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(Includes adopted rules filed through January 28, 1994)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: DECEMBER 20, 1993
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JANUARY 18, 1994

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **March 24, 1994.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

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NEW JERSEY REGISTER

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EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 5(1994)
Termination of State of Energy Emergency

Issued: January 21, 1994.
Effective: January 21, 1994.

WHEREAS, due to the extreme cold temperatures, severe wind chill factors and icy conditions of recent weeks, heavy residential and commercial usage of heat and electrical utilities have resulted in electrical brownouts, stoppages and other heating shortages throughout the State; and

WHEREAS, the Acting Commissioner of the Department of Environmental Protection and Energy ("Acting Commissioner") has made a finding that there exists an energy supply shortage of a dimension which endangers the public health, safety and welfare of all regions of the State; and

WHEREAS, based on the above finding by the Acting Commissioner, Executive Order No. 4 was issued on January 19, 1994 declaring a state of energy emergency for all heat and electrical utilities for the entire State, which Order is to remain in effect until it is rescinded by subsequent Executive Order; and

WHEREAS, the combination of improving weather conditions and compulsory and voluntary reductions in power usage by the citizens of the State has improved the energy supply; and

WHEREAS, the Acting Commissioner has made a finding that the energy supply shortage no longer exists;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT as follows:

1. The state of energy emergency for all heat and electrical utilities for the entire State declared in Executive Order No. 4 issued on January 19, 1994 is hereby terminated and Executive Order No. 4 is rescinded.
2. All energy consumers in the State are encouraged to continue efforts to conserve heat and electrical utilities for the duration of the extreme cold weather.
3. This Order shall take effect as of 11:59 P.M., January 21, 1994.

(b)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 6(1994)
Advisory Panel on Government Contracting Procedures

Issued: January 27, 1994.
Effective: January 27, 1994.
Expiration: Indefinite.

WHEREAS, Executive Order No. 79 issued on January 12, 1993 and Executive Order No. 92 issued on May 4, 1993 established the policy of the State with regard to the issuing of bonds, notes and other instruments, and the awarding of underwriting, bond counsel, architectural, engineering and other professional contracts; and

WHEREAS, it was recognized that implementation of Executive Order Nos. 79 and 92 and the procedures set in place as a result thereof would need continuous monitoring in order to ensure the effectiveness and appropriateness of the policies adopted; and

WHEREAS, the policies and procedures established by Executive Orders No. 79 and No. 92 have now been in place for a number of months; and

WHEREAS, it is important that an analysis of the effect of these policies and procedures be conducted by the Executive Branch, which is responsible for administering the procedures and monitoring the results thereof; and

WHEREAS, it is appropriate that the views of the public and of the affected issuers, service providers and professionals be solicited on the existing procedures; and

WHEREAS, it is also important to ensure that the methods used by the State for the issuance of bonds, notes or other instruments and the selection of all underwriters, financial advisors, bond counsel and providers of other professional services provide the highest degree of quality and performance and instill the greatest level of public trust while at the same time yielding the maximum cost savings for the citizens of this State;

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

1. There is hereby created an Advisory Panel on Government Contracting Procedures (hereinafter "Advisory Panel") to consist of: (a) the Attorney General, (b) the State Treasurer and (c) the Chief Counsel to the Governor, who shall serve as chair.
2. The Advisory Panel shall make a comprehensive review of the existing procedures for: (a) the issuance of bonds, notes or similar instruments; (b) the selection of underwriters in connection with the issuance of bonds, notes or other instruments; (c) the retention of attorneys or law firms in connection with the issuance of bonds, notes or other instruments; and (d) the retention of any engineering, architectural or other professional firms.
3. The Advisory Panel shall report its findings within six months of the effective date of this Order with detailed recommendations as to whether the existing procedures should remain in place or be altered in order to better accomplish the goals of achieving the best economic results with the highest degree of quality from the various providers and integrity in the award of State contracts.
4. All authorities which are required to submit their minutes, resolutions, or actions for gubernatorial approval or veto shall cooperate fully with the Advisory Panel in the implementation of this Order, and shall promptly furnish the members of the panel with any and all information that they may from time to time request.
5. The Advisory Panel is authorized to call upon any department, office, division or agency of this State to supply it with data and other information, personnel or assistance it deems necessary to discharge its duties under this Order. Each department, officer, division or agency of the State is hereby required, to the extent not inconsistent with law, to cooperate with the panel and to furnish it with such information, personnel and assistance as is necessary to accomplish the purpose of this Order.
6. The Advisory Panel shall take care to solicit both written and oral comments from the public and the affected issuers, and service providers and professionals, and to consider the views expressed by those parties in its report.
7. This Order shall take effect immediately.

(c)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 7(1994)
Remission of Forfeiture of Dog "Taro"

Issued: January 28, 1994.
Effective: January 28, 1994.
Expiration: Indefinite.

WHEREAS, Lonnie and Sandy Lehrer, legal residents of the Borough of Haworth, in the County of Bergen, State of New Jersey (the "Owners"), are owners of a dog, also known as "Taro", which dog has been ordered destroyed pursuant to N.J.S.A. 4:19-17 to -37; and

WHEREAS, the above-cited statute provides for proceedings in the form of hearings to determine whether a dog meets certain criteria prior to it being destroyed; and

WHEREAS, the proceedings established by the above-cited statute are similar to those established by forfeiture statutes, which apply to personal property; and

WHEREAS, domestic animals may be properly and appropriately characterized as personal property for purposes of forfeiture; and

WHEREAS, Article V of the Constitution of the State of New Jersey provides, among other things, that the Governor may remit forfeitures; and

WHEREAS, N.J.S.A. 2A:167-5 provides that any person who has suffered a forfeiture may make application for the remission of such forfeiture, "which application the governor may grant by order signed by [her]"; and

WHEREAS, the Owners have made application to the Governor to remit the forfeiture of Taro and good cause has been shown to warrant the granting of such application;

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

1. The forfeiture of Taro, which would result if said dog were destroyed pursuant to N.J.S.A. 4:19-17 to -37, is hereby remitted so long as the Owners certify and agree to the following within 30 days of the date hereof: (a) that Taro has been physically removed outside of the borders of the State of New Jersey and shall so forever remain; (b) that the new owners shall have had no prior ownership interest, either actual or asserted, in Taro; and (c) that the present and new owners shall accept any and all liability of whatever nature in connection with the ownership of Taro and the dog's future acts, with no legal recourse whatsoever to the State of New Jersey, County of Bergen and Borough of Haworth and all officers, employees and agents of said State, County and Borough.

2. This Order shall take effect immediately.

RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Notice of Extension of Comment Period
Special Hearing Rules; Board of Regulatory Commissioners

Proposed New Rule: N.J.A.C. 1:14-10

Take notice that the Office of Administrative Law has extended the comment period for proposed new rule N.J.A.C. 1:14-10 which appeared at 26 N.J.R. 3(a), January 3, 1994. The comment period has been extended until February 24, 1994.

Submit comments by February 24, 1994 to:

Jeff S. Masin, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9, CN 049
Quakerbridge Road
Trenton, New Jersey 08625

BANKING

(b)

DIVISION OF REGULATORY AFFAIRS

Closing of Branch Offices

Proposed Amendments: N.J.A.C. 3:1-2.17, 2.25 and 2.26

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

Authority: N.J.S.A. 17:1-8 and 8.1.

Proposal Number: PRN 1994-104.

Submit comments by March 24, 1994 to:

Rule Comments
Attn: Stephen Szabatin
Deputy Commissioner
Department of Banking
CN 040
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Banking proposes to amend its rules regarding branch closings based on changes in Federal law in this area.

Pursuant to Section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, a depository must give notice to the appropriate banking agency at least 90 days prior to closing a branch. The notice must include (1) a detailed statement of the reasons for the decision to close the branch; and (2) statistical or other information in support of such reasons. 12 U.S.C. §1831p(a). In addition, the depository must mail notice to its customers at least 90 days prior to closing, and must post notice in the branch at least 30 days prior to closing. 12 U.S.C. §1831p(b).

In light of these considerable notice requirements contained in Federal law, the Department no longer views it as necessary for a depository to provide newspaper notice of a proposed branch closing. The 30-day notice requirements for posting in the branch and for notifying the Department are retained. However, when notifying the Department, the depository may provide a copy of the notice sent to the Federal regulatory instead of providing the name of the institution and the location of its principal office, the location of the branch office which will be closed, the prospective date of closing, and a statement of the reasons leading to the decision to close the branch.

If an institution acquires a branch or deposits of a branch from the Resolution Trust Corporation or the Federal Deposit Insurance Corporation or has an option to purchase a branch, and closes it within 180 days, or if it sells a branch to another depository which operates the office as a branch, it may comply with this rule by merely filing a Certificate of Discontinuance with the Commissioner along with the required fee.

The rule provides for a $100.00 fee for closing a branch office and/or filing a certificate of discontinuance.

Social Impact

The proposed amendments primarily reduce the reporting requirements for a depository to close a branch. Since Federal law now provides for substantial notice requirements, it is not expected that this will have any social impact.

Economic Impact

The proposed amendments will eliminate the requirement that depositories provide published notice of proposed branch closings. To the extent that depositories will no longer incur this cost of publication, it will have a positive economic impact. In addition, the proposed amendments provide for a $100.00 filing fee to reimburse the Department for its administrative expenses. This will have a marginal negative economic impact on regulated depositories.

Regulatory Flexibility Analysis

Banks, savings banks and savings and loan associations are predominantly small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, these rules in general reduce the compliance requirements rather than adding to them. The $100.00 fee is necessary to offset administrative expenses. Accordingly, no differentiation based on business size is made.

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

3:1-2.17 Closing of branch offices

(a) (No change.)

(b) If a bank, savings bank or savings and loan association acquires a branch or deposits of a branch from the Resolution Trust Corporation or the Federal Deposit Insurance Corporation or has an option to purchase a branch, and closes it within 180 days, or if it sells a branch to another depository which operates the office as a branch, it may comply with this rule by merely filing a Certificate of Discontinuance with the Commissioner along with the required fee.

(c) A bank, savings bank or savings and loan association may submit to the Department a copy of the branch closing notice filed with its Federal regulator in lieu of the filings required by (a)1 through 4 above.

[(b)]**(d)** Beginning within 10 calendar days after notification of the Department, the bank, savings bank or savings and loan association shall publish notice of the proposed closing once a week for two successive weeks in a newspaper designated by the Commissioner, which is published and circulated in the municipality in which said branch is to be closed, or if there be no such newspaper, then in a newspaper of general circulation in the municipality. The institution shall include in the notice the name of the institution, the location of the branch office which will be closed and the prospective date of closing, the location of the depository's nearest branch office, and a statement indicating that all comments to the closing of the branch may be made to the institution and to the Department of Banking, along with the mailing address of the Department and the institution. **A bank, savings bank or savings and loan association which notifies its customers of the branch closing in accordance with Federal law is exempt from this publication requirement.** In addition, for at least 30 days prior to the branch closing, the bank, savings bank or savings and loan association shall conspicuously post notice of the proposed branch closing in the branch to be closed. This notice in the branch shall contain at least [the same information required in the newspaper notice] **the prospective date of closing, the location of the depository's nearest branch office, and a statement indicating that all comments to the closing of the branch may be made to the institution and to the Department of Banking, along with the mailing address of the Department and the institution.**

(c) to (e) recodified as **(e)** to **(g)** (No change in text.)

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. to 22. (No change.)

23. For filing a certificate of discontinuance and/or closing a branch office $100.00

(b) (No change.)

3:1-2.26 Fees; State associations

(a) Every State association shall pay to the Commissioner the following fees:

1. to 21. (No change.)

22. For filing a certificate of discontinuance and/or closing a branch office $100.00

(b) (No change.)

(a)

DIVISION OF REGULATORY AFFAIRS

Notice of Extension of Time for Comments Mortgage Bankers and Brokers Registration of Solicitors

Proposed Amendment: N.J.A.C. 3:38-5.3

Take notice that the comment period on the above-referenced proposal, published on January 3, 1994 at 26 N.J.R. 6(a), has been extended from February 2, 1994, to May 2, 1994.

Submit comments by May 2, 1994 to:

Stephen Szabatin, Deputy Commissioner
N.J. Department of Banking
CN 040
Trenton, N.J. 08625

EDUCATION

(b)

STATE BOARD OF EDUCATION

Adult Education Programs

Proposed Repeal and New Rules: N.J.A.C. 6:30

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

Authority: N.J.S.A. 18A:1-1.1, 18A:4-15, 18A:7C-1 et seq., 18A:48-1, 18A:49-1 through 8, 18A:50-12, 13 and 14, and the Adult Education Act, 20 U.S.C. 1201 et seq.

Proposal Number: PRN 1994-96.

Submit written comments by March 24, 1994 to:

Elease E. Greene-Smith
Administrative Practice Officer
N.J. Department of Education
225 East State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

The Department of Education proposes to repeal and adopt new rules governing adult education programs at N.J.A.C. 6:30.

Pursuant to Executive Order No. 66(1978) the rules currently in effect were readopted on May 5, 1993. Such readoption was for a period of one year. To avoid automatic expiration on May 11, 1994, it is now necessary to readopt the provision of N.J.A.C. 6:30. The proposed repeal and new rules reflects the continued requirements necessary to operate State issued diploma programs for adults and adult high schools which provide persons of 16 years of age and older with a locally issued, State endorsed high school diploma. The Department is taking this opportunity to restructure and remove duplicate and/or redundant language at N.J.A.C. 6:30 to make the rules easier to understand.

Due to the extensive changes in language and the reorganization of sections, for clarity, the Department proposes to repeal and propose as new rules the provisions contained in N.J.A.C. 6:30. The current rules at N.J.A.C. 6:30-6 set forth the purpose, eligibility and requirements for reimbursement, and monitoring elements and indicators, for supervisors of adult education programs. These provisions are being repealed due to the loss of State funding to support such efforts.

A review of the agency proposal follows:

Subchapter 1. Administration of Adult Basic Skills and Literacy Programs

This subchapter provides administrative and general rules which apply to all basic skills and State-issued diploma programs described in subchapter 2 and for adult high schools described in subchapter 3, which provide persons 16 years of age and older with a locally-issued, State-endorsed high school diploma.

The age requirements contained in N.J.A.C. 6:30-1.2 have been restated in a way which more clearly reflects the common practice across the State, namely, that persons 16 years of age may participate in adult programs if they are no longer enrolled in school. The proposed N.J.A.C. 6:30-1.2(b), (c) and (d) set forth the requirement that a Certificate of Consent to Participate be required of 16- and 17-year-old students in place of the former Certificate of Non-Enrollment in School. The consent form requires the concurrence of a parent, guardian, court officer, or a rehabilitation counselor and confirms that the prospective student is not enrolled in school. Proposed N.J.A.C. 6:30-1.2(d) clarifies that participation in adult programs described in subchapters 2 and 3 shall not be limited in any way, except with respect to availability of facilities and teaching personnel and that participants shall not be denied access to a program because of their place of residency as long as the requirement of New Jersey state residency is met.

In proposed N.J.A.C. 6:30-1.3(a)1iii, an exception to the standard score requirement for passage of the GED test is provided for persons 60 years of age and older. In proposed N.J.A.C. 6:30-1.3(a)3, an exception to the age requirement is made for persons under 16 years of age who have otherwise met all State high school graduation requirements.

In proposed N.J.A.C. 6:30-1.4(a), the Department is raising the fee for registering to take the GED test from $20.00 to $25.00 and is introducing a new process for registering and taking the GED examination. As outlined in proposed N.J.A.C. 6:30-1.4(a), applicants will be given a receipt in the form of a card which will allow them up to six months to take the examination and any retests they may require without having to pay an additional fee after 30 days, which is the current practice. In proposed N.J.A.C. 6:30-1.4(c), the fee for issuing a State-issued high school diploma based on the evaluation of college coursework has remained at $5.00. The Department is no longer reissuing duplicate State high school diplomas but will issue a GED transcript and diploma verification statement upon written personal request and payment of a $5.00 fee.

A new monitoring procedure is outlined in N.J.A.C. 6:30-1.6. The procedure ensures prior notice of monitoring visits to chief school administrators and agency administrators, sharing of monitoring instruments, prompt reporting, and an appeal and corrective action phase. The new process calls for monitoring within five years following adoption of these rules and remonitoring once every five years thereafter. Monitoring indicators are described in subchapters 2 and 3.

A section on definitions, N.J.A.C. 6:30-1.7, has been moved from its former subchapter location and has been amended to include definitions related to apprenticeship.

Subchapter 2. Adult Basic Skills and General Educational Development (GED) Programs

N.J.A.C. 6:30-2.1 through 2.5 regulate adult basic skills and General Educational Development (GED) preparatory programs and provide standards for services. This proposed subchapter continues to encourage the sponsorship of programs for the least educated and most in need. The programs referenced in this new subchapter are regulated in current subchapters 2, 3 and 5. Programs referenced in this subchapter include: adult basic education for persons functioning at less than a ninth grade level; GED preparatory programs for persons looking forward to taking the GED examination; English as a Second Language (ESL) programs for adults with limited English proficiency; and Evening Schools for Foreign-Born Residents for those adults with English language deficiencies who are also interested in preparing for citizenship. Also included in this subchapter are general rules regarding GED testing centers.

Throughout this subchapter regulations are outlined for the following: eligibility for applying for funding; application process for applying for funding; eligibility for participating in a program; and fees.

In proposed N.J.A.C. 6:30-2.6(a), the assignment of program monitors is specified. Proposed N.J.A.C. 6:30-2.6(b) lists eight indicators of program quality with associated measures of performance which will be used by monitoring teams carrying out the monitoring process in adult basic skills programs.

Subchapter 3. Adult High Schools

Proposed N.J.A.C. 6:30-3 regulates the operation of adult high schools and reflects the language of rules originally promulgated in 1986. A number of technical adjustments have been made to update language and to ensure consistency with regular high school operations.

Proposed N.J.A.C. 6:30-3.1 and 3.2 provide general provisions for adult high school operations and regulations related to establishing, expanding or relocating an adult high school. These sections are unchanged from current regulations in N.J.A.C. 6:30-4.

In proposed N.J.A.C. 6:30-3.3(a), the assignment of program monitors is specified. Proposed N.J.A.C. 6:30-3.3(b) lists eight indicators of program quality with associated measures of performance which will be used by monitoring teams carrying out the monitoring process in adult high schools.

Proposed N.J.A.C. 6:30-3.4 through 3.8 are unchanged from current regulations except for technical corrections in language. These sections regulate matters dealing with: eligibility for enrollment; adults with special needs; curriculum; graduation; and, award of credit.

In proposed N.J.A.C. 6:30-3.9(b)2, provision is made for foreign transcript evaluation by staff at an approved adult high school provided that designated evaluators are trained by staff of the Department of Education.

Proposed N.J.A.C. 6:30-3.10 through 3.13 are unchanged from current regulations except for technical revisions of language.

Subchapter 4. Apprentice Training

N.J.A.C. 6:30-4 details apprentice training program responsibilities and duties which include: the approval of registered apprenticeship programs; individual apprenticehsip agreements; monitoring and investigating compliance issues; issuing apprenticeship certificates; and providing technical assistance to business and industry.

Social Impact

As of the 1990 census, over 1.2 million adults and out-of-school youth in New Jersey 25 years of age and older do not have high school diplomas. A more recent national study, just released by the National Center for Educational Statistics, paints a more bleak picture. The study, conducted by Educational Testing Service, is called the National Adult Literacy Survey. The report on the survey describes the types and levels of literacy skills demonstrated by adults across the nation. Five levels of literacy are identified for prose, document, and quantitative proficiencies. Between 21 and 23 percent of Americans or some 40 to 44 million adults 16 years of age and older demonstrated skills in the lowest level of proficiency. In New Jersey, between 20 and 23 percent of the same study group performed in the lowest level of proficiency. In numbers, the percentages represent between 1.2 and 1.4 million New Jerseyans.

These rules provide several options for adults to improve their academic skills and to earn a high school diploma. The social impact of these programs is manifold. With improved academic skills, adults increase their potential for higher earnings and better jobs. In many cases, completing secondary school is the difference between employment and not working at all.

Economic Impact

Adults with high school diplomas benefit significantly from higher than average earnings over their lifetime. In the same study cited above, the authors noted that the median earnings of individuals performing on Level 1, the lowest level of proficiency, were approximately $230.00 to $240.00 each week. Adults performing on Level 3 of the five level scale, earned between $340.00 to $350.00 each week—a difference of about $110.00 each week. This most recent study clearly shows the relationship between education and earnings.

Most of the funding for these programs is derived from Federal and State sources, with augmentation in some instances from local school districts. In the current program year, the Federal adult basic skills grant amounts to 7.2 million dollars. State budgeted grants are: Adult Literacy—$1,024,000; High School Completion—$1,213,000; and, Evening Schools for Foreign-Born Residents—$211,000.

Regulatory Flexibility Analysis

The adult education rules found at N.J.A.C. 6:30 impact upon public schools and public institutions as well as privately sponsored and volunteer-based adult education programs some of which may be considered small businesses as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Those programs which could be considered small businesses must meet the same reporting, recordkeeping and compliance requirements as the public institutions. The requirements include basic application processes necessary for establishing participation in the State funded programs, basic recordkeeping provisions necessary for the monitoring of the programs by the State Department of Education and compliance with program standards and standards of graduation from the programs. The privately sponsored programs and volunteer-based adult education programs provide educational opportunities for adults in community-based settings such as churches, clubs and libraries. The Department sees no need for differing standards based on business size because the rules are viewed as not so burdensome as to merit such treatment and, further, any costs of compliance related to the programs are fully funded by the State.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 6:30.

Full text of the proposed new rules follows:

CHAPTER 30
ADULT EDUCATION PROGRAMS

SUBCHAPTER 1. GENERAL PROVISIONS

6:30-1.1 Purpose and functions

(a) The purpose of adult basic skills and literacy programs is to provide comprehensive life-long learning opportunities for adults.

(b) The Division of Academic Programs and Standards is responsible for:

1. Providing educational leadership for the programs cited in this chapter;

2. Allocating funds to local school districts, county community colleges, county and State institutions, and non-profit and for profit agencies and organizations for the operation of programs cited in this chapter;

3. Evaluating the programs cited in this chapter;

4. Providing technical assistance and training to programs cited in this chapter;

5. Supervising General Educational Development (GED) Testing Centers;

6. Evaluating college transcripts of persons applying for a State-issued high school diploma; and

7. Awarding State-issued high school diplomas to applicants meeting the requirements for diploma issuance.

6:30-1.2 Age and out-of-school requirements

(a) In order to participate in programs described in this chapter, a person must be at least 16 years of age and no longer enrolled in school.

(b) Requests to participate in programs described in N.J.A.C. 6:30-2 and 3 from persons 16 and 17 years of age domiciled in a natural or foster home shall be accompanied by a Certificate of Consent to Participate signed by a parent, guardian, probation or parole officer, State rehabilitation counselor or a judge.

(c) Requests to participate in programs described in N.J.A.C. 6:30-2 and 3 from persons 16 or 17 years of age who are domiciled in a State, county or municipal institution, or in a residential pro-

gram, must be accompanied by a Certificate of Consent to Participate signed by either a parent or guardian, or when neither is available, a surrogate parent.

1. Each institution shall ensure that the rights of a youth are protected through the provision of a surrogate parent who shall assume all parental rights under this chapter, when either:

i. The parent(s) cannot be located after reasonable efforts; or

ii. The youth is a ward of the State of New Jersey.

2. Each institution shall establish a method for selecting and training surrogate parents.

3. The person serving as a surrogate parent shall have:

i. No interest that conflicts with those of the youth he or she represents; and

ii. Knowledge and skills that ensure adequate representation of the youth.

4. A surrogate parent may be paid solely to act in that capacity. Persons serving as surrogate parents may not otherwise be employees of the institution.

(d) Requests to participate in programs described in N.J.A.C. 6:30-2 and 3 from emancipated minors, who are at least 16 years of age, shall be accompanied by a Certificate of Consent to Participate signed by a judge appointed in the State of New Jersey. For purposes of this chapter, an "emancipated minor" is a person 16 or 17 years of age, domiciled in an independent housing arrangement and not responsible to natural or foster parents or a guardian.

(e) Programs as described in N.J.A.C. 6:30-2 and 3 shall accept all requests to participate, as space allows, from residents of New Jersey who are at least 16 years of age and no longer enrolled in school. Participation in programs shall not be limited in any way, except with respect to the availability of facilities and teaching personnel. Participants shall not be denied access to a program because of their place of residency as long as they meet the requirement of New Jersey state residency.

6:30-1.3 Certification for a State-issued high school diploma

(a) Either of the following methods may be used to qualify for a State-issued high school diploma:

1. Persons may apply for a State-issued high school diploma by taking the Tests of General Educational Development (GED) of the American Council on Education or other tests approved by the State Board of Education which shall be used as the basis for qualifying for a State-issued high school diploma.

i. The Commissioner shall establish uniform, Statewide standard scores for passage of the GED test.

ii. These standard score requirements shall be adopted and be subject to change by resolution of the State Board of Education. The State Board shall announce its intent to change GED score requirements no less than 28 days prior to final adoption.

iii. Exceptions to the standard score requirement may be made by the Commissioner upon the recommendation of the Assistant Commissioner, Division of Academic Programs and Standards with respect to persons 60 years of age and older. In no case may an exception to the passing score fall below the minimum passing scores established by the American Council on Education. Such a determination will be made on a case by case basis considering circumstances such as health and achievement.

2. Persons may apply and qualify for a State-issued high school diploma by passing the High School Proficiency Test, and presenting official transcripts showing at least 30 general education credits leading to a degree at an accredited institution of higher education. Included in the 30 general education credits must be a minimum of 15 credits with at least three credits in each of the five general education categories as follows: communications; mathematics; science; social science; and the humanities. For the purpose of this section the five general education categories shall be defined as follows:

i. "Comunications" shall mean courses designed to enhance facility in the English language;

ii. "Mathematics" shall mean courses designed to enhance mathematical conceptual understanding and application, including computer science;

iii. "Science" shall mean courses designed to enhance scientific conceptual understanding and application;

iv. "Social science" shall mean courses designed to promote social awareness, including understanding social, economic and political problems and the responsibilities of citizenship in an interdependent world; and

v. "Humanities" shall mean courses in literary, philosophical, foreign language, historical, aesthetic, or other humanistic studies to promote the understanding and transmission of values to one's own and other cultures.

3. Persons seeking to qualify for a State-issued high school diploma as outlined in this section, shall be at least 16 years of age and out of school. Exceptions to the age requirement may be made by the Commissioner upon the recommendation of the Assistant Commissioner, Academic Programs and Standards for persons under 16 years of age who have otherwise met all state high school graduation requirements. Such a determination will be made on a case by case basis considering extraordinary academic or personal achievement.

6:30-1.4 Fees

(a) Persons submitting applications for a State-issued high school diploma by examination or reexamination on the GED test shall pay a $25.00 fee. Upon application to take the GED test, an applicant shall be presented with a certifying document verifying payment of the appropriate fee and designating a six-month time frame during which the applicant may take the GED test or reexaminations as may be necessary. Applicants will be required to present the payment certification document when registering for retesting during the six-month testing time frame.

(b) Persons housed under the custody and supervision of the New Jersey State Department of Corrections may, by contractual agreement with the New Jersey State Department of Education, be administered the GED test without charge to either the candidate or the New Jersey State Department of Corrections.

(c) Persons requesting a State-issued high school diploma based on the evaluation of college coursework, or a copy of a GED transcript and diploma verification shall do so in the form of a written request signed by the person making the request and shall include a $5.00 fee.

6:30-1.5 School and community planning process

(a) Districts or agencies sponsoring programs as cited in N.J.A.C. 6:30-2 and 3 shall adopt school and community planning procedures for the operating of these programs.

(b) Agencies sponsoring these programs shall provide opportunity for public review and comment on programs funded under N.J.A.C. 6:30-2 and 3. Agencies shall establish advisory committees which shall include community residents and program staff and shall make provision annually for public input.

6:30-1.6 Monitoring

(a) The Commissioner shall require the monitoring of all programs described in this chapter pursuant to N.J.S.A. 18A:48-1, 18A:49-1 through 18A:50-12, 13 and 14, and the Adult Education Act, 20 U.S.C. 1201 et seq., to ensure that each is performing according to the standards and procedures prescribed by law and rule.

(b) The monitoring procedure shall be as follows:

1. The Assistant Commissioner, Division of Academic Programs and Standards shall establish a monitoring schedule annually.

2. Each chief school and agency administrator and program director responsible for adult programs described in this chapter shall be notified in advance by the Assistant Commissioner, Division of Academic Programs and Standards, of the date established for the monitoring visit.

3. Prior to the monitoring visit, each chief school and agency administrator and program director responsible for the adult programs described in this chapter shall receive a copy of the monitoring instrument prescribed by the Commissioner containing the specific indicators as noted in N.J.A.C. 6:30-2.6 and 3.3 needed to demonstrate satisfactory program performance.

(c) Based upon the monitoring findings, the Assistant Commissioner, Division of Academic Programs and Standards, shall determine whether to recommend the continuation or suspension of the program to the Commissioner.

(d) All programs cited in this chapter shall be monitored (within five years of the effective date of these rules) and once every five years thereafter.

(e) Staff of the Bureau of Adult Education and Literacy shall conduct monitoring and shall record findings using worksheets prescribed by the Assistant Commissioner, Division of Academic Programs and Standards, and review the findings with the chief school or agency administrator and director responsible for the adult program.

(f) The Assistant Commissioner, Division of Academic Programs and Standards shall send a formal notification of findings to the chief school or agency administrator responsible for the program within 20 work days of the completion of the monitoring visit. The notification shall contain:

1. Copies of completed worksheets; and
2. A recommendation that the program be continued or suspended by the Commissioner.

(g) A chief school or agency administrator notified that the Assistant Commissioner, Division of Academic Programs and Standards will recommend to the Commissioner that an adult program be suspended shall be granted 60 calendar days from receipt of the notification to document to the Commissioner that the unacceptable findings have been corrected.

(h) Any adult program that does not correct deficiencies within the 60 calendar day period shall be suspended by the Commissioner, in accordance with the procedure established under N.J.A.C. 6:24-3.1.

6:30-1.7 Definitions

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

"Accredited" means that the high school, college or university has met the criteria and standards set by the appropriate accrediting agency such as the Middle States Association.

"Adult" means a person 18 years of age or older.

"Adult high school" means a school conducting supervised educational activities in the day or evening to provide adults with the necessary instruction to enable them to complete the requirements for a locally issued, State-endorsed diploma.

"Adult's primary language" means the language most relied upon by the adult for communication, or the language most spoken by the adult in the adult's home or work environment.

"Apprentice" means an employee of legal working age who meets the qualifications established by the apprentice sponsor and who is employed under a written agreement which provides that related training and on-the-job experience received be in accordance with approved standards of apprenticeship.

"Apprentice sponsor" means an employer who is a party to a written training agreement with an apprentice that includes the components of the training in accordance with approved standards of apprenticeship.

"Apprentice training" means a program of adult vocational education requiring a written training agreement between full-time paid apprentices and their apprentice sponsors. The program includes components of related instruction which are coordinated by an individual who holds a current administrative certificate of Coordinator: Apprentice Programs.

"Apprenticeship agreement joint approval" means a written training agreement between an apprentice and an apprentice sponsor in accordance with approved standards of apprenticeship. This agreement includes the components of the training and is signed by the apprentice, apprentice sponsor, apprentice coordinator, State Department of Education representatives and Federal Bureau of Apprenticeship and Training representative.

"Approved" means that a program has met the standards established by the Department of Education as evidenced by action taken by the State Board of Education.

"Assistant Commissioner" means the Assistant Commissioner, Division of Academic Programs and Standards.

"Attendance" means participation in a learning activity for more than one hour in a session.

"Comprehensive examination" means a test designed to assess mastery of a given set of proficiencies.

"Contact time" means the period in which a student interacts with a staff member of the adult high school for one hour or more at a Department of Education approved facility for purposes of instruction or advisement.

"Course" and "coursework" means activities and projects which are geared toward mastery of a set of proficiencies.

"DD-214" means a Department of Defense form issued to all members of the military which describes their service record.

"Disabled adult" means any adult who has any physiological, mental or psychological disorder or condition which substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.

"Educational plan" means a signed and dated document developed by the student and a professional staff member of the adult school program.

"English language fluency" means the ability to understand conversational English and to speak the language with sufficient structural accuracy, to use vocabulary to participate effectively in most formal and informal conversations on practical, social and school topics, to read material for information and to complete forms and write essays and reports on familiar topics.

"English language proficiency" is defined as the full command of language skills, including proficiency in listening, speaking, reading and writing. English language proficiency is defined operationally as the passing score on an English language proficiency test. To attain proficiency in a language requires more time than to attain fluency.

"Enrolled" means that an adult has completed and filed an application for enrollment and assisted in the development and completion of an educational plan.

"Flexible course" means a course that identifies and prescribes activities and projects necessary to achieve an accepted level of proficiency rather than a specified number of minutes of class time.

"Full-time employment" means work that is not less than 30 hours per week.

"Limited English proficient adult" is defined as an adult who has not demonstrated English language proficiency as measured by a language proficiency test.

"Locally issued, State-endorsed diploma" means a high school diploma awarded to an individual by a district board of education endorsed by the State Board of Education.

"Monitoring" means a process conducted by representatives of the Department of Education to determine whether or not a program can demonstrate satisfactory operational performance.

"New Jersey resident" means a person who resides in or whose principal residence is in the State of New Jersey.

"Occupational license" means a certificate verifying that a person has met qualifications prescribed by an issuing State agency for occupations designated by the New Jersey State Department of Labor.

"Official transcript" means an individual's record of high school or college courses, grades and credits awarded or a record of GED scores.

"Part-time employment" means work that is more than 15 hours but less than 30 hours per week.

"Proficiency" means an explicitly stated and demonstrable knowledge and/or skill used to define a desired learning outcome.

"Proprietary school" means a privately owned school.

"Remedial college courses" means those courses taken at an accredited college or university which are not applied toward graduation and for which no college academic credit is awarded.

"School year" means a period of time commencing on July 1 and ending on June 30 of the following year.

"State-issued diploma" means a diploma issued by the State of New Jersey. This is contrasted with a locally issued, State-endorsed diploma.

"Statement of responsibilities" means an agreement signed by both the student and a representative of the adult high school establishing the requirements of each to engage in a successful academic program.

"Traditional course" means a course which has specified lengths of time for class meetings and the completion of activities necessary to achieve the accepted level of proficiencies for the award of credit.

SUBCHAPTER 2. ADULT BASIC SKILLS AND GENERAL EDUCATIONAL DEVELOPMENT (GED) PROGRAMS

6:30-2.1 Purpose and program descriptions

(a) Adult basic skills programs shall offer instruction designed to enable students to acquire the skills necessary to function independently as parents, workers, consumers and citizens.

1. Adult Basic Education (ABE) programs are designed for persons who are least educated and lacking the most basic educational skills. ABE programs focus instruction on basic communication, computation, pre-occupational, civic and everyday living skills.

2. General Education Development (GED) programs are designed for persons preparing to take the Tests of General Educational Development (GED) in order to qualify for a State-issued high school diploma. GED programs focus instruction on subject areas covered by the GED test, namely, writing skills, social studies, science, interpreting literature and the arts, and mathematics. In these programs instruction may be offered in either English, Spanish or French, subject to the availability of teaching staff.

3. English as a Second Langauge (ESL) programs are designed for persons with limited English language proficiency to prepare them in the acquisition of listening, speaking, reading and writing English language skills necessary to function effectively in an English speaking environment and further, for those who so desire, to enter other adult education programs. Persons with limited English proficiency are those whose primary language is other than English and who, by oral placement test, are determined to be in need of instruction in English as a second language. An adult's primary language is the language most relied upon by the adult for communication or the language most spoken by the adult in his or her home or work environment.

4. Evening schools for Foreign-Born Residents provide foreign-born persons with instruction in the English language pursuant to N.J.S.A. 18A:49-1. The program also provides instruction concerning the organization and function of Federal, State and local government and in the laws of New Jersey and of the United States. All instruction shall be oriented toward preparation for citizenship.

5. General Educational Development (GED) testing centers provide opportunities for adults to take the Tests of General Educational Development (GED) leading to the awarding of a State-issued high school diploma.

6. All curricula shall be adult oriented and shall emphasize instructional approaches and learning activities which are geared to the personal and academic needs and aspirations of each student.

7. For each student, in any adult program noted in this subchapter, an educational plan shall be developed reflecting initial test results indicating deficiencies in basic skills, remedial steps to be taken, dated results of instructional activity and a sign-off by the professional staff person recording the comments.

6:30-2.2 Eligibility for funding

(a) The eligibility of an agency, institution or organization to apply for State and Federal funds for basic skills and GED programs shall be determined in accordance with requirements pursuant to N.J.S.A. 18A:50-12 and the Adult Education Act, 20 U.S.C. 1201 et seq.

(b) Eligibility for funding Evening Schools for Foreign-Born Residents is subject to the following limitations:

1. Funding is limited to school districts;

2. Teachers employed in the Evening School for Foreign-Born Residents programs shall hold a valid New Jersey teaching certificate; and

3. The classes shall be separate and distinct from other adult education classes. They may be held in the same building with other classes but shall be maintained in separate rooms. Classes may be held during daytime hours but shall be available in the evening in all local programs funded for this activity.

6:30-2.3 Application for funding

(a) Agencies entitled to program support for basic skills or GED programs shall submit a statement of intent to sponsor a program during the succeeding fiscal year to the Bureau of Adult Education and Literacy by September 15 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 an application for funding makes reference.

1. The Bureau of Adult Education and Literacy shall forward an application for funding by October 15 of the pre-budget year to each agency which submitted a statement of intent to sponsor a basic skills or GED program.

2. Agencies applying for basic skills or GED programs shall submit an application for funds by the deadline established annually in a request for proposals. Such application, issued by the Division of Academic Programs and Standards, shall be disseminated to all programs or agencies who have submitted a letter of intent pursuant to (a)1 above. Applications shall include the need and purpose of the program, assurance of compliance with state regulations, rationale, goals, a program description including implementation timelines, internal program evaluation, a statement of assurances, personnel and budget.

3. Funding for basic skills or GED programs to agencies shall be established annually as part of the application process.

4. The determination of funding for agencies for adult basic skills programming shall be based upon, but not limited to, the following:

i. Current demographic data related to under-educated adults in the State of New Jersey;

ii. Current demographic data related to each individual eligible agency;

iii. Data submitted by applicants including previous student enrollments and program completion based on attendance or GED passage; and

iv. Anticipated services described by applicants.

5. Agencies applying for funding for basic skills or GED programs will receive a notification of funding by February 15 of the pre-budget year.

(b) School districts requesting funding for Evening Schools for Foreign-Born Residents pursuant to N.J.S.A. 18A:49 shall submit a statement of intent to sponsor a program during the succeeding fiscal year to the Bureau of Adult Education and Literacy by September 15 of the pre-budget year.

1. To receive funding under this program, school districts shall make application annually to the Division of Academic Programs and Standards.

2. Each school district shall submit a statement to the Division of Academic Programs and Standards by September 15 of the pre-budget year stating intent to sponsor an Evening School for Foreign Born Residents and an estimate of local funds which will be made available for program purposes. Allocations shall be developed for the following year pursuant to N.J.S.A. 18A:49.

3. The school district shall appropriate in its annual budget an amount at least equal to the allocation anticipated from the State. The expenditure of State and local funds for that year shall be confirmed in a fiscal report submitted to the Division of Academic Programs and Standards upon completion of the program but no later than July 30 following the close of the program year.

4. In any year that the State appropriation for this program is less than the amount applied for by school districts, the amounts requested by districts shall be prorated. The proration shall be based on the ratio of the State appropriation for that year to the total amount for which application is made.

5. Upon receipt of a notice of allocation from the Division of Academic Programs and standards, districts shall submit an application for approval by the Division. Notice of annual allocation shall be made to school districts by June 30 of the school year preceding funding.

6. School districts approved for funding under this program shall maintain appropriate fiscal records pursuant to N.J.A.C. 6:20-2A.

7. A separate account shall be maintained for the receipt and disbursement of State and local funds. This account shall be shown in the annual audit of the district.

(c) Public schools, public post secondary education institutions, and State agencies, as approved by the State Department of Education, are eligible to apply for funding to operate GED testing centers.

1. Agencies eligible to operate GED testing centers shall submit an application in accordance with procedures established by the Division of Academic Programs and Standards which may include, but not be limited to, documentation related to location, target population, facilities, marketing strategies, institutional commitment, and hours of operation. Contracts shall be approved by the State Department of Education based on an agency's certification that contractual terms and conditions will be met.

6:30-2.4 Eligibility for participation

(a) Participation in ABE and GED programs shall be limited to persons 16 years of age and older and no longer enrolled in school.

1. Participation in ESL programs shall be limited to persons who are residents of New Jersey, are 16 years of age and older and no longer enrolled in school, and judged by oral placement test to be in need of instruction in the English as a second language.

2. Priority for participation in ABE and ESL programs shall be given first to persons who are least educated and most in need and second, to persons who have not obtained a high school diploma.

3. Participation in GED preparatory programs shall be limited to persons who do not possess a high school diploma, are residents of New Jersey, are 16 years of age or older and no longer enrolled in school, and have demonstrated a reading comprehension ability equivalent to a person functioning on a ninth grade level, as demonstrated on a commercially available, nationally normed, standardized test for adults.

(b) Participants in the Evening School for Foreign Born Residents program shall be limited to adults who are residents of New Jersey, are 16 years of age or older, and no longer enrolled in school.

1. Participation by in-school youth who are under 16 years of age shall be permissible when these persons accompany parents or family members participating in the program but shall not be in lieu of regular day school instruction.

6:30-2.5 Fees

Adult basic skills programs and GED programs and Evening Schools for Foreign-Born Residents provided in total or in part with State or Federal funds shall be offered free of tuition, fees or other charges, including the cost of books and other instructional materials.

6:30-2.6 Monitoring

(a) Staff of the Bureau of Adult Education and Literacy shall monitor programs cited in this subchapter pursuant to the monitoring process outlined in N.J.A.C. 6:30-1.6.

(b) The following indicators of program quality with associated measures of performance shall be used by the monitoring teams in carrying out the monitoring process in adult basic skills programs:

1. Learners demonstrate progress toward attainment of basic skills competencies that support their educational needs and goals. Measures of performance shall include:

i. Standardized test score gains;

ii. Informal Reading Inventory results, pre- and post;

iii. Placement scores for ESL students;

iv. Teacher reports of gains and improvements in computation and/or communications and/or life skill competencies; and

v. Student goals and the identification of student skill needs, student comments and feedback, and examples of student work.

2. Learners progress according to their abilities in the instructional program or complete program educational requirements that allow them to continue their education or training or achieve their personal educational goals. Measures of performance shall include:

i. Student advancement to higher levels of skill or competency in the adult education program;

ii. Attainment of a State High School Diploma for GED level students; and

iii. Attainment of a stated personal goal.

3. Based on a participatory planning process, the program develops, implements, evaluates and revises, as needed, written program goals. Measures of performance shall include:

i. Existence of a planning document that specifies program goals and objectives and is regularly reviewed and revised at least once each year;

ii. Openness of the program to community input on planning through mechanisms such as an advisory board, staff meetings and comments, student questionnaires, and public hearings;

iii. As funding permits, program plan responds to and addresses community needs and priorities regarding location of classes, skills taught, and types of program services offered;

iv. Existence of program evaluation component and evidence that evaluation feeds into the planning process; and

v. Activities are implemented based on reviewed and revised program goals and objectives.

4. Program utilizes curriculum and instructional techniques sensitive to individual student and group learning styles and the varying levels of student need. Measures of performance shall include:

i. Student assessment information is used to guide the goals and design of the instructional process; and

ii. Existence of written curriculum guides outlining instructional content including materials, approaches and strategies to address the educational needs and goals of individual students.

5. Program has a staff development process that considers the specific needs of its staff, offers opportunities for training in the skills necessary to provide quality instruction and utilization of skills learned. Measures of performance shall include:

i. Presence of preservice and inservice staff development opportunities that include a program overview, philosophy and goals of the program, and ongoing topics appropriate to adult learning;

ii. Existence of a process for identifying staff development needs;

iii. Effective staff performance as measured by administrative observations of staff; and

iv. Hours of preservice and inservice staff development training received by staff.

6. Program identifies support service needs and the agencies which address these needs, provides information to students as needed, and promotes student access to these agencies through informal linkages with service providers as a means of enhancing student participation in the program. Measures of performance shall include:

i. Presence of a process for identifying student support service needs; and

ii. Presence of a listing of support service providers, or informal agreements or linkages between the program and support service providers.

7. Program recruits the population within the service delivery areas as identified in the Adult Education Act as needing literacy services. Measures of performance shall include:

i. The types of recruitment activities the program performs if the program is undersubscribed;

ii. The percentage of target population enrolled compared with state demographics as compiled and reported by the state educational agency; and

iii. The percentage of target population enrolled compared with state averages as compiled and reported by the state education agency.

8. Students are encouraged to remain in the program long enough to meet their educational goal(s). Program has a plan which addresses retention and implements that plan as needed. Measures of performance shall include:

i. Existence of a written statement on the expected levels of student participation and the measures of activities to be implemented if attrition is above the stated acceptable levels;

ii. Hours of participation in the program by type of program; and

iii. Number of students who continue or return to the program in the following program year.

SUBCHAPTER 3. ADULT HIGH SCHOOLS

6:30-3.1 General provisions

(a) Adult high schools shall offer adults opportunity, accessibility and flexibility while maintaining the high standards inherent in the awarding of a high school diploma. Courses shall be sufficiently varied for meeting the educational needs of adults and shall be designed to challenge participants to achieve their highest level of educational ability.

(b) For each student, in an adult high school program, an educational plan shall be developed reflecting the student's past academic record, an analysis of past experiences for which credit may be awarded, graduation requirements, and a proposed schedule of courses for the current school year leading to completion of the requirements for graduation.

6:30-3.2 Permission to establish, expand or relocate an adult high school

(a) To establish an adult high school, the district board of education shall file a request with the Division of Academic Programs and Standards by January 2 of the year of anticipated operation. The request shall include:

1. Data documenting community need;
2. An identification and description of the proposed program site;
3. A projection of enrollment for the first year of operation;
4. A projection of staff by job title;
5. A locally approved program of studies which includes state mandated courses required for graduation as prescribed in N.J.A.C. 6:30-3.7;
6. A projected budget for the first year of operation; and
7. A district board of education resolution approving the establishment of an adult high school.

(b) The Division of Academic Programs and Standards shall evaluate the application of the district board of education and visit the proposed site before the Assistant Commissioner shall grant or deny approval to establish an adult high school.

1. If permission is not granted, the district may resubmit an amended application.

2. If permission is not granted following resubmission, the proposed adult high school may not begin operations during the subsequent school year.

(c) To expand or to relocate an existing program to another site, the district board of education shall file a request with the Division of Academic Programs and Standards three months prior to the anticipated change. The request shall include elements (a)2, 3 and 4 listed above.

6:30-3.3 Monitoring

(a) Staff of the Bureau of Adult Education and Literacy shall monitor programs cited in this subchapter pursuant to the monitoring process outlined in N.J.A.C. 6:30-1.6.

(b) The following indicators of program quality with associated measures of performance shall be used by the monitoring teams in carrying out the monitoring process in adult high schools:

1. Learners demonstrate progress toward attainment of secondary school level competencies that support their educational needs and goals. Measures of performance shall include:

i. Standardized test score gains;

ii. HSPT score data;

iii. Teacher reports of gains and improvements in computation and/or communications and/or life skills competencies; and

iv. Student goals and the identification of student skill needs, student comments and feedback, and examples of student work.

2. Learners progress according to their abilities in the instructional program or complete program educational requirements that allow them to continue their education or training or achieve their personal educational goals. Measures of performance shall include:

i. Student advancement to higher levels of skill or competency in the academic and training community;

ii. Attainment of a district adult high school diploma; and

iii. Attainment of a stated personal goal.

3. Based on a participatory planning process, the program develops, implements, evaluates and revises, as needed, written program goals. Measures of performance shall include:

i. Existence of a planning document that specifies program goals and objectives and is regularly reviewed and revised at least once each year;

ii. Openness of the program to community input on planning through mechanisms such as an advisory board, staff meetings and comments, student questionnaires, and public hearings;

iii. As funding permits, program plan responds to and addresses community needs and priorities regarding location of classes, skills taught, and types of program services offered;

iv. Existence of program evaluation component and evidence that evaluation feeds into the planning process; and

v. Activities are implemented based on reviewed and revised program goals and objectives.

4. Program utilizes curriculum and instructional techniques sensitive to individual student and group learning styles and the varying levels of student need. Measures of performance shall include:

i. Student assessment information is used to guide the goals and design of the instructional process; and

ii. Existence of written curriculum guides outlining instructional content including materials, approaches and strategies to address the educational needs and goals of individual students.

5. Program has a staff development process that considers the specific needs of its staff, offers opportunities training in the skills necessary to provide quality instruction and utilization of skills learned. Measures of performance shall include:

i. Presence of preservice and inservice staff development opportunities that include a program overview, philosophy and goals of the program, and ongoing topics appropriate to adult learning;

ii. Existence of a process for identifying staff development needs;

iii. Effective staff performance as measured by administrative observations of staff; and

iv. Hours of preservice and inservice staff development training received by staff.

6. Program identifies support service needs and the agencies which address these needs, provides information to students as needed, and promotes student access to these agencies through informal linkages with service providers as a means of enhancing student participation in the program. Measures of performance shall include:

i. Presence of a process for identifying student support service needs; and

ii. Presence of a listing of support service providers, or informal agreements or linkages between the program and support service providers.

7. Program recruits the population within the service delivery area identified as lacking a high school diploma. Measures of performance shall include:

i. The types of recruitment activities the program performs if the program is undersubscribed;

ii. The percentage of target population enrolled compared with state demographics as compiled and reported by the state education agency; and

iii. The percentage of target populations enrolled compared with state averages as compiled and reported by the state education agency.

8. Students are encouraged to remain in the program long enough to meet their educational goal(s). Program has a plan which addresses retention and implements that plan as needed. Measures of performance shall include:

i. Existence of a written statement on the expected levels of student participation and the measures of activities to be implemented if attrition is above the stated acceptable levels;

ii. Hours of participation in the program by type of program; and

iii. Number of students who continue or return to the program in the following program year.

6:30-3.4 Eligibility for enrollment and State aid

(a) To qualify for enrollment in an adult high school, a person shall:

1. Be a New Jersey resident;

2. Meet the age and out-of-school requirement of N.J.A.C. 6:30-1.2;

i. A person enrolled in secondary school with senior standing, lacking an opportunity to take courses in his or her secondary school of enrollment, which are available in the adult high school, shall be exempt from the out-of-school requirement provisions of N.J.A.C. 6:30-1.2 provided that the chief school administrators of both the sending and receiving districts approve in a written joint agreement the participation of such a person on a space available basis in that adult high school. Such written approval shall explicitly state the course(s) to be taken and the time frame covered by the agreement. Tuition established by the receiving district on a cost-recovery basis may be charged to the sending district for persons enrolled under this exception;

3. Have not earned a locally issued, State-endorsed high school diploma;

i. Persons holding locally issued high school diplomas may enroll in an adult high school on a space available basis for the express purpose of supplementing their high school record. Tuition established by the host district on a cost-recovery basis may be charged to persons enrolling under this exception; and

4. Complete and sign an application for enrollment including a statement of responsibilities.

(b) To qualify for State aid a person shall:

1. Have met the requirements set forth in (a) above;

2. Have an educational plan on file; and

3. Have met the following attendance requirements:

i. Be enrolled and on the school register as of October 15 of the current school year; and

ii. Be in attendance at least once from October 16 through October 31, unless excused by the adult high school principal for reasonable cause.

(c) Adults who qualify for State aid shall be reported for State aid purposes on the basis of the number of course credits projected in the educational plan for the current school year on the following schedule:

1. One, to and including, 14 credits as a value of 0.5.

2. Fifteen or more credits as a value of 1.0.

(d) Persons enrolled pursuant to (a)2i and 3i above shall not qualify for State aid with respect to their participation in the adult high school.

6:30-3.5 Adults with special needs

(a) Limited English proficient adults shall be required to demonstrate language fluency on the Maculaitis Assessment Program at a score level determined by the State Board of Education.

1. Limited English proficient adults shall be referred to appropriate classes in the adult high school to attain English language proficiency. If the language improvement needs of the adult cannot be met by the adult high school, then the principal shall refer the person to the nearest adult program with staff available to meet those needs.

(b) For an adult with previous experience in a special education program now seeking similar services at an adult high school, the principal of the adult high school with the concurrence of the adult shall request the most recent evaluation and individualized education plan (IEP) for that adult from the high school of last attendance, provided the evaluation was made within the last three years.

1. The principal shall review the IEP to determine the services required by the plan and also the availability of such services in the adult high school.

i. If the IEP can be carried out, it shall serve as the instructional guide for that adult.

ii. If the principal determines that the IEP cannot be carried out, the principal shall promptly refer the adult to the nearest adult high school with staff available to offer the special services required in the IEP or to appropriate county or State agencies or institutions with resources and personnel able to serve the special needs of the adult.

2. If the evaluation was made more than three years prior to application to the adult high school, the IEP may not serve as a guide for the adult's instructional program at the adult high school.

(c) Disabled adults without previous experience in a special education program or those individuals with IEPs that have been issued more than three years prior to their application to the adult high school shall be counseled regarding educational options which would lead to high school graduation and shall be served to the maximum extent appropriate to the needs of the disabled adult within the capability of the program to provide such services.

6:30-3.6 Curriculum

(a) The adult high school curriculum shall comply with the requirements of law and rule and shall include a program of studies which has been adopted by the district board of education.

(b) A copy of the program of studies together with the rules governing its administration as formulated locally and approved by the district board of education shall be kept on file in the principal's office of each adult high school. Such program shall include the courses offered, both required and elective, and the number of credits for each course.

(c) The program of studies shall include all course descriptions. Each course description outline shall include:

1. The course title;

2. A course description;

3. A topical listing of course content;

4. A list of course proficiencies;

5. Evaluation criteria and the standard of mastery; and

6. A comprehensive examination.

(d) The comprehensive examinations for all courses, except for those in the fine, practical or performing arts, shall be written examinations.

(e) When similarly titled courses exist in the adult high school and in high schools of the district, the proficiencies for adult high school courses must meet or exceed the proficiencies established for those courses in the high schools of the district.

(f) The program of studies shall indicate whether a course is traditional or flexible.

1. Traditional courses shall be held in classroom sessions which meet a minimum of 7,200 minutes for each one-year, five credit course.

2. Flexible courses shall require the completion of projects and activities which shall be reviewed in biweekly meetings between a subject area specialist and a student.

6:30-3.7 Graduation

(a) The district board of education of each adult high school shall adopt policies for adult high school graduation requirements pursuant to law and rule. Policies shall include passing the Statewide assessment test. When adults are unable to pass the Statewide assessment test, there shall be further evaluation through a Special Review Assessment pursuant to N.J.A.C. 6:8-7.1(b)3, 4 and 5. When limited English proficient adults are unable to pass the Statewide assessment test, they shall be further evaluated through a Special Review Assessment pursuant to N.J.A.C. 6:7-1(b)3, 4 and 5 and shall demonstrate English language fluency on the Maculaitis Assessment Program as a requirement for graduation.

(b) The district board of education of each adult high school shall establish minimum credit requirements for graduation which shall meet the requirements of the district's regular high school and shall not be less than 110 credits for newly enrolled adults. Continuously enrolled adults are persons with no more than a 12-month break of participation, and as such, must abide by the requirements in effect at the time of initial enrollment.

1. Of the required credits, no more than 15 credits may be in physical education.

2. Of the required credits, at least 10 credits must be earned in coursework taken at the adult high school issuing the diploma.

(c) Each adult high school shall establish minimum curriculum requirements for graduation which shall meet the requirements of the district's regular high school and include the following:

1. Twenty credits of communication, of which five credits shall be in literature;
2. Fifteen credits of mathematics;
3. Ten credits of history as required by N.J.S.A. 18A:35-1 and 2, and five credits of world history/cultures;
4. Ten credits of natural or physical science;
5. Five credits of fine, practical or performing arts;
6. Five credits in health or safety; and
7. Two and one-half credits of career exploration or development.

(d) The staff of each adult high school shall distribute to each entering adult a copy of all State and local adult high school graduation requirements. In addition, all adults shall receive at the beginning of each course a list of proficiencies required for successful completion of that course.

(e) Successful completion of the requirements set forth in (a), (b) and (c) above, and those established by the district board of education, shall be required as conditions for awarding a locally issued, State-endorsed diploma.

(f) No district board of education may issue an adult high school diploma without State endorsement.

(g) No district board of education may issue an adult high school diploma without signed verifications for all credit awarded for experience and an official transcript(s) being on file.

6:30-3.8 Award of credit

(a) The district board of education of each adult high school shall annually adopt policies at a public meeting which provide for the awarding of credit, subject to the following:

1. Credits verified by an official transcript may be transferred from accredited or State-approved high schools or institutions. Experiences being considered for transferred credit from proprietary schools or public vocational training programs shall be assessed in terms of proficiencies for district courses offering similar experiences.

i. An official transcript shall have either of the following indicators: a raised seal or the original signature of an administrator of the school.

2. Credits may be awarded for other than remedial courses which lead to a degree and are taken at an accredited college. Courses must be verified by an official transcript. Five credits may be awarded for each course meeting two semesters or one year. Credit may be prorated for courses meeting for shorter periods of time.

3. Credits may be awarded for physical education and basic military training with the following limitations.

i. Up to 15 credits may be awarded for previously earned high school physical education credits verified by an official transcript.

ii. Up to 10 credits verified by a DD-214 form may be awarded for basic military training.

iii. The combination of (a)3i and ii above may not exceed 15 credits.

4. A maximum of two and one-half credits in health and safety may be awarded for the possession of a valid New Jersey driver's license if credit for driver's education has not been awarded.

5. Credit may be awarded for work experience with the following limitations:

i. Two and one-half credits may be awarded for each 12 months of full-time employment that is verified by a signed statement from the employer(s).

ii. Two and one-half credits may be awarded for each 24 months of part-time employment that is verified by a signed statement from the employer(s).

iii. The combination of (a)5i and ii above may not exceed 10 credits and may not duplicate credits awarded for apprentice training, an occupational license or on-the-job training.

6. Credits may be awarded for completion of apprentice training with the following limitations:

i. The apprentice training must be approved by the Office of Adult and Occupational Education at the Department;

ii. Completion of training must be verified by a signed document from the registered apprentice sponsor;

iii. The award may not exceed 20 credits and may not duplicate credits awarded for work experiences, an occupational license, on-the-job training or transferred credit from an official transcript; and

iv. The Assistant Commissioner, Division of Academic Programs and Standards, shall announce periodically the apprenticeship titles eligible for the award of credit and determine the amount of credit to be awarded.

7. Credit may be awarded for possession of a current occupational license, issued by an agency of the State of New Jersey, with the following limitations:

i. A maximum of five credits may be awarded for a current occupational license;

ii. The Assistant Commissioner, Division of Academic Programs and Standards, shall announce periodically those occupational titles eligible for the award of credit;

iii. Credit may be awarded for only one occupational license; and

iv. Credit awarded for an occupational license may not duplicate credit awarded for work experience, on-the-job training, apprenticeship or transferred credit from an official transcript.

8. Credits may be awarded for on-the-job training and advanced military training with the following limitations:

i. Five credits may be awarded for each 120 hours of on-the-job training that is formally supervised, follows a prescribed training outline and is verified by a signed statement from the employer;

ii. One credit may be awarded for each week of advanced military training not to exceed 10 credits that is verified by the Military Occupational Speciality designation which appears on the DD-214 form; and

iii. The combination of (a)8i and ii above may not exceed 20 credits and may not duplicate credits for work experience, apprentice training, or an occupational license.

9. The cumulative award of credit for (a)5, 6, 7 and 8 above shall not exceed 30 credits.

10. Credit may be awarded for passing a comprehensive examination with the following limitations:

i. The award shall not exceed five credits;

ii. The comprehensive examination must be part of an approved course and may only be used to award credit for a single course; and

iii. The comprehensive examination may not be a standardized test, such as the General Educational Development Test.

11. Credit may be awarded for remedial coursework in communications and computation only to persons who have demonstrated reading or computational proficiency below the 9.0 grade level on a commercially available, nationally normed, standardized test for adults or to persons unable to pass the Statewide assessment test.

i. The award of credit may not exceed 20 credits in communications and 20 credits in computation.

12. Credit may be awarded for coursework in English as a second language (ESL).

i. The award of credit in English as a second language may not exceed 20 credits.

ii. Courses in English as a second language shall be offered only as traditional courses pursuant to the requirements in N.J.A.C. 6:30-3.6(f)1.

6:30-3.9 Awarding credit for foreign studies

(a) Credit for the equivalent of American secondary school studies experienced in a foreign country may only be awarded as determined by the Manager, Bureau of Adult Education and Literacy following an evaluation of transcript(s) presented by the adult.

(b) Transcript evaluation shall be for the purpose of participating in an adult high school program and shall be transmitted to the Bureau of Adult Education and Literacy with a written request for such an evaluation by the principal of the adult high school.

1. Each request for a transcript evaluation shall be accompanied by a $25.00 fee payable by the local educational agency.

2. Transcript evaluations may be made by staff at an approved adult high school for adult students in attendance providing that the evaluator has been trained by the Division of Academic Programs and Standards and has been approved as an adult transcript evaluator by the Manager, Bureau of Adult Education and Literacy.

6:30-3.10 Maintaining student records

(a) Each adult high school shall have the responsibility to compile, maintain and retain student records and to regulate access to and security of such records.

(b) The attendance records of all adult high schools shall be maintained on a daily basis indicating the number of hours of program participation and shall be submitted to the Department on an annual basis.

(c) For the purpose of attendance record keeping, any adult participating in a learning experience for less than one full hour is not considered as having attended that scheduled session.

6:30-3.11 Maintaining financial records

(a) The financial records of all adult high schools shall be maintained in appropriate accounts pursuant to N.J.A.C. 6:20.

(b) Adult high school opportunities shall be offered free of tuition, fees or other charges, including the cost of books and other instructional materials except as noted in N.J.A.C. 6:30-3.9(b)1.

6:30-3.12 Staffing

(a) The adult high school shall have an adequate number of professional staff, properly certified for their respective assignments; however, those persons involved in adult advisement shall be certified as either principal, supervisor, counselor or teacher.

(b) District boards of education shall only assign position titles to professional staff members which are recognized in N.J.A.C. 6:11.

6:30-3.13 Special conditions

The rules set forth in N.J.A.C. 6:3, 6:8-7.1, and 6:20-3.1 governing the operation of a high school within a school district shall govern the operation of an adult high school unless otherwise explicitly stated in this subchapter.

SUBCHAPTER 4. APPRENTICE TRAINING

6:30-4.1 Apprentice program responsibility and duties

(a) The Department is the recognized State agency responsible for the administration of the related training and instruction portion of apprentice programs. The Department of Education shall staff the State Apprenticeship Coordinator position. The State Apprenticeship Coordinator shall coordinate activities on apprenticeship in cooperation with the United States Department of Labor, Bureau of Apprenticeship and Training (BAT), under the Statement of Joint Program Administration, to involve training and instruction that must comply with federal standards of apprenticeship as published in Labor Standards for the registration of Apprenticeship Programs, 29 C.F.R. Sec. 29-1.13 (1977). Duties of the State Apprenticeship Coordinator shall include, but not be limited to:

1. Approving the initial and ongoing Registered Apprenticeship Programs and related training;
2. Approving individual apprenticeship agreements and related training, criteria for related training, the training component of new Registered Apprenticeship Programs, and advanced standing for School-to-Work apprenticeship linkage programs;
3. Monitoring and investigating compliance issues;
4. Compiling and maintaining records and agreements;
5. Issuing Certificates to sponsor Registered Apprenticeship Programs by business/industry/labor unions, and for completion of a Registered Apprenticeship Program;
6. Providing technical assistance to business and industry, and in the development of training for new registered apprenticeship programs; and
7. Providing liaison with Federal, State and governmental entities, as requested, on issues related to apprenticeship.

6:30-4.2 Approval of related training and instruction

Upon receipt of the Apprenticeship Agreement Joint Approval form from the Federal Bureau of Apprenticeship and Training, the Department will evaluate the related training and instruction component of the apprenticeship. Within 30 days of receipt of the form, the Department shall notify the Federal Bureau of Apprenticeship and Training of its approval or disapproval of the related training and instruction.

HIGHER EDUCATION

(a)

NEW JERSEY HIGHER EDUCATION ASSISTANCE AUTHORITY (NJHEAA)

Procedures Governing NJHEAA Reporting of Loan Status to Credit Bureaus

Proposed New Rule: N.J.A.C. 9:9-1.23

Authorized By: The New Jersey Higher Education Assistance Authority, Warren E. Smith, Chairman.

Authority: N.J.S.A. 18A:72-10, 34 CFR 682.410(b)(5) and 20 U.S.C. 1071 et seq.

Proposal Number: PRN 1994-113.

Submit comments by March 24, 1994 to:

Dr. Jeanne Oswald
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Higher Education Assistance Authority (NJHEAA) is statutorily responsible for the administration of Federally guaranteed loan programs in New Jersey. As a condition of its Federal guarantee, the NJHEAA must comply with the Higher Education Act of 1965, as amended, at 20 U.S.C. 1071 et seq. and United States Department of Education (ED) regulations issued thereunder. Effective February 19, 1993, ED issued regulations on the reporting of loan status to credit bureaus. 34 C.F.R. 682.410(b)(5). The regulations require a guarantee agency, promptly after it pays a default claim on a loan but before it reports the default to a credit bureau or assesses collection costs against a borrower, to provide a 60-day notice period during which the borrower has the opportunity to inspect and copy records pertaining to the loan, the opportunity for an administrative review of the debt, and the opportunity to enter into a repayment agreement on terms satisfactory to the agency. The regulations also require the agency to notify the borrower of any appeal rights he or she may have from an adverse decision on administrative review. The purpose of the proposed new rule is to implement 34 C.F.R. 682.410(b)(5) by providing procedures for (a) inspection and copying of loan records, (b) administrative review, and (c) appeals.

Social Impact

The proposed new rule assures that the Federally guaranteed loans will be available to assist in the financing of the higher education costs by complying with a condition of the Federal guarantee. Federal regulations require a guarantee agency to adopt consumer protection procedures in the form of notice and the opportunity to contest a default before a guarantee agency takes the step, also required by Federal regulations, of reporting a defaulted student loan to all national credit bureaus and assessing collection cost against a borrower.

Economic Impact

The proposed new rule imposes no economic burden other than a modest administrative fee for copying requested loan records, to be assumed by the borrower. This rule requires no filing fee nor are parties obliged to be represented by counsel.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rule does not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The new rule impacts individual loan recipients and the NJHEAA only.

Full text of the proposed new rule follows:

9:9-1.23 Procedures: Reporting Loan Status to Credit Bureaus:

(a) If a borrower wishes to inspect and copy records pertaining to his or her defaulted loans held by the Authority, he or she shall make a written request within 20 days from the date of the Authority's notice. The written request shall include the borrower's social security number, the identity of the loans for which he or she wants records, and a reasonable description of the records he or she wishes to inspect. Upon receiving a proper written request, the Authority shall schedule an inspection, at which time the borrower may order copies of requested records for the fee of $10.00 as set forth on the Authority's notice.

(b) If, after inspecting his or her records, but before the expiration of the 60-day period from the date of the Authority's notice, a borrower objects to the reporting of his or her defaulted loan(s) to credit bureaus, the borrower shall have the opportunity to have an administrative review of the legal enforceability or past-due status of the loan(s). To request an administrative review, the borrower shall complete the Authority's request form included with the Authority's notice. The request form requires the borrower to identify the reasons for review and to file the form with the Authority within the 60-day period. Administrative reviews will be considered on the basis of this review process approved by the NJHEAA.

(c) If a borrower disagrees with the decision on his or her loan status reached on administrative review, and wishes to appeal that decision, the borrower shall file an appeal with the Department of Higher Education, Office of Student Loans, within 10 days of notification of the administrative review decision. Appeals shall be in the form of a letter addressed to the Appeals Committee, in care of the Director of the Office of Student Loans, New Jersey Department of Higher Education, CN 540, Trenton, New Jersey 08625, and shall contain the borrower's full name, social security number, and the identification of the contested loan(s). Appeals will be considered on the basis of this appeals process approved by the NJHEAA.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Long Term Cost Services Manual: Nursing Facility Relief

Proposed New Rules: N.J.A.C. 10:63-3.22 and 3.23
Proposed Repeal: N.J.A.C. 10:63-3.21

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

Authority: N.J.S.A. 30:4D-6a(4)(a)b(14); 30:4D-7, 7a, b and c; 30:4D-12.

Agency Control Number: 93-P-43.

Proposal Number: PRN 1994-105.

Submit comments by March 24, 1994 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN-712
Trenton, NJ 08625-0712

The agency proposal follows:

Summary

The New Jersey Legislature has enacted two statutes in order to remedy the negative fiscal impact on certain nursing facilities resulting from the implementation of the single Statewide salary region in the nursing home rate-setting system (New Jersey Appropriations Act, P.L. 1992, c.40). The two recently enacted statutes, Salary Region Hold Harmless, P.L. 1993, c.196, and New Jersey State Appropriations Act, P.L. 1993, c.155, provide a rate adjustment to compensate nursing facilities (NFs) which will have incurred annualized losses greater than $55,000 for the period of April 1, 1993 to June 30, 1994.

The text of these proposed new rules constitutes two separate formulas for calculating add-ons to the NF per diem rate to compensate NFs which may have incurred annualized reductions in Medicaid reimbursement in excess of $55,000 caused by the implementation of a single Statewide salary region as of July 1, 1992 (New Jersey Appropriations Act, P.L. 1992, c.40). N.J.A.C. 10:63-3.22, as proposed, prescribes the calculation of a per diem amount which would reimburse NFs one quarter of the annual reduction of Medicaid reimbursement in excess of $55,000 for services provided during SFY 1993. Payment would be made retroactively as an add-on to the rate paid for services provided during the first quarter of SFY 1994. N.J.A.C. 10:63-3.23, as proposed, prescribes the calculation of a per diem amount which would reimburse NFs the entire amount of the reduction in the NF's reimbursement in excess of $55,000 for services provided during SFY 1994. Payment would be made as an add-on to the rate paid for services provided during SFY 1994. N.J.A.C. 10:63-3.22 is authorized by P.L. 1993, c.196 and N.J.A.C. 10:63-3.23 is authorized by the New Jersey Appropriations Act, P.L. 1993, c.155.

N.J.A.C. 10:63-3.21 is being proposed for repeal, since it is no longer necessary to retain the text in the New Jersey Administrative Code. The rule covered a period of one year, from October 1, 1988 to September 30, 1989.

Social Impact

The social impact of these proposed new rules is the continued operation of NFs which are at risk as a consequence of the financial impact of the single salary region provisions of the New Jersey Appropriations Act of 1992. There should be no social impact on Medicaid patients residing in NFs.

Economic Impact

Providing this relief to at-risk NFs will cost the New Jersey Medicaid program $4.1 million of combined Federal and State funds for the 15-month period covered by the statutes. Balancing this outlay is the uncertain, but potentially incalculable, cost of the diminution of the quality of care at those affected NFs caring for the convalescing and chronically ill population. The economic impact on NFs will vary, depending on whether they qualify for this relief. Those NFs that qualify will have the formula applied accordingly.

Regulatory Flexibility Analysis

Some NF (providers) may qualify as small businesses under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act, because some may employ less than 100 full-time employees. However, the provisions for the Nursing Facility Relief apply to all NFs rendering services to Medicaid eligible persons. Providers are already required to maintain accurate accounting records. The proposed new rules do not impose any additional reporting, recordkeeping or other compliance requirements.

No differentiation in requirements based on business size is necessary or required because the records which the providers are required to maintain are necessary for the health, safety, and general welfare of Medicaid patients receiving services in a NF. In addition, providers are required by law to maintain sufficient records to fully document the name of the patient being treated, dates, and the nature of services, etc. (See N.J.S.A. 30:4D-12).

There should be no capital costs associated with these new rules.

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

10:63-3.21 [Medicaid Occupancy Initiative] **(Reserved)**

[(a) For purposes of this section, the term "public assistance" refers specifically to the General Public Assistance Law, N.J.S.A. 44:8-107 et seq.

(b) The Department of Human Services shall pay a supplement for routine patient care expenses to the prospective per diem Medicaid reimbursement rates of non-governmental long term care facilities participating in the Medicaid program that have a Medicaid occupancy level above or within two percent of the Statewide average Medicaid occupancy level.

1. For this purpose, the Statewide average Medicaid occupancy level shall be calculated using the sum of the average number of Medicaid recipients and recipients of public assistance under N.J.S.A. 44:8-107 et seq. residing in each skilled nursing and in-

termediate care facility in the State divided by the total number of skilled nursing and intermediate care facility licensed beds in the State, during that month. This calculation shall not include either governmental facilities or facilities which have conditionally withdrawn from or do not participate in the Medicaid Program as long term care providers. Medicaid and public assistance recipients shall include only those residents in a facility who receive skilled nursing or intermediate care services for which the facility is being reimbursed by either of these Programs.

2. For this purpose, each facility's Medicaid occupancy level shall be calculated using the average number of Medicaid recipients and recipients of public assistance residing in a long term care facility divided by the total number of licensed beds in the facility, during that month. The calculation of Medicaid occupancy level shall include eligible bed reserve days in the determination of Medicaid recipients and recipients of public assistance under N.J.S.A. 44:8-107 et seq. Medicaid and public assistance recipients shall include only those residents in a facility who receive skilled nursing or intermediate care services for which the facility is being reimbursed by either of these Programs.

(c) For the purpose of making payment under this section, the Department shall determine the Statewide average Medicaid occupancy level and the Medicaid occupancy level using the number of Medicaid recipients and licensed beds for the actual billing month, if available, or for the most recent month available at the time the regular Medicaid monthly billing is being processed.

(d) The supplement will be paid monthly to qualifying facilities for the billing periods between October 1, 1988 to September 30, 1989.

(e) The interim supplement to the prospective per diem reimbursement rates shall be as follows:

i. For facilities which have a Medicaid occupancy level between a percentage which is two percent below the Statewide average Medicaid occupancy level and 79.9 percent, the amount of $2.60 per diem.

ii. For facilities which have a Medicaid occupancy level between 80 percent and 89.9 percent, the amount of $2.85 per diem.

iii. For facilities which have a Medicaid occupancy level between 90 percent and 100 percent, an amount of $3.10 per diem.

(f) The final supplement to the per diem reimbursement rate will be based upon a reconciliation of the actual Statewide census for the periods October 1, 1988 to September 30, 1989 with the total appropriation. Final settlement will be paid to the facilities based upon their actual reported occupancy.

(g) Unexpended amounts on the funds appropriated for this supplement at the end of the one year statutory period shall be used to adjust the payment of the supplement. A reserve of approximately one million ($1,000,000) dollars shall be withheld in anticipation of increased Medicaid occupancy and potential facility appeals.

(h) Any payment of funds to a facility which is inconsistent with the provisions of this section is subject to recovery of both principal and interest and any other penalties which may be applicable under the New Jersey Medicaid Act. The interest and overpayment penalties may only be assessed in those instances where the error is attributable to the facility.

(i) N.J.A.C. 10:63-3.19, which limits the rates paid to a facility to the certified lowest semi-private rate charged to private patients, will not be applicable to any per diem rate resulting from this section until the first full month following the publication of this section in the New Jersey Register.]

10:63-3.22 Transitional relief for salary region adjustment; State Fiscal Year 1993

(a) In order to provide transitional relief for those nursing facilities most negatively impacted by the adjustment to a single Statewide salary region which began July 1, 1992, a rate adjustment shall be made for qualifying facilities. Nursing facilities which incurred reductions in Medicaid reimbursement in excess of $55,000 for services provided to Medicaid recipients during State fiscal year 1993 (July 1, 1992 to June 30, 1993), as a result of the implementation of the single Statewide salary region, shall receive a prospective per diem rate adjustment.

(b) Facilities shall be reimbursed 25 percent of the annual reduction of Medicaid reimbursement in excess of $55,000. This amount represents the reduction of Medicaid reimbursement in excess of $55,000 for the period from April 1, 1993 to June 30, 1993. The per diem add-on shall be calculated for each facility as follows:

1. Determine for each facility the prospective or interim to actual per diem rate(s) for the period from July 1, 1992 to June 30, 1993 using the salary region system effective prior to July 1, 1992;

i. These calculations shall not include the "six month" acuity adjustment of rates for patient mix;

2. Determine the difference between the corresponding single salary region per diem reimbursement rate(s) for the period from July 1, 1992 to June 30, 1993 (excluding the acuity adjustment of rates) and the per diem rate(s) as calculated in (b)1 above;

3. Multiply the per diem rate difference(s) from (b)2 above by the number of the facility's Medicaid patient days paid (allocated to the applicable rate periods if appropriate) for the period from July 1, 1992 to June 30, 1993;

4. From the sum determined in (b)3 above deduct the amount of $55,000;

5. Divide the remainder from (b)4 above by four; and

6. Divide the quotient from (b)5 above by the total number of the facility's Medicaid patient days paid for the period from April 1, 1993 to June 30, 1993.

(c) The resulting per diem amount shall be paid as an add-on to each eligible facility's routine prospective rate for a three month period commencing July 1, 1993.

10:63-3.23 Transitional relief for salary region adjustment; State Fiscal Year 1994

(a) In order to provide transitional relief for those nursing facilities most negatively impacted by the adjustment to a single Statewide salary region which began July 1, 1992, a rate adjustment shall be made for qualifying facilities. Nursing facilities which incurred reductions in Medicaid reimbursement in excess of $55,000 for services provided to Medicaid recipients during State fiscal year 1994 (July 1, 1993 to June 30, 1994), as a result of the implementation of the single Statewide salary region, shall receive a per diem rate adjustment.

(b) Facilities shall be reimbursed the annual reduction of Medicaid reimbursement in excess of $55,000 for the period effective July 1, 1993 to June 30, 1994. The per diem add-on shall be calculated for each facility as follows:

1. Determine for each facility the prospective or interim to actual per diem rate(s) for the period from July 1, 1993 to June 30, 1994 using the salary region system effective prior to July 1, 1992;

i. These calculations shall not include the "six month" acuity adjustment of rates for patient mix;

2. Determine the difference between the corresponding single salary region per diem reimbursement rate(s) for the period from July 1, 1993 to June 30, 1994 (excluding the acuity adjustment of rates) and the per diem rate as calculated in (b)1 above;

3. Multiply the per diem rate difference(s) from (b)2 above by the number of the facility's Medicaid patient days paid (allocated to the applicable rate periods if appropriate) for the period from July 1, 1992 to June 30, 1993;

4. From the sum determined in (b)3 above deduct the amount of $55,000; and

5. Divide the remainder from (b)4 above by the total number of the facility's Medicaid patient days paid for the period from July 1, 1992 to June 30, 1993.

(c) The resulting per diem amount shall be paid as an add-on to each eligible facility's routine prospective rate for a 12-month period commencing July 1, 1993.

(a)

DIVISION OF FAMILY DEVELOPMENT

Public Assistance Manual
Assignment of Right to Support; Wage Withholding
Proposed Amendments: N.J.A.C. 10:81-11.2 and 11.4
Proposed New Rule: N.J.A.C. 10:81-11.18A

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

Authority: N.J.S.A. 44:10-3; 45 C.F.R. 303.31, 303.33 and 303.100; 42 C.F.R. 433.146 and Section 671(a)17 of the Social Security Act.

Proposal Number: PRN 1994-111.

Submit comments by March 24, 1994 to:
Marion E. Reitz, Director
Division of Family Development
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment at N.J.A.C. 10:81-11.2 provides clarification regarding the requirement of an assignment of rights to support in cases referred by the Division of Youth and Family Services (DYFS) and as a condition of Medicaid.

The proposed amendment at N.J.A.C. 10:81-11.4 confirms the IV-D requirement to provide services to those families who have assigned their rights to support to the State under Aid to Families with Dependent Children (AFDC) (45 C.F.R. 232.11) DYFS (Section 671(a)17 of the Social Security Act) or Medicaid (42 C.F.R. 433.146) or those who are no longer eligible for these programs but want IV-D services. A five working day time frame from the notification of ineligibility is specified for the IV-D agency to notify the family of their right to receive continuing IV-D services.

The proposed new rule at N.J.A.C. 10:81-11.18A sets forth Federal regulations for wage withholding. Child support orders established after November 1, 1990 are subject to immediate wage withholding unless an alternative arrangement is made between the parties subject to the order, or the court finds good cause not to require an immediate income withholding. Child support orders not subject to immediate wage withholding will be subject to withholding when the case becomes 14 calendar days in arrears.

Social Impact

The proposed amendment at N.J.A.C. 10:81-11.2 will have a social impact on the affected families, in that they may be prevented from falling into poverty. The proposed amendment at N.J.A.C. 10:81-11.4 regarding the IV-D requirement to provide services to those families who have an assignment under AFDC (45 C.F.R. 232.11), DYFS (Section 471(a)17 of the Social Security Act) or Medicaid (42 C.F.R. 433.146) will have a positive social impact for the same reason.

The proposed new rule at N.J.A.C. 10:81-11.18A regarding wage withholding is expected to have an overall positive social impact. Although some obligors may complain that they have less control over their money, this practice will ensure the payment of the support obligation.

Economic Impact

The proposed amendment at N.J.A.C. 10:81-11.2 will incorporate current practice into the New Jersey Administrative Code. No negative economic impact is anticipated on the State, regarding the proposed amendments at N.J.A.C. 10:81-11.2 and 11.4 requiring IV-D to provide services to those families who have an assignment under AFDC, DYFS and Medicaid. This procedure is already in practice. A positive economic impact on the State is expected, as the State can now recoup part of the money. The proposed new rule at N.J.A.C. 10:81-11.18A regarding wage withholding is expected to have a positive economic impact on the families involved. Deducting the obligation amount from the obligor's wages will ensure that the money is collected and may prevent a family from falling into poverty and needing public assistance.

Regulatory Flexibility Statement

The proposed amendments and new rule have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments and new rule impose no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for the Aid to Families with Dependent Children program to a low-income population by a governmental agency rather than a private business establishment.

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

10:81-11.2 Eligibility requirements

(a) In addition to the eligibility requirements contained in N.J.A.C. 10:81-11.3 and 5, requirements for AFDC eligibility shall include the following:

1. (No change.)

2. Assignment of support rights: AFDC-C and F applications or recipients as a condition of eligibility automatically assign to the county welfare agency all rights to support from the children's absent parent(s) or any other person to which the eligible children, or the applicant when he or she is included in the eligible unit, may be entitled (see N.J.A.C. 10:81-11.4). **An assignment of rights is also required from DYFS cases under Section 471(a)17 of the Social Security Act and as a condition of Medicaid under 42 C.F.R. 433.146.**

3. (No change.)

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

10:81-11.4 Assignment of support rights

(a) The IV-D agency is required to provide IV-D services to families which have assigned their rights to support under AFDC (45 C.F.R. 232.11), DYFS (Section 471(a)17 of the Social Security Act) or as a condition of receipt of Medicaid (42 C.F.R. 433.146), without an application or application fee.

Renumber (a) through (b) as **(b)** through **(c)** (No change in text.)

[(c)]**(d)** Applicability: The assignment of supports rights applies to the AFDC **and DYFS programs**. AFDC/Medicaid Only applicants will assign only their rights to medical support. It is not an eligibility requirement for the Refugee Resettlement Program.

[(d)]**(e)** IM worker's responsibility: The IM worker shall advise the AFDC client that upon signing an application (PA-1J) for AFDC or AFDC/Medicaid Only, he or she assigns to the county welfare agency any rights to past due support and future support and subsequent to its completion, he or she shall be responsible for informing the county welfare agency of any payments which may be received either directly or through the probation department from an absent parent. Additionally, the AFDC client shall be informed of his or her cooperation responsibilities (see N.J.A.C. 10:81-11.5).

1. Referral to CWA/IV-D Unit: The IM worker, at the time of application for AFDC-C or Medicaid Only, shall complete the appropiate parts of the IV-D referral document and route this form to the CWA/IV-D Unit within two working days of issuance of an assistance check, or determination of eligibility, but no later than 45 days of initial application. Information describing available IV-D services and the individual's rights and responsibilities must be provided to all applicants within five working days of the IV-D referral.

i.-iv. (No change.)

v. Continuing IV-D services for families that lose AFDC, **DYFS or Medicaid** eligibility: **Whenever a family is no longer eligible for assistance under the AFDC, DYFS or Medicaid programs, the IV-D agency must notify the family within five working days of the notification of ineligibility, that IV-D services will be continued unless the IV-D agency is notified by the family that IV-D services are no longer desired.** The IV-D agency is required to pay all amounts collected representing support to the family. An IV-D agency may not recover costs from either parent.

(1)-(2) (No change.)

(f) It is the responsibility of the Division of Youth and Family Services to refer DYFS cases, which include IV-E and non-IV-E cases, to the CWA/IV-D Unit.

10:81-11.18A Wage withholding

(a) In the case of a child support order that is issued or modified after November 1, 1990, the wages of an absent parent shall be

subject to withholding, regardless of whether support payments by such a parent are in arrears, unless the following conditions exist:

1. Either the absent parent or the custodial parent demonstrates, and the court of administrative authority finds, that there is good cause not to require immediate income withholding. Good cause must be based on:

i. A written determination why immediate income withholding would not be in the best interests of the child.

ii. Proof of timely payment of previously ordered support.

2. A written agreement is reached between the absent parent and custodial parent; and, the State, in IV-D cases in which there is an assignment of support rights to the State, provides for an alternative arrangement.

(b) In cases of wages not subject to immediate withholding, the wages of the absent parent will be subject to withholding on the date the absent parent fails to make support payments at least equal to the support payable for 14 calendar days.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Eligibility for Services

Proposed New Rules: N.J.A.C. 10:133C-2

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

Authority: N.J.S.A. 9:6-8.15, N.J.S.A. 30:4C-4(h).

Proposal Number: PRN 1994-112.

Submit comments by March 24, 1994 to:

Barbara Kraeger
Operational Policy and Manual Unit
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Division of Youth and Family Services has undertaken a project to review and incorporate existing Division policy contained in the Division's Field Operations Casework Policy and Procedures manuals into the New Jersey Administrative Code as rules. This project, known as the "Operations Policy to Rules" project, or OPTR, was initiated by the Division to subject those policies which have widespread coverage, continuing effect, or a substantial impact on the rights or legitimate interests of the regulated public to the rulemaking process required by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

This proposal, Eligibility for Services, is a product of the OPTR Group, which is made up of members from private, non-profit groups which represent sectors of the affected public, Division staff members and representatives of other government agencies.

Members of the OPTR Group specifically requested that the Division develop rules on what standards the Division uses to determine who is eligible to receive services from the Division. Such services will be specified further in a future rulemaking of new rules, N.J.A.C. 10:133E.

A summary of the proposed rules follows:

Proposed N.J.A.C. 10:133C-2.1 states the scope of these rules.

Proposed N.J.A.C. 10:133C-2.2 references the definitions used in these rules.

Proposed N.J.A.C. 10:133C-2.3 states the purpose of services provided by the Division.

Proposed N.J.A.C. 10:133C-2.4 states that the Division may offer services on an emergency basis.

Proposed N.J.A.C. 10:133C-2.5 states when the Division shall offer services, the determinations which shall be made prior to offering services and that an applicant or client may accept or reject the Division's services.

Proposed N.J.A.C. 10:133C-2.6 states when the Division shall provide services.

Social Impact

These rules affect each applicant for services, each member of a family referred to the Division for services, and each client who receives services. In addition, these rules provide information to any resident of the State who may wish to apply for services, to anyone who may wish to make a referral to the Division, or to any legal counsel or advocate of an applicant or client.

From January 1, 1993 to November 5, 1993, the Division had 33,208 referrals and applications for services. These referrals and applications related to 57,585 children. Of those, 19,146 referrals and applications contained an allegation of abuse or neglect for 34,004 children.

On November 5, 1993, the Division was providing services to 44,359 children.

These proposed rules have been developed with extensive input from members of the OPTR Group. The Division anticipates a positive response to this proposal because of this interaction.

Economic Impact

While the proposed new rules do not introduce any change to the Division's current operating practice, it may affect the number of people receiving services from the Division. While similar to N.J.A.C. 10:133-1.4(m), the statement that the applicant or client may accept or reject the offer of services by the Division (N.J.A.C. 10:133C-2.5(d)) may emphasize for clients that beyond a child protective services investigation or an assessment, the Division's services are voluntary, unless a court order exists. This clarification may decrease the number of persons who accept and receive services from the Division.

Regulatory Flexibility Statement

Neither the Division nor the public who are, or who may be, eligible to receive services from the Division is considered a small business under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The proposed new rules do not impose reporting, recordkeeping or compliance requirements on small businesses. Therefore, a regulatory flexibility analysis is not necessary. These new rules state the Division's eligibility policy.

Full text of the proposed rules follows:

SUBCHAPTER 2. ELIGIBILITY FOR SERVICES

10:133C-2.1 Scope

The provisions of this subchapter shall apply to all Division representatives, all persons who apply to a local office for Division services, all persons referred by a local office to contract services and all clients receiving Division services from a local office.

10:133C-2.2 Definitions

The definitions in N.J.A.C. 10:133-1.3 are hereby incorporated into this subchapter by reference.

10:133C-2.3 Purpose of services

(a) The purpose of the Division's provision of services shall be to:

1. Provide for the protection of children under 18 years of age who have had serious injury inflicted upon them by other than accidental means and to assure that the lives of innocent children are immediately safeguarded from further injury and possible death and that the legal rights of such children are fully protected (N.J.S.A. 9:6-8.8);

2. Provide for the protection of any child whose parent fails to provide the child with proper protection, maintenance and education (N.J.S.A. 30:4C-12);

3. Preserve and strengthen family life; and

4. Prevent and correct dependency and delinquency among children so far as practicable through welfare services which seek to ensure that such children continue to live in their own homes.

10:133C-2.4 Services on an emergency basis

The Division may offer the family services which are needed on an emergency basis before completing the assessment or a child protective services investigation.

10:133C-2.5 When the Division shall offer services

(a) The Division shall offer services that are determined to be needed as a result of a child protective services investigation or an assessment to meet one or more of the purposes in N.J.A.C. 10:133C-2.3 when:

1. The Division has substantiated an allegation of child abuse or neglect;

2. The welfare of the child is endangered and the condition can be eliminated or ameliorated by the Division making available specific services on behalf of the child in his or her own home; or

3. The welfare of the child is endangered unless the Division removes the child from his or her home pursuant to a court order or voluntary placement agreement signed by the parent(s) or caretaker.

(b) When the Division offers services, in addition to a child protective services investigation or an assessment, the following determinations shall first be made, unless services are required on an emergency basis:

1. The needs of the child cannot properly be provided for by financial assistance, as made available by the laws of New Jersey, including, for example, public assistance;

2. There is no person legally responsible for the support of the child whose identity and whereabouts are known after the Division has completed a search for relatives in accordance with N.J.S.A. 30:4C-12.1, and who is willing and able to provide for the care and support required by the child; and

3. A child, if suffering from a mental or physical disability requiring institutional care, is not immediately admissible to any public institution providing the needed care.

(c) If it appears that the welfare of the child is endangered, and that the condition can be eliminated or ameliorated by making available to or for the child any specific services which the Division may be authorized, within the limits of legislative appropriations, to provide for all children in similar circumstances, the child shall be found eligible for care and supervision, and the Division shall proceed to furnish the services either by direct provision or by purchasing the services from any appropriate privately sponsored agency or institution.

(d) The applicant or client may accept or reject the offer of services by the Division. However, the Division may proceed under N.J.S.A. 30:4C-12 or N.J.S.A. 9:6-8.21 et seq. to seek a court order to provide services if the Division determines that the child requires care and supervision, but the parent refuses services for or on behalf of the child.

10:133C-2.6 When the Division shall provide services

(a) When the conditions in N.J.A.C. 10:133C-2.5 are met, the Division shall provide the service, as available, upon acceptance by the client.

(b) In addition to the assessment and child protective services investigation conducted per N.J.A.C. 10:133C-3 and 10:129A and the services provided under (a) above, the Division shall provide services when the court orders the child or family to receive services, consistent with N.J.S.A. 9:6-8.21 et seq., 30:4C-12, and 30:4C-50 et seq.

(c) The Division shall provide services to a child who has been adjudicated a delinquent and to a child and his or her family where a juvenile-family crisis exists, as defined in N.J.S.A. 2A:4A-22(g), in accordance with N.J.S.A. 2A:4A-24, only upon a court order pursuant to N.J.S.A. 2A:4A-43(b)(5).

INSURANCE

(a)

DIVISION OF ADMINISTRATION

New Jersey Automobile Full Insurance Underwriting Association

Claim Payment Deferral

Proposed Amendments: N.J.A.C. 11:3-2A

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:1C-6(e) and 17:33B-3b(2).
Proposal Number: PRN 1994-127.

A **public hearing** on this proposal will be held on:
Monday, March 14, 1994 at 9:30 A.M.
Department of Insurance
Mary Roebling Building
Room 219-220
20 West State Street
Trenton, New Jersey

Persons wishing to present oral comments or questions must contact the Department no later than March 11, 1994, either in writing to the address below or by telephoning 609-984-3602.

Submit comments by March 24, 1994 to:
Verice M. Mason, Assistant Commissioner
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.A.C. 11:3-2A provides for the deferral of payment of residual bodily injury claims covered by the New Jersey Automobile Full Insurance Underwriting Association (the "Association") pursuant to N.J.S.A. 17:33B-3b(2). N.J.A.C. 11:3-2A.3(d) currently provides that the deferral program expires June 30, 1994. These proposed amendments extend the current deferral program for an additional 18 months, but permit deferred claims to be paid sooner if funds are available. The extended program will apply to all non-economic residual bodily injury claims for which closing papers are physically received by the Association's servicing carriers through December 31, 1995.

The authority and reasons for the creation of the claims deferral program are fully described in the Summary to the original rule proposal of N.J.A.C. 11:3-2A, at 24 N.J.R. 3480(a). When the Legislature enacted the Fair Automobile Insurance Reform Act of 1990 (the "FAIR Act"), N.J.S.A. 17:33B-1 et seq., it recognized that the Association had accrued a substantial deficit. N.J.S.A. 17:33B-3 provided for the appointment of a Trustee by the Commissioner to provide for the liquidation of the Association and the prioritization and payment of claims payable on behalf of the Association.

At its inception, the Association derived funding from various sources. However, the Association's cash receipts are now largely limited to monies received through the New Jersey Automobile Insurance Guaranty Fund ("NJAIGF") which was established by N.J.S.A. 17:33B-5. The Trustee periodically draws money from the NJAIGF to pay losses and expenses. The availability of resources from the NJAIGF is not, however, matched with the Trustee's need for funds, and, therefore, N.J.S.A. 17:33b-3(b)2 authorized the deferral of payment of non-economic, bodily injury claims to bridge the cash shortfall.

The current need to extend the deferral program beyond June 30, 1994, was documented by the Association's Trustee in a request to the Commissioner dated January 13, 1994. The Trustee stated in his request that the Association has, to date, deferred approximately 50,160 residual bodily injury claims. Deferred claims have been timely paid when due at a total expense of approximately $457 million. This figure includes deferral interest paid at a rate of six percent.

While the deferral program has provided the anticipated financial relief allowing the Trustee to effect the orderly payment of the Association's claims and operating expenses, uncertainty with regard to the Association's Federal income tax status and the equitable adjustment of claims of two of its servicing carriers still clouds the Association's future, as various significant and previously-recognized contingencies remain unresolved. More significantly, current financial data and actuarial projections clearly indicate that, if the Association is to retain its financial viability, the current deferral program must be extended. The Trustee, therefore, specifically requested that the Commissioner propose and adopt amendments to the current deferral rules and that the amendments be based upon another uniform plan with both a selected individual claim payment deferral period and a general program duration for a maximum of eighteen months. The Trustee requested that this proposed extension remain in effect through December 31, 1995.

The Trustee recommended the continuation of the current rules' provision that the amount ultimately paid on any deferred claim include simple interest calculated at a rate of six percent per annum. Claims for present economic loss will continue to be paid as presented.

The Trustee also noted that based upon current financial projections, it is expected that this extended program could be completely phased-

out by December 31, 1995, that is, all claims deferred under the extended program could be paid in full by the date of the extended program's termination. Because of the improved cash balances which are currently expected to arise at some time in the latter half of 1995 through the operation of the statutory mechanism of funding through the NJAIGF, it is anticipated that the Association may be able to consecutively release, on a "first-in-first-out" basis, all claims deferred from February 1994 through November 1995. Current projections indicate that the Association may be able to begin such a "phase-out" in or around August 1995 and continue same through December 1995. The Association would also begin to pay residual bodily injury claims on a current basis in December 1995. The phasing-out of the deferral program by payment of claims in this order is a reasonable method to treat all Association deferred claimants fairly.

Finally, the Trustee emphasized that while these analyses indicate that the requested extension of the current deferral program may not be an absolute necessity for the full 18 month period requested, it must also be understood that the financial data and analyses upon which his request was based are merely projections and the Association is still subject to unforeseen contingencies. The Trustee, therefore, strongly stated that in order for his office to remain able to effect the orderly, controlled and well managed payment of Association claims and expenses and more evenly distribute the administrative workload of the servicing carriers in this regard, it is absolutely necessary to provide some flexibility as to the management and administration of a deferral program phase-out. The current program must be extended for an additional 18 months, with the option of accelerated payments of deferred claims available.

Copies of the Trustee's analysis and request may be obtained, upon written request to the attention of:

Division of Legislative and Regulatory Affairs
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 08625

All such requests must be accompanied by a check in the amount of $6.75 made payable to Treasurer, State of New Jersey, to cover the costs of copying and mailing.

Additionally, the proposed amendments include several technical changes which are necessary to implement the extension and to clarify provisions in the current rules regarding the claims deferral.

These proposed amendments will not effect any other substantive aspects of the deferral program. The Trustee will continue to pay all other claims and expenses presented to him for payment including, among other things, personal injury protection claims for medical expenses, lost wages, property damage liability claims, physical damage claims, other claims for current economic loss and residual bodily injury claims previously deferred as they came due, together with accrued interest as provided by N.J.A.C. 11:3-2A.3(e).

In accordance with N.J.S.A. 52:14B-4, the Department will hold a public hearing regarding the proposed extension to the current deferral program. The hearing shall be held as set forth below:

Date: Monday, March 14, 1994
Time: 9:30 A.M.
Place: Department of Insurance
Mary Roebling Building
Room 219-220
20 West State Street
Trenton, NJ 08625

The purpose of the hearing is to receive public comment from interested parties on these proposed amendments. The hearing shall be conducted pursuant to the provisions of N.J.S.A. 52:14B-4g. The hearing shall be conducted by a Hearing Officer designated by the Commissioner. The Hearing Officer shall make recommendations to the Commissioner in the form of a written report, which shall be issued no later than 30 days after the record is closed and shall be made public. A verbatim transcript of the hearing shall be prepared by a certified stenographic reporter, copies of which may be obtained by ordering them directly from the reporter.

At the hearing, representatives of the Trustee will present a summary of the factual information regarding the proposed deferral of certain claim payments of the Association. Thereafter, interested parties may present oral comments and may direct questions through the Hearing Officer. Persons who wish to present oral comments or questions must contact the Department no later than March 11, 1994, either in writing to the Department at the address set forth above or by telephoning 609-984-3602.

The Department reserves the right to limit oral comments and questions in either time or number in order to complete the hearing by 4:30 P.M. on the scheduled date. As established above, interested parties may submit written comments on these proposed rules until March 24, 1994. Written comments will not be accepted on the Hearing Officer's Report.

Social Impact

These proposed amendments further the legislative intent of continuing the plan for the orderly payment of claims covered by the Association in accordance with the appropriate priorities established by the Trustee pursuant to N.J.S.A. 17:33B-3b(2). The deferral program for residual bodily injury claims permits the immediate payment of claims for ongoing medical treatment and other present economic loss, as well as other claims. The proposed amendments merely extend the existing deferral program for an additional 18 months and permit an accelerated repayment of residual bodily injury claims if sufficient funds are available.

Economic Impact

These proposed amendments will have an impact on certain individuals with residual bodily injury claims, attorneys for those claimants, and the Association. Claimants and their attorneys will be affected by the deferred receipt of payment on certain claims.

This temporary economic impact is necessary, however, to ensure that Association obligations are satisfied in an orderly manner and according to the priorities established by law as set forth in the Trustee's Plan of Operation. The burden on claimants will be mitigated by the interest which is paid on deferred claim payments.

The Association will, however, bear the additional costs of interest paid on deferred claims.

Regulatory Flexibility Statement

These amendments continue the deferral of the payment of residual bodily injury claims payable by the Association for personal injuries suffered by individuals. These rules do not impose any reporting, recordkeeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is, therefore, not required.

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

11:3-2A.2 Definitions

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

. . .

"Closing papers" means a release **which includes the Association deferral language set forth in N.J.A.C. 11:3-2A.1(b)2 and which is** signed by the claimant releasing the Association and its insured(s) from liability for the claim, or a warrant of satisfaction of judgement and/or other closing documents.

. . .

11:3-2A.3 Deferral of payment for residual bodily injury claims

(a) Payments by the Association of any residual bodily injury claims, including uninsured motorist claims and underinsured motorist claims, are deferred from payment for **a period not to exceed** 18 months, except such claims as may be granted **a hardship** exemption from deferral by the Trustee as provided in N.J.A.C. 11:3-2A.5.

(b) (No change.)

(c) Payment of a claim which has been deferred pursuant to this subchapter shall occur [on] **no later than** the first day of the eighteenth month following the date of deferral, that is the date upon which closing papers are received in the office of the Association's servicing carrier.

(d) The deferral of claim payments as provided in this subchapter shall continue until [June 30, 1994] **December 31, 1995.**

(e) When claims deferred pursuant to this subchapter are paid by the Association, the payment shall include simple interest at the rate of six percent per annum beginning on the date of deferral. **If claims deferred pursuant to this rule are paid prior to the first day of the eighteenth month following physical receipt of the closing papers by the Association's servicing carrier, the payment of interest will be pro-rated to the date of payment.**

(f) (No change.)

11:3-2A.4 Administrative provisions

(a) (No change.)

(b) The Trustee shall develop, review and, where necessary, amend, uniform operating procedures necessary to implement these rules consistent with this subchapter including procedures for the implementation of hardship exemptions as provided in N.J.A.C. 11:3-2A.5; servicing carrier procedures; and the uniform handling of deferred claim payments.

1.-2. (No change.)

3. Orders for Judgment shall include language similar to that in (b)2 above specifically referring to the deferral of any payment until the first day of the eighteenth month following physical receipt by the Association's servicing carrier of the Order, the inclusion of per annum, simple interest at six percent in any final payment, and the understanding that if any such payment is made early, the amount of interest will be pro-rated to the date of payment.

[3.]**4.** (No change in text.)

(c) (No change.)

(d) Servicing carriers shall not utilize their own funds to pay claims subject to deferral **unless specifically authorized to do so by the Trustee.** Regardless of the source of funds utilized, the Association shall not reimburse servicing carriers for **the unauthorized** payment of claims subject to deferral made on or after the effective date of these rules.

(e) (No change.)

11:3-2A.5 Hardship exemptions

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

(c) Applications for a hardship exemption may be obtained from the Association's servicing carriers or by submitting a written request to the Office of the NJAFIUA Trustee, 160 Avenue at the Commons, Suite 2, Shrewsbury, New Jersey 07702.

1. (No change.)

2. Completed applications shall be submitted directly to the Trustee at the address noted above and shall include a certified-to-be-true copy of the associated judgment or fully-executed deferral release, a copy of the written acknowledgement of receipt of the [letter] **deferral release or order for judgment** issued by the Association's servicing carrier, copies of all unpaid medical bills, insurance coverages, foreclosure notices, eviction notices, funeral bills and other appropriate documentation. Original documents shall be available for review upon the request of the Office of the Trustee.

(d)-(h) (No change.)

11:3-2A.6 Appeal to the Commissioner

(a) An appeal by an applicant of the decision of the Trustee denying a request for a hardship exemption as provided in N.J.A.C. 11:3-2A.5 or from the Trustee's decision regarding a dispute about the date of [receipt of a release] **deferral** as provided in N.J.A.C. 11:3-2A.4(c), shall be filed with the Commissioner within 20 days of receipt of the Trustee's written decision.

1.-2. (No change.)

(b) (No change.)

11:3-2A.7 Public records

(a) Pursuant to N.J.S.A. 47:1A-1, the following documents shall be considered public documents:

1. The Trustee's request to the Commissioner for approval of the deferral plan, **or any extension,** and the supporting analysis and data;

2.-3. (No change.)

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

(a)

DIVISION OF ADMINISTRATION

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

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

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

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

Proposal Number: PRN 1994-128.

Submit comments by March 24, 1994 to:

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

The agency proposal follows:

Summary

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

On October 19, 1992, the Department proposed to amend subsection (i) to extend its application through model year 1994 (see 24 N.J.R. 3604(a)). That proposal was made at a time when substantial modifications to New Jersey's private passenger automobile classification system were under consideration. Those modifications were never made and the amendments to subsection (i), which had been proposed in context with the modifications to the classification system, were not adopted within one year of the date of proposal as required by law. Although insurers have continued their activity under subsection (i) to the present time without interruption, the Department believes that formal extension of subsection (i) at this time is necessary and appropriate.

The proposed amendment to N.J.A.C. 11:3-16.7(i) would extend such use through model year 1995 (or through calendar year 1994) to enable insurers to continue to jointly develop their ratemaking methodologies. However, from then on, insurers will be required to individually develop and use their own rating systems which would replace the jointly developed programs permitted by subsection (i). The Department views this requirement as necessary to comply with the provisions of N.J.S.A. 17:33B-31.

A new subsection (j) is added to specifically require insurers to file for approval by the Department, their new rating systems to replace the jointly developed symbol, vehicle series and model year rating programs. Each such rating system must be approved and in use by January 1, 1995. The Department will issue a Bulletin and adopt rules informing insurers of filing requirements relating to the new rating systems.

Social Impact

New Jersey automobile insurers and purchasers of private passenger auto insurance are affected by this proposed amendment which, while temporarily continuing uniformity in ratemaking, will require insurers to develop and use their own symbol, vehicle series and model year rating systems.

Although insurers may not favor this result, the Department sees little choice in the matter in light of the provisions of N.J.S.A. 17:33B-31.

Both the short and long-term impact of these amendments on consumers are expected to be minimal.

Economic Impact

The proposed amendments continue present symbol, vehicle series and model year automobile rating programs for physical damage coverages through model year 1995 (or through calendar 1994) without change in economic impact which has always been relatively insignificant since most insurers use programs originally filed (and still currently serviced) by rating organizations. However, insurers are expected to incur costs, which

are virtually impossible to quantify, in the process of developing their own symbol, vehicle series and model year rating systems for use subsequent to calendar year 1994.

Symbol, vehicle series and model year rating plans establish standardized indicia for automobiles that consider price, depreciation, cost to repair and loss experience in order to rate them individually for physical damage coverage. The annual servicing includes providing the symbol for new models as they are introduced. While servicing these plans is primarily an administrative and technical function with attendant costs, there is some actuarial judgment (and corresponding cost) involved. Costs will vary considerably from one insurer to another depending, in part, on the availability of creditable data and trained personnel to retrieve, organize and disseminate the data.

The Department of Insurance will incur no additional cost in the implementation of these amendments or continuation of the present rating programs. Additional costs may be incurred, however, in connection with the filing and approval process relating to new symbol, vehicle series and model year rating systems developed and used by each insurer subject to these requirements.

Since symbol, vehicle series and model year rating programs or systems help determine the cost of automobile insurance physical damage coverage, insureds are affected in terms of how much they are required to pay for their coverage. However, whether this determination is made pursuant to current programs maintained jointly by insurers or their own individually developed new systems, will have little impact on insureds in terms of the premiums they are ultimately required to pay.

Regulatory Flexibility Statement

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

A regulatory flexibility analysis is not required since the proposed amendments temporarily continue a rule already in effect and because transition to new symbol, vehicle series and model year rating systems is, in effect, required by statute. N.J.S.A. 17:33B-31. It is expected that details of any new reporting, recordkeeping or other compliance requirements relating to the development and use of new symbol, vehicle series and model year rating systems and imposed on insurers who may be small businesses, will be contained in new rules to be proposed in the near future.

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

11:3-16.7 Jointly developed historical data

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

(i) Insurers may continue to use symbol, vehicle series and model year rating programs for physical damage coverages [for model years 1991 and 1992. Pursuant to this section, insurers] **and** may jointly develop symbol assignments, vehicle series and model year data and determine adjustments to [the] symbol assignments through model year [1992] **1995, and may use such rating programs and may jointly develop such data through December 31, 1994.**

(j) Every insurer shall file a replacement rating system for its jointly developed symbol, vehicle series and model year rating program for physical damage coverage for approval by the Department. Each rating system must be approved and in use by January 1, 1995.

LAW AND PUBLIC SAFETY

(a)

DIVISION ON CIVIL RIGHTS

Multiple Dwelling Reports

Proposed Readoption with Amendments: N.J.A.C. 13:10

Authorized By: C. Gregory Stewart, Director, Division on Civil Rights.

Authority: N.J.S.A. 10:5-1 to 42.

Proposal Number: PRN 1994-99.

Submit comments by March 24, 1994 to:

Linda Wong Peres
Assistant Director
Department of Law and Public Safety
Division on Civil Rights
Bureau of Policy
383 West State Street—CN 089
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:10, pertaining to multiple dwelling reports, expires on March 27, 1994. The Division on Civil Rights (Division) in the Department of Law and Public Safety enforces the Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to 42, and seeks to readopt these rules. The Division has reviewed these rules and has determined that, with the proposed substantive and technical amendments, they are necessary, reasonable and proper for the purpose for which they were originally promulgated.

The Multiple Dwelling Reports rules, N.J.A.C. 13:10, require all owners of multiple apartment developments with 25 units or more to file an annual report with the Division on Civil Rights which shall supply information regarding the racial designation of applicants and tenants, rental turnovers, rental recruiting techniques, and the size and rental rates of the apartments (see N.J.A.C. 13:10-2.2 and 13:10-2.3). Under the current rules, "racial designation" is defined to mean Caucasian, Black, or Spanish surname (see N.J.A.C. 13:10-1.1). One copy of the report shall be filed with the Division on Civil Rights on a yearly basis, due on October 15 (see N.J.A.C. 13:10-2.4). Owners of mulitple apartment developments are required to maintain records of the racial designation of applicants and tenants for two years, pursuant to N.J.A.C. 13:10-2.5.

The Multiple Dwelling Reports rules were initially proposed by the Division on Civil Rights in the New Jersey Register of April 9, 1970, at 2 N.J.R. 36(a). The rules were designed to assist the agency to more effectively enforce the State law against housing discrimination. Data generated by the reports was intended to identify those multiple dwellings whose racial composition may warrant investigation, and to alert owners of multiple dwellings to the composition of those dwellings. It was anticipated that the rules would help the agency monitor housing trends Statewide, and provide important information regarding investigations of charges of discrimination. The rules, after hearing and with modification, were adopted on September 21, 1970.

The legal validity of the rules has been challenged by the New Jersey Builders, Owners, and Management Association, which contended that the rules' reporting requirements offend the Law Against Discrimination, the very statute they seek to enforce. The New Jersey Supreme Court upheld the validity of the rules on the basis that assembling and evaluating these pertinent data was a rational approach toward satisfying the mandate with which the Division on Civil Rights has been charged (see *New Jersey Builders, Owners, and Management Association v. Blair,* 60 N.J. 330, 337 (1972)).

Presently, the Division on Civil Rights receives and monitors compliance of multiple dwelling reports from over 2,500 apartment complexes throughout the State. The reporting requirements alert complex owners as to the composition of their applicants and tenants as well as the agency's attempt to monitor that composition.

The reports generated by the rules are also utilized in the development of affirmative marketing techniques in housing. The Division on Civil Rights in conjunction with Community Housing Resource Boards throughout the State, has endeavored through voluntary affirmative marketing agreements to promote institutional change in housing on an areawide basis. The Division cannot expect effective equal housing opportunity until the real estate and building industries, apartment house association members, financial institutions and local governments demonstrate their acceptance of all applicants and affirmatively promote open communities. The data generated from the rules assists in achieving the above objective by assuring compliance with affirmative action commitments as well as targeting the responsibility for discriminatory practices.

To summarize, the Multiple Dwelling Reports rules are necessary to enable the Division on Civil Rights to systematically acquire information regarding the racial composition of apartment complexes throughout the State. The data generated from the reports serve to ensure the promotion of equal housing opportunity and are used to investigate possible viola-

tions and seek compliance with the Law Against Discrimination. Upon internal review of these rules, the Division on Civil Rights has found them adequate, reasonable, understandable and necessary for the purpose for which they were promulgated. Therefore, the Division on Civil Rights is seeking to preserve the benefits to the public by readopting the rules in their present form.

The Division proposes to add a definition for the term "barrier free," which means adequate and sufficient features which are available in buildings or structures so as to make them accessible to and usable by physically handicapped persons. N.J.A.C. 13:10-1.1 is being proposed for technical amendment and to expand the definition of "racial designation" to include Asian American Pacific Islanders. Technical amendments to N.J.A.C. 13:10-2.1 and 2.4 are being proposed to reflect the correct name of the Division on Civil Rights, correct a grammatical error and include the full citation to the Law Against Discrimination.

The Division proposes to amend N.J.A.C. 13:10-2.2 and 2.3 to add the requirement that owners of multiple apartment developments must report whether their buildings or developments are barrier free. Finally, technical amendments to N.J.A.C. 13:10-2.6 are being proposed to clarify that violations of this chapter shall constitute a violation of the Law Against Discrimination, N.J.S.A. 10:5-1 to 42.

Social Impact

The Multiple Dwelling Reports rules as initially adopted contribute to the public's awareness of fair housing laws by requiring complex owners to focus on the racial composition of their applicants and tenants as well as by emphasizing the responsibility of the Division on Civil Rights to monitor that composition. The data gathered from the reporting rules is also used to target, investigate and resolve complaints of housing discrimination. The proposed readoption will enable the Division to continue its efforts to prevent the emergence of segregated housing developments and to open urban and suburban apartments to minorities, and thus assure equal housing opportunities in this State.

The proposed amendments will have a beneficial social impact upon the residents of New Jersey, particularly Asian American Pacific Islanders and mobility impaired persons who have been subject to housing discrimination. In particular, the Division on Civil Rights will be able to use this additional information to enhance its ability to study patterns of housing occupancy, investigate practices of discrimination and affirmatively administer the Law Against Discrimination.

Economic Impact

Readoption of the Multiple Dwelling Reports rules will continue to have a minimal economic impact on owners of apartments of 25 units or more by requiring the compilation of annual reports reflecting the racial composition of tenants and applicants, and the maintenance of these records for two years.

The proposed amendments will have little economic impact on the real estate industry because owners of multiple apartment developments will only be required to report on additional information which is easily ascertainable based upon a visual observation of tenants or applicants, and upon review of the surname of such individuals as it appears in the owners' records. Owners which are responsible for reporting on the accessibility of their buildings or developments are already governed by building code and other mandates, such as the Federal Fair Housing Act, to ensure their facilities are accessible to handicapped persons. Therefore, information pertaining to their accessibility should be readily available and the reporting of such information should involve minimal, if any, expense.

Regulatory Flexibility Statement

The Multiple Dwelling Reports rules apply to owners of complexes comprised of 25 or more units. Owners of apartment complexes which have less than 25 units are exempt. There are approximately 2,500 multiple dwellings to which the rules apply, a number of which may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The cost of compliance for these owners is minimal since the rules merely require the annual completion and filing of a form which reflects the racial composition of leaseholders and applicants, the number of rental turnovers, apartment rental recruiting techniques, and apartment sizes and rental rates. These requirements have not been shown to be financially or administratively burdensome for covered complex owners during the effective period of the rules.

The rules proposed for readoption with amendments will have minimal effect on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., which own multiple apartment developments having 25 units or more. As noted previously, the additional information which businesses must provide on the multiple dwelling reports is minimal and should be easily ascertainable. Existing personnel who previously prepared such reports can be used to compile the additional information. It is unlikely that any small business will need additional professional services to comply with the amendments. Further, these amendments will minimize any adverse economic impact on small businesses because the cost of ascertaining the information will be minimal.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:10.

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

13:10-1.1 Words and phrases defined

The following words and phrases, when used in this [Chapter] **chapter**, shall have the following meanings, unless the context clearly indicates otherwise. (Unless the context indicates to the contrary all terms used in this rule have the same meanings as in N.J.S.A. 10:5-1 et seq.)

...

"Racial designation" means Caucasion, Black, **Asian American Pacific Islander** or Spanish surname.

13:10-2.1 Purpose

The provisions of this chapter are adopted to enable the Division [of] **on** Civil Rights to study patterns of housing occupancy, [investigated] **investigate** practices of discrimination and affirmatively administer the [New Jersey] Law Against Discrimination, **N.J.S.A. 10:5-1 to 42.**

13:10-2.2 Persons required to report

(a) The owner or owners of every multiple apartment development which has 25 units or more shall file an annual report with the Division on Civil Rights concerning the racial composition of the multiple dwelling, **whether any of its buildings or developments are barrier free,** and factors affecting [that] **its** composition.

(b) (No change.)

13:10-2.3 Form and contents of report

(a) (No change.)

(b) The report may include information concerning:

1.-4. (No change.)

5. Rental rates and apartment sizes; [and]

6. Whether the multiple apartment development is barrier-free; and

[6.]**7.** Such other information as the Attorney General determines is necessary to effectuate the purposes of this rule.

13:10-2.4 Filing of reports

(a) One copy of the report shall be filed with the Division [of] **on** Civil Rights on a yearly basis.

(b) (No change.)

13:10-2.6 Violations

Failure to comply with this chapter shall constitute a violation of [N.J.S.A. 10:5-12] **the Law Against Discrimination, N.J.S.A. 10:5-1 to 42.**

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF REAL ESTATE APPRAISERS

Educational Requirements for Certification as a Residential Real Estate Appraiser

Proposed Amendment: N.J.A.C. 13:40A-2A.3

Authorized By: Board of Real Estate Appraisers, Carmen D. Mistichelli, President.

Authority: N.J.S.A. 45:14F-8(n).

Proposal Number: PRN 1994-106.

Submit written comments by March 24, 1994 to:
Kevin Earle, Executive Director
State Board of Real Estate Appraisers
Post Office Box 45032
Newark, New Jersey 07101

The agency proposal follows:

Summary

The New Jersey State Board of Real Estate Appraisers is proposing amendments to N.J.A.C. 13:40A-2A.3, Educational requirements for certification as a residential real estate appraiser. The amendments increase from 105 to 120 the number of classroom hours that an applicant is required to complete in order to be eligible to take the Board approved examination for certification as a residential real estate appraiser. This increase is being proposed in accordance with an identical revision undertaken in February of 1993 by the Appraisal Qualifying Board, which establishes the minimum national criteria for licensing. It should be noted that Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) (Pub. L. 101-73, as amended) requires that states adopt the minimum AQB standards.

Social Impact

The proposed amendments regarding increased classroom hours will improve the educational proficiency of applicants seeking to become residential real estate appraisers and will at the same time benefit the consumers of the State in that the overall level of competency among potential real estate appraisers will be enhanced.

Economic Impact

The expense of completing 120, as opposed to 105, hours of classroom instruction in subjects related to real estate appraisal will be an additional cost of doing business in the State of New Jersey for applicants wishing to be eligible to take the Board approved examination for certification as a residential real estate appraiser. However, this expense is unavoidable because the board is required by Federal law to adopt the minimum AQB standards regarding educational requirements. This increase in required classroom hours is not expected to have an adverse impact on consumers because the expense to be borne by applicants is estimated to be no more than $200.00 to $300.00 and, as such, is nominal.

Regulatory Flexibility Analysis

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

The proposed amendments will not result in any new reporting or recordkeeping requirements. Compliance requirements consist of completing an additional 15 classroom hours of courses in subjects related to real estate appraisal. No capital costs or costs for professional services are expected as a result of these proposed amendments. The proposed amendments conform to the minimum standards established by the AQB and must be uniformly applicable to all applicants for certification as a real estate appraiser without differentiation as to size of practice in order to protect the public and maintain consistent professional standards.

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

13:40A-2A.3 Educational requirements for certification as a residential real estate appraiser

(a) In order to be eligible to take the Board approved examination for the certification of residential real estate appraisers, an applicant shall be required to complete [105] **120** classroom hours, as defined in N.J.A.C. 13:40A-1.2, of courses in subjects related to real estate appraisal. The required [105] **120** classroom hours shall include a course on the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation, which the applicant shall have taken subsequent to April 27, 1987. Classroom hours completed for the licensed classification may be included within the required [105] **120** classroom hours.

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

(d) The Board may credit various appraisal courses toward the [105] **120** classroom hour educational requirement. Applicants shall demonstrate that their education included coverage of all the topics listed below with particular emphasis on the appraisal of one to four unit residential properties:

1.-15. (No change.)

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

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF REAL ESTATE APPRAISERS
Continuing Education
Proposed Repeal: N.J.A.C. 13:40A-4.1
Proposed New Rules: N.J.A.C. 13:40A-4.1 through 4.9

Authorized By: Board of Real Estate Appraisers, Carmen D. Mistichelli, President.
Authority: N.J.S.A. 45:14F-8(n).
Proposal Number: PRN 1994-107.

Submit written comments by March 24, 1994 to:
Kevin Earle, Executive Director
State Board of Real Estate Appraisers
Post Office Box 45032
Newark, New Jersey 07101

The agency proposal follows:

Summary

The New Jersey State Board of Real Estate Appraisers is proposing new rules, N.J.A.C. 13:40A-4.1 through 4.9, Continuing Professional Education. The Board's prior rule concerning continuing professional education, N.J.A.C. 13:40A-4.1, will be repealed in its entirety and replaced with the new rules.

Except as more specifically set forth below, the proposed new rules detail existing Board administrative procedures. The key aspect of the new continuing professional education requirements appears in N.J.A.C. 13:40A-4.1, which will require all licensed and certified real estate appraisers to attend a 15-hour minimum length course at least once every six years on the Uniform Standards of Professional Appraisal Practice (USPAP) and, in conjunction with the course, will require them to pass an examination on the USPAP. (USPAP requirements are incorporated in both Federal and State laws governing appraisal practices.) This course requirement is in addition to the current 20-hour per biennial cycle requirement.

In order to encourage a diverse educational training, licensees and certificate holders will be limited to no more than four hours of credit per biennial renewal cycle for courses on changes in the USPAP and credit for participation, other than as a student, in appraisal educational processes and programs will be restricted to no more than 10 hours of credit per biennial renewal cycle. In accordance with the criteria established by the Appraisal Qualifications Board (AQB) of the Appraisal Foundation, the minimum length of a continuing professional education course will be increased from two to three and one-half hours. Again in accordance with the criteria established by the AQB, applicants who participate in continuing education activities beyond the minimum requirements during a given renewal cycle will not be allowed to carry over credit into future renewal cycles.

In N.J.A.C. 13:40A-4.6, the sources of continuing education have been expanded to include an additional option. Licensees and certificate holders will now also be allowed to obtain continuing education credits by attending seminars offered by vendors of commercial products, provided that at least one commercial vendor from another company participates in the seminar. This provision is a safeguard measure intended to avoid the possibility that a seminar offered by a single vendor might otherwise become primarily a sales vehicle for the vendor involved.

Social Impact

The proposed new rules will require real estate appraisers to engage in more extensive continuing professional education and to be able to verify that the courses they take meet the upgraded standards that the Board has proposed in accordance with the initiatives taken by the Appraisal Qualifications Board. The provisions being proposed will benefit not only licensees and certificate holders, who will keep current their knowledge and skill, but also the consumers in the State of New Jersey

because they will have access to the services of licensees and certificate holders whose professional competency will be enhanced by their meeting the upgraded standards embodied in the new rules.

Economic Impact

The expense of attending a 15-hour minimum length course once every six years and, in conjunction with the course, passing an examination on the USPAP will be an additional cost of doing business in the State of New Jersey. However, this expense is expected to be nominal and will not pose an undue financial burden on licensees and certificate holders who will be compensated by the assurance that their knowledge and skills remain current. To the extent that any increased costs of doing business may be passed on to consumers, the requirement that licensees and certificate holders shall attend a 15-hour minimum length course once every six years is anticipated to have a negligible economic impact on consumers.

The other new continuing professional education requirements will not have an economic impact on licensees, certificate holders or consumers because these other requirements merely focus on refining existing academic standards.

Regulatory Flexibility Analysis

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

By and large, the proposed new rules merely formalize existing reporting and compliance procedures for licensees and certificate holders. The reporting requirements consist of the following. For approved seminars or training programs, the applicant must submit a completed "Uniform Continuing Education Form" or other certified form acceptable to the Board, or else a signed and dated certification from both the applicant and course instructor attesting to the applicant's satisfactory completion of the course. Applicants seeking continuing education credit for participation other than as a student will need to submit a written request detailing certain information.

The major new compliance requirements consist of the necessity of attending a 15-hour minimum length course on the USPAP once every six years and passing an examination given in conjunction with the course. The cost per 15-hour minimum length course is, on average, expected to be no more than $200.00 to $300.00. Other new compliance requirements consist of the following. No more than four hours of credit per biennial renewal cycle may be awarded for courses on changes in the USPAP. No more than 10 hours of credit per biennial renewal cycle may be awarded for participation, other than as a student, in approved appraisal education processes and programs. Compliance with requirements that have now been formalized involve the requirement that all courses must be a minimum of three and one-half hours in length, and that applicants may not carry over credit into future renewal cycles. Licensees and certificate holders will not, however, be confronted by any new recordkeeping, initial capital costs, costs of professional services or other costs of compliance as a result of this proposal.

Providers of continuing education courses who wish to secure Board approval will need to submit minimum information to establish the validity of the course or courses being offered. In addition, upgrading the minimum length of a course from two to three and one-half hours may involve certain nominal compliance costs should adjustments be necessary for syllabi and other instructional materials. It might be noted that providers of such courses are expected to continue generating income that more than compensates for any expenses that may result from these new rules, and that no other reporting, recordkeeping, capital costs, costs for professional services or other costs of compliance will apply to providers of such courses beyond those cited above.

The requirements affecting both real estate appraisers and providers of continuing professional education courses have been deemed by the Board to be the minimum necessary to protect the public and provide consistent standards, and as such all the requirements included in this proposal must be uniformly applied without differentiation as to size of practice.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:40A-4.1.

Full text of the proposed new rules follows:

13:40A-4.1 Special course requirement; Uniform standards of professional appraisal practice

(a) At least once every six years, all licensed and certified real estate appraisers shall be required to attend a 15-hour minimum length course and pass an examination, given in conjunction with the course, on the Uniform Standards of Professional Appraisal Practice.

(b) The course requirement set forth in (a) above is in addition to the 20-hour per biennial cycle requirement set forth in N.J.A.C. 13:40A-4.3.

13:40A-4.2 Requirements for licensure and certification renewal

(a) The purpose of continuing education activities is to ensure that the appraiser participates in a program that maintains and increases his or her skill, knowledge and competency in real estate appraising.

(b) The Board shall not issue a license or certificate renewal for any biennial period unless the applicant submits, with the renewal application, proof that he or she completed courses of continuing professional education of the types and number of credits hereinafter specified, unless an extension has been granted pursuant to N.J.A.C. 13:40A-4.9. Proof of completion of the required number of continuing education credits shall be in the form outlined in N.J.A.C. 13:40A-4.7.

13:40A-4.3 Credit hour requirements; carryover prohibited

(a) Except as set forth in (d) below, all licensed and certified real estate appraisers shall be required to complete a minimum of 20 hours of approved continuing education activities within each biennial renewal cycle. No more than four hours of credit per biennial renewal cycle may be awarded for courses on changes in the Uniform Standards of Professional Appraisal Practice.

(b) All courses must be a minimum of three and one-half hours in length. One hour of credit shall be awarded for each classroom hour of instruction provided in any approved offering.

(c) Applicants who participate in continuing education activities beyond minimum requirements shall not carry over credit into future renewal cycles.

(d) An applicant renewing a license or certificate for the first time shall submit proof of completion of continuing education requirements as follows:

1. If the initial license or certificate was issued during the first year of a biennial period: proof of 20 hours;

2. If the initial license or certificate was issued during the first six months of the second year of a biennial period: proof of 10 hours; and

3. If the initial license or certificate was issued during the last six months of the second year of a biennial period, no continuing education hours are required for renewal.

13:40A-4.4 Pre-approval of course offerings

(a) The Board shall maintain a list of all approved courses, lecturers and programs at the Board's offices and shall furnish this information upon request.

(b) An applicant seeking to take a course for continuing professional education credit which has not been pre-approved by the Board may apply to the Board for pre-approval of the course offering. The applicant shall submit information similar to that which is required to be supplied by course providers, as more fully detailed in N.J.A.C 13:40A-4.8(a)2.

(c) Determinations as to whether to award credit for an offering which has not been pre-approved shall be entirely within the Board's discretion.

13:40A-4.5 Acceptable course topics

(a) The Board shall approve only those continuing education activities and course topics as are deemed by the Board to be consistent with the purpose of continuing education. Examples of such course topics may include, but are not limited to: changes in the Uniform Standards of Professional Appraisal Practice; ad valorem taxation; arbitration; business courses related to practice of real estate appraisal; construction estimating; land use planning; zoning and taxation; management, leasing, brokerage, timesharing; property

development; real estate appraisal (valuation/evaluations), law, litigation, financing and investment; real estate appraisal related computer applications; real estate securities and syndication; and real property exchange.

(b) The Board shall approve only such continuing education programs as are available and advertised on a reasonably non-discriminatory basis to all real estate appraisers in the State.

13:40A-4.6 Sources of continuing education

(a) The licensee or certificate holder may obtain continuing education credits from the following:

1. Training programs offered by State or Federal agencies or commissions;

2. Educational programs provided during trade organization conferences;

3. Colleges or universities accredited by the New Jersey Department of Higher Education or any state accrediting agency approved by the Board; community or junior colleges accredited by the New Jersey Department of Higher Education; proprietary schools;

4. Seminars offered by real estate appraisal or real estate related organizations;

5. Seminars offered by vendors of commercial products, provided that at least one other commercial vendor from a different company participates in the seminar;

6. Participation, other than as a student, in appraisal education processes and programs, as approved by the Board.

i. Examples of activities for which credit may be granted include teaching appraisal courses, developing appraisal programs, authoring appraisal textbooks or articles, or participating in other like activities deemed by the Board to be equivalent to obtaining continuing education;

ii. No more than 10 hours of credit per biennial renewal cycle may be awarded for activities qualifying under this paragraph; and

7. Courses approved for initial certification and licensing, as referenced in N.J.A.C. 13:40A-2.3(d), 2A.3(d) and 3.3(d) provided the applicant has not previously taken the course in the six year period immediately preceding the biennial renewal deadline.

(b) The award of credit is subject to Board approval of the course offering either prior to filing the renewal application or upon submission of documentation required pursuant to N.J.A.C. 13:40A-4.7 at the time of license or certificate renewal.

13:40A-4.7 Required documentation

(a) Documentation of continuing education requirements shall consist of the following:

1. For courses, seminars or training programs approved by the Board, a completed "Uniform Continuing Education Form" or other certified form acceptable to the Board; or a signed and dated certification, from both the applicant and course instructor(s), attesting that the applicant attended the course listed and satisfactorily completed all course requirements.

2. For participation other than as a student in appraisal education processes or programs:

i. A written request for continuing education credit which shall include at least the following information:

(1) A description of the activities for which credit is sought;

(2) The number of credits sought;

(3) The time spent on such activities;

(4) The reasons the applicant believes such activities meet the Board's continuing education requirements; and

(5) Any further information as may be requested by the Board;

ii. For publication of a book or an article in a professional journal, submission of the book or article;

iii. For teaching or research appointments, a statement of appropriate school authority verifying the appointment and a statement of the subject matter to be taught or the nature of the research to be performed.

(b) For courses, seminars or training programs which have not been pre-approved by the Board:

1. A copy of the course description and/or outline; and

2. A completed "Uniform Continuing Education Form" or other certified form acceptable to the Board or a signed and dated certification, from both the applicant and course instructor(s), attesting that the applicant attended the course listed and satisfactorily completed all course requirements.

(c) Falsification of any information submitted with the renewal application may result in penalties and/or the suspension or revocation of a license or certification.

13:40A-4.8 Responsibilities of continuing education providers

(a) All providers of continuing education courses shall:

1. Secure Board approval prior to advertising or otherwise representing that any course is approved for continuing education credit in New Jersey;

2. Submit, for each course for which approval is sought, the following for evaluation by the Board:

i. A detailed description of course content and estimated hours of instruction;

ii. Any printed material describing the course;

iii. A description of the method used to monitor attendance and the policy for making up missed classes;

iv. A curriculum vitae of the instructor(s), including information concerning the specific background which qualifies the instructor to teach the particular course offering; and

v. Any additional information as may be requested by the Board; and

3. Monitor the attendance at each approved course and provide the Board with a roster of attendees within 30 days of the conclusion of the program.

13:40A-4.9 Extensions

(a) An applicant for biennial renewal may request in writing an extension of time to satisfy continuing education requirements.

(b) An extension may be granted at the sole discretion of the Board if the applicant provides evidence satisfactory to the Board that he or she was unable to obtain the required education because of an incapacitating illness, military assignment or other extraordinary circumstance.

(c) Whether to grant an extension request and the length of time of any extension shall be discretionary determinations made on a case-by-case basis by the Board.

(d) The licensee or certificate holder granted an extension of time to satisfy continuing education requirements will be permitted to renew his or her license or certificate for the period of time for which the extension is granted.

(a)

DIVISION OF STATE POLICE

Uniform Crime Reporting System

Proposed Amendments: N.J.A.C. 13:57

Authorized By: Colonel Justin J. Dintino, Superintendent, Division of State Police.

Authority: N.J.S.A. 52:17B-1 et seq.

Proposal Number: PRN 1994-108.

Submit written comments by March 24, 1994 to:

Colonel Justin J. Dintino, Superintendent
c/o Uniform Crime Reporting Unit
Division of State Police
Box 7068—River Road
West Trenton, N.J. 08628-0068

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:17B-5.1 et seq., the Attorney General has authorized the Division of State Police to collect and collate Statewide crime data through the administration of the Uniform Crime Reporting (UCR) system. Pursuant to N.J.A.C. 13:57, the general requirements of the UCR system have been identified by the rules as originally adopted. These requirements include:

(1) Definitions of law enforcement agencies;

(2) Identification of required report forms;

(3) Submission deadlines; and
(4) Data collection rules and procedures.

The proposed amendments to N.J.A.C. 13:57 continue the general requirements and add provisions which will enhance the integrity of the current system by identifying new data collection procedures. The new rules delete the Divisions of Motor Vehicles, Alcoholic Beverage Control, and Marine Services from the list of independent State law enforcement agencies since they are now a part of the Division of State Police. Added to the list of State law enforcement agencies are the Department of Human Services and New Jersey Transit Police Department.

Other amendments to the original rules: (1) require the collection of ethnic origin information of all juveniles and adults arrested; (2) require a supplementary arson report form (N.J.-UCR 373) to be submitted by full-time municipal police agencies and the Essex County Park Police Department; (3) require a supplementary homicide report and report of police officers killed in the line of duty to be submitted by the offices of the county prosecutors on a monthly basis; and (4) require, as per statutory mandate (N.J.S.A. 2C:58-14), the submission on a monthly basis of statistics involving the commission of offenses with assault firearms.

The amendments make clear that the raw data collected from the law enforcement agencies of the State shall be maintained as confidential by the Division of State Police since it is work product and, therefore, is not intended for public dissemination. The final work product is the Uniform Crime Report, which is disseminated to the public media and other agencies.

The amendments reflect the inherent authority of the Attorney General, through the Division of State Police, to require the submission of any additional information that may be deemed necessary to ensure that the criminal justice community and the public are appropriately informed of viable statistics.

Social Impact

The proposed amendments will enable the Division of State Police to more efficiently maintain and perform its Uniform Crime Reporting data collection functions, as required by statute. The amendments will assist in better identifying the extent, type, and location of criminal activity throughout the State. The rules will provide for a better informed citizenry and criminal justice community.

Economic Impact

The Division of State Police believes that there will be no adverse economic impact upon the public as a result of the new rules. The proposed new rules merely establish enhanced data collection and retrieval procedures for the administration of the Uniform Crime Reporting system to provide a more factual account of criminal activity throughout the State. There will be little, if no, additional administrative costs imposed on the law enforcement community, since the amended procedures and reports are already being submitted to the Division, pursuant to directives.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules impose requirements on the law enforcement community.

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

13:57-1.1 Law enforcement agencies defined

(a) Law enforcement agencies include all law enforcement agencies created by the governing municipal body and promulgated by statute:

1. (No change.)
2. County law enforcement agencies:
i. County prosecutor;
ii. Sheriff;
iii. Park police; **and**
iv. County police agencies[; that is:] **in Bergen and Hudson Counties.**
[(1) Bergen;
(2) Hudson.]
3. State law enforcement agencies:
i. Department of Law and Public Safety:
(1) Division of State Police;
(2) Division of Criminal Justice; **and**
[(3) Division of Motor Vehicles;
(4) Division of Alcoholic Beverage Control;]
[(5)](**3**) Office of Weights and Measures of the Division of Consumer Affairs.
ii. Department of Environmental Protection **and Energy**:
(1) Division of Fish, Game and [Shellfisheries] **Wildlife**; **and**
(2) Division of Parks and Forestry[;].
[(3) Division of Marine Services.]
iii. Department of [Institutions and Agencies] **Corrections.**
[(1) Division of Correction and Parole.]
iv. Department of Human Services.
[iv.]**v.** Palisades Interstate Park Commission.
vi. New Jersey Transit Police Department.
4. (No change.)

13:57-1.2 Reports to Attorney General (State Police to act as collecting agency); type of forms; by whom; when submitted

(a) Municipal full-time police department as defined in these rules will submit on a monthly basis and forward by the seventh day following the close of the reporting period, the following enumerated reports:

1. Return A—[Count] **Monthly count** of offenses known to police (N.J.-UCR 365);
2.-3. (No change.)
4. Age, sex, [and] race, **and ethnic origin** of persons arrested (18 years of age and over (N.J.-UCR 370);
5. Age, sex, [and] race, **and ethnic origin** of persons arrested (Under 18 years of age) (N.J.-UCR 370A):
i. The following reports will be submitted only when the specific offenses involved have occurred in the jurisdiction of a municipal full-time police department:
(1)-(2) (No change.)
(3) Police officers killed or assaulted monthly supplement (N.J.-UCR 369A)[.];
(4) Supplementary Arson Report (N.J.-UCR 373).
ii. (No change.)
[iii. The following report shall be submitted annually, but no later than January 7 after close of each reporting year:
(1) Annual return of persons charged (N.J.-UCR 372).]
6. Monthly count of criminal offenses involving assault firearms (S.P.662).
Recodify existing 6 and 7 as **7 and 8** (No change in text.)

(b) County law enforcement agencies rules include:

1. As defined in these rules, county law enforcement agencies (except Essex County park police department) will submit on a monthly basis and forward by the seventh day following the close of reporting period the following enumerated reports:
i. Police officers killed or assaulted monthly supplement (N.J.-UCR 369A);
ii. Age, sex, [and] race, **and ethnic origin** of persons arrested (18 years of age and over) (N.J.-UCR 370);
iii. Age, sex, [and] race, **and ethnic origin** of persons arrested (Under 18 years of age) (N.J.-UCR 370A);
iv. Supplementary homicide report and report of police officers killed in the line of duty (S.P.46). This report shall only be submitted by the offices of the county prosecutors;
v. Monthly count of criminal offenses involving assault firearms (S.P.662);
[iv.]**vi.** (No change in text.)
[v. The following report shall be submitted annually, but no later than January 7 after the close of each reporting year:
(1) Annual return of persons charged (N.J.-UCR 372).]
[vi.]**vii.** (No change in text.)
[vii.]**viii.** The following county law enforcement agencies, that is, prosecutors, sheriffs, Bergen and Hudson County police agencies, county park police (except Essex County park police), shall for UCR submitting purposes report in a timely manner all part I offenses (murder, [forcible] rape, robbery, assault, [breaking and entering,] **burglary,** larceny-theft, [and] motor vehicle theft, **and arson**) investigated by or reported to their respective agency, and all allied

part I supplementary information (including offense clearance, arrest and disposition data) to the jurisdictional full-time municipal police department, or if no full-time department, shall report to the Division of State Police at the State Police station having jurisdiction in that municipality.

(c) State law enforcement agencies rules are:

1. As defined in these rules, State law enforcement agencies (except Division of State Police and Palisades Interstate Park Commission) will submit on a monthly basis and forward by the seventh day following the close of the reporting period the following enumerated reports:

i. Police officers killed or assaulted monthly supplement (N.J.-UCR 369A);

ii. Age, sex, [and] race, **and ethnic origin** of persons arrested (18 years of age and over) (N.J.-UCR 370);

iii. Age, sex, [and] race, **and ethnic origin** of persons arrested (Under 18 years of age) (N.J.-UCR 370A);

iv. (No change.)

[v. The following report shall be submitted annually, but no later than January 7 after the close of each reporting year:

(1) Annual return of persons charged (N.J.-UCR 372).]

[vi.]**v.** (No change in text.)

[vii.]**vi.** The following State law enforcement agencies, that is, Division of Criminal Justice, [Division of Motor Vehicles, Division of Alcoholic Beverage Control,] Office of Weights and Measures, Division of Fish, Game and [Shellfisheries] **Wildlife**, Division of Parks and Forestry, [Division of Marine Services, and Division of Correction and Parole] **Department of Corrections, Department of Human Services, and the New Jersey Transit Police Department** (except Division of State Police and Palisades Interstate Park Commission), shall for UCR submitting purposes report all part I offenses (murder, [forcible] rape, robbery, assault, [breaking and entering,] **burglary,** larceny-theft, [and] motor vehicle theft, **and arson**) investigated by or reported to their respective agency, and all allied part I supplementary information (including offense clearance, arrest and disposition data) to the jurisdictional full-time municipal police department, or if no full-time department, shall report to the Division of State Police at the State Police station having jurisdiction in that municipality.

(d) Part-time municipal police departments rules are:

1. As defined in these rules, part-time municipal police departments will submit on a monthly basis and forward by the third day following the close of the reporting period, to the Division of State Police at the State Police station having jurisdiction in that municipality, the following enumerated reports:

i. Special police report of part I offenses and persons arrested [(N.J. UCR 368)] **(S.P.27-UCR)**.

(e) Other police and security agencies rules are:

1. Bi-state port authorities, colleges, universities and all other State and private educational facilities employing police or security personnel shall report all part I offenses (that is murder, [forcible] rape, robbery, assault, [breaking and entering,] **burglary,** larceny-theft, [and] motor vehicle theft, **and arson**) investigated by or reported to their respective agency, and all allied supplementary information (including offense clearance data and all part I and part II arrest and disposition data) to the full-time municipal police department where offense(s) occurred, or where no full-time police department exists, the offense and all part I and part II arrest and disposition data shall be reported to the jurisdictional State Police station responsible for enforcement in that municipality.

2. In addition to the notification of State or municipal police agencies on certain offense(s), arrest(s) and disposition(s), the [above enumerated] agencies in (e)1 above shall, when requested by the Attorney General, submit on reports specified by the State **Police** Uniform Crime Reporting Unit all offense and arrest data occurring in their respective facilities and/or jurisdictions. These reports shall be forwarded to the Division of State Police, Uniform Crime Reporting Unit.

3. The agencies in (e)1 above will submit on a monthly basis, directly to the Uniform Crime Reporting Unit, and forward by the seventh day following the close of the reporting period the following enumerated report:

i. Monthly count of criminal offenses involving assault firearms (S.P.662). Each agency enumerated above will submit one report outlining, by municipality, all criminal offenses involving assault firearms investigated by said agency.

13:57-1.3 Exceptions

(a) Exceptions concerning county law enforcement agencies include:

1. In order to evaluate the volume and types of offense data investigated by county park agencies, the Essex County park police shall submit on a monthly basis and forward by the seventh day following the close of the reporting period the following enumerated reports:

i. Return A—[Count] **monthly count** of offenses known to police (N.J.-UCR 365):

(1) (No change.)

ii.-iii. (No change.)

iv. Age, sex, [and] race, **and ethnic origin** of persons arrested (18 years of age and over) (N.J.-UCR 370):

(1) (No change.)

v. Age, sex, [and] race, **and ethnic origin** of persons arrested (Under 18 years of age) (N.J.-UCR 370A):

(1) (No change.)

vi. Monthly count of criminal offenses involving assault firearms (S.P.662):

(1) One report will be submitted outlining, by municipality, all criminal offenses involving assault firearms investigated by Essex County Park Police Department.

[vi.]**vii.** The following reports will be submitted for each municipality only when those specific offense(s) occur:

(1)-(2) (No change.)

(3) Police officers killed or assaulted monthly supplement (N.J.-UCR 369A)[.];

(4) Supplementary arson report (N.J.-UCR 373).

vii. (No change.)

[viii. The following report will be submitted annually, but no later than January 7 after the close of the reporting year, and will include the arrests from all municipalities included in their jurisdictional boundaries:

(1) Annual return of persons charged (N.J.-UCR 372).]

(b) Exceptions concerning State law enforcement agencies include:

1. Division of State Police: State Police having jurisdiction on toll roads, interstate highways and all other highways where the State Police have the primary enforcement responsibility will be the reporting agency for all UCR offense, [and] arrest and disposition data. Where no full-time municipal police department exists, it will be the responsibility of the jurisdictional State Police station to report all offense, arrest and disposition data occurring in that municipality.

2. Palisades Interstate Park Commission: It is the responsibility of the Palisades Interstate Park Commission to submit on a monthly basis and forward by the seventh day following the close of the reporting period the following enumerated reports:

i. Return A—[Count] **Monthly count** of offenses known to police (N.J.-UCR 365):

(1) Report will be submitted for each individual municipality wherein a part I offense occurred within the jurisdiction of the [commission] **Commission**.

ii. Return A—Supplement, page 1 (N.J.-UCR 366):

(1) Report will be submitted for each individual municipality wherein a part I offense occurred within the jurisdiction of the [commission] **Commission**. Report will be submitted for each individual municipality wherein property was stolen or recovered in connection with part I offenses **which have occurred within the jurisdiction of the Commission**.

iii. (No change.)

iv. Age, sex, [and] race, **and ethnic origin** of persons arrested (18 years of age and over) (N.J.-UCR 370):

(1) (No change.)

v. Age, sex, [and] race, **and ethnic origin** of persons arrested (Under 18 years of age) (N.J.-UCR 370A):

(1) (No change.)

vi. Monthly count of criminal offenses involving assault firearms (S.P.662). One report will be submitted outlining, by municipality, all criminal offenses involving assault firearms that were investigated by the Commission during the reporting period.

[vi.]**vii.** The following reports will be submitted for each municipality only when those specific offense(s) occur within the jurisdiction of the Commission:

(1)-(2) (No change.)

(3) Police officers killed or assaulted monthly supplement (N.J.-UCR 369A)[.];

(4) Supplementary arson report (N.J.-UCR 373).

vii. (No change.)

[viii. The following report will be submitted annually, but no later than January 7 after close of the reporting year, and will include the arrests from all municipalities included in their jurisdictional boundaries:

(1) Annual return of persons charged (N.J.-UCR 372).]

(c) The uniform crime report forms identified and described in N.J.A.C. 13:57-1.2 and 1.3 shall be used by the Uniform Crime Reporting Unit of the Division of State Police for purposes of compliance with the provisions of N.J.S.A. 52:17B-1 et seq., and such working documents shall be maintained as confidential by the Division of State Police and are not public records.

(d) Nothing in these regulations shall preclude the Attorney General or Division of State Police for requiring the submission or deletion of any information that may be deemed necessary to maintain a viable and current uniform crime reporting system.

(e) The Attorney General or the Division of State Police shall have the right to choose the manner in which this information will be reported and submitted to the Uniform Crime Reporting Unit.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Lane Usage

Route N.J. 38 in Burlington County

Proposed New Rule: N.J.A.C. 16:30-3.11

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123 and 39:4-124.

Proposal Number: PRN 1994-103.

Submit comments by March 24, 1994 to:

George A. Strathern
Supervising Engineer II, Traffic
Department of Transportation
Bureau of Traffic Engineering
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes a new rule at N.J.A.C. 16:30-3.11 to establish lane use restrictions along Route N.J. 38 in the Townships of Lumberton and Southampton in Burlington County. The provisions of this new rule will improve the flow of traffic and enhance safety along the highway system by providing a center lane for left turn only on portions of Route N.J. 38.

This new rule is being proposed at the recommendation of the Board of Chosen Freeholders of Burlington County, and as part of the Department's on-going review of current conditions. The traffic investigation conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that the establishment of lane use restrictions along Route N.J. 38 in the Townships of Lumberton and Southampton in Burlington County were warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed new rule will establish lane use restrictions along Route N.J. 38 in the Townships of Lumberton and Southampton in Burlington County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of appropriate lane use restriction zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed new rule does not place any reporting, 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 proposed new rule primarily affects the motoring public and the governmental entities responsible for the enforcement of the rule.

Full text of the proposed new rule follows:

16:30-3.11 Route 38

(a) Turning movements of traffic on certain parts of State highway Route 38 described in this subsection are regulated as follows:

1. In Burlington County:

i. Lumberton and Southampton Townships;

(1) Center lane for left turn only:

(A) Both directions of Route N.J. 38 (milepost 18.3) at Smithville Road—Smithville-Jacksonville Road, Lumberton and Southampton Townships.

(B) For westbound Route N.J. 38 (milepost 18.2) traffic at the driveway along the south side of Route N.J. 38 approximately 370 feet west of the Smithville-Jacksonville Road westerly curb line in the Township of Lumberton.

(C) For eastbound Route N.J. 38 (milepost 18.2) traffic at the driveway (to the Division of Motor Vehicles Inspection Station) located along the north side of Route N.J. 38 approximately 1000 feet east of the Smithville Road easterly curb line in the Township of Southampton.

(b)

NEW JERSEY TRANSIT CORPORATION

Procurement Policies and Procedures

Proposed Amendments: N.J.A.C. 16:72-1.1, 1.2, 1.5, 2.2, and 2.4

Authorized By: New Jersey Transit Corporation, Shirley A. DeLibero, Executive Director.

Authority: N.J.S.A. 27:25-5(e).

Proposal Number: PRN 1994-129.

Submit comments by March 24, 1994 to:

Albert R. Hasbrouck, III
New Jersey Transit Corporation
One Penn Plaza East
Newark, NJ 07105-2246

The agency proposal follows:

Summary

On December 23, 1993, Governor James Florio signed S-227/A-2861 into law. Section 2 of the bill amends Sections 11(d) and 11(g) of NJ TRANSIT's enabling legislation (P.L. 1979, c.150) (N.J.S.A. 27:25-6 et seq., specifically 27:25-11). This section formerly required that a proposal bond of at least 50 percent accompany each bid. The amendment removes the statutory minimum amount (50 percent) on proposal bonds

and allows NJ TRANSIT to determine the amount of any required bid bond, but not to exceed 50 percent. The amendment also allows NJ TRANSIT to require a deposit such as a cashier's or certified check or a letter of credit instead of a bid bond.

Section 11(g)(1) of P.L. 1979, c.150 authorized NJ TRANSIT to make purchases without advertising if the aggregate amount did not exceed $7,500. This amount, while a reasonable bidding threshold in 1979, is now far too low and inconsistent with similar requirements for other State agencies. S-227/A-2861 amended this section to delete the $7,500 limit and authorize the amount to be determined as it is for other State agencies pursuant to Section 2 of P.L. 1954, c.48 (N.J.S.A. 52:34-7). This amount is determined bi-annually by the Governor and currently is $10,600 for purchases and $35,600 for contracts for the erection, alteration or repair of any public building or facility.

N.J.A.C. 16:72-1.1 is amended to update NJ TRANSIT's address. At N.J.A.C. 16:72-1.2, the definition of "bid security" is amended to include "a deposit consisting of a cashier's check, certified check or letter of credit" as a form of guarantee; the reference in "line item" about it usually being susceptible to a separate contract award is deleted; the reference to "or other security" is deleted from "payment bond"; and "performance security" is changed to "performance bond." In N.J.A.C. 16:72-1.5, references to "$7,500" are replaced with "the amounts determined pursuant to Section 2 of P.L. 1954, c.48 (N.J.S.A. 52:34-7)"; at subsection (b), the minimum for requiring a quotation is increased to $2,500, and, for a written quotation, to $7,500. N.J.A.C. 16:72-2.2 is amended to include a deposit consisting of a cashier's check, certified check or irrevocable letter of credit drawn to the order of NJ TRANSIT in an amount to be determined by NJ TRANSIT, but not exceeding 50 percent of the bid. It is also required that any letter of credit be issued by a Federally insured financial institution. N.J.A.C. 16:72-2.4(a) is amended to require prospective bidders on improvements to capital facilities and equipment to be pre-qualified as to the character or the amount of work, or both, rather than both always.

Social Impact

The proposed amendments are designed to comply with S-227/A-2861. The purpose of the legislation was to allow NJ TRANSIT to avoid costly bidding requirements where appropriate and by doing so increase competition by encouraging more businesses to submit bids. The increase in the threshold amount for bids recognizes that competition can be provided by a more informal quote system without incurring the expense of the formal bidding process.

Economic Impact

NJ TRANSIT presently awards approximately 200 contracts each year totalling in the approximate amount of $450 million. In certain procurements when a bid bond is not necessary or less than 50 percent would suffice, such requirements result in additional costs to NJ TRANSIT. By allowing NJ TRANSIT to tailor the appropriate form and amount of bid security, certain economies will accrue to NJ TRANSIT, its riders and the taxpayers of New Jersey. In addition, increased competition will result in lower bid prices and further savings. The increase in the bidding threshold will also allow NJ TRANSIT to save the cost of a formal bid process in certain procurements.

Regulatory Flexibility Analysis

The proposed amendments apply to persons and entities who wish to submit bids on NJ TRANSIT procurements. Some of those entities may be small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No different treatment has been provided for small businesses and the rules provide that all prospective bidders be treated equally in the process. The amount and type of bond or deposit required for a specific procurement will be determined by NJ TRANSIT. It is expected that the deletion of the 50 percent bid bond requirement and the increase in the bid threshold will allow more small businesses to bid or quote on NJ TRANSIT procurements.

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

16:72-1.1 Source for public information

The public may receive information concerning NJ TRANSIT's procurement program by contacting the **Procurement** Department, NJ TRANSIT, [McCarter Highway and Market Street, P.O. Box 10009, Newark, New Jersey 07101] **One Penn Plaza East, Newark, New Jersey 07105-2246.**

16:72-1.2 Definitions

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

...

"Bid security" means a guarantee, in the form of a bond **or a deposit consisting of a cashier's check, certified check or letter of credit** that the bidder, if selected, will accept the contract as bid; otherwise, the bidder or [his] **its** guarantor will be liable for the amount of the loss suffered by NJ TRANSIT, which loss may be partially or completely recovered by NJ TRANSIT in exercising its rights against the bond **or deposit.**

...

"Line item" means a procurement item specified in the Invitation for Bids for which the bidder is asked to give individual pricing information [and which, under the terms of the Invitation, is usually susceptible to a separate contract award].

...

"Payment bond" means a guarantee in the form of a bond [or other security] that the vendor will pay all of its obligations to its subcontractors and suppliers and that NJ TRANSIT subcontractors and suppliers will be protected from loss in the event that the vendor fails to make payment as agreed.

"Performance [security] **bond**" means a guarantee, provided prior to execution of a contract, in the form of a bond [or other security] that the successful bidder will complete the contract as agreed and that NJ TRANSIT will be protected from loss in the event the vendor fails to complete the contract as agreed.

...

16:72-1.5 Methods of procurement

(a) Invitation for bid: Except as provided in (c) and (d) below, the formal advertising procedures contained in [Chapter 2 hereof] **N.J.A.C. 16:72-2** shall be followed for all purchases **or contracts** in excess of [$7,500] **the amounts determined pursuant to Section 2 of P.L. 1954, c.48 (N.J.S.A. 52:34-7).**

(b) Quotation: Except as provided in (c) and (d) below, purchases **or contracts** for an amount greater than [$2,000] **$2,500** but not in excess of [$7,500] **the amounts determined pursuant to Section 2 of P.L. 1954, c.48 (N.J.S.A. 52:34-7)** shall be made after quotes have been obtained from at least two qualified and responsible prospective contractors. Written quotations shall be submitted for purchases in excess of [$5,000] **$7,500.**

(c) Request for proposals/negotiations: The procurement of professional and technical services in excess of [$7,500] **the amounts determined pursuant to Section 2 of P.L. 1954, c.48 (N.J.S.A. 52:34-7)** shall be accomplished through the issuance of a request for proposal to a minimum of three vendors and subsequent negotiation, except where determined by the Executive Director or his **or her** designee, in writing, that an alternative method of procurement is in NJ TRANSIT's best interest.

(d) (No change.)

(e) Authority for procurement-by-exception: The authority for procurement under the circumstances listed above rests with the Executive Director for procurement transactions not in excess of [$7,500] **the amounts determined pursuant to Section 2 of P.L. 1954, c.48 (N.J.S.A. 52:34-7).** Transactions in excess of [$7,500] **the amounts determined pursuant to Section 2 of P.L. 1954, c.48 (N.J.S.A. 52:34-7)** will require approval as may be set forth in the By-Laws of NJ TRANSIT.

(f) (No change.)

16:72-2.2 Bid bonds

A bid (proposal) bond [equal to 50 percent of the bid] **or a deposit consisting of a cashier's check, certified check or irrevocable letter of credit drawn to the order of NJ TRANSIT in an amount to be determined by NJ TRANSIT, but not exceeding 50 percent of the bid,** shall accompany all bids to serve as a guarantee that the bidder will, upon acceptance of [his] **its** bid, execute such contractual documents as may be required within 10 working days after issuance of a notice of intent to award. [Such] **any** bonds **submitted pursuant**

to this section must be executed by surety companies licensed to do business in the State of New Jersey. **Any letters of credit shall be issued by Federally insured financial institutions.**

16:72-2.4 Pre-qualification of firms for capital projects

(a) Prospective contractors, prior to bidding on improvements to capital facilities and equipment, must be pre-qualified as to the character [and] **or** amount of work **or both** for which they are permitted to submit bids. Such pre-qualification shall be based on all factors relating to contractor responsibility as set forth in N.J.A.C. 16:72-1.6, and any pertinent information relating to the qualifications of contractors.

(b) (No change.)

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Applications
License and Registration Requirements
Proposed Repeal and New Rule: N.J.A.C. 19:41-1.6

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

Authority: N.J.S.A. 5:12-70a-c, 70e and 90.

Proposal Number: PRN 1994-119.

Submit written comments by March 24, 1994 to:
Antonia Z. Cowan, Senior Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Certain position endorsements allow a casino employee to perform the duties and responsibilities of that particular position or function. The proposed new rule provides guidance to both casino licensees or applicants and their employees as to required position endorsements. The subject of the proposed repealed rule, N.J.A.C. 19:41-1.6, slot machine licenses, is now included in the rule at N.J.A.C. 19:46-1.28.

The Commission intends to promulgate comparable provisions for casino key employees and casino hotel employees in the near future. It is planned that all of these rules will ultimately be codified in a new chapter of rules concerning employee licensees, registrants and applicants. Among many other general and specific provisions, the chapter will provide comprehensive and detailed rules on employees, including application, experiential requirements, position endorsements and the standards for "working down," that is, particular circumstances in which employees are permitted to perform the duties and functions of a position at a lower level of license endorsement. This proposal is the first step in the process of codifying these standards and procedures. The proposed new rule includes endorsements available to persons who hold a casino employee license. The endorsements included are that of accountant/auditor, surveillance employee, dealer, boxperson, floorperson, slot technician, slot attendant supervisor, gaming employee and non-gaming employee.

The proposed repeal and new rule includes two references to keno which is the subject of a proposal by the Commission published December 6, 1993 at 26 N.J.R. 115(a). Should the rules on keno not be adopted before the adoption of this proposal, this proposal would be modified accordingly.

Social Impact

The proposed repeal and new rule implements the legislative requirement that the Casino Control Commission regulate employment in the casino industry and in particular, regulate all individuals who are casino employees. The proposed repeal and new rule would insure appropriate regulation for any individual who functions as a casino employee.

Economic Impact

The proposed repeal and new rule can be expected to clarify the responsibilities of casino licensees or applicants as to the employee licensing requirements of the Casino Control Act and ensure that all employees hold the appropriate license and endorsement. Although the proposed repeal and new rule will result in some increase in new applications for casino employee licenses and position endorsements, the increase is not expected to be significant. The proposed repeal and new rule may also result in an increase of opportunities for holders of casino employee licenses to downgrade to hotel employee registrations which would mean a decrease in the fee charged. No significant economic increase or decrease is anticipated.

Regulatory Flexibility Statement

The proposed repeal and new rule affects casino licensees or applicants and individuals who hold casino employee licenses none of which qualifies as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:41-1.6 [Slot machine licenses] **Casino employee license position endorsements**

[No slot machine shall be used to conduct gaming in any casino or by any casino licensee, its employees or agents unless slot machine licenses shall have first been issued both for the said slot machine and for a model slot machine identical thereto in all electrical, mechanical and other aspects in accordance with sections 100h and 140 of the Act and the regulations of the Commission.]

(a) No person shall be employed to perform the duties and responsibilities of a casino employee as defined in N.J.S.A. 5:12-7 unless he or she holds, at a minimum, a current and valid casino employee license endorsed with the position required by the casino licensee's or applicant's approved jobs compendium and (b) below.

(b) The following positions may be endorsed on a casino employee license:

1. An employee license with an "accountant/auditor" endorsement may, under the supervision of a casino controller or audit department executive, perform the duties and responsibilities of the internal audit department or casino accounting department as provided in N.J.A.C. 19:45-1.11 including, without limitations:

i. Overseeing the review, verification and recording of casino revenue journal entries;

ii. Preparing capital and operating annual budgets;

iii. Supervising personnel in the casino accounting or internal audit department;

iv. Monitoring compliance with regulations and internal controls; and

v. Evaluating the adequacy of accounting and administrative controls.

2. An employee licensee with a "surveillance employee" endorsement may perform the duties and responsibilities of the surveillance department as provided in N.J.A.C. 19:45-1.11.

3. An employee licensee with a "dealer" endorsement may directly operate and conduct the particular game or games endorsed on his or her license. A dealer in craps may also act as a stickperson pursuant to N.J.A.C. 19:45-1.12.

4. An employee licensee with a "boxperson" endorsement may, under the supervision of a pit boss and floorperson, supervise the operation of a craps game by the dealer and stickperson and participate in the conduct of the game, including the placement and payoff of bets.

5. An employee licensee with a "floorperson" endorsement may, under the supervision of a pit boss, directly supervise the operation of the particular game endorsed, in accordance with N.J.A.C. 19:45-1.12.

6. An employee licensee with a "slot technician" endorsement may repair and maintain slot machines and bill changers in a casino licensee's slot department.

7. An employee licensee with a "slot attendant supervisor" endorsement may supervise slot attendants and the operation of slot machines and bill changers in accordance with N.J.A.C. 19:45-1.12.

8. An employee licensee with a "gaming employee" endorsement may perform the following duties and responsibilities, unless a casino key employee license is otherwise required by the Act or the rules of the Commission:

i. Identifying patrons or groups of patrons to receive complimentaries based on actual patron play, authorizing such complimentaries or determining the amount of such complimentaries;

ii. Analyzing casino operations data relating to, without limitation, casino marketing, complimentaries, junkets, gaming, casino simulcasting, keno wagering, special events, promotions and player rating;

iii. Entering data in gaming-related computer systems or developing, maintaining, installing or operating gaming-related computer software systems;

iv. Collecting and recording, pursuant to N.J.A.C. 19:45-1.29, patron counterchecks and personal checks which are dishonored and returned by a bank;

v. Developing marketing programs to promote casino gaming, including without limitation, coupon redemption and other complimentary distribution programs;

vi. Assisting in the operation of a casino, including without limitation, hiring, scheduling, coordinating and training personnel and participating in the preparation of the casino budget;

vii. Distributing, redeeming, accounting for or inventorying coupons which are considered in the calculation of gross revenue;

viii. Processing or maintaining information on credit applications or collection of patron counter checks;

ix. Processing coins, chips, currency or cash equivalents;

x. Processing, analyzing, verifying or controlling active accounting documents related to casino assets;

xi. Functioning as surveillance department personnel unless otherwise provided in (b)2 above or (b)9i below;

xii. Functioning as personnel in the operation and conduct of casino simulcasting wagering or keno wagering;

xiii. Providing physical security in a casino or restricted casino area;

xiv. Operating slot machines and bill changers, including, without limitation, participating in manual jackpot payouts and filling payout reserve containers;

xv. Controlling and maintaining slot machine inventory, including repair parts, equipment and tools for slot machines;

xvi. Supervising a person who performs the duties and responsibilities listed in (b)8i through xv above; and

xvii. Any other ordinary and necessary duties and responsibilities of a gaming employee not otherwise described in this section.

9. An employee licensee with a "non-gaming employee" endorsement may perform duties and responsibilities which do not directly involve the conduct of gaming, but regularly require work in a restricted casino area or access to records maintained within the departments described in N.J.A.C. 19:45-1.11, including, without limitation:

i. Performing secretarial support for supervisors of departments described in N.J.A.C. 19:45-1.11;

ii. Repairing gaming equipment, except slot machines;

iii. Viewing player rating information systems without the authority to enter data, develop, maintain, install or operate the system;

iv. Performing responsibilities which are associated with the installation, maintenance or operation of computer hardware for casino computer systems; and

v. Any other ordinary and necessary duties and responsibilities of a non-gaming employee not otherwise described in this section.

(a)

CASINO CONTROL COMMISSION

Applications
Fees
Employee License Position Additions and Deletions
Proposed Amendment: N.J.A.C. 19:41-9.16

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

Authority: N.J.S.A. 5:12-63c, 69a, 70a-c, 70e, 89, 90, 91, 92, 93, 139 and 141.

Proposal Number: PRN 1994-120.

Submit written comments by March 24, 1994 to:
Antonia Z. Cowan, Senior Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Under subsections 89c, 90a and 90d of the Act and N.J.A.C. 19:41-9.16, casino key employee licenses and casino employee licenses are required to be endorsed with the particular position which the employee is qualified to hold. The computer/printer system currently in use by the Casino Control Commission (Commission) Licensing Division staff imprints endorsements in no particular order. There is no functional or regulatory purpose served by listing multiple endorsements in any particular order. Nevertheless, the Commission receives requests to list endorsements on licenses in several different ways, for example, alphabetically, chronologically, etc. Requests for any ordered listing of endorsements must be done individually on the backup computer by manually typing in the endorsements in the requested order. Proposed amendments to N.J.A.C. 19:41-9.16 will accommodate requests from casino employees or casino key employees who hold more than one endorsement to list multiple endorsements in a particular order and provide notice to the individual who makes such a request that a fee will be charged. The fee imposed covers the costs of processing.

This amendment would also require that the $25.00 fee be imposed for replacement of an ordered endorsement license since the time-consuming manual administrative process would have to be repeated even after the initial ordered endorsement credential was issued.

Social Impact

The proposed amendment does not increase the regulatory burden placed on casino licensees or applicants and their employees. It does seek to more efficiently accommodate requests from holders of casino employee licenses or casino key employee licenses for a particular listing of endorsements on their credentials. Therefore, the proposed amendment is not anticipated to have any social impact beyond that to the individual.

Economic Impact

The proposed amendment establishes a fee for the administrative work required to process a request for a particular listing of endorsements on a casino employee license. Since such requests, which are discretionary on the part of the employee, require time-consuming manual implementation, the fees sought are appropriate to the staff time expended. The proposed fee has no economic effect on persons or businesses external to the casino regulation process.

Regulatory Flexibility Statement

The proposed amendment affects only individuals who hold a casino employee license or a casino key employee license pursuant to the Casino Control Act and not "small businesses" as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-17 et seq. Therefore, no regulatory flexibility analysis pursuant to small business concerns is required.

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

19:41-9.16 Employee license position additions and deletions

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

(c) A request to list multiple endorsements on a license or a replacement license pursuant to N.J.A.C. 19:41-9.17(a), in any

particular order other than random order, shall require a payment of $25.00 for each such request.

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

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Procedures for Granting Credit, and Recording Checks Exchanged, Redeemed or Consolidated
Proposed Amendment: N.J.A.C. 19:45-1.27

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c), 69(a), and 99(a).
Proposal Number: PRN 1994-121.

Submit written comments by March 24, 1994 to:
Barbara A. Mattie
Manager—Operations
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendment eliminates the position of vice president of casino operations as a specific position which may approve a patron's credit limit and changes thereto.

As of August 5, 1991, N.J.A.C. 19:45-1.11 was amended to eliminate the position of vice president of casino operations as a required position in a casino licensee's table of organization. Accordingly, the proposed amendment to N.J.A.C. 19:45-1.27 would permit any casino key employee in a direct reporting line above the casino manager to approve credit limits and changes thereto.

Further, the reference to "with no incompatible function" has been deleted from N.J.A.C. 19:45-1.27(f) since N.J.A.C. 19:45-1.11(a) prohibits incompatible functions in any position.

Social Impact

There will be no social impact on the gaming public or the regulatory agencies. The proposed amendment would give casino licensees more discretion in determining who may be involved in approving credit limits and changing thereto.

Economic Impact

No economic impact is anticipated as a result of the proposed amendment.

Regulatory Impact Statement

This amendment will only affect the operation of New Jersey casino licensees, and therefore, will not impact on any "small" business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq.

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

19:45-1.27 Procedures for granting credit, and recording checks exchanged, redeemed or consolidated

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

(f) The credit limit, and any changes thereto, must be approved by any one or more of the individuals holding the job positions of [vice president of casino operations (or an equivalent executive of a casino licensee that is either a partnership or sole proprietorship)] credit manager, assistant credit manager, credit shift manager, credit executive, **or a casino key employee in a direct reporting line above the casino manager** or a credit committee composed of casino key employees [with no incompatible functions] which may approve credit as a group but whose members may not approve credit individually unless such person is included in the job positions referenced above. The approval shall be recorded in the credit file and shall include:

1.-4. (No change.)

(g)-(o) (No change.)

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Signatures
Proposed Amendment: N.J.A.C. 19:45-1.45

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-69(a) and 69(c).
Proposal Number: PRN 1994-122.

Submit written comments by March 24, 1994 to:
Barbara A. Mattie
Manager—Operations
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendment would permit casino licensees to maintain the signature cards required by N.J.A.C. 19:45-1.45 in alphabetical order by name on a company-wide basis. Casino licensees are presently required to maintain such signature cards in alphabetical order by name on a departmental basis.

Social Impact

There will be no social impact on the gaming public or the regulatory agencies. The proposed amendment would provide the casino licensees with more flexibility in maintaining signature cards.

Economic Impact

No economic impact is anticipated as a result of the proposed amendment.

Regulatory Flexibility Statement

A regulatory flexibility statement is not required for this proposal. The proposed amendments only affect licensed casinos in Atlantic City, none of which is a small business as defined in the Regulatory Flexibility Act (N.J.S.A. 52:14B-16 et seq.).

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

19:45-1.45 Signature

(a) (No change.)

(b) Signature records shall be prepared for each person required by the [regulation] **rules of the Commission** to sign records and documents and shall include specimens of signatures, [and] titles of signers **and the date the signature was obtained**. Such signature records shall be [maintained on a dated signature card] filed alphabetically by **last** name [within a department] **either on a company-wide or departmental basis**. The signature records shall be adjusted on a timely basis to reflect changes of personnel.

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

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

ENVIRONMENTAL REGULATION

Ninety-day Construction Permits Fees

Proposed Amendments: N.J.A.C. 7:1C-1.3 and 1.5

Authorized By: Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.
Authority: N.J.S.A. 13:1D-9, 13:1D-29 et seq., specifically 13:1D-33.
DEPE Docket Number: 10-94-01/296.
Proposal Number: PRN 1994-123.

Public hearings concerning this proposal will be held on:

Friday, March 11, 1994 at 9:30 A.M.
Department of Environmental Protection and Energy
Public Hearing Room
401 East State Street
Trenton, New Jersey

Monday, March 14, 1994 at 7:00 PM.
Dover Municipal Building
33 Washington Street
Toms River, New Jersey

Wednesday, March 16, 1994 at 1:30 P.M.
Ocean City Music Pier
Ocean City, New Jersey

Submit comments by March 24, 1994 to:

Janis Hoagland, Esq.
Administrative Practice Officer
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy (Department) is proposing amendments to N.J.A.C. 7:1C-1.5 governing fees for the filing and review of applications for construction permits pursuant to the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq. and the Waterfront Development Act, N.J.S.A. 12:5-3. In addition, the Department is proposing amendments to N.J.A.C. 7:1C-1.3 concerning pre-application reviews.

The proposed new fees take into account the new and smaller-scale developments that will be subject to review under CAFRA as of July 19, 1994 as a result of the passage of P.L. 1993, c.190 amending CAFRA. In addition, the proposed amendments take into account the fact that as of July 19, 1994 CAFRA will be the only State law requiring a State construction permit for development in the coastal area landward of the mean high water line of tidal waters and that these projects will not require Waterfront Development permits. The Department is proposing these new fees to be effective July 19, 1994, the effective date of the amendments to CAFRA signed into law by Governor Jim Florio on July 19, 1993 (P.L. 1993, c.190). The proposed amendments do not change the fees charged for the review of applications under the Wetlands Act of 1970.

The proposed amendments do not implement P.L. 1993, c.361 which requires the Department to collect certain permit application fees in three installments. The Department will be proposing one regulation to pertain to all the affected permit programs rather than amending each individual regulation. The proposal will be published in a future edition of the New Jersey Register and will include the opportunity for public comment on the proposal.

At N.J.A.C. 7:1C-1.3(a), the Department proposes to change the reference to pre-application "conference" to pre-application "review." This amendment will make this rule consistent with proposed amendments to the Coastal Permit Program Rules, N.J.A.C. 7:7-3.1, in which the Department also proposes to substitute the word "review" for "conference." The amendment will allow the Department and potential applicants the option of a simplified review, including by telephone, for smaller-scale projects. The pre-application "conference" will still be available for large-scale or complex projects, but this change eliminates the necessity for a meeting in order for such a review to occur for smaller projects. The Department is also proposing to add language in this section to specify what type of information needs to be submitted with a request for a pre-application review.

At N.J.A.C. 7:1C-1.5(a)1iv, the Department is proposing to delete the existing permit fees for waterfront development taking place landward of the mean high waterline and to recodify the section. The existing fees are based on whether developments qualified as CAFRA facilities, based on size and use. However, under the legislative amendments to CAFRA effective July 19, 1994, the requirement for a CAFRA permit will vary depending on the development's proposed location. Therefore, the Department is proposing to delete the existing reference to facilities and to propose new fees based on the size of the proposed development. The proposed amendments to the Waterfront Development fees make the fees consistent with those charged for CAFRA permit applications. Both Waterfront Development applications and CAFRA applications require the same amount of Department staff time and resources for administrative review and initial technical review. Substantive technical review varies with the complexity of the proposed development, but the initial reviews are comparable. In addition, the Department's proposed changes to the fees associated with Waterfront Development applications will help to cover more of the program's costs.

At N.J.A.C. 7:1C-1.5(a)1ii(3), the Department is proposing a maximum fee of $30,000 for waterfront development permits. This upper limit is being set because once a project reaches a certain size, further increases in the cost of the project do not always increase the Department's cost in processing the permit or in assessing permit condition compliance.

For those projects which are capped at $30,000, the Department will charge additional fees if such fees are necessary to cover its costs based on the application review time and the estimated costs of determining compliance with permit conditions. When the Department's costs do exceed the initial fee of $30,000, the Department will document its costs and provide this documentation to the applicant with a bill for supplemental fees.

The proposed cap will help insure that a fee will not exceed the Department's permit processing and estimated condition compliance costs. The cap is only being proposed for waterfront development application fees and non-residential CAFRA developments located between the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high waterline and any tidal waters or the landward limit of a beach or dune, whichever is most landward because these application fees are calculated as a percentage of construction costs. While construction costs are an excellent way to predict the complexity of a project and associated time required to complete the review of the application, this method is not always accurate. Sometimes construction costs are more reflective of the types of materials and design chosen rather than of the magnitude of the environmental issues that the Department needs to address in its review of the permit application and in determining condition compliance. In these instances, a cap on the total fee is appropriate. Other application fees are based on the actual size and use of the development and not on construction costs. Therefore, the Department is proposing the cap on the application fees found at N.J.A.C. 7:1C-1.5(a)1ii(3) and (a)3ii(1). In those cases where construction costs above $30,000 are associated with larger scale and complex projects, the Department shall charge additional fees to cover its costs.

At N.J.A.C. 7:1C-1.5(a)3, the proposed amendments delete the existing language and propose new fees. The deletion of the existing language is for clarification purposes. The amendment contains new fees for development located between the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and reflects the regulatory structure of the CAFRA amendments. The proposal reproposes the existing fees for any development located beyond 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward. The Department is also proposing fees for those developments that span regulatory zones. The Department's proposed

changes to the CAFRA fees enable the Department to collect fees for the new developments that will now require CAFRA review as a result of the 1993 legislative amendments to CAFRA.

At N.J.A.C. 7:1C-1.5(a)3iv, the Department is proposing to add fees for General Permit applications. The proposed fee for CAFRA General Permits is the same as that charged by the Department for Freshwater Wetlands General Permits. At N.J.A.C. 7:1C-1.5(a)3v, the Department is also proposing to add a fee for the review and processing of a request for an exemption letter certifying that a development is exempt from the requirements of CAFRA. The Department is proposing to charge more for CAFRA Letters of Exemption than it does for Freshwater Wetlands Letters of exemption since Department experience has shown that the $100.00 fee does not cover the Department's costs.

The Department is proposing amendments to N.J.A.C. 7:1C-1.5(d) concerning fees for the modification of an issued permit. The Department is also proposing to delete the distinction between minor and major modifications. The proposed amendment will insure consistency between the 90 Day Construction Permit Rules at N.J.A.C. 7:1C and the Coastal Permit Program Rules at N.J.A.C. 7:7. In a separate rule proposal, the Department is proposing to amend the Coastal Permit Program Rules, N.J.A.C. 7:7-4.10, requests for modifications, to delete the distinction between minor and major modifications.

These amendments are being proposed in conjunction with proposed amendments to the Department's Coastal Permit Program Rules, N.J.A.C. 7:7 and Rules on Coastal Zone Management, N.J.A.C. 7:7E. These rule proposals can be found elsewhere within this same edition of the New Jersey Register.

The Department is also proposing N.J.A.C. 7:1C-1.5(k) for deletion. This provision provides some applicants with the ability to apply for a partial rebate of an application fee at the end of the permit review process. The Department proposed this provision for deletion in a separate, prior rule proposal which appeared in the February 7, 1994 New Jersey Register. While the Department recognizes that it may be redundant to propose the same provision for deletion in this proposal, the Department is doing so as each rule proposal stands on its own.

The rebate provision and the lack of a cap on fees have proven to be costly and burdensome for both the Department and the applicant. Since the current rule was adopted and implemented, the Department has had to assess several fees in excess of $50,000, as well as one fee of $750,000. Such fees exceed what the Department actually needs for processing and determining condition compliance for a single permit. Further rationale concerning the deletion of this provision may be found in the outstanding proposal.

Social Impact

The Department expects that the proposed increase in fees will have a positive social impact. Coastal permits are required so that the Department can review proposed impacts to the State's coastal environment. The proposed amendments will have a positive social impact to the extent that the citizens of New Jersey are concerned about impacts to the coastal environment. The Department expects that the proposed increases will generate sufficient revenue to enable the Department to maintain staffing levels to review the new permit applications resulting from the new amendments to CAFRA effective July 19, 1994. As a result, the Department will be able to preserve its ability to process and review applications for construction permits in a timely manner.

Economic Impact

The Department expects that the proposed fee increases will result in an increase in the cost of those construction projects which were not previously regulated by CAFRA. The legislation that amends CAFRA brings smaller-scale developments under Department regulatory authority. Therefore, projects which did not previously require CAFRA permits from the Department now require review and the submittal of an application and application fee. The Department does not yet know how many applications it will receive under the legislative amendments to CAFRA as many of these developments were previously unregulated.

The coastal permit programs have been supported in the past by three main revenue sources: Federal grants, State funds and permit fees, although no State funds have been appropriated in recent years. The proposed fees will cover a larger portion of the Department's costs in performing the activities for which fees are charged under N.J.A.C. 7:1C-1.5, but will not cover all such costs. The current and proposed fees reflect more closely the actual cost of application review. The higher fees on the fee schedule are associated with activities requiring greater amounts of Department staff time. While increases in the construction costs of a large project may not always lead to a directly proportional increase in the Department's review costs, these costs generally do continue to increase as construction costs increase, since the projects often include more land and have more potential environmental and other impacts. Other fees are based on the actual size and use of the development and not on construction costs. This fee calculation method adequately covers the Department's costs of processing a permit application.

Environmental Impact

The proposed amendments reflect the Department's intention to manage these permit programs as effectively and efficiently as possible. Under the proposed amendments, the Department hopes to be able to support the level of professional and support staff necessary to administer the CAFRA and Waterfront Development permit programs in a judicious and timely fashion. These programs steer developments away from naturally hazardous and sensitive areas, protect estuarine and marine environments from adverse impacts, and promote resource conservation and designs sensitive to the environment. Thus, to the extent that the fees collected and permits reviewed pursuant to these amendments improve the efficiency and maintain the capabilities of the Department, the environment will benefit.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that a significant portion of builders and property owners affected by the proposed readoption will be "small business" as defined in the Act. Smaller projects that were previously exempt from CAFRA regulation may now require the submittal of a CAFRA application and fee on the basis of the CAFRA amendments. To comply with their rules, affected small businesses may have to submit an application for a coastal permit, which may require engineering support work, legal assistance, and assistance in evaluating the environmental impact of the projects, and an application fee. Application fees are calculated as a percentage of construction costs or on the number of dwelling units proposed in the development. To the extent that small business builders are likely to propose smaller-scale projects, application fees will be less for small businesses than for larger builders.

The application fees are necessary to support the processing and review of construction permits. In an attempt to balance the need to protect the environment against the economic impact, the Department has determined that to exempt small businesses from the requirements would not provide sufficient revenue to administer these programs and would, therefore, endanger the environment, public health and public safety.

In developing the existing rules, the Department has balanced the need to protect the public and the environment from the adverse impacts of unregulated development in the coastal area against the economic impact of the rules. The Department has determined that there is no authority to exempt small businesses from regulation in the permit statutes and that to minimize the impact of the coastal permit program rules on small businesses, further than what is proposed, would endanger public health, public safety and the environment by undermining the coordination of coastal development to such a degree as to make the coastal policy goals impossible to meet. Therefore, no exemption from coverage was provided in the existing rules, and there is no basis for exempting small businesses in the proposed amendments.

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

7:1C-1.1 Purpose

This chapter implements P.L. 1975, Chapter 232 (N.J.S.A. 13:1D-29 et seq.), to secure timely decisions by the Department of Environmental Protection **and Energy** of construction permit applications as defined therein, to assure adequate public notice of procedures thereunder, and to continue effective administration of the substantive provisions of other laws.

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.] **A pre-application review is an optional service especially recommended for major development. During this review the Department will discuss the apparent strengths and weaknesses of the proposed development, as well as the procedures and policies that would apply to the particular development. The conference is intended to provide guidance and does not constitute a commitment of approval or denial of a permit for the proposed development.** 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.

1. A request for a pre-application review shall be made in writing and shall include a conceptual proposal of the proposed development, including a written description of the site and the proposed development including the dimensions, number, and uses of proposed structures, as well as a tax lot and block designation of the site.

(b) (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. Waterfront development permits:

i. (No change.)

ii. The permit fee for any waterfront development taking place landward of the mean high water line [and qualifying as a CAFRA facility, based on size and use, as defined in N.J.A.C. 7:7-2.1 shall be as set forth in (a)3 below.

iii. The permit fee for any waterfront development taking place landward of the mean high water line and not qualifying as a CAFRA facility, based on size and use, as defined in N.J.A.C. 7:7-2.1 shall be as follows:

(1) The fee for Residential Facilities shall be $500.00 for the first residential dwelling unit plus $125.00 for each additional dwelling unit;

(2) The fee for Non-Residential Facilities shall be $700.00 plus one-half of one percent of the non-residential construction cost, up to a maximum of $4,000; and

(3) The fee for mixed Residential and Non-Residential Facilities shall be the sum of the Residential and Non-Residential Facilities fee as calculated under (a)1ii(1) and (2) above.] **shall be calculated as follows:**

(1) The fee for a residential development consisting of one or two dwelling units, as defined at N.J.A.C. 7:7-1.3, shall be $500.00 per unit.

(2) The fee for all other residential developments shall be $3,000 plus:

(i) $50.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for the first 300 units;

(ii) $40.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for units 301 to 600; and

(iii) $30.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for all units in excess of 600.

(3) The fee for non-residential developments shall be calculated based on the following schedule:

Construction Cost	Fees
$0 to $50,000	**$1,450 + ½ of one percent of construction costs**
$50,001 to $100,000	**$1,700 + one percent of construction costs above $50,000**
$100,001 to $200,000	**$2,200 + 1¼ percent of construction costs above $100,000**
$200,001 to $350,000	**$3,450 + 1½ percent of construction costs above $200,000**
greater than $350,000	**$5,700 + one percent of construction costs above $350,000**

The fee payable at the time of application shall not exceed $30,000. If the fee calculated under this formula would have exceeded $30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed $30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

(4) The fee for mixed Residential and Non-Residential Facilities shall be the sum of the Residential and Non-Residential Facilities fee as calculated under (a)1ii(1) or (2) and (3) above.

[iv.]**iii.** The permit fee for all other waterfront developments taking place waterward of the mean high water line shall be as follows:

(1) The permit fee for residential site improvements for a single private residential unit or duplex, including without limitation: shore structures (bulkheads, riprap) piers and docks, walkways and activities associated with a single private residential unit or duplex, shall be $250.00 plus one half of one percent of the construction cost above $10,000.

(2) The permit fee for all other activities requiring a waterfront development permit shall be based on the following schedule:

Construction Cost	Fees
$0 to $50,000	$1,450 + ½ of one percent of construction costs
$50,001 to $100,000	$1,700 + one percent of construction costs above $50,000
$100,001 to $200,000	$2,200 + 1¼ percent of construction costs above $100,000
$200,001 to $350,000	$3,450 + 1½ percent of construction costs above $200,000
greater than $350,000	$5,700 + one percent of construction costs above $350,000

The fee payable at the time of application shall not exceed $30,000. If the fee calculated under this formula would have exceeded $30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed $30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

2. Wetland permits: The fee for a [Type A or Type B] **Wetlands Act of 1970** permit (N.J.A.C. 7:7-2.2) shall be one percent of the construction costs, or a minimum of $250.00 for residential dock construction associated with a single family or duplex dwelling unit, and $500.00 for all other regulated activities.

3. CAFRA permits:

[i. The fee for Residential Facilities shall be $3,000 plus:

(1) $50.00 per dwelling unit for the first 300 units;

(2) $40.00 per dwelling unit for units 301 to 600; and

(3) $30.00 per dwelling unit for all units in excess of 600.

ii. The fee for Non-Residential Facilities shall be $3,500 plus $500.00 per acre included in the site plan.

iii. The fee for mixed Residential and Non-Residential Facilities shall be $3,500 plus $500.00 per Non-Residential acre included in the site plan plus a per unit fee calculated in accordance with (a)3i above. If the mixed-use facility has no separate and distinct district/building designated for Non-Residential use(s), then the Non-Residential acreage shall be the acreage of the entire site.]

i. The fee for residential developments shall be calculated as follows:

(1) The fee for a residential development consisting of one or two dwelling units, as defined at N.J.A.C. 7:7-1.3, shall be $500.00 per unit.

(2) The fee for all other residential developments shall be $3,000 plus:

(i) $50.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for the first 300 units;

(ii) $40.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for units 301 to 600; and

(iii) $30.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for all units in excess of 600.

ii. The fee for non-residential developments shall be calculated as follows:

(1) The fee for Commercial, Public or Industrial Development located on a beach or dune or located between the mean high water

line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, shall be calculated based on the following schedule:

Construction Cost	Fees
$0 to $50,000	**$1,450 + ½ of one percent of construction costs**
$50,001 to $100,000	**$1,700 + one percent of construction costs above $50,000**
$100,001 to $200,000	**$2,200 + 1¼ percent of construction costs above $100,000**
$200,001 to $350,000	**$3,450 + 1½ percent of construction costs above $200,000**
greater than $350,000	**$5,700 + one percent of construction costs above $350,000**

The fee payable at the time of application shall not exceed $30,000. If the fee calculated under this formula would have exceeded $30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed $30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

(2) The fee for commercial, public or industrial developments located beyond 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, shall be $3,500 plus $500.00 per acre included in the site plan.

(A) For a proposed linear development, the fee shall be $3,500 plus $500.00 per acre to be disturbed. For the purposes of this section, "linear development" means land uses such as roads, railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission lines and the rights-of-way therefor, which have the basic function of connecting two points. Linear development shall not mean residential, commercial, office or industrial buildings, improvements within a development such as utility lines or pipes, or internal circulation roads.

(3) For a non-residential commercial development that straddles the regulatory zone between the first 150 feet review zone and the remainder of the CAFRA area and does not trigger the higher regulatory threshold set forth at N.J.A.C. 7:7-2.1(a)5, the fee shall be calculated considering the entire development using the formula found at (a)3ii(1) above.

(4) For a non-residential commercial development that straddles the regulatory zone between the first 150 feet review zone and the remainder of the CAFRA area and does trigger the higher regulatory threshold set forth at N.J.A.C. 7:7-2.1(a)5, the fee shall be calculated considering the entire development using the formula found at (a)3ii(2) above.

(5) For a public or industrial development that straddles the regulatory zone between the first 150 feet review zone and the remainder of the CAFRA area, the fee shall be calculated considering the entire development using the formula found at (a)3ii(2) above.

iii. The fee for mixed residential and non-residential facilities shall be the sum of the residential and non-residential facilities fee as calculated under (a)3i and (a)3ii above.

iv. The fee for the review of a General Permit authorization application pursuant to N.J.A.C. 7:7-7.2 shall be $250.00.

v. The fee for the review and processing of a request for an exemption letter certifying that a development is exempt from the requirements of CAFRA shall be $250.00.

4.-5. (No change.)

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

(d) For the purposes of this section, a [major] modification **to an issued permit will be processed for modified projects** [is one] which will **not** result in a significant change in the scale, use, [design] or impact of the project as approved. [A minor modification is one which will not result in a significant change in the scale, use, design or impact of the project as approved.] **The determination as to what constitutes a significant change is within the sole discretion of the Department and will be based on a review of the original application file and the new information submitted by the applicant. A change that will cause less environmental impact than the original project will not constitute a "significant change".**

1. The fee for a request for an approval of a [major] modification of the approved project shall be [the greater of:

i. One-half of the total permit fee attributable to that portion of the approved project to be modified; or

ii. One quarter] **one-quarter** of the total **original** permit fee [attributable to the entire approved project] **or a minimum of $100.00.**

[2. The fee for a request for an approval of a minor modification of a CAFRA project or a waterfront development project qualifying as a CAFRA facility based on size and use as defined in N.J.A.C. 7:7-2.1 shall be $200.00 and shall be $75.00 for all other waterfront development, coastal wetlands and stream encroachment projects.]

(e) 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.

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

[(k) An applicant who has paid a fee calculated under (a)1, 2, or 3 above of more than $7,000 may request a rebate of part of that fee, at the time provided in (l) below. The Department shall refund to the applicant the amount by which that fee exceeds the Department's actual costs incurred in connection with the review of the Waterfront Development, coastal wetlands, or CAFRA application (including, without limitation, costs incurred in processing and reviewing the application and in addressing any appeal of the permit decision), as shown by Department timekeeping records, if:

1. The Department's timekeeping records show that the fee exceeds the Department's actual costs incurred in connection with application by more than 25 percent; and

2. The Department's timekeeping records show that the fee exceeds the Department's actual costs incurred in connection with application by more than $2,000.

(l) An applicant requesting a rebate under (k) above shall make the request in writing to:

Administrator
Land Use Regulation Program
Department of Environmental Protection and Energy
CN 401
Trenton, New Jersey 08625

The request shall be received by the Department within 20 days after the applicable date in (l)1 or (l)2 below, but not before such applicable date:

1. If neither the applicant nor any other person appeals the Department's decision to approve, condition or disapprove the permit application, the last day on which such an appeal could have been timely filed (without considering any extensions of such time which may be available under any other provision of this title); or

2. If the applicant or another person has appealed the Department's decision to approve, condition or disapprove the permit application, the date as of which any disposition of such appeal can no longer be further appealed.]

(a)

ENVIRONMENTAL REGULATION

Coastal Permit Program Rules

Proposed Readoption: N.J.A.C. 7:7

Authorized By: Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.
Authority: N.J.S.A. 12:5-3, 13:1D-1 et seq., 13:9A-1 et seq. and 13:19-1 et seq.
DEPE Docket Number: 09-94-01.
Proposal Number: PRN 1994-124.

Submit written comments by March 24, 1994 to:
Janis Hoagland, Esq.
Administrative Practice Officer
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Under Executive Order No. 66(1978), the Coastal Permit Program Rules at N.J.A.C. 7:7 expire on May 12, 1994. As required by Executive Order No. 66, the Department of Environmental Protection and Energy (Department) has reviewed these rules and has determined that they are necessary, reasonable, and proper for the purpose for which they were originally promulgated. However, the Department also recognizes that substantial amendments to N.J.A.C. 7:7 are necessary.

Elsewhere in this issue of the New Jersey Register, the Department is proposing significant amendments to reflect and effectively administer the amendments to the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., enacted on July 19, 1993. In that proposal, the Department is also proposing technical changes to N.J.A.C. 7:7 to further clarify the waterfront development permit exemptions granted by the Legislature under the statutory changes commonly known as the Zane amendment.

The Department expects to adopt the amendments in the parallel readoption with amendments by July 1994, on or before the operative date of the legislative amendments to CAFRA. However, that adoption will not occur in time to prevent the expiration of N.J.A.C. 7:7 on May 12, 1994. Therefore, to extend the expiration of N.J.A.C. 7:7 until the amendments can be adopted, the Department is proposing herein to readopt this chapter without change.

In accordance with the intent behind Executive Order No. 66(1978), this proposed readoption without change will extend the expiration date of N.J.A.C. 7:7 for only a brief period, to allow time to adopt the substantial changes contained in the parallel proposed readoption with amendments. The extended expiration date of N.J.A.C. 7:7 will be September 12, 1994.

In light of the limited effect of this proposed readoption, the Department requests that interested persons direct their comments concerning N.J.A.C. 7:7 generally to the parallel proposal to substantially amend the chapter, which proposes to readopt the chapter for a full five years. Much of the discussion that follows appears in that proposal as well, and comments on the following discussion can be addressed most helpfully in the context of that proposal.

A more detailed discussion of the reasons why N.J.A.C. 7:7 remains necessary, reasonable and proper follows:

The coastal area of the State has been the subject of comprehensive land use management for a number of reasons. Foremost, the coastal ecosystem is a fragile and unique network of beaches and the ocean, tidal and inland wetlands, flood plains, estuarine areas, bays, streams and stream corridors, vegetation communities, and wildlife habitats. Approximately 35 percent of the State's population presently inhabits areas in or immediately surrounding the coastal area. During the summer months, millions of people visit the New Jersey shore contributing an estimated $4 billion annually to the State's economy. Both the commercial fisheries and the recreational use of the State's coastal zone require good water quality and an aesthetically pleasing environment. The coastal permit program is the mechanism for balancing the competing requirements of human activities and for protecting and enhancing natural features of the coastal area, thereby maximizing its social, economic, and environmental value.

The Coastal Permit Program Rules at N.J.A.C. 7:7 establish the procedures by which the Department reviews permit applications and appeals from permit decisions under the Coastal Area Facility Review Act (CAFRA) (N.J.S.A. 13:19-1 et seq.), the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.), and the Waterfront Development Act (N.J.S.A. 12:5-3). In 1984, the Department promulgated the Coastal Permit Program Rules by consolidating the procedural rules governing the permit review process for the coastal permit programs authorized by the above three statutes. As authorized by the three statutes, the Coastal Permit Program Rules govern the following types of activities: (1) CAFRA, the construction of development within the coastal area described in Section 4 of CAFRA (N.J.S.A. 13:19-4); (2) Wetlands Act of 1970, the draining, dredging, excavation, or deposition of material, and the erection of structures, driving of pilings or placing of obstructions in any coastal wetlands which have been mapped or delineated pursuant to the Wetlands Act (a list of these maps and a full list of regulated activities appear in N.J.A.C. 7:7-2.2); and (3) Waterfront Development Act, the filling or dredging of, or placement or construction of structures, pilings or other obstructions in any tidal waterway, or in certain upland areas adjacent to tidal waterways (see N.J.A.C. 7:7-2.3).

The existing rules at N.J.A.C. 7:7 are administered by the Land Use Regulation Program (Program), the successor to the Division of Coastal Resources, in conjunction with the Rules on Coastal Zone Management, N.J.A.C. 7:7E. The rules at N.J.A.C. 7:7E contain the Department's substantive policies regarding the use and development of coastal resources. The Program applies the procedural process set forth in N.J.A.C. 7:7 when making coastal permit application decisions (see N.J.A.C. 7:7-1.4).

A summary of the provisions of each subchapter of N.J.A.C. 7:7 follows:

Subchapter 1, General Provisions, sets forth the purpose and scope of the rules, contains definitions of terms and describes permits, permit conditions, permit fees, provisional permits, and the procedure to follow where more than one coastal permit is required.

Subchapter 2, Activities For Which a Permit Is Required, lists categories of activities requiring permits under CAFRA, the Wetlands Act of 1970, and the Waterfront Development Act.

Subchapter 3, Pre-Application Conferences, describes the use of a pre-application conference and sets forth the procedure for requesting a conference, information requirements, and the preparation of a memorandum of record of the conference.

Subchapter 4, Permit Review Procedures, outlines the required contents of permit application, public notification requirements, the Department's application review procedures, and timetable for reaching final decisions on permit applications.

Subchapter 5, Appeals, governs the timetable and format for appealing permit denials, identifies where appeals are to be filed, and contains the Department's obligations and procedure for appeals.

Subchapter 6, Environmental Impact Statements, describes when an environmental impact statement is required, the required format and content of the statement, and to whom the statement is to be distributed.

Social Impact

N.J.A.C. 7:7 has had a positive social impact by providing comprehensive, efficient, and integrated procedures for regulating the delicately balanced coastal area of the State. The Coastal Permit Program Rules provide a mechanism for coordinating land use in the coastal area in a manner which considers the regional nature of the area and which addresses problems beyond the boundaries and control of individual coastal communities. Upon readoption, the Coastal Permit Program Rules will continue to provide reasonable procedures for governing the regulated community's compliance with the Department of Environmental Protection and Energy's administration of CAFRA, the Wetlands Act of 1970, and the Waterfront Development Act.

Failure to readopt these rules would adversely affect permit applicants and property owners in coastal areas by eliminating the guidelines on what coastal development is regulated, what permits are applicable, how to submit permit applications, and how and when the Department administers the coastal regulatory program. Readopting these rules will also allow the Department to continue the public notice and information aspects of administering the coastal permit program, which keep the public informed about coastal permit requirements for development.

The readopted chapter will have the further social benefit of providing the Department with the mechanism to implement the Rules on Coastal Zone Management at N.J.A.C. 7:7E. Through integration of these policies with the procedures contained in N.J.A.C. 7:7, the Department

has made progress in achieving the following policy objectives: (1) protecting and enhancing the coastal ecosystem; (2) concentrating rather than dispersing the pattern of coastal residential, commercial, industrial, and resort development and encouraging the preservation of open space; (3) employing a method for decision making which allows each coastal location to be evaluated in terms of both the advantages and the disadvantages it offers for development; (4) protecting the health, safety and welfare of people who work, reside and visit in the coastal zone; (5) promoting public access to the waterfront through linear walkways and at least one waterfront park in each municipality; (6) maintaining active port and industrial facilities, and providing for necessary expansion in adjacent sites; (7) maintaining and upgrading existing energy facilities, and siting additional energy facilities; and (8) encouraging residential, commercial, and recreational mixed-use redevelopment of the developed waterfront. In general, the Coastal Permit Program Rules have allowed the Department to give more opportunities for public involvement and more weight to environmental considerations in development decisions than had previously been the case.

These positive social impacts have been realized by both the general public and by those property owners whose property values might otherwise have been reduced by haphazard development in the coastal area. While the requirements of the Coastal Permit Program Rules may prevent some property owners from maximizing the immediate development value of their land, such losses in development value will continue to be offset by the social, economic and environmental benefits of preserving the basic integrity of the coastal area.

Economic Impact

The coastal permit procedures in N.J.A.C. 7:7 provide an orderly and efficient method for preparing, reviewing, issuing and enforcing coastal permit applications and coastal permit decisions. The coastal permit program has been supported in the past by three main revenue sources: Federal grants, State appropriations and permit fees, although State funds have not been available in recent years. The Department increased the permit fees effective March 1, 1993 in an attempt to recoup a greater portion of administrative costs associated with this program as mandated by the 90-Day Construction Permit Rules (see N.J.A.C. 7:1C). The current permit fees are based more closely upon the actual cost of application review. Elsewhere in this issue of the New Jersey Register, the Department is proposing changes to the 90 Day Construction Permit Rules that take into account the new authority granted by the legislative amendments to CAFRA to review smaller projects.

The readopted chapter will have several other types of economic impact on prospective coastal permit applicants. Property owners within the coastal area will continue to be subject to regulation and/or promotion of certain types of land use, which may continue to adversely affect the development value of their property. For those developments requiring approval from the Department, applicants may incur engineering, consulting and legal fees in addition to the application fees outlined above. These application preparation fees will vary widely depending on the complexity of the development. In addition, construction costs for certain developments may increase as a result of modifying structures or whole developments to comply with the readopted coastal permit program rules and policies.

The long-term effect of these rules has been to lessen the adverse economic impacts of poorly planned development upon waterfront commerce, tourism, recreation, public access to the coast, the coastal ecosystem, and the fishing and shellfishing industries. Losses in specific property value and the compliance costs associated with the coastal permit program rules have been offset by the economic loss avoided as a result of regulating uses of the coastal area.

Environmental Impact

Through integration of the Rules on Coastal Zone Management in N.J.A.C. 7:7E with these Coastal Permit Program Rules, the Department has implemented a number of provisions designed to mitigate the adverse environmental impacts that would otherwise be caused by development activities in the coastal area. Readopting this chapter will continue to minimize the adverse environmental impacts of activities in the coastal area.

Several provisions of the Rules on Coastal Zone Management implemented by this chapter operate to minimize the impacts of coastal area projects on the environment. Areas identified by the coastal policies as deserving special protection include: shellfish beds, surf clam areas, finfish migratory pathways, areas of submerged vegetation, beaches, dunes, wetlands, stream corridors, and critical or endangered species habitat. Among the factors considered by the coastal resource policies are impacts of projects on marine fish and fisheries, shellfisheries, water quality, wildlife, vegetation, air quality, and floodplains. In general land areas upland of special water's edge areas, projects receive an environmental sensitivity rating indicating the general suitability of a land area for development based on vegetation and soils.

In general, the coastal permit program rules have operated to preserve the most ecologically sensitive and fragile areas along the coast from inappropriate development and to provide adequate environmental safeguards for construction that does occur in the coastal area. Coastal wetlands have benefited particularly from prohibitions on filling and mitigation measures taken under these rules.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that a significant portion of builders and property owners affected by the proposed readoption will be "small businesses" as defined in the Act. To comply with these rules, affected small businesses may have to submit an application for a coastal permit, which may require engineering support work, legal assistance, and assistance in evaluating the environmental impact of the projects. To the extent that small business builders are likely to propose smaller-scale projects, application requirements will be less for small businesses than for larger builders.

In developing the existing rules, the Department has balanced the need to protect the public and the environment from the adverse impacts of unregulated development in the coastal area against the economic impact of the rules. The Department has determined that there is no authority to exempt small businesses from regulation in the governing statutes and that to minimize the impact of the coastal permit program rules on small businesses further than what is proposed would endanger public health, public safety and the environment by undermining the coordination of coastal development to such a degree as to make the coastal policy goals impossible to meet. Therefore, no exemption from coverage was provided in the existing rules, and there is no basis for exempting small businesses in the proposed readoption.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:7.

(a)

ENVIRONMENTAL REGULATION

Coastal Permit Program Rules

Proposed Readoption with Amendments: N.J.A.C. 7:7
Proposed New Rules: N.J.A.C. 7:7-1.7 and 7:7-7

Authorized By: Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 12:5-3, 13:1D-1 et seq., 13:19-1 et seq. and 13:9A-1 et seq.

DEPE Docket Number: 08-94-01/105.

Proposal Number: PRN 1994-125.

Public hearings concerning this proposal will be held on the following dates at the following locations. The public hearings will be held for the times listed or until the close of testimony, whichever occurs first.

Friday, March 11, 1994 at 9:30 A.M.
New Jersey Department of Environmental Protection and Energy
Public Hearing Room
401 East State Street (1st floor)
Trenton, New Jersey 08625

Monday, March 14, 1994 at 7:00 P.M.
Dover Municipal Building
33 Washington Street
Toms River, New Jersey

Wednesday, March 16, 1994 at 1:30 P.M.
Ocean City Music Pier
Ocean City, New Jersey

Submit written comments, identified by the Docket Number given above, by March 24, 1994 to:

Janis Hoagland, Esq.
Administrative Practice Officer
New Jersey Department of Environmental Protection
and Energy
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66(1978), the Coastal Permit Program Rules, N.J.A.C. 7:7, expire on May 12, 1994. As required by Executive Order No. 66, the Department of Environmental Protection and Energy (Department) has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Department therefore proposes to readopt this chapter with significant amendments regarding the filing and review of applications for construction permits pursuant to the amendments to the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., signed into law by Governor Florio on July 19, 1993 (P.L. 1993, c.190). In addition, the Department is proposing technical changes to further clarify the waterfront development permit exemptions granted by the Legislature.

The coastal area of the State has been the subject of comprehensive land use management for a number of reasons. Foremost, the coastal ecosystem is a fragile and unique network of beaches and the ocean, tidal and inland wetlands, flood plains, estuarine areas, bays, streams and stream corridors, vegetation communities, and wildlife habitats. Approximately 35 percent of the State's population presently inhabits areas in or immediately surrounding the coastal area. During the summer months, millions of people visit the New Jersey shore contributing an estimated $4 billion annually to the State's economy. Both the commercial fisheries and the recreational use of the State's coastal zone require good water quality and an aesthetically pleasing environment. The coastal permit program is the mechanism for balancing the competing requirements of human activities and for protecting and enhancing natural features of the coastal area, thereby maximizing its social, economic, and environmental value.

The Coastal Permit Program Rules at N.J.A.C. 7:7 establish the procedures by which the Department reviews permit applications and appeals from permit decisions under the Coastal Area Facility Review Act (CAFRA) (N.J.S.A. 13:19-1 et seq.), the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.), and the Waterfront Development Act (N.J.S.A. 12:5-3). In 1984, the Department promulgated the Coastal Permit Program Rules by consolidating the procedural rules governing the permit review process for the coastal permit programs authorized by the above three statutes. As authorized by the three statutes, the Coastal Permit Program Rules govern the following types of activities: (1) under CAFRA, the construction of development within the coastal area described in Section 4 of CAFRA (N.J.S.A. 13:19-4); (2) under the Wetlands Act of 1970, the draining, dredging, excavation, or deposition of material, and the erection of structures, driving of pilings or placing of obstructions in any coastal wetlands which have been mapped or delineated pursuant to the Wetlands Act (a list of these maps and a full list of regulated activities appear in N.J.A.C. 7:7-2.2); and (3) under the Waterfront Development Act, the filling or dredging of, or placement or construction of structures, pilings or other obstructions in any tidal waterway, or in certain upland areas adjacent to tidal waterways (see N.J.A.C. 7:7-2.3).

The existing rules at N.J.A.C. 7:7 are administered by the Land Use Regulation Program (Program), successor to the Division of Coastal Resources, in conjunction with the Rules on Coastal Zone Management, N.J.A.C. 7:7E. The rules at N.J.A.C. 7:7E contain the Department's substantive rules regarding the use and development of coastal resources. The Program applies the procedural process set forth in N.J.A.C. 7:7 when making coastal permit application decisions.

Governor Florio signed the Senate Committee Substitute for Senate Bill No. 1475 into law on July 19, 1993. This new law revises the provisions of the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., known commonly by the acronym CAFRA. The new law tightens existing regulatory thresholds for the issuance of permits pursuant to CAFRA and makes a number of administrative changes to CAFRA. The Department is herein proposing amendments to reflect and effectively administer the requirements of the revised legislation. In the near future, the Department will be proposing additional regulations concerning enforcement of CAFRA, the Waterfront Development Act, and the Wetlands Act of 1970.

The legislative amendments to CAFRA require that developments be subject to a tiered system of review based upon the proximity of that development to the mean high water line of tidal waters, a beach or dune, and that all new development proposed on a beach or dune be subject to permit review.

The legislation takes effect on July 19, 1994. Developments are exempt from the new requirements if they have received preliminary site plan approval pursuant to the Municipal Land Use Law or a final municipal building or construction permit prior to that date. In addition, residential developments are exempt if by July 19, 1994, they have received preliminary subdivision approval or minor subdivision approval. These exemptions remain valid provided that construction begins by July 19, 1997 and continues to completion without interruption of more than one year. However, these exemptions do not apply to any development which previously required a CAFRA permit.

The CAFRA amendments provide that within 150 feet of the mean high water line or the landward limit of a beach or dune, whichever is most landward, any development which constitutes a "first use" in that area is subject to permit review. However, if there is an intervening structure within 150 feet of the water, beach or dune (that is, "first use"), only residential development with three or more units, commercial developments with five or more parking spaces, and all public and industrial developments require permit review.

Beyond 150 feet from the mean high water line, or landward limit of a beach or dune, residential developments of 25 or more units, commercial developments with 50 or more parking spaces and all industrial and public developments are subject to permit review under the CAFRA amendments.

In urban coastal municipalities, the threshold is further modified for land more than 500 feet from the mean high water line or landward limit of a beach or dune. In these areas, permit review will be required for residential developments of 75 or more units and commercial developments with 150 or more parking spaces. This higher threshold applies in Asbury Park, Atlantic City, Bridgeton, Keansburg, Lakewood, Long Branch, Millville, Neptune, Pleasantville, and Salem City. The list of urban areas, specified in the legislation, is based largely on the eligibility criteria for "urban aid."

Exempted from regulation under the new legislative amendments are the reconstruction of any development that was damaged or destroyed by fire, storm, natural hazard or act of God; enlargements that do not increase the footprint or number of dwelling units of the development; the construction of a patio, deck or similar structure at a residential development; the routine reconstruction, maintenance or repair of a public highway, including safety and repaving improvements; the construction of seasonal or temporary structures related to the tourism industry; and the expansion of an existing, functional amusement pier provided such expansion is located 150 feet landward of the mean high water line, beach or dune.

The legislative amendments to CAFRA also make a number of administrative changes including the following: authorizing the Department to adopt regulations to issue general permits in lieu of an individual CAFRA permit for categories of projects meeting specified criteria; abolishing the Coastal Area Review Board, so that appeals of CAFRA permit decisions go only to the DEPE Commissioner and then to the courts; eliminating the small area in which CAFRA and the Pinelands Commission jurisdiction overlap; and eliminating the requirement for a public hearing and an environmental impact statement for each CAFRA project, leaving it to the Department to establish information requirements and public participation requirements by rule.

The CAFRA region extends from the confluence of the Cheesequake Creek and Raritan Bay in Middlesex County, along the Atlantic Ocean coastline and Delaware Bay, and then northwest along the Delaware River to Pennsville, Salem County. It includes all riparian, tidelands, and coastal wetlands acreage, encompassing 1,376 square miles of land area, and ranges in width from a few thousand feet to 24 miles, totaling 18 percent of the State's land area.

Following the enactment of the CAFRA amendments in July 1993, the Department contacted the planning boards of each of the coastal counties to inform them of the new law, the Department's responsibility to adopt implementing regulations, and the Department's willingness to meet with them. As a result, the Department held three public meetings, one in Ocean County, one in Cumberland County, and one in Monmouth County. The meetings had a dual purpose, first, to explain the new

amendments to the public, and second, to start the process of receiving public input into the regulatory process. Approximately 120 people attended these three public meetings which were co-sponsored by the county planning boards. The Department also held numerous other small meetings and spoke to various organizations to solicit input regarding the rule drafting. The majority of comments focused on the regulation of development within the first 150 feet from the mean high water line or landward limit of a beach or dune, and the need for quick, easy and inexpensive reviews for single-family homeowners.

A summary of each subchapter of N.J.A.C. 7:7 and of the most significant of the proposed amendments follows.

Subchapter 1. General Provisions

Subchapter 1 sets forth the purpose and scope of the rules, contains definitions of terms and describes permits, permit conditions, permit fees, provisional permits, and the procedure to follow where more than one coastal permit is required.

The Department is proposing amendments to the definitions section at N.J.A.C. 7:7-1.3. The proposed amendments replace the definition of "facility" with a definition of "development" to reflect the CAFRA amendments effective July 19, 1994. "Facility" in the existing regulations is defined to include a number of industrial facilities, some public facilities, and housing developments of 25 or more units. The proposed definition of "development" covers residential, commercial, industrial, and public developments, in keeping with the legislative amendments.

The Department is proposing to add definitions for the following terms which are included in the CAFRA amendments: beach, city of the fourth class, commercial development, dune, dwelling unit, educational facility, floating home, footprint of development, governmental agency, habitable structure, industrial development, intervening development, mean high water, mean high water line, public development, public highway, qualifying municipality, reconstruction, residential development, and seasonal or temporary structures related to the tourism industry. In addition, the amendments propose to delete the definition of "Division" and to add a definition of "Program" to reflect the Department's reorganization of July 1991, when the Division of Coastal Resources became the Land Use Regulation Program.

The term "Department" is substituted for "Division" throughout the proposed chapter to reflect the current administrative structure of the Department. The term "development" is substituted for "facility" throughout the proposal to reflect the CAFRA amendments of 1993.

The Department is proposing a new section at N.J.A.C. 7:7-1.7 for emergency permit authorization. The Department may issue an emergency permit authorization if it determines that there is an imminent threat to lives or property unless regulated construction activities are immediately commenced. Potential for severe environmental degradation will also constitute a basis for issuing an emergency permit authorization. The proposed section describes the procedure to be followed in obtaining an emergency permit authorization. The remainder of the subchapter is recodified to reflect the addition of this section.

The Department proposes amendments to N.J.A.C. 7:7-1.8(b), formerly N.J.A.C. 7:7-1.7(b), regarding the procedure when more than one permit is required, to make this section consistent with the fee provision of the 90 Day Construction Act Rules, N.J.A.C. 7:1C-1.5(c).

Subchapter 2. Activities for which a Permit is Required

Subchapter 2 lists categories of activities requiring permits under CAFRA, the Wetlands Act of 1970, and the Waterfront Development Act.

At N.J.A.C. 7:7-2.1(a), the reference to "facilities" is proposed for deletion and the subsection is amended to set forth the types of development for which CAFRA permits are required, that is, the residential, commercial, public and industrial development described in the CAFRA amendments.

Specifically, at N.J.A.C. 7:7-2.1(a)1 through 5, the Department is proposing amendments requiring a tiered system of CAFRA review based upon the proximity of a particular development to the mean high water line of tidal waters, a beach or dune. The proposed language mirrors that of the legislature granting the Department this review authority, with one exception. At N.J.A.C. 7:7-2.1(b)2, the Department is proposing that for those public facilities which provide government services or provide recreational areas and are not specifically listed in the definition of public development, and are not proposed on a beach or dune, the development will be regulated in accordance with the thresholds for commercial development. The CAFRA amendments of 1993 do not specifically address this type of development.

The Department is proposing to delete N.J.A.C. 7:7-2.1(b)6 concerning exemptions. In its place, the Department is proposing a new subsection at N.J.A.C. 7:7-2.1(c) enumerating the exemptions from CAFRA regulation provided by the CAFRA amendments of 1993. Developments located within the first 150 feet are exempt from the new requirements if they have received preliminary site plan approval pursuant to the Municipal Land Use Law or a final municipal building or construction permit prior to July 19, 1994. In addition, residential developments are exempt if by July 19, 1994 they have received preliminary subdivision approval or minor subdivision approval pursuant to the Municipal Land Use Law. These exemptions remain valid provided that construction begins by July 19, 1997 and continues to completion with no cumulative lapses in construction activity of more than one year. However, any development which previously required a CAFRA permit under the original CAFRA legislation still requires a permit.

Exempted from regulation under the new CAFRA amendments are the reconstruction of any development within the same footprint that was damaged or destroyed by fire, storm, natural hazard or act of God; enlargements that do not increase the footprint or number of dwelling units of the development; the construction of a patio, deck or similar structure at a residential development; the routine reconstruction, maintenance or repair of a public highway, including safety and repaving improvements; the construction of seasonal or temporary structures related to the tourism industry; and the expansion of an existing, functional amusement pier provided such expansion is located 150 feet landward of the mean high water line, beach or dune.

The Department is also proposing, at N.J.A.C. 7:7-2.1(d), that any exemption based upon on-site construction on or before September 19, 1973 shall expire on July 19, 1997. The Department is further proposing at N.J.A.C. 7:7-2.1(e) a procedure whereby a person may request from the Department a written determination that a development is exempt from CAFRA and the permit requirements at subchapter 2.

The Department is proposing, at N.J.A.C. 7:7-2.2(a)1 and 2, amendments to clarify the activities requiring a permit pursuant to the Wetlands Act of 1970. The proposed amendments delete the classifications of the permits into Type "A" and Type "B." This classification has been confusing to the regulated public and the Department has decided based on its experience that it is unnecessary. Therefore, the Department is proposing its deletion. Under the proposed amendments to this chapter, the Department will now require the same information for all coastal wetland applications. The list of regulated activities remains the same, but it has been recodified.

The Department is also proposing to amend N.J.A.C. 7:7-2.3(a) to define the waterfront area subject to regulation under the Waterfront Development Law when the site lies in the CAFRA zone. Under the amendment, this regulated area would include any tidal waterway and all lands thereunder, up to and including the mean high water line. The amendment reflects the amendment to the Waterfront Development Law effected by P.L. 1993, c.190, which exempts development landward of the mean high water line of any tidal waters from regulation under the Waterfront Development Law.

The Department proposes to consolidate, clarify, and recodify the exemption status currently granted for waterfront activities involving the repair, replacement and renovation of an existing dock, floating dock, wharf, pier, bulkhead or building at sections N.J.A.C. 7:7-2.3(c)5 and (d)4 and 5. A Waterfront Development permit for these activities is not required as long as the facility is legally existing; the replacement or renovation will not have any additional permanent adverse effects on any natural resources on-site; and the repair, renovation or replacement does not exceed the size of the existing structures and the structure is used solely for residential purposes or the docking or servicing of pleasure vessels.

In preparing this rule proposal, the Department found discrepancies between the regulations published in the New Jersey Administrative Code and the Coastal Permit Program Rules published as public information by the Department. In order to correct these discrepancies, the Department is proposing to delete the language now found in the New Jersey Administrative Code at N.J.A.C. 7:7-2.3(d)10 and (e)3, and substitute, at N.J.A.C. 7:7-2.3(g), the language currently found in the Department's rules published as public information. All three of the sections in question concern exemptions. The proposed subsection includes some minor wording changes to consolidate the subsections and deletes the references to October 3, 1988 and July 17, 1990. The Department believes that it will be less confusing to substitute the language currently found in its public information publication because this

langauge is most often used by the public. The consolidation of the exemption provision into one section also improves the clarity of the rules.

Subchapter 3. Pre-Application Review

Subchapter 3 currently describes the use of a pre-application conference and sets forth the procedure for requesting a conference, information requirements, and the preparation of a memorandum of record of the conference. With this proposal, the Department proposes to replace "conference" with "review" throughout the subchapter. This change will provide the option of a pre-application "review" as opposed to a "conference." A "review" would allow discussing the development with an applicant by telephone rather than at a meeting. This will be used mostly for smaller developments or if only a small number of relatively straightforward issues need discussion, and should save both the Department and applicants time. Pre-application "conferences" will still be available for more complex developments.

The Department is also proposing to amend and move the requirements for the conceptual proposal that must be submitted as part of the request for a pre-application review from N.J.A.C. 7:7-3.3 to N.J.A.C. 7:7-3.2(a), and to recodify the remaining sections of the subchapter. The conceptual proposal must include a written description of the site and the proposed development including the dimensions, number, and uses of proposed structures; maps indicating the site's location and rough internal plan of development; and the tax lot and block designation of the site and a United States Geological Survey quadrangle map showing the site.

Subchapter 4. Permit Review Procedures

Subchapter 4 outlines the required contents of permit applications, public notification requirements, the Department's application review procedures, and the timetable for reaching final decisions on permit applications.

The Department is proposing amendments to N.J.A.C 7:7-4.1(b) to clarify that applications for projects which are not consistent with the applicable Wastewater Management Plan should not be submitted until consistent or until a Plan Amendment is obtained. The Department's regulations under the Water Pollution Control Act provide that consistency with a Wastewater Management Plan must be demonstrated before any other Department approvals can be issued.

In addition, the Department is proposing amendments to the application submittal requirements and notification requirements at N.J.A.C. 7:7-4.2. The Department is proposing to add requirements that the application include verification that a complete copy of the application package has been submitted to the clerk of the municipality and to the planning board and environmental commission of the municipality in which the proposed development would occur. Applications for CAFRA permits within the Pinelands Preservation Area or Protection Area also must contain verification that a complete copy of the application package has been submitted to the Pinelands Commission under the proposed amendments. The amendments further require an applicant to submit proposed verification that a copy of the site plan and CP-1 form have been forwarded to the planning board and environmental commission of the county in which the proposed development would occur, and to all landowners within 200 feet of the property or properties on which the proposed development would occur. The Department is proposing the requirements because it has found that early notification to adjacent property owners of a proposed activity usually speeds up the review process and avoids the delays that may result when potential conflicts involving those property owners are discovered during or after the application review.

The Department is also proposing to amend N.J.A.C. 7:7-4.2(a)8, which describes the information that must be contained on development plans, to require more explicit information on existing and proposed site conditions in order to facilitate the Department's review.

The Department is further proposing to require CAFRA permit applicants to notify the DEPE Bulletin of the filing of an application for a CAFRA permit and to require the applicant to provide proof of publication in the DEPE Bulletin of the notice of filing. Under the proposed amendment the Department will not consider a CAFRA application complete for filing unless it contains proof of the notification of filing published in the DEPE Bulletin. The Department is proposing that publication of the notice of filing in the DEPE Bulletin start the public comment period on CAFRA applications and that interested individuals send requests for a public hearing on a CAFRA application to the Department within 20 days of publication in the DEPE Bulletin and send written comments on the application within 30 days of such publication. The Department will amend its CAFRA permit application package to include a form that the applicant can mail directly to the DEPE Bulletin. These amendments are proposed to enable the Department to timely determine whether to hold a public hearing, in accordance with the amendments to the CAFRA statute adopted in 1993.

The Department is proposing to amend N.J.A.C. 7:7-4.2(b) to require that Waterfront Development and Wetlands applications include a copy of any Tidelands Grant, Lease or License previously approved for the property in question. Under the amendments, permit applications will not be accepted for filing without verification that a tidelands instrument had previously been issued, applied for, or is unnecessary for the site. The amendment is intended to assure that any proposed development will only occur on property under the applicant's legal control.

The Department is also proposing to amend N.J.A.C. 7:7-4.2(g), recodified in this proposal to N.J.A.C. 7:7-4.2(e), by replacing the list of information required to be submitted as part of a mitigation proposal with standard mitigation proposal requirements consistent with the mitigation requirements of the freshwater wetlands program (N.J.A.C. 7:7A-14). These proposed amendments also include a financial assurance provision which is intended to ensure complete performance of the mitigation.

The Department is proposing amendments to N.J.A.C. 7:7-4.4, which governs the initial review of permit applications. The Department is proposing, at N.J.A.C. 7:7-4.4(a)2ii, to provide that no application shall be declared complete for final review unless and until the applicant has possession of all tidelands conveyances required for the riparian land. In addition, development involving riparian lands cannot occur unless the developer has obtained a tidelands conveyance. The Department is proposing, at N.J.A.C. 7:7-4.4(a)2iii, to provide that no application for a development requiring sanitary sewer service shall be declared complete for final review unless and until the project is consistent with the applicable Wastewater Management Plan or until a Plan Amendment is obtained. These amendments are necessary because the Department's regulations under the Water Pollution Control Act require that consistency with a Wastewater Management Plan be demonstrated before any other Department approvals can be issued.

At N.J.A.C. 7:7-4.5, which prescribes when a public hearing may be held on a CAFRA application, the Department is proposing amendments concerning when it will hold a public hearing on a CAFRA application. The CAFRA amendments of 1993 provide the Department with the discretion to hold a 30 day public comment period on a CAFRA application instead of a public hearing. The CAFRA Amendments of 1993 also give the Department 15 days after it declares an application complete for filing to determine whether it will hold a public hearing. To enable it to meet this deadline, the Department is proposing the amendment at N.J.A.C. 7:7-4.2(a)6 (mentioned above) which requires CAFRA permit applicants to verify that a notice of the filing of the application was published in the DEPE Bulletin ensuring that interested individuals receive notice that an application is being submitted to the Department for a CAFRA Permit. The proposed amendments at N.J.A.C .7:7-4.5(a) provide that the date of publication of the notice of application filing in the DEPE Bulletin will start the 30 day public comment period and that all requests for a public hearing be submitted to the Department within 20 days of publication of the notice of application filing in the DEPE Bulletin, ensuring that the Department will receive public comments before determining whether to hold a public hearing on an application.

All public hearings associated with coastal permit applications will be held in accordance with the procedure set forth at N.J.A.C. 7:7-4.5. At N.J.A.C. 7:7-4.6, which governs the final review of permit applications, the Department is proposing clarifying amendments regarding the length of time it has to ask for additional information and to make a final decision on an application. The proposed amendments contain the timeframes applicable when a public hearing is held on an application, and when only a public comment period is held in accordance with the 1993 legislative amendments to CAFRA.

The Department is proposing to amend N.J.A.C. 7:7-4.7 to make this section consistent with N.J.A.C. 7:1C-1.7(c) and to clarify that an automatic approval will not be granted by the Department for any application which requires a riparian conveyance. This language is being proposed to make it clear that an application will not be considered complete for review and will not be reviewed in accordance with the timeframes of the 90 Day Construction Act (N.J.SA.. 13:1D-29 et seq.) if it does not contain a tidelands conveyance and one is required for the site.

The Department is proposing to amend N.J.A.C. 7:7-4.8 to allow an applicant to publish notice of a Department permit decision in a newspaper and to provide notice to commenters and to the municipal clerk, environmental commission and planning board, instead of waiting for publication of the decision in the DEPE Bulletin. This amendment is proposed to allow an applicant the opportunity to expedite completion of the application review process.

The Department is also proposing amendments to N.J.A.C. 7:7-4.10, which concerns modifications of issued permits, to make these rules consistent with the proposed amendments to the Rules and Regulations Governing 90 Day Construction Permits, N.J.A.C. 7:1C, that the Department is proposing elsewhere in this issue of the New Jersey Register.

The Department proposes to delete N.J.A.C. 7:7-4.12, which provides for an expedited review process, because the Department tries to accommodate all requests for expedited reviews and feels that it is not necessary to have a separate review process to handle these requests.

Subchapter 5. Appeals

Subchapter 5 governs the timetable and format for appealing permit denials, identifies where appeals are to be filed, and describes the Department's obligations and procedure for appeals.

The provision for appeals to the Coastal Area Review Board (CARB) at N.J.A.C. 7:7-5.1 and 5.5 are being deleted because CARB was eliminated by the legislation amending CAFRA. CAFRA permit deicions may now be appealed directly to the DEPE Commissioner and/or to the Courts.

At N.J.A.C. 7:7-5.3, the Department is proposing amendments to make the appeal procedure for coastal permits consistent with the existing appeal procedure for other land use regulatory programs.

Subchapter 6. Environmental Impact Statements

Subchapter 6 describes when an environmental impact statement is required, the required format and content of the statement, and to whom the statement is to be distributed.

This proposal contains amendments setting forth the required contents of an Environmental Impact Statement and Compliance Statement. The Department is also proposing language at N.J.A.C. 7:7-6.1(b) to explain the purpose of the EIS or Compliance Statement, namely to assist the applicant and the Department in assessing the probable effects of a proposal on the natural resources and human activities at the project site and surrounding region and in determining the proposed development's compliance with the Rules on Coastal Zone Management, N.J.A.C. 7:7E.

Both the Environmental Impact Statement and Compliance Statement are intended to provide a discussion of a proposed project in terms of the specific rules which apply to the proposed development. The primary distinction between the two is the level of required detail, which is directly related to the size of the proposed project, the conditions of the project site, and the anticipated impacts of the proposed development on the site.

The EIS or Compliance Statement shall contain an environmental inventory and assessment which describes and documents, in narrative form, environmental conditions at the site and the surrounding region, and then assesses the probable impacts of the development on the built and natural environment. The inventory and assessment is to be made with reference to the most current Rules on Coastal Zone Management, N.J.A.C. 7:7E. It should contain sufficient detail to assist in the evaluation of the development, to provide a basis for the applicant's assessment of environmental impact, and to enable the Department to make the necessary findings for permit approval.

An EIS contains a more thorough review, including such data as traffic analyses, stormwater management calculations, archaeological surveys, environmental resource inventories, and detailed design specifications for the proposed construction. In most cases, an EIS will address a greater number of rules or policies since the proposed developments and associated impacts are larger in scope. The EIS will also contain more information regarding project alternatives and mitigation measures designed to reduce the overall impact of the proposed development on the environment. A Compliance Statement is an abbreviated form of an EIS. All applicable rules or policies which apply to a proposed development or development site must still be addressed.

Specific requirements will vary depending on the magnitude and complexity of the project and on the sensitivity of the land and water features of the site.

Prospective applicants are encouraged to contact the Department's Land Use Regulation Program prior to submission of the permit application to determine what type of information is required. The goal of the Department is to have all applicable rules or policies addressed and all potential impacts clearly discussed in the permit application.

The existing N.J.A.C. 7:7-6.2, which now contains the requirements for EIS distribution, is proposed for repeal. The requirements for distribution of the EIS or Compliance Statement have been consolidated in N.J.A.C. 7:7-4.2, which includes all other application requirements. Due to this deletion, the subchapter has been recodified. The proposed new N.J.A.C. 7:7-6.2 is a slightly amended version of the original N.J.A.C. 7:7-6.3. It consolidates the format and content requirements for an EIS or Compliance Statement. In addition, N.J.A.C. 7:7-6.3(b)4 is proposed for deletion to be consistent with the proposed amendments to N.J.A.C. 7:7-2.2(a)1 and 2 deleting the distinction between a Type "A" and Type "B" wetlands permit. The proposed new N.J.A.C. 7:7-6.3 is recodified from the original N.J.A.C. 7:7-6.4, which deals with the preparation of the EIS or Compliance Statement.

Subchapter 7. General Permits and Permits-By-Rule

The legislation amending CAFRA provides the Department with the discretion to issue General Permits in lieu of CAFRA permits for categories of projects meeting specified criteria. The Department is proposing a new subchapter at N.J.A.C. 7:7-7 which details the process for the creation and issuance of General Permits. At N.J.A.C. 7:7-7.1, the Department is proposing general standards for issuing CAFRA General Permits and Permits-By-Rule. At N.J.A.C. 7:7-7.2, the Department is proposing General Permit authorization for the following activities: the construction of a single family home or duplex on a bulkheaded lagoon lot; the expansion of an existing, functional amusement pier; normal beach and dune maintenance activities; and the voluntary reconstruction of an undamaged residential or commercial development.

A general permit authorization will be granted provided that the proposed activity is in compliance with the specific conditions contained in the general permit. For example, the general permit authorization for the construction of a single family home or duplex which is not part of a larger development on a bulkheaded lagoon lot is conditioned upon, among other things, the site being located on a man-made lagoon with all waterfront portions of the site protected by a currently serviceable legal bulkhead there being no wetlands on site upland of the bulkhead, and service by a municipal sewer system for the proposed dwelling.

The expansion of an existing functional amusement pier is conditioned upon the proposed expansion being located more than 150 feet landward of the mean high water line and not exceeding the footprint of the existing, functional amusement pier by more than 25 percent. The proposed expansion must be constructed on pilings at the same elevation as the existing pier, include a provision for public seating and viewing at the terminal end of the expansion, and not eliminate existing, direct public access from the boardwalk to the beach. This General Permit is different than the exemption provided in the 1993 legislative amendments to CAFRA. The legislative amendments exempt the expansion provided it is located 150 feet landward of the mean high water line, beach or dune, whichever is most landward. This General Permit provides for expansion provided it is 150 feet landward of the mean high water line.

The general permit authorization for beach and dune maintenance activities is conditioned upon the activities being conducted in accordance with the Best Management Practices as defined in the Department's Rules on Coastal Zone Management, N.J.A.C. 7:7E. These proposed BMPs may be found within this same New Jersey Register. The activities that may be authorized under this general permit include dune creation projects, sand transfers using mechanical equipment, and the construction of beach access ways.

The voluntary reconstruction of an undamaged residential or commercial development within the same footprint, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law, is conditioned upon the reconstruction not resulting in an enlargement or relocation of the footprint and no increase in the number of dwelling units or parking spaces. The 1993 legislative amendments to CAFRA exempt the reconstruction of any structure damaged or destroyed by fire, storm, natural hazard or act of God. This General Permit allows for the reconstruction of an undamaged structure. The Department may authorize a relocation landward if it determines that such relocation would result in less environmental impact than the original development. A general permit authorization is not required for cosmetic repairs, such as replacing siding windows or roofs.

At N.J.A.C. 7:7-7.3, the Department is proposing the application procedure for a General Permit authorization. At N.J.A.C. 7:7-7.4, the Department is proposing a Permit-By-Rule for the expansion of a single family home. This Permit-By-Rule will allow the expansion of an existing single family dwelling on the non-waterward side of the dwelling, provided that the expansion does not exceed a cumulative surface area of 400 square feet, and provided that such expansion is not proposed on a beach or dune.

Social Impact

The existing rules have had a positive social impact on the people of the State by providing comprehensive, efficient, and integrated procedures for regulating the delicately balanced coastal area of the State. The Coastal Permit Program Rules provide a mechanism for coordinating land use in the coastal area in a manner which considers the regional nature of the area and which addresses problems beyond the boundaries and control of individual coastal communities. Upon readoption with the amendments described above, the Coastal Permit Program Rules will continue to provide reasonable procedures governing the regulated community's compliance with the Department of Environmental Protection and Energy's administration of CAFRA, the Wetlands Act of 1970, and the Waterfront Development Act. In addition, the rules as amended will have a positive social impact by providing the Department with the necessary administrative authority to implement the legislative amendments to CAFRA, signed into law by Governor Florio on July 19, 1993.

Failure to readopt these rules would adversely affect permit applicants and property owners in coastal areas by eliminating the existing guidelines concerning what coastal development is regulated, what permits are applicable, how to submit permit applications, and how and when the Department administers the coastal regulatory program. Readopting these rules will also allow the Department to continue the public notice and information aspects of administering the coastal permit program, which keep the public informed about coastal permit requirements for development.

The readopted chapter with the amendments described above will have the further social benefit of providing the Department with the mechanism to implement the Rules on Coastal Zone Management found at N.J.A.C. 7:7E. Through integration of these rules with the procedures contained in N.J.A.C. 7:7, the Department has made progress in achieving the following policy objectives: (1) protecting and enhancing the coastal ecosystem; (2) concentrating rather than dispersing the pattern of coastal residential, commercial, industrial, and resort development and encouraging the preservation of open space; (3) employing a method for decision making which allows each coastal location to be evaluated in terms of both the advantages and the disadvantages it offers for development; (4) protecting the health, safety and welfare of people who work, reside and visit in the coastal zone; (5) promoting public access to the waterfront through linear walkways and at least one waterfront park in each municipality; (6) maintaining active port and industrial facilities, and providing for necessary expansion in adjacent sites; (7) maintaining and upgrading existing energy facilities, and siting additional energy facilities; and (8) encouraging residential, commercial, and recreational mixed-use redevelopment of the developed waterfront. In general, the Coastal Permit Program Rules have allowed the Department to give more opportunities for public involvement and more weight to environmental considerations in development decisions than had previously been the case.

These positive social impacts have been realized by both the general public and by those property owners whose property values might otherwise have been reduced by haphazard development in the coastal area. While the requirements of the Coastal Permit Program Rules may prevent some property owners from maximizing the immediate development value of their land, such losses in development value will continue to be offset by the social, economic and environmental benefits of preserving the basic integrity of the coastal area.

Economic Impact

The coastal permit procedures in N.J.A.C. 7:7 provide an orderly and efficient method for preparing, reviewing, issuing and enforcing coastal permit applications and coastal permit decision. The coastal permit program has been supported in the past by three main revenue sources: Federal grants, State appropriation and permit fees, although State funds have not been available in recent years. The Department increased the permit fees on March 1, 1993 in an attempt to recoup a greater portion of administrative costs associated with this program as mandated by the Ninety-Day Construction Permits rules (see N.J.A.C. 7:1C). The current permit fees reflect more closely the actual costs of application review. Elsewhere in this issue of the New Jersey Register, the Department is proposing changes to the fee provisions of the Ninety-Day Construction Permits rules necessitated by the legislative amendments to CAFRA which mandate Departmental review of smaller developments in the coastal area.

The readopted chapter with the amendments described above will have several other types of economic impact on prospective coastal permit applicants. Because the 1993 legislative amendments to CAFRA require the Department to review smaller developments, more property owners in the coastal area will be subject to regulation and/or promotion of certain types of land use, which may continue to adversely affect the development value of their property. For those developments requiring approval from the Department, applicants may incur engineering, consulting and legal fees in addition to the application fees outlined above. These application preparation fees will vary widely depending on the complexity of the development. In addition, construction costs on certain developments may increase as a result of modifying structures or whole developments to comply with the readopted coastal permit program rules and policies.

The proposed amendments concerning Environmental Impact Statements and Compliance Statements should have a positive economic impact on some CAFRA applicants since all applicants will no longer be required to submit an EIS as a result of the CAFRA amendments of 1993. Therefore, for those applicants with smaller projects the costs associated with preparing the information should be less than if they were required to submit an EIS. The Department expects that the proposed General Permits and Permits-By-Rule will have a positive social impact since applicants with eligible developments will not be required to submit a complete individual CAFRA permit application.

The long term effect of these rules has been to lessen the adverse economic impacts of poorly planned development upon waterfront commerce, tourism, recreation, public access to the coast, the coastal ecosystem, and the fishing and shellfishing industries. Losses in specific property value and the compliance costs associated with the coastal permit program rules have been offset by the economic loss avoided as a result of comprehensively regulating uses of the coastal area.

Environmental Impact

Through integration of the Rules on Coastal Zone Management at N.J.A.C. 7:7E with the Coastal Permit Program Rules at the N.J.A.C. 7:7, the Department has implemented a number of provisions designed to mitigate the adverse environmental impacts that would otherwise be caused by development activities in the coastal area. Readopting this chapter with the amendments described above will continue to minimize the adverse environmental impacts of activities in the coastal area.

Several provisions of the Rules on Coastal Zone Management implemented by this chapter operate to minimize the impacts of coastal area projects on the environment. Areas identified by the coastal policies as deserving special protection include: shellfish beds, surf clam areas, finfish migratory pathways, areas of submerged vegetation, beaches, dunes, wetlands, stream corridors, and critical or endangered species habitat. Among the factors considered by the coastal resource policies are impacts of projects on marine fish and fisheries, shellfisheries, water quality, wildlife, vegetation, air quality, and floodplains. In general land areas upland of special water's edge areas, projects receive an environmental sensitivity rating indicating the general suitability of a land area for development based on vegetation and soils.

In general, the coastal permit program rules have operated to preserve the most ecologically sensitive and fragile areas along the coast from inappropriate development and to provide adequate environmental safeguards for construction that does occur in the coastal area. Coastal wetlands have benefited particularly from prohibitions on filling and mitigation measures taken under these rules.

The proposed amendments will have a positive environmental impact. The statutory amendments to CAFRA lower existing regulatory thresholds for the issuance of permits, and provide enhanced protection of water quality, habitat and wildlife within these areas of increased regulatory review. These proposed amendments will enable the Department to implement this permit program as effectively and efficiently as possible. The permit program steers development away from naturally hazardous and sensitive areas, protects estuarine and marine environments from adverse impacts, and promotes resource conservation and designs sensitive to the environment. Thus, to the extent that these

amendments improve the administration of CAFRA, the Wetlands Act of 1970 and the Waterfront Development Act, the environment will benefit.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that a significant portion of builders and property owners affected by the proposed readoption with the amendments described above will be "small business" as defined in the Act. To comply with these rules, affected small businesses may have to submit an application for a coastal permit, which may require engineering support work, legal assistance, and assistance in evaluating the environmental impact of the projects. To the extent that small business builders are likely to propose smaller-scale projects, application requirements will be less for small businesses than for larger builders.

In developing the existing rules and the proposed amendments, the Department has balanced the need to protect the public and the environment from the adverse impacts of unregulated development in the coastal area against the economic impact of the rules. The Department has determined that there is no authority in the permit statutes to exempt small businesses from regulation and that to minimize the impact of the coastal permit program rules on small businesses beyond what is proposed would endanger public health, public safety and the environment by undermining the coordination of coastal development to such a degree as to make the coastal policy goals impossible to meet. Therefore, no exemption from coverage was provided in the existing rules and the proposed amendments, and there is no basis for exempting small businesses from the proposed readoption.

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

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

SUBCHAPTER 1. GENERAL PROVISIONS

7:7-1.1 Purpose and scope

(a) This chapter establishes the procedures by which the Department of Environmental Protection **and Energy** will review permit applications and appeals from permit decisions [including appeals to the Coastal Area Review Board] under the Coastal Area Facility Review Act (CAFRA, N.J.S.A. 13:19-1 et seq.), the Wetlands Act **of 1970** (N.J.S.A. 13:9A-1 et seq.) and the Waterfront Development Law (N.J.S.A. 12:5-3). **These procedures also govern the reviews of Federal Consistency Determinations issued pursuant to the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq., and Water Quality Certificates issued pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. 1251 et seq., when the approvals are sought in conjunction with any of the foregoing permit applications.**

(b) The following types of activities are regulated under each of these laws:

1. CAFRA: The construction of any [facility listed] **development defined** in Section 3 of the Act (N.J.S.A. 13:19-3) or in N.J.A.C. 7:7-2.1, within the coastal area described in Section 4 of the Act (N.J.S.A. 13:19-4).

2. Wetlands Act **of 1970**: The draining, dredging, excavation, or deposition of material, and the erection of **any** structure, driving of pilings or placing of obstructions in any coastal wetlands which have been mapped or delineated pursuant to the Wetlands Act **of 1970**. A list of these maps and a full list of regulated activities appears in N.J.A.C. 7:7-2.2.

3. Waterfront Development Law: The filling or dredging of, or placement or construction of structures, pilings or other obstructions in any tidal waterway, or in certain upland areas adjacent to tidal waterways **outside the area regulated under CAFRA**. These requirements are fully explained in N.J.A.C. 7:7-2.3.

7:7-1.3 Definitions

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

"Beach" means a gently sloping area of sand or other unconsolidated material found on tidal shorelines, including ocean, inlet, bay and river shorelines, that extends landward from the mean high water line to either: the vegetation line; a man-made feature generally parallel to the ocean, inlet, bay or river waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except that sandy areas that extend fully under and landward of an elevated boardwalk are considered to be beach areas; or the seaward or bayward foot of dunes, whichever is closest to the ocean, inlet, bay or river water.

"CAFRA" means the Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.).

"City of the fourth class" means a city as defined at N.J.S.A. 40A:6-4d which borders on the Atlantic Ocean and which is a seaside or summer resort.

"Coastal Permit" means a CAFRA, Wetlands or Waterfront Development Permit.

"Commissioner" means the Commissioner of the Department of Environmental Protection **and Energy** or designated representative.

"Commercial development" means a development designed, constructed or intended to accommodate commercial or office uses. "Commercial development" shall include, but need not be limited to, any establishment used for the wholesale or retail sale of food, beverage or other merchandise, or any establishment used for providing professional, financial, or other commercial services.

"Department" means the Department of Environmental Protection **and Energy**.

["Coastal Permit" means a CAFRA, Wetlands or Waterfront Development Permit.]

"Development" means any activity for which a [coastal] **Wetlands Act of 1970 or Waterfront Development** permit is required, including site preparation and clearing. **Development, for an application under the Coastal Area Facility Review Act, means the construction, relocation, or enlargement of any building or structure and all site preparation therefore, the grading, excavation or filling on beaches and dunes, and shall include residential development, commercial development, industrial development, and public development.**

["Division" means the Division of Coastal Resources in the Department of Environmental Protection.]

"Dune" means a wind- or wave-deposited or man-made formation of sand that lies generally parallel to and landward of the beach, and between the upland limit of the beach and the foot of the most inland slope of the dune. Dune includes the foredune, secondary and tertiary dune ridges, as well as man-made dunes, where they exist. A small mound of loose, windblown sand found in a street or on part of a structure as a result of storm activity is not considered to be a dune.

"Dwelling unit" means a house, townhouse, apartment, cooperative, condominium, cabana, hotel or motel room, a patient/client room in a hospital, nursing home or other residential institution, mobile home, campsite for a tent or recreational vehicle, floating home, or any other habitable structure of similar size and potential environmental impact, except that dwelling unit shall not mean a vessel as defined in section 2 of P.L. 1962, c.73 (N.J.S.A. 12:7-34.37).

"Educational facility" means an elementary or secondary school.

"Excavation" means the extraction of sand, gravel, earth or any other material.

"Filling" means the depositing of sand, gravel, earth or any other material.

"Floating home" means any waterborne structure designed and intended primarily as a permanent or seasonal dwelling, not for use as a recreational vessel, which will remain stationary for more than 10 days.

"Footprint of development" means the vertical projection to the horizontal plane of the exterior of all exterior walls of a structure.

"Governmental agency" means the Government of the United States, the State of New Jersey, or any other state, or a political subdivision, authority, agency or instrumentality thereof, and shall include any interstate agency or authority.

"Habitable structure" means a structure that is able to receive a certificate of occupancy from the municipal construction code official, or is demonstrated to have been legally occupied as a dwelling unit for the most recent five year period.

"Industrial development" means a development that involves a manufacturing or industrial process, and shall include, but is not

be limited to, electric power production, food and food by-product processing, paper production, agri-chemical production, chemical processes, storage facilities, metallurgical processes, mining and excavation processes, and processes using mineral products.

"Intervening development" means a development with an above-ground structure, excluding any shore protection structure or sand fencing, and includes houses, garages, commercial, industrial or public buildings that are either completed or under active construction as of July 19, 1994 and that have received all necessary Federal, State, and local approvals prior to July 19, 1994. "Intervening development" does not include seawalls, bulkheads, retaining walls, revetments, fences, boardwalks, promenades, patios, decks, carports, prefabricated sheds, docks, piers, lifeguard stands, bath houses, gazebos, swimming pools, utility lines, culverts, railroads, sewage pump stations, or cabanas. An "intervening development" will be determined by looking at the vertical plane of the exterior walls of the structure extended landward and perpendicular to the mean high water line or landward limit of a beach or dune.

"Mean high water" (MHW) is a tidal datum that is the arithmetic mean of the high water heights observed over a specific 19-year Metonic cycle (the National Tidal Datum Epoch). For the New Jersey shore, the two high waters of each tidal day are included in the mean. This datum is available from the Department's Bureau of Tidelands.

"Mean high water line" (MHWL) is the intersection of the land with the water surface at the elevation of mean high water. The elevation of mean high water varies along the ocean front and the tidal bays and streams in the coastal zone.

(Note: For the above two definitions, for practical purposes, the mean high water line is often referred to as the "ordinary" high water line, which is typically identified in the field as the limit of wet sand or the debris line on a beach, or by a stain line on a bulkhead or piling. However, for the purpose of establishing regulatory jurisdiction pursuant to the Coastal Area Facility Review Act (CAFRA) and the Waterfront Development Act, the surveyed mean high water elevation will be utilized.

"Permit" means any legal instrument constituting permission to undertake construction pursuant to CAFRA (N.J.S.A. 13:19-1 et seq.), the Wetlands Act **of 1970** (N.J.S.A. 13:9A-1 et seq.), or the Waterfront Development Law (N.J.S.A. 12:5-3). Permits shall be issued with conditions including requirements that shall, at the discretion of the [Division] **Department**, be satisfied prior to commencement of construction and long term post construction requirements such as monitoring and maintenance.

"Person" means any corporation, company, association, society, firm, partnership, individual, [or] government agency, **or joint stock company**.

"Pesticide" means any substance defined as a pesticide pursuant to the provisions of N.J.A.C. 7:30.

"Program" means the Land Use Regulation Program in the Department of Environmental Protection and Energy.

"Public development" means a solid waste facility, including incinerators and landfills, wastewater treatment plant, public highway, airport including single or multi-air strips, an above or underground pipeline designed to transport petroleum, natural gas, or sanitary sewage, and a public facility, and shall not mean a seasonal or temporary structure related to the tourism industry, an educational facility or power lines. "Public development" does not have to be publicly funded or operated.

"Public highway" means a "public highway" as defined in section 3 of P.L. 1984, c.73 (N.J.S.A. 27:1B-3), namely public roads, streets, expressways, freeways, parkways, motorways and boulevards, including bridges, tunnels, overpasses, underpasses, interchanges, rest areas, express bus roadways, bus pullouts and turnarounds, park-ride facilities, traffic circles, grade separations, traffic control devices, the elimination or improvement of crossings of railroads and highways, whether at grade or not at grade, and any facilities, equipment, property, rights-of-way, easements and interests therein needed for the construction, improvement and maintenance of highways.

"Qualifying municipality" means those municipalities defined in urban aid legislation, N.J.S.A. 52:27D-178, qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. The municipalities meeting this definition in 1993 are: Asbury Park, Bridgeton, Keansburg, Lakewood, Long Branch, Millville, Neptune, Pleasantville, and Salem City.

"Reconstruction" means the repair or replacement of a building, structure, or other parts of a development, provided that such repair or replacement does not increase or change the location of the footprint of the preexisting development, does not increase the area of impervious coverage associated with the development, and does not result in a change in the use of the development. Reconstruction or repair does not include cosmetic repairs, such as replacing siding, windows or roofs, but does include the demolition of exterior walls.

"Regulated activity" or "activity" means any activity for which a permit is required under CAFRA, the Wetlands Act **of 1970** or Waterfront Development Law, and shall also include the terms "project" and "[facility] **development**".

"Regulated [Wetland] **wetland**" means any wetland which has been mapped and the map promulgated pursuant to the Wetlands Act **of 1970**.

"Residential development" means a development that provides one or more dwelling units.

"Seasonal or temporary structures related to the tourism industry" means lifeguard stands and associated temporary equipment storage containers, picnic tables, benches and canopies, beach badge sheds with a footprint not exceeding 64 square feet in area, wooden walkways, stage platforms, and portable rest rooms, which remain in place only during the period from May 1 through September 30, and which are not placed on an existing dune.

"Site" means the land or area upon which a proposed [facility] **development** is to be constructed.

"Site preparation" means [that substantial] physical activity which is an integral part of a continuous process of land development or redevelopment for a particular [facility] **development** which must occur before actual construction of that [facility] **development** may commence. It does not include the taking of soil borings, performing percolation tests, **or** driving **of less than three** test pilings[, or construction of demonstration or model dwelling units].

"Structure" means any assembly of materials above, on or below the surface of the land or water, including but not limited to buildings, fences, dams, pilings, **footings,** breakwaters, culverts, pipes, pipelines, piers, roads, railroads, bridges, and includes floating structures.

7:7-1.4 Standards for evaluating permit applications

All applications for coastal permits **(as defined in N.J.A.C. 7:7-1.3)** shall be approved, conditionally approved or denied pursuant to the Department's Rules [on Coastal Resources and Development] **on Coastal Zone Management,** N.J.A.C. 7:7E.

7:7-1.5 Permits and permit conditions

(a) No person shall undertake or cause, suffer, allow or permit any regulated activity without a permit issued by the [Division] **Department** in accordance with this chapter.

(b) The following standard procedural conditions shall apply to all coastal permits. **Failure to comply with any of the following shall constitute a violation.**

1. A permittee shall notify the [Division] **Department** in writing, at least three working days prior to the beginning of construction on the site or site preparation.

2. A permittee shall notify the [Division] **Department** in writing within five working days prior to commencement of operation of a CAFRA [facility] **development**. At this time, the permittee shall also certify that all conditions of the permit that must be met prior to operation of the [facility] **development** have been met.

3.-4. (No change.)

5. No [substantial] change in plans or specifications upon which a permit is issued shall be made except with the **prior** written permission of the [Division] **Department**, in accordance with N.J.A.C. 7:7-4.10.

6. [A copy of the permit] **The notice of authorization** shall be posted prominently at the site **during construction** and **a copy of the permit and approved plans shall be kept on the construction site and** shall be exhibited upon request to any person.

7. The permittee shall **immediately** inform the [Division] **Department** of any unanticipated adverse effects on the environment not described in the application or in the conditions of the permit. The [Division] **Department** may, upon discovery of such unanticipated adverse effects, and upon the failure of the permittee to submit a report thereon, notify the permittee of its intent to suspend the permit, pursuant to N.J.A.C. 7:7-4.11.

8. Plans and specifications in the application and conditions imposed by a permit shall remain in full force and effect so long as the proposed [facility] **development** or any portion thereof is in existence, unless modified pursuant to N.J.A.C. 7:7-4.10.

9. If any condition or a permit is determined to be legally unenforceable, modifications and additional conditions may be imposed by the [Division] **Department** as necessary to protect the public interest.

10. (No change.)

11. The [Division] **Department** may issue a modified permit for good cause when circumstances warrant minor changes in the original permit which will not result in additional adverse environmental impacts.

12. If a permit condition requires the dedication of land to a political subdivision for open space and/or recreational or other uses, the permittee shall, within 45 days of the political subdivision's decision whether or not to accept the land, furnish proof to the [Division] **Department** of the political subdivision's decision with respect to such dedication, or the permit may be revoked as provided in N.J.A.C. 7:7-4.11.

13. In the event of rental, lease, sale or other conveyance of the site by the permittee, the permit shall be continued in force and shall apply to the new tenant, lessee, owner or assignee so long as there is no change in the site, proposed construction or proposed use of the [facility] **development**, as described in the original application. No such change shall be implemented unless an application for a permit modification is filed pursuant to this chapter.

14. If a permit contains a condition that must be satisfied prior to the commencement of construction, the permittee must comply with such condition(s) within the time required by the permit or, if no time specific requirement is imposed, then within six months of the effective date of the permit, or provide evidence satisfactory to the [Division] **Department** that such condition(s) cannot be satisfied.

15. (No change.)

(c) The following standard substantive conditions shall apply to all coastal permits, where appropriate:

1. (No change.)

2. Development which requires soil disturbance, the creation of drainage structures, or changes in natural contours shall conduct operations in accordance with **the latest revised version of** "Standards for Soil Erosion Sediment Control in New Jersey," [revised and adopted September 9, 1974,] **promulgated** by the New Jersey State Soil Conservation Committee, [except appendices C-1 and C-2, and shall also comply with N.J.S.A. 4:24-39 through 4:24-55] **pursuant to the Soil Erosion and Sediment Control Act of 1975, N.J.S.A. 4:24-42 et seq. and N.J.A.C. 2:90-1.3 through 1.14**. These standards are hereby incorporated by reference.

(d) A permit shall be valid authority to commence construction of a [facility] **development** for a period of five years from its date of issuance. Where construction has commenced within this five year period, the permit**, with the exception of permits issued for activities located below the mean high water line,** shall upon written authorization of the Department be valid, as long as construction continues, until the project is completed subject to the provisions of (d)1 and 2 below.

1. If construction continues beyond the five year period, and then, prior to completion of the project, stops for a **cumulative** period of one year or longer then the permit shall expire.

2. All requests for authorization to continue construction beyond the expiration of a permit shall be submitted to the Department no later than [five] **20** business days prior to the expiration date of the permit.

3. All permits issued for activities occurring below the mean high water line shall be effective for a fixed term not to exceed five years.

(e) The [Division] **Department** may, after public notice, issue a general permit for activities which are substantially similar in nature and cause only minimal individual and cumulative environmental impacts. **The process for issuance of General Permits and the process for authorizing various activities under the issued General Permits is detailed at N.J.A.C. 7:7-7.**

7:7-1.6 Provisional permits

(a) The [Division] **Department** may issue a provisional permit if it finds that the beginning of construction prior to the completion of the full permit review process is necessary [either] to meet the regulatory or funding requirements of a Federal or State agency[, or to respond expeditiously to the harm and suffering caused by a catastrophe including, but not limited to, any storm, explosion, drought or other disaster].

(b) (No change.)

[(c) The Division may waive or modify the requirements of this chapter in the event of an emergency as described in (a) above in order to facilitate the submission and issuance of provisional permits.]

7:7-1.7 Emergency permit authorization

(a) The Department may issue an emergency permit authorization if it determines that there is an imminent threat to lives or property if regulated construction activities are not immediately commenced. Potential for severe environmental degradation will also constitute a basis for issuing an emergency permit authorization. The procedure for obtaining an emergency permit authorization is as follows:

1. The requesting party shall notify the Department's Bureau of Coastal and Land Use Enforcement by telephone of any situation which may constitute an imminent threat to lives, property or the environment. In response to this notification, the Bureau of Coastal and Land Use Enforcement will inspect the subject site whenever feasible to determine the condition of the property, and the extent of the imminent threat. The determination of imminent threat will be made solely by the Department, based on the condition of the property at the time of inspection. The findings of the inspection will be provided to the Land Use Regulation Program, together with a recommendation regarding the request for emergency permit authorization.

2. The requesting party shall notify the Administrator of the Land Use Regulation Program, in writing, of the imminent threat, including details of the condition of existing structures, the vulnerability of people and/or property, or the imminent threat to the environment, and the proposed construction activities for which the emergency permit authorization is being sought. This written notification shall concurrently be provided to the Department's Bureau of Coastal and Land Use Enforcement.

3. The Land Use Regulation Program will make the final determination on the issuance of an emergency permit authorization. The emergency permit authorization may be oral or in writing. If oral authorization is given, the Department shall issue a subsequent written authorization within five working days. In the event that the construction activities deviate from those which have been approved by the oral or written emergency permit authorization, prior authorization of those deviations must be obtained from the Land Use Regulation Program. Any unauthorized deviation in construction from that which has been authorized will constitute a violation of this section, and may be cause for suspension and revocation of the authorization, and/or other enforcement actions.

4. Within 10 working days of the issuance of an emergency permit authorization, the property owner shall submit a complete coastal permit application to the Land Use Regulation Program. This application must include the standard application (CP-1) form, appropriate permit fee, construction plans, compliance statement, and public notice, pursuant to N.J.A.C. 7:7-4.2. Upon receipt and review of the permit application, the Land Use Regulation Program shall issue a coastal permit, or permits, for the activities covered by the emergency permit authorization. This permit may contain conditions which must be satisfied by the permittee in accordance with the time frames established in the permit.

7:7-[1.7]**1.8** Procedure where more than one permit is required

(a) When a proposed [facility] **development** or project requires more than one coastal permit, the [Division] **Department** will require only one application, but that application must comply with the requirements of each applicable permit program. This does not preclude an applicant from submitting separate applications if the timing or magnitude of a project requires it.

(b) [The fee to be submitted for such an application shall be the highest of any of the required permit fees provided for in N.J.A.C. 7:1C-1.5(c).] **The Department shall assess a single permit fee for a project which requires more than one of the following permits, if the permit applications are submitted and processed simultaneously: CAFRA permits; waterfront development permits; coastal wetlands permits; stream encroachment permits; or freshwater wetlands permits (including individuals permits, general permits, and transition area waivers) issued under N.J.A.C. 7:7A. The permit fee for the project shall be calculated in accordance with N.J.A.C. 7:1C-1.5(c).**

7:7-[1.8]**1.9** Permit fees

Permit fees are established by the Department pursuant to the 90 Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.) and are published at N.J.A.C. 7:1C-1.5. The [Division] **Department** will maintain a printed fee schedule for public use.

7:7-[1.9]**1.10** Construction

This chapter shall be liberally constructed to effectuate the purpose of the Acts under which it was adopted. The [Division] **Department** may, in its discretion, relax their application when necessary and in the public interest.

7:7-[1.10]**1.11** (No change in text.)

SUBCHAPTER 2. ACTIVITIES FOR WHICH A PERMIT IS REQUIRED

7:7-2.1 CAFRA

(a) A CAFRA ["facility" includes any of the facilities designed or utilized for the purposes enumerated in N.J.S.A. 13:19-3(c), including "Public facilities and housing"; "Sanitary landfills"; "Waste treatment plants"; "Road, airport or highway construction"; "New housing developments of 25 or more dwelling units or equivalent"; and "Expansion of existing developments by the addition of 25 or more dwelling units or equivalent".] **permit shall be required for:**

1. Any development located on a beach or dune;

2. A development located in the CAFRA area between the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result either solely or in conjunction with a previous development, in:

i. A development if there is no intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters;

ii. A residential development having three or more dwelling units if there is an intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters;

iii. A commercial development having five or more parking spaces or equivalent parking area if there is an intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters; or

iv. A public development or industrial development;

3. A development located in the CAFRA area between a point greater than 150 feet landward of the mean high water line or any tidal waters or the landward limit of a beach or dune, whichever is most landward, and a point 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, which is located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L. 1978, c.14 (N.J.S.A. 52:27D-178), or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest decennial census, that would result, either solely or in conjunction with a previous development, in:

i. A residential development having 25 or more dwelling units;

ii. A commercial development having 50 or more parking spaces or equivalent parking area; or

iii. A public development or industrial development;

4. A development located in the CAFRA area beyond 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, and which is located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L. 1978, c.14 (N.J.S.A. 52:27D-178), or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest decennial census, that would result, either solely or in conjunction with a previous development, in:

i. A residential development having 75 or more dwelling units;

ii. A commercial development having 150 or more parking spaces or equivalent parking area; or

iii. A public development or industrial development; and

5. Except as otherwise provided above, a development in the CAFRA area at a point 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result, either solely or in conjunction with a previous development in:

i. A residential development having 25 or more dwelling units;

ii. A commercial development having 50 or more parking spaces or equivalent parking area; or

iii. A public development or industrial development.

(b) The Department interprets [the statutory term "facility" as defined by CAFRA in its broadest sense so as to provide adequate environmental safeguards for the construction of any "facility" in the coastal area. On the other hand, the] **its obligation and responsibility to regulate development as defined by CAFRA to include review of the potential impacts of any development, if at least part of that development is located within the area in which a CAFRA permit is required. Therefore, if any development requires a CAFRA permit, the Department will review all of the components of the development, not just those that triggered the regulatory thresholds of CAFRA. In addition, the Department will review all the components of a development that spans the zones in (a) above if the total development exceeds a regulatory threshold. The** Department interprets the statutory intent as excluding [relatively minor construction or reconstruction] **developments with relatively minor impacts**. To that end, the following statutory terms are interpreted **to mean the following**, for the purposes of this section[, as follows].

[1. "Road, airport, or highway construction" means:

i. The widening of an existing road or highway, including jughandle construction, which increases the number of through lanes;

ii. New road construction of more than 1,200 feet in length or the extension of an existing road by more than 1,200 feet, including a cumulative total of 1,200 feet of road extension or construction in any one municipality at any one site except where such road is totally within a new housing development consisting of 24 units or less;

iii. The impervious or pervious paving of an area for 300 or more parking spaces for motor vehicles and related access, or paving of an area equal to or greater than three acres excluding access drives.

2. "Public facilities" exclude elementary and secondary schools.

3. "Installation of above or underground pipelines designed to transport petroleum, natural gas, and sanitary sewage," means:

i. The construction or extension of a sewer line 1,200 feet or more in length with a design capacity of 9,600 gallons per day or greater, including a cumulative total of 1,200 feet or more of sewer line extensions in any one municipality at any one site except where such a sewer line is totally within a new housing development consisting of 24 units or less;

ii. The replacement, restoration and repair of sewerage pipes, including substitutions of materials in these pipes, if an increase design capacity will result;]

1. Public development, for the purposes of (a)3, 4, and 5 above only, does not include:

i. The construction of a new road, sanitary sewer pipeline, storm sewer system, petroleum pipeline or natural gas pipeline of less than 1,200 feet in length or the extension of a road, sanitary sewer pipeline, storm sewer system, petroleum pipeline or natural gas pipeline of less than 1,200 feet in length, not to exceed a cumulative total of 1,200 feet in any one municipality at any one site, unless the construction is located within a development requiring a CAFRA permit in which case it shall be considered part of the development for which a permit is required;

ii. The maintenance, repair or replacement of existing water, petroleum, sewage or natural gas pipelines, and associated pump stations and connection junctions, located completely within paved roadways or paved, gravel, or cleared and maintained rights-of-way, provided that the replacement of sewage pipelines and associated pump stations does not result in an increase in the associated sewer service area;

iii. The repair, modification, or replacement of sanitary system components, including upgrading of systems from primary to secondary treatment, [if] **provided that** an increase in design effluent flow will **not** result; **or**

[iv. Sewer line extensions to service new housing developments of more than 25 dwelling units.]

iv. The construction, maintenance, repair or replacement of water lines, telecomunication lines and cable television lines.

2. For the purposes of (a)2, 3, 4, and 5 above, facilities which provide government services and are not specifically included in the definition of public development at N.J.A.C. 7:7-1.3 or provide recreational areas will be regulated in accordance with the thresholds for commercial developments.

3. Equivalent parking areas will be calculated at 270 square feet per parking space, including one half of the associated aisle area, excluding access drives.

4. ["New housing] **For the purposes of** (a)2 through 5 above development or expansion of existing developments [by the addition of 25 or more dwelling units or equivalent"] **"either solely or in conjunction with a previous developments"** means:

[i. The subdivision or resubdivision of a parcel of land which results in the creation of 25 or more building lots, whether or not the owner of such parcel will conduct actual construction. Any building lots which have been determined to be exempt from the requirements of this subchapter due to on-site construction on or before September 19, 1973, will not be counted when determining if a new or expanded residential development exceeds 25 units. The total number of building lots need not be restricted to any single municipal tax block nor to any one period of time in order to require a permit;]

[ii.]**i.** The construction of [25 or more dwelling units] **any residential or commercial development** on contiguous parcels of property, regardless of present ownership, where there is a proposed sharing of infrastructure constructed to serve those parcels including, but not limited to, roads, utility lines, drainage systems, open spaces or septic drain fields;

[iii.]**ii.** The construction of [25 or more dwelling units] **any residential or commercial development** on contiguous parcels of property which were under common ownership on or after September 1, 1973 (the effective date of CAFRA), regardless of present ownership, **or any subdivision or resubdivision of a parcel of land which occurred after September 19, 1973**;

[iv.]**iii.** The construction of [25 or more dwelling units] **any residential or commercial development** on contiguous parcels of land where there is some shared pecuniary, possessory, or other substantial common interest by one or more individuals in the units;

[iv. The construction of 25 or more motel or hotel rooms campsites (for tents and/or recreational vehicles), mobile home sites, or the construction of hospitals, nursing homes or other institutions with a capacity of 75 or more beds;]

[vi.]**iv.** The mooring of 25 or more floating homes in a marina. For the purposes of this subparagraph, a floating home is defined as a waterborne structure designed and intended primarily as a permanent or seasonal dwelling, not for use as a recreational vessel, and which will remain stationary for more than [30] **10** consecutive days;

[vii.]**v.** The addition of one or more dwelling units or equivalent to any existing dwelling units for which construction had commenced subsequent to September 19, 1973 where such addition, when combined with the existing dwelling units **or parking area**, results in a total [of 25 or more units] **exceeding the regulatory threshold.** Any dwelling units **or parking areas** in existence on or before September 19, 1973 which have been determined by the Department to be exempt from the requirements of this subchapter due to on-site construction on or before September 19, 1973 will not be counted when determining if a new or expanded [residential] development exceeds [25 units] **the regulatory threshold.**

vi. The total number of dwelling units **or parking spaces** in a new or expanded development need not be restricted to any single municipal tax block nor to any one period in time in order to require a permit;

[viii. The construction of 25 or more contained units including but not limited to cabanas which are walled and roofed structures whose primary purpose is to provide shelter and which are affixed to the land and provide potable water and wastewater services or the addition of one or more such contained units to any facility for which construction had commenced subsequent to Septemer 19, 1973 where such addition results in a total of 25 or more units;]

[ix.]**vii.** The construction of [24 or fewer dwelling units or equivalent] **a development below the regulatory threshold** as defined in this section, where such construction is part of a larger planned [facility] **development** in which the total [number of dwelling units or equivalent will exceed 24 units] **development will exceed the regulatory threshold.**

5. (No change.)

[6. All exemptions from this subchapter, which were obtained on the basis that on-site construction had taken place on or before September 19, 1973, shall terminate on June 7, 1988 except as provided in (b)6i through iv below. The Division may authorize an extension of the exemption for a period of time not to exceed five years for the initial extension period and not to exceed one year for any subsequent period. All requests for extensions of exemptions shall comply with the following requirements.

i. All initial extension period requests shall be submitted, in writing, on or before June 7, 1988 to: Chief, Bureau Coastal Enforcement and Field Services, Division of Coastal Resources, New Jersey Department of Environmental Protection, CN 401, Trenton, N.J. 08625.

ii. All requests other than initial extension period requests shall be submitted to the Division as provided in (b)6i above no later than 30 days prior to the expiration of the exemption.

iii. All requests shall be submitted with information which shall be sufficient to enable the Division to make a determination that significant construction has occurred on the site during the 12 month period prior to June 7, 1988 and that the project is being constructed in accordance with plans that were submitted to the Division at the time the exemption was granted.

iv. If no significant construction has occurred during the 12 month period prior to the expiration of the exemption as provided in (b)6iii above, the Division may, in its discretion and upon written request, grant an extension of the exemption provided that the interruption in the construction process was caused by factors beyond the developer's control. Such delaying factors, along with a description of the efforts made by or on behalf of the developer to overcome such factors, shall be documented in the exemption request.]

(c) This subchapter shall not apply to developments which meet one of the following criteria specified at N.J.S.A. 13:19-5:

1. A development which has received preliminary site plan approval pursuant to the "Municipal Land Use Law," P.L. 1975, c.291 (N.J.S.A. 40:55D-1 et seq.) or a final municipal building or construction permit on or before July 19, 1994, provided that construction

begins by July 19, 1997, and continues to completion with no cumulative lapses in construction activity of more than one year;

i. An exemption under this section is granted only for the specific project depicted on the approved site plan or described in the building or construction permit.

ii. Any development that required a permit pursuant to P.L. 1973, c.185 (N.J.S.A. 13:19-1 et seq.) prior to July 19, 1994 shall continue to require a CAFRA permit and shall not be exempted under this section.

iii. For purposes of this subsection, "construction" means having completed the foundations for buildings or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine if construction of a development or part of a development has begun by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Construction" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction.

2. A residential development which has received preliminary subdivision approval or minor subdivision approval pursuant to the "Municipal Land Use Law," P.L. 1975, c.291 (N.J.S.A. 40:55D-1 et seq.) on or before July 19, 1994 where no subsequent site plan approval is required, provided that construction begins by July 19, 1997, and continues to completion with no cumulative lapses in construction activity of more than one year;

i. An exemption under this section is granted only for the specific project depicted on approved plans or described in the approving resolution or construction permit.

ii. Any development that required a permit pursuant to P.L. 1973, c.185 (N.J.S.A. 13:19-1 et seq.) prior to July 19, 1994 shall continue to require a CAFRA permit and shall not be exempted under this section.

iii. For purposes of this subsection, "construction" means having completed the foundations for buildings or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine if construction of a development or part of a development has begun by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Construction" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction.

3. The reconstruction of any development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law; and further provided that such reconstruction does not result in:

i. The enlargement or relocation of the footprint of the development or

ii. An increase in the number of dwelling units or parking spaces within the development.

iii. A relocation landward may be exempt from (c)3i above if the Department determines, in writing, that such a relocation would result in less environmental impact than the damaged or destroyed development.

iv. Any person requesting a determination concerning relocation landward shall follow the procedures for an exemption determination at (d) below).

4. The enlargement of any development provided that such enlargement does not result in:

i. The enlargement of the footprint of the development; or

ii. An increase in the number of dwelling units or parking spaces within the development.

5. The construction of a patio, deck or similar structure at a residential development, provided that such construction does not include the placement of pilings or placement of a structure on a beach or dune.

i. For the purposes of this subsection, "similar structure" includes: open fences, open carports, flower boxes, gardens, gazebos, open or screened porches, satellite dishes and antennas, sheds, wooden boardwalks and gravel or brick/paver block walkways, showers/spa/hot tubs which do not discharge to surface waters or wetlands, and timber dune walker structures constructed in accordance with Department specifications found at N.J.A.C. 7E, Rules on Coastal Zone Management.

ii. For the purposes of this subsection, "similar structure" does not include: the construction of swimming pools, garages, retaining walls, bulkheads, revetments, driveways and associated parking areas, paved yard areas, or outbuildings.

6. Services provided, within the existing public right-of-way, by any governmental entity which involve:

i. The routine reconstruction, substantially similar functional replacement, or maintenance or repair of public highways. The paving of an existing roadway is not considered to be a substantially similar functional replacement;

ii. Public highway lane widening, intersection and shoulder improvement projects which do not increase the number of travel lanes; or

iii. Public highway signing, lighting, guide rail and other nonintrusive safety projects, including traffic control devices.

7. Any development that has an existing, valid CAFRA permit provided that construction begins prior to the expiration date of the permit and continues with no cumulative lapses in construction activity of more than one year.

i. "Construction" means having completed the foundations for buildings or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine if a development or part of a development has begun construction by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Construction" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction.

8. The expansion of an existing, functional amusement pier, provided such expansion does not exceed the footprint of the existing, functional amusement pier by more than 25 percent, and provided such expansion is located in the area beyond 150 feet landward of the mean high water line, beach or dune, whichever is most landward.

(d) Any exemption based upon on-site construction on or before September 19, 1973 shall expire on July 19, 1997.

(e) Development that is exempt from CAFRA requires no certification or approval from the Department, except as may be required by other programs administered by the Department. Any person who wishes may request from the Department a written determination of a development's exemption from the requirements of this subchapter.

1. For an exemption pursuant to (c)1 and 2 above, the following shall be submitted:

i. A folded copy of the preliminary local approval of the site plan or subdivision, including a copy of the approved site plan or subdivision itself, a copy of the resolution approving the site plan or subdivision, or a copy of the building permit with approved plan and soil conservation district approval where required; and

ii. The fee specified at N.J.A.C. 7:1C-1.5(a)3v.

2. For an exemption pursuant to (c)3, 4 and 5, above the following shall be submitted:

i. Plans showing the existing structures and site conditions with locations and dimensions, and all proposed structures, filling, grading, excavation and clearing;

ii. Photographs of the site; and

iii. The fee specified at N.J.A.C. 7:1C-1.5(a)3v.

3. For an exemption pursuant to (c)8 above, the following shall be submitted:

i. A description of the location of the amusement pier including county, municipality, lot(s) and block(s);

ii. A copy of a site plan showing the location of the existing, functional amusement pier and the proposed location of the expansion;

iii. Documentation concerning the size of the footprint of the existing functional amusement pier and the size of the proposed expansion;

iv. Photographs of the site; and

v. The fee specified at N.J.A.C. 7:1C-1.5(a)3v.

7:7-2.2 Wetlands

[NOTE: This subchapter incorporates the requirements of the Wetlands Order issued by the Commissioner of Environmental Protection on April 13, 1972 pursuant to P.L. 1970, c.272.]

(a) Wetlands permits are required for [almost] all activities in coastal wetlands delineated and mapped pursuant to the Wetlands Act **of 1970**[, and are divided into two categories.] **including, but not limited to:**

[1. Type "A" Wetlands permits are required for:]

[i.]**1.** The cultivation and harvesting of naturally occurring agricultural or horticultural products. This provision shall not apply to the continued production of commercial salt hay or other agricultural crops on lands utilized for these purposes on or before April 13, 1972;

[ii.]**2.** The excavation of an individual mooring slip;

[iii.]**3.** The maintenance or repair of bridges, roads, highways, railroad beds or the facilities of any utility or municipality. This provision shall not apply to emergency repairs necessitated by a natural disaster or a sudden and unexpected mechanical, electrical or structural failure. Written notification of such repairs shall be provided to the Division within seven days after their initiation;

[iv.]**4.** The construction of catwalks, piers, docks, landings, footbridges and observation decks[.];

[2. Type "B" Wetlands permits are required for:]

[i.]**5.** The installation of utilities;

[ii.]**6.** Excavation of boat channels and mooring basins;

[iii.]**7.** The construction of impoundments;

[iv.]**8.** The construction of sea walls;

[v.]**9.** The diversion or appropriative use of water;

vi.]**10.** The use of pesticides, except those applied to the skin or clothing for personal use;

[vii.]**11.** Driving or causing to pass over or upon wetlands, any mechanical conveyance which may alter or impair the natural contour of the wetlands or the natural vegetation[.]; **and**

[viii.]**12.** Filling, excavation or the construction of any structure.

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

7:7-2.3 Waterfront development

(a) The waterfront area regulated under this subchapter is divided into three sections, and will vary in width in accordance with the following rules:

1. Within any part of the Hackensack Meadowland Development District delineated at N.J.S.A. 13:17-4.1, the area regulated by this section shall include any tidal waterway of this State and all lands lying thereunder, up to **and including** the mean high water line.

2. Within the "coastal area" defined by section 4 of CAFRA (N.J.S.A. 13:9-4), the regulated waterfront area shall [consist of any tidal waterway and all lands lying thereunder up to the mean high water line and also extend inland to include an adjacent upland area to a boundary 500 feet inland of the mean high water line, the most inland oceanfront beach, or most inland oceanfront dune, as these terms are defined in N.J.A.C. 7:7E, measuring from that feature which results in the greatest regulated waterfront area] **include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line.**

3. In all other areas of the State (that is in those areas outside of the "coastal area" defined by CAFRA and outside of the Hackensack Meadowlands Development District), the regulated waterfront area shall [consist of any tidal waterway] **include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line**, and an adjacent upland area extending landward from the mean high water line to the first paved public road, railroad or surveyable property line existing on September 26, 1980 generally parallel to the waterway, provided that the landward boundary of the upland area shall be no less than 100 feet and no more than 500 feet from the mean high water line.

(b) (No change.)

(c) The following development activities will require a permit in that portion of the waterfront area at or below the mean high [tide] **waterline**:

1. The removal or deposition of sub-aqueous materials (for example, **excavation,** dredging or filling).

2. The construction or alteration of a dock **(fixed or floating)**, wharf, pier, bulkhead, breakwater, groin, jetty, seawall, bridge, piling, mooring dolphin, pipeline, cable, or other similar structure.

3. The mooring of a floating home for more than [30] **10** consecutive days. Floating homes in use within the waters of this state prior to June 1, 1984 shall not require a permit (See N.J.A.C. 7:7-2.1(b) for definition of floating home.)

4. [Dredging, the installation of aids-to-navigation, or other similar activities directly related to navigation will not require a permit when conducted by an agency of the United States Government, nor will the] **The** installation of temporary aids to navigation by any person, [provided that it is] **if they remain** in place for [no] more than [seven] **10 consecutive** days.

[5. The repair, replacement or renovation of an existing dock, wharf, pier, floating dock or similar structure will not require a permit, provided that the repair, replacement or renovation does not increase the size or dimension of the structure, and that the structures, and that the structure is used solely for residential purposes, or for the docking or servicing of pleasure vessels. For the purposes of the section, "repair, replacement or renovation" means the replacement of any component of a structure intended to restore it to a sound state or the condition in which it originally existed.]

(d) A permit shall be required in the waterfront area for the construction, reconstruction, alteration, expansion or enlargement of any structure, or for the excavation or filling of any area with the exceptions listed below:

1.-2. (No change.)

[3. In the area defined at (a)2 above, reconstruction of any building existing prior to January 1, 1981 not resulting in an increase in size of more than 750 square feet over that of the building as it existed prior to January 1, 1981, provided the reconstruction does not bring the footprint of the building any closer to the mean high water line, most inland oceanfront beach, or most inland oceanfront dune;

4. In the area defined at (a)2 above, the expansion or enlargement of any existing structure, conducted in one or more phases on or after July 17, 1990 such that the total area of all phases of expansion or enlargement is 750 square feet or less, provided the expansion does not bring the footprint of the structure any closer to the mean high water line, most inland oceanfront beach, or most inland oceanfront dune; provided, however, the construction or the reconstruction of a bulkhead or other shore protection structure shall not be included in the calculation of expansion or enlargement area;]

[5.]**3.** [Minor] **In the waterfront area defined in (a)3 above, minor** additions to or changes in existing structures or manufacturing operations **that do not increase the amount of impervious cover**, where such changes or additions do not result in a change in the present land use of the site[.];

[6.]**4.** The repair, replacement or renovation of [a permanent] **any legally existing** dock, wharf, pier, bulkhead or building [existing prior

to January 1, 1981] **provided that the repair, replacement or renovation will not have any additional permanent adverse effects on any natural resources on-site, including, but not limited to, wetlands, shallow water habitat, submerged vegetation, and natural shoreline configuration, and** provided the repair, replacement or renovation does not increase the size of the structure and the structure is used solely for residential purposes or the docking or servicing of pleasure vessels;

[7.]**5.** The repair, replacement or renovation of [a] **any legally existing** floating dock, mooring raft or similar temporary or seasonal improvement or structure **provided that the repair, replacement or renovation will not have any additional permanent adverse effects on any natural resources on-site, including, but not limited to, wetlands, shallow water habitat, submerged vegetation, and natural shoreline configuration, and** provided the improvement or structure does not exceed in length the waterfront frontage of the parcel of real property to which it is attached and is used solely for the docking or servicing of pleasure vessels[;]**.**

[8. In the area defined at (a)2 above, development not within 500 feet of the mean high water line consisting of the construction, reconstruction, or expansion or enlargement of one single-family residential dwelling unit.

9. In the area defined in (a)2 above, any development which is not within 500 feet of the mean high water line and that has received a Division determination pursuant to (e)3 below that it does not directly affect commerce and navigation along the waterfront or on the waterways.

10. This subchapter shall not apply to any development or activity in the upland area defined in (a)3 above and in man-made waterways and lagoons for which on-site construction, including site preparation, was in progress on or prior to September 26, 1980 or to any development or activity in the upland area defined in (a)2 above for which all necessary municipal approvals or permits were received prior to October 3, 1988, or for which lawful on-site construction, excluding site preparation, was in progress on or prior to July 17, 1990. For the purpose of this section, "construction, excluding site preparation" encompasses improvements which include, but are not limited to, paved roads, curbs, pilings, water lines, sewer lines, and storm drains. In order for such improvements to be considered "in progress" on or before July 17, 1990, materials must have been brought to the site and partially installed on or before that date. For the purpose of this section, "construction, excluding site preparation" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction or structures.

i. Any interruption in the process of construction and completion of the facility in excess of one year may be cause for denial of an exemption request under this paragraph, or where previously exempted, it may be causes for revocation of such exemption under this paragraph, by the Division.

ii. A finding that a proposed facility is exempt under this paragraph from the requirements of this subchapter shall apply only to the facility as conceived and designed prior to September 26, 1980, for the area defined in (a)3 above, and prior to July 17, 1990 for the area defined in (a)2 above. Any modification which expands or substantially changes the exempted facility and which would not be classified as a minor modification under N.J.A.C. 7:7-4.10 shall require a permit.]

(e) Any person proposing to undertake or cause to be undertaken any development or activity in or near the waterfront area may request in writing a determination that the proposal is not subject to the requirements of this subchapter on the basis that the proposed development site is located outside the waterfront area, or that the proposed [facility] **development** does not require a permit under (d) above[, provided that no development proposed in the area described in (a)2 above shall be considered exempt because it does not affect commerce or navigation along the waterfront or on the waterways pursuant to (d)9 above and (e)3 below unless such determination is first obtained from the Division].

1. The requesting party shall provide the [Division] **Department** with two copies of a map depicting the project site in a scale of not less than 1:2,400 (one inch equals 200 feet) **and depicting the mean high water line,** and **with** a project description. When the applicability determination request is based on a proposed facility's location in accordance with [paragraphs (a)2 and] (a)3 above, the map shall **also** depict that property line as it is depicted on the official local tax map as of September 26, 1980, [for the area defined in (a)3 above, and July 17, 1990, for the area defined in (a)2 above, shall delineate the mean high water line,] and shall graphically depict the proposed project.

[2. The Division shall, within 30 days of receipt, return the map of the requesting party, indicating on the map the waterfront area boundary and its relationship to the project site.

3. When the request for a determination that the project is not subject to the requirements of this subchapter is based on a proposed lack of direct effect upon commerce and navigation along the waterfront or upon waterways of a development proposed for that portion of the area described in (a)2 above which is not within 500 feet of the mean high water line, the map shall be accompanied by an impact statement which includes the following:

i. Project description including:

(1) Location of the project;

(2) Size, in terms of both overall area and footprint;

(3) Proposed use of the project; and

(4) A listing of all adjacent developed properties with their uses and the distance of each from the proposed project; and

ii. Information adequate to demonstrate the following:

(1) Erosion control sufficient to maintain current coastal or bottom configuration;

(2) Lack of interference with public access to currently established commercial and recreational uses including tourism; and

(3) Compatibility with current commercial uses, including tourism, within the waterfront area as defined in (a) above.

4. Nothing in this rule shall be construed to prevent filing of a completed application for a waterfront development permit at the option of the applicant instead of a request for a determination that the project is not subject to the requirements of this subchapter for that area of the waterfront defined in (a)2 that is beyond 500 feet from the mean high water line.

5. Any person who believes that a proposed development or activity is exempt from the requirements of this subchapter due to lawful on-site construction pursuant to (d)10 above may request in writing a determination of exemption from the Division.

i. Exemptions shall be sought and considered upon submission of information sufficient for the Division to determine that the physical work specified in (d)10 above necessary to begin the construction of the proposed facility was actually performed prior to September 26, 1980 for the area defined in (a)1 and (a)3 above and prior to July 17, 1990 for the area defined in (a)2 above, or that all required local permits have been obtained prior to October 3, 1988 for the area defined in (a)2 above.]

(f) A **Waterfront Development** permit is required for the [additional] filling of any lands formerly flowed by the tide, if any filling took place after 1914 without the issuance of a tidelands grant, lease or license by the Department of Environmental Protection **and Energy** and Tideland Resource Council or their predecessor agencies, even where such lands extend beyond the landward boundary of the upland area defined in (a)**3** above, **or up to and including the mean high water line in the areas defined in (a)1 and 2 above.**

1. A **Waterfront Development** permit application submitted under this subsection must be submitted in conjunction with an application for a Tidelands grant, lease or license.

(g) A Waterfront Development permit shall not be required for any development or activity in the upland area defined in (a)3 above and in manmade waterways and lagoons for which on-site construction, excluding site preparation, was in progress on or prior to September 26, 1980. For the purpose of this section, "construction, excluding site preparation" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction or structures. For the purposes of this section, "construction, excluding site preparation" does encompass improvements which include, but are not limited to, paved roads, curbs, and storm drains.

1. Any person who believes that a proposed development is exempt from the requirements of this subchapter due to on-site construction may request in writing a determination of exemption from the Department in accordance with (g)2 below.

2. Exemptions shall be applied for and considered upon submission of information sufficient for the Department to determine that the physical work specified in (g)1 above necessary to begin the construction of the proposed development, was actually performed prior to September 26, 1980 in the area defined in (a)3 above.

i. Any interruption in the process of construction and completion of the development may be cause for denial of an exemption request, or where previously exempted, it may be cause for revocation of such exemption, by the Department.

ii. A finding that a proposed development is exempt from the requirements of this subchapter shall apply only to the development as conceived and designed prior to September 26, 1980. Any modification which expands or substantially changes the exempted development shall require a permit.

SUBCHAPTER 3. PRE-APPLICATION [CONFERENCES] **REVIEW**

7:7-3.1 Purpose

[A pre-application conference is an optional, but highly recommended, step. It allows the Division to inform potential applicants of the various procedures and policies applicable to a permit application. The Division will candidly discuss the apparent strengths and weaknesses of the proposed facility at this conference, but can in no way commit itself to approval or rejection of a proposed facility as a result of these discussions.] **A pre-application review is an optional service especially recommended for major development. At this review the Department will discuss apparent strengths and weaknesses of the proposed development, as well as the procedures and policies that would apply to the particular development. The review is intended to provide guidance and does not constitute a commitment to approve or deny a permit application for the development.**

7:7-3.2 Request for a pre-application [conference] **review**

(a) Potential applicants **for major projects** are encouraged to request a pre-application [conference] **review** with the [Division] **Department** at the earliest opportunity. A request for a pre-application [conference] **review** shall be made in writing and shall include [a project description, a tax lot and block designation of the site and a United States Geological Survey quadrangle map showing the site] **a conceptual proposal for the proposed development.**

1. The conceptual proposal shall include:

i. A written description of the site and the proposed development including the dimensions, number, and uses of proposed structures;

ii. Maps indicating the site's location and rough internal plan of development; and

iii. A tax lot and block designation of the site and a United States Geological Survey quadrangle map or county road map showing the site.

(b) The [Division] **Department** shall, within [five] **10** days of receipt of such request, schedule a pre-application conference **if one is warranted. Alternatively, the Department may suggest a telephone conversation if only a small number of relatively straightforward issues need discussion.** A pre-application [conference] **review** will not be considered a declaration of intent to submit an application to the [Division] **Department** as defined in N.J.A.C. 7:1C-1.3 of the 90-Day Construction Permit rules.

[7:7-3.3 Conceptual proposal

Prior to the pre-application conference, a potential applicant should present a conceptual proposal for the proposed facility to the Division. This document should include:

1. A written description of the site and the proposed facility;
2. The dimensions, number, and uses of proposed structures; and,
3. Maps indicating the site's location and rough internal plan of development.]

7:7-[3.4]**3.3** Discussion of information requirements

(a) The [Division] **Department** shall [candidly] discuss the **information, including the** level of detail and areas of emphasis, which [will be necessary] **must be included in a permit application for the proposed development** to allow the [Division] **Department** to review the application if one is submitted. **This does not preclude the Department from requesting additional information based upon review of the formal application submittal.**

[(b) In cases where an Environmental Impact Statement (EIS) would be required, the Division shall determine which specific EIS requirements need not be included by the potential applicant.]

[1.](**b**) The [Division] **Department** shall also make available to the potential applicant current information on nearby projects in the [Division's library and] **Department's** files. [2.] This information may be incorporated, by reference, in the applicant's EIS if agreed to by the [Division] **Department**.

7:7-[3.5] **3.4** Memorandum of record

(a) After the pre-application [conference] **review**, the [Division] **Department** shall, **upon request,** prepare a written memorandum of record **or policy compliance checklist** summarizing the discussion of the [apparent strengths and weaknesses of the] proposed [facility] **development**, the apparent sensitivity of the land and water features of its site, and the level of detail and the areas of emphasis necessary in the information that **would** be required as part of [the] **an** application.

(b) The memorandum of record shall be mailed to the potential applicant within [10] **20** days of the pre-application [conference] **review**. If [the potential applicant submits] an application **is submitted**, a copy of the memorandum of record **or policy compliance checklist** shall be included. [When no conference is held, this guidance may be given verbally only with reference to specific rules.]

(c) The memorandum of record shall not be construed as a decision of the Department **and shall not have any binding effect on the final decision of the Department on any permit application.**

SUBCHAPTER 4. PERMIT REVIEW PROCEDURE

7:7-4.1 General

(a) The provisions of CAFRA, the Wetlands Act **of 1970**, and the Waterfront Development Law are supplemental to other laws, including the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq., P.L. 1975, Chapter 291). Early consultation with the [Division] **Department** by a prospective applicant can avoid unnecessary duplication and delay in development review at the state and local levels for the same [facility] **development**, if applications for proposed [facilities] **developments** are processed at the same time at the State and local levels.

(b) Applicants for projects which require review or approval of a county-wide or area-wide planning agency or development, transportation or improvement authority [shall] **should** consult with that agency on a regular basis to insure that the project and any changes to it are acceptable. **Projects which are not consistent with the applicable Wastewater Management Plan should not be submitted until consistent or until a Plan Amendment is obtained because the Department's regulations under the Water Pollution Control Act require that consistency with a Wastewater Management Plan be demonstrated before any other Department approvals can be issued.**

(c) The 90 Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.) and its implementing regulations (N.J.A.C. 7:1C) establish certain uniform permit review requirements for five types of construction permits issued by the Department, including CAFRA, Wetlands **Act of 1970** and Waterfront Development permits. This chapter incorporates and is consistent with those requirements.

7:7-4.2 Application contents

(a) Applications shall [consist of] **contain the following:**

1. [a] **A** completed DEPE Standard Construction Permit (CP-1) form[,];

2. [a] **A** check or money order in the amount of the appropriate fee (see N.J.A.C. 7:1C-1.5)[, and any additional information required in this section];

3. Verification (white receipt or green card is acceptable) that a complete copy of the application package has been submitted to the clerk of the municipality in which the proposed development will occur, and to the planning board and environmental commission of the municipality in which the proposed development would occur. Applications for CAFRA permits within the Pinelands Preservation Area or Protection Area must also contain verification that a complete copy of the application package has been submitted to the Pinelands Commission;

4. Verification that a certified mail notice with return receipt requested (white receipt or green card is acceptable) and a copy of the siteplan and CP-1 form have been forwarded to the planning board and environmental commission of the county in which the proposed development would occur and to all landowners within 200 feet of the property or properties on which the proposed development would occur, along with a certified list of all landowners within 200 feet. The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions;

5. A copy of a public notice shall be included in the application to the Department. The notice shall read as follows:

"This letter is to provide you with legal notification that an application will be submitted to the New Jersey Department of Environmental Protection and Energy, Land Use Regulation Program for a permit for the development shown on the enclosed plan.

The complete permit application package can be reviewed at either the municipal clerk's office or by appointment at the DEPE's Trenton office. The Department of Environmental Protection and Energy welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter. In your letter, you may request a hearing if you believe one is necessary. Requests for a public hearing should state the specific nature of the issues proposed to be raised at the hearing. Both comments and hearing requests should be sent along with a copy of this letter to:

New Jersey Department of Environmental Protection
and Energy
Land Use Regulation Program
CN 401
5 Station Plaza
Trenton, New Jersey 08625
Attn: (County in which the property is located)
Section Chief";

6. Proof that notification of filing of an application for a CAFRA permit was published in the DEPE Bulletin;

7. Photographs showing the project site;

8. Fifteen copies of development plans. (Plans must be folded if larger than 8½ inches by 11 inches in size.)

i. For CAFRA applications, Waterfront Development applications for activities occurring above the mean high water line, and for Wetlands applications for activities other than catwalks, docks and piers:

(1) The set of plans must include, but not be limited to, the following information:

(A) All existing structures, roads, utilities, topography, vegetation, and coastal and freshwater wetlands, and any proposed structures, filling, grading, excavation, clearing, roads, utilities, sewers, landscaping and lighting, and soil erosion and sediment control devices.

(B) Any additional information specified in the "Checklist for Administrative Completeness for Waterfront Development, Tidal Wetlands, and CAFRA".

(2) Plans for any development consisting of more than one single family dwelling or duplex must be signed and sealed by a Professional Engineer or Land Surveyor.

ii. For Waterfront Development applications for activities occurring below the mean high water line and for Wetlands applications for catwalks, docks or piers:

(1) The set of plans must include, but not be limited to, the following information specified in the "Checklist for Administrative Completeness for Waterfront Development, Tidal Wetlands, and CAFRA":

(A) The lot;

(B) All existing waterfront structures (piers, bulkheads, pilings, etc.) on the lot and all immediately adjacent lots;

(C) Locations and dimensions of structures, lots, wetlands, mean high water line, upland property, road and utilities;

(D) The proposed work area and construction/development area clearly labelled and showing all distances and dimensions;

(E) The general site location of the development, which may be on a county or local road map or an insert from a U.S. Geological Survey topographic quadrangle map;

(F) The scale of the survey or map, and a north arrow;

(G) The name of the person who prepared the plan and the date it was prepared;

(H) The name of the applicant, lot and block number, and municipality, leaving a margin of one inch on the top and left hand sides of the plan; and

(I) The location of upper and lower wetlands boundary.

(2) Dredging plans must show the area to be dredged, existing depth, proposed depth, adjacent depths, the amount of material to be dredged, the method of dredging, the exact location of the dredge material dewatering and disposal site by municipal block and lot, and the means of containing spoils. A dredge material analysis may also be required.

(3) Dock plans must show channel location, location and orientation of propsed mooring areas, mooring area depths at mean low water, including the method, time, and date of soundings, cross sections of the dock including height and width of any wetlands crossing(s).

(4) Development plans for activities in an area subject to a Tidelands conveyance (grant, lease or license) shall be prepared by a professional engineer, and must depict the limits of the conveyance. All activities in areas except man-made lagoons are subject to this requirement. Development plans for activities in man-made lagoons do not have to be prepared by a professional engineer, unless required by N.J.S.A. 45:8-27 et seq.;

9. Copies of an Environmental Impact Statement (EIS) or Compliance Statement, prepared in accordance with N.J.A.C. 7:7-6, as follows:

i. CAFRA permit applications shall include 15 copies. The applicant may submit either 15 complete copies with all attachments and appendices or may submit five complete copies of the EIS along with 10 additional copies, one of which shall have appended thereto only an archaeological survey, if appropriate; and one of which shall have appended thereto only a traffic analysis if appropriate.

ii. Waterfront Development and Wetlands applications shall include 10 copies of a Compliance Statement with the Rules on Coastal Zone Management, N.J.A.C. 7:7E, prepared in accordance with N.J.A.C. 7:7-6. This Statement of Compliance shall address all coastal rules applicable to the proposed project;

10. Applications within the Pinelands Preservation Area or Protection Area must also submit either a Certificate of Filing, Notice of Filing, or a Certificate of Compliance from the Pinelands Commission along with the other required application materials; and

11. Any additional information requested by the Department to clarify or provide further information regarding information already submitted on the proposed development.

[(b) CAFRA permit applications shall also include 15 copies of an Environmental Impact Statement (EIS), prepared in accordance with N.J.A.C. 7:7-6.

1. At the option of the applicant either 15 complete copies with all attachments and appendices shall be submitted or five complete copies of the EIS shall be submitted along with 10 additional copies, one of which shall have appended thereto only an archaeological survey, if appropriate; one of which shall have appended thereto only the recycling plan; and one of which shall have appended thereto only a traffic analysis if appropriate; and one of which shall have appended thereto only an energy conservation plan. The remaining copies may be submitted without appendices and attachments.

2. All EIS submittals with appendices shall be labeled on the cover page so that the appendices can be identified.

3. The applicant shall, upon notification by the Division during the initial 20 working day review, submit additional copies along with appendices.

(c) Wetlands Type B applications shall also include five copies of an Environmental Impact Statement (EIS) prepared in accordance with N.J.A.C. 7:7-6.

(d) Wetlands Type A and Waterfront Development permit applications shall, at the discretion of the Division, include such additional information as may be required to adequately assess the proposed project's impacts. Applicants will be advised of such additional requirements either at the pre-application conference (see N.J.A.C. 7:7-3) or at the initial review phase (see N.J.A.C. 7:7-4.4). The additional requirements shall include but not necessarily be limited to the following:

1. Copy of any Tidelands Grant, Lease or License previously approved for the property in question.

2. Evidence that copies of the CP-1 have been forwarded to the County and Municipal Planning Boards and Environmental Commissions, County and Municipal Clerks.

3. Fifteen copies and one reproducible transparent copy of a development plan on 8.5″×11″ paper, showing, at a minimum the following:

i. The lot;

ii. All existing waterfront structures on the lot and immediately adjacent lots;

iii. Distances and dimensions of areas, structures and lots, including wetlands and mean high water line, upland property, roads and utility lines;

iv. The proposed work area;

v. The general site location of the development depicting the Region;

vi. The scale of the plan and a north arrow;

vii. The name of the person who prepared the plan; and

viii. The name of the applicant and municipal lot and block number.

4. Photographs showing the project site.]

(b) Waterfront Development and Wetlands applications shall also include a copy of any Tidelands Grant, Lease or License previously approved for the property in question. Permit applications will not be accepted for filing without verification that a tidelands instrument has been previously issued, applied for, or is unnecessary for the site.

[(e)](c) Development plans for activities in an area which [will] requires a Tidelands (Riparian) Grant, Lease or License, shall be prepared by a professional surveyor licensed by the State of New Jersey and shall depict the limits of the area for which the Tidelands instrument will be sought.

[(f)](d) An application for a Waterfront Development **or Wetlands** permit **proposing the discharge of dredge or fill material** shall **also** constitute an application for a **State** Water Quality Certificate under Section 401 of the Federal Clean Water Act.

[(g)](e) If the regulated activity [for which a permit is requested will] **would** occur on wetlands as defined by N.J.A.C. 7:7E-[3.25(a)] **3.27(a)** then the applicant [shall, subject to the exceptions set forth in (g)1 and 2 below,] **may** submit a mitigation plan as part of the application.

1. [Upon adequate showing by the applicant that financing for the project is contingent upon the issuance of a permit, the Division may issue the permit and allow the submission of a mitigation plan as a preconstruction permit condition, provided, however, that no permit will be issued until the Department has reviewed and approved a conceptual outline of a mitigation plan which applicant intends to implement.] **The Department requires an approved mitigation proposal as a condition precedent to engaging in a regulated activity in a wetland.**

[2. The Division may, upon the request of the applicant, determine that a mitigation plan will not be required to be a part of a permit application for the construction of catwalks, piers, docks, landings, footbridges and observation decks provided that the applicant shows, to the satisfaction of the Division, that vehicles and equipment will not be placed on the wetlands in order to construct the structure and that the structure will comply with the acceptability conditions provided by N.J.A.C. 7:7E-4.11(d). The Division may, however, require mitigation notwithstanding the applicant's compliance with the terms of this paragraph, if it has determined, on an individual case basis, that mitigation is necessary. The Division will notify the applicant that a mitigation plan is required within the initial 20 working day review period.]

[3.]**2.** Any mitigation [plan] **proposal** submitted pursuant to this section shall include, but **shall** not [necessarily] be limited to, the following:

[i. A site plan showing wetlands which will be destroyed and showing the wetlands area which will be mitigated.

ii. A metes and bounds description of the proposed mitigation site.

iii. New Jersey Wetlands Map/Tidelands Map number(s) for the development site (and mitigation site if at a different location) as well as block and lot numbers and ownership of the mitigation site.

iv. Size of wetlands mitigation (surface area in sq. ft. or acres).

v. Size of wetlands mitigation (surface area sq. ft. or acres). The acreage of wetlands habitat, tidal water and any uplands habitats created or preserved as part of the mitigation project shall be specified. Only the wetlands portion of the acreage will apply to wetlands mitigation ratio of 2:1.

vi. Elevation of final grade of mitigation site in relation to mean sea level (MSL), along with slope percentage.

vii. Tidal range of mitigation site and salinity range of adjacent inundating waters.

viii. Wetlands community type and flora species disturbed (scientific name, not common names as these vary) and a real coverage of each prior to disturbance. These items shall be shown on the site plan.

ix. Soil and vegetation type of mitigation site prior to disturbance. This information shall be shown on the site plan.

x. Scientific names of species to be planted (or seeded), stock type (example: bare root sprigs, peat potted, etc.), and source of material (example: Maryland).

xii. Spacing of plantings or density of seeding and a schedule showing the dates excavated, planted/seeded, fertilized, monitored, etc. These items shall be shown on the site plan.

xiii. Type of fertilizer used, nutrient concentrations and dates applied.

xiv. Schedule of implementation.

xv. Monitoring program (if required).]

i. A description of the wetland mitigation proposal, which shall include the specific goals of the mitigation proposal and a discussion of how the mitigation proposal will satisfy those goals;

ii. A description (for example, size, type, vegetation, hydrology, etc.) of the wetlands to be destroyed or disturbed;

iii. Photographs of the proposed mitigation site;

iv. The names and addresses of current and proposed owner(s) of the mitigation project site;

v. A description of the existing ecosystem of the mitigation site, including a discussion of the vegetation, soils, hydrology, wildlife and adjacent land use;

vi. A discussion of the proposed hydrology of the mitigation site. The discussion should focus on the sources of water for the mitigation project, and should provide seasonal high water table information as well as the projected elevation of final grade of the mitigation project in relation to mean seal level (MSL), along with slope percent;

vii. The tidal range of the mitigation site and the salinity range of adjacent inundating waters;

viii. Existing soil types with soil borings to document seasonal high water tables, and a discussion of the created substrate of the proposed mitigation site describing how the substrate of the site will be prepared, whether the pH is appropriate, and any other pertinent factors;

ix. A planting scheme of the proposed vegetative community depicted on the mitigation site plans, including spacing of all plant-

ings, stock type (bare root, potted, seed), size, and the source of the plant material;

x. A copy of a deed restriction providing that no regulated activities will occur in the wetland mitigation area or its associated transition area and that it will remain as a natural area in perpetuity. Proof that the deed restriction has been registered with the County Clerk (the Registrar of Deeds and Mortgages if applicable) is required within 60 days following approval of the mitigation proposal;

xi. A metes and bounds description of the proposed mitigation site which forms the basis for the deed restriction. The metes and bounds description shall include the transition area;

xii. New Jersey Wetlands Map/Tidelands Map number(s) for the development site (and mitigation site if at a different location) as well as block and lot numbers and ownership of the mitigation site;

xiii. An actual cost estimate of the mitigation proposal. The cost estimate should include the cost of land, site preparation, engineering costs, plantings and any other items incidental to the mitigation proposal;

xiv. Five folded copies of a site plan for the mitigation project which includes:

(1) Project location within the region;

(2) The lot and block number of the mitigation project location;

(3) Existing and proposed elevations and grades of the mitigation site in one foot intervals; and

(4) Plan views and cross sectional views;

xv. A copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map showing the location of the property and its general vicinity, indicating and labeling the location of the proposed mitigation and the property boundaries, and a determination of the State Plan Coordinates for the center of the mitigation site. The accuracy of these coordinates should be within 50 feet of the actual center point. For linear mitigation projects, the applicant shall provide State Plan Coordinates for the endpoints of those projects which are 1,999 feet or less, and for those projects which are 2,000 feet and longer, additional coordinates at each 1,000 foot interval; and

xvi. In accordance with N.J.A.C. 7:7A-14.1, a mitigation plan must include a secured bond, or other financial surety acceptable to the Department including an irrevocable letter of credit or money in escrow, that shall be sufficient to hire an independent contractor to complete and maintain the proposed mitigation should the permittee default. The financial surety for the construction of the mitigation project shall be posted in an amount equal to 115 percent of the estimated cost of construction. In addition, financial surety to assure the success of the mitigation project shall be posted in an amount equal to 30 percent of the estimated cost of construction. The financial surety will be reviewed annually and shall be adjusted to reflect current economic factors.

[(h)]**(f)** (No change in text.)

7:7-4.3 Availability of application for examination by the public

(a) Copies of all coastal permit applications, **and subsequent submissions,** will be available for public scrutiny by interested persons in the offices of the [Division] **Department** in Trenton **by appointment and in the municipal clerk's office** during normal business hours. [Local agencies to whom copies of the coastal permit applications were submitted (see N.J.A.C. 7:7-6.2) may also make a copy of the application available for public scrutiny by interested persons during normal work hours, upon request.] **On a case-by-case basis, the Department may make arrangements for copies of coastal permit applications and subsequent submissions to be available for public review in a municipality outside normal business hours.**

(b) The status of all permit applications shall be published in the DEPE Bulletin pursuant to N.J.A.C. 7:1C-1.6, and **this publication** shall constitute notice to all interested persons except as provided in N.J.A.C. 7:7-4.8.

7:7-4.4 Initial review of applications

(a) Within [a maximum of] 20 working days of receipt of the application, the [Division] **Department** shall take one of the following actions:

1. Declare the application complete for final review, assign an agency project number, and proceed to review on the merits.

2. Assign an agency project number and accept the application, but request in writing that the applicant submit additional information within a specific period of time to assist in its review. In such cases, the application will not be considered complete for final review or public hearing until all the additional information has been received and deemed acceptable for review.

i. In the case of all CAFRA permit applications and those other coastal permit applications or CAFRA permit modification applications for which the [Division] **Department** has determined that additional information is necessary to assist in its review and that this information can only be obtained by public hearing, the application shall be declared complete for public hearing.

ii. No application shall be declared complete for final review unless and until the applicant has possession of all tidelands conveyances required for the riparian land. The Department may in its discretion issue a permit decision prior to receipt of the conveyance.

iii. No application for a development requiring sanitary sewer service shall be declared complete for final review unless and until the project is consistent with the applicable Wastewater Management Plan or until a Plan Amendment is obtained, because the Department's regulations under the Water Pollution Control Act require that consistency with a Wastewater Management Plan be demonstrated before any other Department approvals can be issued.

3. Return the application, explaining why it is unacceptable for filing, and return the filing fee upon notification that the applicant does not intend to reapply.

(b) Within 15 days of the receipt of any additional information submitted pursuant to [paragraph] (a)2 above [and where a public hearing will not be held], the [Division] **Department** shall [notify] **issue notification to** the applicant [to the completeness for final review of the application, or shall specify which deficiencies still remain. The application shall not be considered to be filed until it has been declared complete for final review by the Division] **regarding whether the amended application is considered complete.**

1. Such notification shall either:

i. Specify which deficiencies still remain;

ii. If no public hearing is to be held, declare the application complete for final review; or

iii. If a public hearing is to be held, declare the application complete for the public hearing.

[1.]**2.** Copies of information submitted in response to deficiency letters shall **be submitted to the municipal clerk and**[,] at the discretion of the [Division] **Department**, be distributed **by the applicant** to the same persons to whom copies of the initial application were distributed [and to reviewing agencies who have requested such information or will require it in order to complete their review].

(c) Applications for which a public hearing will be held shall go on to the public hearing phase of the permit review process. Wetland and Waterfront Development applications which do not require a public hearing and which are complete for final review shall begin the 90 day review period established pursuant to the 90 Day Construction Permit Law **on the date of receipt of the additional information which completed the application.**

(d) If an application is not complete for final review **or for the public hearing** within 90 days of a request for additional information, the [Division] **Department** may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, a 90 day extension in which to submit the information will be granted.

1. All fees submitted with [a cancelled] **an** application **that is cancelled** shall be non-refundable **but will be applied toward re-submission of the application provided that such re-submission is within one year of the date of cancellation.**

2. A re-submission of a previously cancelled application **more than one year after the date of cancellation** shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:1C-1.5[, unless re-submitted within one year of cancellation].

3. A re-submission of an application shall be required to meet the application requirements specified at N.J.A.C. 7:7-4.2.

(e) Once an application is declared complete for final review or for the public hearing, the rules in effect at that time will govern the staff review of the permit application pursuant to the 90 Day Law, N.J.S.A. 13:1D-29 et seq.

[(e)](f) Once the application for which a public hearing is required has been declared complete for public hearing, the [Division] **Department** shall prepare a preliminary analysis of the project, based upon the staff analysis and recommendations, as well as upon comments from other agencies to whom copies of the application were distributed and comments from interested persons.

1. To be [incorporated] **assured of incorporation** in the preliminary analysis, such comments must be received within 20 days after the applicant has been notified of completeness for public hearing.

2. The [Division] **Department** will [mail] **provide** copies of the preliminary analysis to the applicant and to any person requesting a copy. [The preliminary analysis shall be made available three days prior to the public hearing.]

7:7-4.5 Public hearings **and public comment periods**

(a) Public hearings shall be convened in accordance with the following:

1. [The Division shall hold a non-adversarial public hearing for all CAFRA permit applications, to afford the applicant and interested persons the opportunity to present orally and in writing, their position concerning the application, the preliminary analysis, and any data they may have developed in relation to the proposed facility.] **The Department may, in its discretion, hold a non-adversarial public hearing for a CAFRA permit when the Department determines that additional information is necessary to assist in its review and that this information can be best obtained by providing an opportunity for a public hearing. The Department may initiate public hearings on its own or in response to public requests identifying specific issues which the Department believes warrant a public hearing.**

i. The Department may issue or deny a permit without a public hearing, unless there is a significant degree of public interest in the application and the Department receives written request(s) for a hearing. Requests for a public hearing must be received within 20 days of the date of publication of the notice of filing of an application for a CAFRA permit in the DEPE Bulletin.

ii. In the event that the Department does not hold a public hearing on a CAFRA permit application, the Department will provide for a 30-day public comment period which begins on the date of publication of the notice of filing of an application for a CAFRA permit in the DEPE Bulletin. Public comments must be submitted within 30 days of the date of publication of the notice of filing of an application for a CAFRA permit in the DEPE Bulletin.

2. The [Division] **Department** may, in its discretion, hold a non-adversarial public hearing for [CAFRA permit modification applications and for] Wetlands and Waterfront Development permit applications **and for coastal permit modification applications** when it determines that additional information is necessary to assist it in its review and that this information can be obtained only by providing an opportunity for a public hearing. Such a determination will be made within 20 working days of the filing of the application.

(b) If a hearing is to take place, the [Division] **Department** shall, within 15 days of declaring the application complete for public hearing, set a date, place, and time for the public hearing and shall so notify the applicant.

1. The date for the hearing shall be not later than 60 days after the application has been declared complete for public hearing.

2. The hearing shall, if possible, be held in the municipality in which the [facility] **development** is proposed.

(c) The [Division] **Department** shall publish a notice announcing the date, place, and time of the public hearing in the DEPE Bulletin.

(d) The applicant shall give public notice of the public hearing, pursuant to Section 7.1 of the Municipal Land Use Law (N.J.S.A. 40:55D-12). **The newspaper display advertisement shall be a minimum of four inches in width.**

1. Such notice shall describe the proposed [facility] **development**, identify its agency project number, announce the date, place, and time of the public hearing on the application, and indicate that comments on the application may be made to the [Bureau of Coastal Project Review, Division of Coastal Resources] **Land Use Regulation Program**, New Jersey Department of Environmental Protection **and Energy**, CN 401, Trenton, New Jersey 08625 at or within 15 days after the public hearing, or until the application is declared complete for review (see N.J.A.C. 7:7-4.6), whichever occurs last.

2. If the [facility] **development** is a linear [facility] **development** such as a pipeline or road, the applicant shall [also] give public notice [by publication of a display advertisement of at least four column inches] **in the official newspaper of the municipality** or in a newspaper of general circulation in the municipality **if there is no official newspaper**, and to owners of all real property within 200 feet of an above surface structure related to a linear [facility] **development**, such as a pumping station or treatment plant, **rather than to owners of real property within 200 feet of the entire linear development.**

3. Such notice shall also be given to the clerk of the municipality in which the proposed development will occur, the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.

[3.]**4.** Proof of notice shall be submitted to the [Division] **Department** at least three days prior to the public hearing. In cases where proof of publication is unavailable 3 days prior to the hearing, the applicant may submit a notarized affidavit stating that notice of the hearing has been published, and specifying the date and newspaper in which such notice was published.

(e) The [Division] **Department** shall maintain a copy of the hearing transcript **and of all written comments received** for public inspection in its Trenton Office.

(f) The applicant shall **provide a court reporter,** bear the cost of the hearing **and provide the Department with the original transcript,** as required by N.J.A.C. 7:1C-1.5(e). **The court reporter must be a Contract Vendor selected from the New Jersey Department of Treasury Notice of Contract Award.**

(g) The presiding official at the public hearing shall have broad discretion with respect to oral and written presentations by interested persons. This discretion shall be exercised to allow every person the opportunity to speak**, to reasonably limit the length of individual testimony,** and insure the maintenance of an orderly forum. At the conclusion of statements of interested persons, the applicant shall be afforded the opportunity to [speak] **respond** to the statements offered by interested persons.

(h) Any interested person may submit information and comments, in writing, concerning the application and the preliminary analysis at or within 15 days after the hearing **or during the public comment period**. [, or until the application is declared complete for final review, whichever occurs last. Such information shall be forwarded to the permit applicant by the Division.] **Additional comments received after this date will also be included in the application file and may be considered by the Department in the review process if relevant to the application.**

7:7-4.6 Final review of the application

(a) In the case of CAFRA applications, the [Division] **Department** shall, within 15 days after the public hearing**, if one is held, or 15 days after the close of the public comment period if no hearing is held,** either declare the application complete for final review or [notify] **issue notification to** the applicant that additional information is required[.

1. In the case of CAFRA applications, the Division may, at or within 15 days after the public hearing and based on comments or questions raised at the hearing, require an applicant to submit additional information necessary] for the complete review of the application. The request for additional information shall be made in writing, or if made at the hearing, confirmed in writing.

i. If a public hearing was held and no additional information is required, the date of the public hearing shall be the date the application was considered complete for review.

ii. If no public hearing was held, and no additional information is required, the date of the close of the public comment period shall be the date the application was considered complete for final review.

(b) The [Division] **Department** shall, within 15 days of the receipt of any required additional information, either declare the application complete for **final** review **effective the date of receipt of the additional information** or [notify] **issue notification to** the applicant that the application is still not complete for **final** review **and specify which deficiencies remain.**

(c) (No change.)

(d) If an application for which a public hearing **or public comment period** has been held is not complete for review within 90 days of a request for additional information, the [Division] **Department** may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, further extensions in which to submit the information will be granted. **Failure to submit the information by the mutually agreed date of extension will be cause for the Department to cancel the application without further notice.**

1. All fees submitted with [a cancelled] **an** application **that is cancelled** shall be non-refundable **but will be applied toward re-submission of the application provided that such re-submission is made within one year of the date of cancellation.**

2. A re-submission of a previously cancelled application **more than one year after the date of cancellation** shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:1C-1.5[, unless re-submitted within one year of cancellation].

3. A re-submission of an application shall be required to meet the application requirements specified at N.J.A.C. 7:7-4.2.

7:7-4.7 Timetable for final decisions

(a) The [Division] **Department** shall act on CAFRA applications within 60 days of the public hearing, **or within 60 days of the close of the public comment period if no hearing is held,** unless additional information was required [at the hearing], in which case the [Division] **Department** shall act on the application within 90 days of the date it was declared complete for final review.

(b) The [Division] **Department** shall act on all Wetland and Waterfront Development applications within 90 days after the application was declared complete for **final** review.

(c) If the [Division] **Department** fails to act within the prescribed time period, the application shall be deemed to have been approved, subject to the standard conditions set forth in N.J.A.C. 7:7-1.5, **with the exception of any application for a permit which has not received all required riparian conveyances setting forth the person's right to use or occupy the land.**

7:7-4.8 Publication of the final decision

(a) The [Division] **Department** shall notify the applicant of the decision by mail, shall publish notice of the decision in the DEPE Bulletin, and shall also notify all interested persons who specifically requested notice.

(b) The permittee may, if it [so desires] **chooses not to wait for the decision to be published in the DEPE Bulletin**, publish notice of the final decision in a newspaper of regional circulation which includes the municipality in which the project site is located, and by certified mail to any person who **commented on the application during the review process or** requested such notice, in writing, during the [public comment] **application review** period. The [Division] **Department** shall maintain a list of such newspapers. **Such notice shall also be given to the clerk of the municipality in which the proposed development will occur, the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.**

1. Publication of notice by the permittee **by publication of a display advertisement of at least four** [column] **inches in width in a newspaper of general circulation in the municipality** shall begin the 10 day appeal period (see N.J.A.C. 7:7-5) if publication takes place prior to publication of notice of the final decision in the DEPE Bulletin.

2. Proof of such publication and of mailing shall be submitted the [Division] **Department.**

(c) The permit application review process may be extended pursuant to the provisions of N.J.A.C. 7:1C-1.8(e) or by mutual agreement.

7:7-4.9 Withdrawal, re-submission and amendment of applications

(a) An applicant may withdraw an application at any time in the application review process. All fees submitted with such applications are non-returnable [subsequent to the application being declared complete for public hearing or final review] **following the conclusion of the initial 20 working day review period,** except that the fee may be credited for the same project within one year of the date of the notice of withdrawal.

(b) If an application is denied, the applicant may resubmit an application for a revised project **of the same or reduced scope** on the same site within one year without additional fees. The resubmitted application will be treated as a new application, although references may be made to the previously submitted application. An applicant who wishes to appeal the denial, and at the same time revise the application may do so in accordance with procedures in N.J.A.C. 7:7-[5.4]**5.1.**

(c) Permit applications may be amended at any time as part of the permit review process. Copies of amendments and amended information shall be distributed by the applicant to the [same persons to whom copies of the initial application were distributed] **clerk of the municipality in which the proposed development will occur, the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.**

(d) Amended applications submitted within 30 days of the deadline for final decision must be accompanied by a request to extend the decision date by 30 days or by a period agreed to by the applicant and the Department.

7:7-4.10 Requests for modifications

(a) A permittee may apply for a modification to an issued permit[. Requests for modification must be in writing, must explain the need for modifying the project as approved, and must indicate whether the applicant considers the modification to be minor in nature.

(b) Modifications which are minor in nature, that is,] **for projects** which do not result in a significant change in the scale, [design,] use or impact of the project as approved[, shall generally be approved by the Division]. The determination as to what constitutes a significant change is within the sole discretion of the [Division] **Department and will be based on a review of the original application file and new information submitted by the applicant. A change that will result in less environmental impact than the original approved development will not constitute a significant change.**

1. Permits may only be modified during the initial five year term of the permit or beyond this five year period if the permit is still active pursuant to N.J.A.C. 7:7-1.5(d). At the Department's discretion, a modification may be granted to a permit for which approved construction has been completed to allow additional minor construction to occur on-site.

[(c) Requests for minor modifications shall be acted on by the Division within 30 days of receipt, unless additional information is required in order to process the request.

(d) If the Division determines that a requested modification is not minor in nature, it shall notify the permittee of that determination within 30 days of receiving the request.]

[1.](**b**) Modifications [which are not minor in nature] shall require an [amended permit] application **to amend the issued permit,** including a new CP-1 form, **notice requirements pursuant to N.J.A.C. 7:7-4.2, a copy of the original permit, summary report, and approved plans,** and any additional information necessary to review the proposed modification.

[2.](c) A fee shall be required for any modification [which is not minor in nature,] and shall be in accordance with the provisions of N.J.A.C. 7:1C (90 day Construction Permits).

[3.](d) The status of [amended permit applications] **an application to amend an issued permit** shall be published in the DEPE Bulletin.

7:7-4.11 Suspension and revocation of permits

(a) A permit is suspendable for good cause, such as, but not limited to, violations of permit condition, [and] significant changes in the plan for the [facility] **development** which occur after a permit is issued which are not explicitly authorized in writing by the [Division] **Department, the applicant's failure to correctly identify project impacts, or unanticipated adverse effects caused by the development.**

1. Prior to the suspension, the [Division] **Department** shall furnish written notice to the permittee by certified mail, providing 10 days within which to either remedy the violations, provide an explanation of why such violations cannot be remedied, [or] offer a plan to remedy these violations, **or demonstrate to the Department that good cause for suspension does not exist.** [This] **Any remedial** plan shall indicate the time necessary to implement the remedy.

2. If the above requirements have not been met, the permit shall be suspended. Construction **may not commence, or if underway,** shall then cease until the [violations have been remedied] **Department has lifted the suspension.**

3. A permittee may appeal suspension of a permit according to the provisions of N.J.A.C. 7:7-5 only if construction has ceased.

(b) A suspended permit is revocable for good cause.

1. Prior to revocation, the [Division] **Department** shall provide the permittee with written notice of intent to revoke the permit by certified mail and of the permittee's right to a hearing pursuant to the provisions of N.J.A.C. 7:7-5.

2.-3. (No change.)

[7:7-4.12 Expedited application process

(a) The Division will at the request of the applicant, and provided that adequate staff time is available, review coastal permit applications on an expedited basis if they meet the following requirements. The use of this procedure will eliminate the initial 20 working day review period. No extra fee will be charged for an expedited review.

(b) In order to qualify for the expedited application process, an application must meet the following requirements.

1. Applicants must have had at least one pre-application conference.

2. The project must have received an encouraged status as a result of the conference.

3. Applicants must notify the Division at least one week in advance of submission of an application with a request for an expedited review.

4. The application must be complete for final review or public hearing when submitted. This will require detailed consultation between the Division and the applicant prior to its submission.

(c) The Division shall, by the end of the first working day after submission of an application with a request for expedited review, notify the applicant by telephone (and shall confirm by letter) that the application is or is not complete to qualify for an expedited review. A finding that it does not qualify may be appealed to the Director of the Division.

1. An application which qualifies for expedited review shall be declared complete for final review or public hearing on the day it is submitted.

2. Copies of the application shall be distributed to other Divisions within the Department and to other agencies pursuant to the usual procedures. The applicant shall be advised by telephone of any deficiencies which arise as the result of that review process.

3. The applicant shall be responsible for supplying any such additional information prior to or at the public hearing.

4. The Division shall act on the permit application within the time periods specified in N.J.A.C. 7:7-4.7.]

SUBCHAPTER 5. APPEALS

7:7-5.1 Request for review on appeal

(a) Any interested persons who consider[s himself] **themselves** aggrieved by a final [action] **decision** of the [Division] **Land Use Regulation Program** may, within 10 days of publication of notice of the final decision in the DEPE Bulletin or within 10 days of publication of notice by the permittee pursuant to N.J.A.C. 7:7-4.8(b), whichever occurs first, **appeal to the DEPE Commissioner by requesting** a hearing by addressing a written request to the Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, **401 East State Street,** CN 402, Trenton, New Jersey 08625-0402 **and including a completed "Administrative Hearing Request Checklist and Tracking Form for Permits" incorporated herein by reference as an Appendix.**

1.-2. (No change.)

[(b) Any person who considers himself aggrieved by a final action of the Division with respect to a CAFRA permit application may, in the alternative, request a hearing before the Coastal Area Review Board, by addressing a written request to the Secretary, Coastal Area Review Board, CN 401, Trenton, New Jersey 08625.

1. Appeals involving only policy questions may be appealed directly to the Board. Appeals involving contested facts will initially be referred to the Office of Administrative Law, and will ultimately be decided on by the Commissioner. They may thereafter be appealed to the Board.]

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

[(d)](c) A hearing request may include a request that the [issuance of the] permit be stayed.

7:7-5.2 Response to appeal request

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

(c) Any person or entity having a significant interest in the outcome of a hearing request may, in addition to filing a response, request permission to participate in the appeal process. A request to participate must be postmarked within 10 days of publication of notice of the original hearing request in the DEPE Bulletin, and must specify the requesting party's interest in the matter being appealed.

(d) (No change.)

7:7-5.3 Action on appeal request

(a) The [Division] **Department** shall publish notice of all appeal requests in the DEPE Bulletin.

(b) (No change.)

(c) The Commissioner may, upon request and for good cause shown, stay [the issuance of the] **any or all of the conditions of the** permit pending a final decision on the appeal.

(d) Requests for which a hearing is granted shall be referred to the Office of Administrative Law [for the holding of a fact finding hearing pursuant to the Administrative Procedure Act (N.J.S.A. 15:14B-1 et seq.), after which the Commissioner will make a final decision] **which shall assign an administrative law judge to conduct a hearing on the matter in the form of a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.**

(e) Within 45 days of receipt of the administrative law judge's decision, the Commissioner shall accept, reject, or modify the decision.

(f) The Commissioner's action shall be considered final agency action for the purposes of the Administrative Procedure Act, and shall be subject only to judicial review as provided in the Rules of Court.

7:7-5.4 Review of revised application to settle appeal

(a) (No change.)

(b) Applicants will be required to submit information adequate to allow the [Division] **Department** to fully assess any proposed revisions to the project.

(c) Notice of a proposed settlement which is arrived at pursuant to this section shall be published in the DEPE Bulletin, and shall be provided to any interested third party who commented on the

project in writing or at the public hearing (if one was held)**, and any interested person shall have 10 days from the date of publication in the DEPE Bulletin to comment on a proposed settlement.**

(d) Any permit which is issued as a result of a settlement may be appealed **by an affected party not a party to the settlement,** in the manner provided for in this subchapter.

[7:7-5.5 Coastal Area Review Board Procedures

(a) A request for review on appeal submitted to the Coastal Area Review Board shall be in the form required by N.J.A.C. 7:7-5.1. An answer may be filed as provided by N.J.A.C. 7:7-5.2.

(b) The Commissioner of Environmental Protection, or his designee, shall be the Chairman of the Board.

(c) Argument before the Board shall be restricted to questions of policy and conclusions of law, not findings of fact. The record before the board shall consist solely of the permit application and file.

(d) The Board shall, within 21 days of receiving an appeal request:

1. Schedule a full hearing;
2. Decline to review the appeal for good cause;
3. Decide the appeal in a summary manner, pursuant to (e) below.

(e) The Board may, at any meeting, decide an appeal in a summary manner, based upon statements in the appeal request, and any information in the record. The Secretary of the board shall promptly notify the parties to the appeal of the Board's decision.

(f) Beginning with the day of notification of acceptance of a request for hearing, the appellant shall have 15 days to file a statement with the Secretary.

1. The Department and the applicant, as appropriate, shall have ten days to file a response to the appellant's statement with the Secretary.

2. The appellant shall then have five days to file a rebuttal with the Secretary.

(g) All documents filed with the Secretary pursuant to this section shall be filed with sufficient copies for distribution by the Secretary to all parties to the appeal and to the members of the Board. The time period in this section may be modified in specific cases at the discretion of the Board, with the consent of the parties.

(h) The Board may affirm, modify or reverse the decision of the Division.]

SUBCHAPTER 6. INFORMATION REQUIREMENTS FOR ENVIRONMENTAL IMPACT STATEMENTS AND COMPLIANCE STATEMENTS

7:7-6.1 When an EIS is required

(a) [Section 7 of CAFRA (N.J.S.A. 13:19-7) requires the preparation of an Environmental Impact Statement (EIS) for all CAFRA applications.] **An Environmental Impact Statement (EIS) or Compliance Statement, which shall provide the information needed to evaluate the effects of the proposed development on the environment of the coastal area, is required for all CAFRA permit applications.** The [Division] **Department** also requires an EIS for all major Wetlands and Waterfront Development permit applications [(for example, those projects which meet the definition of a CAFRA project, but which are located outside the CAFRA area)].

(b) The purpose of the EIS **or Compliance Statement** is to assist the applicant and the [Division] **Department** in assessing the probable effects of a proposal on the natural resources and human activities at the project site and surrounding region **and in determining the proposed development's compliance with the Rules on Coastal Zone Management, N.J.A.C. 7:7E.**

1. Both the Environmental Impact Statement and Compliance Statement are intended to provide a discussion of a proposed project in terms of the specific rules which apply to the proposed development. An EIS is required for major projects, including those projects which, based on site conditions and/or the surrounding area, are anticipated to have greater environmental impacts. A Compliance Statement is required for minor projects.

2. A Compliance Statement is an abbreviated form of an EIS which may be submitted for minor projects. All applicable rules which apply to a proposed development or development site must be addressed in the Statement.

3. In cases where a proposed project appears to be neither major or minor scale, prospective applicants are encouraged to contact the Department's Land Use Regulation Program prior to submission of the permit application to determine what type of information is required. The goal of the Department is to have all applicable rules or policies addressed and all potential impacts clearly discussed in the permit application.

[7:7-6.2 Distribution of EIS to other Agencies

(a) Applicants for CAFRA permits shall submit one copy of the EIS to each of the following agencies:

1. County planning board, division or agency;
2. County environmental commission, agency or council;
3. Municipal planning board;
4. Municipal environmental commission, if any;
5. Soil Conservation District (unless responsibility for enforcing soil conservation requirements has been delegated to the municipality);
6. Delaware Valley Regional Planning Commission (for facilities in Burlington, Camden, Gloucester and Mercer Counties);

(b) The applicant shall include the following statement in the transmittal letter accompanying an EIS distributed to local agencies:

"This environmental impact statement has been submitted to the New Jersey Department of Environmental Protection, Division of Coastal Resources as part of an application for Coastal Area Facility Review Act permit for a project in (indicate municipality in which the facility is proposed).

This copy of the EIS is submitted to this agency for your information and comments, and to make the EIS available for review by interested citizens. The Department of Environmental Protection welcomes your comments on the project described and assessed in the EIS. Please submit your written comments within 21 days to:

Bureau of Planning and Project Review
Division of Coastal Resources
New Jersey Department of Environmental Protection
CN 401
Trenton, New Jersey 08625"

(c) An affidavit shall be sent by the applicant or the applicant's agent to the Division stating that the applicant has distributed copies of the EIS pursuant to (b) above. No application shall be declared complete for filing pursuant to N.J.A.C. 7:7-4.7 without submission of this affidavit.]

7:7-[6.3]**6.2** Formats and contents

(a) The applicant shall prepare and submit the EIS **or Compliance Statement** in the form and manner [as] set forth in this subchapter. Failure to comply with these requirements may result in a determination that an application is not complete for public hearing or final review, depending on its status (see N.J.A.C. 7:7-4.1 and 4.4).

(b) The applicant shall include in the EIS **or Compliance Statement** the following:

1. Summary: A brief one or two page summary shall preface the EIS **or Compliance Statement**, and shall contain:

i. A description of site, including location, tax map designation, and existing conditions;

[i.]**ii.** A description of the size, nature and location of the proposed [facility] **development**;

[ii.]**iii.** A description of the major environmental impacts associated with the proposed [facility] **development**, including possible areas of controversy or significant issues to be solved; **and**

[iii.]**iv.** A list of any other municipal, state or federal approvals required or received, if any[.];

2. Project description: The project description consists of [11] **eight** elements which, when taken together, describe what the applicant proposes to do, where it will be done, how it will be constructed, and how it will be operated.

i. The description shall consist of written and graphic material and [maps] **development plans as specified in N.J.A.C. 7:7-4.2(a)7.**

ii. The [11] **eight** elements are: the development description, site plan, structure description, housing plan, transportation plan,

[construction plan, operation plan] utilities plan, [energy conservation plan], public services plan, and outdoor recreation plan (as appropriate)[.];

3. Environmental assessment and compliance with the Rules on Coastal Zone Management. This section shall include an environmental inventory assessment as described below, a detailed statement of compliance with the Rules on Coastal Zone Management (N.J.A.C. 7:7E), and a listing of adverse impacts, mitigation and alternatives; and

4. Appendices as needed.

(c) The EIS or Compliance Statement shall contain an environmental inventory and assessment which describes and documents, in narrative form, environmental conditions at the site and the surrounding region, and then assesses the probable impacts of the development on the built and natural environment.

(d) The inventory and assessment is to be made with reference to the most current Rules on Coastal Zone Management, N.J.A.C. 7:7E. It should contain sufficient detail to enable an evaluation of the development, to provide a basis for the applicant's assessment of environmental impacts, and to enable the Department to make the necessary findings for permit approval.

1. Specific requirements will vary depending on the magnitude and complexity of the project, and on the sensitivity of the land and water features of the site.

2. An EIS contains a more thorough review of a proposed development's impacts than a Compliance Statement, including such data as traffic analyses, stormwater management calculations, archaeological surveys, environmental resource inventories, habitat assessment, and detailed design specifications for the proposed construction. In most cases, an EIS will address a greater number of rules since the proposed development and associated impacts will be larger in scope. The EIS will also contain more information regarding project alternatives and mitigation measures designed to reduce the overall impact of the proposed development on the environment.

[3. Environmental inventory and assessment:

i. Section 7(a) of CAFRA requires, as part of the EIS, the preparation of "an inventory of existing environmental conditions at the project site and in the surrounding region. . .". Section 7 also requires an assessment of the probable impact of the project on the resources identified in the inventory, a list of unavoidable adverse impacts, mitigating measures, and alternatives to all or any part of the project, with reasons for the acceptability or non-acceptability of those alternatives.

ii. In order to comply with this requirement, the EIS shall contain an environmental inventory and assessment which describes and documents, in narrative form and maps, environmental conditions at the site and the surrounding region, and then assesses the probable impacts of the facility on the built and natural environment.

iii. The inventory and assessment is to be made with reference to the Rules on Coastal Resource and Development Policies, N.J.A.C. 7:7E.

(1) It should contain sufficient detail to assist in the evaluation of the facility, to provide a basis for the applicant's assessment of environmental impacts, and to enable the Division to make the necessary statutory findings for permit approval as specified in the relevant enabling legislation.

(2) Specific requirements will vary depending on the magnitude and complexity of the project, and on the sensitivity of the land and water features of the site.

4. An EIS for a Type B Wetlands Permit shall, in addition to the general requirements set forth in (b)1 to 3 above, include a description and analysis of all possible direct and indirect effects of the proposed activity on the site itself as well as on adjacent and noncontiguous areas. The EIS shall refer particularly to the effect of the project on the project on the public trust in submerged lands, wildlife and marine fisheries, the protection, preservation and enhancement of the natural environment and the preservation of the ecological balance of the wetlands. It shall relate ecological and physical characteristics of the proposed activity site to local vegetation, birds, mammals, tidal circulation, hydrology, soils, and land use; in addition, it shall describe and analyze:

i. The reason that structures cannot be located on lands other than wetlands;

ii. Temporary and permanent physical changes which would be caused by the proposed activity and impact of these changes on the activity area and immediate environs;

iii. All measures to be taken during and after the completion of the proposed activity to reduce detrimental on-site and off-site effects; and

v. Adverse environmental impacts which cannot be avoided.

(c) Every EIS submitted to the Division, other than those submitted for a Type B Wetlands Permit shall, to the maximum extent practicable, be prepared in accordance with the following format:

1. Table of contents;
2. List of figures;
3. Introduction;
4. Inventory:
i. Location;
ii. Ownership of site and adjacent properties; and
iii. Existing site conditions:
(1) Topography;
(2) Existing development;
(3) Existing zoning;
(4) Master plan;
(5) Tidelands interest;
(6) Regulated wetlands;
(7) Delineated flood hazard areas; and
(8) Publicly owned lands.
5. Project description:
i. General;
ii. Building type;
iii. Transportation plan;
iv. Utilities plan:
(1) Water Supply;
(2) Wastewater service;
(3) Storm drainage facilities;
(4) Electrical service;
(5) Solid waste collection, recycling, disposal; and
(6) Street lighting.
v. Energy plan;
vi. Landscaping plan;
vii. Soil erosion and sediment control plan;
viii. Open space and recreation plan;
ix. Aesthetics plan;
x. Construction plan;
xi. Operation plan; and
xii. Future plan.
6. Environmental assessment and compliance with Coastal Resource and Development Policies. This section of the EIS shall include an environmental inventory assessment, a detailed statement of compliance with the Coastal Resource and Development Policies (N.J.A.C. 7:7E), and a listing of adverse impacts, mitigation and alternatives.
i. Location policies:
(1) Special areas;
(2) General water areas;
(3) General land areas; and
(4) General Location Policies with reference to Secondary impacts.
ii. Use Policies; and
iii. Resource Policies.
7. Appendices as needed.]

7:7-[6.4]**6.3** Preparation

(a) (No change.)

(b) If the applicant believes that specific elements of the EIS **or Compliance Statement** are not applicable to the proposed [facility] **development**, [and if agreed to by the applicant and the Division

at the pre-application conference,] the applicant may indicate "not applicable" under the appropriate heading. The reason why the information is not required should be indicated.

(c) The EIS shall be bound or in loose-leaf form, on 8½ by 11 inch paper. All maps, plans and aerial photographs shall specify a north point, graphic scale, **name of preparer,** date of preparation **(including all revisions),** and source of information. **All appendices shall be labelled on the cover page so that they can be identified.**

(d) The EIS **or Compliance Statement** should be prepared using an interdisciplinary approach, and the qualifications of the persons who prepared each element shall be identified in a separate section. References to information, reports or treatises not contained in the EIS shall be cited throughout the text as appropriate, and in a consistent manner.

(e) The [Division] **Department** recognizes that some or all of the EIS requirements set forth below in (f) may be addressed in an EIS prepared [pursuant to state or Federal law] **to meet requirements of another governmental agency or body**. Such an EIS may be submitted under this subchapter, but must be supplemented in order to comply with (f) below.

(f) The EIS **or Compliance Statement** must discuss the applicability of the Department's Rules on Coastal [Resource and Development Policies] **Zone Management,** N.J.A.C. 7:7E, to the proposal. This information is to be submitted in both map form and as part of the environmental inventory and assessment.

SUBCHAPTER 7. GENERAL PERMITS AND PERMITS-BY-RULE

7:7-7.1 General standards for issuing coastal General Permits and Permits-By-Rule

(a) This section contains the procedures and substantive standards governing the issuance of new General Permits in accordance with N.J.S.A. 13:14 et seq. and contains the procedures and substantive standards for the issuance of permits-by-rule. N.J.A.C. 7:7-7.2 and 7.3 contain the procedures and substantive standards for authorizing various developments under the issued General Permits. N.J.A.C. 7:7-7.4 describes the activities authorized by Permit-by-Rule.

(b) Before reissuing a General Permit or Permit-By-Rule, or adopting a new General Permit or Permit-By-Rule, the Department will propose a draft General Permit for public comment in the form of a rule proposal pursuant to the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(c) The Department may issue General Permits or Permits-By-Rule only if all of the following conditions are met:

1. The Department determines that the regulated development will cause only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, and is in keeping with the legislative intent to protect and preserve the coastal area from inappropriate development;

2. The Department determines that the development will be in conformance with the purposes of CAFRA; and

3. The Department has provided public notice and an opportunity for a public hearing with respect to the proposed General Permit or Permit-By-Rule. After a General Permit has been issued by the Department, the Department will not hold hearings on individual applications for a General Permit.

(d) Each General Permit or Permit-By-Rule shall contain a specific description of the type(s) of development which are authorized, including limitations for any single operation, to ensure that the requirements of (a), (b) and (c) above are satisfied. At a minimum, these limitations shall include:

1. The size and type of the development that may be undertaken; and

2. A precise description of the geographic area to which the general permit or permit-by-rule applies.

(e) The Department will include in each general permit or permit-by-rule issued pursuant to this subchapter appropriate conditions applicable to particular types of sites or development which must be met in order for a proposed development or activity to qualify for authorization under the general permit or permit-by-rule.

1. The Department may add special conditions which must be met in order for a specific proposed development to qualify for a general permit.

(f) The Department may, by proposing and adopting regulations, rescind a category of general permits or permits-by-rule, and thereafter require individual CAFRA permits for development previously covered by the general permit or permit-by-rule, if it finds that the general permit or permit-by-rule no longer meets the purposes of N.J.S.A. 13:19-1 et seq. and of this chapter.

(g) The Department shall review each general permit and permit-by-rule a minimum of once every five years in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. This review shall include public notice and an opportunity for public hearing. Upon completion of this review, the Department shall either modify, reissue or revoke each general permit and permit-by-rule previously adopted.

(h) If a general permit or permit-by-rule is not modified or reissued within five years of initial publication in the New Jersey Register, it shall automatically expire.

7:7-7.2 General Permit authorization

(a) The following development in the CAFRA area is authorized under the following General Permits provided that the activity is in compliance with specific conditions contained in the General Permit:

1. Single Family Home or Duplex: The construction of a single family home or duplex on a bulkheaded lagoon lot, provided that the proposed project complies with all of the following:

i. The site is located on a man-made lagoon;

ii. All waterfront portions of the site are protected by a currently serviceable legal bulkhead;

iii. There are no wetlands on site upland of the bulkhead;

iv. The project consists solely of the construction of a single family home or duplex and associated improvements and is not part of a larger development;

v. The dwelling and all other permanent structures, exclusive of a deck, are set back a minimum of 15 feet from the waterward face of the bulkhead;

vi. A silt fence is erected upland of the bulkhead with a 10 foot return on each end prior to construction. This fence must remain in place until all construction and landscaping activities are completed;

vii. Landscaping on the site is limited to indigenous coastal species to the maximum extent practicable and does not include the planting of a lawn. The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners must be made of filter cloth or other permeable material;

viii. The driveway is covered with a permeable material or is pitched to drain all runoff onto permeable areas of the site;

ix. The lowest habitable floor of the proposed structure is at or above the base flood elevation for the site as established by the Federal Emergency Management Agency and designated on the Flood Insurance Rate Map; and

x. The proposed dwelling will be serviced by an existing municipal sewer system.

2. Amusement Pier Expansion: The expansion of an existing, functional amusement pier, provided that the proposed expansion complies with the following:

i. The amusement pier was existing and functional as of July 19, 1993 and contained game, ride and food concessions;

ii. The proposed expansion does not exceed the footprint of the existing, functional amusement pier by more than 25 percent;

iii. The proposed expansion is located more than 150 feet landward of the mean high water line;

iv. The proposed expansion is constructed on pilings at the same elevation as the existing, functional amusement pier;

v. The proposed expansion will not eliminate or affect existing, direct public access from the boardwalk to the beach, unless another access point is provided immediately adjacent to the expanded pier for each access point eliminated; and

vi. The proposed expansion includes a provision for public sitting and viewing at the terminal end of the expansion.

3. Beach and Dune Maintenance Activities: Beach and dune maintenance activities provided they are conducted in accordance with Best Management Practices as defined by the Department in the Rules on Coastal Zone Management, N.J.A.C. 7:7E-3A. Activities which may be authorized under this general permit include dune creation projects, sand transfers using mechanical equipment, and the construction of beach access ways.

4. Voluntary Reconstruction: The voluntary reconstruction of a non-damaged legally constructed, currently habitable residential or commercial development within the same footprint, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law and provided:

i. The reconstruction does not result in the enlargement or relocation of the footprint of the development; and

ii. The reconstruction does not result in an increase in the number of dwelling units or parking spaces within the development.

iii. A relocation landward may qualify for this general permit if the Department determines that such a relocation would result in less environmental impact than the prior development.

(b) The Department may require an application for an individual CAFRA permit instead of a General Permit if the Department finds that additional permit conditions would not be sufficient, or that special circumstances make this action necessary to ensure compliance with statutory requirements. The Department retains discretionary authority to require, on a case-by-case basis, submission of an individual CAFRA permit application for any proposed activity when it is determined that such a review would be in the public interest and that the proposed activity has the potential to cause significant impacts on environmental resources. In addition, when a project in its entirety does not qualify for a general permit, then the entire project shall require an individual CAFRA permit application. The Department will require an individual CAFRA permit application for a development that has already received a General Permit.

(c) All General Permits shall be valid for a term not to exceed five years from the date of receipt from the Department. If the term of a General Permit applicable to a specific development exceeds the expiration date of the General Permit issued by rule, and the General Permit upon which the authorization was based is modified by rule to include more stringent standards or conditions, the permittee must comply with the requirements of the new regulations by applying for a new General Permit authorization unless construction is already underway. If the General Permit is not reissued, the applicant must apply for an individual CAFRA permit unless construction pursuant to the prior General Permit is already underway.

1. For the purposes of this section, "construction" means having completed the foundations for buildings or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine if construction of a development or part of a development has begun by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Construction" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction.

7:7-7.3 Application procedure for a General Permit authorization

(a) A person proposing to engage in an activity covered by a General Permit shall submit the following to the Department:

1. A completed DEPE Standard Construction Permit (CP-1) form;

2. Photographs of the site for which authorization is being requested;

3. Verification that a certified mail notice with return receipt requested and a complete copy of the application has been forwarded to the clerk of the municipality and that a certified mail notice with return receipt requested (white receipts or green cards are acceptable) has been forwarded to the environmental commission, or any public body with similar responsibilities, as well as to municipal planning board, county planning board, municipal construction official, and to all landowners within 200 feet of the property or properties on which the proposed activity will occur. The applicant shall also provide a certified list of all landowners within 200 feet as part of the application. The notice shall read as follows:

"This letter is to provide you with legal notification that an application will be submitted to the New Jersey Department of Environmental Protection and Energy, Land Use Regulation Program for a General Permit authorization for (describe the proposed development).

The complete permit application package can be reviewed at either the municipal clerk's office or by appointment at the DEPE's Trenton office. The Department of Environmental Protection and Energy welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter. Your comments should be sent along with a copy of this letter to:

New Jersey Department of Environmental Protection and Energy
Land Use Regulation Program
CN 401
5 Station Plaza
Trenton, New Jersey 08625

Attn: (County in which the property is located) Section Chief"

4. A fee pursuant to N.J.A.C. 7:1C-1.5(a)3iii; and

5. Any additional information as outlined in (b) through (e) below.

(b) A person applying for a General Permit to construct a single family home or duplex on a bulkheaded lagoon lot pursuant to N.J.A.C. 7:7-7.2(a)1 shall also submit:

1. Three copies of site plans demonstrating that the proposed development complies with the criteria listed above at N.J.A.C. 7:7-7.2(a)1; and

2. A copy of the local construction permit approval obtained for the proposed single family home or duplex.

(c) A person applying for a General Permit to expand an existing, functional amusement pier pursuant to N.J.A.C. 7:7-7.2(a)2 shall also submit written documentation containing:

1. A description of the location of the activity including county, municipality, lot(s) and block(s);

2. Documentation concerning the size of the footprint of the existing functional amusement pier and the size of the proposed expansion;

3. A copy of a site plan showing the location of the existing, functional amusement pier and the proposed location of the expansion;

4. Plans showing the existing and proposed direct public access points from the boardwalk to the beach; and

5. Plans showing the proposed public sitting and viewing area at the terminal end of the expansion.

(d) A person applying for a General Permit for beach and dune maintenance activities pursuant to N.J.A.C. 7:7-7.2(a)3 shall also submit:

1. A description of the location of the proposed activities, including county, municipality, lot(s) and block(s);

2. A plan showing the specific location of all proposed activities;

3. A description of the specific activities proposed for each location;

4. A statement from the applicant which details how the proposed activities will be conducted in compliance with the standards set forth in the Department's Rules on Coastal Zone Management, N.J.A.C. 7:7E;

5. The name, title, address and phone number of the person(s) responsible for supervising the proposed activities to ensure compliance with the referenced standards; and

6. The schedule for conducting the specific activities.

(e) A person applying for a General Permit for voluntary reconstruction of an undamaged, legally constructed, serviceable structure or habitable residential or commercial development pursuant to N.J.A.C. 7:7-7.2(a)4 shall also submit:

1. Development plans clearly depicting the existing site and the proposed site, including size and location of the current and proposed footprint; and

2. Documentation that there will not be an increase in the number of dwelling units or parking spaces or equivalent parking area associated with the proposed reconstruction.

3. A person wishing to relocate landward shall also submit plans showing the existing structures and site conditions with locations and dimensions, and all proposed structures, filling, grading, excavation and clearing.

(f) Except as otherwise provided in this section, an application for a General Permit authorization will be reviewed following the procedures set forth at N.J.A.C. 7:7-4.4 through 4.11.

7:7-7.4 Permits-By-Rule

(a) This section details the activities authorized by Permit-by-Rule.

1. Single Family Home or Duplex Expansion: The expansion of a legally constructed, habitable single family or duplex dwelling on the non-waterward sides of the dwelling, provided that the expansion does not exceed a cumulative surface area of 400 square feet, and provided that such expansion is not proposed on a beach, dune, or wetland.

2. Expansion of a Single Family Home or Duplex on a bulkheaded lagoon lot: The expansion of a legally constructed, habitable single family or duplex dwelling on a bulkheaded lagoon lot, provided that the expansion does not exceed a cumulative surface area of 400 square feet, such expansion is not proposed on a wetland, and provided that such expansion is set back a minimum of 15 feet from the waterward face of the bulkhead.

(b) A person wishing to engage in an activity covered by a Permit-By-Rule shall submit notification to the Department at least 30 days prior to commencement of the proposed work. Such notification shall be sent to: Administrator, DEPE—Land Use Regulation Program, CN 401, Trenton, New Jersey 08625, and shall include:

1. A description of the location of the proposed activity including county, municipality, lot(s) and block(s);

2. A description of the proposed expansion including its dimensions and location; and

3. A copy of the issued building permit for the proposed development.

APPENDIX

Administrative Hearing Request Checklist
and Tracking Form for Permits

I. Permit Being Appealed:

_____
Title and Type of Permit

_____ _____
Issuance Date of Permit Permit Number

II. Person Requesting Hearing:

_____ _____
Name/Company Name of Attorney (if applicable)

_____ _____

_____ _____
Address Address of Attorney

III. Please Incude the Following Information as Part of Your Request:

A. The date the permittee received the final permit;
B. A copy of permit, list of all permit conditions and issues contested;
C. The legal and factual questions at issue;
D. A statement as to whether or not the permittee raised each legal and factual issues during the public comment period on the permit;
E. Suggested revised or alternative permit conditions;
F. An estimate of the time required for the hearing;
G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
I. This form, completed, signed and dated with all of the information listed above, including attachments, to:
   1. Office of Legal Affairs
      ATTENTION: Adjudicatory Hearing Requests
      Department of Environmental Protection and Energy
      401 East State Street
      CN 402
      Trenton, New Jersey 08625-0402
   2. (Name and address of Assistant Director/designee)
   3. All co-permittees (w/attachments)

IV. Signature: _____ Date: _____

(a)

ENVIRONMENTAL REGULATION
LAND USE REGULATION PROGRAM
Rules on Coastal Zone Management
Proposed Amendments: N.J.A.C. 7:7E
Proposed Repeals: N.J.A.C. 7:7E-2.3, 3.26, 3.29, 3.30, 4.2 through 4.10, 8.3, 8.9, 8.15 and 8.16
Proposed New Rules: N.J.A.C. 7:7E-3.49, 3A, 7.3A and 8.21

Authorized By: Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.
Authority: N.J.S.A. 13:19-16.
DEPE Docket Number: 11-94-01/291.
Proposal Number: PRN 1994-126.

Public hearings concerning these amendments will be held on:

Friday, March 11, 1994 at 9:30 A.M.
Department of Environmental Protection and Energy
Public Hearing Room
401 East State Street
Trenton, New Jersey

Monday, March 14, 1994 at 7:00 P.M.
Dover Municipal Building
33 Washington Street
Toms River, New Jersey

Wednesday, March 16, 1994 at 1:30 P.M.
Ocean City Music Pier
Ocean City, New Jersey

Submit written comments, identified by the Docket Number given above, by March 24, 1994 to:

Janis Hoagland, Esq.
Administrative Practice Officer
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The Rules on Coastal Zone Management (N.J.A.C. 7:7E) represent the State's substantive standards for the use and development of resources in the New Jersey coastal zone. These rules are used to review permit applications under the Coastal Permit Program rules at N.J.A.C. 7:7, which implement the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., the Wetlands Act of 1970, N.J.S.A. 13:9A-1, and the Waterfront Development Law, N.J.S.A. 12:5-3. In addition, this

chapter applies to decisions regarding consistency of proposed Federal actions with these rules under Section 307(c)(1) of the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq., and to make decisions on water quality certifications under Section 401 of the Federal Clean Water Act, 33 U.S.C. 1251 et seq. The rules are also used as a basis for making recommendations to the Tidelands Resource Council on applications for riparian grants, leases and licenses, and are applicable to other Departmental decision-making processes, as set forth in N.J.A.C. 7:7E- 1.2(e). The Rules were initially adopted in 1978 to constitute New Jersey's Coastal Zone Management Program under the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq..

The Department of Environmental Protection and Energy (DEPE) proposes to revise the Rules on Coastal Zone Management in response to the CAFRA amendments which were enacted in July 1993, and which become effective on July 19, 1994 (P.L. 1993, c.190). The Department held public meetings on September 20, September 30, and October 1, 1993, in Ocean, Cumberland and Monmouth Counties, respectively, to discuss the CAFRA amendments and to solicit comments and suggestions from the public regarding the implementation of the new legislation. These proposed amendments to the Rules on Coastal Zone Management incorporate many of the comments and suggestions received from the public. The comments focused primarily on the need to provide a simple and clear permit application process for single family home owners. Many of the single family home owners' concerns are also being addressed by the Department's proposed amendments to the Coastal Permit Program Regulations (N.J.A.C. 7:7) published elsewhere in this issue of the New Jersey Register.

The Department is proposing changes to the Rules on Coastal Zone Management, including the addition of appendices to make the rules more "user friendly" by incorporating specific design standards and specifications. Additional proposed amendments throughout the rules reflect organizational changes in the Department's current structure. The rules were initially promulgated pursuant to the Administrative Procedures Act (N.J.S.A. 52: 14B-1 et seq.) in 1981, and this terminology therefore more accurately reflects their past and current legal status.

Rules Proposed for Repeal

The Department proposes to repeal the following sections in their entirety:

N.J.A.C. 7:7E-2.3, Mapping and acceptability determination, which explains the Coastal Location Acceptability Method (CLAM) to be used in determining whether a proposed activity on a specific site will comply with the coastal policies, is proposed for repeal because it has been difficult to use and is no longer considered necessary by the Department. The Department's current practice is to apply all pertinent coastal rules to a given application, which makes the CLAM process redundant.

N.J.A.C. 7:7E-3.1, Introduction. DEPE proposes to repeal N.J.A.C. 7:7E-3.1(a)2 (Special Water's Edge Areas) from this rule because each Special Water's Edge Area is covered under an existing rule elsewhere in this chapter. These separate rules provide standards and acceptability conditions for different types of developments which apply to each Special Area.

N.J.A.C. 7:7E-3.26, Alluvial Flood Margins, which governs the type of development and standards for development in alluvial flood margins, is proposed for repeal because other existing rules provide adequate protection to these areas. The other rules are regarding the Wetlands (N.J.A.C 7:7E-3.27), Wetland Buffers (N.J.A.C. 7:7E-3.28) and Intermittent Stream Corridors (N.J.A.C. 7:7E-3.32). All alluvial flood margins, by their physical nature, are classified as one of these other special areas and therefore this rule is duplicative.

N.J.A.C. 7:7E-3.29, Cranberry Bogs, which governs the type of development and standards for development in cranberry bogs, is proposed for repeal because N.J.A.C. 7:7E-3.27, Wetlands, applies to all areas which could be classified as cranberry bogs. Since that rule will continue to adequately protect these areas, a separate rule for cranberry bogs is no longer considered necessary.

N.J.A.C. 7:7E-3.30, Wet Borrow Pit Margins, is proposed for repeal. Its provisions are proposed to be merged with those at N.J.A.C. 7:7E-3.14, Wet Borrow Pits, to increase regulatory simplicity and clarity.

DEPE proposes to repeal N.J.A.C. 7:7E-8.3, Shellfisheries and incorporate parts of this section with the Shellfish Beds Rule (N.J.A.C. 7:7E-3.2) to form a new Shellfish Habitat Rule codified at N.J.A.C. 7:7E-3.2. Combining these rules will enable permit applicants to more easily address the impacts of proposed developments on shellfish habitat, since the presentation of the rule will be more concise.

N.J.A.C. 7:7E-8.9, Important Wildlife Habitat, protects against impacts to important wildlife habitats. The rule is being proposed for repeal because it is rarely used and because other rules, including the N.J.A.C 7:7E-8.8, Vegetation, and N.J.A.C 7:7E-3.39, Critical Wildlife Habitat, adequately protect important wildlife habitat areas.

N.J.A.C 7:7E-8.15, Fertile Soils, requires that all excavated soils on a development site be stockpiled for reuse on the site. The rule is proposed for repeal because it has been difficult to enforce and because N.J.A.C. 7:7E-8.8, Vegetation, adequately protects these soils through its standards for site clearing and stabilization.

N.J.A.C. 7:7E-8.16, Noise Abatement, requires noise levels to conform with the standards established in N.J.A.C. 7:29-1.1. This rule is proposed for repeal because local noise control ordinances are now in place and enforced at the municipal level, making these provisions duplicative.

N.J.A.C. 7:7E-4.2 through 4.10, Water Area Policy Summary Table. These sections currently provide a list of development activities for each water area type, and provides an indication of the acceptability of each specific activity in terms of the Rules on Coastal Zone Management. DEPE proposes to repeal these rules and incorporate the applicable acceptability indicators within other sections of the rules. The purpose of this proposed change is to centralize the acceptability indicators for purposes of clarity.

Proposed Amendments

Subchapter 1. Introduction

N.J.A.C. 7:7E-1.1, Purpose. DEPE proposes to modify this section to include water quality certifications (N.J.S.A. 58:10A-1 et seq. and 33 U.S.C. 1341) and Federal consistency determinations in the list of approvals to which the Rules on Coastal Zone Management apply in order to reflect and clarify current practice. The proposed amendment states that water quality certifications will also be reviewed in accordance with other applicable statutes and regulations administered by the Department, including the water quality standards (N.J.A.C. 7:9B). A state water quality certification is required under Federal law (Section 401 of the Federal Clean Water Act) before a Federal agency can issue a Federal permit allowing a discharge into waters of the United States. A Federal consistency determination is likewise required under Federal law for federally authorized activities which affect the state coastal zone.

N.J.A.C. 7:7E-1.2, Jurisdiction. DEPE proposes to amend this rule to include a new definition of coastal zone and to revise the description of DEPE management actions covered by the Rules on Coastal Zone Management. The amendment reflects the Department's current organization, current terminology for management activities, and current statutory authorities.

N.J.A.C. 7:7E-1.5, Coastal decision-making process. DEPE proposes to amend N.J.A.C.7:7E-1.5(a) to eliminate the statement that the Hackensack Meadowlands Development Commission (HMDC) will be the lead agency in decisions made on coastal resources in the Hackensack Meadowlands District. The role of HMDC in decision making will be addressed in a future rule proposal amending N.J.A.C. 7:7E-3.45, which specifically applies to the Hackensack Meadowlands District.

7:7E-1.5(c) Definitions. DEPE is proposing to add definitions for the following terms: area, commercial development, development, dwelling unit, habitable structure, location, major commercial development, minor commercial development, mean high water, mean high water line, reconstruction, and spring tide.

The definitions for the following terms are proposed to be amended: conditionally acceptable, division, department, navigable, and site. The new definitions reflect the CAFRA amendments effective July 19, 1994, and the revised definitions are intended to clarify the applicability of the Rules on Coastal Zone Management.

Subchapter 2. Location, Use and Resource Rules

N.J.A.C. 7:7E-2.1, Introduction. DEPE proposes to revise this rule by eliminating the reference to the CLAM method now described in N.J.A.C. 7:7E-2.3. As previously stated, DEPE is proposing to repeal N.J.A.C. 7:7E-2.3 in its entirety.

Subchapter 3. Special Areas

Special Areas are coastal areas which require special management, because of their environmentally sensitive nature. These areas are so naturally valuable, or so important for human use, or so sensitive to impact, or so hazardous as to merit focused attention.

N.J.A.C. 7:7E-3.2, Shellfish habitat. DEPE proposes to merge the shellfish beds and shellfisheries rules (existing N.J.A.C. 7:7E-3.2 and

7:7E-8.3) into a new shellfish habitat rule. The existing shellfish beds and shellfisheries rules protect water areas which contain shellfish resources. The proposed change will clarify what constitutes a productive shellfish habitat and a habitat which has a history of production for various types of shellfish. The proposed changes include identifying the shellfish resources by their habitats and limiting the shellfish resources protected under the rule to those areas where the productivity rating is high (or to areas capable of producing shellfish at a density of 0.20 shellfish per square foot, the level deemed viable for commercial harvesting) and to those areas designated as shellfish culture areas, pursuant to N.J.S.A. 50:1 et seq. (including estuarine areas presently leased by the State for shellfish aquaculture activities or hard clam relay, transplant and transfer as well as those areas suitable for future shellfish aquaculture development, or areas designated as "productive" pursuant to N.J.A.C 7:25-24, Leasing of Atlantic and Delaware Bay Bottom for Aquaculture). Water areas that are less productive will not be protected under the proposed rule, even though these areas are valuable to recreational clammers and produce clams or forage foods for a variety of finfish and waterfowl. This demarcation is intended to balance the competing interests of boating-related services and facility development, and shellfish protection for the benefit of the shellfish industry and the environmentally conscious public. Boating-related uses and facilities will generally not be permitted in water areas that are shellfish habitats as defined by the proposed habitat definition, and no special restrictions pursuant to this rule are proposed to be placed on boating-related uses in water areas that are not shellfish habitats, with the exception of conditions imposed on development in the Navesink, Manasquan, and Shrewsbury Rivers and Saint Georges Thorofare, as set forth at N.J.A.C. 7:7E-7.3(d) (standards relevant to marinas).

The proposed revisions to the shellfish rules also include a provision to allow new dredging for the purpose of maintaining the functioning of existing public launching facilities with parking for 25 or more boat trailers and existing marina facilities with 25 or more dry or wet dockage units. DEPE further proposes to modify and recodify the existing standards in N.J.A.C. 7:7E-3.2(c) to provide clear and/or quantifiable standards to govern the downgrading (or the elimination of the potential for upgrading) of a Shellfish Growing Water Classification of areas located under waterfront developments. This system of classification is proposed to conform to the National Shellfish Sanitation Program's Manual of Operations. A Shellfish Growing Water Classification allows or prohibits shellfish harvesting in a water area based on water quality.

N.J.A.C. 7:7E-3.5, Finfish migratory pathways. This rule protects certain waterways from disturbance which could adversely affect the migration and spawning of various species of fish. DEPE proposes to revise this rule to include "channelization and tide gates" in the definition of development which could affect this resource, and to include the entrainment of fish eggs, larvae or juveniles as activities which would result in a requirement for mitigation. These additional activities have been determined to potentially impact this Special Area;, their inclusion in the rule is intended to increase the protection of this resource.

N.J.A.C. 7:7E-3.6, Submerged Vegetation. This rule protects submerged aquatic vegetation from disturbance which could adversely affect the vegetation. DEPE proposes to amend the definition of this resource and to enlarge the scope of the rule. Under the proposed amendment, the rule would apply on the basis of the presence or absence of the existing or documented species habitat and freshwater submerged vegetation species habitats would be added to the existing submerged vegetation species list. These proposed changes would provide increased protection to this resource, which plays an important role in the estuarine ecosystems of the coastal zone by trapping suspended sediment, providing winter forage for waterfowl, and providing a nursery area for juvenile fish.

The proposed amendments would allow the following development and uses in the submerged vegetation habitat, subject to specified conditions: trenching for utility lines in the public interest; new dredging of State and Federal navigation channels; new and maintenance dredging of previously authorized, existing, operating marinas with 25 or more dockage units (wet or dry) and public launching facilities with 25 or more trailer parking facilities, and all associated access channels to those marinas; maintenance dredging to access existing docks, piers, boat ramps and mooring areas; the construction of a single noncommercial dock or pier, provided that there is no practicable alternative and other conditions are met; and the extension of an existing pier or floating dock for the purpose of eliminating boating or dredging through submerged vegetation habitat.

The proposed amendments would also require mitigation, that is, replanting and monitoring, for unavoidable, permanent and significant impacts to submerged vegetation habitat. The conditionally acceptable activities described above have been identified as activities that are either necessary and unavoidable or that can be accommodated in the habitat area without destroying or significantly degrading the habitat environment. By including the submerged vegetation "habitat" in the definition of the rule, as well as those areas where the vegetation is actually present, greater protection of the resource will be provided, since submerged vegetation is somewhat migratory and the areas of coverage may vary from time to time. Protection of the resource will also be increased through adoption of the mitigation requirement.

N.J.A.C. 7:7E-3.7, Navigation channels. DEPE proposes to expand the definition of navigation channels to include areas up to the top of the channel slopes on either side. This proposed change will provide greater protection to boaters who operate in and adjacent to these navigation channels. Additionally, DEPE proposes to amend this rule to prohibit construction within a navigation channel and to discourage development within 50 feet of a navigation channel unless it can be demonstrated that the structure will not hinder navigation and that all dock and pier construction will not hinder access to adjacent docks, piers, moorings or water areas. These changes are intended to increase the margin of safety for boaters in water areas which contain existing docks, piers and moorings and in areas adjacent to navigation channels.

N.J.A.C. 7:7E-3.10, Marina Moorings. DEPE proposes to revise the definition in this section to specify that marina mooring areas are areas for the mooring of five or more vessels. The current definition does not include a threshold number, which means that any water area could be a marina mooring if that water area provides for the mooring or docking of a boat. It is the current practice of DEPE and the Army Corps of Engineers to consider five or more slips a "marina."

N.J.A.C. 7:7E-3.11, Ports. This rule discourages the construction of boat ramps for recreational boating in these areas. DEPE proposes to revise this section to provide that boat ramps are conditionally acceptable in port areas so long as any such ramp complies with all Special Area rules in this chapter and does not interfere with the port use.

N.J.A.C. 7:7E-3.14, Wet Borrow Pits. DEPE proposes to modify this section to incorporate subsections (f) and (g) of N.J.A.C. 7:7E-3.30, Wet Borrow Pit Margins, at subsections (i), (j) and (k) of N.J.A.C. 7:7E-3.14. As previously stated, DEPE is also proposing to repeal N.J.A.C. 7:7E-3.30. Subsections (f) and (g) of N.J.A.C. 7:7E-3.30 contain requirements regarding the grading of banks at the water's edge, allowing limited recreational use of wet borrow pit margins, and requiring a water quality buffer area around the perimeter of wet borrow pits. DEPE believes that retention of the substantive provisions of N.J.A.C. 7:7E-3.3 (f) and (g) in the regulations is necessary in order to adequately protect these wet borrow pits. This proposed revision will provide all standards associated with wet borrow pits in one section, which will simplify the permit application and review procedure.

N.J.A.C. 7:7E-3.15, Intertidal and Subtidal Shallows. This rule discourages any development, filling, dredging or other disturbance in this Special Area. DEPE proposes to revise this rule to allow for the dredging of these areas to maintain access to existing marinas and public launching areas and existing dock and mooring areas. The proposed revision also includes a recommendation that all utility installation through these areas be accomplished by directional drilling rather than by trenching, and allows the filling of this area for beach nourishment if the requirements of the Filling and Coastal Engineering rules (N.J.A.C. 7:7E-4.2(j) and 7:7E-7.11(d)) are met. These proposed changes will better protect this Special Area by encouraging a less damaging construction technique which will result in decreased disturbance to the shallows, and the changes will facilitate the dredging of existing boat mooring areas and boat accesss channels as well as beach nourishment.

N.J.A.C. 7:7E-3.16, Dunes. This rule prohibits any development on or disturbance to dunes, with the exception of certain activities (construction of shore protection structures, utility lines, dune walkovers, and sand fencing). DEPE proposes to revise this rule to specifically prohibit the bulldozing, excavating, altering or grading of dunes and the clearing of dune vegetation, unless such activities are specifically approved by the Land Use Regulation Program in the Department. DEPE also proposes to revise the rule to provide clear standards for dune creation, maintenance and stabilization projects, dune walkover and pathway construction, and dune design guidelines, in accordance with the National Flood Insurance Program (NFIP) regulations. The Department has not previously regulated these types of dune activities, but the proposed

changes are based on data and information which has been developed over the past 10 years by the Department in the area of dune construction, maintenance and enhancement. In addition, some of the standards are taken from existing NFIP Regulations which have been in effect since 1988. These proposed changes will increase the protection of dunes by ensuring that regulated activities are conducted in an environmentally sound manner.

N.J.A.C. 7:7E-3.17, Overwash Areas. This rule prohibits most types of development in overwash areas, with the exception of dune enhancement activities, dune walkover construction and the construction of linear developments and shore protection structures. DEPE proposes to modify this rule to incorporate the dune construction and enhancement standards in N.J.A.C. 7:7E-3.16 (described above), as well as to specifically highlight the importance of protecting street-ends from storm overwash, through dune construction. Data collected by the DEPE since 1984 have identified street-ends as the major overwash hazard areas. The proposed revision should result in increased storm protection for the developed shorefront.

N.J.A.C. 7:7E-3.18, Coastal High Hazard Areas. DEPE proposes to revise this rule to reflect the new definition of Coastal High Hazard Area (or V-zone) of the National Flood Insurance Program (NFIP), which was formally adopted in 1988 as a revision to the NFIP regulations. The proposed revision also includes a 25 foot set-back requirement for structures located immediately adjacent to and landward of oceanfront shore protection structures located in V-zones. This set-back requirement is intended to reduce the potential for damage caused by wave runup and overtopping of the shore protection structure. This revision also reflects recommendations made by Federal Emergency Management Agency and the New Jersey Hazard Mitigation Team as part of the State Hazard Mitigation Report following the December 1992 northeast storm.

N.J.A.C. 7:7E-3.19, Erosion Hazard Areas. DEPE proposes to modify this rule to include a reference to the standards for dune construction and enhancement, dune walkover and pathway construction, and standards for beach maintenance activities, proposed as N.J.A.C. 7:7E-3A.

N.J.A.C. 7:7E-3.21, Bay Islands. This rule restricts the level of development on bay islands, in an effort to minimize disturbance to these environmentally sensitive areas and to ensure that storm evacuation routes from the barrier islands are maintained. DEPE proposes to revise this rule to list specific bay islands which will be exempt from the requirements of this rule, based on the location of the islands and on the level of existing development and infrastructure currently in place. This amendment is intended to allow for infill development on the listed bay islands, which are already highly developed.

N.J.A.C. 7:7E-3.22, Beaches. This rule prohibits most types of development on beaches but does not include acceptability standards for developments which are allowed in these areas. DEPE proposes to revise this rule to allow beach maintenance and restoration activities, which were previously unregulated by the Department, provided specific standards are met. These standards were developed by the DEPE, in conjunction with the Stockton State College Coastal Research Center, will limit the potential for adverse impacts to the natural beach/dune system. The standards also include guidelines for construction of boardwalks, access ramps and pathways, and dune creation/restoration projects.

N.J.A.C. 7:7E-3.23, Filled Water's Edge. DEPE proposes to revise this rule to reference N.J.A.C. 7:7E-8.11, which governs public access to the waterfront. Because the public access rule applies to most filled water's edge sites, the amendment will provide greater clarity. The proposed revision also includes a statement that public access will not typically be required at single family or duplex residential lots.

N.J.A.C. 7:7E-3.25, Flood Hazard Areas. This rule regulates development in flood hazard areas in order to protect lives and property in these zones. DEPE proposes to revise this rule to provide a definition of "undeveloped" and to specifically cross-reference the Stormwater Runoff rule at N.J.A.C. 7:7E-8.7, which includes specific standards for the construction of stormwater management systems in flood hazard areas.

N.J.A.C. 7:7E-3.27, Wetlands. DEPE proposes to modify this rule to include a reference to all wetland maps available to the public, to include a reference to the Freshwater Wetlands Protection Act (FWPA) standards at N.J.A.C. 7:7A for development in Freshwater Wetlands, and to include specific wetland mitigation requirements and standards. In addition, for projects which require a waterfront development permit, DEPE proposes to allow the reuse of former dredge material disposal islands for continued dredge material disposal under specified conditions. These proposed changes should facilitate the disposal of dredged material. The mitigation requirements and standards are intended to provide clear guidance to permit applicants in the planning and design of a wetland mitigation project. The proposed revisions are intended to codify existing policy, and to reference preexisting legal standards which are already applicable to these various wetland areas in the coastal zone by virtue of the Freshwater Wetlands Protection Act (N.J.S.A. 7:7A) or the Wetlands Act of 1970 (N.J.A.C. 13:9A-1).

N.J.A.C. 7:7E-3.28, Wetlands Buffers. DEPE proposes to revise this rule to clarify the required wetlands buffer distances, which are dependant on the type of wetlands present (tidal/saline or freshwater wetlands). In addition, the revision includes a provision by which the Department will apply less restrictive buffer requirements for single family or duplex infill developments. DEPE also proposes to delete the existing provision (N.J.A.C. 7:7E-3.28(d)) which specifies that areas in the coastal zone and also in the Pinelands Area shall provide buffers in accordance with the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50), for the purpose of clarity.

N.J.A.C. 7:7E-3.31, Coastal Bluffs. DEPE proposes to clarify this rule by including wetlands adjacent to the steep slopes area within the coastal bluff definition.

N.J.A.C. 7:7E-3.36, Historic and Archaeological Resources. This rule protects various historic and archaeological resources. DEPE proposes to revise this rule to define the types of projects or sites which may not require an archaeological or cultural resource report as part of the permit application submission. In addition, the revision includes more specific guidance on the preparation of reports for submission to the New Jersey Historic Preservation Office.

N.J.A.C. 7:7E-3.37, Specimen Trees. This rule protects specimen trees from any disturbance which could adversely affect them. DEPE proposes to revise the definition in the rule to include trees with a circumference of 85 percent of the record trees, and to provide specific guidance on how to measure tree size and buffer areas. This revision will provide greater protection to trees which approach the size of the specimen tree for particular species.

N.J.A.C. 7:7E-3.38, Endangered or Threatened Wildlife or Vegetation Species Habitats. This rule provides protection to endangered or threatened species habitats. DEPE proposes to revise this rule to incorporate the basis for requiring a habitat buffer, and to clarify that buffer size is dependent on the range of the species to be protected. DEPE is also proposing to update the list of affected species. The proposed revision also includes a reference to habitat assessment guidelines, which are proposed at N.J.A.C. 7:7E-3C. These guidelines will enable applicants to more easily prepare the required habitat assessments in an acceptable manner.

N.J.A.C. 7:7E-3.40, Public Open Space. DEPE proposes to revise this rule to require a buffer to new development proposed for locations adjacent to public open space areas, in order to minimize conflicts in different uses for these areas.

N.J.A.C. 7:7E-3.43, Special Urban Areas. DEPE proposes to revise this rule to update the list of municipalities which qualify as this type of Special Area.

N.J.A.C. 7:7E-3.44, Pinelands National Reserve and Pinelands Protection Area. DEPE proposes to revise this rule to expressly state that proposed developments must comply with the substantive provisions of the Pinelands Comprehensive Management Plan (CMP), N.J.A.C. 7:50. The revision also includes a statement that strict compliance with the CMP will not be required for stormwater management systems and wetlands buffers because the DEPE has developed specific standards for the design and operation of stormwater management systems and has established standards for protecting wetland buffer areas under the Freshwater Wetlands Protection Act. The current rule states, "Coastal development shall be consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, Section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.)." DEPE proposes to revise N.J.A.C. 7:7E-3.44 (c) to clarify that a State permit is required for the discharge of dredged or fill material into freshwater wetlands or state open waters in the Pinelands. This change is proposed to reflect the fact that on December 23, 1993, the Environmental Protection Agency approved DEPE's application to assume the permitting jurisdiction over such activities formerly exercised by the Army Corps of Engineers under Section 401 of the Clean Water Act (33 U.S.C. 1344).

N.J.A.C. 7:7E-3.49, Urban Waterfront Redevelopment Areas. DEPE is proposing a new rule to facilitate the permit application and review process for previously developed urban waterfront sites. The new

provision is consistent with the urban redevelopment goals and objectives of the State Plan, as well as with previous permit decisions in the geographical areas defined in the rule. The proposed rule limits the regulations applicable to an Urban Waterfront Redevelopment Area to those which have been determined by the DEPE to have a potential to adversely impact commerce and navigation activities. Under the proposed new rule, the only coastal rules applicable to this area would be N.J.A.C. 7:7E-3.11, Ports; 7:7E-3.23, Filled Water's Edge; 7:7E-3.25, Flood Hazard Areas; 7:7E-3.27, Wetlands; 7:7E-3.28, Wetlands Buffers; 7:7E-3.36, Historic and Archaeological Resources; 7:7E-3.38, Endangered or Threatened Wildlife or Vegetating Species Habitat, 7:7E-3.41, Special Hazard Areas; 7:7E-3.43, Special Urban Areas; 7:7E-3.45, Hackensack Meadowlands District; 7:7E-3.48, Hudson River Waterfront Area; 7:7E-7.2(b), Housing Use Policies; 7:7E-7.4, Energy Use Policies; 7:7E- 7.9, Port Use Policies; 7:7E-7.12, Dredge Spoil Disposal on Land; 7:7E-7.14, High Rise Structures; 7:7E-8.7, Stormwater Runoff; and 7:7E-8.11, Public Access to the Waterfront.

Subchapter 4. General Water Areas

N.J.A.C. 7:7E-4.1, Definition. DEPE proposes to revise this section of the General Water Areas rule to delete the Water Area Policy Summary Table in order to clarify the requirements of this section and to simplify the preparation of permit applications. The requirements of this section have been incorporated into other specific rules, and into the Acceptability Conditions for Uses rule, N.J.A.C. 7:7E-4.11. DEPE also plans to repeal N.J.A.C. 7:7E-4.3 through 7:7E-4.10 in their entirety, and to include the definitions of the areas covered by these rules (ocean, open bay, semi- enclosed back bay, tidal guts, large rivers, medium rivers lakes, and man- made harbors) in this section.

N.J.A.C. 7:7E-4.2(c), Boat ramps. DEPE proposes to recodify an existing provision (N.J.A.C. 7:7E-4.11(c)), and to clarify that the DEPE encourages public use ramps, to require the use of certain construction materials for boat ramps, and to require trash receptacles near the boat ramps.

N.J.A.C. 7:7E-4.2(e), Docks and piers (recreational). Now codified at N.J.A.C. 7:7E-4.11(e), DEPE proposes to recodify and revise this provision to include spacing and setback requirements for new docks, to address the construction of docks in shellfish habitat and submerged vegetation areas, to address the legalization of docks which were constructed prior to the adoption of these rules, and to include a standard for jet ski docks. These standards are intended to reduce the conflicts between adjacent water uses and to provide greater protection to Special Water Areas. The existing rule does not include standards to ensure minimum setbacks and separation between existing docks and property boundaries, and therefore is difficult to implement.

N.J.A.C. 7:7E-4.2(f), Dredging—maintenance. Now codified at N.J.A.C. 7:7E- 4.11(f), DEPE proposes to recodify and revise this provision to clarify the definition of maintenance dredging and to allow for the testing of the dredging elutriate as well as the dredged material itself. This clarification should assist applicants in the preparation of permit applications, specifically in the area of project design, by providing guidance on acceptability for maintenance dredging based on the original dredging project. In addition, the revision will allow for the testing of dredging elutriate (the water content of dredged material), which will ensure that adverse water quality impacts from dredging operations are minimized. The current rule does not clearly provide for such testing and it is therefore difficult to ensure that maintenance dredging projects will be conducted in an environmentally sound manner.

N.J.A.C. 7:7E-4.2(h), Dredged material disposal. Now codified as N.J.A.C. 7:7E-4.11(h), DEPE proposes to recodify and revise this provision to modify the requirement for overboard disposal of dredged material from a minimum of 75 percent sand to a minimum of 90 percent sand. This revision will minimize the discharge of fine grained material, which could have an adverse impact on water quality through increased turbidity. In DEPE's experience, overboard disposal of dredged material with sand content less than 75 percent has resulted in turbidity increases which has caused temporary closure of bathing beaches. DEPE also proposes to amend this regulation to update the reference to Federal guidelines, and to refer to N.J.A.C. 7:7E-3.2, the proposed shellfish habitat rule.

N.J.A.C. 7:7E-4.2(j), Filling. Now codified at N.J.A.C. 7:7E-4.11(j), DEPE proposes to recodify and revise this provision to indicate that the Freshwater Wetlands Protection Act (FWPA) and regulations (N.J.A.C. 7:7A) are applicable to the filling of lakes, ponds and reservoirs. This clarification will provide applicants with additional notice that FWPA requirements apply in certain cases, which will aid in the preparation of permit applications.

N.J.A.C. 7:7E-4.2(k), Mooring. Now codified at N.J.A.C. 7:7E-4.11(k), DEPE proposes to revise and recodify this provision to add several acceptability conditions, including demonstrated need, minimization of adverse impacts, no interference with navigation, and a requirement for adequate marking. These revisions will help to alleviate conflicts between adjacent water uses, specifically moorings, and will ensure that the minimum water area is affected by each proposed mooring. In addition, the requirement for marking the moorings will provide greater safety for boaters operating in and adjacent to the mooring area. Currently promulgated acceptability requirements do not contain these conditions and have resulted in disturbance to shallow water habitats through excessive shading, and have also resulted in conflicts between adjacent mooring areas.

N.J.A.C. 7:7E-4.2(l), Sand and gravel extraction. Now codified at N.J.A.C. 7:7E-4.11(l), DEPE proposes to revise and recodify this provision to discourage this activity in all General Water Areas. This revision reflects the acceptability conditions for sand and gravel extraction which are now included in the water area policy summary table which is being proposed for deletion in this document. The intent of this revision is to clarify the acceptability conditions for sand and gravel extraction and to increase protection of water areas throughout the coastal zone. Sand and gravel extraction has the potential to adversely impact water areas through increased turbidity and sedimentation.

N.J.A.C. 7:7E-4.2(m), Bridges. Now codified at N.J.A.C. 7:7E-4.11(m), DEPE proposes to recodify and revise this provision to include a provision for fishing platforms and catwalks in bridge design. In many cases, the use of bridges for fishing is precluded due to design deficiencies in the original bridge construction. This revision will provide for designs which will not preclude the construction of fishing platforms at some future point in time, even if such amenities are not required at the time of bridge construction or reconstruction. Currently, there is a shortage of fishing platforms at existing bridges, which adversely affects the ability of the public to use these areas for recreational fishing.

N.J.A.C.7:7E-4.2(p), Dams and impoundments. Now codified at N.J.A.C. 7:7E-4.11(p), DEPE proposes to recodify and revise this provision to include the following acceptability conditions: they are essential for water supply purposes or creation of special wildlife habitats; adverse impacts are minimized; and the structures will not adversely affect navigation routes. This revision will clarify the conditions under which the construction of dams and impoundments will be found to be acceptable. Without these proposed changes, there is the potential for dam and impoundment construction to adversely affect wildlife habitats or navigation along a waterway.

N.J.A.C. 7:7E-4.2(r), Realignment of water areas. Now codified at N.J.A.C. 7:7E-4.11(r), DEPE proposes to recodify and revise this provision to expand the definition of what constitutes realignment of a water area to include any activity which modifies the surface area of a water body and to exclude the rebulkheading of previously bulkheaded water areas or bulkheading at or above the spring high water line. The revision is proposed for the purpose of clarification.

N.J.A.C. 7:7E-4.2(t), Breakwaters. DEPE proposes a new provision which is intended to provide guidance and standards for the construction of breakwaters. The proposed subsection includes a definition, an acceptability standards section and a rationale. The proposed construction standards have been implemented by the DEPE in past permit decisions, and are intended to ensure that the construction of breakwaters does not interfere with water circulation patterns and does not adversely affect the movement of marine organisms in the area of the breakwater. The proposed standards are also consistent with the requirements of the Army Corps General Permits for breakwater construction.

Subchapter 5. General Land Areas

This subchapter is in the process of being revised by the Department, and will be the subject of future discussion and of a separate rule proposal. In the meantime, DEPE proposes to revise this subchapter by adding forest vegetation as a criterion for establishing a high environmental sensitivity (N.J.A.C. 7:7E-5.4(b)), to add a requirement for Water Quality Management Plan (208) consistency in order to meet the "adequate sewage treatment" criterion (N.J.A.C. 7:7E-5.5(b)), to clarify the infill requirements (N.J.A.C. 7:7E-5.5(b)), to define "major commercial developments" (N.J.A.C. 7:7E-5.5(c)), and to provide an exemption from this rule for small (< 6000 square foot lots) single family and duplex residential developments (N.J.A.C. 7:7E-5.1(b)).

The addition of forest vegetation as a high environmental sensitivity site criterion is intended to limit the destruction of mature forested sites. Forest vegetation stabilizes soil, filters and reduces stormwater runoff, provides wildlife habitat, and provides buffering and screening to adjacent land uses.

The addition of 208 consistency as a criterion to satisfy "adequate sewage" for a proposed development site is intended to reflect the actual development potential of a site. Under existing legal standards, a site cannot be served by a sanitary sewer system unless it is in an approved sewer service area, as defined in the appropriate County Water Quality Management (208) Plan.

The definition of "major commercial development" is proposed for clarification. This term is part of the existing rule, but has not previously been defined.

The exemption for small residential lots is intended to provide relief for single family and duplex residential property owners, who would not be required to comply with the coverage limits established in this section under the proposal. The CAFRA amendments of 1993 subject some of these property owners to regulation under CAFRA; however, the Department believes application of coverage limits to the owners of single family lots would be unduly burdensome. Therefore, these sites would not be subject to coverage limits pursuant to this section.

Subchapter 6. General Location Policies

This section is in the process of being revised by the Department, and will be the subject of future discussion and of a separate rule proposal. In the meantime, DEPE proposes minor revisions which will make reference to the DEPE (instead of DEP) and the Rules on Coastal Zone Management (instead of policies).

Subchapter 7. Use Policies

N.J.A.C. 7:7E-7.2(b), Water area and water's edge housing. DEPE proposes to revise this provision to limit the reconstruction of homes pursuant to the rule to habitable structures, to add a requirement that new homes be set back from existing shore protection structures by a distance of 25 feet (for oceanfront structures) and 15 feet (from others), and to encourage the provisions for boat ramps wherever possible. Currently, this rule does not include setback requirements. As a result, homes have been constructed in areas subject to wave runup and overtopping (along the oceanfront) and homes have been constructed in locations which preclude the reconstruction of adjacent bulkheads (along other tidal waterways).

The requirement for a structure to be habitable is intended to preclude reconstruction of old, remnant structures in water areas, where the structure has not been inhabited for a long period of time and is in an extremely deteriorated condition. The current rule was intended to allow for reconstruction of homes which were somewhat usable, and this proposed change would clarify the intent of the rule. The setback requirement is intended to provide ample space to allow for future reconstruction of the on-site bulkhead, without the need to dismantle portions of the existing home or to require additional filling of the water area due to insufficient room to reconstruct the bulkhead. The oceanfront setback requirement is intended to provide increased protection for oceanfront development. The provision for encouraging boat ramps wherever possible is intended to provide greater opportunity for boat owners, particularly small craft owners, to access water for boat launching, without needing to pay the cost to launch at a marina.

N.J.A.C. 7:7E-7.2(c), Floating homes. DEPE proposes to revise this provision to modify the time period for vessels to be considered as floating homes from 30 days (docking) to 10 days. This revision is being proposed to be consistent with the practice of the Tidelands Resource Council, which considers any waterborne structure which remains stationary for more than 10 days to be a floating home.

N.J.A.C. 7:7E-7.2(e) (residential mix) currently encourages a mix of dwelling unit types in the coastal zone. The provision is being proposed for deletion since the types of housing built are dictated by factors such as population trends and surrounding developments and are usually reflected in the zoning of a site. DEPE therefore believes that local zoning better reflects the conditions and housing needs of an area, and that the issue of housing types should be determined at the local level rather than through this provision.

N.J.A.C. 7:7E-7.2(f), Standards relevant to the development of a single family home or duplex. DEPE proposes to revise this provision and to recodify it at N.J.A.C. 7:7E-7.2(e) to provide a more concise definition of infill for the purpose of this particular rule. In addition, two other Special Area rules (Wetland Buffers, N.J.A.C. 7:7E-3.28, and Endangered or Threatened Wildlife or Vegetation Species Habitats, N.J.A.C. 7:7E-3.38) have been added to the list of rules which apply to these types of developments. These revisions are intended to provide a greater degree of protection to environmentally sensitive endangered or threatened species habitats and wetland buffer areas. In addition, the clarification of the infill definition will assist applicants in the preparation of permit applications, by helping to determine a site's development potential. Under the current and proposed rule, an infill development has a higher development potential.

N.J.A.C. 7:7E-7.2(h) (housing rehabilitation) currently discourages the demolition and redevelopment of existing structures for residential developments. The provision is proposed for deletion because it is very difficult to implement and enforce and has therefore been very rarely used.

N.J.A.C. 7:7E-7.2(i) (large scale-multi use development) currently exempts large-scale multi-use developments from the requirement of compliance with the Land Area Policies. The provision is proposed for deletion since it has rarely been used and because the past applications of this policy have shown that large scale developments are generally residential, with very little accessory use (commercial, office, etc.). Therefore, the General Land Areas rule for residential development more accurately reflects the type of review which large scale developments now undergo. That review includes an evaluation of existing development and of the infrastructure adjacent to the proposed development site.

N.J.A.C. 7:7E-7.3(d), Marinas. DEPE proposes to revise this provision to incorporate standards for marina siting, design, construction and operation and standards for the construction of marinas in shellfish habitat areas defined at N.J.A.C. 7:7E-3.2, and to require public access to the waterfront for new marinas and marina expansions. The marina development standards have been utilized in past decisions, based on a report entitled *Developing A Marina In New Jersey: A Handbook,* dated September 1982, and prepared by Rogers, Golden & Halpern under contract with the DEPE. These standards and guidelines are intended to assist applicants in the design of marinas, and in the preparation of permit applications for marina related projects. The standards include requirements for marina parking, restroom facilities, channel and slip sizes, marina related services, public access, and other marina development activities.

In addition to these standards, the Department has imposed three additional requirements upon marinas with five or more slips to be located in the Navesink, Shrewsbury and Manasquan Rivers, as well as the St. George's Thorofare. Banning the use of chemically treated woods, requiring an on- site rest room and on-site pump out station or marine septic disposal facility (according to boat size and capacity for on-board septic) as well as requiring monthly fecal coliform water monitoring for the first two full seasons of operation to ensure such developments on these water bodies will not jeopardize the State's goal to protect and, ultimately, to enhance the quality of these waters which produce the bulk of New Jersey's shellfish harvest used both for human consumption and as industrial by-product.

N.J.A.C. 7:7E-7.3(e), Amusement piers, parks and boardwalks. DEPE proposes to revise this provision to include provisions for public access to the waterfront and provisions for requiring that all pier expansions be constructed on pilings to the same elevation as the existing pier. These standards, which are consistent with the proposed standards for amusement pier General Permits (N.J.A.C. 7:7-7.2), are intended to provide guidance to amusement pier owners on the specific requirements related to amusement pier expansions. These standards should assist in the preparation of permit applications.

N.J.A.C. 7:7E-7.4, Energy Use Policies. DEPE proposes to revise this rule to delete the reference to the BPU and to include a reference to the DEPE, Office of Energy, which is currently responsible for the coordination of reviews for energy facilities in the coastal zone.

N.J.A.C. 7:7E-7.5(b), Public transportation. DEPE proposes to revise this provision to prohibit the conversion of existing rail road rights of way if they have been used for public recreational trail use. The intention of this revision is to ensure that public use of previously accessible public areas is maintained.

N.J.A.C. 7:7E-7.5(d), Parking. DEPE proposes to revise this provision to delete the existing reference to 300 parking spaces, which was the regulatory parking threshold under the original CAFRA. The number 300 no longer has any significance, given the amendments to CAFRA which take effect on July 19, 1994. Those amendments subject commercial developments with five parking spaces to regulation under

CAFRA if the development is within 150 feet of the mean high water line, or inland limit of a beach or dune, and other commercial developments with 50 or more parking spaces to regulation.

N.J.A.C. 7:7E-7.6(d), Wastewater treatment facilities. DEPE proposes to revise this provision to indicate that wastewater treatment facilities are conditionally acceptable if they are consistent with the applicable Water Quality Management Plan (208), promulgated under the Water Quality Management Act, N.J.S.A. 58:12A. This will allow for a more streamlined review under CAFRA, since those qualifying projects would have already been reviewed by other agencies within the Department, in terms of the 208 Plan approval process.

N.J.A.C. 7:7E-7.8, Mining Use Policies. DEPE proposes to revise this provision to require a 500 foot buffer from mining uses to any adjacent residential development, and to reference the existing Freshwater Wetlands Protection Act (FWPA) standards (N.J.A.C. 7:7A) for projects located in freshwater wetland areas. These revisions will reduce potential conflicts between two distinctly different land uses, and improve the quality of life for residents living adjacent to proposed mining uses. The reference to the FWPA is intended to clarify existing requirements, in an effort to assist applicants to prepare permit applications and to comply with all applicable laws.

N.J.A.C. 7:7E-7.10(c), Retail trade and services. DEPE proposes to revise this provision to include offices in the definition. Previously, office developments were not specifically referenced in any category, and therefore the application of this provision to office developments was unclear. This change should assist applicants in the preparation of permit applications, by providing a reference to specific use standards for these developments.

N.J.A.C. 7:7E-7.11(a), Coastal engineering. DEPE proposes to revise this provision to clarify the scope of and the exceptions from the normal coastal engineering standards.

N.J.A.C. 7:7E-7.11(c), Dune management. DEPE proposes to revise this provision to provide a reference to the standards for dune creation, maintenance and enhancement which is proposed to be included as N.J.A.C. 7:7E-3A. These guidelines will provide specific guidance to property owners and municipalities in the area of dune management. The standards have been developed by the Department, in conjunction with the Soil Conservation Service, and have been successfully implemented over the past 10 years as part of all DEPE sponsored and funded dune projects.

N.J.A.C. 7:7E-7.11(d), Beach nourishment. DEPE proposes to revise this provision to require public access to all nourished beach areas for projects which are publicly funded. This is consistent with the New Jersey Shore Protection Program Rules (N.J.A.C. 7:7F), which currently apply to all State funded shore protection projects, including beach nourishment projects. The revision will assure that if public monies are expended for beach nourishment, the public as a whole will benefit.

N.J.A.C. 7:7E-7.11(e), Structural shore protection. DEPE proposes to revise this provision to include standards for bulkhead construction in V-zones (flood hazard areas subject to three foot high breaking waves during the 100-year storm), and to provide details on the reconstruction of existing bulkheads elsewhere. These guidelines have recently been established by the DEPE, in conjunction with the Federal Emergency Management Agency, and are intended to ensure that bulkhead design and construction will provide the greatest measure of protection to developments located landward of these structures.

N.J.A.C. 7:7E-7.12, Dredge Material Disposal on Land. DEPE proposes to revise this rule to include acceptability conditions for the reuse of previously used dredge material disposal islands for continued dredged material disposal. These conditions will allow for the reuse of formerly used dredge spoil disposal islands, which will facilitate the implementation of public and private dredging projects throughout the State. The current rule does not presently allow this reuse.

Subchapter 8. Resource Policies

N.J.A.C. 7:7E-8.3, Shellfisheries. DEPE proposes to repeal this rule and incorporate some of the standards into the proposed revised N.J.A.C. 7:7E-3.2, Shellfish habitat. This proposal will combine all applicable standards into one rule to simplify the preparation and review of permit applications. A detailed description of the revised shellfish habitat rule (N.J.A.C 7:7E-3.2) is provided in the section on that rule.

N.J.A.C. 7:7E-8.5, Surface Water Use. DEPE proposes to revise this rule to delete the requirement for water conservation fixtures. This requirement is now part of the Uniform Construction Code (BOCA), and the current rule was therefore determined to be duplicative. In addition, local construction code enforcement personnel are best able to enforce the requirements related to water conservation fixtures.

N.J.A.C. 7:7E-8.6, Groundwater Use. DEPE proposes to revise this rule to delete information regarding stormwater runoff, which was mistakenly inserted into this rule during a previous revision. The information proposed to be deleted is contained in the current and proposed N.J.A.C. 7:7E-8.7, Stormwater Runoff.

N.J.A.C. 7:7E-8.7, Stormwater Runoff. DEPE proposes to revise this rule to delete much of the current rule and replace it with a new rule which will provide clear standards for designing stormwater management systems, define DEPE preferred stormwater management techniques, define the maintenance requirements for these systems, and define the vegetation types which should be used as part of the systems. These proposed changes will provide applicants with much more detailed guidance in stormwater management system design, and should result in a more streamlined review of this component of permit applications. In addition, it is expected that there will be much less need for plan revisions throughout the permit application review process, due to the clear guidelines and standards being proposed. Most of these standards have been developed to be consistent with the stormwater management standards established by the Department's Stormwater Permitting and Stream Encroachment Programs. The goal of the proposed revisions is to provide uniform, consistent stormwater management standards which will apply to all developments in the coastal zone, and which will be reviewed in the same fashion by all agencies within the Department.

N.J.A.C. 7:7E-8.11, Public Access to the Waterfront. DEPE proposes to revise this rule to address the public access requirements at single family/duplex developments and to require mitigation for projects which reduce existing on-street parking used for access to waterfront areas. These clarifications should assist in the preparation of permit applications by providing more concise guidance regarding public access to the waterfront. The amendments are also intended to ensure and increase public access to the waterfront and to state that public access to the waterfront will not typically be required at individual single family or duplex residential developments.

N.J.A.C. 7:7E-8.12, Scenic Resources and Design. DEPE proposes to revise this rule to include the addition of design standards for waterfront construction, to ensure that proposed developments do not adversely affect existing views of and access to beaches and waterfront areas. The intention of this amendment is to maintain the aesthetic qualities of the coastal areas which currently exist.

N.J.A.C. 7:7E-8.13, Buffers and Compatibility of Uses. DEPE proposes to revise this rule to provide clear standards for buffers between adjacent developments, based on existing and proposed land uses at and adjacent to a development site, through the use of a buffer matrix. These changes will provide better design guidance to permit applicants in the area of buffers to adjacent uses, and should alleviate potential conflicts between adjacent land uses. The use of a buffer matrix will provide a quick and simple method to calculate required buffer distances, and should result in more consistent permit decisions by the Department. The amendment includes a hardship provision, which may be applied if strict application of a buffer standard would otherwise preclude a beneficial use of the property.

N.J.A.C. 7:7E-8.14, Traffic. DEPE proposes to revise this rule to include a parking requirement of two parking spaces per unit for residential developments. This requirement will ensure that proposed developments will provide adequate parking, and will not adversely affect existing public parking adjacent to the development site. Currently, the DEPE does not have a standard parking requirement in the Rules on Coastal Zone Management.

N.J.A.C. 7:7E-8.17, Subsurface Sewage Disposal Systems. DEPE proposes this new rule to set standards for the construction of subsurface sewage disposal systems, and to reference the applicable existing DEPE standards for construction (N.J.S.A. 58:11-23 et seq.). The intention of this new rule is to provide clear regulatory guidance to applicants proposing to construct these types of sewage treatment systems, thereby facilitating the permit application preparation and review process.

Social Impact

The proposed revisions to the Rules on Coastal Zone Management will have a positive social impact for several reasons. First, these revisions include specific provisions for implementing the CAFRA amendments which take effect on July 19, 1994. These provisions reflect the new scope of CAFRA, which will apply to developments which were previously unregulated by the Department, such as development activities conducted on and adjacent to beaches and dunes, as of July 19, 1994. The

increased protection of beaches and dunes should have a positive social impact by preserving these resources for present and future generations. Second, these proposed revisions include the repeal and consolidation of existing rules, which provide more concise guidance to permit applicants in the areas of project design and application preparation. Last, the proposed revisions to N.J.A.C. 7:7E-3.22, 3.16, 3.27, 8.7 and 3.2 (Beaches, Dunes, Wetlands, Stormwater Runoff and Shellfish Habitat, respectively) will provide greater protection to these natural resources within the state's coastal zone, particularly in the more sensitive locations in and proximate to tidal waters, beaches and dunes. This added protection will benefit present and future generations of New Jersey residents, who will continue to visit and enjoy the Jersey shore.

The proposed amendments and new rules have been developed to provide more specific and concise guidance to prospective permit applicants. This should simplify permit application preparation, based on the increased use of design standards in the proposed amendments and rules. These standards should facilitate the preparation of permit applications, particularly by property owners who were not previously subject to regulation under CAFRA. The revisions are expected to make the rules more "user friendly" and to therefore provide significant assistance and benefit to the CAFRA regulated community.

Economic Impact

The overall economic impact of these proposed revisions will be positive, because permit applicants will have more definitive guidance in designing projects and preparing the required coastal permit applications. The proposed revisions include specific design standards and specifications and should therefore result in reduced engineering, consulting and legal fees incurred as part of the permit application process. In addition, since the goals of the CAFRA amendments and the associated Rules on Coastal Zone Management are to better protect the sensitive coastal ecosystems, the industries dependent on the coastal area and on an aesthetically pleasing coastal environment and high water quality (tourism, recreational and commercial fishing and shellfishing, coastal resorts) should reap significant economic benefits.

In some cases, the economic impact of these proposed rule amendments will be manifested in increased costs associated with permit condition compliance, such as mitigation requirements. For example, the mitigation requirement proposed as part of the revised N.J.A.C. 7:7E-3.6, Submerged Vegetation, will result in increased costs to complete the required mitigation work. However, it is likely that most of these mitigation requirements will be associated with large projects, such as major navigational dredging and utility installation projects, which are generally undertaken by governmental agencies and large utility companies.

Other economic impacts of these proposed revisions will be the potential increased cost of compliance with the proposed N.J.A.C. 7:7E-8.7, Stormwater Runoff, which will require specific preferred stormwater management system design for particular sites. These designs may cost more to construct than other less effective systems which have been constructed in the past. However, these preferred systems should also result in more effective treatment of stormwater runoff, and therefore should help to improve water quality in the coastal zone.

The economic impact of the proposed revision to N.J.A.C. 7:7E-8.12, Scenic Resources and Design, will be the potential for reduced site coverage due to the setback requirements. This proposed change may affect the size and type of structures built.

The economic impact of the proposed revision to N.J.A.C. 7:7E-8.13, Buffers and Compatibility of Uses, will be the reduction of areas which can be developed with structures, due to the proposed buffer distances required as part of the revised rule. This could impact on the size and type of structures built.

Another anticipated economic impact will be the increased cost to develop individual properties that were previously unregulated by CAFRA, but become regulated as of July 19, 1994 solely as the result of the legislative mandate of the CAFRA amendments. However, it is expected that the increased scope of DEPE jurisdiction will ultimately have a positive overall economic impact, through the long-term protection and enhancement of the natural resources in the coastal zone. This protection should help to sustain the State's tourism industry, which is dependent on clean waters and beaches. In addition, it is expected that this increased regulation should ultimately reduce economic losses by reducing future storm damages, and the associated storm recovery costs, through better maintenance and enhancement of protective oceanfront dunes.

Some additional positive economic impacts of these proposed revisions include a reduced scope of review for coastal permits, and an associated reduction in the scope of the required Environmental Impact Statement or Compliance Statement. Specifically, the proposed revision to N.J.A.C. 7:7E-7.6(d) (Public facility use) will eliminate the need for the Program to evaluate compliance for wastewater facility developments which have already been found to be consistent with the Water Quality Management (208) Plan. Also, the repeal of N.J.A.C. 7:7E-3.26, Alluvial Flood Margins; 7:7E-3.29, Cranberry Bogs; 7:7E-3.30, Wet Borrow Pits; and 7:7E-3.30(e), (h) (i), Housing Use—Residential mix, Housing rehabilitation and Large-scale multi use developments, respectively) will reduce the scope of application preparation and should therefore reduce the consulting fees associated with permit application preparation.

Through the enactment of the CAFRA amendments, the Legislature acknowledged that there was a need for increased protection of the natural resources of New Jersey's coastal zone. The result of this legislation is that more people and more properties will be subject to regulation by the DEPE. In developing these proposed amendments and new rules, the Department considered the concerns of the newly regulated communities, and structured the amendments to provide a concise and specific regulatory framework designed to facilitate the preparation, submission and review of permit applications. The Department has also made an effort to reduce the burden on single family/duplex developments through specific regulatory proposals, including revisions to N.J.A.C. 7:7E-3.28, Wetlands Buffers; 7:7E- 7.2, Housing Use; 7:7E-8.11, Public Access to the Waterfront; and 7:7E-8.13, Buffers and Compatibility of Uses.

Environmental Impact

The proposed revisions to the Rules on Coastal Zone Management will have a positive environmental impact, for several reasons. First, the revisions will provide greater protection for natural resources within the State's coastal zone, particularly in the more environmentally sensitive locations proximate to tidal waters, beaches and dunes. The revised rules on beaches, dunes and coastal high hazard areas (N.J.A.C. 7:7E-3.22, 3.16 and 3.18, respectively) will afford greater protection to these highly sensitive areas, and will thereby help to reduce the vulnerability of developed coastal areas to storm surges, flooding and associated storm damages. The proposed revisions involving the shellfish habitat (N.J.A.C 7:7E-3.2) and submerged vegetation (N.J.A.C. 7:7E-3.6) Rules will also provide greater protection to coastal waters, shellfish habitat areas and fisheries resources, for reasons discussed above. The proposed revisions to the stormwater runoff rule (N.J.A.C. 7:7E-8.7) should help to improve water quality in the surface waters of the coastal zone.

Perhaps the most significant environmental impact is that existing and revised rules will apply to a greater number of sites and developments as of July 19, 1994, by virtue of the regulatory thresholds established by the CAFRA amendments. This legislative mandate should ultimately result in greater overall protection and enhancement of New Jersey's coastal environment.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that a significant number of builders and property owners affected by the proposed amendments will be "small businesses" as defined in the Act. Because the legislation expanded the scope of the Coastal Facility Review Act (CAFRA) with the 1993 amendments to include, in some instances, single family lots, these proposed amendments to the Rules on Coastal Zone Management take into account the variety of projects now regulated, specifically the single family/duplex lot owners. Much of the impact to small businesses is directly related to the new CAFRA thresholds resulting solely from the legislative mandate of the CAFRA amendments of 1993.

The Department has attempted to balance protection of the coastal resources and public safety and welfare with the needs of small businesses. The legislative amendments to CAFRA do not contain an exemption for small businesses, except to the extent that the regulatory thresholds contained in the amendments may exclude certain smaller businesses, based on the statutory thresholds of CAFRA. Therefore, the proposed amendments to these rules do not exempt small businesses beyond the extent of the exemptions contained in the legislative amendments. The proposed rules do, however, reduce the requirements for single family and duplex residential developments, specifically in the Housing Use (N.J.A.C. 7:7E-7.2(f), Wetland Buffer (N.J.A.C. 7:7E-3.28), Public Access to the Waterfront (N.J.A.C 7:7E-8.11) and Buffers and Compatibility of Uses (N.J.A.C. 7:7E- 8.13) rules.

Many properties, which were previously unregulated by CAFRA, will become regulated as of July 19, 1994, as the CAFRA amendments become effective. This increased regulation will certainly have an impact on small businesses, by virtue of the fact that there will be an additional permit requirement imposed by the CAFRA amendments. These costs include permit fees, engineering and environmental consulting fees, legal fees and "carrying costs" related to the time needed to obtain the required permits. However, the Department is attempting, through this proposal, to simplify the permit application submission requirements in an effort to assist the newly regulated small businesses. This proposal includes an increased use of design standards and specifications, which should aid in the preparation of permit applications, and therefore reduce the engineering and consulting costs associated with the preparation of coastal permit applications.

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

SUBCHAPTER 1. INTRODUCTION

7:7E-1.1 Purpose

(a) This chapter presents the substantive [policies] **rules** of the Department of Environmental Protection **and Energy** regarding the use and development of coastal resources, to be used primarily by the [Division of Coastal Resources] **Land Use Regulation Program** in the Department in reviewing permit applications under the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq **(as amended to July 19, 1993),** Wetlands Act **of 1970,** N.J.S.A. 13:9A-1 et seq., [and] Waterfront Development [Permit Program] **Law,** N.J.S.A. 12:5-3**, Water Quality Certification (401 of the Federal Clean Water Act), and Federal Consistency Determinations (307(c)(1) of the Federal Coastal Zone Management Act). Requests for Water Quality Certification shall also be reviewed in accordance with other applicable statutes and regulations administered by the Department including the Surface Water Quality Standards, N.J.A.C 7:9-4.** The rules also provide a basis for recommendations by the [Division] **Program** to the Tidelands Resource Council on applications for riparian grants, leases and licenses.

(b) In 1977, the Commissioner of the Department of Environmental Protection submitted to the Governor and Legislature the Coastal Management Strategy for New Jersey-CAFRA Area (September 1977), prepared by the Department as required by CAFRA, N.J.S.A. 13:19-16, and submitted for public scrutiny in late 1977. The Department revised the Coastal Management Strategy for public review as the New Jersey Coastal Management Program-Bay and Ocean Shore Segment and [Draft] **Final** Environmental Impact Statement (EIS) **for Federal approval, which was received in September 1978.** In May 1980, the Department submitted further revisions, published as the Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement [for public review] **for Federal approval, which was received in September 1980.** [In August 1980, the Govenor submitted the final New Jersey Coastal Management Program and final New Jersey Coastal Management Program and Final Environemtnal Impact Statement for Federal approval, which was received in September 1980.] The Rules on Coastal Zone Management (Rules) constitute the substantive core of the program. The Rules were amended on June 4, 1981, January 12, 1982, April 19, 1982, February 7, 1983, February 3, 1986, August 15, 1988, [and] May 15, 1989**, August 20, 1990, April 5, 1993, November 15, 1993 and (the effective date of these amendments).**

(c) By **revising and re**adopting these policies as administrative rules, according to the Administrative Procedure Act, the Department aims to increase the predictability of the Department's coastal decision-making by limiting administrative discretion, as well as to ensure the enforceability of the [Coastal Resource and Development Policies] **Rules on Coastal Zone Management** of the coastal management program of the State of New Jersey prepared under the Federal Coastal Zone Management Act. Further, the Department interprets the "public health, safety and welfare" clause in CAFRA (N.J.S.A. 13 :19-10f) and the Wetlands Act **of 1970** (N.J.S.A. 13:19A-4d) to include a full consideration of the national interests in the wise use of coastal resources.

7:7E-1.2 Jurisdiction

(a) General: This chapter shall apply to five categories, as defined in N.J.A.C. 7:7E-1.3(c) through (g), of actions or decisions by the Department on uses of coastal resources within or [significantly] affecting the coastal zone:

1. Coastal [permits] **Permits**;
2. [Division management actions] **Program Management Actions**;
3. Consistency [determinations] **Determinations**;
4. Financial assistance;
5. DEPE management actions affecting the coastal zone; and
6. DEPE planning actions affecting the coastal zone.

(b) Geographic scope of the New Jersey Coastal Zone: This chapter shall apply geographically to the New Jersey Coastal Zone, which is defined as: [the Coastal Area under the jurisdiction of the Coastal Area Facility Review Act (N.J.S.A. 13:19-4), all other areas now or formerly flowed by the tide, shorelands subject to the Waterfront Development Law, regulated wetlands listed at N.J.A.C. 7:7-2.2, and the Hackensack Meadowlands Development Commission District as defined by N.J.S.A. 13:17-4.]

1. The coastal area under the jurisdiction of the Coastal Area Facility Review Act (CAFRA);

2. Areas extending waterward to the State's seaward (Raritan Bay and Atlantic Ocean) jurisdiction on the east, the State's bayward (Delaware Bay) jurisdiction on the south and southwest, and the State's riverward (Delaware River) jurisdiction on the west;

3. The regulated area under the jurisdiction of the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(a);

4. All areas containing tidal wetlands; and

5. The Hackensack Meadowlands Development Commisssion District as defined by N.J.S.A. 13:17-4.

(c) Coastal Permits: This chapter shall apply to all:

1. [waterfront development] **Waterfront Development** permits (N.J.S.A. 12:5-3)[,];
2. [wetlands] **Wetlands** permits (N.J.S.A. 13:9A-1 et seq.); and
3. CAFRA permits (N.J.S.A. 13:19-1 et seq.).

(d) [Division] **Program** management actions: This chapter shall apply to all actions of the [Division of Coastal Resources] **Land Use Regulation Program** within the Coastal Zone to the extent statutorily permissible:

1. Permits for use of a floodway (N.J.S.A. 58:16A-50 et seq.);
2. Promulgation of regulations concerning land use in flood hazard areas (N.J.S.A. 58:16A-50 et seq.);
3. Certification pursuant to Section 401 of the Federal Clean Water Act , 33 U.S.C. §1251 et seq. ([water quality certification] **Water Quality Certification**); **and**
4. Permits for activities regulated pursuant to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.)[; and].

[5. Dam Permits (N.J.S.A. 58:4-1).]

(e) (No change.)

(f) Financial assistance decisions: This chapter shall apply to State aid financial assistance decisions by DEPE under the Shore Protection Program and Green Acres Program within the coastal zone, to the extent permissible under existing statutes and regulations.

(g) **DEPE management activities**: This chapter shall apply, to the extent statutorily permissible, to the following DEPE management actions in or affecting the coastal zone in addition to those noted at N.J.A.C. 7:7E-1.1:

1. Tidelands Resource Council: Conveyances of State owned tidelands (N.J.S.A. 12:3-1 et seq.).
2. Division of Water [Resources] **Quality**:

i.-iv. (No change.)

v. Designation of Critical Sewerage [areas] **Areas** (N.J.S.A. 58:11-44).

3. Land Use Regulation Program:

[vi.]**i.** Permits for 50 or more [sewerage] **Sewerage** (septic) [facilities] **Facilities** (N.J.S.A. 58:11-23).

[vii.]**ii.** Approval for Sewerage Facilities in Critical Areas (N.J.S.A. 58:11-45).

iii. Permits to Perform Regulated Activities within Freshwater Wetlands (N.J.S.A. 13:9B-1 et seq.).

iv. Issuance of Permits pursuant to the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.).

4. Water Supply Regulation:

[viii.]**i.** Permit to divert surface and/or subsurface or percolating waters for public **and private** water supply (N.J.S.A. [58:1-37, 58:4A-2] **58:1A et seq.**).

[ix.]**ii.** Approval of diversions for water supply (N.J.S.A. [58:1-17] **58:1A et seq.**).

[x.]**iii.** Permits to drill wells (N.J.S.A. 58:4A-14).

[xi.]**iv.** [Permits] **Certifications** to construct new or modified public water supply sources, treatment plants, and distribution systems (N.J.S.A. [58:11-2,3,10] **58:12A-1 et seq.**).

[xii]**v.** Permits to install or maintain a physical connection between an approved public potable water supply and an unapproved supply (N.J.S.A. 58:11-9.**1** to 9.11 **and 58:12A-1 et seq.**).

5. Bureau of Stormwater Permitting: Permits for the discharge of stormwater to surface waters for industrial and other facilities (N.J.S.A. 58:10A-1 et seq.).

[3.]**6.** [Division of Environmental Quality] **Air Quality Regulation Program**:

i.-ii. (No change.)

iii. Approvals of [a] variances to exceed [an] air quality standards (N.J.S.A. 26:2C-9.2).

[4.]**7.** Division of Solid Waste Management: Certification of Solid Waste facilities (N.J.S.A. 13:1E-1 et seq.).

[5.]**8.** Green Acres and Division of Parks and Forestry:

i. Adoption of regulations concerning use of State-owned lands (N.J.S.A. [13:8-20 et seq] **13:1L-19**.).

ii.-iv. (No change.)

[6.]**9.** (No change.)

10. Natural and Historic Resources, Engineering and Construction Section: Dam Permit (N.J.S.A. 58:4-1).

[7.]**11.** All Divisions: Management of State-owned lands by DEPE.

(h) DEPE planning actions: This chapter shall provide the basic policy direction for the following planning actions undertaken by DEPE in the coastal zone as the lead [State] **state** agency for Coastal Management under Section 306 of the Federal Coastal Zone Management Act.

1. [Division of Coastal Resources] **Land Use Regulation Program**:

i. Coastal zone management;

2. Natural and Historic Resources Program:

[ii.]**i.** Navigational dredging; and

[iii.]**ii.** Shore protection.

[2.]**3.** [Division of Water Resources] **Land and Water Planning**:

i.-iii. (No change.)

iv. Implementation and coordination of the Federal Coastal Zone Management Program.

[3.]**4.** [Division of Environmental Quality] **Air Quality Regulation**: Air quality planning

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

7:7E-1.4 Review, Revision and Expiration

The Department shall periodically review this chapter, consider the various national, State, and local interests in coastal resources and developments seeking coastal locations, and propose and adopt appropriate revisions to this chapter. Under the requirements of the federal Coastal Zone Management Act, the Department expects to conduct an annual review of the rules and expects to revise, amend or readopt the rules before the five year deadlines under Executive Order No. 66[(1978)] **of 1978** for periodic review of administrative rules.

7:7E-1.5 Coastal decision-making process

(a) General: Decisions on uses of coastal resources shall be made using the three step process comprising the Location [Policies] **Rules** (subchapters 2 through 6), the Use [Policies] **Rules** (subchapter 7), and the Resource [Policies] **Rules** (subchapter 8) of this chapter. Depending upon the proposed use, project design, location, and surrounding region, different specific [policies] **rules** in each of the three steps may be applicable in the coastal decision-making process. The Rules on Coastal Zone Management address a wide range of land and water types (locations), present and potential land and water uses, and natural, social and economic resources in the coastal zone. DEPE does not, however, expect each proposed use of coastal resources to [address] **involve** all Location [Policies] **Rules**, Use [Policies] **Rules**, and Resource [Policies] **Rules**. Rather, the applicable [policies] **rules** are expected to vary from proposal to proposal. [Decisions on the use of coastal resources in the Hackensack Meadowlands District will be made by the Hackensack Meadowlands Development Commission, as lead agency, and the Department, consistent with the Hackensack Meadowlands District Master Plan, its adopted components and management programs.]

(b) Principles: The Coastal Zone Management [Policies] **Rules** represent the consideration of various conflicting, competing, and contradictory local, State, and national interests in diverse coastal resources and in diverse uses of coastal locations. Numerous balances have been struck among these interests in defining these [policies] **rules**, which reduce but do not presume to eliminate all conflicts among competing interests. One reason for this intentional balancing and conflict reducing approach is that coastal management involves explicit consideration of a broad range of concerns, in contrast to other resource management programs which have a more limited scope of concern. Decision-making on individual proposed actions using the Coastal Zone Management [Policies] **Rules** must therefore consider all three steps in the process, and weigh, evaluate, and interpret inevitably complex interests, using the framework established by the [policies] **rules**. In this process, interpretations of terms, such as "prudent", "feasible", "minimal", "practicable", and "maximum extent", as used in a specific [policy] **rule** or combinations of the [policies] **rules** may vary, depending upon the context of the proposed use, location, and design. Finally, these principles should not be understood as authorizing arbitrary decision-making or unrestrained administrative discretion. Rather, the limited flexibility intentionally built into the **Rules on** Coastal Zone Management [Policies] provides a mechanism for incorporating professional judgment by DEPE officials, as well as recommendations and comments by applicants, public agencies, specific interest groups, corporations, and citizens into the coastal decision-making process.

1. In the application of administrative discretion, DEPE officials will be guided by eight basic coastal policies which summarize the direction of the specific [policies] **rules**.

i.-iii. (No change.)

iv. Protect the health, safety and welfare of people who reside, work and visit [in] the coastal zone.

v. Promote public access to the waterfront through **protection and creation of meaningful access points and** linear walkways and at least one waterfront park in each waterfront municipality.

vi. Maintain active port and industrial facilities, and provide for necessary expansion in adjacent sites.

vii. Maintain and upgrade existing energy facilities, and site additional energy facilities determined to be needed by the **New Jersey** State Energy Master **Management** Plan in a manner consistent with the [policies] **rules** of [the] **this** Coastal Management Program.

viii. Encourage residential, commercial, and recreational mixed-use redevelopment of the developed waterfront.

(c) Definitions: The [Coastal Resource and Development Policies] **Rules on Coastal Zone Management** are stated in terms of actions that are encouraged, required, acceptable, conditionally acceptable, discouraged, or prohibited. Some [policies] **rules** include specific conditions that must be met in order for an action to be deemed acceptable. Within the context of the [Coastal Resource and Development Policies] **Rules on Coastal Zone Management** and the principles defined (b) above, the following words have the following meanings.

"Acceptable" means that a proposed used of coastal resources is likely to be approved.

"Action", "activity", ["development",] "project", "proposal", or "use" are used interchangably to describe the proposed use of coastal resources that is under scrutiny using the [Coastal Resource and Development Policies] **Rules on Coastal Zone Management**.

"Area": See definition for "site" below.

"Commercial development" means a development designed, constructed or intended to accomodate commercial, retail or office uses. "Commercial development" shall include, but need not be limited to , any establishment used for the wholesale or retail sale of food or other merchandise, or any establishment used for providing professional, financial or other commercial services.

"Conditionally acceptable" means that a proposed use of coastal resources is likely to be acceptable, provided that conditions specified in the [policy] **rules** are satisfied.

"Development" means any activity for which a Wetlands Act of 1970 or Waterfront Development Permit is required, including site preparation and clearing. "Development," for an application under the Coastal Area Facility Review Act, means the construction, relocation, or enlargement of any building or structure and all site preparation thereof, the grading, excavation or filling on beaches and dunes, and shall include residential development, commercial development, industrial development and public development.

"Dwelling unit" means a house, townhouse, apartment, cooperative, condominium, cabana, hotel or motel room, a room in a hospital, nursing home or other residential institution, mobile home, campsite for a tent or recreational vehicle or any habitable structure of similar size and potential environmental impact, except that dwelling unit shall not mean a vessel as defined in section 2 of P.L. 1962, c.73 (N.J.S.A. 12:7-34.37).

"Department", or "DEPE" means the Department of Environmental Protection **and Energy**.

"Discouraged" means that a proposed use of coastal resources is likely to be rejected or denied as the Department has determined that such uses of coastal resources should be deterred and developers should be dissuaded from proposing such uses. In cases where the Department considers the proposed use to be in the public interest despite its discouraged status the Department may permit the use provided that mitigating or compensating measures [are] **can be** taken so that there is a net gain in quality and quantity of the coastal resource of concern.

["Division" means the Division of Coastal Resources within the Department.]

"Encouraged" means that a proposed use of coastal resources is acceptable and is a use, by its purpose, location, design, and effect, that the Department has determined should be fostered and supported in the coastal zone.

"Habitable structure" means a structure that has a valid certificate of occupancy from the municipal construction code official, or can be demonstrated to have been legally occupied as a dwelling unit for the last five years.

"Location": See definition for "site" below.

"Major commercial development" means a commercial development with a cumulative building area of greater than 100,000 square feet.

"Minor commercial development" means a commercial development with a cumulative building area of 100,000 square feet or less.

"Mean high water" (MHW) is a tidal datum that is the arithmetic mean of the high water heights observed over a specific 19-year Metonic cycle (the National Tidal Datum Epoch). For the New Jersey coast, the two high waters of each tidal day are included in the mean. This datum is available from the DEPE, Tidelands Management Program.

"Mean high water line" (MHWL) is the intersection of the land with the water surface at the elevation of mean high water. The elevation of mean high water varies along the oceanfront and the tidal bays and streams in the coastal zone. (Note: For practical purposes, the mean high water line is often referred to as the "ordinary" high water line, which is typically identified as the limit of wet sand or debris line on a beach, or by a stain line on a bulkhead or piling. However, for the purpose of establishing regulatory jurisdiction pursuant to the Coastal Area Facility Review Act (CAFRA) and the Waterfront Development Law, the surveyed mean high water elevation will be used.)

"Navigable" means [navigable in fact, including by canoe, at mean low tide] **deep enough and wide enough to afford passage to watercraft, including canoes, at high tide. Navigability will also apply to areas upstream of obstructions (for example, culverts), provided that the water course is still tidally influenced in the upstream area.**

"Program" means NJDEPE Land Use Regulation Program.

"Prohibited" means that a proposed use of coastal resources is unacceptable and that the Department will use its legal authority to reject or deny the proposal.

"Reconstruction" means the repair or replacement of a building, structure or other parts of a development, provided that such repair or replacement does not increase or change the location of the footprint of the preexisting development, does not increase the area of impervious coverage associated with the development, and does not result in a change in the use of the development. Reconstruction or repair does not include cosmetic repairs, such as replacing siding, windows or roofs, but does include the demolition of exterior walls.

"Site"[, "location", "area", or "surrounding region"] means the geographic scope of the proposed use of coastal resources that is under scrutiny using the [Coastal Resources and Development Policies] **Rules on Coastal Zone Management**. [This shall include the site of a proposed use as well as the surrounding area or region that may be affected by the proposed use and is therefore appropriate for evaluation as part of the coastal decision-making process, as well as alternative sites.] **"Site" also means the land or area upon which a proposed development is to be constructed.**

"Spring tide" means a tide that occurs at or near the time of new and full moon and which rises highest and falls lowest from the mean level. "Spring high water line " is the intersection of the land with the water surface at the elevation of spring high tide.

"Water dependent" means development that cannot physically function without direct access to the body of water along which it is proposed. Uses, or portions of uses, that can function on sites not adjacent to the water are not considered water dependent regardless of the economic advantages that may be gained from a waterfront location. Maritime activity, commercial fishing, public waterfront recreation and marinas are examples of water dependent uses, but only the portion (of the development requiring direct access to the water is water dependent. The test for water dependency shall assess both the need of the proposed use for access to the water and the capacity of the proposed water body to satisfy the requirements and absorb the impacts of the proposed use. A proposed use will not be considered water dependent if either the use can function away from the water or if the water body proposed is unsuitable for the use. For example, in a maritime operation, a dock or quay and associated unloading area would be water dependent, but an associated warehouse would not be water dependent.

1. Examples of water dependent uses include: **docks, piers,** marina activities requiring access to the water, such as commissioning and decommissioning new and used boats, boat repairs and short term parking for boaters, storage for boats which are too large to be feasibly transported by car trailer (generally greater than 24 feet), rack systems for boat storage, industries such as fish processing plants and other commercial fishing operations, port activities requiring the loading and unloading of [ships] **vessels**, and water-oriented recreation.

2. Water dependent uses exclude, for example: housing, hotels, motels, restaurants, warehouses, manufacturing facilities (except for those which receive and quickly process raw materials by ship), dry boat storage for boats that can be transported by car trailer, long-term parking, parking for persons not participating in a water-dependent activity, **boat sales,** automobile junk yards, and non-water oriented recreation such as roller rinks and racquetball courts.

"Water oriented" means development that serves the general public and derives economic benefit from direct access to the water body along which it is proposed. (Industrial uses need not serve the general public.) A hotel or restaurant, since it serves the public, could be water-oriented if it takes full advantage of a waterfront location. An assembly plant could be water oriented if overland transportation is possible but water-borne receipt of raw materials and shipment of finished products is economically advantageous.

Housing is not water-oriented despite the economic premium placed on waterfront housing, because it only benefits those who can afford to buy or rent the housing units.

7:7E-1.6 Mitigation

(a) Mitigation shall be selectively considered on a case-by-case basis as compensation for the loss or degradation of a particular natural resource. In general, mitigation should be similar in type and location to the resource disturbed, destroyed, that is, replacement in kind within the same watershed. The [Division] **Program** will, however, consider proposals for mitigation that differ in type and/or location from the disturbed or destroyed resource provided the mitigation would provide a major contribution to meeting the [basic] **Basic** [location] **Location** [policies] **Policies** (N.J.A.C. 7:7E-1.5(b)1). Requirements for mitigation of a particular resource are addressed more specifically in each applicable Special Area [Policy] **Rules** (N.J.A.C. 7:7E-3.1 through 3.48).

(b) The Department will not consider a mitigation proposal in determining whether a project should be awarded a permit, but will require mitigation as a condition of any permit found to be acceptable under the criteria listed in N.J.A.C. 7:7A-3 and/or 7:7E-3.15 and 3.27.

(c) Rationale: This rule is intended to conserve those physical and biological values described under applicable Special Area rules, while allowing development consistent with acceptability criteria. Use of this mitigation rule will result in real gain, or no net loss of habitat productivity or resource value.

SUBCHAPTER 2. LOCATION, USE AND RESOURCE [POLICIES] **RULES**

7:7E-2.1 Introduction

The coastal land and water areas of New Jersey are diverse. The same development placed in different locations will have different impacts on the coastal ecosystem and built environment as well as different social and economic implications. Different [policies] **rules** are therefore required for different locations. This subchapter and subsequent subchapters defines the Location, Use and Resource [Policies] **Rules** of the Coastal Program. [The application of the Location Policies, in conjunction with the Use and Resource Policies, for the purpose of evaluating the suitability of a development, is also known as the Coastal Location Acceptability Method or CLAM]. This presentation of the [policies] **rules** is lengthy and detailed because the coast is large, varied, and complex. The method of applying the policies is, however, relatively simple.

7:7E-2.2 Classification of land and water types

(a) The Location [Policies] **rules** classify all land and water locations into a General Area and some into one or more Special Areas.

1. Special Areas are so naturally valuable, or so important for human use, or so hazardous, or so sensitive to impact, or so particular in their planning requirements, as to merit focused attention. Special Areas are defined and given special [policies] **rules** in subchapter 3. Special Area types are grouped under four broad headings: Special Water Areas; Special Water's Edge Areas; Special Land Areas; and Special Coast Wide Areas.

2. General Areas are general types of locations which classify the whole coastal zone with the exception of the **Special** Water's Edge, which is entirely a Special Area. Parts of General Areas may also be classified as one or more Special Areas. General Areas are defined and given general [policies] **rules** in subchapters 4 and 5. General Area types are grouped under two broad headings: General Water Areas (subchapter 4) and General Land Areas (subchapter 5).

[7:7E-2.3 Mapping and Acceptability Determination

(a) The Coastal Location Acceptability Method (CLAM) is a nine step process which determines DEP Policy for any proposed coastal use in any coastal location. The first six steps are the mapping and policy determination process to assess location acceptability, which is the subject of this section. Steps 7 and 8 refine the location acceptability determinations by reviewing the proposed use in terms of Uses and Resources Policies. Step 9 is the synthesis of Location, Use and Resource Policies.

CLAM Location Policy Analysis:

Step 1—Identify and map site and surrounding region.

Step 2—Identify and map Special Areas.

Step 3—Determine the applicable Special Area Policies.

Step 4—Identify and map General Areas.

Step 5—Determine the applicable General Area Policies.

Step 6—Map Final Location Acceptability and list Location Policy conditions.

CLAM Use Policy Analysis:

Step 7—Identify applicable Use Policies, evaluate the proposed use, and, if necessary, modify the Location Acceptability Determination and list Use Policy conditions.

CLAM Resource Analysis:

Step 8—Identify applicable Resource Policies, evaluate the proposed use, and, if necessary, modify the Location Acceptability Determination and list the Resource Policy conditions.

CLAM Synthesis

Step 9—Determine final acceptability of proposed use, summarize and synthesize the final acceptability of a proposed use at a proposed location in terms of the applicable Location, Use and Resource Policies. Approval will be given only if a proposal satisfies all three sets of policies. In particular, applicants should note that applications that do not satisfy Location Policies will not be approved even if the Use and Resource Policies are satisfied.]

SUBCHAPTER 3. SPECIAL AREAS

7:7E-3.1 Introduction

(a) Special Areas are those 48 types of coastal areas which merit focused attention and special management [policies] **rules**. This subchapter divides Special Areas into Special Water Areas (See N.J.A.C. 7:7E-3.2 through 3.15), Special Water's Edge Areas (See N.J.A.C. 7:7E-3.16 through 3.32), Special Land Areas (See N.J.A.C. 7:7E-3.33 through 3.35), and Coastwide Special Areas (See N.J.A.C. 7:7E-3.36 through 3.48).

1. Special Water Areas extend landward to the [mean] **spring** high water line or the level of normal flow in non-tidal waters.

[2. Special Water's Edge Areas extend from the mean high water line (or the level of normal flow in non-tidal streams) to one of the following, whichever is most extensive.

i. The inland limit of alluvial soils with a seasonal high water table equal to or less than one foot;

ii. The one hundred year flood hazard line, whether tidal or fluvial;

iii. The inland limit of water's edge fill or

iv. The inland limit of coastal bluffs.]

[3.]**2.** The Special Water's Edge Areas **can be found at** [(see] N.J.A.C. 7:7E-3.16 through [7:7E-]3.32[) can be further subdivided] **and are divided** into three subcategories, depending on their locations:

i.-iii. (No change.)

[4.]**3.** Special Water's Edge Areas in [(a)3i](**a)2i** and ii above are found only next to the ocean, major open bays and backbay waters, while Coastwide Special Water's Edge Areas are found adjacent to tidal as well as non-tidal waters.

[5.]**4.** Special Land Areas are landward of the Water's Edge.

[6.]**5.** Coastwide Special Areas may include Water, Water's Edge or Land Areas.

(b) All land or water locations, except Special Water's Edge Areas, are subject to either the Land Area or Water Area General [Policies] **rules**. In addition, certain locations are subject to one or more Special Area [Policies] **rules**. All Special Water's Edge Areas are subject to one or more Special Area [Policies] **rules**. Where the applicable General and Special Area [policies] **rules** differ, the Special Area [Policies] **rules** shall be applied.

7:7E-3.2 Shellfish [beds] **habitat**

(a) ["]Shellfish [beds" are] **habitat is defined as an** estuarine bay or river bottom[s (tidelands) that are productive for] **which has a history of production for** hard clams (Mercenaria mercenaria), soft clams (Mya arenaria), eastern oysters (Crassostrea virginica), bay

scallops (Argopecten irradians), or blue mussels (Mytilus edulis), **or otherwise listed below in this section.** [A productive bed is one which can be shown to have a history of natural recruitment for one or more of these species, or is leased by the State of New Jersey for shellfish culture, or is a State Shellfish Management Area.] **A shellfish habitat area is defined as an area which meets one or more of the following criteria:**

1. The area has a current shellfish density equal to or greater than 0.20 shellfish per square foot;

2. The area has a history of natural shellfish production according to data available to the New Jersey Bureau of Shellfisheries, or is depicted as having high or moderate commercial value in the Distribution of Shellfish Resources in Relation to the New Jersey Intracoastal Waterway (U.S. Department of the Interior, 1963), "Inventory of New Jersey's Estuarine Shellfish Resources" (Division of Fish, Game and Wildlife, Bureau of Shellfisheries, 1983-present); and/or the "Inventory of Delaware Bays Estuarine Shellfish Resources" (Division of Fish, Game and Wildlife, Bureau of Shellfisheries, 1993);

3. The area is designated by the State of New Jersey as a shellfish culture area as authorized by N.J.S.A. 50:1 et seq. Shellfish culture areas include estuarine areas presently leased by the State for shellfish aquaculture activities or hard clam relay, transplant and transfer as well as those areas suitable for future shellfish aquaculture development; or

4. The area is designated as productive at N.J.A.C. 7:25-24, Leasing of Atlantic and Delaware Bay Bottom for Aquaculture.

(b) Any area determined by the Department to be contaminated by toxins is excluded from this definition. The Final Short List, prepared by the Department pursuant to the Federal Clean Water Act 33 U.S.C.A. Section 1313(c) (1), identifies these known contaminated areas. Also excluded from this definition are those sites for which the Department is presented with clear and convincing evidence that the sites lack the physical features necessary for the support of a shellfish population., excluding those waterways listed at N.J.A.C. 7:7E-7.3(d)10 and (j) below.

[(b) Any development] **(c) The water located under any boat mooring facility (including docks and associated structures) is automatically condemned and reduced to "prohibited" status pursuant to N.J.A.C. 7:12-2.1(a)1ii. Development** which would result in the destruction, **condemnation or contamination** of [presently productive] shellfish [beds] **habitat** is prohibited[, unless the development is of national interest and no prudent and feasible alternative sites exist].

1. The term "destruction" includes actions of filling to create fast land, overboard dumping or disposal of solids or spoils which would smother [present] shellfish populations, or create unsuitable conditions for shellfish colonization or the creation of bottom depressions with anoxic conditions.

[2. If the development is of national interest and will result in the destruction of presently productive shellfish beds, the applicant shall be responsible for the expense incurred to salvage the resource. All such programs shall be coordinated with the appropriate shellfish management agency].

(d) Construction of a dock or boat moorings in shellfish habitat is prohibited, except for the following:

1. Public fishing piers owned and controlled by a public agency for the sole purpose of providing access for fishing; and

2. In waters which have been classified as "prohibited" for the purpose of harvesting shellfish.

[(c) Any coastal development which would result in contamination or condemnation of shellfish beds is prohibited. Development which would significantly alter the water quality, salinity regime, substrate characteristics (as through runoff and sedimentation), natural water circulation pattern, or natural functioning of the Shellfish Beds during the construction and operation of the development is prohibited.]

(e) New dredging (defined at N.J.A.C. 7:7E-4.11(g)) within shellfish habitat is prohibited, except when it is necessary to maintain the use of public launching facilities (ramps) with 25 or more trailer parking spaces or marina facilities with 25 or more dockage units, consisting of either dry dock storage or wet slips. New dredging for existing marinas or for the expansion of such facilities is conditionally acceptable provided that:

1. The expanded portion of the marina, other than the access channel, will not be located within the shellfish habitat;

2. The marina provides on site restrooms, a marine sanitation disposal device and pumpout station; and

3. The width, depth and length of the to-be-dredged channel and boat basin are limited to the minimum dimensions needed to service the existing or expanded facilities.

[(d) Water dependent development which requires new dredging adjacent to shellfish beds is discouraged and shall be managed so as not to cause significant mortality of the shellfish resulting from increase in turbidity and sedimentation, resuspension of toxic chemicals, or to otherwise interfere with the natural functioning of the shellfish bed.

1. New dredging within shellfish beds is prohibited.

2. Maintenance dredging of existing navigation channels is conditionally acceptable. State managed shellfish recovery programs are encouraged prior to dredging.]

(f) Maintenance dredging (defined at N.J.A.C. 7:7E-4.11(f)) within shellfish habitat is conditionally acceptable, provided the disturbance to shellfish habitat is minimized to the greatest extent possible.

[(e) If there is a delay of more than one year between completion of permit application review and initiation of approved activity, the shellfish resource shall be resurveyed. If there is a significant change in the resource, new mitigation measures may be required by the Department. The applicant shall coordinate any shellfish resource inventory with the Bureau of Shellfisheries to ensure it is conducted in the appropriate manner utilizing the best available techniques.]

(g) New dredging adjacent to shellfish habitat is discouraged in general, but may be conditionally acceptable if it can be demonstrated that the proposed dredging activities will not adversely affect shellfish habitat, population or harvest. If the Department determines dredging to be acceptable, dredging shall be managed pursuant to N.J.A.C. 7:7E-4.11(g) so as not to cause significant mortality of the shellfish due to increased turbidity and sedimentation, resuspension of toxic chemicals, or any other occurence which will interfere with the natural functioning of the shellfish habitat.

(h) For the purpose of this rule all docks and piers, except public fishing piers defined in (d)1 above, are considered boat mooring facilities.

(i) Development required for national security for which there exists no other prudent and feasible alternative site is acceptable under this rule, provided that the shellfish resource is salvaged and mitigated pursuant to a plan approved in writing by the Department. The applicant is responsible for all the expenses of resource salvaging and mitigation. All such programs shall be coordinated with the appropriate shellfish management agency.

(j) N.J.A.C. 7:7E-7.3(d)10 shall also apply to development of boat mooring facilities of five or more slips on the Navesink, Shrewsbury, and Manasquan Rivers and St. George's Thorofare.

[(f)]**(k)** Rationale: Estuarine shellfish are harvested by both commercial and recreational fisherman, with the sport group concentrating on hard clams. Oysters, bay scallops and soft and hard clams are predominantly commercial species. Commercial dockside landing values in New Jersey for 1988 were $6.03 million for estuarine mollusks. As with commercial species, processing and distribution considerably increase the value of this fishery to the State's economy. The commercial harvest is estimated to support employment of 1,500 persons in fishing, distribution, processing and retail. Recreational clammers purchased 13,179 licenses in 1988. Furthermore, it is estimated that there are approximately 10,000 senior citizen recreational clammers. In addition to direct human consumption, shellfish play an important role in the overall ecology of the estuary. Young clams are important forage foods for a variety of [finfish] **species** such as winter flounder, crabs and migratory waterfowl, especially the diving species.

There is an inherent conflict between shellfish habitat and water quality protection and boating related activities, such as mooring

and dredging, though both are important water-dependent activities in New Jersey. Mooring facilities are a source of pollution with a high potential for improper disposal of human waste. Shellfish grown in or near marinas and docks are unsafe for human consumption due to the potential health threats associated with the pollution generated as a result of leaching of toxic chemicals from waterfront construction materials and boat-related pollutants, and human waste disposed in close proximity to these marinas and docks. Shellfish (bivalve molluscs) readily bioaccumulate and concentrate toxic substances and pathogenic microorganisms within their tissue which possesses a human health risk. Due to the potential health threats associated with shellfish grown in polluted waters, shellfish are prohibited from being harvested for human consumption near mooring activities. Dredging activities typically distrub and degrade the habitat environment.

Motor fuels can be released into the aquatic environment via the operation of boat engines, fuel spills and bilge pumping. The effects of petroleum hydrocarbons on fish and shellfish include direct lethal toxicity, sublethal disruption of physiology, behavior, bioaccumulation, and development of an unpleasant taste to edible species. Motor fuels and exhaust often contain lead, cadmium, zinc and other heavy metals. Heavy metals have been shown to cause suppression of growth or death of eggs, embryos and larvae of hard clams. In addition, such contaminants are known to cause a variety of sublethal effects, including inhibited feeding behavior, retarded shell growth, and depression of cardiovascular function and respiration in various species of shellfish.

Boat maintenance operations can also have adverse impacts to estuarine organisms. Detergents used to wash boats can be toxic to fish and invertebrates and may contribute to elevated nutrient levels, particularly phosphorous. Toxins from various antifouling paints are harmful to shellfish and other invertebrates.

Dredging disturbs and degrades shellfish habitat by adversely altering the water quality, salinity regime, substrate characteristics, natural water circulation pattern and natural functioning of the shellfish habitat.

This rule intends to strike a balance between resource protection and recreational boating-related uses, by allowing maintenance dredging in shellfish habitats where an area has already been previously dredged and new dredging at existing public boat launching facilities and major mooring/docking facilities and major mooring/docking facilities with 25 or more dockage units. The dredging of larger marinas and boat launching facilities will allow the greatest number of boaters access to the water areas with the least amount of habitat disturbances and degradation. This is partly because the larger marinas are more likely than smaller ones to generate sufficient demand for a full service marina, and are required to provide restrooms, marine sanitation disposal device and pumpout station, as a condition for the dredging approval if they did not already have them. Dredging is allowed at larger marinas and boat launching facilities becauce their highly concentrated use pattern minimizes the overall physical space required for dockage/mooring area and channel maintenance. Additionally, direct disposal of human waste into the water is expected to be reduced at these better equipped marina facilities. The maintenance of these facilities is therefore considered acceptable and would be positive to the extent that it leads to less pollution from current boaters.

The Navesink River, Shrewsbury River and Manasquan River (upstream of the Route 35 Bridge), and St. George's Thorofare are important areas for shellfish habitat. The Navesink and Shrewsbury River's are unique in that only three estuaries within the State have commercial soft clam densities. St. Georges Thorofare is commercially and recreationally valuable area that contains a high hard clam density according to the 1985 Shellfish inventory conducted by the Division of Fish, Game and Wildlife. It is estimated to contain 6.2 million hard clams in a 107 acre area. The high abundance of hard clams, together with the fact that this waterbody is poorly flushed makes St. George's Thorofare a critical area that is sensitive to any potential pollution activities. These circumstances led to a moratorium being placed on this waterway against the construction of any new docks. Since then the moratorium has been lifted, however, the circumstances continue to render recommendations of denial for the construction of new docks.

Federal, State and local officials have recognized the importance of these rivers as shellfish habitat and the need to protect their water quality. As a result, pollution control programs have been formed to protect these rivers. For example, the Navesink River Shellfish Protection Program represents a multi-agency pollution control program. On August 21, 1986, a Memorandum of Understanding was signed by the New Jersey Department's of Environmental Protection and Energy and Agriculture and the United States Department of Agriculture and United States Environmental Protection Agency. The memorandum serves to "..formalize our commitment to the Navesink River Water Control Shellfish Protection Program, its primary goal of improving water quality in the Navesink River watershed to a point at which the river's full shellfishery and recreational potential may be attained." Water quality monitoring during six years of implementation of pollution controls (1987-93) has shown significant reductions in bacterial contamination of the Navesink River, to the point where the potential now exists for upgrading the shellfish classification of the river to seasonally approved. The Shrewsbury River is a unique shellfish habitat in that it is only one of the three estuaries in New Jersey to have commercial densities of soft clams. Studies indicate that the Shrewsbury River is hydrologically connected to the Navesink River. As such, the Shrewsbury River has been included as part of the "Navesink River Shellfish Protection Program". In addition, the Monmouth/Ocean Alliance to Enhance the Manasquan River" was formed by Monmouth and Ocean Counties and the New Jersey Department of Environmental Protection to identify causes of shellfish water degradation and plan solutions for improved water quality and uses in the Manasquan River.

(**OAL Note:** The Rationale in N.J.A.C. 7:7E-3.2(k) above and in those sections of N.J.A.C. 7:7E-3 which follow are not reproduced in the Code as they are not rules in themselves. While their adopted form will appear in the adoption of these rules, the Rationale statements will continue not published in the Code.)

7:7E-3.5 Finfish migratory pathways

(a) "Finfish migratory pathways" are waterways (rivers, streams, creeks, bays[,] **and** inlets) which can be [demonstrated] **determined** to serve as passageways for diadromous fish to or from seasonal spawning areas, including juvenile anadromous fish which migrate in autumn and those listed by H.E. [Zick] **Zich** (1977) "New Jersey Anadromous Fish Inventory" NJDEPE Miscellaneous Report No. 41, and including those portions of the Hudson and Delaware Rivers within the coastal zone boundary.

1. Species of concern include: alewife or river herring (Alosa pseudoharengus), blueback herring (Alosa sapidissima), American shad (Alosa aspidissima), striped bass (Monroe saxatilis), Atlantic sturgeon (Acipenser oxyrhynchus), Shortnose sturgeon (Acipenser brevirostrum) and American eel (Anguilla rostrata).

(b) Development, such as dams, dikes, spillways, **channelization, tide gates** and intake pipes, which creates a physical barrier to the movement of fish along finfish migratory pathways is prohibited, unless acceptable mitigating measures such as fish ladders, erosion control, or oxygenation are used.

(c) Development which lowers water quality to such an extent as to interfere with the movement of fish along finfish migratory pathways or to violate State and Delaware River Basin Commission water quality standards is prohibited.

1. Mitigating measures are required for any development which would result in: lowering dissolved oxygen levels, releasing toxic chemicals, raising ambient water temperature, impinging or suffocating fish, **entrainment of fish eggs, larvae or juveniles,** causing siltation, or raising turbidity levels during migration periods.

(d) Water's edge development which incorporates migration access structures, such as functioning fish ladders, will be conditionally acceptable, provided that the **NJDEPE,** Division of Fish, Game and Wildlife approves the design of the access structure. **As of January, 1994, the NJDEPE Division of Fish, Game and Wildlife is currently**

evaluating anadromous fish spawning areas for potential enhancement work. This may include building of fish ladders, removal of obstructions, stocking, and other means. A development proposal shall be consistent with these Department efforts.

(e) Rationale: Striped bass are one of New Jersey's most prized sport fish and are actively sought wherever they occur in New Jersey. This species spawn in Delaware, Hudson and Maurice Rivers. American Shad, once much more numerous and an important commercial species, continue to make an annual spawning run in the Delaware and Hudson Rivers, where there is an active sport fishery. A much reduced commercial fishery exists in the Delaware Bay and River. Herrings are important forage species and spawn annually in many of New Jersey's tidal tributaries including [the Raritan and Hackensack Rivers] **those listed by H.E. Zich (1977) "New Jersey Anadromous Fish Inventory", NJDEP Miscellaneous Report No. 41.** Herrings are fished during spring runs, for direct human consumption, garden fertilizer and for use as bait.

7:7E-3.6 Submerged Vegetation

(a) A "Submerged Vegetation" special area consists of **estuarine** water areas supporting **or documented as previously supporting** rooted, **submerged** vascular [seagrasses] **plants** such as widgeon grass ([Ruppie] **Ruppia** maritima), **sago pondweed (Potamogeton pectinatus), horned pondweed (Zannichellia palustris)** [attached green algae (Ulva lactuca)] and eelgrass (Zostera marina). [Eelgrass beds are limited to] **In New Jersey, submerged vegetation is most prevalent in the** shallow portions of the **Navesink,** Shrewsbury, **Manasquan and Metedeconk** Rivers, **and in** Barnegat, **Manahawkin** and Little Egg Harbor Bays. **Other submerged vegetation species in lesser quantities include, but are not limited to, the following: water weed (Elodea nuttalli), Eriocaulon parkeri, Liaeopsis chinesis, Naja flexilis, Nuphar variegatum, Potamogeton crispus, Potamogeton epihydrus, Potamogeton perfoliatus, Potomogeton pusillus, Scirpus subterminalis and Vallisneria americana.** [Widgeon grass is for the most part limited to shallow areas of upper Barnegat Bay.] Detailed maps of the distribution of the above species for New Jersey, and a method for delineation, are available from DEPE in the [DEP-DCR sponsored study, The] New Jersey Submerged Aquatic Vegetation Distribution Atlas (Final Report), February, 1980, conducted by Earth Satellite Corporation **and also on "Eelgrass Inventory" maps prepared by the Division of Fish, Game and Wildlife, Bureau of Shellfisheries, 1983. If the Department is presented with clear and convincing evidence that a part of its mapped habitat lacks the physical characteristics necessary for supporting or continuing to support the documented submerged vegetation species, such a site would be excluded from the habitat definition.**

(b) [Policy relevent to submerged vegetation is as follows:] **Regulated activities in submerged vegetation beds are prohibited except for the following:**

[(1) Destruction of submerged vegetation beds is prohibited. Mitigation measures are required for all upland developments which would result in erosion or increased turbidity that would adversely affect this special area.]

[2.]**1.** Trenching for [energy] **utility** pipelines and submarine cables [of national significance] **in the public interest,** [will be conditionally acceptable,] provided there is no [prudent] **practicable** or feasible alternative [site,] **alignment, the impact area is minimized and that, following pipeline or cable installation,** [and if the site] **the disturbed area** is restored to **its** [original bathymetry and replanted with pre-development vegetation species,] **preconstruction contours and conditions. This may include subsequent monitoring and replanting of the disturbed area** if these species have not re colonized the [site] **disturbed area** [after] **within** three years. **The use of directional drilling techniques for utility installations is strongly encouraged, rather than the use of trenching;**

2. New dredging of State and Federal navigation channels provided that there is no practicable or feasible alternative to avoid the vegetation; and that impacts to the habitat area (for example dredging width, length and depth) are minimized to the maximum extent practicable. Mitigation will be required for destruction of one acre or more which possess submerged aquatic vegetation;

3. Maintenance dredging as defined at N.J.A.C. 7:7E-4.2(f) of previously authorized, existing State and Federal navigation channels and associated disposal areas provided that there is no practicable or feasible alternative to avoid the vegetation and that impacts to the habitat area are minimized to the maximum extent practicable;

4. New and maintenance dredging as defined at N.J.A.C. 7:7E-4.2(f), of previously authorized operating marinas and any necessary access channels to the expanded portion of such marinas (this exception does not include the boat basin of the expanded portion of the marina) and existing launching facilities with 25 or more dockage, storage or trailer parking units and their associated access channels, provided the proposed areas to be dredged (such as channel length, depths and widths) are minimized to the maximum extent practicable;

5. Maintenance dredging as defined at N.J.A.C. 7:7E-4.2(f) to regain access to existing private docks, piers, boat ramps and mooring piles not associated with marinas that were previously dredged to an authorized channel and/or mooring depth, width and length, provided there is no practicable or feasible alternative on site that would avoid dredging in submerged vegetation habitat;

6. Construction of a single noncommercial dock or pier provided that:

i. There are no practicable or feasible alternatives to avoid impacts to submerged vegetation habitat at the site;

ii. The width of the structure will not exceed four feet, except for that portion of the structure adjacent to the mooring area, where the width and length may not exceed six and 20 feet, respectively;

iii. The pier shall have no more than two designated slips. No boats may be moored at a non-designated pier/dock area;

iv. No more than one pier shall be placed for every building lot and each building lot shall have a forty foot or greater frontage on the water. Where more than one lot has been assembled for the purpose of building, only one pier will be allowed;

v. No dredging shall be performed in conjunction with the use of the dock or pier;

vi. A minimum water depth of four feet at mean low water must be present in the area where the boats will be moored; and

vii. There is no alternative mooring area at the site that would have less impact on the submerged aquatic vegetation; and

7. The extension of existing piers or floating docks through submerged vegetation habitat to water at least four feet deep at mean low water, for the purpose of eliminating dredging or boating through submerged vegetation habitat, provided the width of the extended portion of the pier does not exceed four feet (except for the portion of the pier adjacent to the mooring area where the width shall not exceed six feet), there will be no increase in the number of boat moorings, and no dredging will be performed in conjunction with the use of the structure.

(c) Regulated activities in upland or water areas adjacent to submerged vegetation habitat or in submerged vegetation habitat which result in erosion or turbidity increases in the waters supporting submerged vegetation are prohibited unless mitigating measures are provided.

(d) Compensation for unavoidable, permanent significant impacts to submerged vegetation habitats, when required, shall consist of the establishment of self-sustaining habitat for the appropriate species in accordance with scientifically-documented transplanting methods. Monitoring and replanting shall be carried out biannually to demonstrate persistence of the compensatory habitat for a minimum of three years. The following must be documented for any area proposed for seagrass habitat restoration: that the area previously supported seagrass but no longer does; the specific cause(s) of seagrass elimination; and that the specific condition(s) or action(s) responsible for elimination of seagrass has since ceased. Priority will be given to in-kind restoration of seagrass habitat in as close proximity as possible to the impacted site. No compensation credit will be given for attempts to plant seagrass within unvegetated interpatch areas of existing seagrass habitat or for attempts to

increase bottom coverage within existing seagrass beds (defined as an area where seagrass rhizomes overlap, or where seagrass shoots intermingle within less than one square meter).

[(c)](e) Rationale: New Jersey's estuarine waters are relatively shallow, rich in nutrients and highly productive. The submerged vegetation of these shallow habitats serve important functions as suspended sediment traps, important winter forage for migratory waterfowl, nursery areas for juvenile fin fish, bay scallops and blue crabs, and by nourishing fishery resources through primary biological productivity (synthesis of basic organic material) through detrial food webs in a similar manner to salt marsh emergent **Spartina** cord grasses. In addition, seagrasses absorb wave energy and root networks help stabilize silty bay bottoms. The value of seagrasses was dramatically illustrated during the 1930's when a disease epidemic virtually eliminated eelgrass form the eastern U.S. Atlantic ocean coastline. The number of finfish, shellfish, and waterfowl drastically decreased, threatening their survival. The oyster industry of the Atlantic coast was ruined. Bays became choked with silt and new mudflats were formed.

Most of the submerged vegetation species, in particular the eelgrass and widgeon grass, grow in patches which often cluster together forming a vegetative community and migrate from year to year about shoal areas. Disturbances to the substrate such as dredging usually result in permanent habitat destruction and loss. In shallow areas, propeller action may severely damage the roots and churn up the substrate and increase turbidity, damaging or destroying the plants and reducing their productivity. Other activities that can also have a negative impact on the plants and/ or habitat include wake actions, upland runoff and shading from structures.

This rule aims to protect the submerged vegetation as a resource. Areas where submerged aquatic vegetation grows or has been known to grow are identified as habitat areas which currently or potentially could support the submerged vegetation plant communities. Dredging of the habitat area is permitted for maintaining the depth of existing State and Federal channels since the navigability of these channels is essential to commerce and navigation. New and maintenance dredging to existing large marinas and public launching facilities provides the greatest number of boaters access to the water areas with the least amount of disturbance to the habitat area. Limited boating related uses are also permitted in habitat areas with greater than four feet of water depth, where impacts from boating are not likely to be destructive to the plants or their habitat environment.

7:7E-3.7 Navigation channels

(a) Navigation channels include water areas in tidal rivers and bays presently maintained by DEPE or the Army Corps of Engineers and marked by US Coast Guard with buoys or stakes, as shown on NOAA/National Ocean Survey Charts: 12214, 12304, 12311, 12312, 12313, 12314, 12316, 12317, 12318, 12323, 12324, 12326, 12327, 12328, 12330, 12331, 12332, 12333, 12334, 12335, 12337, 12341, 12343, 12345, 12346, and 12363.

1. Navigation channels also include channels marked with buoys, dolphins, and stakes, and maintained by the State of New Jersey, [and] access channels and anchorages.

2. Navigation channels **include all areas between the top of the channel slopes on either side.** [are approximately parallel to the river bed. Access channels are spurs that connect a main navigation channel to a terminal. Anchorages are location where vessels moor within water at or near the water's edge for the purpose of transferring cargo, or awaiting high tide, better weather, or fuel and terminal availability.]

(b) [Policy] **Standards** relevant to navigation channels is as follows:

1. New or maintenance dredging of existing navigation channels is conditionally acceptable providing that the condition under the new or maintenance dredging [policy] **rule** is met (see N.J.A.C. 7:7E-[4.10]**4.2**(f) and (g)).

2. Development which would cause terrestrial soil and shoreline erosion and siltation in navigation channels shall utilize appropriate mitigation measures.

3. Development which would result in loss of navigability is prohibited.

4. Any construction which would extend into a navigation channel is prohibited.

5. The placement of structures within 50 feet of any authorized navigation channel is discouraged, unless it can be demonstrated that the proposed structure will not hinder navigation.

6. All dock and pier construction must not hinder access to adjacent docks, piers, moorings or water areas.

(c) Rationale: Navigation channels are essential for commercial and recreational surface water transportation, especially in New Jersey back bays where water depths are very shallow. Channels play an important ecological role in providing estuarine circulation and flushing routes, and migration pathways and wintering and feeding habitat for a wide diversity of finfish, shellfish and waterfowl. Navigation channels, access channels and anchorages [from] form a network of areas that have a depth sufficient to enable marine trade to operate at the limiting depth of the channel. If one part of the system is not maintained, the entire system might be unable to function.

7:7E-3.10 Marina Moorings

(a) Marina moorings are areas of water that provide mooring, docking and boat maneuvering room as well as access to land and navigational channels for **five or more** recreational boats. [Typically maintenance dredging is required to preserve water depth.]

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

(d) New or maintenance dredging in marina mooring areas and access channels is conditionally acceptable, provided that the proposed dredging complies with the provisions applicable to new and maintenance dredging, N.J.A.C. 7:7E-[4.11]**4.2**(f) and (g).

(e) Rationale: **Continued operation of** [Marinas] **marinas** [are] **is** encouraged since they benefit the state by attracting tourists and associated revenues and by providing recreational opportunities to the estimated 25% of residents that go boating in the bays and coastal waters of the State (1977 Eagleton Institute Poll). [Further, existing marinas are inadequate to serve current and projected demand. The vast majority of existing marinas (70%) are filled to capacity with many having waiting lists: indicating a large unmet demand ("Developing a Marina in New Jersey: A Handbook",, N.J. DEP, 1982). According to the New Jersey State Comprehensive Outdoor recreational Plan (SCORP), boating demand will increase through 1995 and perhaps diverting large numbers to other states.]

7:7E-3.11 Ports

(a) ["]Ports["] are water areas having, or lying immediately adjacent to, concentrations of shoreside marine terminals and transfer facilities for the movement of waterborne cargo (including fluids), and including facilities for loading, unloading and temporary storage.

1. (No change.)

2. Standards for a docking facility or concentration of docks for a single industrial or manufacturing facility may be found under the General Water Area [Policy] **rule** for Docks and Piers **(commercial)** (N.J.A.C. 7:7E-[4.11]**4.2**).

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

(d) Boat ramps for recreational boating are [discouraged] **conditionally acceptable provided the ramp complies with all Special Areas Rules (N.J.A.C. 7:7E-3) and provided it does not interfere with the port use.**

(e) Docks and piers for cargo movements are [an] encouraged [use].

(f) Rationale: The ports of New Jersey are components of two of the nations three largest port districts—the New York-New Jersey Port District and the Delaware Rivert Port District. The Port of Newark-Elizabeth is the nation's largest container port. Shipping is a major industry in the state as well as an important contributor to the well-being of other state industries. A set of [policies] **rules** aimed at encouraging the use and expansion of existing ports, while discouraging the sprawl of port uses into undeveloped areas, is therefore, an element of coastal [policy] **rules.**

7:7E-3.14 Wet Borrow Pits

(a) ["]Wet borrow pits["] are scattered artificially created lakes that are the results of surface mining for coastal minerals extending

below groundwater level to create a permanently flooded depression. This includes, but is not limited to, flooded sand, gravel and clay pits, and stone quarries. Where a [Wet Borrow Pit] **wet borrow pit** is also a [Wetland] **wetland** and/or [Wetlands buffer] **wetlands buffer**, Wetlands and/or Wetlands Buffers [Policies] **Rules** shall apply. (See N.J.A.C. 7:7E-3.27 and 3.28).

(b) All proposed dredging and filling activities shall comply with [the] **any** applicable Freshwater Wetlands Protection Act Rules ([see] N.J.A.C. 7:7A). **In addition, such activities must receive a Water Quality Certificate pursuant to N.J.S.A. 58:10A et seq. and Section 401 of the Federal Clean Water Act if a Federal permit is required for the activities.**

(c) (No change.)

(d) Surface mining is conditionally acceptable provided condition (b) above is met and the Use [Policies] **Rules** for Mining (see N.J.A.C. 7:7E-7.8) are complied with.

(e) (No change.)

(f) Disposal of dredged [spoil] **material** is [conditionally acceptable] **discouraged, but may be acceptable in limited cases,** provided condition (b) above is met and that:

1. The spoil is clean and non-toxic, [of] an appropriate particle size for the site, and will not disturb groundwater flow or quality;

2. (No change.)

(g) Filling of [Wet Borrow Pits] **wet borrow pits** for construction is conditionally acceptable provided that:

1.-4. (No change.)

5. A program for water quality monitoring and maintenance is included with the application; [and]

6. Recreational uses in water and water quality buffer areas minimize wildlife disturbance[.]; **and**

7. All requirements of the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., are satisfied.

(h) (No change.)

(i) All proposed uses directly adjacent to wet borrow pits shall grade all banks at the immediate water's edge, except those in acceptable water access areas, to a slope not greater than 33 percent, and shall stabilize the surface and initiate succession of native vegetation adapted to water's edge conditions.

(j) Limited recreational use of wet borrow pit margin is acceptable providing that the water buffer disturbance is limited in extent and wildlife habitat disturbance is minimized.

(k) A water quality buffer area is required around the perimeter of wet borrow pits. The minimum width of this buffer area will be 100 feet where soils are coarse (sands and gravels) and 50 feet elsewhere.

[(i)](l) Rationale: The Special Area [Policies] **Rules** for wet borrow pits are less restrictive than the [policies] **rules** for other lakes, ponds and reservoirs in that they allow sand and gravel extraction, dredge spoil disposal and filling, under specified conditions. This is because they are already disturbed sites. Also, they are of relatively recent origin and, typically, vegetative succession is not as far advanced as along natural lakes. Wet borrow pits, therefore, tend to be less important as wildlife habitats than natural lakes. Finally, they are not connected to the wider estuarine system by streams.

On the other hand, their separation from streams means that they are most susceptible to water quality impacts caused by runoff. The water is still, and the only water loss is through groundwater seepage and evaporation. Sediment collects quickly, enlarging marsh areas, and the eutrophic conditions that lead to sudden oxygen loss are concentrated by evaporation. Low levels of toxicity are quickly biomagnified to fatal levels. In general, these still water areas are much more sensitive to impacts of all kinds than flowing water.

Undisturbed wet borrow pits can become wildlife habitats for aquatic, amphibian and terrestrial species, offering productive edges, shallow waters, wetland areas and important breeding and migratory habitats. Proposals that include wet borrow pits as wildlife preserves are, therefore, encouraged. Low intensity recreation which takes advantage of the scenic amenities of these lakes is also desirable if wildlife disturbance is minimized.

There is a severe shortage of dredged [spoil] **material** disposal sites in New Jersey. The filling of wet borrow pits is essentially a reverse of the mining operation which created them, and has less negative impact than filling natural depressions, provided that the spoil is clean and non-toxic and the particle size matches the neighboring natural substrates closely enough so as to not disturb groundwater movement. If the filling of wet borrow pits is designed to retain some surface water area, and to maximize land-water edges, much of the wildlife value can be preserved while providing needed spoil disposal sites.

The value of wet borrow pits as wildlife habitat may be enhanced by limited fingers of fill to enlarge the land-water interface. Filling can also create sites for waterfront housing. Since residential construction sites near surface water are much in demand, it is desirable to allow some residential and related uses, provided that housing is consistent with Location and Use [Policies] **Rules**, water quality is maintained, and a water quality buffer is preserved along the waters edge. The buffer would not block visual or physical access to the water, but would preserve water quality and provide wildlife habitat. Medford Lakes provides an example of an attractive residential community built around wet borrow pits, but siltation and eutrophication provide evidence for the need for a water quality buffer area.

7:7E-3.15 Intertidal and Subtidal Shallows

(a) ["]Intertidal and subtidal shallows["] means all permanently or twice daily submerged areas from the mean high water line to a depth of four feet below mean low water.

(b) Development, filling, new dredging or other disturbance is [generally] discouraged but may be permitted in accordance with the **acceptability conditions found at N.J.A.C. 7:7E-4.2. Dredging is acceptable only if the following criteria are satisfied in addition to the acceptabilty conditions found at N.J.A.C. 7:7E-4.2:** [Use Policy for the applicable water body type (see N.J.A.C. 7:7E-4).]

[1. If the destruction of intertidal and subtidal shallows takes place, mitigation shall be carried out at a ratio of one acre created to one acre lost. Mitigation sites shall be located within the same estuary whenever feasible. However, dredging activities and specific filling activities found approvable under N.J.A.C. 7:7E-4.11(j)2iii(1) and (2) are exempted from this mitigation requirement.]

1. The dredging of intertidal and subtidal shallows may be acceptable to maintain adequate water depths for any existing or new marinas with 25 or more slips or public launching facilities and existing ports.

2. Maintenance dredging of intertidal and subtidal shallows for legally constructed, existing docks other than those identified in (b)1 above, is acceptable provided the following criteria are met:

i. The depth of the proposed dredge area does not exceed four feet mean low water;

ii. The width of the access channel is the minimum width required to moor a boat at the dock; and

iii. The maintenance dredging complies with all applicable Special Water Area Rules (N.J.A.C. 7:7E-3).

[(c)]**3.** Submerged infrastructure is conditionally acceptable, provided that:

[1]**i.** There is no feasible alternative route that would not disturb intertidal and subtidal shallows;

[2]**ii.** The infrastructure is buried deeply enough to avoid exposure or hazard; [and]

iii. Directional drilling for the purpose of installation of submerged infrastructure is preferred to trenching; and

[3]**iv.** All trenches are backfilled **to the preconstruction depth** with naturally occurring sediment.

4. The filling of intertidal and subtidal shallows for beach nourishment is conditionally acceptable provided it meets the requirements found under the Filling rule (N.J.A.C. 7:7E-4.2(j)) and the Coastal Engineering rule (N.J.A.C. 7:7E-7.11(d)).

(c) If the destruction of intertidal and subtidal shallows takes place, mitigation shall be carried out at a ratio of one acre created to one acre lost. Mitigation sites shall be located within the same estuary whenever feasible. Specific filling activities acceptable under N.J.A.C. 7:7E-4.2(j)2iii(1) and 7.11(d) are exempt from this mitigation requirement.

1. Dredging activities for residential noncommercial docks will not require mitigation. Dredging activities for projects which do not meet the criteria at (b)1 and 2 above, marinas and ports will not require mitigation provided the dredged area is reduced to the minimum extent practicable (minimum being the smallest area compared to the area needed to develop the same project at another site).

(d) Rationale: Intertidal and subtidal shallows play a critical role in estuarine ecosystems. They are a land-water ecotone, or ecological edge where many material and energy exchanges between land and water take place. They are critical habitats for many benthic organisms and are critical forage areas for fishes and many migrant waterfowl. The sediments laid down in intertidal and subtidal flats contain much organic detritus from decaying land and water's edge vegetation, and the food webs in these areas are an important link in the maintenance of estuarine productivity. Preservation is, therefore, the intent of these [policies] **rules**, with limited exceptions to allow for needed water-dependent uses and submerged infrastructure.

7:7E-3.16 Dunes

(a) A ["]dune["] is a wind or wave deposited or man-made formation of [vegetated drifting wind blown sand] **sand (mound or ridge)**, that lies generally parallel to, and landward of, the beach, and between the upland limit of the beach and the foot of the most inland dune slope. "Dune" includes the foredune, secondary and tertiary dune ridges, as well as man-made dunes, where they exist **(see Appendix, Figure 1, incorporated herein by reference)**.

1. Formation of sand immediately adjacent to beaches that are stabilized by retaining structures, **and**/or snow fences, planted vegetation, and other measures are considered to be dunes regardless of the degree of modification of the dune by wind or wave action or disturbance by development.

2. A small mound of loose, windblown sand found in a street or on a part of a structure as a result of storm activity is not considered to be a "dune."

(b) Development is prohibited on dunes, except for development that has no [prudent] **practicable** or feasible alternative in an area other than a dune, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. **In addition, the removal of vegetation from any dune, and the excavation, bulldozing or alteration of dunes is prohibited, unless these activities are a component of a Department approved beach and dune management plan.** Examples of acceptable activities are:

1. Demolition and removal of paving **and** structures;

2. Limited, designated access ways for pedestrian and authorized motor vehicles between public streets and the beach that provide for minimum feasible interference with the beach and dune system and are oriented so as to provide the minimum feasible threat of breaching or overtopping as a result of **a** storm surge or wave runup **(see N.J.A.C. 7:7E-3A)**;

3. Limited stairs, walkways, pathways and boardwalks to permit access across dunes to beaches, in accordance with N.J.A.C. 7:7E-3A, provided they cause minimum feasible interference with the beach and dune system;

4. The planting of native vegetation to stabilize dunes **in accordance with N.J.A.C. 7:7E-3A**;

5. Sand fencing, either a brush type barricade or [a] picket type, to accumulate sand and aid in dune formation **in accordance with N.J.A.C. 7:7E-3A**;

6. Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(e); and,

7. Linear development which meets the [Policy] **Rule** on Location of Linear Development (N.J.A.C. 7:7E-6.1).

(c) The creation of dunes for the purpose of shore protection is strongly encouraged. According to the National Flood Insurance Program (NFIP) Regulations established by the Federal Emergency Management Agency (FEMA), primary frontal dunes will not be considered as effective barriers to base flood storm surges and associated wave action where the cross-sectional area of the primary frontal dune, as measured perpendicular to the shoreline and above the 100-year stillwater flood elevation and seaward of the dune crest, is equal to or less than 540 square feet. This standard represents the minimal dune volume to be considered effective in providing protection from the 100-year storm surge and associated wave action, and should represent a "design dune" goal.

[(c)]**(d)** Rationale: Ocean and bayfront dunes are an irreplaceable physical feature of the natural environment possessing outstanding geological, recreational, scenic and protective value. Protection and preservation in a natural state is vital to this and succeeding generations of citizens of the State and the Nation. The dunes are a dynamic migrating natural phenomenon that helps protect lives and property in adjacent landward areas, and buffers barrier islands and barrier beach spits from the effects of major natural coastal hazards such as hurricanes, storms, flooding and erosion. Natural dune systems also help promote wide sandy beaches and provide important habitats for wildlife species.

Extensive destruction of dunes has taken place in this century along much of the coast. This disruption of the natural processes of the beach and dune system has led to severe erosion of some beach areas; jeopardized the safety of existing structures on and behind the remaining dunes and upland of the beaches; increased the need to manage development in shorefront areas no longer protected by dunes; interfered with the sand balance that is so essential for recreational beaches and the coastal resort economy; necessitated increased public expenditures by citizens of the entire State for shore protection structures and programs; and increased the likelihood of major losses of life and property from flooding and storm surges.

The [policy] **rule** encourages the natural functioning of the dune system and encourages restoration of destroyed dunes, to protect and enhance the coastal beach dune areas, and to devote these precious areas to only those limited land uses which preserve, protect and enhance the natural environment of the dynamic dune system.

7:7E-3.17 Overwash areas

(a) An [Overwash Area] "**overwash area**" is an area subject to accumulation of [sand] **sediment, usually sand,** that is deposited landward of the beach or dune by the rush of water [up onto the beach, following the breaking of a wave which carries sediment over the crest of a beach berm, a dune or a structure] **over the crest of the beach berm, a dune or a structure**. An overwash [fan] **area** may, through stabilization and vegetation, become a dune **(see Appendix, Figure 1)**.

1. The seaward limit of the [Overwash Area] **overwash area** is the seaward toe of the former dune, or the landward limit of the beach, in the absence of a dune.

2. The landward limit of the [Overwash Area] **overwash area** is the inland limit of sediment transport.

3. Verifiable aerial photography and other appropriate sources may be used to identify the extent of overwash.

(b) Development is prohibited [in Overwash Areas] **on overwash areas,** except for development that has no prudent or feasible alternative in an area other than an [Overwash Area] **overwash area**, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:

1. Creation of dunes or expansion of existing dunes **in accordance with N.J.A.C. 7:7E-3A;**

2.-3. (No change.)

[4. Limited stairs, walkways, pathways and boardwalks to permit access across dunes to beaches, provided they cause minimum feasible interference with the beach and dune system;

5. The planting of native vegetation to facilitate dune development;

6. Sand fencing, either a brush type barricade or a picket type, to accumulate sand and aid in dune formation];

[7.]**4.** Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(e);

[8.]**5.** Linear development which meets the [Policy] **Rule** on Location of Linear Development (N.J.A.C. 7:7E-6.1); [and]

[9.]**6.** Removal of newly deposited overwash fans from public roads and or developed lots[.]**; and**

7. Construction of street-end beach accessways along the oceanfront, provided they are oriented at an angle against the predominant northeast storm approach, are limited in width to no more than ten feet, and are defined/stabilized with sand fencing. These standards should be included in all beach and dune management plans for oceanfront locations.

(c) A development may be permitted if, by creating a dune with buffer zone or expanding an existing dune landward, the classification of the site is changed so as to significantly diminish the possibility of future overwash. [On non-oceanfront lots where this is not feasible, mitigation may take the form of creation or enhancement of adjacent street-end dunes, including the construction of appropriately designed walk over structures.] **In determining overwash potential, the protective capacity of newly created dunes will be evaluated in terms of the "design dune" goal discussed in N.J.A.C. 7:7E-3.16(c).**

(d) A single story, beach/tourism oriented commercial [facility] **development** located within an already developed municipal boardwalk/commercial area of Point Pleasant Beach, Seaside Heights, Ocean City, North Wildwood and Wildwood City is **conditionally** acceptable provided that it meets the following conditions:

1. The site is located within an area currently used **and zoned** for beach related commercial use, and is landward of the boardwalk;

2.-3. (No change.)

4. The facility meets all the flood proofing requirements [N.J.A.C. 7:7E-3.25, Flood Hazard Areas] **of the Flood Hazard Area Rule, N.J.A.C. 7:7E-3.25**.

(e) Rationale: Overwash areas indicate weakness in natural and man-made shore protection. Hazard has been demonstrated, often with extensive property damage. Overwash areas are, therefore, unsuitable locations for further development, and public funds should not be used to rebuild damaged shore protection structures. However, in certain oceanfront communities where an existing municipal boardwalk (including all adjacent resort-oriented commercial establishments) is already densely developed and is the dominant tourism attraction of the community, low intensity, infill development may be permitted. At these specific locations, the gain in public use and enjoyment of the beach, ocean and boardwalk facilities outweighs the limited additional and loss in property damages. Elsewhere the return of these areas to a natural state and the formation of dunes is desirable.

Overwash is a natural shoreline movement process associated with storm and rising sea level and is one of the processes by which barrier islands migrate inland under natural conditions. In New Jersey, migration caused by overwash is usually prevented due to shore protection structures, the highly developed nature of barrier islands and post-storm clean-up practices.

A development proposed in an overwash area may, by incorporating a **"design** dune" and buffer area, the **whose** dimensions of which would be determined on a case-by-case basis, mitigate the hazard and change the classification of the site so that it is no longer an overwash area.

7:7E-3.18 Coastal High Hazard Areas

(a) ["]Coastal [High Hazard Areas] **high hazard areas**["] are flood prone areas subject to high velocity waters ([or] V zones)[,] as delineated on the Flood Insurance Rate Maps (FIRM) prepared by **the Federal Emergency Management Agency** (FEMA), and areas **within 25 feet of oceanfront shore protection structures, which are** subject to wave run-up and overtopping.[of shore protection structures parallel to the shoreline] **(see Appendix, Figure 2 incorporated herein by reference). The Coastal High Hazard Area extends from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The inland limit of the V zone is defined as the V zone boundary line as designated on the FIRM or the inland limit of the primary frontal dune, whichever is most landward.**

(b) Residential development, including [, but not limited to,] hotels and motels[,] is prohibited in [Coastal High Hazard Areas] **coastal high hazard areas** except for single family and duplex infill developments which are conditionally acceptable provided that the standards of N.J.A.C. 7:7E- 7.2(f) are met.

(c) In general, commercial development is discouraged in the [Coastal High Hazard Areas] **coastal high hazard areas**. Beach use related commercial development in [Coastal High Hazard Areas] **coastal high hazard areas** is conditionally acceptable within areas that are already densely developed, provided that:

1.-2. (No change.)

3. The facility is open to the general public and supports beach/tourism related activities [only], that is, retail, amusement and food services. Lodging facilities are excluded; and

4. The facility complies with all the flood proofing requirements at N.J.A.C. 7:7E-3.25, Flood Hazard Areas.

(d) (No change.)

(e) Rationale: V zones are areas subject to high velocity waters and are further defined as areas capable of supporting a three foot high breaking wave. These areas are designated on FIRMs as zone V1-30. On many FIRMs, oceanfront, bulkheads, revetments or seawalls have been used to delineate the landward limit of the coastal high hazard area. However, wave run-up, which is the rush of water up a structure or beach that occurs on the breaking of a wave, and overtopping may also cause considerable damage behind bulkheads, revetments and seawalls, inshore of the V zone limit. Both V zone and wave run-up zone are high hazard areas where structures are vulnerable to severe storm damage. The only developments allowed by this rule are ones which are related to beach use and/or tourism and limited residential infill development. These beach use and tourism oriented developments are subject to storm damage but they enhance the public use and enjoyment of the beach and ocean.

7:7E-3.19 Erosion Hazard Areas

(a) ["]Erosion [Hazard Areas] **hazard areas**["] are shoreline areas that are eroding and/or have a history of erosion, causing them to be highly susceptible to further erosion, and damage from storms.

1. Erosion [Hazard Areas] **hazard areas** may be identified by any one of the following characteristics:

i.-iv. (No change.)

v. Foreshore extended under [a] boardwalk;

vi.-viii. (No change.)

ix. Cliffed bluffs **as** adjacent to beach;

x.-xii. (No change.)

2. Erosion [Hazard Areas] **hazard areas** extend inland from the edge of a stabilized upland area to the limit of the area likely to be eroded in 30 years[,] for one to four unit dwelling structures, and 60 years[,] for all other structures, including developed and undeveloped areas. This distance is measured from the crest of a bluff for coastal bluff areas[;], [from] the most seaward established dune crest for unvegetated dune areas[;], [from] the first vegetation line from the water for established vegetated dune areas[;], and [from] the landward edge of a beach or the eight foot [National Geodetic Vertical Datum] (NGVD) contour line, whichever is farther inland, for non-dune areas.

i. An established, unvegetated dune is a dune that has been in place for at least two winter seasons, or has been constructed [pursuant to a Waterfront Development Permit or a CAFRA Permit or with financial assistance from the Department] **with the approval of the Department**.

ii. (No change.)

3. The extent of an [Erosion Hazard Area] **erosion hazard area** is calculated by multiplying the projected annual erosion rate at a site by 30 **for the development of one to four unit dwelling structures and by 60 for all other developments**.

(b) Development is prohibited in [Erosion Hazard areas] **erosion hazard areas**, except for:

1. Linear development which meets the [Policy] **Rule** on Location of Linear Development (N.J.A.C, 7:7E-6.1);

2. Shore protection activities which meet the appropriate Coastal Engineering Use [Policies] **Rule** (N.J.A.C. 7:7E-7.11);

3. Single story, beach/tourism oriented commercial developments located within an already developed municipal boardwalk/commercial area of Point Pleasant Beach, Seaside Heights, Ocean City, North Wildwood and Wildwood City[. Such development] is **conditionally** acceptable provided that it meets the following conditions:

i. The site is located within an area currently used **and zoned** for beach related commercial use, and is landward of **and adjacent to** the boardwalk;

ii.-iii. (No change.)

iv. The facility meets all the flood proofing requirements of the Flood Hazard Areas [policy] **rule**; [and]

4. Single family and duplex infill developments that meet the standards of N.J.A.C. 7:7E-7.2(f)[.]; [Erosion Hazard Area for developments or redevelopment located within a designated Urban Renewal or Redevelopment District will be determined on a case-by-case basis.]

5. The construction of dune walkover structures and at-grade walkover pathways, in accordance with Department standards found at N.J.A.C. 7:7E-3A; and

6. Dune creation and beach maintenance activities in accordance with Department standards found at N.J.A.C. 7:7E-3A.

(c) Rationale: As a result of continuing rising sea levels [[s and]], active storm induced sand movements, and offshore currents (littoral drift), most of the Atlantic coastline of New Jersey is retreating. Coastal erosion also affects the bayshores of New Jersey. The rate of retreat, or erosion, is not uniform, and varies locally depending upon the nature and magnitude of coastal processes operating within individual parts of the shoreline. Certain parts of the shoreline have a higher risk for future erosion.

Development other than shore protection measures and linear development is prohibited in these areas in order to protect public safety and prevent loss of life and property. However, in certain oceanfront communities where an existing municipal boardwalk (including all adjacent resort-oriented commercial establishments) has long been featured as the main attraction of that resort community and is already densely aligned with buildings, low intensity, infill may be permitted. At these specific locations, the gain in public use and enjoyment of the beach, ocean and boardwalk facilities outweighs the limited, potential additional loss in property damages.

The annual rate of erosion shall be calculated on a case-by-case basis by using the best available data and scientific methodology. Historical erosion rates of areas need to be analyzed to determine the particular past trend that best reflects the current shoreline processes affecting that area. The appropriate long or short term historical erosion rate of an area is then combined with other information, which may help to explain the erosion rate of at an area, to determine a projected erosion rate for the next thirty to sixty years. These factors include but are not limited to: past or on-going shore protection activities, e.g. beachfills, or groin, revetment or bulkhead constructions, past or on-going navigation channel dredging projects and past storm events.

The [Division] **Program** will use a computer program, entitled, "Metric Mapping Analysis of New Jersey's Historical Shoreline Data" developed in 1988 for the [Division] **Program** by Stephen P. Leatherman et al of the University of Maryland Coastal Mapping Group, to produce historical shoreline change maps for specific sites along the oceanfront. These maps will be used to establish the appropriate long or short term trend in shoreline changes that will most likely continue in the future for a specific site.

The projected annual erosion rate or historical shoreline change data for a specific site, excluding the Raritan Bay area, may be obtained from the [Division] **Program** by written request accompanied by a site plan which identifies the site by either the "state plane" coordinate system or latitude-longitude coordinates. For sites located along the Raritan Bay, the annual erosion rate can be found in Paul A. Gares, Karl F. Nordstorm and Norbert P Psuty, Coastal Dunes: Their function, Delineation and Management, Center for Coastal and Environmental Studies, Rutgers University for NJDEP, 1979. Other appropriate sources including verifiable aerial photography, may also be consulted.

7:7E-3.21 Bay Islands

(a) Bay [Islands] **islands** are islands or filled areas surrounded by tidal waters, wetlands, beaches or dunes, lying between the mainland and barrier islands**. Such islands may be connected to the mainland or barrier island by elevated or fill supported roads (see Appendix, Figure 3, incorporated herein by reference)**.

1. In cases where a [Bay Island] **bay island** is also a Filled Water's Edge (N.J.A.C. 7:7E-3.23), the more restrictive provisions of the two rules shall apply.

2. This rule will not apply to proposed development located in the following areas:

OCEAN COUNTY:
Bonnett Island, Stafford Township
Chadwick Beach Island, Dover Township
Channel Island, Mantoloking Borough
Osborne Island, Little Egg Harbor Township
Pelican Island, Dover/Berkeley Townships
West Point Island, Lavallette Borough

ATLANTIC COUNTY:
Chelsea Heights, Atlantic City
Venice Heights, Atlantic City
Ventnor Heights, Ventnor City

CAPE MAY COUNTY:
Old Avalon Boulevard Island, Middle Township
Princeton Harbor, Avalon Borough
West Wildwood, Wildwood City

(b) On [Bay Island] **bay island** sites which do not abut a paved public road and [/or] are not served by a sewerage system with adequate capacity, non-water dependent development is prohibited and water dependent development is discouraged. Water dependent development may be acceptable if there are no feasible alternatives and environmental impacts are minimized.

(c) On [Bay Island] **bay island** sites which abut a paved public road and sewerage system with adequate capacity, water dependent development is conditionally acceptable, provided all other applicable Coastal Zone Management [Policies] **rules** are complied with. New non-water dependent development is acceptable only at a Low Intensity Development as defined in N.J.A.C. 7:7E-[3.6(d)]**5.6(d)** except for **Existing** Lagoon Edges (N.J.A.C. 7:7E-3.24) where the acceptable intensity of development may be increased to [a] Moderate [Intensity Development as defined in N.J.A.C. 7:7E-5.6(c)].

(d) (No change.)

(e) Rationale: New Jersey's bay islands are former wetlands where upland areas have been created by past filling, particularly with dredge spoils. Many are suitable for future spoil disposal. They are adjacent to areas with high environmental sensitivity, particularly wetlands, intertidal flats, tidal waterways, shellfish beds, and endangered and threatened wildlife habitats. Development of the islands would pose a great threat to these natural resources and habitat. The majority of, if not all, bay islands are valuable wildlife habitats or have the potential to become habitat through the implementation of management techniques. Their value, in part, stems from their isolation from human activity as compared to the intense development and beach usage of oceanfront barrier islands. For example, sandy areas are used by beach nesting birds such as least tern, black skimmer, and piping plover, and vegetated areas are used by colonial nesting birds such as heron and non-colonial birds such as marsh hawk. Bay islands are also subject to flooding and by virtue of their location function as bridges between the mainland and barrier islands. If developed, these islands would pose added storm evacuation problems. They are usually distant from public services, and therefore unsuitable for development.

The above list of Bay Islands which are exempted from the requirements of this rule was established based on a review of the physical conditions of these islands, including environmental sensitivity, accessibility, and level of existing development and infrastructure. Future development on the islands listed above does not pose a significant threat to environmental resources, nor would it adversely affect storm evacuation from the oceanfront barrier islands.

7:7E-3.22 Beaches

(a) ["]Beaches["] are gently sloping [unvegetated] areas of sand or other unconsolidated material, **found on all tidal shorelines, including ocean, bay and river shorelines (see Appendix, Figure 1),** that extend landward from the mean high water line to either;

[1. The vegetation line,]

[2.]**1.** A man-made feature generally parallel to the ocean, inlet, or bay waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except [that] **the** sandy areas that extend fully under and landward of an elevated boardwalk are considered beach areas; or

[3.]**2.** The seaward or bayward foot of dunes, whichever is closest to the bay, inlet or ocean waters.

[(b) Beaches can be found on all tidal shorelines, including ocean, bay and river shorelines.]

[(c)](**b**) Development is prohibited on beaches, except for development that has no prudent or feasible alternative in an area other than a beach, and that will not cause significant adverse long-term impacts [on] **to** the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:

1. Demolition and removal of paving and structures;

2. Dune creation and related sand fencing and planting of vegetation for dune stabilization, **in accordance with N.J.A.C. 7:7E-3A;**

3.-4. (No change.)

5. Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(e);[and]

6. Linear development which meets the [Policy] **Rule** on Location of Linear Development (N.J.A.C. 7:7E-6.1)[.];

7. Beach maintenance activities which do not adversely affect the natural functioning of the beach and dune system, and which do not preclude the development of a stable dune along the back beach area. These activities include routine cleaning, debris removal, mechanical sifting, maintenance of access ways and Department approved dune creation and maintenance activities; and

8. Post-storm beach restoration activities involving the placement of clean fill material on beaches, and the mechanical redistribution of sand along the beach profile from the lower beach to the upper beach. These post-storm activities, which are different than routine beach maintenance activities, must be carried out in accordance with the standards found at N.J.A.C. 7:7E-3A.

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

[(e)](**d**) Rationale: Undeveloped beaches are vital to the New Jersey resort economy. Unrestricted access for recreational purposes is desirable so that the beaches can be enjoyed by all residents and visitors of the state. Public access will be required for any beaches obtaining state funds for shore protection purposes. Beaches are subject to coastal storms and erosion from offshore currents. Public health and safety considerations require that structures be excluded from beaches to prevent or minimize loss of life or property from storms and floods, except for some shore protection structures and linear facilities, such as pipelines, when [nonbeach] **non-beach** locations are not prudent or feasible.

7:7E-3.23 Filled Water's Edge

(a) ["]Filled [Water's Edge] **water's edge**["] areas are existing filled areas lying between wetlands or water areas, and either the upland limit of fill, or the first paved public road or railroad landward of the adjacent water area, whichever is closer to the water. Some existing or former dredged **material** [spoil] disposal sites and excavation fill areas are [Filled Water's Edge] **filled water's edge (see Appendix, Figure 4, incorporated herein by reference).**

(b) The "waterfront portion" is defined as a contiguous area at least equal in size to the area within 100 feet of navigable water, measured from the Mean High Water Line (MHWL). This contiguous area must be accessible to a public road and occupy at least 30 percent of **its perimeter along** the navigable water's edge.

(c) On [Filled Water's Edge] **filled water's edge** sites with direct water access, (that is, those sites without extensive [Inter-tidal Shallows] **inter-tidal shallows** or [Wetlands] **wetlands** between the upland and navigable water), development [shall] **must** comply with the following conditions:

1. The waterfront portion of the site shall be developed with a water dependent use (see N.J.A.C. 7:7E-1.5(c) for definitions) or left undeveloped for future water dependent uses;

2. (No change.)

3. On large [Filled Water's Edge] **filled water's edge** sites, of **about** 10 acres or more upland acres, where water-dependent and water-oriented uses can co-exist with other types of development, a greater mix of land uses may be acceptable or even desirable. In these cases, a reduced waterfront portion, that is, less than that provided by a 100 foot setback, may be acceptable provided that non-water related uses do not adversely affect either access to or use of the waterfront portion of the site.

(d) On [Filled Water's Edge] **filled water's edge** sites without direct access to navigable water, the area to be devoted to water related uses will be determined on a case-by-case basis.

(e) On [Filled Water's Edge] **filled water's edge** sites with an existing or pre-existing water dependent use, that is, one existing at any time since July **of** 1977, development [shall] **must** comply with the following additional conditions:

1. For sites with an existing or pre-existing marina, development that would reduce the area currently or recently devoted to the marina is acceptable if:

i. For every two housing units proposed on the [Filled Water's Edge] **filled water's edge** the existing number of boat slips in the [Marina] **marina** mooring area (N.J.A.C. 7:7E-[3.14] **3.10**) is increased by one and at least 75 percent of the total number of slips (existing and new) remain open to the general public. Removal of upland to create slips is acceptable;

ii. Marina services are expanded in capacity and upgraded ([i.e.] **that is,** modernized) to the maximum extent practicable; and

iii. (No change.)

2. (No change.)

(f) [Along the Hudson River and in other portions of the Northern Waterfront and Delaware River Region, where] **In waterfront areas located outside of the CAFRA zone** the [proposed] water dependent use [is] **may be a** public walkway, **provided** the **upland** walkway right-of-way shall [be] **is** at least 30 feet wide, unless there are existing onsite physical constraints which cannot be removed or altered to meet this requirement.

(g) (No change.)

(h) Along the Hudson River and in other portions of the Northern Waterfront and Delaware River Region, where water dependent uses are [demonstrated to be] **deemed** infeasible, some part of the waterfront portion of the site may be acceptable for non-water dependent development under the following conditions:

1. The development proposal addresses, as a minimum, past use of the site as well as potential for future water dependent, commercial, transportation, recreation, and compatible maritime support services uses;

2. The developed land uses closest to the water's edge are water oriented;

3. Currently active maritime port and industrial land uses are preserved;

4. Adverse impacts on local residents and neighborhoods are mitigated to the maximum extent practicable; and

5. All other [Coastal Policies] **coastal rules** are met [, with particular emphasis on water quality and fishing access, are met].

(i) On all filled water's edge sites, development must comply with the Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11). Public access to the waterfront will not be required at single family or duplex residential lots along the waterfront.

[(i)](**j**) Rationale: The water's edge along New Jersey's shore, bays and rivers is a highly valued, yet limited, resource. Waterfront locations offer a rare combination of natural features and opportunities for waterborne commerce and recreational boating. Though an estimated 37 percent of the state's 753 miles of shoreline along navigable waterways is filled water's edge, two-thirds of these locations are already developed. The particular requirements for an

average sized marina or port facility further narrows the filled water's edge potentially suitable for such development to approximately 3 percent, or 19 miles, of the state's entire water's edge (NJDEP, Policy Assessment 1983).

Filled water's edge areas, though relatively scarce, are less environmentally sensitive than undisturbed water's edge areas. The buffering functions of the water's edge have already been lost through excavation, filling and the construction of retaining structures. The filled water's edge, therefore, provides the best opportunity for intense use of the waterfront. Accordingly, certain kinds of development are allowed up to the limit of fill.

The [policy] **rule** seeks to promote both the marine trades as an important sector of the state's economy and uses that enhance public access to, and use of, the water's edge. Uses that require a waterfront location in order to function (i.e., water dependent uses) and uses that serve the general public and derive economic benefits from a waterfront location (i.e., water-oriented uses) are favored over non-water related uses such as housing and offices. These non-water related uses can be situated away from the water.

Since many existing water dependent uses are being lost, or more often, constricted by housing and other non-water related uses, and since few excellent sites remain for recreational and commercial boating, it is desirable to restrict redevelopment of sites currently or recently occupied by a water dependent use. Further, preserving slips open to the general public is necessary to protect the public's common law right to use tidal waters for navigation. Although housing at the water's edge can in some situations ensure the long term viability of a marina, it generates additional boating demand, which further aggravates limited marina space. Accordingly, in defining "Slip open to the general public", slips leased only to owners of associated housing or only to residents of a certain municipality would be excluded, unless any member of the general public could join by paying a reasonable fee. Marinas warrant special attention for several reasons. They benefit the state by attracting tourists and associated revenues and by serving the estimated 25 percent of residents who go boating in New Jersey's coastal waters (1977 Eagleton Institute Poll). The vast majority of existing marinas (70%) are filled to capacity with most having waiting lists of one season or more evidence of a large unmet demand (Rogers, Golden and Halpren for New Jersey DEPE, Developing a Marina in New Jersey 1982). According to the New Jersey State Comprehensive Management Outdoor Recreation Plan (SCORP), boating demand will increase through 1995 leaving even more boaters without facilities, perhaps diverting large numbers to other states. Where consolidation of a marina's land based facilities is justified, the existing marinas services and boat slips must be maintained or, where possible, expanded. Upland boat storage is an exception. Upland storage for most (75%) of a marina's large boats, which cannot be easily trailored off-site, must be accommodated. However, space for only a small portion (25%) of boats that can be trailored off-site for winter storage must be retained.

Along the Hudson River and in other portions of the developed urban waterfront, potential for future water dependent and maritime support services is also of concern. On these sites economic revitalization must be balanced against the need to preserve and provide for water dependent and water-oriented uses.

7:7E-3.25 Flood Hazard Areas

(a) ["]Flood [Hazard Areas] **hazard areas**["] are the floodway and flood fringe area around rivers, creeks and streams as delineated by DEPE under the Flood Hazard Control Act (N.J.S.A. 58:16A-50 et seq.), or by the Federal Emergency Management Agency (FEMA); or the [Flood Hazard Area] **flood hazard area** around other coastal water bodies as defined by FEMA. [Flood Hazard Areas] **They** are areas subject to either tidal or fluvial flooding. Where [Flood Hazard areas] **flood hazard areas** have been delineated by both DEPE and FEMA, DEPE delineations shall be used. Where [Flood Hazard Areas] **flood hazard areas** have not been delineated by DEPE or FEMA, limits of the 100 year floodplain will be established by computation on a case-by-case basis. The seaward boundary shall be the mean high water line **(see Appendix, Figures 6 and 7, incorporated herein by reference)**.

1. A complete list of streams for which the Department has delineated the [Flood Hazard Area] **flood hazard area** can be found in N.J.A.C. 7:13 **(Rules Governing Flood Hazard Areas)**.

2. (No change.)

3. Where portions of the [Flood Hazard Areas] **flood hazard areas** meet the definition of another Special Water's Edge type (Filled Water's Edge, [Existing] Lagoon Edge, Alluvial Flood Margins, Beaches, Dunes, Overwash Areas, Erosion Hazard Areas, Coastal High Hazard Areas, Barrier Island Corridor, Bay Islands, Wetlands, Wetlands Buffer, [Cranberry Bogs, Wet Borrow Pit Margins,] Coastal Bluffs, and Intermittent Stream Corridors), the [relevant] Special Water's Edge policies shall apply in terms of location acceptability and **the** [Flood Hazard Areas policy] **flood hazard areas rule** shall apply in terms of setback and flood proofing requirements.

(b) Dedication of undeveloped [Flood Hazard Areas] **flood hazard areas** for purposes of public open space is encouraged, especially where such areas are [part of a regional greenway system such as those designated under] **designated to** the New Jersey Wild and Scenic Rivers System (see N.J.S.A. 13:8-45 et seq.). **For the purpose of this rule, "undeveloped" means areas, including, but not limited to, lawns and farm fields, which are not covered by impervious surfaces.**

(c) In undeveloped [Flood Hazard Areas] **flood hazard areas**, development within 100 feet of a navigable water body is prohibited, unless the development is for water dependent use or low intensity use which does not reduce the flood dissipating value of the [Flood Hazard Area] **flood hazard area** or preclude water dependent use of the area. ("Navigable" and "water dependent" are defined at N.J.A.C. 7:7E-1.5(c).)

(d) Elsewhere in the undeveloped portions of the [Flood Hazard Areas] **flood hazard areas** development is conditionally acceptable provided that:

1.-2. (No change.)

(e) [In general, detention and retention basins are prohibited in Flood Hazard Area. However, retention] **Retention** and detention basins developed specifically for storm water management purposes are conditionally acceptable provided they are constructed in accordance with **the Stormwater Runoff rule (N.J.A.C. 7:7E-8.7)** [criteria of the State stormwater management regulations (N.J.A.C. 7:8)].

(f) Development in areas subject to fluvial flooding [shall] **must** conform with the Flood Hazard Area Control Act and rules adopted [pursuant thereto] **thereunder**. Development in areas subject to tidal flooding [shall] **must** conform with applicable federal flood hazard reduction standards as found at 44 C.F.R. Part 60 and [in] the Uniform Construction Code, N.J.S.A. 52:27D-1 et seq.

(g) In developed areas, the intensity of [a] development shall not exceed the maximum allowed under the acceptability of development in the General Land Are [Policy] **Rule** (N.J.A.C. 7:7E-5.2).

(h) Rationale: The goal of this [policy] **rule** is to reduce losses of life and property resulting from unwise development of flood hazard areas, and allow uses compatible with periodic flooding, agricultural and forestry, recreation, and fish and wildlife habitat and uses which require a water's edge location. This [policy] **rule is** consistent with the State Waterfront Development Law's objective of safeguarding port facilities and waterfront resources for the public's overall economic advantage. The [policy] **rule** will ensure that the State's waterfront is not pre-empted by uses which could function equally well at inland locations.

Flood Hazard Areas adjacent to rivers are subject to flooding in severe fluvial storms. They are also critical elements of the coastal ecosystems, providing flood storage capacity, physical and biochemical water filtration, primary productivity and wildlife habitats.

For these reasons, the preferred [policy] **rule** is to preserve those flood hazard corridors that are in **an undeveloped** [their natural] state with native or adapted forest vegetation for conservation purposes and to allow limited exceptions for water dependent uses, infill and uses for which there is no feasible alternative location.

The location acceptability for a site under this [policy] **rule** applies only to flood hazard areas which have not been disturbed by filling.

Sites subject to this [policy] **rule**, therefore, tend to be in a more natural state than sites subject to the Filled Water's Edge [Policy] **Rule**. Accordingly this [policy] **rule** is more restrictive, discouraging development which would unnecessarily disturb vegetation, and requiring water dependency within 100 feet of a navigable water body.

[By discouraging development which has a feasible alternative location, this policy Will tend to be most restrictive in undeveloped parts of the state, where there will tend to be more alternate locations for proposed development. For example, if a proposed commercial development is located in an undeveloped waterfront of an urban downtown, a suburban location would not be considered a satisfactory feasible alternative. Development found acceptable in a flood hazard area floodplains would, or course, have to be consistent with the public safety objectives and would have to meet the flood proofing requirements.]

7:7E-3.26 [Alluvial Flood Margins] **(Reserved)**

[(a) "Alluvial flood margins" are mainland areas adjacent to, and upland from, floodplains. They extend inland to the limit of alluvial soils with a seasonal high water table equal to, or less than, one foot.

1. Alluvial soils are those developing in recent sediment deposited by surface water and exhibiting essentially no modification of the deposited materials.

2. Where an alluvial flood margin is also an intermittent stream corridor, only the Intermittent Stream Corridor Policies (N.J.A.C. 7:7E-3.27) shall apply.

(b) Wildlife refuge and low intensity recreational use is encouraged.

(c) Development is discouraged in alluvial flood margins unless no feasible alternative site exists, or it is a landward extension of a water dependent use.

(d) Rationale: Alluvial flood margins are parts of floodplains. Although above the 100 year flood level, they have been deposited by flood waters and do provide flood storage capability in the severest storms. If left undisturbed they contribute to the critical water quality buffering and wildlife habitat functions of floodplains and provide some primary productivity to estuaries through nutrients flushed to adjacent bays, rivers or streams. The high water table and compressibility of these areas make them costly for development. Conservation of this area is the preferred use.]

7:7E-3.27 Wetlands

(a) ["]Wetlands["] or ["Wetland] **wetland**["] means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

[1. Wetlands are regulated and protected under the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) or the Freshwater Wetlands Protection Act of 1987 (N.J.S.A. 13:9B-1 et seq.). In addition, projects in Wetlands that are exempt from the Freshwater Wetlands Protection Act may be regulated pursuant to other programs within the jurisdiction of the Department.

2. All tidal Wetlands situated in the Raritan Basin, south along the Atlantic Ocean and north along Delaware Bay and Delaware River and are delineated at a scale of 1:2,400 on official maps as listed under N.J.A.C. 7:7-2.2 are subject to the Wetlands Act of 1970.

3. All tidal and inland Wetlands are subject to the Freshwater Wetlands Protection Act of 1987, unless the Wetland is located within the boundary of coastal wetlands delineated on the official maps cited at (a)2 above or is located within the jurisdiction of the Hackensack Meadowlands Commission or the Pinelands Commission.

4. Generalized location of both coastal and inland wetlands can be found at a scale of 1:24,000 on maps produced for the National Wetlands Inventory by the United States Fish and Wildlife Service.]

1. Wetlands areas are identified and mapped on the following:

i. National Wetlands Inventory Maps produced by the U.S. Fish and Wildlife Service at a scale of 1:24,000;

ii. Coastal wetland maps, pursuant to the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) prepared by the DEPE at a scale of 1:2400; and

iii. Freshwater wetland maps prepared by DEPE at a scale of 1:12,000.

Note: Maps referenced in (a)1ii and iii above are available from the DEPE Map and Publications sales office (609) 777-1038.

[i.]**2.** Generalized locations of some wetland types can be found in county soil surveys prepared by the [United States] **U.S.** Department of Agriculture, Soil Conservation Service.

[ii.]**3.** The[se] maps **referenced under (a)1i, iii, and 2 above** shall be [used only] **useful** as an indicator to assist in the preliminary determination of the presence or absence of [Wetlands] **wetlands only**. They have been determined to be unreliable for the purposes of locating the actual wetlands boundary **on a specific site**.

[5.]**4.** All tidal and inland [Wetlands] **wetlands**, excluding the delineated tidal wetlands [promulgated] **defined** pursuant to N.J.A.C. 7:7- 2.2, shall be identified and delineated in accordance with the USEPA three-parameter approach (that is, hydrology, soils and vegetation) specified under N.J.A.C. 7:7A-1.4 of the Freshwater Wetlands Protection Act Rules.

(b) Development in wetlands defined under the Freshwater Wetlands Protection Act of 1987 is prohibited unless the development is found to be acceptable under the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A).

[(b)](**c**) [In general, development] **Development** of all kinds **in all other wetlands not defined in (b) above** is prohibited [in Wetlands] unless the Department can find that the proposed development meets the following four conditions [(see N.J.A.C. 7:7-2.2)]:

1. Requires water access or is water oriented as a central purpose of the basic function of the activity (this [policy] **rule** applies only to development proposed on or adjacent to waterways). This means that the use must be water dependent as defined in N.J.A.C. 7:7E-1.5[.];

2.-4. (No change.)

[(c) In addition, development in wetlands regulated under the Freshwater Wetlands Protection Act of 1987 is prohibited, unless the development is found to be acceptable under the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A).]

(d) (No change.)

[(e) Under the Wetlands Act, the activities of the Department, the Tidelands Resource Council, the State Mosquito Control Commission and county mosquito commissions are exempted from the coastal wetlands policies within mapped coastal wetlands. However, activities which involve manipulation of the mean high water line are regulated under the Waterfront Development Statute (N.J.S.A. 12:5-1 et seq.).]

[(f)](**e**) Development that adversely affects white cedar [standards] **stands** such as water table drawdown, surface and groundwater quality changes and the introduction of non-native plant species is prohibited.

(f) For projects which require a Waterfront Development permit, the reuse of former dredged material disposal islands for continued dredged material disposal is conditionally acceptable provided the following criteria are met:

1. The site has been used for dredged material disposal within the past 10 years;

2. The site has existing dikes or berms in sound condition, and/or has sufficient area of previously disposed material to allow the construction of structurally sound dikes and berms;

3. There are no anticipated adverse effects on threatened or endangered species;

4. There are no colonial nesting birds present on site which would be adversely affected (seasonal restrictions may be required);

5. No wetlands regulated pursuant to the Wetlands Act of 1970 would be adversely affected;

6. The former dredged material disposal area is not subject to daily tidal innundation, and the vegetation community is limited primarily to scrub/shrub or phragmites; and

7. The required Waterfront Development permit and Water Quality Certification are obtained.

[(g) Rationale: See the OAL Note at the beginning of the subchapter.]

[(h)](g) If an application to disturb or destroy [Wetlands] **wetlands** meets the standards for permit approval, the Department will require the applicant to mitigate for the loss or degradation of the [Wetlands] **wetlands** in accordance with the following:

1. Mitigation for the loss of wetlands subject to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., shall meet the standards of N.J.A.C. 7:7A.

[1.]**2.** When a permit allows the disturbance or loss of [Wetlands] **wetlands** (see N.J.A.C. 7:7E-3.25) by filling or other means, this disturbance or loss shall be compensated for as specified under [(h)] **(g)**6 below unless the applicant can prove through the use of productivity models or other similar studies, that by restoring or creating a lesser area, there will be replacement of [Wetlands] **wetlands** of equal ecological value. **In order to demonstrate equal ecological value, the applicant shall survey and provide written documentation regarding, at a minimum, existing soil, vegetation, water quality functions, flood storage capacity, soil erosion and sediment control functions, and wildlife habitat conditions and detail how the proposed mitigation plan will replace the ecological values of the wetland to be lost or disturbed.**

[2.]**3.** Mitigation shall be performed prior to or concurrent with activities that will permanently disturb [Wetlands] **wetlands** and immediately after activities that will temporarily disturb these habitats. **Applicants shall be required to obtain a secured bond, or other surety acceptable to the Department including an irrevocable letter of credit or money in escrow, that shall be sufficient to hire an independent contractor to complete and maintain the proposed mitigation should the applicant default. The performance bond for the construction of the proposed mitigation shall be posted in an amount equal to 115 percent of the estimated cost of construction of the mitigation activity. In addition, a maintenance bond to assure the success of the mitigation shall be posted in the amount equal to 30 percent of the estimated cost of construction. The performance and maintenance bonds will be reviewed annually and shall be adjusted to reflect current economic factors.**

i. The performance bond or other surety will be released upon an inspection by the Department confirming completion of construction and planting of the mitigation site. The maintenance bond will be released upon the Department's confirmation that the three-year, post-planting monitoring period has been successfully completed and that no additional maintenance is required in order to meet the specifications of the approved mitigation plan.

[3.]**4.** Where the Department permits **a** mitigation surface area [on a basis] of less than 2:1, monitoring by the permittee at a frequency determined by the Department to be appropriate on a case-by-case basis shall be required. In such cases, additional mitigation or further remedial action shall be required at a level and within the forms determined to be appropriate on a case-by-case basis by the Department when the Department determines that a net loss of equal ecological value occurs. Under no circumstances shall the mitigation area be smaller than the disturbed area. Creation of [Wetlands] **wetlands** from existing natural resources protected under the applicable Special Area [Policies] **Rules** (N.J.A.C. 7:7E-3) is not an acceptable form of mitigation, nor is transfer of title of existing wetlands or intertidal or subtidal shallows to a government agency or conservation organization.

[4.]**5.** (No change in text.)

6. As a condition of every creation or enhancement plan authorized under this subsection, an applicant shall sign a Department approved conservation easement and register this restriction on the deed for the subject parcel. This restriction will provide that no regulated activities will occur in the created or enhanced wetland area. This restriction shall be memorialized in a deed restriction meeting the Department's requirements and shall run with the land and be binding upon the applicant and the applicant's successors in interest in the premises or any part thereof. The permit will not become effective until the deed restriction is registered with the county clerk. Any regulated activities undertaken on the site before a copy of the registered restriction is submitted to the Department will be considered in violation of these rules.

i. No future development will be permitted on the mitigation site unless the Department finds that the regulated activity has no practicable alternative which would:

(1) Not involve a wetland site;

(2) Involve a wetland but would have a less adverse impact on the aquatic ecosystem;

(3) Not have other significant adverse environmental consequences, that is it shall not merely substitute other significant environmental consequences, for those attendant on the original proposal; and

(4) There is a compelling public need for the activity greater than the need to protect the mitigation site.

ii. To satisfy (g)6 above, the applicant shall provide a receipt showing that the restriction has been registered at the county clerk's office.

7. Except for publicly funded projects, as described at (g)7i below, any mitigation carried out off-site shall be on private property.

i. Mitigation for publicly funded projects may be carried out on public lands provided that these lands were private lands purchased by a public agency expressly for the purpose of performing mitigation.

[5.]**8.** Future development of the mitigation site is prohibited **and as a condition of any permit which includes creation of a mitigation site, the owner shall be required to record a conservation easement governing that site.**

[6.]**9.** The Department distinguishes between four types of mitigation: restoration, creation, enhancement, and contribution. Depending on the circumstances under which wetlands are lost or disturbed, different types of mitigation may be required by the Department. The types of mitigation are explained below, in decreasing order of their desirability:

i. Restoration refers to actions performed on the site of a regulated activity, within six months of the commencement of the regulated activity, in order to reverse or remedy the effects of the activity on the wetland and to restore the site to preactivity condition.

(1) Restoration shall be required at a ratio of one acre created to one acre lost or disturbed. If restoration actions are performed more than six months after the commencement of the regulated activity which disturbed the wetland, these actions will no longer be considered restoration, but will be considered creation, and will be governed by the provisions of [(h)6ii(2)] **(g)9ii(3)** below.

(2) If restoration actions are performed on degraded wetlands offsite, these actions will be considered enhancement and will be governed by the provisions of [(h)6ii(3)] **(g)9iii** below.

ii. Creation refers to actions performed to establish wetland characteristics, habitat and functions on:

(1) A non-wetlands site; or

(2) A former [Wetlands] **wetlands** site which has been filled or otherwise disturbed such that it no longer retains wetland characteristics. If the site retains [Wetland] **wetland** characteristics such that it meets the definition of a degraded [Wetland] **wetland** pursuant to N.J.A.C. 7:7A-1.4, it is not eligible for use in creation. Rather, it is only eligible for enhancement activities pursuant to [(h)6iii,] **(g)9iii** below. If the disturbance to a formerly [Wetlands] **wetlands** site is the result of a violation of the Freshwater Wetlands Protection Act and/or the Wetlands Act of 1970, the Department may, at its discretion, condition an approval of a mitigation [plan] **proposal**, or a permit, or both, on the resolution of the violation.

(3) Creation will be required at a ratio of two acres created to one acre lost or disturbed. **Under no circumstances shall the mitigation area be smaller than the disturbed area.**

(4) Creation shall not be permitted on a site that retains wetlands characteristics.

iii. Enhancement refers to actions performed to improve the characteristics, habitat and functions of an existing, degraded [Wetland] **wetland** such that the enhanced wetland will have resource values and functions similar to an undisturbed wetland. The enhancement requirement will be determined on a case-by-case basis.

iv. Contribution refers to the donation of money or land. The Department will permit the donation of land only after determining that all alternatives to the donation are not practicable or feasible, **or that the permanent protection of the land will provide ecological benefits equal to or greater than those resulting from the creation of wetlands.** This determination will be made in consultation with the United States Environmental Protection Agency (USEPA) for freshwater wetlands. **Monies donated shall be used for the purchase of land to provide areas for wetland losses, to provide areas for restoration of degraded wetlands, and to provide areas to preserve wetlands and transition areas determined to be of critical importance, and the transfer of funds for research to enhance the practice of mitigation.** If money is donated, the Department will require an amount equivalent to **the lesser of the following costs**:

[(1) The cost of purchasing an area which was historically a wetland but which has been legally filled, and restoring that area to a functional wetland of equal ecological value to those which are being lost.

(2) The cost of purchasing an area which was historically an upland, and creating and preparing wetlands of equal ecological value to those which are being lost.]

(1) Purchasing and enhancing existing degraded wetlands, resulting in preservation of wetlands of equal ecological value to those which are being lost; or

(2) Purchase of property and the cost of creation of wetlands of equal ecological value to those which are being lost.

v. If the Department determines that land may be donated as part or all of a contribution to mitigate for the destruction of freshwater wetlands, the Wetlands Mitigation Council must first determine that the donated land has the potential to be a valuable component of the wetlands ecosystem.

[7.]**10.** All mitigation projects shall be carried out on-site to the maximum extent practicable. **Mitigation of wetlands, on- site or off-site, from other existing climax habitats is not practicable and is discouraged.**

[8.]**i.** If on-site mitigation is found to be impracticable, off-site mitigation shall be considered and implemented within the same watershed or estuary if feasible.

[9.]**11.** All mitigation proposals submitted to the Department shall be prepared in accordance with **N.J.A.C. 7:7E-3B.**

(h) Rationale: The environmental values and fragility of coastal wetlands have been officially recognized in New Jersey since the passage of the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) and the passage of the Freshwater Wetlands Protection Act of 1987 (N.J.S.A. 13:9B-1 et seq.). Tidal and Freshwater Wetlands, are the most environmentally valuable land areas within the coastal zone.

Wetlands contribute to the physical stability of the coastal zone by serving as (i) a transitional area between forces of the open sea and upland areas that absorb and dissipate wind-driven storm waves and storm surges, (ii) a flood water storage area, and, (iii) a sediment and pollution trap.

Also, wetlands naturally perform the wastewater treatment process of removing phosphorous, nitrogenous and other water pollutants, unless the wetlands are stressed.

The biological productivity of New Jersey's wetlands is enormous and critical to the functioning of estuarine and marine ecosystems. The emergent cord grasses and associated algal mats convert inorganic nutrients into organic plant material through the process of photosynthesis. In this way, the primary base for estuarine and marine food webs is provided. The principal direct dietary beneficiaries of organic wetland detritus are bacteria and protozoan, which are in turn fed upon by larger invertebrates. Important finfish, shellfish, and other resources feed upon these invertebrates. New Jersey's wetlands are prime wintering habitat annually for hundreds of thousands of migratory waterfowl. Approximately two-thirds of marine finfish and shellfish are known to be estuarine, and, therefore, wetlands dependent.

Inland herbaceous wetlands, such as bogs and marshes, play an important role in regulating the quality of the water in streams that flow to the estuaries. They retard runoff and store storm waters. They are important areas for primary productivity for estuarine systems. They are critical habitats and movement corridors for several species of plants and animals that are endangered or threatened.

They are productive habitats for other game and non-game animals, such as fur bearers and song birds. These wetlands also serve as fire breaks, and may limit the spread of forest, brush, or grass fires. They are inappropriate development sites due to poor drainage and load bearing capacity of the underlying soils.

Forested wetlands play a critical role in coastal and other ecosystems. Roots and trunks stabilize shorelines and trap sediment. They are physical and biochemical water filter areas maintaining stream water quality. High productivity, high water availability and high edge to area ratio make these areas especially productive wildlife areas.

White cedar stands, as well as other lowland swamp forests, play an important role in purifying water in coastal streams, retarding runoff, providing scenic value, and serving as a rich habitat for many and endangered plant and animal species, as well as game species, such as deer. White cedars also act as forest fire breaks. White cedar stands most commonly occur in flood plains and in the fringe areas of drainage ways and bogs, which are frequently underlain with saturated organic peat deposits. This material is particularly unsuited for development.

White cedar is New Jersey's most valuable timber species and grows in discrete stands. The wood has a long tradition of maritime and local craft uses. Unfortunately, white cedars have been eliminated from much of their previous range in New Jersey.

7:7E-3.28 Wetlands Buffers

(a) ["]Wetlands [Buffer] **buffer** or transition area["] means an area of land adjacent to a [Wetland] **wetland** which minimizes adverse impacts on the [Wetlands] **wetlands** or serves as an integral component of the [Wetlands] **wetlands** ecosystem **(see Appendix, Figure 7)**. Wider buffers than those noted below may be required to establish conformance with other Coastal [Policies] **Rules, including, but not limited to, 7:7E-3.38 and 3.39.**

1. [A Wetlands Buffer of up to 300 feet in width shall be established around wetlands regulated under the wetlands Act of 1970.] **A wetlands buffer or transition area of up to 150 feet in width shall be established adjacent to all wetlands defined and regulated under the Freshwater Wetlands Protection Act. (Refer to the Freshwater Wetland Protection Act Rules, N.J.A.C. 7:7A, for further guidance).**

2. [A Wetlands Buffer or transition area of up to 150 feet in width shall be established within all wetlands regulated under the Freshwater Wetlands Protection Act. (see Freshwater Wetland Protection Act Rules, N.J.A.C. 7:7A).] **For all other wetlands, including wetlands regulated under the Coastal Wetlands Act of 1970, a wetlands buffer of up to 300 feet shall be established.**

[(b) Development is prohibited in a wetlands buffer around wetlands regulated pursuant to the Wetlands Act of 1970, unless it can be demonstrated that the proposed development will not have a significant adverse impact and will cause minimum feasible adverse impact, through the use of mitigation where appropriate on the wetlands, and on the natural ecotone between the wetlands and surrounding upland. The precise geographic extent of the required actual wetlands buffer on a specific site shall be determined on a case-by-case basis using these standards.]

(b) Subject to (a) above, all wetlands buffers (that is, transition area) associated with wetlands subject to the Freshwater Wetlands Protection Act shall be regulated in accordance with the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

[(c) All Wetlands Buffers (that is, transition area) associated with Wetlands subject to the Freshwater Wetlands Protection Act shall be regulated in accordance with the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.]

(c) Development is prohibited in a wetlands buffer around all other wetlands, unless it can be demonstrated that the proposed development will not have a significant adverse impact and will cause minimum feasible adverse impact, through the use of mitigation where appropriate on the wetlands, and on the natural ecotone

between the wetlands and surrounding upland. The precise geographic extent of the actual wetlands buffer required on a specific site shall be determined on a case-by-case basis using these standards.

(d) In areas of the coastal zone which are within [the Pinelands Area (N.J.A.C. 7:7E-3.24) and] the Hackensack Meadowlands District, the appropriate buffer width shall be determined in accordance with the requirements set forth in the [Pinelands Comprehensive Management Plan for Wetlands Transition Areas, N.J.A.C. 7:5-6.14 and by the] Hackensack Meadowlands District Zoning Regulations[, respectively].

(e) Rationale: Development adjacent to wetlands can adversely affect the wetlands through increased runoff, sedimentation, and introduction of pollutants.

The coastal zone includes a diversity of types of wetlands, of varying widths, quality and importance to the ecosystem, from large forested freshwater wetlands, to narrow strips of coastal wetlands. For this reason, the appropriate buffer necessary to protect the wetlands adjacent to proposed land disturbance must be determined on a case-by- case basis, but using a standard that requires no significant impact on, and minimum feasible disturbance to, the wetlands.

The preservation of a transitional area of native vegetation in the portion of the wetlands buffer adjacent to a wetlands and the construction of detention basins or berms if necessary to control runoff, could mitigate impacts and make development permissible in the remainder of the wetlands buffer.

Buffers that support strands of native vegetation perform the following ecological and physical functions:

1. Stabilization of soil and prevention of erosion;
2. Filtration of suspended solids (silt) to prevent their deposition on wetlands. Siltation onto wetlands can lead to undesirable changes in vegetation, e.g. from cord grass (Spartina) to reeds (Phragmites), which contribute less to the estuarine and marine food chain;
3. Water turbidity control;
4. Inhibition of pollutant introduction into wetlands soil, water and food chains. Without wetlands buffers, "urban" runoff from adjacent housing will almost always cause an increase in contaminants, such as coliform, following rain;
5. Storm water storage;
6. Formation of a barrier to floating debris, and;
7. Contribution to estuarine productivity, especially if the buffer is a forested floodplain.

As transition areas between differing vegetation communities (habitat areas), appropriately vegetated wetlands buffers function as ecotones, supporting a diversity of species and uses, and serving as wildlife movement corridors.

Wetlands buffers are used as lookout perches for raptors; nesting sites for Marsh Hawks, Black Crowned Night Heron, and Osprey; fall migration foraging stopovers for birds, including woodcock; nesting sites for Wood Ducks, Black Ducks, and Mallards; and forage routes into and out of wetlands for Raccoons, Mink, Muskrat, Fox, Deer, and others. Grassy wetlands edges serve as feeding sites for Wilson's Snipe, Ruffled Grouse, Quail and song birds.

Wetland buffer requirements may be less restrictive in areas where proposed development is considered infill, and where a majority of the area adjacent to the wetlands is developed. In these areas, the potential adverse impacts to the wetlands from additional development are generally minor. The Department will establish the required wetland buffers for these areas on a case-by-case basis, based on the existing site conditions, including but not limited to elevation, topography and vegetation.

7:7E-3.29 [Cranberry Bogs] **(Reserved)**

[(a) "Cranberry bogs" are areas around streams which have been impounded and are now, or have been formerly been, used for cranberry farming. These areas are intermittently flooded in the process of cranberry growing.

(b) Cranberry farming is encouraged provided that water quality and diversion standards are satisfied.

(c) Wildlife refuges in former cranberry bogs are encouraged.

(d) Other uses of former cranberry bogs shall conform to Policies for the Wetlands (N.J.A.C. 7:7E-3.25).

(e) Rationale: Cranberry farming is a small but locally significant part of the coastal economy and should be protected and promoted. Growing cranberries requires plentiful supplies of high quality ground and surface water. Care must be taken, therefore, so that cranberry growing does not unacceptably impact local hydrology or water quality.

Abandoned cranberry bogs are ideal wildlife refuges if properly managed since habitat quality can be improved by intermittent flooding and the mechanisms to do this exist. Proposals that include wildlife management programs within cranberry bogs will therefore be favored. Abandoned cranberry bogs, if undisturbed, take on wetlands characteristics.]

7:7E-3.30 [Wet Borrow Pit Margins] **(Reserved)**

[(a) "Wet Borrow Pit Margins" are areas surrounding Wet Borrow pits (see definition N.J.A.C. 7:7E-3.14(a)). They extend from normal high water level in the borrow pit below the inland limit of a water quality buffer. The width of this buffer will vary by substrate texture. Where soils are coarse, i.e. sands or gravels, the width will be 100 feet; elsewhere, it will be 50 feet.

1. Where a Wet Borrow Pit margin is also a Wetland and/or Wetlands Buffer, Wetlands and/or Wetlands Buffer Policies (N.J.A.C. 7:7E-3.27 and 3.28) shall apply.

(b) Surface mining is conditionally acceptable provided that other coastal policies, particularly the Use Policies on Mining (N.J.A.C. 7:7E-7.8), are satisfied.

(c) Wildlife habitat uses are encouraged.

(d) Non water dependent uses are prohibited unless acceptable filling (see N.J.A.C. 3.14(b)3 and 4) in the wet borrow pit removes these areas from the water's edge and reclassifies them.

(e) If residential development takes place landward of the Wet Borrow Pit Margin, use of the margin must be consistent with the requirements for a water quality buffer around wet borrow pits (see N.J.A.C. 7:7E-3.14(b) 5iv, v and vi).

(f) All proposed uses shall grade all banks at the immediate water's edge, except those in acceptable water access areas, to a slope no greater than 33 percent, and shall stabilize the surface and initiate succession of native vegetation adapted to water's edge conditions.

(g) Limited recreational use of the wet borrow pit margin is acceptable providing that the water buffer disturbance is limited in extent and wildlife habitat disturbance is minimized.

(h) Rationale: Wet borrow pit margins are the water quality buffer areas of wet borrow pits. The still water in lakes is very susceptible to all types of impacts. A water quality buffer provides a biophysical filter and bank stabilization. Preserving this area also maximizes the important wildlife habitat value of the land-water interface.

The policy on wet borrow pits allows limited filling of the lakes and this may remove wet borrow pits margins from water's edge. The former margin areas shall then be reclassified as appropriate, and policy analysis shall proceed on the new classes.

Mixed use projects that include wildlife habitats, and low and high intensity waterfront recreation are an acceptable use of some former borrow pits, since they realize the scenic and recreational value of the lakes and waterfront while preserving wildlife value. Care should be taken in the layout and design of the site to provide adequate separation and barriers to protect wildlife areas from human disturbance.

Recreational use of wet borrow pits margins is possible without losing the wildlife value, provided that intensive disturbance is limited to occasional concentrated water access points, and elsewhere banks are stabilized, native habitats promoted and human access controlled.]

7:7E-3.31 Coastal Bluffs

(a) A coastal bluff is a steep slope (greater than 15 percent) of consolidated (rock) or unconsolidated (sand, gravel) sediment [that is formed by wind and water erosion forces, and] which is adjacent to the shoreline or **which is** demonstrably associated with shoreline processes.

1. (No change.)

2. The landward limit of a coastal bluff is the landward limit of the area likely to be eroded within 50 years, or a point 25 feet landward of the crest of the bluff, whichever is farthest inland [see Figure 17] **(see Appendix, Figures 7 and 8, incorporated herein by reference)**.

3. Steep slopes (N.J.A.C. 7:7E-[3.32]**3.34**) are isolated inland areas with slopes greater than 15 percent. All steep slopes associated with shoreline processes [i.e.,] **or** adjacent to the shoreline **and associated wetlands,** or contributing sediment to the system, will be considered coastal bluffs.

(b) Development is prohibited on coastal bluffs, except for linear development which meets the [Policy] **rule** on Location of Linear Development (N.J.A.C. 7:7E-6.1) and shore protection activities which meet the appropriate Coastal Engineering Use [Policies] **rules** (N.J.A.C. 7:7E-7.11).

(c) (No change.)

(d) Rationale: Coastal bluffs are most prominent in New Jersey along the Delaware River at Roebling and Florence and along the Raritan Bay at Aberdeen Township and Atlantic Highlands. They have a significant function in storm damage prevention and flood control, by eroding in response to wave action and resisting erosion caused by wind and rain runoff. Bluff erosion is also an important source of beach nourishment where the coastal bluff faces an open water body. Disturbance of coastal bluffs which undermines their natural resistance to wind and rain erosion increases the risk of their collapse and causes cuts in the bluffs. This increases danger to structures at the top of the bluff and reduces the bluff's ability to buffer upland area from coastal storms. Vegetation helps stabilize bluffs and can reduce the rate of erosion caused by wind and rain runoff. A minimum construction setback on the stable land is required to protect life and property, and reaffirms the setback requirement of the Erosion Hazard Area [Policy] **rule** (N.J.A.C. 7:7E-3.19).

7:7E-3.32 Intermittent Stream Corridors

(a) ["]Intermittent [Stream Corridors"] **stream corridors** are areas including and surrounding surface water drainage channels in which there is not a permanent flow of water and which contain[s] an area or areas with a seasonal high water table equal to or less than one foot. The inland extent of these corridors is either the inland limit of soils with a seasonal high water table depth equal to, or less than one foot, or a disturbance of 25 feet measured from the top of the channel banks, whichever is greater [(see Figure 7)] **(see Appendix, Figures 7 and 9, incorporated herein by reference)**.

1. Where an [Intermittent Stream Corridor] **intermittent stream corridor** is also a [Wetland] **wetland, the Wetlands rule** (N.J.A.C. 7:7E-[3.25]**3.27**) [the Wetlands Policy] shall apply.

(b) Uses that promote undisturbed growth of native vegetation and wildlife habitat value are encouraged.

(c) Cutting, filling, damming, detention basins for runoff recharge, paving, structures or any other activities that would directly [upgrade] **degrade** the function of intermittent stream corridors, except for linear infrastructure for which there is no feasible alternate route, is prohibited.

(d) Intermittent streams not subject to the ebb and flow of the tide shall also comply with the Freshwater Wetlands Protection Act Rules [on State Open Waters] (N.J.A.C. 7:7A[2.2]).

(e) Rationale: Intermittent Stream Corridors are the spring areas for coastal streams. They are very susceptible to surface and subsurface disturbance. The water quality of coastal streams and estuaries depends inpart o[f]**n** undisturbed spring areas. They are productive areas since water is at or near the surface, and are important wildlife habitats. For these reasons the intention of the [policies] **rules** is preservation.

7:7E-3.33 Farmland Conservation Areas

(a) ["]Farmland [Conservation Areas] **conservation areas**["] are defined as **any** contiguous area[s] of 20 acres or more (in single or multiple tracts of single or multiple ownership) with soils in the Capability Classes I, II and III or special soils for blueberries and cranberries as mapped by the United States Department of Agriculture, Soil Conservation Service, in National Cooperative Soil Surveys, which are actively farmed, or suitable for farming, unless it can be demonstrated by the applicant that new or continued use of the site for farming or farm dependent purposes is not economically feasible. Farming or farm-dependent purposes include nurseries, orchards, vegetable and fruit farming, raising grains and seed crops, silviculture (such as Christmas tree farming), floriculture (including greenhouses), dairying, grazing, livestock raising, and wholesale and retail marketing of crops, plants, animals and other related commodities.

(b) Farmland [Conservation Areas] **conservation areas** shall be maintained and protected for open space or farming purposes. Farming or farm-dependent uses are permitted uses in farmland conservation areas. Housing is permitted only if it is an accessory use to farming. Mining is permitted only in accordance with a reclamation plan which meets the requirements of the Mining Use [Policy] **rule** (N.J.A.C. 7:7E-7.8).

(c) Continued, renewed, or new farming is encouraged in [Farmland Conservation Areas] **farmland conservation areas**.

(d) Rationale: Farmland conservation areas are an irreplaceable natural resource essential to the production of food and fiber, particularly in the "Garden State". Conservation of large, contiguous areas of these lands for farming serves both private and public interests, particularly in terms of ready access to locally-grown food, jobs and open space preservation.

In the coastal zone, some of the irreplaceable soil resources have already been converted to urban uses. Other areas which are of a sufficiently large scale to make farming feasible should be reserved for farming purposes, provided that farming is economically feasible.

7:7E-3.36 Historic and Archaeological Resources

(a) ["]Historic and [Archaeological Resources] **archaeological resources**["] include objects, structures, shipwrecks, **buildings,** neighborhoods, districts, and [other] **man-made or man-modified** features of the landscape and seascape, including **historic and prehistoric** archaeological sites, which either are on or are eligible for inclusion on the [State] **New Jersey** or National Register of Historic Places.

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

(d) Scientific recording[s] and/or removal of the historic and archaeological resources or other mitigation measures must take place[,] if the proposed development would irreversibly and/or adversely affect historic and archaeological resources. Surveys and reports to identify and evaluate historic and archaeological resources potentially eligible for the [State] **New Jersey** or National Registers shall be performed by professionals who meet the National Park Service's Professional Qualifications Standards in the applicable discipline. Professional procedures and reports shall meet the applicable Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation and the [Office of] New Jersey [Heritage's] **Historic Preservation Office's** professional reporting and surveying guidelines of the Office of New Jersey Heritage in the Division of Parks and Forestry, DEPE, once these guidelines are promulgated as rules, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The same qualifications and performance standards shall apply to documentation, investigations, and reports prepared pursuant to (e) below. The same qualifications and performance standards shall apply to documentation, investigations, and reports prepared pursuant to (e) below. A description of [these] **the** qualifications and performance standards is available at the [Office of New Jersey Heritage] **Historic Preservation Office**.

(e) New development in undeveloped areas near historic and archaeological resources is conditionally acceptable, provided that the design of the proposed development is compatible with the appearance of the historic and archaeological resource. **For archaeological resources within the area of the undertaking, avoidance and protection is appropriate. When this is not feasible and prudent, and these resources are of value solely for the information which they contain, archaeological data recovery to mitigate the project impact will be required.**

(f) [Commercial salvage] **Salvage** of shipwrecks over 50 years old [is prohibited. Salvage for research and educational purposes] is

discouraged, but may be permitted, [provided that] **subject to the following conditions**:

1. The proposed [excavation] project is in the public interest;

[2. The purpose of the proposed activity is to further archaeological knowledge;]

[3.]**2.** The archaeological knowledge gained will outweigh the loss to future [archaeologists] **archaeological research** and to the public of the preserved shipwreck;

[4.]**3.** The applicant has expertise in underwater archaeology as outlined by the Federal Requirements [(]36 CFR 66, pursuant to the Archaeological and Historic Preservation Act of 1974 (P.L. 93-291), and through [NEPA] **the National Environmental Policy Act**, the National Historic Preservation Act of 1966, (as amended), **the Abandoned Shipwreck Act of 1987, and their respective implementing regulations and guidelines** [and Executive Order 11593];

[5. A State designated archaeologist will be present on location to supervise excavation] **4. Artifacts will be recovered in an archaeologically appropriate manner**;

[6.]**5.** Recovered artifacts will be **analyzed and inventoried, and as appropriate,** preserved [and/or], restored, and/**or** made accessible to **future** researchers; [and]

[7.]**6.** [A final] **Two copies of a professional archaeological** report [is] **will be** prepared for the Department giving the following information about the shipwreck and its excavation: Historic background, description of environment, salvage methodology, artifact analysis, description of techniques used in preservation of artifacts, base map, narrative and grid map on artifacts recovered, bibliography, photographs, National [or State Historic] Register documentation and conclusions; **and**

7. The entire exploration and salvage effort will be in accordance with the Secretary of the Interior's 1983 Standards and Guidelines for Archaeology and Historic Preservation, and the Department of the Interior's 1990 Abandoned Shipwreck Act Final Guidelines which are available from the Historic Preservation Office.

(g) The Department may require the submission of a cultural resource survey report if it is determined that there is a known historic or prehistoric resource in the project area, or a reasonable potential for the presence of such a resource, which may be affected by a proposed development. However, in general, such surveys will not be required for the developments and/or sites listed below:

1. Single family and duplex developments which are not part of a larger development;

2. Sites which can be documented as being previously disturbed to the extent that any archaeological resources present would have been completely destroyed;

3. Sites which are located on lands containing fill material, including Psamments soils (PN, PO, PW) or Urban Land Soils (UL, UP), as defined in the appropriate County Soil Survey; and

4. The replacement of structures and utilities, in-place and in-kind, provided that the area of previous disturbance does not increase.

(h) The ultimate decision on the requirement for a cultural resource survey will be made by the Department's Land Use Regulation Program, based on information received in response to public comments or information provided by the New Jersey Historic Preservation Office regarding the presence of known historic and prehistoric resources or the potential for their presence.

[(g)](**i**) Rationale: The range of historic and archaeological resources along the coast is [broad and] diverse, from the oceanfront Victorian ["gingerbread"] **era** architecture, to examples of New Jersey's maritime heritage, to colonial homes, **and** to **American** Indian [Artifacts] **sites**. The public interest requires the preservation of both representative and unique examples of historic and archaeological (cultural) resources of the coast, in order to provide present and future generations with a sense of the people who lived, worked and visited the coast in the past. **DEPE's Historic Preservation Office** [Office of New Jersey Heritage] maintains an up-to-date list of properties on the New Jersey [State] Register of Historic Places. As the State Historic Preservation Officer the Commissioner of DEPE, and the staff of the [DEP's Office of New Jersey Heritage] **DEPE's Historic Preservation Office** advise [DEP's Division of Coastal Resources] **DEPE's Land Use Regulation Program** on the historic resources aspects of coastal decisions.

For shipwrecks and shipwreck sites, t[T]he ability of the archaeologists to **appropriately** retrieve [intact] and preserve artifacts [from historic shipwrecks] is gradually improving, but remains limited. [Therefore,] **Generally,** the best way to preserve historic shipwrecks is to leave them **in place** [alone] until retrieval and preservation techniques improve. However, when the shipwreck is threatened by [development] **destruction** or when the research **and/or public** benefits of immediate retrieval outweigh the **impacts** [risks], salvage may be approved subject to conditions developed in consultation with the [Office of New Jersey Heritage] **Historic Preservation Office**, the State Museum and other interested **parties, including** research and educational institutions. **The preservation and salvage of New Jersey's historic shipwrecks and shipwrecks sites will be consistent with the Federal Abandoned Shipwreck Act Guidelines, issued under the authority of the Abandoned Shipwreck Act (Pub. L. 100-298; 43 U.S.C. 2101-2106).**

The requirement for historic and prehistoric resource surveys varies from site to site, and project to project. Therefore, the Department has established several categories of sites and projects which generally will not require such surveys. However, in an effort to ensure adequate protection of historic and of prehistoric resources, the Department may require such surveys, on a case-by-case basis. This requirement will be based on the determination that there is a known historic or prehistoric resource, or a reasonable potential for the presence of such a resource, which may be affected by the proposed development. Such a determination will be based on such factors as the presence of known cultural sites, the presence of known sites nearby, and the known presence of sites in a similar topographic setting.

7:7E-3.37 Specimen Trees

(a) ["]Specimen trees["] are the largest known individual trees of each species in New Jersey. The Department's Bureau of **Parks and** Forestry maintains a list of these trees (see [New Jersey Outdoors, September-October 1984] **"New Jersey's Biggest Trees", published by NJDEPE Division of Parks and Forestry, Summer 1991** for a listing of specimen trees). In addition, large trees approaching the diameter of the known largest tree shall be considered specimen trees. **Individual trees with a circumference equal to or greater than 85 percent of the circumference of the record tree, as measured 4.5 feet above the ground surface, for a particular species shall be considered a specimen tree.**

(b) Development is prohibited that would significantly reduce the amount of light reaching the crown, alter drainage patterns within the site, adversely affect the quality of water reaching the site, cause erosion or deposition of material in or directly adjacent to the site, or otherwise injure the tree. The site of the tree extends to [the outer limit] the buffer area necessary to avoid adverse impacts**, which is measured from the trunk as three times the radius of the crown of the tree** [, or 50 feet from the tree, whichever is greater].

(c) Rationale: Many interested citizens have assisted DEPE, over decades, in locating specimen trees. This process includes reporting large trees that can be considered specimens even though they may not be the largest in New Jersey of a species. Specimen trees are an irreplaceable scientific and scenic resource. Often these trees have also been associated with historical events.

7:7E-3.38 Endangered or Threatened Wildlife or Vegetation Species Habitats

(a) Areas known to be inhabitated on a seasonal or permanent basis by **or to be critical at any stage in the life cycle of** any wildlife (fauna) or vegetation (flora) identified as "endangered" or "threatened" species on official Federal or State lists of endangered or threatened species, or under active consideration for State or [national] **Federal** listing, are considered Special Areas. The definition also includes a sufficient buffer area to insure continued survival of the **population of the** species. [DEP-] **DEPE's** Division of Fish, Game and Wildlife **and Division of Parks and Forestry** intentionally

restrict[s] dissemination of data showing the geographic [distribution] **location** of these species [habitats], in order to protect the **species and their** habitats.

1. The required threatened or endangered species habitat buffer area shall be dependent upon the range of the species and the development's anticipated impacts to the species habitat.

(b) Development of this special area is prohibited unless it can be demonstrated that endangered or threatened wildlife or vegetation species habitat would not directly or through secondary impacts on the relevant site **or in the surrounding region** be adversely affected.

(c) The following wildlife species were listed as endangered on the State list in January 1984, as amended on May 6,1985, July 20, 1987 **and June 3, 1991**:

FISH

Shortnose Sturgeon[1]	Acipenser brevirostrum

AMPHIBIANS

Tremblay's Salmander	Ambystoma tremblayi
Blue-spotted Salamander	Ambystoma laterale
Eastern Tiger Salamander	Ambystoma tigrinum tigrinum
Pine Barrens Treefrog	Hyla andersoni
Southern Gray Treefrog	Hyla chrysocelis

REPTILES

Atlantic Hawksbill Turtle[1]	Eretmochelys imbricata
Atlantic Loggerhead Turtle[1]	Caretta caretta
Atlantic Ridley Turtle[1]	Lepidochelys kempi
Atlantic Leather-back Turtle	Dermochelys coriacea
Bog Turtle	Clemmys muhlenbergi
Timber Rattlesnake	Crotalus horridus horridus
Corn Snake	Elaphe guttata guttata

BIRDS

Bald Eagle[1]	Haliaeetus leucocephalus
Peregrine Falcon[1]	Falco peregrinus
Cooper's Hawk	Accipter cooperii
Least Tern	Sterna albifrons
Black Skimmer[2]	Rynchops niger
Norther Harrier[2]	Circus cyaneus
Short-eared Owl[2]	Asio flamneus
Pied-billed Grebe	Podilymbus podiceps
Upland Sandpiper	Bartramia longicauda
[Cliff Swallow	Petrochelidron pyrrhonota]
Sedge Wren[2]	Cistothorus platensis
Henslow's Sparrow	Ammodramus henslowii
Vesper Sparrow[2]	Pooecetes gramineus
Piping Plover	Charadrius melodus
Roseate Tern	Sterna dougallii
Loggerhead Shrike	Larnius ludovicianus
Red-shouldered Hawk[2]	**Buteo lineatus**

MAMMALS

Sperm Whale[1]	Physter catedon
Blue Whale[1]	Balaenopetera musculus
Fin Whale[1]	Balaenopetera physalus
Sei Whale[1]	Balaenopetera borealis
Humpback Whale[1]	Megaptera novaeangliae
[Right Whale[1]	Eublaena glacialis]
Bobcat	**Lynx rufus**
Eastern Woodrat	**Neotoma floridana**
Right Black Whale	**Balaena glacialis**

INVERTEBRATES

Mitchell's Satyr (butterfly)[1]	**Neonympha m. mitchellii**
Northeastern Beach Tiger Beetle	**Cicindela d. dorsalis**
American Buring Beetle[1]	**Nicrophorus americanus**
Dwarf Wedge Mussel[1]	**Alasmidonta heterodon**

(d) The following Species were listed as Threatened Species on the State list in January 1984 as amended on May 6, 1985, [and] July 20, 1987 **and June 3, 1991**.

[FISH

Atlantic Sturgeon	Acipenser oxyrhynchus
American Shad	Alosa sapidissima
Brook Trout (native)	Salvelinus frontinalis
Atlantic Tomcod	Microgadus tomcod]

AMPHIBIANS

Long-tailed Salamander	Eurycea longicauda
Eastern Mud Salamander	Pseudotriton montanus

REPTILES

Wood Turtle	Clemmys insculpta
Northern Pine Snake	Pituophis m. melanoleucus
Atlantic Green Turtle[1] and 3 1&3	Chelonia mydas

BIRDS

Osprey	Paridon haliaetus
Great Blue Heron	Ardea herodias
Red-shouldered Hawk	Buteo lineatus
[Merlin	Falco Columbarius]
Red-headed Woodpecker	Melanerpes erythrocephalus
Bobolink[2]	Dolichonyx oryzivorus
Savannah Sparrow[2]	Passerculus sandwichensis
Ipswich Sparrow[2]	Passerculus sandwichensis princeps
Grasshopper Sparrow[2]	Ammodramus savannarum
Yellow-crowned Night Heron	Nyctanassa violacca
American bittern	Botaurus legtigimosos
Northern Goshawk	Accipiter gentilis
Black Rail	Laccipiter jamaicensis
Barred owl	Strix varia
Little Blue Heron[2]	**Egretta caerulea**
Long-eared Owl	**Asio otus**
Cliff Swallow[2]	**Hirundo pyrrhonota**

1. Also on the Federal List
2. Status designation applicable to breeding populations only
3. Does not nest regularly in New Jersey

(e) [Refer to N.J.A.C. 7:5C-5.1 for the official list of endangered plant species.] **The Division of Parks and Forestry is responsible for promulgation of the official Endangered Plant Species List pursuant to N.J.S.A. 13:1B-15. The Endangered Plant Species List, N.J.A.C. 7:5C-5.1, currently contains 308 native plant species, and includes species determined by the DEPE to be endangered in the State as well as plant species officially listed as Federally Endangered or Threatened or under active consideration for Federal listing as Endangered or Threatened. Because the Endangered Plant Species List is periodically revised based on new information documented by the DEPE, it is not published as part of this rule. To obtain the most current Endangered Plant Species List, please contact the NJDEPE, Division of Parks and Forestry, Office of Natural Land Management, CN 404, Trenton, NJ 08625.**

(f) For sites located within the Pinelands National Reserve and the Pinelands Protection Area, the [Plant] plant species listed in Section 6- 204 of the Pinelands Comprehensive Management Plan shall also apply (N.J.A.C.7:50-6.24).

(g) For projects which require a habitat assessment, the guidelines found at N.J.A.C. 7:7E-3C.

[(g)](**h**) Rationale: Endangered and threatened species are organisms which are facing possible extinction in the immediate future due to loss of suitable habitat, and past overexploitation through human activities or natural causes. Extinction is an irreversible event and represents a loss to both future human use, education, research and to the interrelationship of all living creatures with the ecosystem.

7:7E-3.40 Public Open Space

(a) ["]Public [Open Space"] **open space** constitutes land areas owned or maintained by State, Federal, county and municipal agencies or private groups (such as conservation organizations and homeowner's associations) and used for or dedicated to conservation of natural resources, public recreation, visual or physical public access or, wildlife protection or management. Public [Open Space] **open space** also includes, but is not limited to, State Forests, State

Parks, and State Fish and Wildlife Management Areas, lands held by the New Jersey Natural Lands Trust (N.J.S.A. 13:1B-15.119 et seq.), lands held by the New Jersey Water Supply Authority (N.J.S.A. 58:1B-1 et seq.) and designated Natural Areas (N.J.S.A. 13:1B-15.12a et seq.) within DEPE-owned and managed lands.

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

(d) Development within existing public open space [, such as campgrounds and roads,] is conditionally acceptable, provided that the development complies with the [Coastal Resource and Development Policies] **Rules on Coastal Zone Management** and is consistent with the character and purpose of public open space, as described by the park master plan when such a plan exists.

(e) (No change.)

(f) All new development adjacent to public open space will be required to provide an adequate buffer area and to comply with the Buffers and Compatibility of Uses rule (N.J.A.C. 7:7E-8.13). The buffer required will be dependent upon adjacent land uses and potential conflicts between users of public open space and the proposed adjacent land use.

[(f)](**g**) (No change in text.)

7:7E-3.43 Special Urban Areas

(a) ["]Special [Urban Areas] **urban areas**["] are those municipalities defined in urban aid legislation (N.J.S.A. 52:27D-178) qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. The following [32 coastal] municipalities **within the coastal zone** qualify as [Special Urban Areas] **special urban areas** in [1989] **1993**:

Asbury Park	Jersey City	Paulsboro
Atlantic City	Keansburg	Pennsauken
Bayonne	Kearny	Penns Grove
Bellville	Lakewood	Perth Amboy
Bridgeton	Long Branch	Pleasantville
Camden	Millville	Rahway
Carteret Borough	**Mt. Holly Twp.**	Salem
Commercial Twp.	Neptune Twp.	Trenton
Elizabeth	New Brunswick	West New York
Glassboro	Newark	Weehawken
Gloucester City	North Bergen	**Willingboro**
Gloucester Twp.	Old Bridge City	**Woodbridge**
Hoboken	Passaic	**Woodbury**

(b) Development that will help to restore the economic and social viability of special urban areas is encouraged. Development that would adversely affect the economic well being of these areas is discouraged, when an alternative **which is** more beneficial to the special urban areas is feasible. Development that would be of economic and social benefit and that serves the needs of local residents and neighborhoods is encouraged.

(c) Housing, hotels, motels and mixed use development, which is consistent with the Public Access to the **Waterfront** [Resource Policy] **rule** (N.J.A.C. 7:7E-8.11) and the Hudson River Waterfront **Area** [Policy] **rule** (N.J.A.C. 7:7E-[3.46]**3.48**) where applicable, including those provisions relating to fishing access as appropriate are acceptable only over large rivers where water dependent uses are demonstrated to be infeasible. These uses are conditionally acceptable on structurally sound existing pilings, or where at least one of the following criteria is met:

1. Where piers have been removed as part of the harbor clean up program, the equivalent pier area may be replaced in **either** the same or [another] **other nearby** location;

2.-3. (No change.)

(d) Housing, hotels, motels and mixed use development are acceptable in filled water's edge areas, provided that development is consistent with the Filled Water's Edge [Policy] **rule** (N.J.A.C. 7:7E-[3.16]**3.23**) and public access is provided for, as required by N.J.A.C. 7:7E-[8.13]**8.11**.

(e) Rationale: This [policy] **rule** helps link the Coastal Management Program with other State efforts to focus on and restore New Jersey's urban areas. The [policy] would be applied to State actions on major proposals, such as shopping centers, outside urban areas which could drain resources from nearby urban areas, as well as to projects both in and out of urban areas which could help stimulate social and economic activity in urban areas.

The Filled Water's Edge [policy] **rule** which reserves the waterfront for water dependent uses should not be strictly applied in special urban areas in all cases. Housing, hotels, motels and other commercial developments, which benefit from a waterfront location and stimulate the revitalization of a special urban area would be consistent with State coastal objectives, and urban policy. This would also be true for such development over water areas. However, new development over water areas must be limited to Large Rivers (the Delaware, Hudson and Raritan) where the existing development density is high and where danger from storm surge is minimal, must not increase the total water area covered by piers or pilings to prevent the extension of non-water dependent uses into previously undeveloped Water Areas and must not unreasonably restrict public access between the development and the waterbody. In addition, development on piers must not be detrimental to fishery resources. Public access must be allowed since the water area over which the structure is to be built is an area impressed with the public trust doctrine. To forbid access along the water's edge on decks built in conjunction with the development would be an unreasonable restraint on public access. However, it would not be unreasonable to limit night access by the general public in residential areas over the water.

7:7E-3.44 Pinelands National Reserve and Pinelands Protection Area

(a) The Pinelands National Reserve includes those lands and water areas defined in the National Parks and Recreation Act of 1978, Section 502 (P.L. 95-625), an approximately 1,000,000 acre area ranging from Monmouth County in the north, south to Cape May County and from Gloucester and Camden County on the west to the barrier islands of Island Beach State Park and Brigantine Island along the Atlantic Ocean on the east **(see Appendix, Figure 10, incorporated herein by reference)**. The "Pinelands Area" is a slightly smaller area within the Pinelands National Reserve. It was designated for State regulation by the Pinelands Protection Act of 1979 (N.J.S.A. 13:18-1 et seq.). The Pinelands Commission adopted a Comprehensive Management Plan in November, 1980. Within the Pinelands Area, the law delineates a Preservation Area, where the plan shall "preserve an extensive and contiguous area of land in its natural state, thereby insuring the continuation of a pinelands environment..." (Section 8c).

1. Under the authority of the [DEP] **Department's** Surface Water Quality Standards (N.J.A.C. 7:9-4), all surface waters within the boundaries of the Pinelands Area, except those waters designated as FWI, are designated "Pinelands Waters" which have special antidegradation policies, designated uses and water quality criteria (see N.J.A.C. 7:9-4.4, 4.5(d)6ii, 4.12(b), and 4.14(b)). The Department's present Ground[-Water] **water** Quality Standards (N.J.A.C.7:9-6), which were adopted on March 3, 1981, **and revised on February 1, 1993,** identify the "Central Pine Barrens Area" as the only part of the Pinelands distinguished from the rest of the State (N.J.A.C. 7:9-6.7(c)).

2. The coastal municipalities wholly or partly within the Pinelands National Reserve Area include:

Atlantic County	
Brigantine City	Hamilton Township
Corbin City	Mullica Township
Egg Harbor City*[1]	Port Republic*
Egg Harbor Township	Somers Point City
Estell Manor Township	Weymouth Township
Galloway Township	
Burlington County	
Bass River Township	Washington Township
Cape May County	
Dennis Township	Upper Township
Middle Township	Woodbine Borough

Cumberland County
Maurice River Township

Ocean County

Barnegat Township	Lakehurst Borough
Beachwood Borough	Little Egg Harbor Township
[Berkley] **Berkeley** Township	Manchester Township
Dover Township	Ocean Township
Eagleswood Township*[1]	South Toms River Borough
Lacey Township	Stafford Township
	Tuckerton Borough

*[1]Municipalities with areas in both the Pinelands **Protection** Area and the Coastal Zone. These areas are all within the Preservation Area of the Pinelands **Protection** Area (N.J.S.A. 13:18A-1 et seq.).

(b) Coastal development shall [be consistent] **comply** with the **substantive provisions of the Pinelands Comprehensive Management Plan ("CMP") set forth at N.J.A.C. 7:50. Coastal development that would not comply with the substantive requirements of the CMP or is otherwise inconsistent with the** intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, Section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.) **is prohibited.**

1. (No change.)

2. The [Division of Coastal Resources] **Land Use Regulation Program (formerly the Division of Coastal Resources)** and the Pinelands Commission will [coordinate the permit] review **applications for development in the Pinelands National Reserve in accordance with** [process through the procedure outlined in] the February 8, 1988 Memorandum of Agreement between the two agencies and any subsequent amendments to that agreement. Copies **of the agreement** are available from the [Division of Coastal Resources, Planning Group, CN 401, 9 Ewing Street, Trenton, New Jersey 08625] **Environmental Regulations' Coastal/Land Planning Group at CN 423, 401 East State Street, Trenton, New Jersey 08625.**

(c) Coastal activities in areas under the jurisdiction of the Pinelands Commission shall not require a [Freshwater Wetlands] **freshwater wetlands** permit, or be subject to transition area requirements of the Freshwater Wetlands Protection Act, except that discharge of dredged or fill materials in freshwater wetlands and/or State open waters shall require a **State** permit [issued under the provisions of Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Clean Water Act of 1977, or] under [an] **the** individual or statewide general permit program administered by the State under the provisions of [the Federal Act and applicable State laws] **33 USC 1344 and N.J.S.A. 13:9B-6(b).**

(d) If sites containing freshwater wetlands are located outside of the Protection Area but within the Pinelands National Reserve, the freshwater wetlands and transition areas on those sites will be subject to the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A). In addition, pursuant to N.J.A.C. 7:7E-3.28, wider buffers may be required in the Pinelands National Reserve to conform with other coastal rules.

(e) In reviewing permit applications for conformance with the Pinelands Comprehensive Management Plan (CMP), the Department will not require strict compliance with the CMP for the following:

1. Stormwater Runoff (N.J.A.C. 7:7E-8.7); and

2. Wetland Buffers (N.J.A.C. 7:7E-3.28).

[(d)]**(f)** Rationale: The New Jersey Pinelands contain approximately 1,000,000 acres of high quality surface and groundwater resources. In response to the need to protect, preserve and enhance the unique features of the Pinelands and the significant ecological, natural, cultural, recreational, educational, agricultural and public health resources of the pinelands area, the federal government passed the National Parks and Recreation Act of 1978 (P.L. 95-625), the Governor issued Executive Order No. 71 in February 1979, and the Legislature passed the Pinelands Protection Act in June of 1979.

Prior to these actions, under Executive Order No. 56, issued on May 28, 1977, the Governor created the Pinelands Review Committee to delineate a pinelands region and develop a plan to guide State actions affecting that Region. The report of the Pinelands Review Committee, completed in February 1979, stressed the need to take strong action to manage development in the pinelands.

Because the living marine resources in the bays and estuaries of the coastal zone depend on the flow of freshwater from the pinelands, changes to the quality and quantity of the pinelands water resource caused by pollution and contamination would have a significant impact on coastal resources.

The Pinelands Protection Act (Section 22) recognized the overlap between pinelands and coastal management interests and mandated the [DEP] **DEPE**, in consultation with the Pinelands Commission, review the environmental design for the coastal area prepared as required by CAFRA (see N.J.S.A. 13:19-10) which is also within the boundaries of the Pinelands National Reserve. This overlap extends from Pleasant Mills to the Garden State Parkway on both sides of the Mullica River.

With regard to the review of coastal permit applications for sites located in the Pinelands National Reserve, the Department will not require strict compliance with the Pinelands Comprehensive Management Plan in the areas of Stormwater Management and Wetlands Buffers. The Department has established a mechanism for protecting wetland buffers or transition areas through the Freshwater Wetlands Protection Act. The standards for establishing wetlands buffers have been developed and implemented through the FWPA, and have been found to adequately protect wetland buffer areas in the coastal zone.

In addition, the Department has developed specific standards for the design and operation of stormwater management systems in the coastal zone, based on extensive technical applications and input from a number of agencies within the Department. Department requirements for stormwater management systems have been designed to minimize impacts to surface or ground waters, in terms of water quality and flood control, through the application of specific standards for stormwater management system design and operation. These standards are more comprehensive than the Pinelands standards, in that they include priority techniques as well as specific design guidelines and specifications, rather than arbitrary setback distances.

7:7E-3.49 Urban waterfront redevelopment areas

(a) Urban waterfront redevelopment areas include previously developed urban sites, located along the tidal rivers of New Jersey outside of the defined Coastal Area, which are subject to Department jurisdiction pursuant to the Waterfront Development Law. Specifically, these areas are limited to sites located along the Arthur Kill, Hudson River, Newark Bay, and the tidal portions of the Hackensack and Passaic Rivers, and their tributaries, as well as the waterfront area on the Delaware River in Camden City. These areas include industrial sites, previously filled port areas, landfills and railroad yards.

1. In determining which urban waterfront areas have been previously developed, the Department will evaluate the existing site conditions at the time of permit application submission.

(b) For projects which involve the redevelopment of a previously developed urban waterfront site, in the geographic areas listed above, the Department's permit application review will be limited to the following Rules on Coastal Zone Management:

1. Special Areas (N.J.A.C. 7:7E-3): Out of the total of 48 Special Areas rules, only the following 11 will apply to developments located in Urban Waterfront Redevelopment Areas, upland of the mean high water line:

i. Ports (N.J.A.C. 7:7E-3.11), Filled Waters Edge (N.J.A.C. 7:7E-3.23), Flood Hazard Area (N.J.A.C. 7:7E-3.25), Wetlands (N.J.A.C. 7:7E-3.27), Wetlands Buffer (N.J.A.C. 7:7E-3.28), Historic and Archaeological Resources (N.J.A.C. 7:7E-3.36), Endangered or Threatened Wildlife or Vegetation Species Habitat (N.J.A.C. 7:7E-3.38), Special Hazard Areas (N.J.A.C. 7:7E-3.41), Special

Urban Areas (N.J.A.C. 7:7E-3.43), Hackensack Meadowlands District (N.J.A.C. 7:7E-3.45), and Hudson River Waterfront Area (N.J.A.C. 7:7E-3.48).

2. Housing Use—Water Area and Water's Edge Housing (N.J.A.C. 7:7E-7.2(b));

3. Energy Use (N.J.A.C. 7:7E-7.4);

4. Port Use (N.J.A.C. 7:7E-7.9);

5. Dredge Spoil Disposal on Land (N.J.A.C. 7:7E-7.12);

6. High Rise Structures (N.J.A.C. 7:7E-7.14);

7. Stormwater Runoff (N.J.A.C. 7:7E-8.7);

8. Public Access to the Waterfront (N.J.A.C. 7:7E-8.11);

(c) Rationale: The State Development and Redevelopment Plan has identified urban revitalization as a critical statewide planning goal. While many of these urban centers have suffered decline, they still include extensive infrastructure systems, industrial uses and other valuable built assets. In addition, these areas are also home to a large labor pool that could, with appropriate investment, become among the State's most valuable human resource assets.

Therefore, this rule is intended to allow for a streamlined application and review of redevelopment projects in the urban waterfront areas defined above, with an emphasis focused on protecting Special Areas, improving surface water quality and facilitating public access to public trust lands (tidal waters of the State). In this way, the Department will concentrate its review on those activities which could result in adverse environmental impacts, while allowing more flexibility to facilitate redevelopment of these previously developed urban waterfront areas.

SUBCHAPTER 3A. STANDARDS FOR BEACH AND DUNE ACTIVITIES

7:7E-3A.1 Standards applicable to routine beach maintenance

(a) Routine beach maintenance includes debris removal and clean-up; mechanical sifting; maintenance of access ways; removal of sand from street ends, boardwalks/promenades and residential properties; the repair or reconstruction of existing boardwalks, gazebos and dune walkover structures; and limited sand transfers from the lower beach to the upper beach or alongshore (shore parallel). Sand transfers from the lower beach profile to the upper beach profile are specifically designed to restore berm width and elevation, to establish/enhance dunes and to repair dune scarps. Activities which preclude the development of a stable dune along the back beach are not considered to be routine beach maintenance activities, pursuant to this section. Specifically, the bulldozing of sand from the upper beach (berm) to the lower beach (beach face), for the purpose of increasing the berm width or flattening the beach profile, is not considered to be routine maintenance.

1. If the activities in (a) above are proposed to be conducted by a municipal or county agency on property owned by that governing body, then the municipal or county engineer must certify that the activities will be conducted in accordance with these standards. The appropriate municipal or county engineer is responsible for ensuring compliance with these requirements. If these activities are proposed to be conducted on privately owned property, then the property owner is responsible for ensuring that the activities will be conducted in accordance with these standards. If these activities are proposed to be conducted on State owned properties, then the DEPE, Bureau of Construction and Engineering must certify that the activities will be conducted in accordance with these standards.

2. All guidelines and specifications of this section must be incorporated into any contract documents or work orders related to proposed beach and dune activities, as described in this section. The Land Use Regulation Program is available to assist in the development of specific maintenance plans for oceanfront locations, upon request.

(b) Projects involving the mechanical redistribution of sand from the lower beach profile to the upper beach profile, or alongshore, are acceptable, in accordance with the following standards:

1. The amount of sand transferred at any one time shall be limited to one foot scraping depth at the borrow zone. This borrow zone may not be rescraped until the sand volume from the previous scraping activities has been fully restored.

2. The borrow zone shall be limited to the area between the low water line and the inland limit of the berm. It is strongly recommended that a program of beach profiling be utilized to monitor the condition of the beaches and to ensure compliance with the standards of this section.

3. If the purpose of the sand transfers is to repair eroded dunes (dune scarps), all filled areas shall be stabilized with sand fencing and planted with beach grass in accordance with DEPE and/or SCS standards. Fencing shall be in place within 30 days of the transfer operation, while the vegetative plantings may be installed during the appropriate seasonal planting period (October 15 through March 31, anytime the sand is not frozen).

4. There shall be no disturbance to existing dune areas.

5. In areas of documented habitat for endangered nesting shorebirds (Piping Plovers and Least Terns), no sand transfers shall take place between April 1 and August 1. The Land Use Regulation Program, in coordination with the Division of Fish, Game and Wildlife, will determine affected areas.

6. Records of all sand transfer activities shall be maintained by the property owner, beach association, governmental agency or other authority conducting the activities, and shall be available for inspection by the Department, upon request. These records shall include, but not be limited to, dates of transfer, borrow area limits, fill area limits, estimates of the amount of sand transferred, the name of the person(s) supervising the transfer activities, and the engineering certification required (if appropriate) for all sand transfer activities.

7:7E-3A.2 Standards applicable to emergency post-storm beach restoration

(a) This section on emergency post-storm beach restoration will apply to all beaches which are impacted by coastal storms with a recurrence interval equal to or exceedings a five-year storm event.

(b) Beach restoration activities, as part of an emergency post-storm recovery, include: the placement of clean fill material with grain size compatible with (or larger than) the existing beach material; the bulldozing of sand from the lower beach profile to the upper beach profile; the alongshore transfer of sand on a beach; the placement of concrete or rubble; and the placement of sand filled geotextile bags of tubes. The placement of sand filled geotextile bags or tubes is preferred to the placement of concrete, rubble or other material.

(c) The emergency post-storm beach restoration activities in (b) above should be designed and implemented as a means to restore the beaches to the pre-storm condition, or to restore the beaches to a level sufficient to provide protection from a storm event with a minimum recurrence interval of five years (five-year storm protection). For the purpose of this section, five-year storm protection equates to a minimum 30-foot wide berm at elevation +8 Mean Sea Level (NGVD). Restoration beyond the pre-storm beach condition will not be considered "emergency post-storm beach restoration," pursuant to this section.

(d) The bulldozing of sand from the lower beach profile to the upper beach profile, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. Bulldozing is limited to the beach area landward of the low water line. Removal of material from below the low water line is considered dredging, and is not authorized pursuant to this section; and

2. The beach face cannot be graded to a slope steeper than 1:3.

(e) The longshore transfer of sand from one beach area to another, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. No disturbance to existing dune areas is permitted;

2. Sand borrow areas shall not be bulldozed to a depth which exceeds one foot;

3. The borrow areas may not be rescraped until full sand volume recovery has occurred; and

4. An adequate supply of sand is available at the borrow area site, so that the relocation of this material will not decrease the level of protection adjacent to the borrow area.

(f) The placement of sand filled geotextile bags or tubes, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. The bags or tubes shall be placed along the toe of any scarped dune, or seaward of the dune toe, and not on the dune itself; and

2. The tubes or bags should be tapered at the end of the project area, to minimize the impact to adjacent areas which are not protected by the bags/tubes.

(g) The placement of sand, gravel, rubble, concrete, or other inert material, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. All material shall be non-toxic sand, gravel, concrete, rubble, or other inert material;

2. The placement of concrete or rubble shall be temporary in nature, and is not to be used as permanent protection, unless it is part of a DEPE approved, engineered design for permanent shore protection;

3. All concrete and rubble placed on the beach shall be removed within 90 days, unless the placement is part of a DEPE approved, engineered design for permanent shore protection; and

4. The use of automobiles, tires, wood debris, asphalt, appliances or other solid waste is prohibited.

7:7E-3A.3 Standards applicable to dune creation and maintenance

(a) Dune creation and maintenance includes the placement and/or repair of sand fencing (including wooden support posts), the planting and fertilization of appropriate dune vegetation, the maintenance and clearing of beach access pathways less than eight feet in width, and the construction or repair of approved dune walkover structures. Bulldozing, excavation, grading, vegetation removal or clearing, and relocation of existing dunes are not authorized pursuant to this section.

(b) All dune creation and maintenance activities should be conducted in accordance with the specifications found in Guidelines and Recommendations for Coastal Dune Restoration and Creation Projects (NJDEPE, 1985), and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (Soil Conservation Service, 1992). The Department will provide site specific technical assistance for dune creation and maintenance projects, upon request.

(c) All proposed dune vegetation should be limited to the following coastal species: American Beachgrass (Ammophila breviligulata), Coastal Panicgrass (Panicum amarulum), Japanese Sedge (Carex kobomugi), Bayberry (Myrica pennsylvanica), Rugosa Rose (Rosa rugosa), Beach Plum (Prunus maritima), Shore Juniper (Juniperus conferta), and Japanese Black Pine (Pinus thunbergii). Although they may not be currently available from commercial nurseries at this time, the following plant species are also well suited to the dune environment: Seaside Goldenrod (Solidago sempervirens), Dusty Miller (Artemesia stelleriana), Beach Pea (Lathyrus japonicus), Sea Oats (Uniola paniculata), Bitter Panicgrass (Panicum amarum), and even Saltmeadow Cordgrass (Spartina patens).

1. American beachgrass is the preferred species for the stabilization of newly established dunes, and for stabilization of the primary frontal dune. Woody plant species are suitable for back dune and secondary dune environments. Herbaceous plant species are preferred as supplemental plantings for all dune areas.

2. Dune vegetation should be diversified as much as possible, in an effort to provide continuous stabilization in the event that pathogens reduce or eliminate the effectiveness of one species. A complex of associated grasses, herbaceous species and woody species is preferred to the planting of one species.

(d) The construction of elevated timber dune walkover structures shall be in accordance with the standards and specifications (or similar specifications) described in Beach Dune Walkover Structures (Florida Sea Grant, 1981). The construction of elevated dune walkover structures, particularly at muncipal street-ends and other heavily used beach access points, is preferred to the construction of pathways or walkways through the dunes.

1. Copies of the NJDEPE and Florida Sea Grant reports are available from the NJDEPE, Land Use Regulation Program, CN 401, Trenton, NJ 08625. Copies of the Soil Conservation Service report are available directly from the Soil Conservation Service, Plant Materials Center, 1536 Route 9 North, Cape May Court House, NJ 08210.

(e) The construction of at-grade dune walkovers is acceptable only at single family and duplex residential dwellings, subject to the following conditions:

1. Only one walkover per building is allowed;

2. The width of the walkover must not exceed four feet;

3. The walkover shall be fenced on both sides through the use of sand fencing;

4. The use of unrolled sand fencing as a base for the walkover is preferred to the use of planks and boards. Sand fence based walkovers allow for easier seasonal removal and placement, and allow for greater growth of beachgrass, while still providing an adequate base for pedestrian traffic; and

5. Solid boardwalk type walkovers shall be elevated at least one foot above the dune, to allow for movement of sand and vegetative growth under the boardwalk structure.

(f) The controlled use of discarded natural Christmas trees for the purpose of dune stabilization is generally discouraged, but may be acceptable, in accordance with the standards set forth below. Discarded Christmas trees serve the same function as sand fencing, by trapping wind blown sand and facilitating sand deposition and dune formation. However, uncontrolled or inappropriate placement of trees will hinder the development of dunes and may present a fire hazard.

1. Only natural, coniferous trees are suitable for use in dune stabilization. The use of tree limbs, clippings, artificial trees, and other dead vegetation is prohibited;

2. Trees should be placed at least 100 feet landward of the high water line, in areas which are generally not subject to normal tidal innundation and wave swash action;

3. The placement of trees should be oriented against the prevailing winds, in either a straight line or zig-zag formation;

4. The trees should be installed by overlapping the stump end of one tree with the pointed end of another, and then anchoring the connection point with a sufficient amount of sand to hold the trees in place;

5. Newly placed trees should be monitored to ensure that the trees remain anchored and do not become dislodged. Additional quantities of sand or wooden anchor stakes may be used to hold the trees in place until they become stabilized; and

6. All newly deposited sand should be stabilized through the planting of beachgrass, during the appropriate planting season.

7:7E-3A.4 Standards applicable to the construction of boardwalks

(a) The construction of boardwalks should address a number of engineering concerns related to structural support, resistance to vertical and horizontal water and wind loads, and scouring. The construction of timber boardwalks along tidal shoreline is acceptable, in accordance with the following standards:

1. All timber support piles shall be a minimum of eight inches in diameter;

2. Support piles should be driven to a depth of at least –10 feet (mean sea level), for all V-zone locations. In A-zones, the depth of penetration should be at least –five feet (mean sea level);

3. The method for insertion of piles should be a pile driver or drop hammer;

4. All support joists and timber connections should be anchored through the use of hurricane clips or metal plates; and

5. All metal fasteners, including but not limited to bolts, screws, plates, clips, anchors and connectors, shall be hot dipped galvanized.

SUBCHAPTER 3B. INFORMATION REQUIRED IN MITIGATION PROPOSALS

7:7E-3B.1 Mitigation proposal requirements

(a) All mitigation proposals submitted to the Land Use Regulation Program shall include, but not be limited to:

1. An introduction describing the wetland mitigation proposal. The introduction should include the specific goals of the mitigation proposal and a discussion of how the mitigation proposal will satisfy those goals;

2. A description (that is, size, type, vegetation, hydrology, etc.) of the wetlands that are being destroyed or disturbed;

3. Photographs of the proposed mitigation site;

4. The names and addresses of current and proposed owner(s) of the mitigation project site;

5. A description of the existing ecosystem of the mitigation site, including a discussion of the vegetation, soils, and hydrology, wildlife and adjacent land use;

6. A discussion relative to the proposed hydrology of the mitigation site. The discussion should focus on the sources of water for the mitigation project, provide seasonal high water table information as well as the projected elevation of final grade of the mitigation project in relation to mean sea level (MSL), along with slope percent;

7. The tidal range of the mitigation site and the salinity range of adjacent inundating waters;

8. The existing soils types with soil borings to document seasonal high water tables, with a discussion relating to the created substrate of the proposed mitigation site, including a description of how the substrate of the site will be prepared, whether the pH is appropriate and any other pertinent factors;

9. A planting scheme of the proposed vegetative community depicted on the mitigation site plans, including spacing of all plantings, stock type (bare root, potted, seed), size, and the source of the plant material;

10. A copy of a deed restriction which provides that no regulated activities will occur in the mitigation area or its associated transition area and that it will remain as a natural area in perpetuity. Proof that the deed restriction has been registered with the County Clerk (or the Registrar of Deeds and Mortgages if applicable) is required within 60 days following approval of the mitigation proposal;

11. A metes and bounds description of the proposed mitigation site which forms the basis for the deed restriction. The metes and bounds description shall include the transition area;

12. The New Jersey Wetlands/Tidelands Map number(s) for the development site (and the mitigation site if it is at a different location) as well as block and lot numbers and ownership of the mitigation site;

13. The actual cost estimate of the mitigation proposal. The cost estimate should include the cost of land, site preparation, engineering costs, plantings and any other items incidental to the mitigation proposal;

14. Five folded copies of a site plan for the mitigation project which includes:

i. The project location within the region;

ii. The lot and block number of the mitigation project location;

iii. Existing and proposed elevations and grades of the mitigation site in one foot intervals; and

iv. Plan views and cross sectional views;

15. A copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map showing the location of the property and its general vicinity, indicating and labeling the location of the proposed mitigation and the property boundaries, and a determination of the State Plan Coordinates for the center of the mitigation site. The accuracy of these coordinates should be within 50 feet of the actual center point. For linear mitigation projects, the applicant shall provide State Plane Coordinates for the endpoints of those projects which are 1,999 feet or less, and for those projects which are 2,000 feet and longer, additional coordinates at each 1,000 foot interval; and

16. In accordance with N.J.A.C. 7:7A-14.1, obtain a secured bond or other financial surety acceptable to the Department including an irrevocable letter of credit or money in escrow, that shall be sufficient to hire an independent contractor to complete and maintain the proposed mitigation should the permittee default. The financial surety for the construction of the mitigation project shall be posted in an amount equal to 115 percent of the estimated cost of construction. In addition, the financial surety to assure success of the mitigation shall be posted in an amount equal to 30 percent of the estimated cost of construction. The financial surety will be reviewed annually and shall be adjusted to reflect current economic factors.

SUBCHAPTER 3C. ASSESSING IMPACTS TO ENDANGERED AND THREATENED WILDLIFE SPECIES IN ENVIRONMENTAL IMPACT ASSESSMENTS

7:7E-3C.1 Performance standards

(a) Performance standards for habitat assessments are as follows:

1. Assessments of endangered or threatened wildlife should begin by contacting the New Jersey Natural Heritage Program to obtain information on the known occurrences of endangered and threatened species on and within the vicinity of the site. This is known as the "Master" species list.

2. An evaluation of habitat including examination of vegetation cover, soils, hydrology and existing land use shall be made for the site and surrounding areas. The site's vegetative analysis shall include an on-site investigation and evaluation. The surrounding areas investigation shall consist of air photos or appropriate cover maps.

3. Based on the assessment of habitat and general habitat associations of species on the "Master" list, a list of endangered, threatened, or other rare species that may be present on the site shall be developed. This is known as the potential species list. The applicant shall be able to justify excluding any species from the master list in developing the list of potential species.

4. A survey shall be performed for all species on the list of potential species unless detailed evaluation of habitat and comparison with individual species habitat requirements suggests that no suitable habitat exists on, or immediately adjacent to, the subject property. The "survey" list is therefore comprised of all species on the potential list except those for which the consultant presents convincing evidence that suitable habitat does not exist. Most of the species on the survey list will be species that could occur based on the presence of suitable habitat and/or known occurrences within the site's vicinity. No survey need be performed for species confirmed to occur on the site according to the Natural Heritage Database. In such a case, the National Heritage Database provides positive evidence to support a finding of potential negative impacts to endangered or threatened species habitats. Field studies should focus on documenting the location and extent of habitats for the confirmed species.

5. Surveys for all species on the survey list should be performed using scientific methodology appropriate for each species or species group. When surveys confirm the occurrence of any endangered or threatened species, additional habitat assessment should be performed to determine the location and extent of habitat for the confirmed species.

7:7E-3C.2 Reporting standards

(a) Reporting standards for habitat assessments are as follows:

1. The environmental impact assessment shall provide proof of correspondence with the Natural Heritage Program including copies of all correspondence with the Natural Heritage Program and, if applicable, the DEPE's Endangered and Nongame Species Programs.

2. The environmental impact assessment shall provide a description of the habitat on site and a description of the surrounding habitat.

3. The environmental impact assessment shall provide the list of potential species as described in N.J.A.C. 7:7E-3C.1(a)3. It shall provide justification for excluding any species mentioned by the New Jersey Natural Heritage Program as occurring on site or in the vicinity of the subject property. For example, the Natural Heritage Program list of species occurring in the areas may include the bog turtle. If the subject property is comprised entirely of uplands, justification for excluding the Bog Turtle from the list of potential species would be based on the lack of a suitable habitat.

4. A description of the habitat requirements for each species on the potential list shall be provided, including appropriate literature citations.

5. The environmental impact assessment shall provide the survey list of species as described in N.J.A.C. 7:7E-3C.1(a)4. The environmental impact assessment shall also provide detailed justifica-

tion for excluding any species from the survey list that appears on the potential list. This justification shall consist of detailed assessment of habitat conditions on and within the vicinity of the project site in comparison with known habitat requirements of the particular species. Habitat requirements of that particular species should be obtained from review of the appropriate scientific literature and/or from the Natural Heritage Program, Endangered and Nongame Species Program, or (for wetlands species) from the DEPE Land Use Regulation Program. Literature citations shall be provided.

6. The environmental impact assessment shall provide a description of the methodology used to survey for each species on the survey list. The methodology followed should be based on established acceptable techniques for the particular species and should provide the following information: best time of year to survey, best time of day, minimal time required, minimal number of sampling points, plot transacts, etc., and the minimum number of replications. The assessment should also provide literature citations for the techniques used. The assessment shall describe how the particular methodology was applied to this survey, giving the following information: surveyors names, dates and times surveys performed, number of samples, number of replications. This information shall be provided for each species surveyed or indicate when one survey covered more than one species.

7. The assessment shall provide the names and qualifications of all investigators performing habitat and/or species surveys.

8. The findings of all species surveys shall be provided whether negative or positive.

9. The assessment of potential impacts shall reflect reasonable ecological principles. That is, if any rare or endangered species or potential habitats are found to be present on or immediately adjacent to the site, the environmental impact assessment shall describe the likely affects of the proposed development on the local populations of the particular species. This evaluation should be based on habitat requirements and life history of each species, and the way in which the proposed development may alter habitat, including: vegetation, soils, hydrology, affects on competitor, parasite, or predator species, human disturbance, etc. For example, a golf course will introduce pesticides and fertilizers into the groundwater, affecting the physical and biological characteristics of nearby streams and ponds that may serve as breeding sites for rare amphibians. The report should present detailed information, including maps, showing the location of all confirmed endangered and threatened species occurrences. The report should also include a description or maps illustrating the location and extent of suitable habitat for all species for which suitable habitat is confirmed to occur on the project site.

SUBCHAPTER 4. GENERAL WATER AREAS

7:7E-4.1 Definition

(a) General **Water** Areas are first divided into water and land by the same definitions used for Special Areas, N.J.A.C. 7:7E-3.1. Water and [Land] **land** are further subdivided into General Area types. The water's edge has no General Area types since all water's edge areas are one or more Special Area types.

(b) This subchapter defines General Water types, assigns General **Water** Area [policies] **rules** to each and summarizes the rationale and intent of the [policies] **rules**.

1. In many cases an area already identified as a Special Area will also fall within the definition of a General Area. In these cases, both General and Special Area [policies] **rules** will apply. In case of conflict between General and Special Area [policies] **rules**, the more specific Special Area [Policy] **rules** shall apply.

2. ["]General Water Areas["] are areas which lie below either the [mean] **Spring** high water line or the normal water level of non-tidal waters. Except at a time of drought or extreme low tide, these areas are permanently inundated.

3. General Water Areas are divided by volume and flushing rate into **eight categories as defined below:**

[i. Oceans;
ii. Open Bays;
iii. Semi-enclosed and back bays;
iv. Tidal guts;
v. Large river;
vi. Medium rivers, creeks and streams;
vii. and Lakes, ponds and reservoirs;
viii. Some of these types are further divided for policy purposes into different depths.]

i. "Lakes, ponds and reservoirs" includes relatively small water bodies with no tidal influence or salinity. Many are groundwater fed, while others serve as surface aquifer recharge areas. Lakes that are the result of former mining operations are not included in this definition, but are defined at N.J.A.C. 7:7E-3.14, Wet Borrow Pits.

ii. "Large rivers" means waterways with watersheds greater than 1,000 square miles. Large Rivers are limited to the Delaware, Hudson and Raritan Rivers.

(1) The Delaware River is a tidal river from the Bridge Street Bridge in Trenton to its mouth at Delaware Bay, defined as a line between Alder Cover, Lower Alloways Creek Township and the Delaware River Basin Commission-River and Bay Memorial at Liston Point Delaware.

(2) The Hudson River is a tidal river from the New York State Line to its mouth at Upper New York Bay at the Morris Canal, Jersey City.

(3) The Raritan River is a tidal river from a point approximately 1.1 miles upstream from the Landing Lane Bridge between Piscataway and Franklin Townships to its mouth at Raritan Bay and the Arthur Kill.

iii. "Man-made harbors" means semi-enclosed or protected water areas which have been developed for boat mooring or docking.

iv. "Medium rivers, creeks and streams" means rivers, streams and creeks with a watershed of less than 1,000 square miles. This definition includes waterways such as the Hackensack, Passaic, Oldmans, Big Timber, Pennsauken, Navesink, Manasquan, Toms, Wading, Mullica, Great Egg, Maurice, Cohansey, Salem, and Rancocas (see Appendix, Figures 13c-e, incorporated herein by reference).

v. "Ocean" includes the area of the Atlantic Ocean from the marine boundary with the State of New York in the Raritan Bay and Sandy Hook Bay south to the marine boundary with the State of Delaware in Delaware Bay, near Cape May Point (see Appendix, Figure 13c).

vi. "Open bay" means a large, semi-confined estuary with a wide unrestricted inlet to the ocean and with a major river mouth discharging directly into its upper portion. Open bays are limited to the Delaware Bay, Raritan Bay, Sandy Hook Bay and Upper New York Bay (see Appendix, Figure 13b, incorporated herein by reference).

vii. "Semi-enclosed and back bay" means a partially confined estuary with direct inlet connection and some inflow of freshwater. Semi-enclosed bays differ from black bays in depth, degree of restriction of inlet and level of freshwater flow.

viii. "Tidal guts" means the waterway connection between two estuarine bodies of water. Also known as thorofares, tidal guts control the mix of salt and freshwater. Examples include the Arthur Kill and Kill Van Kull (see Appendix, Figures 13a-e, incorporated herein by reference).

[7:7E-4.2 Water Area Policy Summary Table

The Water Area Policy Summary Table (Figure 21) indicates the location Policy for the introduction of various uses in each of the General Water Areas. This table is included for quick reference. For further details on conditions for acceptability of uses, see N.J.A.C. 7:7E-4.11.]

[WATER AREA POLICY SUMMARY TABLE FIGURE (21)

Note: Depths are mean depth of water

Use	Water Area Type	Ocean 18'+,0-18'		Open Bay 18'+,6-18',0-6'			Semi-Enclosed and Back Bay 6'+,0-6'		Tidal Guts	Large Rivers	Medium Rivers, Creeks & Streams	Lakes Ponds and Reservoirs	Man-Made Harbors
Aquaculture		E	E	E	E	E	E	E	E	E	E	E	E
Boat Ramps		/	C	/	C	C	C	C	C	C	C	C	C
Docks (cargo)		C	C	C	C	C	C	C	C	C	C	/	C
Docks (recreation)		C	C	C	C	C	C	C	C	C	C	C	C
Dredging (maintenance)		C	C	C	C	C	C	C	C	C	C	C	C
Dredging (new)		C	C	C	C	D	C	D	D	C	C	C	D
Dredge Material Disposal		C	C	C	C	D	C	D	C	C	P	P	P
Dumping		P	P	P	P	P	P	P	P	P	P	P	P
Filling		D	D	P	D	D	D	D	D	D	D	P	D
Piling		D	C	D	C	C	C	C	C	C	C	D	C
Mooring		C	C	C	C	C	C	C	C	C	C	C	C
Sand, Gravel Extraction		C	D	D	D	D	D	D	P	C	C	P	P
Bridges		/	/	D	D	D	D	D	C	C	C	P	P
Submerged Infrastructure		C	C	C	C	C	C	C	C	C	C	C	C
Overhead Lines		/	/	P	P	P	P	P	C	D	C	P	C
Dams and Impoundments		/	/	/	/	/	P	D	P	P	D	/	/
Outfalls and Intakes		C	C	C	C	C	C	C	C	C	C	C	C
Realignment		/	/	D	D	D	D	D	D	D	D	D	D
Miscellaneous		C	C	C	C	C	C	C	C	C	C	C	C

P = Prohibited
C = Conditionally Acceptable
D = Discouraged
/ = Impractical
E = Encouraged
(See appropriate policy)]

[7:7E-4.3 Ocean

(a) The "ocean" basin has two depth levels (0'-18'+) and includes all areas of the Atlantic Ocean out to the limit of New Jersey's territorial sea, three nautical miles from the shoreline. The ocean extends from the marine boundary with the State of New York in Raritan Bay and Sandy Hook Bay south to the marine boundary with the State of Delaware in Delaware Bay, near Cape May Point (see Figure 22).

(b) Policy: See Policy Summary Table, N.J.A.C. 7:7E-4.2.

(c) Rationale: The largest water body found within the coastal zone is the Atlantic Ocean. The vast volume of water together with strong wind induced mixing, surface and subsurface currents, and tidal pulse make the ocean the water body most able to assimilate human induced stresses. The assimilative capacity of the ocean is not unlimited nor are all the benthic and pelagic and surface organisms equally resilient to stresses. The high energy marine system simultaneously provides opportunity for various uses such as recreation and navigation and imposes several constraints to human structures.

Marine waters are divided into two depth categories: the shallower portion is most commonly thought of as the surf zone, which is of national recreational value. Uses which would impact the recreational values are consequently discouraged from this location. Uses located within deeper portions have less potential to adversely impact coastal resources or induce impacts such as ocean shoreline instability.]

[7:7E-4.4 Open Bay

(a) The "open bay" basin type has three depth levels (0'-6', 6'-18', and 18+) and is defined as a large, somewhat confined estuary with a wide unrestricted inlet to the ocean and with a major river mouth discharging directly into its upper portion. Delaware Bay, Raritan Bay, Sandy Hook Bay, and Upper New York Bay are the only representatives of this water body type in New Jersey.

(b) Policy: See Policy Summary Table, N.J.A.C. 7:7E-4.2.

(c) Rationale: Open bays are the largest estuarine systems within the New Jersey coastal zone. All estuaries provide critical nursery habitat for marine finfish and shellfish and provide organic nutrients for marine/estuarine food webs.

Open bays have traditionally been used as commercial shipping entrances to the New Jersey/New York harbors and New Jersey/Pennsylvania/Delaware harbors, and have consequently suffered from extensive human perturbations, with the northern area being more severely disturbed.

Open bays have large rivers discharging into their upper portions. Although a less vigorous environment than the coastal sea, surface wave action can be high during strong wind conditions. Open bays are extensively used for commerce and recreation, although recreation commercial fin and shellfish has been constrained by sewage pollution. These water bodies are subdivided into three categories based solely on water depth. The criteria of depth was used as this factor is closely related to dilution potential.]

[7:7E-4.5 Semi-enclosed and back bay

(a) The "semi-enclosed bay" or "back bay" basin type is a partially confined estuary with direct inlet connection and some inflow of freshwater. Semi-enclosed bays differ from back bays in depth, degree of restriction of inlet and level of freshwater inflow, but the initial location policy is identical for the two water body types. Great Bay and Great Egg Harbor are examples of semi-enclosed bays, Barnegat Bay, Little Egg Harbor, the Shark River estuary and other bays in Atlantic and Cape May Counties are back bays. This combined water body type has two depth levels (0-6', and 6'+).

(b) Policy: See Policy Summary Table, N.J.A.C. 7:7E-4.2.

(c) Rationale: Semi-enclosed water bodies are the estuaries behind barrier beach islands with restricted, indirect, or shallow inlets to the open ocean. This category includes all non-riverine estuarine water bodies including embayments and back bays.

These areas are more sensitive to human disturbance, because of the very limited to moderate freshater inflow, slower tidal flushing, and smaller water body volume.

The semi-enclosed estuaries are critical to the protection and perpetuation of the coastal ecosystem. Their physically protected geography allows more sensitive or fragile organisms to survive than in the more vigorous ocean and open bays. The vast majority of important marine finfish, shellfish and aquatic birds utilize these areas as critical nursery habitats. The contiguous coastal wetlands perform the essential role of photosynthesis, resulting in natural organic material export into the coastal sea through the action of tidal and storm induced flushing.

These estuarine water bodies are subdivided into three categories based solely upon the criteria of relative water depth. Deeper water portions are the areas most intensively used by man for water surface activities such as navigation. Deeper water areas have a greater Physical ability to dilute pollutants and biologically detoxify toxic agents. This assimilative capacity is not limited however. Shallow water area generally have less potential dilution and flushing.]

[7:7E-4.6 Tidal guts

(a) The "tidal gut" channel type includes tidal waterway connections between two estuarine bodies of water. Also known as thorofares, tidal guts have no significant freshwater drainage, are tidally influenced and vary in flow rates and natural water depths. Examples range from Arthur Kill and Kill Van Kull in the developed coast, to Clam Thorofare, Beach Thorofare and Wading Thorofare in the Shore region.

(b) Policy: See Policy Summary Table, N.J.A.C. 7:7E-4.2.

(c) Rationale: Tidal Guts are critical areas for estuarine ecology, controlling the mix of salt and freshwater nutrient transport, and movement corridors for aquatic organisms. Guts serve as important access ways for human navigation, physical water circulation and tidal flushing of estuaries.]

[7:7E-4.7 Large rivers

(a) The "large river" channel type includes flowing waterways with watersheds greater than 1,000 square miles, which means the Delaware, Hudson, and Raritan Rivers.

1. The Delaware River is a tidal river from the Bridge Street Bridge in Trenton to its mouth at Delaware Bay, defined as a line between Alder Cover, Lower Alloways Creek Township and the Delaware River Basin Commission River and Bay Memorial at Liston Point, Delaware.

2. The Hudson River is a tidal river from the New York State Line to its mouth at Upper New York Bay at the Morris Canal, Jersey City.

3. The Raritan River is a tidal river from a point approximately 1.1 miles upstream from the Landing Lane Bridge between Piscataway and Franklin townships to its mouth at Raritan Bay and the Arthur Kill.

(b) Policy: See Policy Summary Table, N.J.A.C. 7:7E-4.2.

(c) Rationale: Large rivers are the principal freshwater input to the Open Bays and the critical estuarine functions performed by these bays depends, in large part, on maintenance or improvement of water quality and flow patterns in tidal rivers. These water bodies have a long history of intensive human use, especially in commerce. These economic interests must be accommodated. Large rivers are all drained by watersheld in excess of 1,000 square miles, and are tidally influenced with the Bay and Ocean Shore Segment. These factors allow for flushing of pollutants, although extensive portion of each are presently over-stressed with sewage and industrial wastes.]

[7:7E-4.8 Medium rivers, streams and creeks

(a) "Medium rivers", "streams", and "creeks: This channel type includes rivers, streams and creeks with a watersheld area of less than 1,000 square miles. This includes watercourses such as the Hackensack, Passaic, Oldmans, Big Timber, Pennsauken, Navesink, Manasquan, Toms, Wading, Mullica, Great Egg, Maurice, Cohansey, Salem and Rancocas and smaller streams.

(b) Policy: See Policy Summary Table, N.J.A.C. 7:7E-4.2.

(c) Rationale: Medium rivers have moderate to small discharge rates. Many are tidally influenced and most are relatively shallow, and of smaller volume than large rivers. These factors combine to render these features more susceptible to degradation through human activities.]

[7:7E-4.9 Lakes, Ponds and Reservoirs

(a) "Lakes", "ponds", and "reservoirs": This category includes lakes, ponds, and reservoirs, virtually all which in the unglaciated coastal plain of southern New Jersey are manmade (impoundments). These types are relatively small water bodies with no tidal influence or salinity. Many are groundwater fed, while others are known to serve as surface aquifer recharge areas.

i. This General Water Area type includes enclosed freshwater basins, both shallow and deep, with little or insignificant flow. Due to the limited extent of this water type, no depth subdivisions are made.

2. Lakes that are the result of former mining operations are not included here, but are defined separately as "wet borrow pits".

(b) Policy: See Policy Summary Table, N.J.A.C. 7:7E-4.2. In addition, all activities shall comply with he Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

(c) Rationale: Lakes, ponds, and reservoirs have a severely limited ability to flush pollutants owing to limited freshwater inflow and lack of tidal inundation. Pollutants which enter these areas can precipitate to the bottom, remaining a continuing source of contamination. Certain lakes, ponds and reservoirs also serve as potable surface water sources.]

[7:7E-4.10 Man-made harbor

(a) Man-made harbors are semi-enclosed or protected water areas which have been developed for boat mooring or dockage. This general water area type includes Marinas (N.J.A.C. 7:7E-3.10), Ports (N..A.C. 7:7E-3.11), semi-enclosed water bodies created by man-made jetties or similar structures, fishing ports and harbors, and lagoons (see N.J.A.C. 7:7E-3.17 and Figures 13c-3).

(b) Policy: See Policy Summary Table, N.J.A.C. 7:7E-4.2.

(c) Rationale: Man-made Harbors were created or modified for the purposes of facilitating navigation, for commercial or recreational purposes.

They are previously disturbed water features, often with dredged bottoms and bulkheaded shorelines. They are essential to the coastal economy and to meeting recreational needs, and should be maintained for commercial or recreational boating use.]

7:7E-[4.11]**4.2** Acceptability Conditions for Uses

(a) Numerous developments or activities seek locations in New Jersey's coastal waters. Some uses involve locations both above and below the mean high water line, in both Water and Water's Edge areas. This section defines the important uses of water areas managed by the Coastal Management Program and the conditions under which those uses are acceptable. Some projects involve combinations of uses, such as retaining structures, dredging, and filling. Other uses, such as Shore Protection uses, are defined elsewhere under Use [Policies] **rules**.

(b) Standards relevant to aquaculture are as follows:

1. ["]Aquaculture["] is the use of permanently inundated water **areas**, whether saline or fresh, for the purpose of growing and harvesting plants or animals in a way to promote more rapid growth, reduce predation, and increase harvest rate. Oyster farming in Delaware Bay is a form of aquaculture.

2.-3. (No change.)

(c) Standards relevant to boat ramps are as follows:

1. ["]Boat ramps["] are inclined planes, extending from the land into a water body for the purpose of launching a boat into the water until the water depth is sufficient to allow the boat to float. Boat ramps are most frequently paved with asphalt or concrete, or covered with metal grates.

2. The acceptability conditions for boat ramps are as follows:

i. [Where boat] **Boat** ramps are conditionally acceptable[,] **provided** they [must] meet the following conditions:

(1) [there] **There** is a demonstrated need that cannot be met by existing facilities;[and]

(2) [they] **They** cause minimal practicable disturbance to intertidal flats or subaqueous vegetation;

(3) Boat ramps shall be constructed of environmentally acceptable material, such as concrete or oyster shells;

(4) Garbage cans shall be provided near the boat ramp.

ii. Public use ramps shall have priority over restricted use and private ramps.

[ii. In all water areas, Boat ramps shall be constructed of environmentally acceptable material, such as concrete or oyster shells, and garbage cans shall be provided near the boat ramp. Public use ramps shall have priority over restricted use and private use ramps.]

3. (No change.)

(d) **Standards relevant to** docks and piers (for Cargo [movement] and commercial fisheries) are as follows:

1.-3. (No change.)

(e) Standards relevant to docks and piers (recreational) are as follows:

1. ["]Recreational and fishing docks and piers["] are structures supported on pilings driven into the bottom substrate, or floating on the water surface, which are used for recreation or fishing or for the mooring of boats used for recreation or fishing, except for commercial fishing**, and house boats.**

2. Recreational docks and piers, including mooring piles, are conditionally acceptable in General Water Areas provided that:

i.-v. (No change.)

vi. The width of the structure shall not exceed twice the clearance between the structure and the surface of the ground below or the water surface at mean high tide [whichever is closest to the structure,] (measured from the bottom of the stringers), except for floating docks. Under typical circumstances the maximum width of the structure shall be eight feet over water and six feet over marsh, wetlands and mudflats. The height of the structure over wetlands shall be a minimum of four feet regardless of width;

(1) A minimum of eight feet of open water shall be provided between any docks if the combined width of the docks over the water exceeds eight feet.

(2) Construction and placement of the dock shall be a minimum of four feet from all property lines, for docks which are perpendicular to the adjacent bulkhead or shoreline.

vii. In lagoons the structure extends no more than 20 percent of the width of the lagoon from bank to bank; and

viii. [Breakwater attached to the structures shall be at least 18 inches above the bottom of the waterway and shall provide a minimum of three inches spacing between planks.] **The proposed structure does not hinder navigation or access to adjacent water areas.**

[3. Docks and piers on pilings or cantilevered or floating docks and piers shall be preferred to construction on fill. Repairs and maintenance of existing docks and piers are generally acceptable.]

3. The construction of recreational docks and piers within areas designated by the Department as shellfish habitat must comply with the standards specified under the Shellfish Habitat rule (N.J.A.C. 7:7E-3.2).

4. The construction of recreational docks within submerged vegetation areas must comply the standards specified under the Submerged Vegetation rule (N.J.A.C. 7:7E-3.6).

5. Jet ski ramps are inclined floating docks which are typically attached to existing docks for the purpose of docking jet skis. Jet ski ramps shall not exceed eight feet in width.

6. For sites which have existing dock structures exceeding eight feet in width over water areas and/or wetlands, which were constructed prior to September 1978 and for which the applicant proposes to increase the coverage over the water area or wetland by increasing the number or size of boat slips, docks or piers, the existing oversized structures must be reduced to a maximum of eight feet in width. All structures proposed as part of an expansion must comply with all of the applicable Rules on Coastal Zone Management (N.J.A.C. 7:7E.).

[4.]**7.** Rationale: Docks and piers constructed through filling would permanently destroy most ecological value of the area filled and are consequently discouraged. Docks and piers with the maximum spacing between horizontal planking and of the minimum practicable width will allow sunlight penetration into the water and onto the bottom, thus allowing continued photosynthesis by plants underneath the structure. Also, spaced planking helps protect loosening of boards during high water levels and wave slap from underneath.

Docks and piers built on pilings will undergo ice heaving, frequently leading to structural damage, during thick ice conditions in areas with significant tidal action. Normal length pilings need to be resunk annually due to ice raising unless some type of water circulation system is installed or ice is broken up daily. Floating docks need to be removed before winter and bottom floatation needs to be serviced annually. Cantilevered docks at a height above winter ice and tidal action levels do not have these problems but have limits in load bearing capacity and must be fastened to a bulkhead.

Jet skis have been gaining popularity among New Jersey's boating public. Jet ski ramps which can accommodate the "dry" docking of these vehicles can be designed to satisfy the needs of the public while minimizing adverse impacts to the environment.

(f) Standards relevant to maintenance dredging are as follows:

1. ["]Maintenance Dredging["] is the removal of accumulated sediment from previously authorized **and legally dredged** navigation and access channels marinas, lagoons, canals or boat moorings for the purpose of maintaining an authorized water depth and width for safe navigation. **In order to be considered maintenance dredging, the proposed dredge area must be limited to the same depth, length and width of the previous dredging operation.** Dredging beyond those authorized dimensions is "new Dredging" (see [N.J.A.C. 7:7E-4.11](g) above).

2. Maintenance dredging is conditionally acceptable to the authorized depth, length and width within all General Water Areas to ensure that adequate water depth is available for safe navigation, provided that:

i. An acceptable [spoil] **material** disposal site with sufficient capacity exists (see [N.J.A.C. 7:7E-4.11] (g) **below** and **N.J.A.C.** 7:7E-7.12 for **rules** on dredged material disposal).

ii. [A pre-dredging] **Pre-dredging** chemical and physical analysis of the dredge**d** [spoil] **material and/or its elutriate** may be required [for upland disposal at sites] where the Department suspects contamination of sediments. [For ocean disposal of dredge spoils from sites suspected of being contaminated, additional] **Additional** testing, such as bioaccumulation test**ing,** and bioassay of sediments, may also be required. The results of these tests will be used to determine if [hazardous substances] **contaminants** may be resuspended at the dredging site and what methods may be needed to control their escape. The results will also be used to determine acceptability of [a dredged material] **the proposed** disposal [site] **method**.

iii. Turbidity concentrations ([i.e.] **that is,** suspended sediments) and other water quality parameters at, downstream, and upstream of the dredging site, and slurry water overflows shall meet applicable State Surface Water Quality Standards in N.J.A.C. 7:9-4. [and the Department] **NJDEPE** may require the permittee to conduct biological, physical and chemical water quality monitoring before, during and after dredging and disposal operations to ensure that water quality standards will not be exceeded.

iv. If predicted water quality parameters are likely to exceed State Surface Water Quality Standards, or if pre- dredging chemical analysis of [sediments] **dredged material or elutriate** reveals significant contamination, [then analysis of sediments reveals significant contamination], then the Department will work cooperatively with the applicant to fashion acceptable control measures [or, in the alternative, may] **and will** impose seasonal restrictions under the specific circumstances identified below.

v. For maintenance dredging using mechanical dredges such as clamshell bucket, dragline, grab, orange peel, **or** ladders, [dipper or

scouring, the feasibility of] deploying silt curtains at the dredging site [shall be examined,] **may be required, if feasible based on site conditions.** In sites [with water currents above one knot,] **at which the use of silt curtains is infeasible,** dredging using closed watertight buckets or lateral digging buckets will be examined. [The Department] **NJDEPE** may decide not to allow mechanical dredging [or scouring] of highly contaminated sites even if turbidity control measures were planned.

vi. [If] **In the waterways characterized below, if** the applicant for mechanical maintenance dredging cannot meet the acceptability conditions in (f)i through v above, then the Department will authorize dredging on a seasonally restricted basis only, in waterways characterized by the following:

(1) Known spawning or nursery areas of Endangered shortnose sturgeon (N.J.A.C. 7:7E-[3.37]**3.38**);

(2) (No change.)

(3) Waterbodies downstream of known anadromous fish spawning sites, as in N.J.A.C. 7:7E-[3.5]**3.9**, where the predicated turbidity plume will encompass the entire cross-sectional area of the water body, thus forming a potential blockage to upstream migration;

(4)-(6) (No change.)

vii. For hydraulic dredges, if the applicant cannot meet the above acceptability conditions in (f)i through v above, specific operational procedures, such as removal of cutter head, flushing of pipeline sections prior to disconnection, limitations on depth of successive cuts, etc. shall be examined. Seasonal dredging restrictions may be imposed in the following areas to prevent entrainment and mortality of aquatic organisms:

(1) Known female blue crab winter hibernation areas;

(2) Known spawning, nursery, or wintering areas of the endangered shortnose sturgeon as in N.J.A.C. 7:7E-[3.37]**3.38 and/or winter flounder**; or

(3) Known wintering areas of adult Atlantic or shortnose sturgeon, striped bass **and**/or white perch.

3. To mitigate adverse impacts upon Shellfish [Beds] **Habitat** (N.J.A.C. 7:7E-3.2) or [endangered] **Endangered** and Threatened Wildlife or Vegetation Species Habitat (N.J.A.C. 7:7E-[3.37]**3.38**), Finfish Migratory Pathways (N.J.A.C. 7:7E-[3.9]**3.5**), Marine Fish and Fisheries (N.J.A.C. 7:7E-8.2) and wintering area for finfish or blue crabs, and to prevent reduction of ambient dissolved oxygen below critical levels, or the increase of turbidity or the resuspension of toxic substances above critical levels, seasonal limitations may be imposed on maintenance dredging as specifically described in this subsection.

4. Rationale: Maintenance dredging is necessary to provide access to marinas, docks, ports, and other appropriate water dependent development, but it must be carried out in such a way that Special Areas and other identified environmentally sensitive areas are not unnecessarily disturbed.

Potential water column impacts vary with each type of dredging method employed i.e., mechanical or hydraulic. Mechanical methods have been documented to release more suspended sediments at the dredging site than hydraulic methods. Hydraulic dredging causes greater mixing of sediments with water which is an important consideration when dredging contaminated sites, since slurry water is usually released into the water body.

Previously dredged areas typically accumulate black muds high in clay and silt, detritus and other organics and if sources are present, toxic heavy metals, petroleum and other chlorinated hydrocarbons. The majority of potentially toxic contaminants are closely bound to fine grain sediment particles and may not therefore be available for uptake by aquatic organisms. This is why bioaccumulation testing is necessary. Fine grain sediments have a greater potential to create turbidity than do heavier sand sediments.

Presently available equipment and operational practices can contain or reduce off site movement of suspended particles. Efficiency and applicability of control equipment depends on hydrologic conditions at the site.

The information available on aquatic species responses and/or mortality due to dredge-induced water quality changes is incomplete. It is known however that egg and larval forms of aquatic biota are more sensitive than adult stages. American oyster eggs and larvae are known to be sensitive to turbidity levels and durations that typically occur at mechanical dredging sites. Turbidity is known to block upstream migration of striped bass. Turbidity may, therefore, block other anadromous species during spring upstream migration.

Little information exists on the resuspension of fecal bacteria in contaminated sediments. The potential exists that dredging turbidity plume could carry fecal bacteria into harvestable shellfish beds or human bathing beaches. This may result in unacceptable human health hazards.

Aquatic finfish and blue crabs which winter in New Jersey's estuarine and tidal waters are lethargic at cold water temperatures. Large scale mechanical or hydraulic dredging could entrain and kill significant numbers, since they would not be able to evacuate a dredging area.

(g) [The standards] **Standards** relevant to new dredging are as follows:

1. (No change.)

2. Acceptability conditions [relevant to] **for** new dredging area as follows:

i. New dredging is conditionally acceptable in all General Water Areas for boat moorings, navigation channels or anchorages (docks) provided that:

(1)-(5) (No change.)

(6) Dredging will be accomplished consistent with all conditions described under [Dredging-Maintenance (e)1] **the maintenance dredging provisions, (f)2(i) through vii above**, as appropriate to the dredging method;

(7)-(8) (No change.)

[(9) The dredged area is reduced to the minimum practical; and]

[(10)]**(9)** The maximum depth of the newly dredged area will not exceed that of the connecting access or navigation channel necessary for vessel passage to bay or ocean; **and**

(10) Dredging will have no adverse impacts on groundwater resources.

ii. To mitigate adverse impacts [Upon] **upon** Shellfish [beds] **Habitat** (N.J.A.C. 7:7E-3.2), Endangered or Threatened Wildlife or Vegetation Species Habitat (N.J.A.C. 7:7E-[3.36]**3.38**), Finfish Migratory Pathways (N.J.A.C. 7:7E-3.5), Marine Fish and Fisheries (N.J.A.C. 7:7E-8.2), spawning or wintering areas for finfish, or female blue crab wintering areas, and to prevent reduction of ambient dissolved oxygen below critical levels, or the increase of turbidity or the resuspension of toxic substances above critical levels, seasonal and/or dimensional limitations may be imposed on new dredging.

iii.-v. (No change.)

(h) [The standards] **Standards** relevant to dredged material disposal are as follows:

1. ["]Dredged material disposal["] is the discharge of sediments [(spoils)] removed during dredging operations.

2. Acceptability conditions relevant to dredged material disposal are as follows:

i. Dredged material disposal is prohibited in tidal guts, man-[modified] **made** harbors, and medium rivers, creeks and streams.

ii. Dredged material disposal is discouraged in open bays, [and] semi-enclosed and backbays where the water depth is less than six feet.

iii. Disposal of dredged materials in the ocean and bays deeper than six feet is conditionally acceptable provided that it is in conformance with the USEPA **and US Army Corps of Engineers** Guidelines [(40 CFR 230, 45 FR 85344, December 24, 1980)] **parts 220-228 and 33 CFR, Parts 320-330 and 335-338)** established under Section 404(b) of the Clean Water Act.

iv. EPA Guidelines require that consideration be given to the need for the proposed activity, the availability of alternate sites and methods of disposal that are less damaging to the environment, and applicable water quality standards. They also require that the choice of **the** site minimize harm to municipal water supply intakes, shellfish, fisheries, wildlife, recreation, threatened and endangered species, benthic life, wetlands and submerged vegetation, and that it be confined to the smallest practicable area.

v. (No change.)

vi. Overboard disposal of sediments less than [75] **90** percent sand shall be acceptable in unconfined disposal sites when shallow waters preclude removal to an upland or confined site provided that: [Shellfish Beds] **Shellfish Habitats** (as defined in N.J.A.C. 7:7E-3.2) are not within 1,000 meters; disposal will not smother or cause condemnation **or contamination** of harvestable shellfish resources (as in N.J.A.C. 7:7E-3.2); and sediment characteristics of the [spoil] **dredged material** and disposal site are similar. If unconfined aquatic disposal can not meet these conditions, then [the Department] **NJDEPE** shall impose a seasonal restriction appropriate to the resource of concern.

vii. Uncontaminated dredged sediments with 75 percent sand or greater are generally encouraged for beach nourishment [on ocean or open bay shores].

[viii. The use of uncontaminated dredge material to create new wetlands or islands in any General Water Area is conditionally acceptable depending upon an evaluation of the biological value of the wetlands gained compared with the value of the water area lost.]

[ix.]**viii.** Dredged material disposal in lakes, ponds and reservoirs is prohibited.

[x.]**ix.** Conditions for dredged [spoils] **material** disposal on land are indicated in N.J.A.C. 7:7E-7.12.

3. Rationale: Dredged material disposal can have significant adverse effects, such as introduction of heavy metals, burial of benthic flora and fauna and increased turbidity. Therefore, dredged material disposal is prohibited or discouraged in smaller water bodies which have lesser assimilative capacities and is conditionally acceptable in larger water bodies if in conformance with the USEPA Guidelines. Unconfined overboard (or open water) disposal, particularly of hydraulically dredged fine grain sediments, frequently forms a "fluid mud" layer along the water body bottom. Fluid muds have been documented to cause acute mortality of aquatic benthic organisms due to low oxygen levels and slow rate of consolidation. Movement of fluid muds away from an unconfined [spoil] **dredged material disposal** site can not be controlled with silt curtains.

(i) [The standards] **Standards** relevant to dumping ([Solid] **solid** waste or sludge) are as follows:

1. The ["]dumping of solid waste or sludge["] is the discharge of solid or semi-solid waste material from industrial or domestic sources or sewage treatment operations into a water area.

2. Acceptability conditions: The dumping of solid or semi-solid waste of any description in any [coastal water] **General Water Area** is prohibited.

3. Rationale: Dumping of solid and semi-solid waste in coastal waters would have significant adverse environmental and aesthetic effects and would be harmful to the coastal recreational economy. The existence of land [and deep ocean disposal] sites makes coastal dumping unnecessary.

(j) [The standards] **Standards** relevant to filling are as follows:

1. ["]Filling["] is the deposition of material (sand, soil, earth, dredged [spoils] **material**, etc.) into water areas for the purpose of raising water bottom elevations to create land areas.

2. Acceptability conditions relevant to filling are as follows:

i. Filling is prohibited in lakes, ponds, reservoirs, and open bay areas at depths greater than 18 feet**, unless the filling is consistent with the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) and Regulations, N.J.A.C. 7:7A.**

ii. In all other natural water areas, filling is discouraged, but limited filling may be considered for acceptability provided that:

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

(4) The minimum [practical] **practicable** area is filled;

(5)-(7) (No change.)

iii. Filling in a man-made lagoon is discouraged unless it complies with the conditions found under [N.J.A.C. 7:7E-4.11(i)2ii] **(j)2ii above** or the following [three] **two** conditions:

[(1) In those areas of man-made lagoons where the Division of Coastal Resources has promulgated a limit of fill line, no fill or associated retaining structures shall be permitted seaward of that line. Compliance with the mitigation policy (N.J.A.C. 7:7E-1.6) shall not be required in such cases.]

[(2)](**1**) In those areas where two existing lawful bulkheads are not more than 75 feet apart and no limit of fill line has been promulgated, the connecting bulkhead may not extend seaward of a straight line connecting the ends of the existing bulkheads. Compliance with the mitigation [policy] **rule** shall not be required in such cases.

[(3)](**2**) Elsewhere, the proposed retaining structure shall not extend seaward of the **spring** high water line.

3. In no event may regulated wetlands be filled except under the conditions of the Wetlands Special Area [Policy] **Rule** (N.J.A.C 7:7E-[3.25]**3.27**).

4. Filling using clean sediment of suitable particle size and composition is acceptable for beach nourishment projects (see the Coastal Engineering Use [Policies] **Rules** N.J.A.C. 7:7E-7.11)[, and conditionally acceptable for the creation of new wetlands].

5. Standards relevant to the removal of unauthorized fill are as follows:

i. For filling which took place prior to September 26, 1980 (the effective date of the [Rules on Coastal Resources and Development Policies] **Rules on Coastal Zone Management**, N.J.A.C. 7:7E), or prior to September 28, 1978 for areas within the coastal area defined at N.J.S.A. 13:19- 4 (CAFRA), removal shall be required only if the fill has resulted in ongoing significant adverse environmental impacts, such as the blocking of an otherwise viable tidal wetland or waterbody, and its removal will alleviate the adverse impacts.

ii. For filling which took place subsequent to September 26, 1980 (or subsequent to September 28, 1978 for areas within the coastal area defined at N.J.S.A. 13:19-4), removal shall be required if it violates the acceptability conditions for filling in water areas set forth [at N.J.S.A. 7:7E-4.11(i)] **in this subsection**.

6. Rationale: Filling is generally discouraged because it results in:

[(i)]**i.** Loss of aquatic habitat including nursery areas for commercially or recreational important species.

[(ii)]**ii.** Loss of estuarine productivity since shallow estuarine water frequently has a higher biological value and is more important than deeper water.

[(iii)]**iii.** Loss of habitat important for certain wading birds and waterfowl.

[(iv)]**iv.** Loss of dissolved oxygen in the water body since the shallows facilitate oxygen transfer from air to water. Pilings and columnar support structures are often suitable for support of docks and quays when a large area is required for loading and unloading ships. The large surface would prevent light from reaching the estuarine bottom, and heavy loads would require dense pilings, thereby destroying aquatic habitat almost as completely as would fill. As surface area and load bearing requirements increase, the use of pilings can become infeasible for engineering reasons, as well as ineffective in achieving environmental objectives.

Lagoons, as a result of limited freshwater inflow, multiple dead-end branches, and deeper bottoms than adjacent bay waters, have poor circulation which causes anoxic (devoid of oxygen) and stagnant bottoms. However, the shallow water edges of lagoons have been shown by NJDEPE [Bureau of Coastal Project Review] (1984) to support a wide variety of finfishes and shrimp. The above [policies] **rules** are intended to conserve this aquatic productivity found along shallow lagoon edges, while allowing use by the property owners.

(k) Standards relevant to mooring are as follows:

1. A boat ["]mooring["] is a temporary or permanently **fixed or** floating anchored facility in a water body for the purpose of attaching a boat.

2. Temporary or permanent boat mooring areas are conditionally acceptable in all General Water Areas provided [that the mooring area is adequately marked and is not a hazard to navigation]**:**

i. There is a demonstrated need that cannot be satisfied by existing facilities;

ii. Adverse environmental impacts are minimized to the maximum extent practicable;

iii. The mooring area is adequately marked and is located so as not to hinder navigation. A hazard to navigation will apply to all potential impediments to navigation, including access to adjacent moorings, water areas, docks and piers.

3. Rationale: [Moorings do not have adverse environmental impacts and are, therefore, permitted provided they are not a hazard to navigation.] **Moorings are conditionally acceptable in all General Water Areas provided impacts to Special Water Areas are minimized and they are not a hazard to navigation.**

(l) Standards relevant to sand and gravel extraction are as follows:

1. ["]Sand and gravel extraction["] is the removal of sand or gravel from the **water** bottom substrate, usually by suction dredge, for the purpose of using the sand or gravel at another location.

2. Sand and gravel extraction is prohibited in lakes, ponds and reservoirs, man-made harbors and tidal guts unless the waterbody was created by the extraction process, in which case the use is conditionally acceptable. This activity is discouraged in all General Water Areas [except the deep ocean and rivers, creeks, and streams]. In these General Water Area types, priority will be given to sand extraction for beach nourishment, and extraction is conditionally acceptable provided that:

i. (No change.)

ii. Turbidity and resuspension of toxic materials is controlled throughout the extraction operation consistent with the Department's Surface Water Quality Standards [standards] (N.J.A.C. 7:9-4);

iii.-vi. (No change.)

3. Rationale: The long-term demand for sand resources is not known, and may exceed the supply. If all envisioned beach projects in the Shore Protection Master Plan were implemented, for example, 24 million cubic yards of sand would be needed. Care must be taken, therefore so the extraction is properly managed and will not adversely affect [Special Areas] **special areas** or water quality.

(m) Standards relevant to bridges are as follows:

1. A ["]bridge["] is any continuous structure spanning a water body, except for an overhead transmission line.

2. Bridges are conditionally acceptable over all water area types provided that:

i. There is a demonstrated need that cannot be satisfied by existing facilities;

ii. Applicable Location and Resource [Policies] Rules are satisfied, with special attention to Location [policies] **Rules** on Secondary Impacts and Linear Development;

iii. Pedestrian and bicycle use is provided for unless it is demonstrated to be inappropriate; and

iv. Fishing catwalks and platforms are provided to the maximum extent practicable. **This shall be taken into consideration during the design phase of all proposed bridge projects.**

3. Rationale: Bridge crossings over bays, rivers, streams and other water areas are often necessary to provide continuity in the transportation system and, in the case of barrier islands, to link otherwise isolated land areas. The need to replace or upgrade bridges to safely maintain a transportation system is well recognized. However, the need for new bridges to accommodate additional traffic must be clearly demonstrated to justify potential adverse environmental effects on shellfish [beds] **habitat**, fish spawning grounds and migratory pathways, destruction of wetlands as well as aesthetic and air quality impacts. Bridges to barrier islands, in particular, must be reviewed [against] **in accordance with** the General Location [Policy] **rule** on Secondary Impacts.

(n) Standards relevant to submerged infrastructure are as follows:

1. ["]Submerged infrastructure["] includes the following:

i. Cables are solid underwater lines such as telecommunication cables or electrical transmissionon lines.

ii. Pipelines are underwater pipes laid, buried,or trenched for the purpose of transmitting liquids or gas. Examples would be crude oil, natural gas, water, petroleum products or sewage pipelines. Construction of an underwater pipeline may involve trenching, temporary trench spoil storage, and [back filling] **backfilling**, or jetting as an alternative to trenching.

2. Submerged infrastructure[s are] **is** conditionally acceptable provided that [they are] **it is** not sited within Special Areas, unless no prudent and feasible alternate route exists. **The use of directional drilling for the installation of submerged infrastructure is encouraged over the use of trenching.**

i. In the case of pipelines, the following conditions shall also be met:

(1)-(2) (No change.)

(3) The conditions outlined for pipelines in the **Energy** Use [policies] **rules** (See N.J.A.C. 7:7E-7.4) are satisified.

ii. Temporary trench spoil storage and backfilling as part of pipeline trenching is acceptable provided that bottom contours are reestablished following trench spoil removal, to the orginial bottom contours, to the maximum extent practicable. [Jetting pipelines into bottom sediments is conditionally acceptable provided that trenching and back-filling are impractical.]

iii. In the case of cable routes, the following [additional] conditions must be met:

(1)-(2) (No change.)

3. Rationale: The installation of submerged infrastructure will disrupt the ecosystem in which it is placed and so is strongly discouraged in Special Areas which are environmentally sensitive. Installing submerged infrastructure in tidal guts is discourgaged because it will unacceptably disturb the sensitive estuarine ecology found there [(See 7:7E-4.6)].

Backfilling trenches is required to minimize damage to pipelines by currents, storm waves, sea clam dredges, anchors and other marine equipment. If a pipeline is not buried deep enough to avoid uncovering by erosion, it will be susceptible to breakage when left uncovered. Pipeline damage or breakage may result in the release of the transport substances into the ocean water with potentially adverse effects to the marine environment. Bottom contours must be reestablished following trenching and backfilling to maintain a stable bottom for the marine life found there.

(o) (No change.)

(p) Standards relevent to dams and impoundments are as follows:

1. ["]Dams and impoundments["] are structures that obstruct natural water flow patterns for the purpose of forming a contained volume of water. Impoundments include dikes with sluice gates and other structures to control the flow of water.

2. [Dams and impoundments are impractical in many water body types, prohibited in other water body types and discouraged in specified water body types (see Figure 21), unless essential for water supply purposes or the creation of special wildlife habitats.] **The construction of dams and impoundments is prohibited in all Water Areas except medium rivers, creeks, and streams, unless:**

i. The structures are essential for water supply purposes or for the creation of special wildlife habitats;

ii. Adverse impacts are minimized; and

iii. The structures will not adversely affect navigation routes.

3. (No change.)

(q) Standards relevant to outfalls and intakes are as follows:

1. ["]Outfalls["] and ["]intakes["] are pipe openings that are located in Water Areas for the purpose of intake of water or discharge of effluent including [sew] **sewage**, stormwater and industrial effluents.

2. utfalls and intakes are conditionally acceptable in most water bodies provided that the use assciated with the intake or outfall meets the [Coastal Resource and Development Policies] **Rules on Coastal Zone Management**. In particular, stormwater discharge pipes shall comply with the **Stormwater** Runoff [Policy] **rule** (N.J.A.C. 7:7E-8.7) and provide appropriate filtration methods. [The Water Areas Policy applies only to the location of the mouth of the pipes, not to the effluent or the amount of diversion.]

3. (No change.)

(r) Standards relevant to realignment of water areas are as follows:

1. ["]Realignment of water areas["] means [changing] the physical alteration or relocation of the [changing the] surface configuration of any water area. **This does not include the rebulkheading of a previously bulkheaded water area or the bulkheading at or above the spring high water line.**

2. Realignment of naturally occurring [, unaltered] water areas is discouraged.

3. Realignment of previously realigned water areas is conditionally acceptable, provided that it can be demonstrated that no adverse

environmental impacts ([i.e.] **that is,** water quality, flood hazard, species diversity reduction/alteration) will result, and no Resource [Policies] **rules** will be contravened by the realignment; and that a net recreational/ecological benefit will demonstrably accrue.

4. (No change.)

(s) Standards relevant to miscellaneous uses are as follows:

1. Miscellaneous includes uses of Water Areas not specifically defined in this section or addressed in the Use [Policies] **rules.**

2. Water dependent uses of Water Areas not identified in the [Water Acceptability Table or addressed] in the Use [Policies] **rules** will be analyzed on a case-by-case basis to ensure that adverse impacts are minimized. Non-water dependent uses are discouraged in all [water areas] **Water Areas.**

(t) Breakwaters (including those constructed of concrete, rubble mound and timber) are structures designed to protect shoreline areas or boat moorings by intercepting waves and reducing the wave energy which would normally impact the adjacent shoreline areas or boat mooring areas. Typically, timber breakwaters are designed and utilized to protect boat moorings, while concrete or rubble mound breakwaters are designed and utilized to protect shoreline areas which are subject to storm waves and associated erosion.

1. Timber breakwaters shall be at least 18 inches above the bottom of the waterway and shall provide a minimum of three inch spacing between planks. The individual plank width shall not exceed six inches.

2. For detached breakwaters which are not fixed directly to a dock or pier structure, marking with photocell lights and/or reflectors is required.

3. The construction of concrete or rubble mound breakwater structures must be consistent with the acceptability conditions for Structural Shore Protection (N.J.JA.C. 7:7E-7.11(e) and Filling (j) above).

4. Rationale: Breakwaters are designed to protect boat moorings and may be suitable as shore protection structures. Breakwaters may be fixed or floating, attached or detached, depending on the water depth, tidal range and wave climate. The design of a breakwater structure must consider location, height, porosity and purpose, in order for the breakwater to function without adversely affecting the movement of sediment and marine organisms or adversely affecting water circulation patterns.

SUBCHAPTER 5. GENERAL LAND AREAS

7:7E-5.1 Definition

[(a)] ["]General [land areas] **Land Areas**["] include all mainland land features located upland of special water's edge areas. These [land area] **Land Area** [policies] **rules** apply in all [general land areas] **General Land Areas**, including those land areas that are also Special Areas, where both the General Land Area and Special Area [Policies] **rules** must be complied with.

[(b) "General Land Areas" begin at the inland limit of soils with a seasonal high water table equal to, or less than, one foot; the 100-year flood hazard line, whether tidal or fluvial; the inland limit of water's edge fill; or the inland limit of coastal bluffs, whichever is farthest inland from the water's edge.] **Until such a time as this subchapter is revised through a formal rule adoption, for single family and duplex developments located on lots which are less than 6000 square feet in area, which were subdivided on or prior to July 19, 1993, and which are not part of a larger development, the Department shall not apply the development intensity requirements of this subchapter. In addition, the requirements of this subchapter shall not apply to linear developments, as defined in N.J.A.C. 7:7E-6.1.**

7:7E-5.2 Acceptability of development in General Land Areas

(a) (No change.)

(b) Determination of the specific [policy] **rule** for a Land Area site is a four step process:

1.-2. (No change.)

3. Third, the Land Acceptability Table (N.J.A.C. 7:7E-5.7) for the appropriate region is consulted to determine the [acceptability] **acceptable** intensity of development of the site, given the three possible combinations of Development Potential and Environmental Sensitivity factors for the site or parts of the sites.

4. (No change.)

(c) (No change.)

7:7E-5.3 Coastal Growth Rating

(a) The [Coastal Zone] **coastal zone** is classified into 15 different regions on the basis of the varied pattern of existing coastal development and natural and cultural resources (see Appendix, Figure [12] **14, incorporated herein by reference**). For these regions, [the Department] **NJDEPE** uses three broad regional growth strategies:

1. -3. (No change.)

(b)-(p) (No change.)

7:7E-5.4 Environmental Sensitivity Rating

(a) Environmental Sensitivity is an indication of the general suitability of a land area for development based on soils **and on-site vegetation.**

(b) High Environmental Sensitivity Areas are land areas with wet or high permeability moist soils **or forest vegetation.**

1. ["]Wet or high permeability moist soils["] are soils with a depth to seasonal high water table of three feet or less, unless the soils are loamy sand or coarser in which case they are soils with a depth to seasonal high water table of four feet or less.

2. Forest vegetation is defined as an area of trees and shrubs where a majority of the trees are four inches in diameter breast height or greater.

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

(e) Rationale:

1. High Environmental Sensitivity

This ranking is given to land areas where they are particularly sensitive to impacts. **Valuable resources exist where either forest vegetation or wet and high permeability moist soils are present on a proposed development site.** These areas are valuable as open space, for screening, for ground and surface water purification, and as wildlife habitats. Areas of high soil percolation and shallow depth to water table are especially sensitive to ground water impacts because the rapid percolation offers little pollutant filtration and the distance to ground water is small. The **loss of forest vegetation and the** degradation of ground water that occurs when these areas are developed raises the level of sensitivity. Therefore, they should be left undeveloped or developed at a lower density than lands which are not of high environmental sensitivity.

2. (No change.)

3. Low Environmental Sensitivity

[There] **This ranking is given to areas where there** is a relatively large distance to ground water and therefore little potential for transferring adverse impacts. All paved areas are included, because in these areas most of the adverse impacts associated with development will minimally diminish natural resources or generate new adverse impacts.

7:7E-5.5 Development Potential

(a) Development [Potential] **potential** has three levels—High, Medium and Low— depending upon the presence or absence of certain development-oriented elements at or near the site of the proposed development, as defined in (b) through (e) below. The [Development Potential] **development potential** rating applies to the entire land area portion of the site. Different sets of [Development Potential] **development potential** criteria are [also] defined in (b) through (e) below for different categories of development. Also, some of the criteria vary depending upon the regional type. If a specific set of [Development Potential] **development potential** criteria is not defined for a particular category or type of development, then the **Definition of** [acceptable intensity of development policy] **Acceptable Intensity of Development rule** (N.J.A.C. 7:7E-5.6) is not applicable to that type of development.

(b) The standards relating to Residential **and Minor Commercial** Development Potential are as follows:

1. Scope: The [Residential Development] **residential development** category includes housing, including retirement communities, hotels,

motels, minor commercial facilities of a neighborhood or community scale, and mixed use developments that are predominantly residential.

2. High Potential sites meet all of the following criteria:

i. **Roads**: Direct access from the site to an existing paved public road with sufficient capacity to absorb satisfactorily the traffic likely to be generated by the proposed development.

(1) In Development Regions, direct access to either paved public roads with sufficient capacity or adequate improvements in capacity, either to be completed as part of the proposed development or otherwise approved or under construction.

ii. **Sewerage:** Direct access to a wastewater treatment system, including collector sewers and treatment plant, with adequate capacity to treat the sewage from the proposed development **and is consistent with the current Areawide Water Quality Management Plan (208)**, or soils suitable for on-site sewage disposal systems that will meet applicable ground and surface water quality standards.

iii. **Infill:** A majority of the perimeter of the site, excluding wetlands[,] or surface water areas[,] or land areas abutting limited access transportation corridors (for example, Garden State Parkway, Atlantic City Expressway), is adjacent to or across a public road or railroad from land that is developed, or a majority of the land within 1,000 feet of the site, is developed**, and the site is located within one half mile of the nearest existing commercial or industrial development of more than 20,000 square feet (cumulative building area)**. Developed land, for infill purposes for determination of high, medium, or low potential, means:

(1)-(5) (No change.)

(6) [Public] **Those areas of public** parks [areas] developed for active recreational use; and

(7) Transportation facilities including train stations and airfields.

3. Medium Potential sites do not meet all of the criteria for High Potential sites and do not meet any of the criteria for Low Potential sites.

4. Low Potential sites in Limited Growth or Extension Regions meet any one of the following criteria:

i. Roads: [A site] **Site** located more than 1,000 feet from the nearest paved public road;

ii. Sewerage: [sites] **Sites** located more than 1,000 feet from an adequate wastewater treatment system, and [characterized by] soils unsuitable for on-site sewage disposal systems; or

iii. Infill: A site located more than one-half mile from the nearest existing commercial or industrial development of more than 20,000 square feet **of enclosed** building area, **within a single facility**.

5. In Development Regions, Low Potential sites meet either of the following criteria:

i. Roads: Site located more than 1,000 feet from the nearest existing paved or proposed public road; [or]

ii. Sewerage: Site located more than 1,000 feet from existing or approved adequate wastewater treatment system; or

iii. Infill: No requirement.

(c) The standards relevant to Major Commercial and Industrial Development Potential are as follows:

1. Scope: The Major Commercial and Industrial Development category includes all industrial development, warehouses, **offices,** manufacturing plants, wholesale and major regional shopping centers **of greater than 100,000 square feet of enclosed building area**, and major parking facilities **of greater than 700 parking spaces.**

2. High Potential sites meet all of the following criteria:

i. (No change.)

ii. [Sewage] **Sewerage**: Direct access to a wastewater treatment system, including collector sewers and treatment plant, with adequate capacity to treat [the] sewage from the proposed development, or soils suitable for on-site sewage disposal systems that will meet applicable ground and surface water quality standards.

(1) In Development Regions, where the existing sewage collection or treatment capacity is inadequate and the soils are unsuitable for septic systems, an applicant may include an agreement with a sewage authority to increase service to provide the required capacity. This will qualify the proposal for a [High Potential] **high potential** rating, provided that secondary impact analysis demonstrates that [a] **any** development likely to be induced by new sewage capacity above the requirements of the proposal is acceptable.

iii. Infill: A part of the site boundary shall be either immediately adjacent to, or immediately across a road from, existing major commercial or industrial development, or in Development Regions, [either] the property proposed for development [or an adjacent property,] is adjacent to **or across the road from** existing commercial [or residential] developments. **For commercial development of less than 100,000 square feet of enclosed building area, the property proposed for development is adjacent to or across the road from commercial or residential development**.

3. (No change.)

4. Low Potential sites meet any one of the following criteria:

i. (No change.)

ii. Infill: A site located more than one-half mile from the nearest existing commercial or industrial development of more than [20,000] **50,000** square feet **of enclosed** building area **within a single facility**.

(d) (No change.)

(e) Development Potential Rankings for energy facilities shall be [jointly] determined by NJDEPE [and NJDOE] **Office of Energy and the Program** on a case by case basis.

(f) (No change.)

SUBCHAPTER 6. GENERAL LOCATION [POLICIES] RULES

7:7E-6.1 [Policy] **Rule** on location of linear development

(a) A linear development, such as but not limited to a road, sewer line, or offshore pipeline, that must connect two points to function shall comply with the specific location [policies] **rules** to determine the most acceptable route, to the maximum extent practicable. If part of the proposed alignment of a linear development is found to be unacceptable under the specific location [policies] **rules**, that alignment (perhaps not the least possible distance) may nonetheless be acceptable, provided the following conditions are met:

1.-4. (No change.)

7:7E-6.2 Basic location [Policy] **rule**

(a) A location may be acceptable for development under the specific location [policies above] **in N.J.A.C. 7:7E-6.1**, but the DEPE may reject or conditionally approve the proposed development of the location as reasonably necessary to:

1.-3. (No change.)

7:7E-6.3 Secondary impacts

(a) ["]Secondary impacts["] are the effects of additional development likely to be constructed as a result of the approval of a particular proposal. Secondary impacts can also include traffic increases, increased recreational demand and any other offsite impacts generated by onsite activities which effect the **site and** surrounding region.

(b) Coastal development that induces further development shall demonstrate, to the maximum extent practicable, that the secondary impacts of the development will satisfy the [Coastal Resource and Development Policies] **Rules on Coastal Zone Management**. The level of detail and areas of emphasis of the secondary impact analysis are expected to vary depending upon the type of development. Minor projects may not even require such an analysis. Transportation and wastewater treatment systems are the principal types of development that require a secondary impact analysis, but major industrial, energy, commercial, residential, and other projects may also require a rigorous secondary impact analysis.

1. Secondary impact analysis must include an analysis of the likely geographic extent of induced development, its relationship to the State Development [Guide Plan Concept Map] **and Redevelopment Plan**, an assessment of likely induced point and non-point air and water quality impacts, and [an] evaluation of the induced development in terms of all applicable [Coastal Resource and Development Policies] **Rules on Coastal Zone Management**.

2. (No change.)

(c) Rationale: Further development stimulated by new development and the cumulative effects of coastal development, including development not directly managed by **NJDEPE** may gradually adversely affect the coastal environment. The capacity of existing infrastructure does, however, limit the amount and geographic extent of possible additional development. Secondary impact analysis, particularly of proposed infrastructure, enables **NJDEPE** to ascertain that the direct, short term effects, and the indirect or secondary effects of a proposed development will be consistent with the basic objectives of the Coastal Management Program. Secondary impact analysis enables **NJDEPE** to evaluate likely cumulative impacts in the course of decision-making on specific projects.

SUBCHAPTER 7. USE [POLICIES] **RULES**

7:7E-7.1 Purpose

Many types of development seek locations in the coastal zone. The second stage in the screening process of the [Coastal Resources and Development Policies] **Rules on Coastal Zone Management** spells out a set of [policies] **rules** for particular uses of coastal resources. Use [policies] **rules** are [policies] **rules** and conditions addressed to particular kinds of development. Use [policies] **rules** do not preempt location [policies] **rules which** restrict development, unless specifically stated. In general, they introduce conditions which must be satisfied in addition to the Location [policies] **rules** (N.J.A.C. 7:7E-2 through 6), and the Resource policies] **rules** described in the following subchapter (N.J.A.C. 7:7E-8).

7:7E-7.2 Housing Use [Policies] **rules**

(a) (No change.)

(b) Standards relevant to water area and water's edge housing are as follows:

1. New housing **or expansion of existing habitable housing** is prohibited in Water Areas. [, except for reconstruction] **Reconstruction** of existing **habitable** structures on pilings located [on guts, canals, lagoons and ports which have been] **over water areas is conditionally acceptable except when** damaged by [causes other than] wind, water or waves, [which is conditionally acceptable] **in which case reconstruction is prohibited.**

2. In special urban areas and along large rivers where water dependent uses are demonstrated to be infeasible, new housing is also acceptable on structurally sound existing pilings, or where piers have been removed as part of the harbor clean up program, the equivalent pier area may be replaced in the same or another location.

i.-ii. (No change.)

iii. New housing acceptable under this [policy] **rule** shall be consistent with the Public Access [Resource] **to the Waterfront** [Policy] **Rule** (N.J.A.C. 7:7E-[8.13]**8.11**), including provisions of fishing access as appropriate.

3. Housing is conditionally acceptable in the filled water's edge, provided that it meets the requirements of the Filled Water's Edge [Policy] **rule** (N.J.A.C. 7:7E-[3.16]**3.23**) and the Public Access **to the Waterfront** [Policy] **Rule** (N.J.A.C. 7:7E-[8.11]**8.13**). The acceptable intensity of residential development shall be determined by applying the criteria of the General Land Area [Policy] **rule** (N.J.A.C. 7:7E-5) except on bay islands where the requirements of the Bay Island Corridor [Policy] **rule** (N.J.A.C. 7:7E-[3.24]**3.21**) shall apply.

4. New housing involving the stabilization of existing lagoons through revegetation, bulkheading or other means is conditionally acceptable provided that the conditions of the [existing lagoon edge policy] **Existing Lagoon Edge rule (N.J.A.C. 7:7E-3.24)** and the Filling [Policy] **rule** (N.J.A.C. 7:7E-[4.11]**4.2**(j)) are satisfied.

5. On sites with existing shore protection structures, the residential structure shall be set back a minimum of 25 feet from the oceanfront shore protection structures, and a minimum of 15 feet from shore protection structures elsewhere. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the seaward side of the revetment.

6. Water area and water's edge housing shall include a provision for boat ramps wherever feasible unless an accessible boat ramp is nearby.

[5.]**7.** Rationale: Housing is not water dependent on water access, and does not generally qualify for exemption to the [policy] **rule** of restricting non-water dependent development along water's edge. In addition to this general restriction, most of the Special Area [policies] **rules** contain specific restrictions that have the practical effect of discouraging or prohibiting new development, including housing, from sensitive areas.

(c) Standards relevant to floating homes are as follows:

1. A ["]floating home["] is any waterborne structure designed and intended primarily as a permanent or seasonal dwelling, not for use as a recreational vessel, which will remain stationary for more than [30] **10** days.

2. Floating homes are prohibited in the [Coastal Zone] **coastal zone.** Those floating homes registered with the New Jersey Department of Motor Vehicles prior to June 1, 1984 are not subject to this paragraph.

3. Rationale: The primary focus of a floating home is as a residence. Floating homes, therefore, are not water-dependent, and should not be permitted to pre-empt limited land's edge locations from water dependent uses such as boating. Boats which are used for navigation and serve a secondary function as houses are not considered floating homes and are not prohibited. [There is currently a shortage of marina slips in New Jersey, with 70 percent of New Jersey's marinas at full capacity (NJDEP, "Developing a Marina in New Jersey: A Handbook", 1982.). Floating homes should not be allowed to compete for limited marina space with recreational and commercial boats.] **Floating homes have an adverse** [adversely] impact on water quality through grey water discharges. The proliferation of houseboats in New Jersey would have a cumulative adverse effect on water quality, navigation and aesthetics.

(d) (No change.)

[(e) Standards relevant to residential mix are as follows:

1. Housing development that provides for a mix of dwelling types and for persons of different age and income groups is encouraged.

2. Rationale: The quality of life improves when residential areas provide a diversity of dwelling types, at different cost levels, so that people of different ages, lifestyles and incomes can live together, rather than the post-war pattern of highly stratified development that has taken place in the process of suburbanization of the coastal zone. At the same time, the coastal region already provides specialized dwelling types for particular groups, such as senior citizens.]

([f])**(e)** Standards relevant to the development of a single family home or duplex located upland of the mean high water line are as follows:

1. All structures and on-site improvements shall comply with the [Coastal Policies] **coastal Rules** for Beaches, Dunes, Wetlands, **Wetland Buffers, Endangered or Threatened Wildlife or Vegetation Species Habitats** and Coastal Bluffs, and shall comply with other Coastal [Policies] **Rules** by meeting the following minimum standards. Compliance with the applicable [policies] **rules** may require changes in a building design and/or location.

i. On sites with shore protection structures, the residential structure shall be set back, a minimum of 25 feet, from oceanfront shore protection structures, and at a minimum of 15 feet from bulkheads elsewhere. This distance is measured from the [seaward] **waterward** face of a bulkhead or seawall and from the top of slope on the [seaward] **waterward** face of a revetment.

ii. (No change.)

iii. For sites partially or completely within the [Erosion Hazard Area or Coastal High Hazard Area] **erosion hazard area or coastal high hazard area**, only infill developments meeting the following criteria are acceptable. [Infill is defined as no more than two buildable vacant lots, as defined by the municipality and shown by the municipal record as such on or prior to October 3, 1988, with houses located on both sides of the vacant lot(s) perpendicular to the shoreline. Where an existing house or buildable lot is separate from the others by a street oriented perpendicular to the shoreline, the infill requirement for the side of the property adjacent to the street shall be determined by the status of the property adjacent to the other side of the street.] **A development qualifies as infill for purposes of this section if:**

(1) It is shown as buildable lot on municipal records prior to July 19, 1993;

(2) The lot is served by a municipal sewer system; and

(3) A house is located on each lot abutting the lot line, perpendicular to the shoreline, and within 100 feet of said lot line.

[(1) The] **iv. In non-tidal areas,** the lowest structural member must be at least one foot above the base **flood** elevation.

v. In tidal areas the following standards apply:

(1) For residential developments located within designated zones A1-30 on the community's Flood Insurance Rate Maps (FIRM), the lowest floor (including basement) must be elevated to or above the base flood elevation.

(2) For residential developments located within designated Zones V1-30 on the community's FIRM, the building must be elevated on pilings so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings) is elevanted to or above the base flood level.

[(2)](**3**) The house shall be constructed as close to the landward site boundary as possible, and shall not be constructed waterward of the adjacent developments.

[iv.]**vii.** For wooded sites, site clearing shall be limited to an area no greater than 20 feet from the footprint of the dwelling and the area deemed necessary for driveway, septic and utility line installations.

[v.]**viii.** Indigenous coastal plants **(as defined in Vegetation, N.J.A.C. 7:7E-8.8)** shall be used in landscaping wherever feasible. No plastic lines shall be used in landscaped or gravel areas. All liners shall be made of filter cloth or other permeable material. **The use of non-indigenous vegetation and/or lawns is discouraged.**

[vi.]**ix.** All driveways shall be [surfaced] **covered** with permeable materials or pitched to drain all runoff onto permeable areas of the site.

2. Rationale: Single family and duplex homes are the most prevalent type of development along the developed oceanfront communities of the Jersey Coast. This rule recognizes the importance of protecting the safety of local residents from the natural shoreline changes and hazard areas, especially in the event of a storm. Developments are therefore prohibited on beaches, dunes, wetlands, coastal bluffs, erosio hazard areas and coastal high hazard areas. However, in view of the extensive developments that have already occurred in some of the coastal high hazard and erosion hazard areas, infill single family or duplex homes are found to be acceptable, because their development will not alter the existing need for public expenditure in shore protection at these locations, the risk involved is reduced to a minimum in terms of the quantity and intensity of developments that will be permitted and it would allow the infill sites to be developable to the degree currently existing in that area. The use of non-indigenous vegetation and/or lawns is discouraged due to the large quantity of water and fertilizer required to sustain such vegetation.

[(g)](**f**) (No change.)

[(h) Standards relevant to housing rehabilitation are as follows:

1. Residential development involving the demolition and redevelopment of existing structures is discouraged, unless rehabilitation of the existing structures is demonstrated to be impractical, infeasible, or contrary to the public interest.

2. Rationale: The preservation, restoration, or rehabilitation of existing structures is preferable to demolition and redevelopment in order to save structures and neighborhoods with historic and aesthetic interest. Rehabilitation is often more labor intensive than construction of a new building. This means that more jobs are created and less energy is consumed through the production of new building materials.]

[(i) Standards relevant to large-scale multi-use development are as follows:

1. "Large-scale multi-use developments" are free standing, planned developments, such as planned unit developments, which combine at least 500 residential dwelling units with commercial, industrial, recreational, or other uses.

2. Large-scale multi-use developments are conditionally acceptable, provided that they carry out the basic coastal policy to concentrate the regional pattern of development, contribute to regional housing needs, do not cause significant adverse secondary impacts, and will not induce growth outside the site boundary which is in consistent with coastal policies.

3. Large-scale multi-use developments need not meet the Land Area Policies, except in the high and moderate environmental sensitivity portions of Limited Growth Regions, where only the roads and sewerage criteria will be used in determining if the Development Potential is High, Medium or Low (See N.J.A.C. 7:7E- 5.5(b)). Large-scale multi-use development in Limited Growth Regions must, however, incorporate a buffer along the perimeter of the site of sufficient size to preclude scattered peripheral development.

4. Rationale: Large planned communities offer advantages of scale in creating new nodes of development and providing housing. Such large scale projects may, however, detract from or alter appropriate regional patterns of development.]

7:7E-7.3 ["]Resort Recreational Use["]

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

(d) Standards relevant to marinas are as follows:

1. ["]Marina["] means any dock, pier, bulkhead, mooring or similar structure or a collection of adjacent structures under singular or [collective control or management] **related ownership** providing permanent or semi-permanent dockage to five or more vessels.

2. New marinas or expansion or renovation **(including, but not limited to, dredging, bulkhead construction and reconstruction, and relocation of docks)** of existing marinas for recreational boating are conditionally acceptable if:

i. The [proposed] marina includes the development of an appropriate mix of dry storage areas, public launching facilities, berthing spaces, repair and maintenance facilities, and boating and hardware supply facilities, depending upon site conditions[;].

ii. The [proposed] marina posts prominent signs indicating discharges shall not be allowed within the basin and provides restrooms and [portable toilet emptying receptacles] **marine septic disposal facilities** for wastewater disposal from boats. For marinas with dockage for 25 or more vessels or any on vessel with live-aboard arrangement, adequate and conveniently located pumpout stations shall be provided.

iii. Restrooms and at least one portable toilet emptying receptacle shall be provided at a [Marina] **marina**. The portable toilet emptying receptacle requirement may be satisfied either by the installation of a receptacle device or by the designation of either a pumpout or restroom facility for this use; and

(1) Discharge to a municipal or regional treatment plant where practicable;

(2) Discharge to a subsurface sewerage disposal system constructed in accordance with N.J.A.C. 7:9-2 and N.J.A.C. 7:7E-4.2(t); or

(3) Discharge to a holding tank with waste being removed by a licensed septage hauler. A marina employing this method shall maintain a record of waste removal; and

[iv. All restrooms, pumpout facilities and portable toilets emptying receptacles shall dispose of the collected water in a manner acceptable to the Department as follows:

(1) Discharge to a municipal or regional treatment plant where practicable;

(2) Discharge to a subsurface sewage disposal system constructed in accordance with N.JA..C. 7:9-2; or

(3) Discharge to a holding tank with waste being removed by a licensed septage hauler. A marine employing this method shall maintain a record of waste removal.]

iv. New marina facilities and expansions and renovation of existing marinas shall provide public access in accordance with the Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11).

3.-6. (No change.)

[7. New marinas are prohibited on wetlands unless the wetlands area lost to marina development is minimal and is compensated for by the creation or restoration of wetlands elsewhere, consistent with the Wetlands Mitigation Policy (N.J.A.C. 7:7E-3.27).]

[8.]7. (No change in text.)

8. Construction of new marinas within areas designated by the Department as shellfish habitat is prohibited. Expansions of existing marinas within shellfish habitat areas shall comply with the standards of the Shellfish Habitat rule (N.J.A.C 7:7E-3.2) and Submerged Vegetation rule (N.J.A.C. 7:7E-3.6).

9. Marinas shall comply with the design standards set forth in N.J.A..C 7:7E-7.3A.

10. In addition to complying with all other applicable portions of these rules, all new, expanded and renovated boat mooring facilities with five or more slips which are located on any portion of the Navesink River, Shrewsbury River or Manasquan River (upstream of the Route 35 Bridge) or the St. George's Thorofare shall meet the conditions in (d)10i through iii below. Renovation shall include complete or partial alteration of any portion of a structure, including construction, reconstruction of or relocation of existing docks, piers, moorings and bulkheads and dredging. The conditions are:

i. A pumpout facility shall be constructed and maintained at those facilities at which boats over 24 feet in length or those with onboard septic facilities (heads) shall be docked. All other facilities shall construct and maintain on site marine septic disposal facilities;

ii. No pressure treated lumber or other lumber treated with any other substance shall be used in any portion of the project; and

iii. The applicant and/or property owner shall finance monthly sampling and testing of fecal coliform levels per milliliter of water at five locations selected by the Department in the water in which the project is located. Testing shall be performed by a State-certified laboratory and shall be conducted beginning in the first month following the mooring of vessels and monthly thereafter for two full seasons of operation (that is, May 1 through October 31) The monitoring shall occur on the day of the month selected by the Department and no advance notice of the sampling day shall be given to the property-owner. Results of the monitoring shall be provided to the Department and the property-owner in writing by the laboratory within 10 calender days after the date of sampling.

(1) The State-certified laboratory shall determine the pre-construction median level of fecal coliform in the water at each of the Department selected test sites at the applicant's expense, and advise the Department and the applicant in writing of these results within 10 calender days after the date of sampling. If any post-construction test at any single site yields fecal coliform levels which exceed the pre-construction reading at that site by 100 percent, the property owner shall allow Department personnel access to the property during day-light hours to assess whether the operation of the project is causing or contributing to the elevated reading.

(2) In the event the Department determines in writing that the elevated readings of fecal coliform are caused, in whole or in part, by the operation of the project, the property owner shall, as a condition of the permit, cease such uses and practices as described in writing by the Department and shall implement such practices as determined by the Department in writing to be minimally necessary to reduce the levels of fecal coliform emanating from the project.

(3) In the event the Department determines that the laboratory has twice or more failed to sample in the correct location, failed to comply with commonly accepted sampling techniques and laboratory methods or has divulged the date of sampling to the applicant and/or property-owner in advance of sampling, the property owner shall immediately discontinue use of such laboratory upon receipt of written notice to this effect from the Department and shall arrange for all future sampling to be conducted by another State-certified laboratory. For every month in which sampling does not occur as a result of a change in laboratory, an extra month of sampling shall be required from the property owner during the next season of operation.

(4) If the property owner fails to arrange for water sampling as required herein without first securing the express written permission of the Department to omit sampling for that month, the property owner shall be in violation of the terms of the permit issued under these rules and the Department shall notify the property owner in writing of its intention to revoke the permit and prohibit use of the project pending final revocation of the permit in accordance with N.J.A.C. 7:7-4.11(b).

[9.]**11.** Rationale: [The location of marinas] **Marinas** [requires the use of sensitive] **are located on** land[s] **at the water's edge** which exists **only** in [only] limited supply and [are also valued for other activities] **which, in its natural state, is indispensable to many land and water-related activities.** The [policies] **rules** [aim] **are intended** to ensure that the area devoted to marinas is [fully and] efficiently utilized to keep the size of the area required to a minimum **to maintain the environmental integrity of the water and water's edge areas and to preserve the scenic and natural characteristics of the area.** Facilities for sail and oar boating are encouraged because such boats consume less energy, **are less disturbing to wildlife** and **pollute less** [have less of a polluting impact on the water] than motor boats. [Slips devoted to] **Facilities offering** rental boats **and rental slips are encouraged because they reduce the need for construction of additional mooring facilities,** serve a greater number of people and afford the casual boat**er access to water-related recreation** [the opportunity to engage in water sports]. Marina development **which is permissible under these rules** is encouraged to take place on [Filled Water's Edge] **filled water's edge** lands because they are of low environmental sensitivity. **Marina development within areas designated as shellfish habitat is prohibited since it would result in the condemnation or contamination of shellfish habitat and adversely affect the water quality of the water body.**

The Navesink River, Shrewsbury River and Manasquan River (upstream of the Route 35 Bridge), and St. George's Thorofare are particularly important shellfish habitats. The Navesink and Shrewsbury Rivers are unique in that they are the only two estuaries within the State which have soft clams in commercially viable densities. St. Georges Thorofare contains high densities of hard clams according to the 1985 Shellfish inventory conducted by the Division of Fish, Game and Wildlife, containing approximately 6.2 million hard clams in a 107 acre area. The high abundance of hard clams, together with the fact that this water body is poorly flushed makes St. George's Thorofare critical to the shellfish industry and extremely sensitive to any potential pollution producing activity.

Federal, State and local officials have recognized the importance of these rivers as shellfish habitat and the need to protect their water quality. As a result, pollution control programs such as the Navesink River Shellfish Protection Program have been implemented to protect and enhance water quality. On August 21, 1986, a Memorandum of Understanding was signed by the New Jersey Department of Environmental Protection and Energy, the New Jersey Department of Agriculture and the United States Department of Agriculture and the United States Environmental Protection Agency. The memorandum serves to "... formalize our commitment to the Navesink River Water Control Shellfish Protection Program, [and] its primary goal of improving water quality in the Navesink River watershed to a point at which the river's full shellfishery and recreational potential may be attained." Water quality monitoring during 6 years of implementation of pollution controls on the Navesink from 1987-1993 have shown significant reductions in bacterial contamination of the Navesink River, to the point where the potential now exists for upgrading the shellfish classification of the river from "special restricted" to "seasonally approved".

The Shrewsbury River has been included in the "Navesink River Shellfish Protection Program" since it is hydrologically connected to the Navesink River and is one of only two estuaries in New Jersey with commercially viable densities of soft clams. Concern over deterioration of the water quality in the Manasquan River and its effects upon shellfish compelled Monmouth and Ocean Counties, together with DEPE, to form the "Monmouth/Ocean Alliance to Enhance the Manasquan River." This Alliance seeks to identify causes of shellfish water degradation and plan uses which would protect and enhance water quality in the Manasquan by requiring water quality monitoring at project sites located on the above listed waterways. The Department is honoring its commitment to maintain and eventually upgrade the water quality of these rivers. Monitoring affords the Department the opportunity for early intervention and

thorough investigations should the water quality be adversely affected by the operation of projects permitted under this Rule.

(e) Standards relevant to amusement piers, parks and boardwalks are as follows:

1. New amusement piers are prohibited, except in areas with privately held riparian grants, where they are discouraged. Expanded or extended amusement piers, parks, and boardwalks at the water's edge or in the water, and the on-site improvement or repair of existing amusement piers, parks and boardwalk areas are discouraged unless the proposed development meets the following conditions:

i. The amusement pier, park[s], or boardwalk does not reasonably conflict with aesthetic values, ocean views, or other beach uses and wildlife functions;

ii. [Public access to the shorefront is not limited] **The proposed pier expansion will not eliminate or affect the existing direct public access to the beach, unless another access point is provided immediately adjacent to the expanded pier, for each access point eliminated;** [and]

iii. The surrounding community can adequately handle the activity and uses to be generated by the proposed development[.];

iv. The pier expansion is constructed on pilings at the same elevation as the existing pier; and

v. The pier expansion includes a provision for public seating and viewing at the terminal end of the expansion.

2. The expansion of a pier qualifying for a General Permit under N.J.A.C. 7:7-7 is acceptable.

[2.]**3.** (No change in text.)

7:7E-7.3A Marina Development

(a) The following pertains to selection of the marina site:

1. The site should not need to be dredged or expect to need dredging in the future.

2. The site should have a total flushing time of less than four days (two or less is preferred). Sites considered for dead-end finger channels shall be considered only after this flushing capability has been demonstrated.

3. The site should be located with safe, convenient access to cruising waters. Winding channels, hazardous routes and long travel distances to water-use areas are discouraged.

4. The site must have adequate land access for autos, trucks, trailers and emergency equipment.

5. Sites with direct sewer service access are preferred.

6. For wet-slip marines, a general rule is that the land area should be one to 1.25 times the size of the water area. Deviations from this ratio must be shown to include adequate capacity for parking and other ancillary needs.

7. The boundaries of the site should be at least 1,000 feet from shellfish harvesting areas (unless a greater distance is determined appropriate pending DEPE review).

8. Wet-slip marinas shall not be constructed nor expanded in Category One waters.

(b) The following pertains to marine project design:

1. The following should be followed to promote water quality in the marina basin:

i. Basin depths must never exceed the depths of access channels nor the open water to which the basin is connected.

ii. Deep-draft slips shall be constructed in naturally deep portions of the site in order to minimize the need for dredging.

iii. Floating breakwaters are preferred in low-energy areas (where wavelengths are less than twice the width of the breakwater).

iv. Sharp angles are to be avoided; corners should be gently rounded, never square.

v. Basin depths should uniformly deepen toward the exit and waterway outside the basin.

vi. Entrance channels should not be located on corners.

vii. Where possible, entrance channels should be oriented in the direction of the prevailing winds to promte wind-driven circulation.

viii. Enclosed basins should include openings at opposite ends to promote circulation.

ix. Slips should be oriented parallel to currents, never broadside; this promtes circulation and reduces the load on the pier structure.

x. Fuel pumps shall include back pressure cut-off valves. Main cut-off valves shall be available both at the dock and in the upland area of the marina.

xi. Fuel docks should be sturdy using a floating design wherever possible in order to withstand significant storm affected tidal ranges.

xii. To control stormwater runoff, upland portions of the site should include water quality features such as detention basins and limit pollutants from entering the waterway.

2. Sloping rip-rap bulkheads are preferred over solid vertical structures; they better dissipate wave energy and provide a more diverse habitat for marine organisms.

3. To avoid standing waves, bulkheads should never be parallel to one another.

4. To minimize the impact on the photic zone, dock and pier widths should be minimized. In addition, the structures should stand as high above mean high water as possible and should be oriented north-south to the maximum extent practicable.

5. The distance from a parked car to a slip should never exceed 180 meters.

6. Septic systems shall be installed with a minimum setback of 100 feet and in soils with a minimum depth to the seasonal high water table of four feet or more.

7. For safety, the usable width of the entrance channel should be at least four times the beam of the widest expected vessel, or a minimum of 19 meters.

8. The marina shall provide pumpout station(s) (fixed or portable). Marinas which allow occupation of berthed vessels for a period of 72 hours or more shall provide slipside pumpout facilities.

9. The marine shall provide abundant trash receptacles along with adequate fish cleaning areas, including separate and well-marked dispensers for organic refuse.

10. Ample parking facilities shall be provided, with a minimum of 0.6 spaces per slip (the number will range from 0.6 to 2.5 spaces per slip, depending on the nature of the marina).

11. The design should include an aesthetically pleasing landscape design.

12. Maintenance areas shall be screened by proper landscaping and shall include techniques which will prevent materials from entering the water.

13. The fueling facility shall be designed to accommodate four of the largest expected vessels.

14. For safety, the turning area of the basin should be at least 2.25 times the length of the longest expected vessel.

15. Marinas shall provide restroom facilities according to the following schedule:

i. For a small marine (up to 40 boats):

(1) Men: One toilet stall, one urinal, and one washbasin.

(2) Women: Two toilet stalls and one washbasin.

ii. For a small "quality" or medium marina (40 to 80 boats):

(1) Men: One urinal, one toilet stall, one shower stall, and one washbasin.

(2) Women: Two toilet stalls, one washbasin, and one shower stall.

iii. For a large marine (over 80 boats):

(1) Add:

(A) One urinal per 30 boats (men);

(B) One toilet stall per 60 boats (men);

(C) One toilet stall per 30 boats (women);

(D) One washbasin per 30 boats (men and women);

(E) One shower stall per 60 boats (men and women).

16. For safety, comfort, and to avoid interference with commercial boating activity, marinas will be designed such that wave heights do not exceed two to four feet in the entrance channel and one to 1.5 feet in the berthing area. Such a design will assume four foot external wave conditions.

17. The marina shall develop and implement a recycling plan for solid waste as appropriate to county requirements.

(c) The following pertains to marina construction:

1. Only high-grade, slow leaching wood preservatives shall be used on pilings and other dock/pier woods.

2. If dredging is necessary, it shall be scheduled around critical life stages of marine organisms.

3. Dredging shall take place during the colder months when the dissolved oxygen levels are naturally high.

4. Erosion and sediment controls shall be in place prior to construction.

5. Where appropriate (currents under 1.5 knots), sediment curtains shall be used during dreding.

6. Clean dredge spoil with adequate grain size shall be used for beach nourishment.

(d) The following pertains to marina operation:

1. The marina must have available adequate floating containment booms and absorbant materials in the event of hydrocarbon spills. Employees shall be trained in the deployment and proper usage of such equipment.

2. Operators shall immediately notify DEPE and the Coast Guard of all signifiant hydrocarbon spills.

3. Operators shall take immediate action in the event of a spill, including boom deployment and spreading of absorbent materials.

4. Waste receptacles shall be emptied daily.

5. Boat maintenance shall be undertaken as far from the water as possible.

6. Restrooms shall provide both hot and cold water and shall be maintained in a sanitary, warm, dry, brightly-lit and well-ventilated condition.

7. No-discharge signs shall be posted through-out the marina basin.

7:7E-7.4 Energy Use [Policies] **rule**

(a) General definition of energy uses: ["]Energy uses["] includes facilities, plants or operations which produce, convert, distribute or store energy. Under the Department of Energy Act, the Energy Act, the term ["]energy facility["] does not include an operation conducted by a retail dealer.

(b) Standards relevant to general energy facility siting procedure are as follows:

1. The acceptability of all proposed new or expanded coastal energy facilities shall be determined by [the following review process.] **the DEPE Office of Energy (as part of the Reorganization Plan 002-1991, the Office of Energy was placed witin the DEPE, and responsibility for the State Energy Master Plan as well as commenting on energy policy was delegated to the Department and the Program).**

2. [The Department] **DEPE's Office of Energy** will determine the need for future coastal energy facilities according to three basic standards. [The Department] **The Office of Energy** will [prepare] **submit** an Energy Report **to the Program** with its determination of the need for a coastal energy facility based on three required findings:

i.-iii. (No change.)

3. The [Department] **Program** will determine the acceptability of coastal energy facilities using [this chapter] **the Rules on Coastal Zone Management** supported by appropriate, technically sound analyses of alternatives.

4. Rationale: [BPU and the Department] **The Department's Land Use Regulation Program and the Office of Energy** share responsibility for carrying out the energy facility siting, planning and project review elements of the New Jersey Coastal Management Program. The State Energy Master Plan and its appendices[,] **and** the [Coastal Resource and Development Policies] **Rules on Coastal Zone Management**, [and the Memorandum of Understanding between the Department and BPU] provide a clear framework for decision-making by these two [State agencies on] **offices for** the review of proposed facilities, as well as a basis for continued consultation and cooperative planning.

(c)-(h) (No change.)

(i) Standards relevant to pipelines and associated facilities are as follows:

1. Crude oil and natural gas pipelines to bring hydrocarbons from offshore New Jersey's coat to existing refineries, and oil and gas transmission and distribution systems and other new oil and natural gas pipelines are conditionally acceptable, subject to the following conditions and restrictions:

i. For safety and conservation of resources, the number of pipeline corridors, including trunk pipelines for natural gas and oil, shall be limited, to the maximum extent feasible, and designated following appropriate study and analysis by the [Department of Environmental Protection and the BPU] **DEPE Office of Energy and Land Use Regulation Program**, and interested Federal, State and local agencies, affected industries, and the general public;

ii. (No change.)

iii. Oil and gas pipelines are subject to the following restrictions, respectively, regarding the Central Pine Barrens and other particularly sensitive areas:

(1) Pipeline corridors for landing oil are prohibited in the Central Pine Barrens area of the Mullica River, Cedar Creek watersheds and portions of the Rancocas Creek and Toms River watersheds, defined as the 760 square mile region adopted by DEPE as "critical area" for sewerage purposes and non-degradation surface and groundwater quality standards (see N.J.A.C. 7:9- 4.6(i), (j), and N.J.A.C. 7:9-10.1(b) and **Appendix,** Figure [27] **16 incorporated herein by reference),** and discouraged in other undeveloped parts of the Pine Barrens; and

(2) Pipeline corridors for natural gas are discouraged in the Central Pine Barrens as defined above, unless the developer can demonstrate that **the** construction and operation of the proposed pipeline will meet the adopted non-degradation standards for water quality and cause no long-term adverse environmental impacts.

iv. Proposals to construct offshore oil and gas pipelines, originating on the Outer Continental Shelf, and all of the contemplated ancillary facilities along the pipeline route such as, for example, gas separation and dehydration facilities, gas processing plants, oil storage terminals, and oil refineries will be evaluated by the [DEP and the BPU] **Department's Office of Energy and Land Use Regulation Program** in terms of the entire pipeline corridor through he State of New Jersey and the adjacent territorial sea;

v. To preserve the recreational and resort character of the coastal areas, the following conditions and prohibitions shall apply to oil and gas pipeline-related facilities:

(1)-(2) (No change.)

(3) Offshore platforms for pumping or compressor stations are encouraged to be located out of sight of the shoreline.

vi. (No change.)

vii. Pipelines shall be buried to a depth sufficient to minimize exposure by scouring, [shipgroundings] ship groundings, anchors, fishing and clamming and other potential obstacles on the sea floor. Trenching operations shall be conducted in accordance with applicable Federal regulations.

2. (No change.)

(j) Standards relevant to gas separation and dehydration facilities are as follows:

1. (No change.)

2. Separation and dehydration facilities are discouraged in the Bay and Ocean Shore area. Such facilities that are approved shall meet all applicable air and water quality standards, and be protected by adequate visual, sound, and vegetative buffers. Separation and dehydration facilities will be reviewed as part of the overall proposed gas transportation system by the Department [and BPU].

3. (No change.)

(k)-(l) (No change.)

(m) Standards relevant to gas processing are as follows:

1. (No change.)

2. Gas processing plants proposed for locations between the offshore pipeline landfall and interstate natural gas transmission lines shall be prohibited from sites within the Bay and Ocean Shore area and shall be located the maximum distance from the shoreline. The siting of gas processing plants will be reviewed in terms of the total pipeline routing system by the Department's [and BPU] **Office of Energy and the Program.**

3. (No change.)

(n) Standards relevant to other gas-related facilities are as follows:

1. Additional facilities related to a natural gas pipeline such as metering and regulating stations, odorization plants, and block valves are conditionally acceptable in the Bay and Ocean Shore area provided they are protected by adequate visual, sound, and vegetative buffer areas; are approved by the [Department and BPU] **Office of Energy and Program**; and are in compliance with United States Department of Transportation regulation.

2. (No change.)

(o) Standards relevant to oil refineries and petrochemical facilities are as follows:

1. New oil refineries and petrochemical facilities are conditionally acceptable outside of the Bay and Ocean Shore area provided that: they are consistent with all applicable Location and Resource [Policies] **rules**; there is a need for the facility as determined by [BPU] **the Office of Energy**; and an Environmental Impact Statement determines that the facility will have no unacceptable impacts.

i.-iii. (No change.)

2. (No change.)

(p)-(q) (No change.)

(r) Standards relevant to electric generating stations are as follows:

1. New or expanded electric generating facilities (for base load, cycling, or peaking purposes) and related facilities are conditionally acceptable subject to the conditions that follow. Conversion or modification of existing generating facilities for purposes of fuel efficiency, cost reduction, or national interest are conditionally acceptable provided they meet applicable State and Federal laws and standards.

i. The construction and operation of the proposed facility shall comply with the [Coastal Resource and Development Policies] **Rules on Coastal Zone Management**, with special reference to air and water quality standards and policies on marine resources and wildlife.

ii. [NJDEP and BPU] **The Office of Energy and the Program** shall find the proposed location and design of the electric generating facility is the most reasonable alternative for the production of electrical power that [BPU] **the Office of Energy** has determined is needed. The finding shall be based on a comparative evaluation by the applicant of alternative sites within the coastal zone and inland, and of alternative technologies for the transportation and conversion of energy as well as the productive use of plant residuals, including thermal discharges.

iii. (No change.)

iv. Nuclear generating stations shall be located in generally remote, rural, and low density areas, consistent with the criteria of 10 CFR 100 (United States Nuclear Regulatory Commission rules on siting nuclear generating stations) and/or any other related Federal regulations. In addition, NJDEPE shall find that the nuclear generating facility is proposed for a location where the appropriate low population zone and population center distance are likely to be maintained around the nuclear generating facility, through techniques such as land use controls or buffer zones.

v. The construction and operation of a nuclear generating station shall not be approved unless DEPE finds that the proposed method for disposal of the spent fuel to be produced by the facility will be safe, conforms to standards established by the United States Nuclear Regulatory Commission, and will effectively remove danger to life and the environment from the radioactive waste material. This finding is required under present State law (N.J.S.A. 13:19-11) and will be made consistent with judicial decisions (see *Public Interest Research Group v. State of New Jersey,* 152 *N.J. Super* 191 (App. Div. 1977)) and Federal law.

vi. (No change.)

2. Rationale: The siting of an electric generating station is an extraordinary event with far-reaching impacts, when compared with the typical day-to-day decisions made under the State's coastal **zone** management program. Such siting decisions therefore, require special scrutiny using: (a) the State's authority in its management of state-owned tidelands and submerged lands contemplated as sites for all or part of an electric generating station, (b) the State's regulatory authority, and (c) the State's influence in [federal] **Federal** proceedings on aspects of the siting process.

New Jersey's coastal zone, especially along Barnegat Bay and Delaware Bay, has experienced the consequences of several major siting decisions in the past decade and already has diverse mix of existing, proposed, and potential fossil fuel and nuclear generating facilities, both onshore and offshore.

For example, in 1980 two nuclear generating units were in operation in the coastal zone: Salem Unit I on Artificial Island on the Delaware River in Salem County and at Oyster Creek near Barnegat Bay in Ocean County. Four additional nuclear generating units are under construction in the Bay and Ocean Shore Segment and have received [the construction in the Bay and Ocean Shore Segment and have received] the appropriate federal and State approvals, including Forked River on the Oyster Creek site in Ocean County, and Salem 2 and Hope Creek 1 and 2 on Artificial Inland. The Hope Creek project, which DEPE approved under CAFRA in 1975, had its genesis in a project contemplated at Newbold Island in the Delaware River, less than five miles south of Trenton. In 1973, the [U.S.] **United States** Atomic Energy Commission (the predecessor to the Nuclear Regulatory Commission), acting in accord with the view of New Jersey, recommended that Artificial Island would be a more suitable site than Newbold Island because of population density concerns. Until PSE&G decided to withdraw its proposal, New Jersey's coastal zone was also the site of two proposed floating nuclear reactors, the Atlantic Generating Station, Units 1 and 2, at a site in the Atlantic Ocean east of Little Egg Harbor. The coastal zone also includes generating stations that have used various fossil fuels depending upon the price and availability of fuel as well as upon the applicable air quality rules.

New Jersey recognizes the interstate nature of the electric power system. Some electricity is produced in New Jersey at facilities owned partially by utilities in other states and exported to those states. New Jersey also imports electricity produced in adjacent states. In short, New Jersey is an integral part of the Pennsylvania- New Jersey-**Delaware-** Maryland interconnecting grid system, importing and exporting electricity from the system at different times of the day, season and year in order to generate electricity efficiently and achieve the lowest achievable cost to electricity users throughout this multi-state region.

The need for converting some existing facilities from oil-fired to coal-fired generation is recognized by the Powerplant and Industrial Fuel Use Act of 1978 (FUA) P.L. 95-620. The FUA restricts, through mandatory and discretionary prohibitions, the use of natural gas and petroleum as primary energy sources in existing powerplants. In the FUA, the national objective to decrease dependency on imported fuel is combined with the desire to achieve self-sufficiency in a manner that minimizes environmental and social costs. These objectives are considered sufficiently flexible in their achievement as to ensure that the environmental impacts are acceptable (see Fuel Use Act, EIS April 1979, [U.S. DOE] **United States Department of Energy**).

New Jersey also recognizes that most electric generating facilities may not be coastal-dependent but do require access to vast quantities of cooling waters, a siting factor that, from the perspective of utilities, increases the attractiveness of coastal locations. This siting [policy] **rule** strikes a balance among various competing national, regional, and state interests in coastal resources, and recognizes some of the differences in the siting requirements of fossil fuel and nuclear generating stations.

The [policy] **rule** directs fossil fuel stations toward built up areas in order to preserve and protect particularly scenic and natural areas important to recreation and open space purposes. New Jersey has articulated this policy with a conscious recognition of the state's progress in attaining and maintaining high air quality. Given the use of appropriate control technology, coal-fired generating stations, for example, appear feasible at various coastal locations. The siting of coal-fired power plants in urban areas also promotes efficient energy use due to the proximity of power plants to load centers.

The nuclear siting [policy] **rule** recognizes public concern for the disposal of spent fuel, as mandated in 1973 by the New Jersey Legislature in CAFRA.

(s) (No change.)

7:7E-7.5 Transportation Use [Policies] **rule**

(a) Standards relevant to roads are as follows:

1. New road construction must be consistent with the [Policy] **Rule** on Location of Linear Development and shall be limited to situations where:

i.-v. (No change.)

vi. Induced development in conflict with coastal [policies] **rules** would not be expected to result.

2. (No change.)

(b) Standards relevant to public transportation are as follows:

1. New and improved [needed] public transportation facilities, including bus, rail, air, boat travel, people mover systems and related parking facilities, are encouraged.

2. Existing rail rights-of way[s] may not be converted to other uses, unless the Department determines that the route is not critical for public transportation, **public recreational trail use,** or public access reasons.

3. (No change.)

(c) (No change.)

(d) Standards relevant to parking facilities are as follows:

1. Parking facility standards apply to all of the following:

i. (No change.)

ii. Any parking facility [for 300 or more cars] and related access, of which any part of the facility or related access is located in the coastal zone; or

[iii. Any paved area of which any part is located in the coastal zone, which area is equal to or greater than three acres excluding access drives.]

2. Parking lots, garages and large paved areas are conditionally acceptable, provided that they will not interfere with existing or planned mass transit services, the extent of paved surfaces is minimized, **and** landscaping with indigenous [or preferred] species is maximized[; the development satisfies the Resource Policies for air water, and runoff; and the development is compatible with its surroundings and satisfies the Location Policies].

3. Each hotel casino facility located in Atlantic City shall provide one of every five non-Absecon and non-Brigantine Island resident hotel-casino employees commuting during the daily peak hour with an intercept space. Absecon Island residents are residents of Atlantic City, Margate, Ventnor, and [Long Port] **Longport**. Brigantine Island residents are residents of the City of Brigantine. Non-Absecon and non-Brigantine Island resident employees commuting during the daily peak hour is the sum of the number of non-Absecon and non-Brigantine Island resident employees of the shift with the largest number of employees plus the number of non-Absecon and non-Brigantine Island resident employees of the next largest adjoining shift. This intercept parking space shall be located off Absecon and Brigantine islands, specifically outside of the municipal boundary of the five municipalities identified above. If off-island sites are not available, temporary use of other sites is conditionally acceptable if an applicant can demonstrate that it will be moved to an off-island site within one year.

i. Alternatives that would reduce vehicle miles travelled and peak hour employee travel demand may be substituted for **the** employee intercept parking space requirements for casino facilities. The Department will review proposed alternative in consultation with the Department of Transportation. The Department will approve alternatives which it determines will reduce vehicle miles travelled and peak-hour employee travel by at least as much as would result from furnishing intercept parking as described above. Acceptable alternatives include, but are not necessarily limited to, employee subsidies for bus, rail transit, van pools, and/or bicycle programs.

ii.-iii. (No change.)

4. (No change.)

7:7E-7.6 Public Facility Use [Policies] **rule**

(a) ["]Public facilities["] include a broad range of public works for production, transfer, transmission, and recovery of water, sewerage and other utilities. The presence of an adequate infrastructure makes possible future development and responds to the needs created by present development.

(b) Standards relevant to general public facilities are as follows:

1. Upgrading existing facilities to meet development and redevelopment needs in developed waterfront areas is encouraged. New or expanded public facility development **(except wastewater treatment facilities)** is conditionally acceptable provided that:

i.-ii. (No change.)

iii. The public facility would not generate significant secondary impacts inconsistent with the [Coastal Resource and Development Policies] **Rules on Coastal Zone Management**.

2. (No change.)

(c) (No change.)

(d) Standards relevant to wastewater treatment facilities are as follows:

[1. Coastal development that does not employ the most energy-efficient wastewater treatment system practicable is discouraged. Energy efficient systems are encouraged.

2. On-site sewage disposal systems which recycle nutrients and water for productive use are encouraged where the design, installation, operation, and maintenance will be consistent with applicable ground and surface water quality statutes and regulations.

3. Wastewater treatment systems that recharge the groundwater with highly treated effluents are encouraged, provided that consistently high quality effluents and acceptable recharge techniques are demonstrated.]

1. Wastewater treatment facilities (including sewer lines) are conditionally acceptable provided they are consistent with a Water Quality Management (208) Plan approved by the Office of Land and Water Planning, and comply with the following:

i. Wastewater treatment facilities shall not generate significant secondary impacts inconsistent with the Rules on Coastal Zone Management.

[4]**ii.** Wastewater treatment facilities shall to the maximum extent feasible, provide for multiple use of the site, including open space and recreational use.

5. Rationale: Public facilities provide all important public services, but can also adversely affect the coastal environment and economy if improperly located, designed, or constructed. In particular, the secondary impacts of new public facility construction and the need for the facility require scrutiny. In developed areas, some inadequate public facilities need to be upgraded and improved.

Solid Waste is a resource whose potential for recovery must be evaluated before locating new sanitary landfills. Further regional solutions to solid waste management are mandated under State law. In addition, the development of new landfills is subject to the regulation of the Department's Division of Solid Waste Management.

Wastewater treatment systems range in scale from on-site sewage disposal systems to regional treatment systems with centralized plans, major interceptors, and ocean outfalls. In the past decade considerable wastewater construction has taken place or been authorized in developing parts of the coastal zone with corresponding improvements to water quality. New wastewater treatment systems must be carefully evaluated in terms of water quality impacts and secondary impacts.

The [federal] **Federal** Clean Water Act encourages federally funded wastewater treatment facilities to provide for multiple use of the site. The Coastal **Policies rules** support and extend this [federal] **Federal** policy by requiring that all new wastewater treatment facilities in the coastal zone consider the feasibility of multiple use.

7:7E-7.7 Industry Use [Policies] **rule**

(a) ["]Industry uses["] include a wide variety of industrial processing, manufacturing, storage and distribution activities. Industry is defined by Standard Industrial Classification (SIC) categories 2011 to 3999, except for 2991 (petroleum refining), which is covered by Use [Policy] **rule** N.J.A.C. 7:7E-7.4(i).

(b) Industry is encouraged in special water areas and conditionally acceptable elsewhere provided it is compatible with all applicable Location and Resource [Policies] **rules**. Particular attention should be given to Location [policies] **rules** which reserve the water's edge for water dependent uses (N.J.A.C. 7:7E-[3.17]**3.16** and 7:7E-[3.31] **3.32**; to Resource [policy] **rule** N.J.A.C. 7:7E-[8.15]**8.13**, which re-

quires that the use be compatible with existing uses in the area or adequate buffering be provided; and Resource [Policy] **rule** N.J.A.C. 7:7E-[8.13]**8.11** which places public access requirements upon the use.

(c)-(f) (No change.)

(g) Rationale: A strong industrial base is vital if an area is to be health and vibrant. Many of the developed parts of the coast are suffering from a declining industrial base. Land which had been productive is now vacant and in need of redevelopment. The [industrial policies] **Industrial rules** encourage industry to locate in the vacant areas of the cities of the Northern and Delaware waterfronts. However, the [policies] **rules** recognize that a healthy waterfront will host a mix of uses. By asking waterfront industries to create public access to the water and make sites they would vacate available to the public, the [policies] **rules** also recognize the waterfront as a valuable public resource.

The [industrial policies] **Industrial rules** address the conflicting demands and effects of industrial waterfront development. The [policies] **rules** recognize several factors which must be considered during the decision making process. First, water dependent industry must locate somewhere along the waterfront.

Other industry which needs water for operating or processing, some or all of the time, might also require a location near the waterfront, but landward of the water's edge. Second, as a result of environmental degradation, urban areas are suffering from unmet recreation and open space needs. Third, urban areas typically suffer from high unemployment and deteriorating tax bases. Fourth, city dwellers must be supported in their efforts to rejuvenate and revitalize their cities, making them pleasant and economically viable places to live.

7:7E-7.8 Mining Use [Policies] **rule**

(a) New or expanded mining operations on land, and directly related development, for the extraction and/or processing of construction sand, gravel, ilmenite, glauconite, and other minerals are conditionally acceptable, provided that the following conditions are met (mining is otherwise exempted from the General Land Areas [Policy] **rule**, but shall comply with the Special Areas, and General Water Area [Policies] **rules**):

1. The location of mining operations, such as pits, plants, pipelines, and access roads, causes minimal practicable disturbance to significant wildlife habitats, such as [lowland swamp forests] **wetlands** and stands of mature vegetation;

2. (No change.)

3. [Adequate buffer] **Buffer** areas are provided, using existing vegetation and/or new vegetation and landscaping, to provide maximum feasible screening of new on-land extractive activities and related processing from roads, water bodies, marshes and recreation areas. **A minimum buffer area of 500 feet will be required to residential development;**

4.-6. (No change.)

7. The mineral extraction **operation** will not have a substantial or long lasting adverse impact on coastal resources, including local economies, after the initial adverse impact of removal of vegetation, habitat, and soils, and not including the long term irretrievable impact of use of the non-renewable mineral resource; and

8. The mine development and reclamation plan minimizes the area and time of disruption of agricultural operations and provides for storage and restoration of all Agricultural Class I, II , and III soils, so that there will be no net loss in the area covered by these soils whenever [possible] **feasible**. The placement of soils may be acceptable to an alternate location if a need is demonstrated, there is no net loss in the area covered by these soils and the placement is consistent with all other coastal policies.

(b) The proposed mining, extension of existing mining or associated mining activities in freshwater wetlands or freshwater wetlands transition areas is subject to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) In addition, proposed mining extension of existing mining or associated mining activities within the 100-year floodplain is subject to the Flood Hazard Control Act (N.J.S.A. 58:16A-50 et seq.).

[(b)](c) Rationale: New Jersey's coastal zone includes important deposits and minerals. Mining these non-renewable resources is vital to certain sectors of the economy of selected regions of the coastal zone, the entire state and in some cases the nation, depending upon the specific type of mineral. For example, the high quality silica sands of Cumberland County supply an essential raw material for New Jersey's glass industry. Other industrial sands mined and processed in Cumberland County serve as basic ingredients in the iron and steel foundry industry. Ilmenite deposits in Ocean County provide titanium dioxide which is used in paint pigment. Construction grade sands are used in virtually all construction activity.

The extraction and processing of minerals from mines on land also produces short and long term adverse environmental impacts on agriculture. For example, open-pit mining removes all vegetation and soil, destroys wildlife habitat, changes the visual quality of the landscape, and irretrievably consumes the depletable mineral resource. Many of these impacts can be ameliorated by incorporating proper, imaginative and aggressive reclamation and restoration planning into the mine development process. However, the location of mineral deposits is an unquestionably limiting factor on the location of mining operations. Reasonable balances must therefore be struck between competing and conflicting uses of lands with mineral deposits.

Depending upon the diversity and strength of a local economy, depletion of mineral deposits through extraction may lead to serious adverse long-term economic consequences, particularly if the planned reclamation does not replace the direct economic contribution of the mining industry. The nonrenewable nature of mineral resources must also be considered carefully in light of the uses of some [of the] mined minerals.

7:7E-7.9 Port Use [Policies] **rule**

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

7:7E-7.10 Commercial Facility Use [Policies] **rule**

(a) Standards relevant to hotels and motels are as follows:

1. ["]Hotels and motels["] are commercial establishments, known to the public as hotels, motor-hotels, motels, or tourist courts, primarily engaged in providing lodging or lodging and meals, for the general public. Also included are hotels and motels operated by membership organizations, whether open to the general public or not.

2. New, expanded or improved hotels and motels are conditionally acceptable provided that the development complies with all Location and Resource [policies] **rules** and with the [policy] **rule** for high-rise structures and is compatible in scale, site design, and architecture with surrounding development.

3. (No change.)

4. In special urban areas, new hotel, motel, or restaurant development is acceptable in the filled water's edge and over large rivers on structurally sound pilings, provided it is consistent with [policies] **rules** on Filled Water's Edge (N.J.A.C. 7:7E-[3.16]**3.23** and Special Urban Areas (N.J.A.C. 7:7E-[3.41]**3.43**, and the existing total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.

5. (No change.)

(b) (No change.)

(c) Standards relevant to retail trade and services are as follows:

1. "Retail and trade service" is a broad category including, **but not limited to,** establishments selling merchandise for personal and household consumption, such as food stores and clothing stores; **offices;** service establishments such as banks and insurance agencies; establishments such as restaurants and night clubs; and establishments for participant sports such as bowling alleys and indoor tennis courts.

2. In special urban areas, new or expanded retail trade and service establishments are conditionally acceptable in filled water's edge areas and over large rivers on structurally sound existing pilings as part of mixed use developments, provided that the development is consistent with **the** [policies] **rule** on [filled water's edge] **Filled Water's Edge** (N.J.A.C. 7:7E-[3.16]**3.23**) and Special Urban Areas

(N.J.A.C. 7:7E-[3.41]**3.43**), and the existing total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.

3. Elsewhere in the coastal zone, new or expanded retail trade and service establishments are conditionally acceptable provided that the development:

i. Complies with all [acceptable] **applicable** Location and Resource [Policies] **Rules**;

ii. Is compatible in scale, site design, and architecture with surrounding development; and

iii. Where appropriate, utilizes the water area as the central focus of the development.

4. (No change.)

(d) (No change.)

7:7E-7.11 Coastal Engineering

(a) ["]Coastal engineering["] includes a variety of structural and non-structural measures to manage water areas and the shoreline for natural effects of erosion, storms, and sediment and sand movement. Beach nourishment, sand fences, [pedestrial] **pedestrian** control on dunes, stabilization of dunes, dune restoration projects, dredged **material** [spoil] disposal and the construction of retaining structures such as bulkheads, revetments and seawalls are all examples of coastal engineering.

1. [The] **Coastal engineering standards are subject to the** Location [Policies] **rules** on General Water Areas and **to the** Special Area[s] **rules** [are directly relevant to most coastal engineering uses]. These coastal engineering use [policies] **rules** do not apply to **water dependent** uses [associated with] **within existing** ports[, commerce, and industry].

(b) (No change.)

(c) Standards relevant to dune management are as follows:

1. Dune restoration**, creation** and maintenance projects as non-structural shore protection measures, including sand fencing, revegetation, additions of non-toxic appropriately sized material, control of pedestrian and vehicular traffic, are encouraged. **These projects must be carried out in accordance with N.J.A.C. 7:7E-3A, Standards for Beach and Dune Activities.**

2. Rationale: [A natural dune field provides a strong measure of natural protection for adjacent land uses.] **As documented by the NJDEPE, the Federal Emergency Management Agency and others, dunes have proven to be very effective in providing protection from coastal storm surges, wave action and flooding. Dunes have been shown to reduce the level of storm damage particularly to boardwalks, gazebos and residential oceanfront structures. Creation, restoration, enhancement and maintenance of dunes is a preferred shore protection alternative where feasible.**

(d) Standards relevant to beach nourishment are as follows:

1. Beach nourishment projects, such as non-structural shore protection measures, are encouraged, provided that:

i. The particle size **and type** of the fill material is compatible with the existing beach material to ensure that the new material will not be removed to a greater extent than the existing material would be by normal tidal fluctuations;

ii. The elevation, width, slope, and form of proposed beach nourishment projects are compatible with the characteristics of the existing beach; [and]

iii. The sediment deposition will not cause unacceptable shoaling in downdrift inlets and navigation channels[.]**; and**

iv. Public access to the nourished beach is provided in cases where public funds are used to complete the project.

2. (No change.)

(e) Standards relevant to structural shore protection are as follows:

1. The construction of new shore protection structures or expansion or fortification of existing shore protection structures**, including, but not limited to,** jetties, groins, seawalls, bulkheads, and other retaining structures to retard longshore transport and/or to prevent tidal waters from reaching erodible material is acceptable only if it meets all of the following [seven] **five** conditions:

i. The structure is essential to protect water dependent uses or heavily used public recreation beach areas in danger from tidal waters or erosion, or the structure is essential to protect existing structures and infrastructure in developed shorefront areas in danger from erosion, or the structure is essential to mitigate, through, for example, the construction of a retained earthen ber[n]m, the projected erosion in an [Erosion Hazard Area] **erosion hazard area** along a headland and provide erosion protection for a development that is otherwise acceptable under [Coastal Resource and Development Policies] **the Rules on Coastal Zone Management**[.];

ii. The structure will not cause significant adverse impacts on local shoreline sand supply;

iii. The structure will not create net adverse shoreline sand movement [conditions] downdrift, including erosion or shoaling[s];

iv. The structure will cause minimum feasible adverse impact to living marine **and estuarine** resources;

[v. The structure is consistent with the State's Shore Protection Master Plan];

[vi.]**v.** If the proposed project requires filling of a water area it must be consistent with the General Water Area [Policy] **rule** for Filling (N.J.A.C. 7:7E-[4.11(j)1]**4.2(j)**) and all other relevant coastal [policies; and] **rules.**

[vii. The structure is designed, and will be maintained for at least a 50-year period of intended use.]

2. Maintenance or reconstruction of an existing bulkhead is conditionally acceptable, provided it does not result in the extension of the structure or the upland by more than 18 inches in any direction. Maintenance or reconstruction of an existing bulkhead which results in extension of the structure or upland by more than 18 inches shall be considered new construction**, unless it can be demonstrated that the existing bulkhead can not physically accommodate an 18 inch replacement. In such cases, the Department may allow for bulkhead replacement at a location which is as close as physically possible to the existing bulkhead sheathing. All measurements shall be made from the waterward face of the existing bulkhead sheathing to the waterward face of the new bulkhead sheathing.**

3.-4. (No change.)

5. The construction of bulkheads subject to wave runup forces (V-Zones) must be designed and certified by a professional engineer to withstand the forces of wave runup, and must include a splash pad on the landward side. The splash pad must have a minimum width of 10 feet, and may be constructed of concrete, asphalt or other erosion resistant material. If a cobblestone or similar splash pad is utilized, appropriate subbase and filter cloth must be incorporated into the design. A provision for the use of rip-rap along the seaward toe of the bulkhead structure may be required on a case-by-case basis, as a means to limit the scour potential.

[5.]**6.** (No change in text.)

7:7E-7.12 Dredged [Spoil] **Material** Disposal on Land

(a) ["]Dredged [spoil] **material** disposal["] is the discharge of sediments, [known as spoils,] removed during dredging operations. The following [policies] **rules** govern Land and Water's Edge disposal only. The [policies] **rule** regulating dredged [spoil] **material** disposal in Water [areas] **Areas** are found in N.J.A.C. 7:7E-[4.11] **4.2**.

(b) Dredged [spoil] **material** is conditionally acceptable under the following conditions: sediments are covered with appropriate clean material that is similar in texture to surrounding soils, and the sediments will not pollute the groundwater table by seepage, degrade surface water quality, present an objectionable odor in the vicinity of the disposal area, or degrade the landscape.

1. Dredged [spoil] **material** disposal is prohibited on [natural undisturbed] wetlands[, and on formerly spoiled wetlands that have revegetated with wetland species] **unless the disposal satisfies the criteria found at N.J.A.C. 7:7E-3.27**.

2. The use of uncontaminated dredged material of appropriate quality and particle size for beach nourishment is encouraged. Creation of useful materials such as bricks and lightweight aggregate from the dredged material is encouraged.

3. The use of uncontaminated dredged material for purposes such as restoring landscape, enhancing farming areas, creating recreation-oriented landfill sites, including beach protection and general land

reclamation, [building islands,] creating marshes, capping contaminated [spoil] **dredged material disposal** areas, and making new wildlife habitats is encouraged.

4. (No change.)

5. Dredged [spoil] **material** disposal in wet and dry borrow pits is conditionally acceptable (see N.J.A.C. 7:7E-[3.15]**3.14**, [7:7E-3.25] and [7:7E-3.29]**3.35**).

6. If pre-dredging sediment analysis indicates contamination, then special precautions shall be imposed including but not necessarily limited to, These may include increasing retention time of water in **the** disposal site or rehandling basin through weir and dike design modifications, use of coagulants, ground water monitoring, or measures to prevent biological uptake by colonizing plants.

7. Dewatering releases from confined (diked) disposal sites and rehandling basins shall meet existing State Water Quality Standards (N.J.A.C. 7:9-4 [and 7:9-] **through 6**).

(c) Rationale: Dredged [spoil] **material** disposal is an essential coastal land and water use that is linked inextricably to the coastal economy. [Spoil] **Dredged** material disposal could have serious impacts in the coastal environment. In the past decade, evolving state and federal policies for protection of the marine and estuarine coastal environment have sharply limited the creation of new water area dredged [spoil] **material** disposal areas. Yet maintenance dredging must continue if inlets and navigation channels are to be maintained. [The Coastal Policy] **This rule** recognizes the importance of this use of coastal resources and the need for land disposal sites.

Use of inefficient or faulty equipment and methods in the movement of dredged [spoils] **material**, may result in spillage of fuels, emission of toxic or noxious gases, loss of dredged materials, and noise and vibrations. These cause water pollution, air pollution and discomfort both for the crews and for the human population along the disposal route and nearby areas.

Therefore, due investigation is required prior to approval of dredge material disposal on land. Further, every precaution should be taken to ensure that the placement of dredge material does not endanger the coastal natural resources.

7:7E-7.13 National Defense Facility Use [Policy] **rule**

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

SUBCHAPTER 8. RESOURCE [POLICIES] RULES

7:7E-8.1 Purpose

(a) The third step in the screening process of the [Coastal Resource and Development Policies] **Rules on Coastal Zone Management** involves a review of a proposed development in terms of its effects on various resources of the built and natural environment of the coastal zone, both at the proposed site as well as in its surrounding region. These [policies] **rules** serve as standards to which proposed development must adhere.

(b) In addition to the standards addressed in this subchapter, proposed development must also adhere to applicable site development standards administered by other State and local agencies. These include, but are not limited to, standards adopted by local [soil conservation districts] **Soil Conservation Districts** or municipalities pursuant to the Soil and Sediment Control Act (N.J.S.A. 4:24-39 et seq.); [and] Barrier Free Design Requirements promulgated by the New Jersey Department of Community Affairs pursuant to N.J.S.A. 52:32.1 et seq. and N.J.S.A. 52:27D-123 and N.J.A.C. 5:23-3.2 and 5:23-3.14[.], **the Municipal Land Use Law, N.J.S.A. 40:55D- 1 et seq.; the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. and its implementing regulations set forth at N.J.A.C. 7:7A.**

7:7E-8.2 Marine Fish and Fisheries

7:7E-8.3 [Shellfisheries] **(Reserved)**

[(a) "Shellfisheries" are estuarine bay and river bottoms which are potentially productive for hard clams, soft clams, eastern oysters, bay scallops or blue mussels.

1. Potentially productive areas are those which do not have a history of natural recruitment for any of the above species, but could be used as shellfish culture planting area.

2. Presently productive shellfish beds, and those with a history of natural recruitment, are addressed by Special Area policy N.J.A.C 7:7E-3.2.

(b) Any development which would result in the destruction of potentially productive shellfish area is discouraged. (The term "destruction" is defined in 7:7E-3.2)

(c) Any development which would result in the contamination and condemnation of a potentially productive shellfish area is prohibited.

1. Water-dependent development which requires new dredging in these areas is discouraged.

2. Maintenance dredging in these areas is conditionally acceptable.

(d) Any project which would discharge untreated or improperly treated domestic or industrial waste waters or toxic or hazardous substances directly into waters so as to adversely affect a potentially productive shellfishing area is prohibited.

(e) Rationale: Estuarine shellfish are harvested by both commercial and residential fisherman, with the sport group concentrating on hard clams almost exclusively. Hard clams are a very significant species. Oysters, bay scallops and soft clams are predominantly commercial species. Commercial dockside landing values in New Jersey for 1982 were $8.32 million for estuarine mollusks, with an estimated retail industry value of $20.8 million. The commercial harvest is estimated to support employment of 1,500 persons in fishing, distribution, processing, and retail. Sport clammers numbered 17, 907 in 1982. In addition to direct human consumption, shellfish play and important role in the overall ecology of the estuary. Young clams are important forage food for a variety of finfish such as winter flounder, and crabs and migratory waterfowl especially the diving species.

Hard clams are widely distributed in New Jersey's coastal estuaries inhabitating most waters where the salinity is about 15 parts per thousand or greater. Suitable bottom substrate and dissolved oxygen are also important determining factors. Hard clams usually recolonize areas that area dredged, provided that anoxic conditions are not present, although it may take a number of years.

Water presently condemned for shellfishing may not be directly or immediately important to human economic although these areas have been used as resource recovery programs, relay and depuration, source areas. These areas however, serve for restocking fishable areas through production of motile larvae. Shellfish in condemned waters also are not lost to estuarine ecological food-webs, but serve as a food source to other species or wildlife.]

7:7E-8.5 Surface Water Use

(a) ["]Surface water["] is the water in lakes, ponds, streams, rivers, bogs, wetlands, bays, and ocean that is visible on land.

(b) Coastal development shall demonstrate that the anticipated surface water demand of the facility will not exceed the capacity, including phased planned increases, of the local potable water supply system or reserve capacity and that construction of the facility will not cause unacceptable surface water disturbances, such as drawdown, bottom scour, or alteration of flow patterns.

[1. Coastal development which uses design processes and fixtures which minimize consumptive water use will be encouraged.]

[2.]**1.** Coastal development shall conform with all applicable DEPE and, in the Delaware River Area, the Delaware River Basin Commission, requirements for surface water diversions.

(c) (No change.)

7:7E-8.6 Groundwater Use

(a) ["]Groundwater["] is all water within the soil and subsurface strata that is not at the surface of the land. It includes water within the earth that supplies wells and springs.

(b) Coastal development shall demonstrate, to the maximum extent practicable, that the anticipated groundwater withdrawal demand of the development, alone and in conjunction with other groundwater diversions proposed or existing in the region, will not cause salinity intrusions into the groundwaters of the zone, will not degrade groundwater quality, will not significantly lower the water table or piezometric surface, or significantly decrease the base flow of adjacent water sources. Groundwater withdrawals shall not exceed the aquifer's safe yield.

[1. Coastal development shall use the best available technology to minimize off-site stormwater runoff, increase on-site infiltration, simulate natural drainage systems, and minimize off-site discharge natural filtration functions.

i. Best available technology may include measures such as retention basins, recharge trenches, porous paving and piping, contour terraces, and swales, provided such techniques can be demonstrated to satisfy these policies.

ii. Provisions for elimination of curbs, reduction of roadway widths, and rooftop runoff recharge basins are strongly encouraged.]

[2.]**1.** Coastal development shall conform with all applicable DEPE and, in the Delaware River Basin, Delaware River Basin Commission requirements for groundwater withdrawal and water diversions.

(c) Rationale: Groundwater is a primary source of water for drinking and industrial use. In some areas of the coastal zone, especially areas in Essex, Middlesex, Monmouth, Salem, Camden, and Cape May Counties, excessive amounts of groundwater are being withdrawn. The problem stems from the overpumping of groundwater, industrial, agricultural and municipal landfill leakage into groundwater and reduction of aquifer recharge caused by increased development and population. This has led to a progressive lowering of the water table or piezometric surface, altered groundwater flow patterns, changed groundwater recharge/discharge relationships **which may in turn result in** [is] increasing salt water intrusion into the groundwaters, [may damage] **damaging** the base flow conditions of streams, and [may lead to] well closing [because of] **due to** contamination.

7:7E-8.7 Stormwater Runoff

[(a) Stormwater runoff is flow on the surface of the ground, resulting from precipitation.

(b) Coastal Development shall use the best available technology to minimize off-site stormwater runoff, increase on-site infiltration, simulate natural drainage systems, and minimize offsite discharge of pollutants to ground or surface water and encourage natural filtration functions.

1. Best available technology may include measures such as retention basins, recharge trenches, porous paving and piping, contour terraces, and swales, provided such techniques can be demonstrated to satisfy these policies.

2. Provisions for elimination of curbs, reduction of roadway widths, and rooftop recharge basins are strongly encouraged.

(c) Standards relevant to flood and erosion control are as follows:

1. For sites subject to fluvial flooding, the flood and erosion control standard for detention requires that volumes and rates be controlled so that after development the site will generate no greater peak runoff from the site than prior to development, for a two-year, 10-year, and/or up to 100-year storm event considered individually.

i. The appropriate flood control measures to be incorporated for detention purposes vary from one site to another, depending on a site's proximity to the drainageways of a watershed.

ii. These design storms shall be defined as either a 24 hour storm using the rainfall distribution recommended by the U.S. Soil Conservation Service when using United States Soil Conservation Service procedures, (such as U.S. Soil Conservation Service, "Urban Hydrology for Small Watersheds", Technical Release No. 55, or as the estimated maximum rainfall for the estimated maximum rainfall for the estimated time of concentration of runoff at the site when using a design method such as the mdified Rational Method. For purposes of computing runoff, all lands in the site shall be assumed, prior to development, to be in good condition (if the lands are pastures, lawns or parks), with good cover (if the lands are woods), or with conservation treatment (if the land is cultivated), regardless of conditions existing at the time of computation.

(d) Standards revelant to water quality control are as follows:

1. The water quality requirement for detention will require prolonged retention of a Small design storm using the rainfall distribution recommended for New Jersey by the United States Soil Conservation Service or a storm of one and 1/4 inches of rainfall in two hours. Provisions shall be made for the water to be retained and released so as to evacuate 90 percent in approximately 18 hours in the case of residential developments and 36 hours in the case of other developments. This is usually accomplished by a small outlet at the lowest level of detention storage, with a large outlet or outlets above the level sufficient to control the Small design storm. If this requirement would result in a pipe smaller than three inches in diameter, the period of retention shall be waived so that three inches will be the minimum pipe size used.

2. Where soils have sufficient permeability, the production of zero runoff from the site under conditions of the 1 1/4 inch water quality storm will be considered sufficient to meet the water quality requirement for residential developments, provided that the seasonal high groundwater does not rise to within two feet of the bottom of the detention basin. For other than residential developments, approvals will be on a case-by-case after technical review. The object of this review will be to avoid pollution of groundwater.

(e) Standards relevant to Detention Ponds and Swales are as follows:

1. Groundwater infiltration areas such as detention ponds or swales shall be sited as far horizontally from surface water and as far vertically from groundwater as is practicable.

i. Infiltration areas are discouraged in soils with a seasonal high water table between 1 1/2 and three feet; Limited infiltration swales may be acceptable on a case by case basis provided that:

(1) Swales in these areas are not the principal infiltration areas and only serve to recharge runoff generated within the area of soils with the seasonal high water tables between 1 1/2 and three feet;

(2) Maximum swale slopes are two percent;

(3) Time of concentration is maximized by maximizing the length of the swale; and

(4) Swales are planted with native woody species at sufficient densities to delay surface water flow and promote evapo-transpiration.

ii. Infiltration areas, detention and retention basins, or any other techniques of delaying runoff are prohibited in soils with a seasonal high water table of 1 1/2 feet or less, and in riverine floodplains.

(f) Standards relevant to Alternatives to Detention Basins

1. It is not necessary that basic requirements for water quality and quality control; be satisfied by means of detention basins. Measures including, but not limited to rooftop storage, tanks, infiltration pits, porous pavement, dry wells, gravel layers underneath paving, or sheet flow through vegetated areas may be used for the purpose, with the appropriate consideration for length of life and feasibility of the continued maintenance in accordance with technical guidance from the Department. Vacuum street sweeping may be substituted for the water quality requirement where it can be shown to the satisfaction of the Department that continuity of the service will be assured, and where the pollution in question originates on the pavement.

2. Non-structural management practices, including but not limited to, cluster land use development, open space acquisition, stream encroachment and flood hazard controls, protection of wetlands, steep slopes and vegetation should be coordinated with detention requirements. Changes in land use can often reduce the scope and cost of detention provisions required by means of appropriate changes in runoff coefficients.

(g) Standards relevant to Maintenance and Repair area as follows:

1. Maintenance of detention basins and infiltration areas, or of other alternatives, is a very important aspect of a stormwater management program. Control measures shall be designed to provide for mechanical maintenance operations. Responsibility for operation and maintenance of stormwater management of stormwater management facilities including periodic removal and disposal of accumulated particulate material and debris, unless assumed by a government agency, shall remain with the property and shall pass to any successor or owner. In the case of developments where lots are to be sold, permanent arrangements, satisfactory to the approving agency shall be made to ensure continued performance of the obligations.

(h) Standards relevant to Storm Water Point Source Discharges are as follows:

1. Storm water point source discharges may not flow into sanitary sewer systems.

(i) Rationale: Stormwater Runoff is a natural process of surface hydrology. Development changes this process as the volume and rate of runoff increase as the natural landscape is modified and replaced by impervious surfaces. Unless managed properly, stormwater runoff will adversely affect the coastal environment in several ways: increased erosion, increased storm surges in streams, destruction of flood plain vegetation, degraded water quality from contaminants in runoff from paving, increased turbidity, decreased aquatic productivity, lowered water tables, reduced groundwater quality and supply. The policies anticipate these concerns and treat a development site as a closed system within which drainage system within which drainage systems must be designed using best available management technology to contain runoff and ground and surface water pollution increase within the site in order to minimize off-site impacts.

The policy requirements are adapted from standards under the New Jersey Storm Water Management Act, N.J.S.A. 40:55D-1 et seq.

Examples of stormwater runoff management techniques may be found into source books: J. Tourbier and R. Westmacott, Water Resources Protection Measures in Land Development—A Handbook, (Newark, Delaware: University of Delaware, Water Resources Center, April 1974) and New Jersey State Soil Conservation Committee, Standarsd for Soil Erosion and Sediment Control in New Jersey, Trenton, New Jersey: State Soil Conservation Committee, revised 1975).]

(a) Stormwater runoff is the flow of water on the surface of the ground, resulting from preciptation.

(b) Coastal development shall employ a site design which, to the extent feasible, minimizes the amount of impervious coverage on a project site, and shall use the best available technology to minimize the amount of stormwater generated, minimize the rate and volume of off-site stormwater runoff, maintain existing on-site infiltration, simulate natural drainage systems and minimize the discharge of pollutants to ground or surface waters. Consistent with the provisions of the stormwater runoff rule, the overall goal of the post-construction stormwater management system design shall be the reduction from the predevelopemnt level of suspended solids and soluble contaminants.

1. Non-structural management practices, including, but not limited to, cluster land use development, minimum site disturbance, open space acquisition, use of sheet flow from streets and parking areas, and the protection of wetlands, steep slopes and vegetation shall be incorporated into project designs. These non-structural management practices shall be utilized, unless it is demonstrated that these practices are not feasible, from an engineering perspective, on a particular site.

2. In determining the appropriate stormwater management system design for a particular project, the existing physical site conditions must be carefully considered. Slopes, depth to seasonal high water table, soil type and texture, watershed area, and property areas are all critical to the selection of a suitable stormwater management technique or combination of techniques.

(c) Standards relevant to stormwater management system design are as follows:

1. All stormwater management systems shall be designed in accordance with this section. The use of control techniques not specifically listed in this section will be evaluated on a case-by-case basis, and may be permitted in conjunction with the techniques discussed in this section. Alternative techniques may be acceptable, provided that it can be demonstrated that they satisfy the design standards of this section. Complete justification for selection of a particular stormwater management technique, including the engineering basis for exclusion of Department's preferred techniques, shall be provided as part of a complete permit application submission.

2. The following apply to tidal areas:

i. The construction of stormwater outfalls into tidal waters must include the incorporation of a tide flex valve, if the bottom elevation of the outfall is within one foot of the mean high water elevation.

ii. Because tidal flooding is the result of higher than normal tides, the 100-year tidal flood elevation will not be affected by development. Therefore, development activities that are located along or adjacent to tidal water bodies and segments of tidal water bodies, as specified below, shall not be required to comply with the flood control requirements of this section. These affected tidal waters include:

(1) Atlantic Ocean;

(2) All water bodies named on the U.S. Geological Survey 7.5′ topographic maps as "bays," "canals," "coves," "guts," "harbors," "inlets," "sounds," "thorofares," and "channels," except for the portion of the Delaware River near Camden called "Back Channel";

(3) All man-made lagoons and canals discharging into the water bodies listed in this subparagraph;

(4) All sections of the "Intracoastal Waterway";

(5) Arthur Kill (entire reach); Hackensack River (Newark Bay to the Pulaski Skyway); Hudson River; Manasquan River (Atlantic Ocean to Route 70); Metedeconk River (Barnegat Bay to Route 70); Navesink River (Shrewsbury River to Coopers Bridge); Passaic River (Newark Bay to the Pulaski Skyway); Raritan River (Raritan Bay to the New Jersey Turnpike); Shark River (Atlantic Ocean to confluence with Laurel Gully Brook; Shrewsbury River (Sandy Hook Bay to Seven Bridge Road); Waretown Creek (Atlantic Ocean to Route 9); Whale Brook (Raritan Bay to Route 35); Wreck Pond (Atlantic Ocean to Route 71); and

(6) Along watercourses not specifically identified in (c)2ii(1) through (5) above, that flow into tidal water bodies listed above, the reach between the mouth and either the first bridge or culvert upstream or the point upstream where the regulatory flood (as per N.J.A.C. 7:13) exceeds the 100-year tidal elevation, whichever is closest to the mouth.

3. The following apply to flood control:

i. If a regional stormwater management plan has been developed for the watershed, the applicant shall meet the flood control requirement of the Stormwater Runoff rule by conforming to the regional management plan. If no regional stormwater management plan has been developed then the applicant shall design the stormwater system so that the post-development peak runoff rate for the two year storm event is 50 percent of the pre-development peak runoff rate and the post-development peak runoff rates for the 10- and 100-year storm events are 75 percent of the pre-development peak runoff rate.

ii. The design storms used to achieve the required level of site runoff control described in (c)2i above shall be defined as either the 24-hour storm using the rainfall distribution recommended by the U.S. Soil Conservation Service (USSCS), or as the total rainfall uniformly distributed throughout the critical storm duration as determined by the USSCS Modified Rational Method ("Standards for Soil Erosion and Sediment Control in New Jersey," April, 1978). A 20 acre drainage area limit shall be used for the Modified Rational Method unless otherwise approved by the Department.

iii. For the purposes of computing runoff, all lands in the site shall be assumed, prior to development, to be in good hydrologic condition if the lands are pastures, lawns or parks, with good cover if the lands are woods, or with conservation treatment if the land is cultivated, regardless of conditions existing at the time of computation. For lands to be considered cultivated, it shall have been used for such purposes for a period of at least 10 years prior to the time of computation. If such use has not occurred or cannot be satisfactorily documented, woods shall be assumed to be the redeveloped land condition. In computing pre-development runoff, all significant land features, such as ponds, depressions or hedgerows which increase the ponding factors shall be accounted for.

vi. Plans and calculations shall be provided to show that the discharge will not cause erosion along the flow path between the outfall and the receiving waterbody. All stormwater discharge paths shall be stabilized in accordance with the criteria in N.J.A.C. 7:13-3.3.

4. The following apply to water quality control:

i. The water quality control standard shall be the maximum feasible reduction of the average annual total suspended solids

(TSS) loading after construction has been completed, and the removal of oil, grease and other soluble contaminants through vegetative filtration, wherever possible. Under no circumstances shall the average annual pre-development total suspended solids (TSS) discharged off-site be increased after construction has been completed and the removal of oil and grease through vegetative filtration has been effected wherever possible.

ii. The water quality requirement for detention will require prolonged detention of a small design storm which is a one-year frequency 24-hour storm using the rainfall distribution recommended for New Jersey by the Soil Conservation Service, or a storm of 1.25 inches of rainfall in two hours. Provisions shall be made for the small design storm to be retained and released so as to evacuate 90 percent or less in 18 hours in the case of residential developments, and 36 hours in the case of other developments. This is usually accomplished by a small outlet at the lowest level of detention storage, with a large outlet or outlets above the level sufficient to control the small design storm. If the above requirement would result in a pipe smaller than three inches in diameter, the period of detention shall be waived so that three inches will be the minimum pipe size used. The retention time shall be considered a brim-drawdown time, and therefore begin at the time of peak storage.

(d) The Land Use Regulation Program has assigned to the following stormwater management techniques, a hierarchy of preferences for use in project design. These options are categorized as "Encouraged," "Conditionally Acceptable" and "Discouraged." If an applicant cannot make maximum use of a preferred stormwater management technique, based on physical or engineering constraints, the Program may accept some combination of techniques. If use of a particular technique on a property can be designed to meet a majority of that technique's normal requirements, than an applicant may still be required to use that stormwater management technique, if use of that technique on that property remains environmentally preferable to alternative techniques. In addition, none of the techniques listed in this section may be constructed "on-stream."

1. Encouraged: The following list represents the preferred stormwater management techniques established by the Program. The incorporation of these methods into project design is strongly encouraged, because these techniques have been determined to provide the best water quality and flood control.

i. The use of newly created artificial wetlands is encouraged, provided that the following design conditions are satisfied:

(1) The water depth in the wetlands is less than one foot (six inches is optimal), with the exception of the 25 percent area discussed at (d)1i(6) below;

(2) The perimeter of the water area shall be graded to form a 10 to 20 foot wide shallow bench for aquatic emergents, for at least half of the water area perimeter;

(3) The surface area of the wetland shall constitute about two to three percent of the total area of the contributing watershed;

(4) Wetland vegetation shall be commercial wetland plant stock (either live plants or dormant rhizomes), as opposed to transplants or seeding;

(5) At least two primary native or non-aggressive exotic wetlands species, which are hardy and rapid colonizers, shall be planted over about 30 percent of the total shallow water area. Each primary species shall be planted in three or four monospecific stands, with individual plants about two to three feet apart. Up to three secondary wetland species, that are not as aggressive in colonizing a pond, shall be randomly distributed in clumps around the perimeter of the wetlands;

(6) If a basin is exclusively designed to act as a shallow wetland, at least 25 percent of the total surface area of the inundated area shall be reserved for open water areas that are two or more feet deep, to provide habitat for waterfowl and marsh birds.

(7) The use of native fish stocks in artificial wetlands is encouraged, as a means to control mosquitos; and

(8) The use of a clay liner in the system design may be required, depending on site conditions in order to ensure adequate hydrology in the system.

ii. The use of wet ponds/retention basins is encouraged, provided that the following design conditions are satisfied:

(1) The ratio of permanent pool or basin volume to the runoff volume for the water quality storm runoff shall be greater than three to one;

(2) The pool must be shallow enough to avoid thermal stratification, and deep enough to minimize algal blooms and resuspension of decomposing organics and other previously deposited materials;

(3) The surface and drainage area shall be sufficient so that the inflow of dry weather flow into the wet pond will be large enough to sustain sufficient water during the summer periods and prevent stagnation;

(4) Wet ponds shall be configured so as to promote maximum sedimentation;

(5) The use of native fish stocks in wet ponds is strongly encouraged, as a means to control mosquitos; and

(6) The use of a clay liner in the system design may be required, depending on site conditions in order to ensure adequate hydrology in the system.

iii. The use of detention basins is encouraged, to provide storage of stormwater and to control the introduction of sediments and pollutants to ground and surface waters, provided that the following design conditions are satisfied:

(1) The use of artificial wetlands a retention basin has been thoroughly explored and has been determined to be infeasible, based on engineering criteria;

(2) The design standards for water quality control and flood control, as described in (c) above, must be satisfied;

(3) There shall be at least three feet of vertical separation between the bottom of the basin and the seasonal high water table;

(4) Native and non-aggressive exotic vegetation for use in detention basins shall be the approved species as determined by the appropriate Soil Conservation District; and

(5) All low-flow channels shall be constructed of rip-rap or grass paver blocks.

2. Conditionally Acceptable: The following list represents the stormwater management techniques which may be incorporated into project design, provided that it can be documented that the use of the "Encouraged" techniques listed in (d)1 above has been maximized or shown to be infeasible for engineering reasons. These techniques are designed to facilitate the infiltration of stormwater into the soil. However, these systems are susceptible to failure as a result of inadequate depth to seasonal high water table, improper soil texture and inadequate long-term maintenance of the systems.

i. The use of vegetated swales is conditionally acceptable, provided that the following conditions are satisfied:

(1) The use of other "Encouraged" stormwater management techniques, as described in (d)1 above, has been maximized, or can be documented as infeasible. Complete justification for the exclusion of the "Encouraged" techniques must be provided as part of the permit application submission;

(2) There shall be at least three feet of vertical separation between the bottom of the swale and the seasonal high water table;

(3) The soil texture shall be sand, loamy sand or sandy loam, as defined by the U.S. Department of Agriculture;

(4) The use of vegetative swales shall be limited to low intensity developments, as defined in N.J.A.C. 7:7E-5;

(5) The swales shall be designed to provide a vegetation contact time of a minimum of five minutes for the water quality storm;

(6) The slope of the swale shall not be less than 0.5 percent (preferably one percent or higher);

(7) The swale shall be designed so the depth of flow does not exceed three inches for the water quality storm;

(8) The use of rip-rap, in conjunction with appropriate vegetation, may be incorporated into the design of the swale, if a stable condition using vegetation alone cannot be achieved;

(9) Vegetation for use in the swales shall include native woody species, and shall be consistent with the approved vegetation species as determined by the local Soil Conservation District; and

(10) In addition to the standards in (d)2i(1) through (9) above, all swales must be designed in accordance with the Soil Conservation District "Standards for Soil Erosion and Sediment Control in New Jersey," N.J.A.C. 2:90.

ii. The use of infiltration basins is conditionally acceptable, provided that the following conditions are satisfied:

(1) The use of other "Encouraged" stormwater management techniques, as described in (d)1 above, has been maximized, or can be documented as infeasible. Complete justification for the exclusion of the "Encouraged" techniques must be provided as part of the permit application submission;

(2) There shall be at least three feet of vertical separation between the bottom of the proposed infiltration basin and the seasonal high water table;

(3) The soil texture shall be sand, loamy sand or sandy loam, as defined by the U.S. Department of Agriculture;

(4) No topsoil may be placed in the basin bottoms;

(5) The basin bottom shall be scarified after the basin is formed, after which no other construction within the basin may occur;

(6) All of the water quality storm shall be stored and recharged within 72 hours of the storm; and

(7) There is an adequate back-up drainage system provided, in the event that the infiltration capacity of the infiltration basin fails.

3. Discouraged: The following list represents techniques which are not likely to be approved, unless it can be clearly documented that the use of other "Encouraged" or "Conditionally Acceptable" techniques has been maximized or is infeasible for engineering reasons.

i. Underground storage cannot be utilized as a means to provide water quality treatment of stormwater. Underground storage for the purpose of controlling stormwater volume is discouraged, but may be acceptable in limited cases, provided that the following conditions are satisfied:

(1) The use of other "Encouraged" or "Conditionally Acceptable" stormwater management techniques, as described in (d)1 and 2 above, has been maximized, or can be documented as infeasible. Complete justification for the exclusion of "Encouraged" or "Conditionally Acceptable" techniques must be provided as part of the permit application submission; and

(2) Water quality treatment shall be provided, prior to stormwater discharge to the underground storage system.

ii. The use of sediment traps and oil/grease separators is generally discouraged, but may be acceptable in limited cases, provided that the following conditions can be satisfied:

(1) The use of other "Encouraged" or "Conditionally Acceptable" techniques, as described in (d)1 and 2 above, has been maximized, or can be documented as infeasible. Complete justification for the exclusion of "Encouraged" or "Conditionally Acceptable" techniques must be provided as part of the permit application submission;

(2) The use of sediment traps and oil/grease separators shall be limited to drainage areas less than 0.1 acre in size;

(3) For drainage areas greater than 0.1 acre in size, the use of sediment traps and oil/grease separators shall be combined with other stormwater management techniques as described in this subsection.

iii. The use of porous asphalt pavement is discouraged, due to the problems associated with continued maintenance and functioning of these types of infiltration systems. As set forth in this subparagraph, the surface of porous asphalt pavement shall be cleaned regularly to avoid becoming clogged by fine grained material. Porous pavement does not include gravel, crushed shell or paver blocks (non-grout). The use of porous pavement may be acceptable in limited cases, provided that the following conditions are satisfied:

(1) The use of other "Encouraged" or "Conditionally Acceptable" techniques, as described in (d)1 and 2 above, has been maximized, or can be documented as infeasible. Complete justification for the exclusion of "Encouraged" or "Conditionally Acceptable" techniques must be provided as part of the permit application submission;

(2) The soil texture shall be sand, loamy sand or sandy loam, as defined by the U.S. Department of Agriculture;

(3) The use of porous asphalt pavement shall be limited to light traffic areas only, such as parking areas;

(4) The areas of porous asphalt pavement shall be adequately buffered, through vegetative screening, to avoid adjacent sources of aeolian sand and silt;

(5) The use of porous asphalt pavement shall include a strict maintenance schedule, to include, but not be limited to, vacuum sweeping on a weekly basis and high pressure water washing of the pavement on a monthly basis;

(6) The use of asphalt sealers is prohibited; and

(7) The use of sand during periods of snow is prohibited on porous asphalt areas.

iv. The use of perforated pipe for the purpose of underground recharge of stormwater is discouraged, due to the problems associated with maintenance and long-term infiltration functioning of this type of system, and the potential to directly contaminate groundwater. However, the use of perforated pipe may be acceptable in limited cases, provided that the following conditions are satisfied:

(1) The use of other "Encouraged" or "Conditionally Acceptable" techniques, as described in (d)1 and 2 above, has been maximized or can be documented as infeasible. Complete justification for the exclusion of "Encouraged" and "Conditionally Acceptable" techniques must be provided as part of the permit application submission;

(2) The soil texture shall be sand, loamy sand or sandy loam, as defined by the U.S. Department of Agriculture; and

(3) Runoff shall be filtered through a basin and/or vegetated swale, to enhance water quality, prior to discharge into a perforated pipe system.

(e) The species and quantity of native or non-invasive exotic vegetation used as part of a stormwater management system design shall be consistent with the standards and specifications of the local Soil Conservation District. In general, the use of vegetation shall be limited to low maintenance native species, shall be pest resistant, and shall be drought or water tolerant, depending on the specific application. The use of native woody species is encouraged for all vegetated swales.

(fe) Standards relevant to stormwater management system maintenance are as follows:

1. The long-term maintenance of stormwater management systems is a critical factor in the ongoing functioning of these systems. In cases where these existing systems have failed, the most common cause is inadequate maintenance of the system. Therefore, the following maintenance requirements shall be included as part of all stormwater management plans; shall be specifically identified on the site plans and in a stormwater system maintenance report for any proposed project; and, if required by the Program, shall be recorded with the deed for the property in question: all information regarding the long-term maintenance of proposed stormwater management systems, which information shall be provided as part of the initial permit application submission, and the party or parties responsible for long-term maintenance of the system shall be clearly designated, and documentation of the assumption of this responsibility shall be provided as part of the permit application submission. All maintenance records shall be written, maintained and provided to the Department upon request;

i. Maintenance of detention basins shall include, but not be limited to, the following activities:

(1) Visual inspection of all components of the stormwater management system at least twice each year;

(2) Removal of silt, soil, litter and other debris from all catch basins, inlets and drainage pipes, on a twice-yearly basis;

(3) Maintenance, including grass cutting, and replacement (if necessary) of all landscape vegetation within the basins, at least once each year;

(4) Removal of silt from within the basins at least once each year, or more frequently if noticeable buildup occurs, for disposal in an acceptable location; and

(5) The basin bottoms shall be aerated at least once each year, and shall be scraped and replanted at least once every five years, to prevent the sealing of the basin bottom by silt deposits.

ii. Maintenance of artificial wetlands shall include, but not be limited to, the following:

(1) Visual inspection of all components of the system at least once every six months;

(2) Removal of silt, litter and other debris from all catch basins, inlets and drainage pipes at least once every six months, or as required;

(3) Vegetation harvesting at least once each year;

(4) The approval of a stormwater management system which involves the creation of artificial wetlands on an upland site will automatically include the issuance of a Freshwater Wetlands General Permit 1 for maintenance of the wetlands, which shall be renewed every five years.

(f) Rationale: Stormwater runoff is a natural process of surface hydrology, whereby precipitation flows on the surface of the ground into a surface water body or into the soil through infiltration. Development changes this process as the volume and rate of runoff increase in response to changes in the natural landscape, including grading, paving and construction. Unless managed properly, the stormwater runoff generated by buildings and paved surfaces has the potential to adversely affect the coastal environment in several ways: increased erosion; increased flooding in streams; destruction of flood plain vegetation; contamination of ground and surface waters through the introduction of pollutants and sediment; increased turbidity in surface waters; and decreased aquatic productivity.

The two primary objectives in designing a stormwater management system are water quality control and flood/erosion control. Many of the concerns related to water quality control and flood/erosion control should be addressed during the site planning and design phase of a development. Non-structural management practices, including land use, site design and source controls for nonpoint source pollution control shall be used in the planning of a project, unless it dcan be demonstrated that these practices are infeasible on a particular site. Changes in land use can often reduce the scope and cost of required detention provisions by means of appropriate changes in runoff coefficients.

In order to reduce the potential for adverse impacts from stormwater runoff, a minimum disturbance and minimum maintenance goal should apply to landscaping on a proposed project site. Where practical, clearing or site grading should only occur on land required for the structure and any related utilities, drives, walks and active recreational facilities. Where land disturbance is necessary and existing vegetation is proposed to be removed, alternative landscaping including ground coverings, shade trees and shrubbery should be utilized. Native plant species should be established, and lawns should be avoided where conditions are poor or indicate problems with turf establishment and maintenance.

As a design guideline, the Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA) have established a threshold of 80% reduction of the average annual total suspended solids (TSS) loading after construction has been completed. The removal of 80% of TSS is assumed to control to some degree heavy metals, phosphorous and other pollutants. In some cases, local conditions such as steep slopes may preclude the attainment of this goal. However, the design of stormwater management systems shall include adequate provisions, as described in this rule, to satisfy the 80% TSS reduction goal.

The requirements of this section have been established to conform with the New Jersey Surface Water Quality Standards (N.J.A.C. 7:9-4 et seq.). Certain guidelines and standards discussed in this section have been previously developed and discussed in a report titled "Controlling Urban Runoff: A Practical Manual For Planning And Designing Urban BMP's", written by Thomas Schueler, Metropolitan Washington Council of Governments, dated 1987. Further information and details may be found in that report.

7:7E-8.9 [Important Wildlife Habitat] **(Reserved)**

[(a) "Important wildlife habitats" are areas of general importance to the maintenance of a range of wildlife species, providing high primary productivity, good mixes of habitat types, surface water, cover, or movement corridors. These areas are not as critical as "critical wildlife habitats". If they were depleted the effect on wildlife population would not be as catastrophic as the loss of a critical habitat, but serious depletions of wildlife populations would occur. Until maps which identify these areas are available, sites will be considered for importance on a case by case basis by the Division of Fish, Game and Wildlife.

(b) Coastal development which does not incorporate management techniques which minimize disturbance to important wildlife habitats, on and offsite, is discouraged.

(c) Development that would significantly restrict the movement of wildlife through the site to adjacent habitats and open space is discouraged.

(d) Rationale: Important Wildlife Habitats are areas that provide primary productivity or primary habitat for a wide range of game and non-game species. Depletion of this resource would cause a general population decline of a species that are not rare and endangered.

Wildlife is an important natural resource of the coast. Desirable on- site wildlife management techniques which could mitigate adverse impacts, and favor minimal feasible interference include preservation and dedication to open space of sensitive habitats of sufficient width, especially along drainage ways and waterways, to preserve wildlife movement corridors, placement of nesting boxes, and planting of vegetative wildlife food species.]

7:7E-8.11 Public Access to the Waterfront

(a) ["]Public access to the waterfront["] is the ability of all members of the community at large to pass physically and visually to, from and along the ocean shore and other waterfronts.

(b) Coastal development adjacent to all coastal waters, including both natural and developed waterfront areas, shall provide permanent perpendicular and linear access to the waterfront to the maximum extent practicable, including both visual and physical access. Development that limits public access and the diversity of the waterfront experiences is discouraged.

1. All development adjacent to water shall, to the maximum extent practicable, provide, within its site boundary, a linear waterfront strip accessible to the public. If there is a linear waterfront accessway on either side of the site and [it] **the continuation of which** is not feasible [to continue it] within the boundaries of the site, a pathway around the site connecting to the adjacent parts, or potential parts of the waterfront path system in adjacent parcels shall be provided.

2. Municipalities that do not currently provide, or have active plans to provide, access to the water will not be eligible for Green Acres or Shore Protection [Bond] funding.

3. Public access must be clearly marked, provide parking where appropriate, be designed to encourage the public to take advantage of the waterfront setting, and [shall] **must** be barrier free where practicable.

4. A fee for access [to], including parking where appropriate, **to** or use of publicly owned waterfront facilities shall be no greater than that which is required to operate and maintain the facility and must not discriminate between residents and non-residents except that municipalities may set a fee schedule that charges up to twice as much to non-residents for use of marinas and boat launching facilities for which local funds provided 50 percent or more of the costs.

5.-8. (No change.)

9. Developments elsewhere in the [Coastal Zone] **coastal zone** shall conform with any adopted municipal, county or regional waterfront access plan, provided the plan is consistent with the Rules on Coastal Zone Management.

10.-12. (No change.)

13. For developments which reduce existing on-street parking that is used by the public for access to the waterfront, mitigation for

the loss of these public parking areas is required at a minimum of 1:1 within the proposed development site or other location within 250 feet of the proposed project site.

(c) At sites proposed for the construction of single family or duplex residential lots, which are not part of a larger development, public access to the waterfront is not required as a condition of the coastal permit.

[(c)](**d**) Rationale: New Jersey's coastal waters and adjacent shorelands are a valuable limited public resource. they are protected by New Jersey's Shore Protection Program and patrolled by the New Jersey Marine Police which are both financed by all State residents.

Existing development often blocks the waters from public view and/or makes physical access to the waterfront difficult or impossible. In addition, private ownership of land immediately inland from publicly owned tidelands often limits public access to those lands and the waters which flow over them. This has limited access to and enjoyment of public resources by citizens who, through taxes, support their protection and maintenance.

The [public trust doctrine] **Public Trust Doctrine**, which was enunciated by the New Jersey Supreme Court in Neptune v. Avon-by-the-Sea 61 NJ 296 (1972) and reaffirmed and expanded in Van Ness v. Borough of Deal 78 NJ 174 (1978) requires that tidal water bodies be accessible to the general public for navigation, fishing and recreation. The New Jersey Supreme Court, in Matthews v. Bay Head Improvement Association has extended the public right established by these cases to beaches which, though privately owned, are leased to an improvement association and are operated in a public manner. The most significant aspect of the decision is that is was not based entirely on the quasi-public nature of the Bay Head Improvement Association, but on the unique importance of the public's right of access to the shore, regardless of ownership. The Court said "recognizing the increasing demand for our State's beaches and the dynamic nature of the [public trust doctrine] **Public Trust Doctrine**, we find that the public must be given both access to and use of privately-owned dry sand areas as reasonably necessary. While the public's rights in private beaches are not co-extensive with the rights enjoyed in municipal beaches, private landowners may not in all instances prevent the public from exercising its rights under the [public trust doctrine] **Public Trust Doctrine**. The public must be afforded reasonable access to the foreshore as well as a suitable area for recreation on the dry sand." DEPE, therefore, has an obligation to ensure that the common law right is not abridged. This obligation remains even after the State has conveyed tidelands to a private owner.

The Public Trust Doctrine requires that access be provided to publicly funded shore protection structures and that such structures not be used to impede access. The New Jersey Supreme Court in Borough of Neptune v. Avon-by-the-Sea 61 NJ 296 (1972) held that:

. . . at least where the upland sand area is owned by a municipality a political subdivision and creature of the state and dedicated to public beach purposes, a modern court must take the view that the Public Trust Doctrine dictates that the beach and the ocean waters must be open to all on equal terms and without preference and that any contrary state or municipal action is impermissible. (61 N.J. at 308-309, emphasis added).

Such structures, when located on wet sand beaches, tidally-flowed or formerly tidally-flowed lands are subject to the Public Trust Doctrine. Once built, most publicly funded shore protection structures become municipal property and are, therefore, subject to the Doctrine in the same manner as municipally owned beaches. The developed waterfront, due to its past industrial utilization, has been closed to the people that live adjacent to the waterfront. DEPE intends to promote a horizontal network of open space at the water which could be visualized as a narrow strip used for walking, jogging, bicycling, sitting or viewing, which is contiguous, even if the path must detour around existing or proposed industry due to security needs or the lack of pre-existing access. These linear walkways will connect future and existing waterfront parks, open space areas, and commercial activities. The goal of the [policy] **rule** is the piecing together of a system that will provide continuous linkages and access along the entire waterfront.

7:7E-8.12 Scenic Resources and Design

(a) ["]Scenic resources["] include the views of the natural and/or built landscape.

(b) ["]Large-scale elements of building and site design["] are defined as the elements that compose the developed landscape such as size, geometry, massing, height and bulk structures.

(c) (No change.)

(d) In all areas, except the Northern Waterfront region [and], the Delaware River Region **and Atlantic City**, new coastal development adjacent to a [waterway] **bay or ocean or bayfront or oceanfront** , beach, dune or boardwalk and higher than 15 feet in height measured from the existing grade of the site or boardwalk shall:

1. Provide an open view corridor perpendicular to the water's edge in the amount of 30 percent of the frontage along the waterfront where an open view currently exists; and

2. Be separated from either the beach, dune, boardwalk, **or waterfront**, whichever is further inland, by a distance of equal to two times the height of the structure. However, exceptions may be made for infill sites within existing commercial areas along a public boardwalk where the proposed use is commercial and where the set-back requirement is visually incompatible with the existing character of the area.[; and

3. Dedicate, at a minimum, one-half of the preserved open space parallel to the shore of public use.]

(e) Rationale: A project which is of a scale and location that has significant effect on he scenic resources of a region is considered to have a regional impact and to be of State concern. This [policy] **rule**, applies only to [facilities] **development** which by their singular or collective size, location and design could have a significant adverse effect on the scenic resources of the coastal zone. Restoration of areas of low scenic quality, such as abandoned port facilities and blighted urban areas, through large-scale new construction and design that is compatible with the surrounding region is also encouraged by this [policy] **rule**. Specific issues of concern include those addressed by the [policies] **rules** on Historic and Archaeological Resources, High Rise Structure, Public Access, and Buffers and Compatibility of Uses.

7:7E-8.13 Buffers and Compatibility of Uses

(a) ["]Buffers["] are natural or man-made areas, structures, or objects that serve to separate distinct uses or areas. ["]Compatibility of uses["] is the ability for uses to exist together without aesthetic or functional conflicts.

(b) Development shall be compatible with adjacent land [and water] uses to the maximum extent practicable.

1. Development that is likely to adversely affect adjacent areas, particularly Special Areas (N.J.A.C. 7:7E-3.1 through 3.48) or residential or recreation uses, [is prohibited unless the impact is mitigated by an adequate buffer] **shall include a buffer in accordance with (b)3 below**. [The purpose, width and type of the required buffer shall vary depending upon the type and degree of impact and the type of adjacent area to be affected by the development, and shall be determined on a case-by-case basis.]

2. [A specific policy for buffers around wetlands may be found at N.J.A.C. 7:7E-3.28.] **The rule regarding wetland buffers is found at N.J.A.C. 7:7E-3.28.**

3. Subject to (b)1 above, proposed developments shall provide appropriate buffers as established in the buffer matrix below in this paragraph. These buffers may be modified or waived if strict application would result in an extraordinary hardship which is not the result of any action or inaction by the applicant. An extraordinary hardship shall be deemed to exist when strict application of these requirements would result in an inability to have a beneficial use of the property. If such a hardship is deemed to exist, any modification shall be limited to the minimum relief necessary to allow a beneficial use.

i. The buffer matrix is as follows:

(1) In order to calculate the required buffer distance for proposed developments, the buffer matrix shown below shall be utilized. This matrix allows for the input of several variables, and the output of a buffer distance that will be required as part of a project design. The use of this matrix should be applied to all projects, with the

exception of single family or duplex developments which are not part of a larger development. The Transportation matrix will apply only to new road construction. In addition, the Department may vary the buffer requirements for projects in proximity to open space or conservation uses.

(2) For small-scale projects, the Program may allow for a reduced buffer, in cases where physical constraints preclude the application of the required buffer as determined by the matrix, and when it can be demonstrated that there will be no adverse impact to existing adjacent land uses.

(3) In cases where the site adjacent to the proposed development is undeveloped, the currently zoned use of that site will be used in the matrix.

ii. The following procedure shall be used in applying the buffer matrix:

(1) Determine the existing land use adjacent to each property boundary of the proposed development site;

(2) Determine whether the proposed development site adjacent to each property line is forested or non-forested. For the purpose of this section, forested means an area of trees and shrubs where a majority of the trees are four inches in diameter breast height (dbh) or greater;

(3) Identify the proposed use of the development, adjacent to each property line, for which the CAFRA permit is being sought;

(4) Determine the appropriate matrix table (I through V) for the existing land use adjacent to the proposed development site; and

(5) Given the information in (b)3ii(1), (2) and (3) above, and the appropriate matrix table, establish the required buffer distance from the property boundary of the proposed development site.

BUFFER MATRIX TABLE

I. Existing Residential Use Adjacent to Development Site

Proposed Use	Minimum Buffer Distance From Property Line	
	Forested Site	Non-forested Site
Residential	25 feet	50 feet
Commercial	50 feet	75 feet
Industrial	100 feet	175 feet
Public Development	0 feet	75 feet
Transportation	100 feet	175 feet

II. Existing Commercial Use Adjacent to Development Site

Proposed Use	Minimum Buffer Distance From Property Line	
	Forested Site	Non-forested Site
Residential	50 feet	75 feet
Commercial	20 feet	20 feet
Industrial	20 feet	20 feet
Public Development	5 feet	50 feet
Transportation	20 feet	20 feet

III. Existing Industrial Use Adjacent to Development Site

Proposed Use	Minimum Buffer Distance From Property Line	
	Forested Site	Non-forested Site
Residential	100 feet	150 feet
Commercial	30 feet	50 feet
Industrial	20 feet	20 feet
Public Development	5 feet	100 feet
Transportation	20 feet	30 feet

IV. Existing Public Facility Adjacent to Development Site

Proposed Use	Minimum Buffer Distance From Property Line	
	Forested Site	Non-forested Site
Residential	50 feet	75 feet
Commercial	25 feet	50 feet
Industrial	75 feet	100 feet
Public Development	0 feet	20 feet
Transportation	50 feet	75 feet

V. Existing Public Open Space Adjacent to Development Site

Proposed Use	Minimum Buffer Distance From Property Line	
	Forested Site	Non-forested Site
Residential	100 feet	150 feet
Commercial	150 feet	200 feet
Industrial	200 feet	300 feet
Public Development	150 feet	200 feet
Transportation	150 feet	200 feet

4. The following apply to buffer treatment

1. All buffer areas shall be planted with appropriate vegetative species, either through primary planting or supplemental planting. This landscaping shall include use of mixed, native vegetative species, with sufficient size and density to create a solid visual screen within five years from the date of planting.

ii. Buffer areas which are forested may require supplemental vegetative plantings to ensure that acceptable visual and physical separation is achieved.

iii. Buffer areas which are non-forested will require dense vegetative plantings with mixed evergreen and deciduous trees and shrubs. Evergreens must be at least eight feet tall at time of planting; deciduous trees must be at least three inches caliper, balled and burlapped; shrubs must be at least three to four inches in height.

(c) Rationale: The juxtaposition of different uses may cause various problems. An activity may cause people to experience noise, dust, fumes, odors, or other undesirable effects. Examples of possible incompatible uses include factories or expressways next to housing, residential developments next to farms and residential, commercial or industrial development adjacent to wetlands or endangered or threatened wildlife or vegetation species habitat. Vegetated buffer areas between uses can overcome, or at least ameliorate, many of these problems especially if earthen berms are included. Buffers can benefit users of both areas. Where farms operate near a residential area, for example, a buffer can protect residents from of the noise and smell of farming, while protecting the farmers from **the imposition of** local regulations controlling hours in which machinery can be used.

Buffers serve several important functions, including maintenance of wildlife habitat, water purification, open space and recreation, and control of runoff. Buffers may include fences, landscaped berms, and vegetated natural areas.

7:7E-8.14 Traffic

(a) ["]Traffic["] is the movement of vehicles, pedestrians or ships along a route.

(b) Coastal development shall be designed, located and operated in a manner to cause the least possible disturbance to traffic systems.

1. Alternative means of transportation, that is, public and private mass transportation facilities and services, shall be considered and, wherever feasible, incorporated into the design and management of a proposed [facility] **development**, to reduce the number of individual vehicle trips generated as a result of the facility. Examples of alternative means or transportation include: van pooling, staggered working hours and installation of ancillary public transportation facilities such as bus shelters.

(c) When the level of service of traffic systems is disturbed by approved development, the necessary design modifications or funding contribution toward an area wide traffic improvement shall be prepared and implemented in conjunction with the coastal develop-

ment, [and in a manner which is satisfactory to] **the satisfaction of** the New Jersey Department of Transportation and any regional [transportation] agencies.

(d) Any development that causes a location on a roadway to operate in excess of capacity Level D is discouraged. A developer shall undertake mitigation or other corrective measures as may be necessary so that the traffic levels at any affected intersection remain at capacity Level D or better. A developer may, by incorporating design modification or by contributing to the cost of traffic improvements, be able to address traffic problems resulting from the development, in which case development would be conditionally acceptable. [The determinations] **Determinations** of traffic levels which will be generated will be made by the New Jersey Department of Transportation.

(e) Coastal development shall provide sufficient on-site and/or off-site parking for its own use **at a ratio of two spaces per residential unit**. In general, [existing] on street parking spaces along public roads cannot be credited as **part of** off-site parking provided for a project. All off-site parking facilities [shall] **must** be located **in** either **in** areas within reasonable walking distance to the development or areas identified by any local or regional transportation plans as suitable locations. All off-site parking facilities must also comply with [the standards relevant to parking facilities specified at] N.J.A.C. 7:7E-7.5 **(d), the Parking Facility rule** [Transportational Use Policies], where applicable.

(f) (No change.)

7:7E-8.15 [Fertile Soils] **(Reserved)**

[(a) "Fertile soils" are soils that have Agricultural Capability Ratings, as defined by the United States Department of Agriculture, Soil Conservation Service in the National Cooperative Soil Surveys of I, II, IIIe with a K value of less than 0.20, IIIw if well drained, or Woodland Suitability Rating of 1.

(b) Location policies restrict development in farmland conservation areas. Elsewhere coastal development shall avoid disturbing fertile soils, to the maximum extent practicable, and shall carefully remove stockpile and reuse the topsoil when onsite fertile soils cannot be preserved.

(c) Rationale: Fertile soils are the product of millennia of soil farming processes and, once paved, are irreparably lost. The Farmland Conservation Areas Policy (N.J.A.C. 7:7E-3.33) preserves large contiguous acreages of fertile soils for commercial production of food and fiber, but smaller areas of fertile soils in the open spaces between development are a natural resource of considerable value. The landscaping of development is promoted by fertile soils but, more importantly, the preservation of fertile soils near development offers the opportunity for home gardens. Applicants need to show the distribution of fertile soils relative to proposed structures and paving in site plans. If these development elements are shown on fertile soils, applicants need to demonstrate why alternative positions are not feasible.]

7:7E-8.16 [Noise Abatement] **(Reserved)**

[(a) "Noise" is any sound of such level to be injurious to human health or welfare, or which would unreasonably interfere with the enjoyment of life or property throughout the State or in any portion thereof, but excludes noise emanating from residential structures and all aspects of the employer-employee relationship concerning health and safety hazards within the confines of a place of employment (N.J.S.A. 13:1G-3).

(b) Noise levels must conform with the standards established in N.J.A.C. 7:29-1. and administered by the Office of Noise Control in the Division of Environmental Quality.

(c) Rationale: Noise can be detrimental to the health, safety and welfare of people who live and work in the coastal zone. It can also diminish the enjoyment of people who visit the coast.]

7:7E-8.21 Subsurface sewage disposal systems

1. 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.

2. Acceptability conditions for subsurface sewage disposal systems are as follows:

i. Construction of the subsurface sewage disposal system is acceptable provided it meets all the provisions of the standards for Individual Subsurface Sewage Disposal Systems (N.J.A.C. 7:9A) and receives approval from the appropriate administrative authority;

ii. For areas subject to tidal flooding, the bottom elevation of the disposal bed must be at or above the 10 year flood elevation as determined by the Federal Emergency Management Agency Flood Insurance Study Reports;

iii. Construction of subsurface sewage disposal systems is prohibited in V-zones as delineated on the Flood Insurance Rate Maps (FIRM) prepared by the Federal Emergency Management Agency (FEMA).

3. Rationale: The subsurface sewage disposal system regulations provide standards for the proper location, design, construction, installation, alteration, operation and maintenance of individual subsurface disposal systems. These regulations serve to protect public health and safety and environment, potable water supplies, and safeguard fish and aquatic life while preserving their ecological values, In areas subject to tidal flooding subsurface sewage disposal systems constructed below the 10-year flood elevation are susceptible to failure during flooding events. Furthermore, construction of subsurface sewage disposal systems within coastal high hazard areas (V-zones) is prohibited in accordance with the National Flood Insurance Program Regulations.

APPENDIX

OAL NOTE: Figures 1 through 16 proposed herein forming the Appendix to N.J.A.C. 7:7E were not reproducible in the New Jersey Register. They may be reviewed by contacting the Office of Administrative Law, Rules and Publications, CN 049, Trenton, N.J. 08625, or DEPE.

(a)

ENVIRONMENTAL REGULATION

Notice of Public Meetings and Opportunity for Public Comment

Coastal Area Facility Review Act—Planning Policies

DEPE Docket Number: 12-94-01.

Take notice that the New Jersey Department of Environmental Protection and Energy is hereby seeking discussion and public input on its plans to revise those sections of the existing Rules on Coastal Zone Management (N.J.A.C. 7:7E) that concern planning and growth regions. In separate documents published elsewhere in this issue of the New Jersey Register, the Department is formally proposing amendments to the regulations concerning the coastal permit application procedures, fees, and certain subchapters of the Coastal Policies. Those changes must be in place by July 19, 1994 to enable the Department to effectively implement the 1993 legislative amendments to CAFRA which take effect that day. This Discussion Draft is a pre-rule proposal directed toward a requirement in the 1993 CAFRA amendments that the Department consult with the New Jersey State Planning Commission and county and municipal governments in the coastal area and consider the policies and provisions of the State Development and Redevelopment Plan (N.J.S.A. 52:18A-200).

The 1993 CAFRA amendments empower the State Planning Commission to adopt the Coastal Planning Policies of the Department's CAFRA regulations as the State Development and Redevelopment Plan for the coastal area. Before proposing a rule change to implement these sections of the legislation, the Department has chosen to offer for informal public review and discussion its thoughts about how best to approach them. The public comments the Department is seeking at this time will be used to prepare and propose amendments to those sections of the existing Rules on Coastal Zone Management that concern the Coastal Growth Rating Policies, N.J.A.C. 7:7E-5.3. The Department's goals are to better manage development and to foster a more cooperative working relationship between the State Coastal Zone Management Program and regional, county and municipal governments, so as to instill

regional and coastal management planning concepts into local planning and zoning programs. The proposed revisions will also lead to a review of the present Memorandum of Agreement between the Department and the Pinelands Commission.

In this document, the Department provides one fairly detailed approach that the DEPE could propose as coastal planning rules. These rules would become part of the New Jersey Coastal Management Program and of the State Development and Redevelopment Plan. The Department asks for responses to any or all of three general questions concerning its proposed approach:

1. Is the proposed general framework a good one or are there entirely different options that the Department should consider?
2. If the proposed general framework is appropriate, what modifications can be suggested that would improve it?
3. Are there other techniques or programs—regulatory or non-regulatory—the Department and the State Planning Commission should consider that could lead to better management of New Jersey's coastal resources and/or improvements in the land use decision-making process?

At the end of this document, the Department also lists several more specific issues for which public input is particularly sought.

The Department will be holding a series of **public meetings** at the time and locations listed below to discuss the ideas in the document.

- Monmouth County
Monday, April 4, 1994, 7:00 P.M.
Freeholders Meeting Room, County Court House
Freehold, New Jersey
- Burlington/Atlantic Counties
Wednesday, April 6, 1994, 7:00 P.M.
Atlantic County Board of Freeholders Meeting Room
201 Shore Road
Northfield, New Jersey
- Cape May County
Tuesday, April 12, 1994, 7:00 P.M.
Intermediate Meeting Room, Crest Haven Complex
4 Moore Road
Cape May Court House, New Jersey
- Ocean County
Thursday, April 14, 1994, 7:00 P.M.
Freeholders Meeting Room, County Court House
Toms River, New Jersey
- Cumberland County
Tuesday, April 19, 1994, 6:00 P.M.
County Library
800 E. Commerce Street
Bridgeton, New Jersey
- Salem County
Wednesday, April 20, 1994, 6:00 P.M.
The Greater Salem Community Center
118 Walnut Street
Salem, New Jersey
- Trenton, NJDEPE Building
Tuesday, April 26, 1994, 1:00 P.M.
Public Meeting Room, 1st Floor
401 East State Street
Trenton, New Jersey

Written comments are welcome. Submit comments, identified by the Docket Number given above, by Friday, May 6, 1994, to:

Janis Hoagland
Administrative Practice Officer
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, NJ 08625-402

Anyone with questions or desiring additional meetings should contact:

Steven Whitney
Manager, Coastal/Land Planning Element
Office of Land and Water Planning
Department of Environmental Protection and Energy
CN 423
Trenton, NJ 08625-0423

During the State Development and Redevelopment Plan Cross-acceptance process which took place from 1989 to 1992, the Department participated in voluntary coordinating efforts with the State's coastal county planning departments and representatives of the New Jersey Office of State Planning and the State Planning Commission. This process also involved negotiations with the New Jersey Pinelands Commission staff regarding the Pinelands Comprehensive Management Plan to assure that there is consistency between the Coastal and Pinelands plans in overlap areas of the Pinelands National Reserve.

The Department proposes to incorporate portions of the State Development and Redevelopment Plan and its Resource Planning and Management Structure to replace two subchapters of the State's Rules on Coastal Zone Management, specifically, Subchapter 5, General Land Areas, and Subchapter 6, General Location Policies. The highlights of these proposed revisions are:

- Substitute the State Development and Redevelopment Plan Resource Planning and Management Map for the existing Coastal Growth Ratings

The Department is proposing to replace the three current coastal growth ratings with the five planning areas and five center designations that are established in the State Development and Redevelopment Plan. The proposed planning areas in the CAFRA area were negotiated with and approved by County Planning Boards through public participation processes, and are more specific in identifying the location of existing development and infrastructure and where new development should occur than the Department's current coastal decision-making process.

- Eliminate the Development Potential Criteria and Region Matrices

The present coastal location rules use a set of development potential, environmental sensitivity, and growth region criteria to determine the intensity of impervious surface that will be allowed on a specific site for which coastal permit approval is sought. This decision process involves a set of three development potential criteria, an environmental criterion and three growth regions, and concludes with one rating out of a set of 27 possibilities. The present system is complex and subject to varying interpretations. In addition, the existing location rule was designed to be used for specific sites and does not facilitate regional planning and growth projections as well as the State Development and Redevelopment Plan.

- Adjust the Intensity Values to Encourage Development in Centers

The intensity values contained in the current coastal rules do not consider local zoning and allow relatively high intensities of development in extension and limited growth areas. The Department is proposing adjusted values that are more consistent with nonpoint source pollution and stormwater management goals, and that encourage development in mutually designated centers, consistent with the goals and objectives of the State Development and Redevelopment Plan.

The proposed revisions for public discussion are as follows:

SUBCHAPTER 5. GENERAL LAND AREAS

7:7E-5.2 Acceptability of Development in General Land Areas

a. The acceptability of development is defined in terms of development intensities. The following factors determine the levels of acceptable development intensity for locations in land areas:

1. Planning Area
2. Location within a designated center

b. Determination of the specific land area policy for a site is a four-step process:

1. First, determine the Planning Area.
2. Second, determine if the site is located within a designated Center.
3. Third, review the Development Intensity Table for either the Planning Areas or Centers to determine the acceptable intensity of development for the site, given its location in a Planning Area or a Center.
4. Fourth, compare the applicant's proposed intensity of development on the site with the acceptable intensity of development for the site.

c. Coastal development which does not conform with the acceptable intensity of development of a site is discouraged. The term "discouraged" is defined in DEPE's regulations as to mean that a proposed use of coastal resources is likely to be rejected or denied as DEPE has determined that such uses of coastal resources should be deterred and that developers should be dissuaded from proposing such uses. In cases where DEPE considers the proposed use to be in the public interest despite its discouraged status DEPE may permit the use, provided that mitigating or compensating measures are taken so that there is a net gain in the quality and quantity of the coastal resource of concern.

7:7E-5.3 Coastal Growth Rating

The coastal zone is proposed to be classified into five different Planning Areas. Each Planning Area is geographically delineated to reflect

certain common characteristics. These characteristics suggest that growth and development should be guided to certain locations and in certain patterns within the Planning Area to take advantage of existing infrastructure, or to protect sensitive coastal resources. They also refine and reinforce existing and planned development patterns. The five Planning Areas are established in the New Jersey State Development and Redevelopment Plan, adopted by the State Planning Commission in June 1993.

Within Planning Areas are central places, or Centers, where growth should be attracted or discouraged, depending on existing opportunities and constraints within the Center and Planning Area. Centers are the organizing principle for achieving more effective and efficient patterns of development in the coastal area. Where possible, new growth and development should be organized into compact development in the form of Centers. The size and function of Centers will vary, depending on the unique conditions along the New Jersey coast. These Centers should be designated in municipal master plans and should be incorporated in the State Development and Redevelopment Plan (SDRP) through its Centers Designation Process.

PLANNING AREA 1—Metropolitan Planning Area

Description: This proposed Planning Area includes a variety of communities on the New Jersey coast including the designated Urban Center of Atlantic City, the urban areas of Red Bank, Long Branch and Bridgeton, and the older suburbs of Fair Haven, Rumson, Deal, Spring Lake, Ventnor, and Margate. These areas grew along rail lines from larger Urban Centers and around seaside resorts. There are large public and private investments in the facilities and infrastructure needed to maintain these communities. Most of the communities are fully developed, with little vacant land. Much of the growth anticipated in these areas will therefore be in the form of redevelopment. A key issue will be to balance redevelopment and the coastal resort economy with the maintenance of fragile coastal resources.

Intent: Public and private investment and reinvestment in the Metropolitan Planning Area should be a priority of State, regional and local programs. To sustain the economic performance of the Metropolitan Planning Areas, redevelopment must be sensitive to the need to protect the vitality of existing communities while affording opportunities for growth. Urban development and redevelopment must take advantage of historical development patterns and of the coastal locations of Urban Centers and the interrelated suburbs, an extensive public transit system, excellent access to an extensive road network, and unique coastal recreation and open space opportunities. This means creating programs and processes that empower municipalities to act jointly to replace aging urban infrastructure, retain and expand employment opportunities, upgrade housing to attract a balanced residential population, stabilize a threatened environmental base, and protect community character.

Delineation Criteria:

1. Population density of more than 1,000 persons per square mile;
2. Existing public water and sewer systems;
3. Adjacent to the Suburban Planning Area;
4. Land area greater than one square mile;
5. Population of not less than 25,000 people;
6. Areas that are totally surrounded by land areas that meet the criteria of a Metropolitan Planning Area, are geographically interrelated with a Metropolitan Planning Area and meet the intent of this planning area.

Policy Objectives:

Land Use: Guide development and redevelopment to ensure efficient use of scarce land while capitalizing on the inherent public facility and service efficiencies of concentrated development patterns.

Housing: Preserve the existing housing stock through maintenance and rehabilitation efforts and provide a variety of housing choices through development and redevelopment.

Economic Development: Promote economic development by encouraging redevelopment efforts such as infill and land assembly, public/private partnerships and infrastructure improvements. Promote tourism and related activities.

Transportation: Capitalize on high-density development patterns of coastal urban areas to encourage the design and use of public transit and alternative modes of transportation to improve air quality, and to improve travel among population and employment centers and transportation terminals. Plan, design, construct and maintain transportation systems to address the special seasonal demands of travel and tourism in the coast.

Coastal Resources: Reclaim environmentally damaged sites and mitigate future negative impacts, particularly to waterfronts, beaches, scenic vistas, habitats. Identify and map Critical Environmental and Historic Sites (CEHSs).

Recreation/Open Space: Incorporate public recreation opportunities in development and redevelopment activities. Ensure meaningful public access to coastal waterfront areas.

Public Facilities and Services: Complete, repair or replace existing infrastructure systems to enable existing and future development to cause minimal negative environmental impacts.

PLANNING AREA 2—Suburban Planning Area

Description: The Suburban Planning Area is located adjacent to the more densely developed Metropolitan Planning Area, and is distinguished by a lack of defined Centers and the availability of developable land. The Suburban Planning Areas are typified by communities such as Dover and Brick Townships in Ocean County, which experienced some of the highest growth rates in the nation during the 1960s and 1970s, and parts of Galloway and Egg Harbor Townships that grew rapidly during the 1980s. These areas continue to experience growth and expanding infrastructure needs, while developing employment opportunities and shopping centers that serve a year-round population and also accommodating a seasonal influx of visitors.

Intent: The existing inventory of undeveloped and underdeveloped land in the Suburban Planning Area provides sufficient land area to accommodate much of the market demand for future growth and development in the coastal zone. While the less developed Planning Areas can provide additional but limited opportunities for growth and development, the Suburban Planning Area is a key area for accommodating market forces and demand. However, much of the future growth pattern may be influenced by the placement of major transportation services, sewer alignments, existing development and preliminary development approvals. This planning area offers opportunities to expand infrastructure efficiently from neighboring Metropolitan Planning Areas to accommodate growth. "Retrofitting" or redeveloping existing settlements, provides additional opportunities to accommodate growth. New development should be designed to discourage sprawl and to prevent additional nonpoint pollution. Suburban development along the coast continues to be a major source of pollutants into coastal waters, particularly in Barnegat Bay. Other regulatory and nonregulatory efforts should be directed toward reducing nonpoint pollution.

Internally oriented, mixed-use centers that promote a sense of community should be designed for this area. This will ensure fiscal responsibility, efficient and effective infrastructure, reasonable cost housing, reduced congestion and balanced economic development. Where possible, development should be concentrated in centers.

Delineation Criteria:

1. Population density of less than 1,000 persons per square mile;
2. Land area contiguous to the Metropolitan Planning Area where it can be demonstrated that the natural systems and the existing or planned urban infrastructure (includes water, sewers, storm water drainage and transportation) have the capacity to support development that meets the policy objectives of this Planning Area;
3. Land area greater than one square mile.

Policy Objectives:

Land Use: Guide development and redevelopment into compact centers, including former single-use developments. Reduce nonpoint pollution through improved site design, including minimum disturbance/minimum maintenance standards; accommodate mixed-use development in centers.

Economic Development: Guide opportunities for economic development and employment in suburban centers. Retain and promote seasonal and year-round travel and tourism activities in the coastal resort areas.

Transportation: Link shore suburban areas to employment centers with public transit. Plan, design, construct and maintain transportation systems to address the special seasonal demands of travel and tourism in the coast.

Coastal Resources: Protect critical coastal resources through open space conservation and buffers. Identify Critical Environmental and Historic Sites (CEHSs). Protect and enhance fish, wildlife and plant habitats. Protect and restore the ecological functions of wetland systems

to ensure their long-term environmental, economic and recreational value. Improve the quality of runoff from developed areas that enters coastal waters, and encourage the use of retro-fitting measures to address existing stormwater problems.

Recreation/Open Space: Incorporate public recreation opportunities in development and redevelopment activities. Ensure meaningful public access to coastal waterfront areas.

Public Facilities and Services: Ensure wastewater capacity for expected growth and seasonal population influx. Ensure Natural Disaster Planning. Minimize off-site stormwater runoff through best available technologies. Maximize natural drainage systems.

PLANNING AREA 3—Fringe Planning Area

Description: The Fringe Planning Area is at the edges of the Suburban Planning Area. This area does not and is not planned to have urban level infrastructure during the foreseeable future. Fringe Planning Areas are served primarily by a rural, two-lane road network and on-site well water and wastewater systems. It is characterized by a predominantly rural landscape with scattered small settlements and free-standing residential and commercial developments. Agriculture and other resource-based activities are active. The Fringe Planning Area can be subject to dispersed, inefficient development patterns without careful growth management efforts. Uncontrolled development can also create conflicts with sensitive natural resources, agricultural and resource-based activities. More compact, sensitive development patterns can reduce conflicts and adverse impacts on resources while maintaining rural character and communities.

Intent: The intent for the Fringe Planning Area is to concentrate development in or at the edges of existing communities or new designated centers to accommodate the area's anticipated population and employment growth. The levels of development should be based on the capacities of natural and built environment. Outside of Centers, the rural landscape and character should be maintained. In Centers, infrastructure should be extensions of systems in Planning Areas 1 or 2, or be designed and planned to connect to those systems in the future. Infrastructure for Centers should be provided primarily by the private sector.

Delineation Criteria:

1. Population density of less than 1,000 persons per square mile;
2. Served by rural roadways and utilities, but generally lacking public wastewater systems except in existing Centers;
3. Land area greater than one square mile;
4. Does not include land that meets the criteria for the Rural Planning Area or the Environmentally Sensitive Planning Area;
5. Area is adjacent to the Metropolitan Planning Area or the Suburban Planning Area.

Policy Objectives:

Land Use: Coordinate timing and sequence of development with planned infrastructure. Discourage dispersed development patterns in favor of more compact Center development.

Economic Development: Focus rural economic activities, such as resource extraction, agriculture and recreation, in the environs of the Planning Area, and guide higher intensity activities to the Centers.

Transportation: Maintain transportation systems that link Centers and the Fringe Planning Area to the Metropolitan and Suburban Planning Areas.

Coastal Resources: Protect critical coastal resources through open space conservation and buffers. Identify Critical Environmental and Historic Sites (CEHSs). Protect and enhance fish, wildlife and plant habitats. Protect and restore the ecological functions of wetland systems to ensure their long-term environmental, economic and recreational value.

Recreation/Open Space: Ensure meaningful public access to coastal waterfront areas.

Public Facilities and Services: Time and sequence infrastructure to support development in Centers.

PLANNING AREA 4—Rural Planning Area

Description: The Rural Planning Area contains large areas of undeveloped land, sparsely developed, interspersed with residential, commercial and industrial development; forested areas, Rural Centers; and most of the coastal areas' remaining agricultural land. The Rural Planning Area also includes other rural economic activities such as marine-related businesses and resource extraction (sand mining).

Intent: Maintain the existing character of the Rural Area where practical. Prudent land development practices are required to protect the industry and valuable water resources. Uses that are non-farm or resource-based must be sensitive to the predominant rural character and agricultural/resource land base. Encourage rural development that supports rather than conflicts with rural characteristics and the agricultural land base. Encourage a pattern of development that promotes a stronger rural economy while meeting the needs of rural residents. Meet the need for farm services and businesses by concentrating them within Centers. Protect the critical resources of the coastal ecosystem, including surface and ground water quality.

Delineation Criteria:

1. Population density of less than 1,000 persons per square mile;
2. Land area greater than one square mile;
3. Land currently in agricultural or natural resource production or having a strong potential for production:
   a. Soils of local importance as determined by the County Agricultural Development board; or
   b. Prime and unique soils as determined by the U.S.D.A. Soil Conservation Service; or
   c. Soils of statewide importance as determined by the N.J.D.A. State Soil Service Conservation Committee;
4. Underdeveloped wooded tracts, vacant lands, and large contiguous tracts of agricultural lands predominantly served by rural two lane roads and individual wells and septic tanks; and
5. Farmland satisfying the above delineation criteria for the Environmentally Sensitive Planning Area, is designated as Planning Area 4B rural Environmentally Sensitive Planning Area.

Policy Objectives:

Land Use: Protect and enhance rural character and agricultural viability by guiding growth into Centers. Maintain existing low-density and low-intensity development patterns that are consistent with the rural landscape. Encourage creative land use techniques to minimize conflicts with agriculture and rural character.

Transportation: Maintain a transportation network that accommodates agriculture and access to markets.

Economic Development: Encourage economic activities in Centers that complement and support rural and agricultural communities and that provide diversity in the rural economy.

Coastal Resources: Protect and preserve large tracts of open space. Minimize conflicts between agriculture and resource-based economic activities and sensitive coastal resources.

Recreation/Open Space: Ensure recreational opportunities in Rural Areas and meaningful public access to coastal waterfront areas.

Public Facilities and Services: Support appropriate infrastructure development to support Centers and minimize conflicts with agricultural activities.

PLANNING AREA 5—Environmentally Sensitive Planning Area

Description: The Environmentally Sensitive Planning Area has large contiguous land and water areas with critical coastal ecosystems, wildlife habitats, geological features, and other valuable coastal resources. Some of these lands have remained rural and relatively undeveloped, while others have been dominated by development for many years, such as the coastal barrier islands and spits. The barrier islands have been intensely developed for the most part, and represent a major public investment in infrastructure systems that must be protected and maintained while protecting the economic and ecologic value of adjacent coastal resources.

Intent: Protect natural resources critical to the maintenance of coastal ecosystems, maintain the balance of ecological systems and beneficial growth. The ecological systems of the Environmentally Sensitive Area should be protected by carefully linking the location, character and magnitude of development to the capacity of the natural and built environment to support new growth and development. Large contiguous areas of undisturbed habitat should be maintained to protect sensitive natural resources and wildlife, and new development in these areas should be located in Centers.

Delineation Criteria:

1. Population density of less than 1,000 persons per square mile outside Centers;
2. Land area greater than one square mile, outside Centers;

3. Areas outside Centers exhibiting one or more of the following features:

(a) Trout production waters and trout maintenance waters and their watersheds;

(b) Pristine non-tidal Category 1 waters and their watersheds upstream of the lowest Category 1 stream segment;

(c) Watersheds of existing or planned potable water supply sources;

(d) Aquifer recharge areas of potable water supply sources;

(e) Habitats of populations of endangered or threatened plant or animal species;

(f) Coastal wetlands;

(g) Contiguous freshwater wetland systems;

(h) Significant natural features such as critical slope areas, ridge lines, gorges and ravines, unique geological features (including beach and barrier spits/islands);

(i) Prime forested areas, including mature stands of native species; or

(j) Natural landscapes of exceptional value, in combination with one or more other environmentally sensitive features pursuant to these criteria; and

4. Existing or programmed sewer service and public water service areas are confined to Centers.

Policy Objectives:

Land Use: Protect environmentally sensitive features by guiding development into Centers and maintaining low intensity development patterns in the environs.

Transportation: Maintain a transportation system that links Centers and supports the travel and tourism industry, and recreational and natural resource-based activities. Plan, design, construct and maintain transportation systems to address the special seasonal demands of travel and tourism to barrier islands.

Economic Development: Support appropriate seasonal, recreational, and natural resource-based activities in the environs, and locate economic development opportunities that serve both the surrounding region and the travel and tourism industry, in Centers.

Coastal Resources: Protect forests, wetlands, fish, marine life and wildlife to maintain their environmental, economic, aesthetic and recreational values.

Recreation/Open Space: Ensure meaningful public access to coastal waterfront areas. Encourage recreational opportunities to meet local and regional demands.

Public Facilities and Services: Support appropriate infrastructure development to support Centers and to minimize conflicts with sensitive environmental resources. Plan and maintain infrastructure systems to serve the resort economy.

CENTERS

Centers are an integral part of the State's efforts to achieve more efficient and effective patterns of development in the coastal area. Consistent with the State Development and Redevelopment Plan, these draft Proposed Rules would promote new growth and development into compact developments in the form of Centers.

The size and function of Centers will vary, depending on the unique conditions among and within the State's regions. The wide diversity of natural and built systems along the coast requires that there be highly urbanized Centers, as well as smaller Rural Centers. A Center's current and future scale of development affects how it is linked, economically and physically, with other Centers along the coast, and with the rest of the State.

There are five types of Centers:

Urban Centers: Urban Centers are the largest of the five types of Centers, and they offer the most diverse mix of industry, commerce, residences and cultural facilities of any central place. They are repositories of large infrastructure systems, industrial jobs, corporate headquarters, medical and research services, government offices, convention centers, museums and other valuable assets.

Urban Centers anchor growth in their metropolitan planning areas, and their influence extends throughout the State. They have a distinct central business district and various neighborhoods, many of which may have cores of shopping and community services. There is one Urban Center identified in the coastal zone (see 7:7E-5.3.3 below).

Towns: Towns are the existing traditional centers of commerce and government throughout the State. They are relatively free-standing in terms of their economic, social and cultural functions. Like Urban Centers, though not to the same degree, towns reflect a higher level of investment in public facilities and services than their surrounding environs. They provide a core of commercial services to adjacent residents and provide employment in the regions. There are 37 towns identified in the coastal zone (see 7:7E-5.3.3 below).

Towns contain several neighborhoods that together provide a highly diverse housing stock in terms of types and price levels. Towns have a compact form of development with a defined central core containing shopping services, offices and community and governmental facilities.

Regional Centers: Regional Centers may be either existing or new. Existing Regional Centers vary in character and size, depending on the unique economics of the regions they serve. In the Metropolitan Planning Area, existing Regional Centers may include some smaller cities not designated as Urban centers. In the Suburban Planning Area, existing Regional Centers often serve as major employment Centers. In rural areas, they often are population Centers and county seats, with small business districts serving residents.

Planned Regional Centers should be located in the State's major corridors and designed to organize growth that would otherwise sprawl throughout the corridor and create unserviceable demands. They should be compact and contain a mix of residential, commercial and office uses at an intensity that will make a variety of public transportation options feasible as the Centers are built out. Both existing and planned Regional Centers are seen as developing over time and should be carefully planned by municipalities and counties in coordination with the State Planning Commission and the Department of Environmental Protection and Energy. There are 13 Regional Centers identified in the coastal zone (see 7:7E-5.3.3 below).

Villages: Villages are compact, primarily residential communities that offer basic consumer services for their residents and nearby residents. Villages are not meant to be Centers providing major regional shopping or employment for their regions. This larger economic function belongs to Towns or Regional Centers. There are 48 Villages identified in the coastal zone (see 7:7E-5.3.3 below).

Hamlets: Hamlets are the smallest places eligible for Center designation. Existing Hamlets are found primarily in rural areas, often at crossroads. Hamlets are not synonymous with subdivisions. Although Hamlets are primarily residential in character, they have a small, compact core offering limited convenience goods and community activities, such as a community building, a house of worship, a tavern or luncheonette, a commons or similar land use. There are 11 Hamlets identified in the coastal zone (see 7:7E-5.3.3 below).

7:7E-5.3.1 Coastal Planning Maps

The Planning Areas and Center Designations for the Coastal Area are delineated on the official map of the State Development and Redevelopment Plan, entitled the "Resource Planning and Management Map" (RPMM), a series of maps corresponding to the 1:24000 scale United States Geological Survey (USGS) 7.5 topographic quadrangle maps comprising the geographic area of the State of New Jersey (see N.J.A.C. 17:32-8).

7:7E-5.3.2 Map Amendments

The Resource Planning and Management Map will be amended in accordance with the State Planning Rules, which govern the amendment of the Resource Planning and Management Map.

7:7E-5.3.3 Designation of Centers

The State Development and Redevelopment Plan adopted by the State Planning Comission in June 1993 identified the following Centers in the coastal zone:

a. **Urban Centers:** Atlantic City, Camden, Elizabeth, Jersey City, New Brunswick, Newark, Paterson, Trenton

b. **Regional Centers**

Cape May County: Cape May Courthouse; Ocean City; Rio Grande; Wildwood

Cumberland County: Bridgeton; Millville

Middlesex County: Perth Amboy; Raritan Center

Monmouth County: Asbury Park; Eatontown; Long Branch; Red Bank

Ocean County: Lakewood; Toms River

Salem County: Salem City

c. **Towns**

Atlantic County: Absecon; Brigantine; Margate; Pleasantville; Smithville (Galloway Twp.); Somers Point; Ventnor

Burlington County: Beverly; Bordentown City; Burlington City

Cape May County: Avalon; Cape May City; Sea Isle City; Stone Harbor; Town Bank/North Cape May (Lower Twp.); Villas (Lower Twp.)

Middlesex County: Carteret; Highland Park; South Amboy
Monmouth County: Keyport; Manasquan; Matawan; Neptune
Ocean County: Barnegat Light (Ocean Twp.); Bay Head; Beach Haven (Long Beach Twp.); Forked River (Lacey Twp.); Harvey Cedars; Island Heights; Lakehurst; Lavalette; Long Beach; Mantoloking; Mystic Island (Little Egg Harbor Twp.); Ocean Gate; Point Pleasant Beach; Point Pleasant Boro; Seaside Heights; Seaside Park; Ship Bottom; Surf City; Tuckerton
Salem County: Salem City

d. **Villages**

Atlantic County: Belcoville (Weymouth Twp.); Longport; Port Republic
Cape May County: Cape May Point; Del Haven (Lower Twp.); Dennisville (Dennis Twp.); Goshen (Middle Twp.); Marmora (Upper Twp.); Palermo (Upper Twp.); Petersburg (Upper Twp.); South Dennis (Dennis Twp.); South Seaville (Middle Twp.); Strathmere (Upper Twp.); Tuckahoe (Upper Twp.); Whitesboro/Burleigh (Middle Twp.)
Cumberland County: Carmel (Deerfield Twp.); Cedarville (Lawrence Twp.); Centre Grove (Lawrence Twp.); Cumberland/Hesstown (Maurice River Twp.); Deerfield (Deerfield Twp.); Delmont (Maurice River Twp.); Dividing Creek (Downe Twp.); Fairton (Fairfield); Fortescue (Downe Twp.); Greenwich (Greenwich Twp.); Heislerville (Maurice River Twp.); Laurel Lakes (Millville City); Leesburg/Dorchester (Maurice River Twp.); Mauricetown (Maurice River Twp.); Newport (Downe Twp.); Othello (Greenwich Twp.); Port Elizabeth (Maurice River Twp.); Port Norris (Commercial Twp.); Roadstown (Stow Creek Twp.); Shiloh (Shiloh Borough); Springtown (Greenwich Twp.)
Monmouth County: East Keansburg, Leonardo (Middletown)
Ocean County: Barnegat (Barnegat Twp.); Cedar Run (Stafford Twp.); Nugentown (Little Egg Harbor Twp.); Waretown (Ocean Twp.); West Creek (Little Egg Harbor Twp.)
Salem County: Canton (Lower Alloway Creek); Hancocks Bridge (Lower Alloway Creek); Harmersville (Lower Alloway Creek); Oakwood Beach (Elsinboro Twp.); Sinnickson Landing (Elsinboro Twp.)

e. **Hamlets**

Cape May County: Beesley's Point (Upper Twp.); Clermont; Eldora (Dennis Twp.); Green Creek (Middle Twp.); Oceanview, Seaview (Upper Twp.); Swainton (Middle Twp.).
Ocean County: Cedar Bonnet Island, Mayetta, Staffordville (Stafford Twp.)
Salem County: Hagersville (Elsinboro Twp.)

While identifying these areas as Centers, the Plan does not designate or delineate the exact boundaries for any of them. To determine the boundaries, the Department of Environmental Protection and Energy and the State Planning Commission will consult with municipalities and counties to propose boundaries on which they will then seek public comment in at least one public hearing jointly convened by the two State agencies. Subsequent to an additional period of time in which to receive written comments, the designation may be reviewed and adopted as proposed or with modifications by the State Planning Commission and the Department of Environmental Protection and Energy Commissioner or designee.

The designation of additional Centers may be initiated by the State Planning Commission or the Department of Environmental Protection and Energy. In addition, any interested municipal or county governing body, other agency or individual may propose that a coastal area be designated as a Center by submitting a proposal to the Department of Environmental Protection and Energy and the State Planning Commission.

Upon receipt of such a proposal, the two agencies will review the information and subject it to the same public process identified above.

Interim delineation of Centers for DEPE permitting purposes, in the event that Centers are not designated prior to effective date of rules, shall be done by the DEPE.

7:7E-5.4 Development Intensity

Introduction

(a) Development intensity is a measure of the acceptable level of intensity to which a site may be developed. The acceptable intensity is based on the location of a site: what Planning Area it is in, and whether it is located in a designated center or the environs of a Planning Area.

In general, development potential is dependent on the Planning Area. Sites in Planning Areas with available infrastructure capacities have a higher development potential than sites in a Planning Area that currently lacks such capacities or has sensitive natural resources. In Centers, acceptable intensity is related to a hierarchy whereby Urban and Regional Centers have a higher allowable intensity than a village or a hamelt.

The following is a general description of the development potential of each Planning Area:

The Metropolitan Planning Area, Planning Area 1

The Metropolitan Planning Area, with its existing infrastructure and capacities, is also appropriate for high levels of development, compatible with local plans. There are several Centers in the Metropolitan Planning Area that are appropriate for high intensity development and redevelopment.

The Suburban Planning Area, Planning Area 2

While development patterns are well established here, development intensities are highest within designated Centers to concentrate development and take advantage of infrastructure efficiencies. Most of the development in the Coastal area should occur in the Suburban Planning Area, Planning Area 2. Development in the Suburban Planning Area environs should be less intense than in Centers, and less intense than in the Metropolitan Planning Area.

The Fringe Planning Area, Planning Area 3

This Planning Area is generally rural, lacking infrastructure and/or capacities to support relatively intense suburban development, but signs of more intense development may be apparent. Development in general should be low intensity, and should not increase infrastructure, except in Centers, which are the appropriate location for more intense development.

The Rural Planning Area, Planning Area 4

The Rural Planning Area is a low density development pattern with a rural road network and on-site wastewater and water supply systems. Development outside Centers must remain low density and intensity to maintain water quality and not induce the need for infrastructure improvements, and must be compatible with agriculture and agriculture-related industry and with resource-based industries. Environmental constraints should preclude development in some sensitive areas. More intense development should be allowed in Centers.

The Environmentally Sensitive Planning Area, Planning Area 5

Because the Environmentally Sensitive Planning Area is delineated based on environmental features in need of protection, these constraints should preclude all but the lowest densities and intensities of development. In Centers, higher intensities are permitted, and development opportunities are encouraged here.

Centers in the Environmentally Sensitive Planning Area barrier islands should accommodate development at higher intensities, compatible with development patterns in existing Centers.

TABLE 1

Development Intensities for Planning Area Environs

Planning Area	Maximum Intenstiy
PA 1: Metropolitan	50%
PA 2: Suburban	30%
PA 3: Fringe	5%
PA 4: Rural	0.5%
PA 5: Environmentally Sensitive	0.3%

TABLE 2

Development Intensities for Designated Centers

Center Designation	Intensity	Floor Area Ratio**
Urban Center	90%	30:1
Regional Center	70%	5.5:1
Town	60%	3:1
Village	55%	2:1
Hamelt	40%	1.2:1

**Floor Area Ratio is a measure of the gross floor area of all buildings or structures on a lot divided by the total lot area. It is included here for illustrative purposes only to give an idea of what could be built on a site with the intensities that are proposed for each Center.

Rationale

The Development Intensity Tables represent a balance between environmental constraints and development potentials of sites, based on the presence or absence of infrastructure systems and/or environmentally sensitive resources, and/or a site's location within a designated Center or environs. Each number represents the maximum percentage of a site that may be developed. Acceptable intensities are higher in Centers to encourage more compact and efficient development patterns, and lower in the environs to lessen urban sprawl and to reduce the potential for nonpoint pollution through stormwater runoff from high intensity suburban development. Development in Centers should be in coordination with water quality and stormwater concerns. It should be the responsibility of State and local governments to support growth and economic development in Centers in a comprehensive manner that integrates environmental issues.

Conclusion

Interested persons are encouraged to comment on the proposed revisions described above and issues related to them. Other relevant issues and concerns that commenters consider pertinent to the proposal also will be accepted for review and consideration. In particular, the Department will use the comments it receives to answer the three general questions raised in the opening paragraphs of this document and questions falling within these topical areas:

- Centers—In order to encourage development in Centers, are the intensities and floor area ratios in this proposal reasonable? What other standards should be considered? Should existing municipal zoning and other standards be the accepted measure in designated Centers? Should standards be jointly developed by the Department and individual municipalities?
- Center Designation—The Department is seeking ideas for incentives that could be built into the regulatory process to promote the designation of Centers and to steer development into Centers. The one specific proposal on which the Department requests comment is a proposal whereby development proposed in a designated Center, unlike development proposed elsewhere in the coastal area, could be authorized by a General Development Plan approval. This process would be modelled on a similar approach used by municipal governments and authorized by the Municipal Land Use Law (N.J.S.A. 40:55D-45.1). At the municipal level, the approval is available only to projects more than 100 acres in size; for use at the State level in CAFRA, it would be limited to projects in designated Centers, regardless of size. The information requirements for a General Development Plan approval could be approved by the Department of Environmental Protection and Energy on a case by case basis, but would generally be significantly less than those for a full CAFRA permit application. The Department would grant a General Development Permit approval if it made a finding that the proposed development was generally consistent with the intent of the Planning Area and Center and was a suitable site for the specific development. Before development could take place, the developer would have to apply for and receive a full CAFRA permit in which compliance with all the Coastal Policies would have to be demonstrated.

The purpose of a General Development Plan approval would be to encourage appropriate development in Centers by enabling potential developers to gain an approval which could enable them to secure funding and other commitments before having to proceed with the more detailed design necessary to demonstrate that a project minimized environmental impacts and complied with each Coastal Policy.

At the local level, a General Development Approval is valid for 20 years, and thereby protects a developer from changes in zoning that may occur during that period. The Department seeks suggestions for other incentives it could provide to encourage building in Centers.

- Development Intensities—If municipal master plans are consistent with regional plans, such as the Pinelands Comprehensive Management Plan and Wild and Scenic River plans, should the municipal guidelines supersede the Department's Location Policies?
- Should new development be constrained in watersheds where groundwater and surface water quality is of a high quality, or where it is currently impaired? What criteria should be used to identify these critical watersheds? How can development be better managed to protect water resources?
- The Department is concerned about the possible conflicts between regional planning and site-specific permit decision-making. In order to address this, should development be allowed to exceed net intensity criteria on one site if comparable undeveloped land off-site is set aside to meet gross intensities? How should development at the edge of a Planning Area be viewed when the adjacent Planning Area has a significantly different permissible development intensity?
- Planning Areas—Do the five Planning Areas accurately describe the New Jersey coast? Do the Intent and Policy Objectives address the critical issues in each area? Does the application of Planning Area 5—Environmentally Sensitive Planning Area, and the designation of Centers, adequately balance often conflicting issues such as coastal resource protection, economic development, tourism, and housing opportunities on the coastal barrier islands? Does the delineation of Planning Area 5 in the Coastal Area, particularly the barrier islands, need modification?

(a)

ENVIRONMENTAL REGULATION-LAND USE REGULATION PROGRAM

Flood Hazard Area Control Rules

Proposed Repeal and New Rules: N.J.A.C. 7:13

Authorized By: Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy

Authority: N.J.S.A. 58:16A-50 et seq., N.J.S.A. 58:10A-1 et seq. and 13:1D-1 et seq.

DEPE Docket Number: 06-94-01/123.

Proposal Number: PRN 1994-116.

A **public hearing** concerning these amendments will be held on Monday, March 28, 1994 at 9:00 A.M. at:

New Jersey Department of Environmental Protection and Energy
Public Hearing Room
401 East State Street
Trenton, New Jersey

Submit written comments, identified by the Docket Number given above, by April 25, 1994 to:

Janis Hoagland, Esq.
Administrative Practice Officer
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The Flood Hazard Area Control Act Rules, N.J.A.C 7:13 were adopted in their current form in 1984. In 1985 the Department of Environmental Protection and Energy (DEPE) amended the rules to exempt most government road projects from strict compliance with the 20 percent net fill requirements for flood fringe areas and the zero percent net fill requirements in the Central Passaic Basin. The chapter was readopted without changes in 1989.

Time constraints dictate that the DEPE propose, elsewhere in this issue of the New Jersey Register, to readopt the existing rules in order to prevent their expiration under Executive Order No. 66(1978), while the DEPE proposes this repeal and new rules at N.J.A.C. 7:13. In light of the limited purpose of the proposed readoption, the DEPE requests that interested persons direct their comments concerning N.J.A.C. 7:13 generally to this proposal to repromulgate the chapter.

In this proposal, DEPE is revising the rules to make them easier to understand, to reflect organizational changes within DEPE and to bring the rules into compliance with relevant court decisions and actual agency procedure which has evolved since the readoption in 1989. In June 1991, the DEPE distributed draft revisions of N.J.A.C. 7:13 and held a public hearing in Trenton on July 16, 1991. See 25 N.J.R. 1989(a). The written and oral comments received on the draft were carefully reviewed by the DEPE. The proposed new rules which follow have been written to address and, where possible, incorporate the comments and suggestions received regarding the draft revisions.

The DEPE has determined that the clarity of the rules can best be improved by restructuring the existing rules and proposing new text in renumbered subchapters. Proposed subchapter 1, General Provisions, remains essentially the same as the current subchapter 1. Proposed subchapter 2, Project Standards, combines all of the engineering standards and some of the environmental standards for specific projects from

the current subchapters 3, General Standards for Permitting Stream Encroachment within the Floodways of Delineated Streams and within Encroachment Lines of Non-delineated Streams; subchapter 4, Regulation of Stream Encroachments in the Flood Fringe Area of Delineated Streams and Between the Encroachment Lines and the Boundaries of the 100-year Flood Plain of Nondelineated Streams; and subchapter 5, Special Cases. Proposed subchapter 3, General Environmental Standards, combines the general environmental standards from the current subchapters 3, 4 and 5. Proposed subchapter 4, Application Procedure for Stream Encroachment Permits, incorporates some of the text from current subchapter 2 of that same name. Subchapter 5, Implementation, incorporates some of the text from current subchapter 6 of that same name. Subchapter 6, Delineated Floodways, incorporates some of the text from current subchapter 7.

The following describes in detail the new rules for N.J.A.C. 7:13 that the DEPE is proposing herein, prefaced by a brief discussion of the provisions in the current rules that the Department has decided not to include in the repromulgated chapter. The proposed new rules are then described subchapter by subchapter, highlighting, where appropriate, those provisions that reorganize or modify the current rules.

The DEPE is not proposing to repromulgate current N.J.A.C. 7:13-2.5, Optional review for projects in small drainage areas. This section allowed for approval of certain individual projects by the municipal or county engineer in cases in which the drainage area was less than 320 acres (for minor projects) or 150 acres (for major projects). In practice, municipal and county engineers have been reluctant to issue approvals under this section for any projects other than their own (over which they have exclusive control of design and construction). Proposed N.J.A.C. 7:13-5.3 still allows DEPE to delegate certain permitting and enforcement functions to county agencies.

The DEPE is not proposing to repromulgate current N.J.A.C. 7:13-2.10(a), Extension of time for permit, because it is proposing N.J.A.C. 7:13-4.7(e) to issue a single non-renewable permit for the maximum legally allowable limit of five years.

The DEPE is not proposing to repromulgate current N.J.A.C. 7:13-4.2, Municipal responsibilities and procedures, flood fringe areas, and the related provisions at current N.J.A.C. 7:13-4.3 and 4.4. This section required municipalities to adopt a flood fringe ordinance and take over the administration of the Stream Encroachment Program for projects located in the flood fringe area. No municipality has applied to DEPE to assume this jurisdiction. Proposed N.J.A.C. 7:13-5.3 still allows DEPE to delegate certain permitting and enforcement functions to county agencies.

The DEPE is not proposing to repromulgate current N.J.A.C. 7:13-5.1 through 5.5, Projects of Special Concern. These sections defined and set forth the procedures for review and approval of projects of special concern. The reorganization of the permit program, which subjects all projects to review under the same category of environmental standards obviates the need for these provisions. In practice, all applications for stream encroachment permits had to be reviewed by DEPE to determine whether the project qualified as one of "special concern." Since DEPE was investing substantial staff time reviewing the environmental and engineering aspects of proposed projects to determine if they qualified as projects of special concern, the DEPE has decided to incorporate most of the aspects of "special concern" projects into the usual review standards for all projects in order to reduce administrative costs and expedite the permitting process. The proposed new rules are designed so that the amount of information required from the applicant beyond that in the basic application correlates with the degree of environmental disturbance the project will cause. Public hearings, when interest from the public is expressed, will still be required pursuant to N.J.A.C. 7:13-2.5(e) and 4.8(b).

The DEPE is not proposing to repromulgate N.J.A.C. 7:13-5.9, Projects involving bridges which traverse a floodway. This section provided that bridge approaches would be evaluated for compliance with the review standards under this chapter as part of an application to construct a bridge. The provision is unnecessary because any portion of a project which falls within the jurisdiction of this chapter must likewise meet all applicable requirements.

Subchapter 1. General Provisions

Proposed N.J.A.C. 7:13-1.1, Purpose and scope, remains essentially the same as the current rule. Two new terms, "development" and "watercourse," are used. "Development," defined to mean any construction activity or other manmade land disturbance (see N.J.A.C. 7:13-1.2) replaces "construction and other developmental activities." "Watercourse" replaces "stream" to better describe the area of jurisdiction and to avoid confusion with the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A which set forth different definitions of "stream" and "ditch."

Proposed N.J.A.C. 7:13-1.1(e) combines current subsections N.J.A.C. 7:13-4.1(a) and (b) and revises the text to apply the requirements of the chapter to the development and use of land within the areas under the jurisdiction of this chapter, rather than just the flood fringe area.

Proposed N.J.A.C. 7:13-1.2 contains definitions of terms used in this chapter.

Proposed N.J.A.C. 7:13-1.3, Applicability, identifies in one section the areas in which the requirements of this chapter shall apply. This section incorporates the statements of jurisdiction found in the current rules at N.J.A.C. 7:13-1.4, 3.5 and 5 and codifies long-standing DEPE policy of asserting jurisdiction over those areas containing threatened and endangered species of plant and animals as defined in State regulations. Current N.J.A.C. 7:13-1.4 described the area of applicability as the flood hazard area and 100-year flood plains within the State of New Jersey, at locations having a drainage area of over 50 acres and all Projects of Special Concern as defined in current section N.J.A.C. 7:13-5. The current subchapter 5 identified different areas of jurisdiction in terms of distances, 25 or 50 feet, back from top of bank based on the amount of disturbance proposed, whether the stream was trout associated, if there was acid producing soil deposits present or if there was an adverse impact to the biota of the stream. Furthermore, current N.J.A.C. 7:13-3.5 required the protection of near-stream vegetation within 25 feet of the top of bank.

The proposed new rules do not bring any new areas under the jurisdiction of the DEPE, and they relinquish jurisdiction over development along the Delaware and Raritan Canal, within tidal wetlands regulated pursuant to the Wetlands Act of 1970, in tidal areas up to the first bridge or specified reach of a watercourse and in drainage areas less than 50 acres with no definable bed and banks. Within tidally influenced areas, the engineering requirements will apply only in the floodway and the environmental requirements will apply only if neither a waterfront development permit or a Coastal Area Facilities Review Act permit (see N.J.A.C. 7:7) is required for the project. The DEPE is proposing to deregulate under this chapter development along tidal and tidally-influenced watercourses because development in the these flood plains simply does not affect fluvial flood elevations inland and because environmental impacts of development in such areas are more accurately estimated and efficiently regulated by the DEPE's coastal programs. Furthermore, the Uniform Construction Code requirements for structures located in tidal areas are equal to or more restrictive than the requirements under this chapter.

Proposed N.J.A.C. 7:13-1.3(e), Non-regulated uses in the floodway, consolidates the provisions of several sections in the current rules. The uses described in current N.J.A.C. 7:13-3.2(a)4 (obstructions to flood flows) and 3.2(a)5 (affecting the flood-carrying capacity of a stream) are combined at new N.J.A.C 7:13-1.3(e)1i. Current N.J.A.C. 3.2(a)2 (erection of structures) and 3.2(a)3 (channel modifications) now appear, unaltered, in new N.J.A.C. 7:13-1.3(e)1ii and iii. New N.J.A.C. 7:13-1.3(e)1iv allows repairs and in-kind replacements of bridges, culverts and other structures without a permit under this chapter, pursuant to N.J.S.A. 58:16A-55.1. Current N.J.A.C. 7:13-3.2(a)7 (increasing off-site flood damage potential) was recodified as new N.J.A.C. 7:13-1.3(e)1v and revised to stipulate a permissible maximum for increased flood damage of two-tenths of a foot (2.4 inches). New N.J.A.C. 7:13-1.3(e)1vi provides that for a use in the floodway to be considered non-regulated, the use may not adversely affect areas ordinarily under the jurisdiction of this chapter. New N.J.A.C. 7:13-1.3(e)1vii incorporates the long-standing DEPE requirement that a use must not contribute to a violation of any applicable water quality standard. Current N.J.A.C. 7:13-3.2(a)6 (on-site flood damage risks assumed by the owner) is recodified to new N.J.A.C. 7:13-1.3(e)1viii and rewritten to clarify its meaning.

New N.J.A.C. 7:13-1.3(e)2 expands upon the list of non-regulated uses that appears in current N.J.A.C. 7:13-3.2(b). Uses which have been added include, backstops and open bleachers for playing fields, inground swimming pools, boat launching ramps constructed at or below existing grade, minor stream cleaning projects done by hand, open decks proposed for residential structures, maintenance, repair and replacement in-kind of bridges, culverts, roads, watercourse gauging structures, retaining walls, docks and boathouses on lakes, ponds or reservoirs and utility poles.

Proposed N.J.A.C. 7:13-1.3(f), Non-regulated uses in the flood fringe, also consolidates examples of non-regulated uses in the flood fringe that are dispersed in various sections of the current rules. New N.J.A.C. 7:13-1.3(f)1 articulates the precise criteria by which the DEPE shall consider uses as failing to qualify as "non-regulated" uses, including those uses which contribute to violations of State water quality standards, uses which reduce the volume of flood storage or which require hydrologic or hydraulic calculations to determine impact, uses which adversely affect the areas under the jurisdiction of the chapter, and uses for which the land owner refuses to consent.

New N.J.A.C. 7:13-1.3(f)2 expands upon the list of non-regulated uses that appears in current N.J.A.C. 7:13-4.6(b). Uses that have been added include Pole barns, open decks and additions to single family residential structures of up to 300 square feet, backstops and open bleachers, inground and above ground pools, boat launching ramps and the maintenance, repair and replacement of existing roadways.

Subchapter 2. Project Standards

Proposed N.J.A.C. 7:13-2.1, General, identifies which watercourses the engineering and environmental standards apply to. The standards have been identified in the text as engineering or environmental.

Proposed N.J.A.C. 7:13-2.2, Prohibited uses, reflects the DEPE's statutory authority to preserve the flood-carrying capacity of the watercourse and to protect public and private property and the public health, safety and welfare pursuant to N.J.S.A. 58:16A-55. Prohibited uses in the floodway include the addition of fill, including new structures and fences, which will cause an obstruction to flow, the addition, discharge or storage of solid and hazardous waste, storage of materials and equipment, individual subsurface sewage disposal systems and off channel detention/retention basins. This section also sets criteria for the expansion of existing uses and the repair of damaged structures.

Proposed N.J.A.C. 7:13-2.3, Regulatory flood, amplifies current DEPE definitions as to what flood events the DEPE will regulate. The regulatory flood for delineated streams remains the Flood Hazard Area Flood as determined by the adopted State study. The Flood Hazard Area Flood for delineated streams is still calculated by increasing the 100-year flood flow by 25 percent to account for future development in the drainage basin which will increase both the volume of flood waters and, therefore, flood elevations. The regulatory flood for non-delineated streams remains the 100-year flood event. However, unless a regional stormwater management plan is in effect, this rule will now require that the 100-year flood flows be calculated assuming full development in the basin, according to current zoning, instead of the current practice of designing for the existing conditions. This section also requires all projects to be designed so that they do not increase the flood damage potential from storm events less than the 100-year event. This section was added because the DEPE recognizes that certain structures may not cause a problem during a 100-year flood, but may increase flooding during lesser frequency floods.

Proposed N.J.A.C. 7:13-2.4, Establishment of Flood Plain Limits and Encroachment Lines on Non-Delineated Watercourses, identifies specific methods used to establish the flood plain and floodway limits. References to the National Flood Insurance Maps, the U.S. Army Corp of Engineers maps and to floods of record were dropped because they do not account for future development which can increase the flood elevations and cause flooding problems in the future.

Proposed N.J.A.C. 7:13-2.5, Watercourse cleaning, requires a permit only for the mechanized removal of accumulated material from the natural channel. Removal of material below the natural channel will be considered channelization which is regulated under new N.J.A.C. 7:13-2.9. This section will allow public entities to apply for cleaning and maintenance permits for as many or as few watercourses as are within their jurisdiction. The new rule now includes within a single permit the initial cleaning and subsequent maintenance cleaning of all watercourses approved by the DEPE for the entire five year life of the permit.

Proposed N.J.A.C. 7:13-2.7, Disposal of spoils, consolidates the provisions of several sections in the current rules. The prohibition of disposing spoils within 15 feet of the top of bank has been increased to 25 feet in order to coincide with the overall environmental concerns of this chapter. Provisions are made to allow Mosquito Commission projects to be reviewed on a case-by-case basis.

Proposed N.J.A.C. 7:13-2.8, Stormwater management, consolidates the provisions of several sections in the current rules and sets forth new requirements for stormwater discharges into the areas regulated under this chapter.

Proposed N.J.A.C. 7:13-2.9, Channel modification, prohibits channelization except when controlling flooding which threatens life or property. The existing rule did not specify the seriousness of the flooding needed to justify channelization and this proposal merely articulates the standard actually employed by the DEPE in assessing such applications.

Proposed N.J.A.C. 7:13-2.10, Underground utilities in the flood plain, consolidates the provisions of several sections of the existing rules and codifies practices currently accepted by the DEPE. These practices include allowing a stainless steel plate in lieu of the top six inches of encasement if the three foot vertical clearance cannot be met and requiring utilities crossing over or under a piped reach of stream to maintain a minimum one foot vertical clearance above or below the pipe.

Proposed N.J.A.C. 7:13-2.11, Aboveground utilities in the flood plain, reflects the current DEPE requirements such as requiring pipe crossings to be attached to the downstream side of a bridge or culvert.

Proposed N.J.A.C. 7:13-2.12, Dams, reflects the changes in the Dam Safety Program rules, N.J.A.C. 7:20, and the increased environmental concerns of this chapter. The definition of a dam under the Dam Safety Act has broadened since the initial adoption of this chapter in 1984. Certain detention/retention basins impoundment structures that would not have been considered dams in 1984 and, therefore, would have been under the jurisdiction of this chapter, are now classified as Class IV dams. Under the Dam Safety Regulations, a permit is not required for a Class IV dam but it must be designed in accordance with the requirements of the Dam Safety Regulations. The intent of current N.J.A.C. 7:13-3.15 has been preserved since on-watercourse dams which have been reviewed by the DEPE and issued a Dam Safety Permit will still be exempted from an engineering review under this chapter as reflected in proposed N.J.A.C. 7:13-2.12(b)1. However, proposed N.J.A.C. 7:13-2.12(b)2 provides that dams that do not receive a Dam Safety Permit will be subject to the engineering standards of this chapter. Furthermore, proposed N.J.A.C. 7:13-2.12(c)1 requires that all new dams, proposed within the jurisdiction of this chapter be reviewed for compliance with the environmental standards of this chapter (regardless of whether or not they have received a Dam Safety Permit).

Proposed N.J.A.C. 7:13-2.13, Requirements for structures, redefines the access requirements for residential developments required by the current N.J.A.C. 7:13-4.7(c).

Proposed N.J.A.C. 7:13-2:14, Standards for fill within the flood plain, now defines January 31, 1980 (the effective date of the Flood Hazard Area Control Act ("FHAC Act")). Previously, the DEPE required that the applicant account for all fill placed on a site after 1929, the year the Stream Encroachment Program began. Determining 1929 ground elevations proved nearly impossible due to a lack of records; 1980 elevations are easily verifiable. This section also incorporates current N.J.A.C. 7:13-5.4(b) (variances for highway projects) and eliminates the requirements for special notices for these projects.

Proposed N.J.A.C. 7:13-2:15, Additional requirements for fill in the Central Passaic Basin, now defines the ground elevations extant as of March 25, 1977 (the effective date of the zero net fill requirement in the Central Passaic Basin) as the existing elevations by which to calculate the amount of fill placed or proposed to be placed on a site. Previously, the DEPE required that the applicant account for all fill placed on a site after 1929, and as explained above, this requirement proved to be impracticable. This section also incorporates current N.J.A.C. 7:13-5.4(b) (variances for highway projects) and eliminates the requirements for special notices for these projects.

Proposed N.J.A.C. 7:13-2.16, Bridges and culverts, sets forth the design criteria for bridges and culverts. While the DEPE has always regulated these structures the design requirements were never before written into any rule. This section sets forth the engineering and environmental design standards and the proper methods for calculating the upstream and downstream impacts of new bridges and culverts as well as replacement bridges and culverts.

Proposed N.J.A.C. 7:13-2.18, Impacts to other properties, specifies the allowable impacts to properties owned by persons other than the applicant, and the methods of calculating these impacts.

Subchapter 3. General Environmental Standards

Proposed N.J.A.C. 7:13-3.1, Minimization of environmental damage, requires that applicants describe all environmental impacts of a project and the measures by which such adverse impacts shall be eliminated or minimized and to require compliance with all applicable environmental statutes, regulations and ordinances. Pursuant to court decisions, N.J.A.C. 7:13-3.1(b)3 now provides that the DEPE shall deny an appli-

cation for any project which significantly and adversely affects the biota of the watercourse, threatened or endangered plants or animals, agricultural or potable water supplies, flooding or drainage characteristics of a watercourse or fisheries.

Proposed N.J.A.C. 7:13-3.4, Mitigation, sets forth standards already applied by the Program for mitigation when a project disturbs or destroys the environment within the jurisdiction of this chapter. Under the requirements of this section, when a project causes an environmental impact in an area, the applicant shall either restore the area on a one to one ratio or create an area of equal or better value on a two to one ratio.

Proposed N.J.A.C. 7:13-3.6, Projects affecting other fish resources, consolidates the requirements of several sections of the existing rules and adds two new sections which establish criteria for work affecting Anadromous and warm water fish.

Proposed N.J.A.C. 7:13-3.8, Freshwater wetlands, ensures that projects receiving permits under this program also minimize disturbance to any freshwater wetlands located along watercourses and compensate for any loss of such wetlands caused by construction or use of the project. Freshwater wetlands within the flood plain, provide a natural and effective means of regulating the flow of water by providing storage and absorption of floodwater and slowly releasing the water and maintaining a base flow in a watercourse during periods of drought. Accordingly this rule compels applicants within the regulatory jurisdiction of the program to design projects to protect such wetlands to the greatest extent possible.

Proposed N.J.A.C. 7:13-3.9, Threatened and endangered species, reflects current DEPE policy and practices in all permitting programs. This section sets forth criteria for identifying and protecting rare and endangered species dependent on the watercourse for survival and protecting their habitats as well.

Subchapter 4. General Procedures for Stream Encroachment Permits

Proposed N.J.A.C. 7:13-4.1 requires information for all applications submitted to the Department, updates policy and more clearly defines what is required for a complete application.

Proposed N.J.A.C. 7:13-4.2, Notice, more clearly explains what constitutes proper notice.

Proposed N.J.A.C. 7:13-4.3, Pre-application conferences, reflects organizational changes within the DEPE, and the policy of the Land Use Regulation Program of trying to combine reviews under different regulations into a permit. A new requirement of requesting a pre-application conference in writing and submitting plans and information prior to the conference was added so that the staff could be better prepared and offer more meaningful guidance at the conference.

Proposed N.J.A.C. 7:13-4.6, Emergency permit waiver, reflects the organizational changes in the DEPE, better defines when an emergency permit can be issued and the procedure for obtaining one.

Proposed N.J.A.C. 7:13-4.7, Permit application review procedures, better reflects the 90-Day Construction Permit Rules, and the policy and procedure changes concerning deficiencies in applications, a five year limit on permits, procedures and fees for resubmission of denied or withdrawn applications, procedures to request a 30-day extension of 90-day review, and procedures to resubmit applications with hardship requests.

Proposed N.J.A.C. 7:13-4.8, Hardship requests, reflects the DEPE's current practice of requiring a permit application to accompany a request for hardship waiver in order for the DEPE to assess the true engineering and environmental impacts of the project.

Proposed N.J.A.C. 7:13-4.10, Procedure for appeal to the DEPE, now coincides with the appeal procedure as outlined in N.J.A.C. 7:1C-1.9 of the 90-day Construction Permit rules as well as the Administrative Procedure Act.

Subchapter 5. Implementation

This subchapter currently appears as subchapter 6 and was revised to clarify intent and procedures.

Proposed N.J.A.C. 7:13-5.1, Consistency with other requirements in permit review, requires that permits issued pursuant to this chapter be conditioned upon the permittee complying with all other applicable Federal, State or local requirements; that issuance of a permit does not obligate the Department to issue any other applicable permit; and that where the Department has not delegated authority as outlined in N.J.A.C. 7:13-5.3, no local agency or employee thereof can grant a permit under the "Municipal Land Use Law" (N.J.S.A. 40:55D-1 et seq.) for a regulated activity until the Department has issued a permit.

Proposed N.J.A.C. 7:13-5.2, Creation of a county water resource association, allows for the creation of a county water resource association to discuss and coordinate county flood control and water management programs.

Proposed N.J.A.C. 7:13-5.3, Delegation of power to counties, allows for the delegation of the Department's authority to review and decide any application made pursuant to this chapter as well as its power to enforce any aspect of its legal obligations arising under the Act to a county governing body.

Proposed N.J.A.C. 7:13-5.4, Penalties, states that anyone who violates a provision of this chapter is subject to penalty and injunctive relief, as applicable, pursuant to the N.J.S.A. 58:16A-63 and N.J.S.A. 58:10A-1 et seq.

Subchapter 7. Delineated Floodways

This subchapter currently appears as subchapter 7 and remains unchanged. This subchapter list those reaches of watercourses within the State that have had floodways formally adopted.

Social Impact

The deletion of current N.J.A.C. 7:13-2.5, Optional review for projects in small drainage areas, will have a positive social impact by saving the applicant professional costs in connection with an application to county or municipal engineers who have, in practice, long declined to exercise their permitting authority under the rule. This section allowed for approval of individual projects, which were not classified as Projects of Special Concern under current subchapter 5, by the municipal or county engineer in cases in which the drainage area was less than 320 acres (for minor projects) or 150 acres (for major projects). In practice, the municipal and county engineers have been reluctant to issue approvals under this section for any project other than their own over which they have exclusive control of design and construction. The proposed rule appearing at N.J.A.C. 7:13-5.3 still allows DEPE to delegate certain permitting and enforcement functions to a county agency.

The deletion of the classification of Project of Special Concern, current N.J.A.C. 7:13-5.1 through 5.5, will have a positive social impact by relieving applicants of projects in environmentally sensitive areas from the numerous ill-effects arising from the public perception that projects so-named were considered by the DEPE to be inappropriate for the site. The proposed changes appearing at subchapter 3 have a positive social impact by requiring all applications to meet the same general categories of environmental standards, with the degree of detail required from the applicant increasing according to the level of environmental disturbance caused by the project. Public meetings concerning proposals will still be required pursuant to N.J.A.C. 7:13-2.5(e) and 4.8(b) at the DEPE's request or when interest from the public is expressed.

N.J.A.C. 7:13-1.3, Applicability, will have a positive social impact by clarifying and placing in a single section for easy reference a statement of the DEPE's jurisdiction under this chapter. The uncertainty attending the process by which projects were designated Projects of Special Concern has been eliminated and replaced with a clear statement of DEPE jurisdiction based upon objective criteria by which areas of particular environmental sensitivity can be easily identified. This allows applicants to estimate costs of building in such areas accurately and early in the design process. The public will continue to enjoy the benefits of the heightened standards imposed on projects in areas of special environmental sensitivity. The DEPE' decision not to extend its jurisdiction in tidal and tidally-influenced areas has a positive social benefit of eliminating duplication of the review done by the DEPE's Coastal Programs. Moreover, the public continues to be assured of the integrity of structures in such areas since the Uniform Construction Code imposes the same or more restrictive standards than this chapter ever did. The new definition of "non-regulated use" will also have a positive social impact by more closely reflecting the standards and concerns that have evolved in the program over the last few years, thus eliminating any confusion over what activities can be considered non-regulated under this chapter. This section will also have a positive social impact by allowing individual homeowners to reasonably expand their legal dwelling in the flood plain and shall also allow public entities to maintain existing roads, bridges and other structures without the delay and expense for a permit.

N.J.A.C. 7:13-2.2, Prohibited uses, will have a positive social impact by eliminating confusion over what constitutes a prohibited use and liberalizing restrictions upon the development of property where at all possible in situations consistent with preserving public safety. For example, by prohibiting fill that causes an obstruction to flow instead of

prohibiting "net fill," an undeveloped lot located in the floodway surrounded by existing buildings that effectively shield the lot from direct flows of flood waters can now be developed. Furthermore, the continuation of lawful preexisting uses and repair of damaged structures in the floodway have a positive social impact by now allowing the repair and/or expansion of such uses provided that these activities do not increase the flood damage potential. For example, in the past, additions to existing buildings in floodways or the expansion of same as part of replacing a damaged structure (including second story additions) were strictly prohibited. Under the provisions of this proposal they would be allowed provided that they pose no further obstruction to flow and that they will withstand the forces exerted by floodwaters.

The new rule concerning the regulatory flood, N.J.A.C. 7:13-2.3, will have a positive social impact by insuring that structures will be designed to withstand the increased flooding generated by the inevitable increase of legally-permissible development in the drainage area. Experience has shown that development in a drainage basin increases the volume of runoff contributing to flooding and consequently, increases the flood elevations. Merely requiring projects to conform to existing conditions does not adequately protect the public in the event of floods if and when the drainage basin is fully developed. State adopted delineation increases the 100-year discharge by 25 percent (25%) then uses that flow to set the Flood Hazard Area Flood Elevation. This was done to account for future development and therefore increased flood flows. The increase of the 100-year flood level by 25 percent in calculating the Flood Hazard Area Flood Elevation has proven an inaccurate estimate of the true flooding conditions in the basins as development has progressed in this State. The rapid advance in personal computer technology and the abundance of hydrologic and hydraulic programs now makes it reasonable to require applicants to calculate a 100-year flood based upon full development in the drainage basin if there is no regional Stormwater Management Plan which otherwise governs development in that area.

N.J.A.C. 7:13-2.3(c) requires projects to be designed so that they do not increase the damage potential of floods of frequencies less than the 100-year flood. This will have a positive social impact by insuring that proposed projects do not increase the costly damages caused by floods which occur most often, such as the two, five or 10 year floods.

N.J.A.C. 7:13-2.4 requires that the boundaries of the flood plain be established by a standard step backwater analysis and that the floodway be established through an equal conveyance reduction analysis. This rule will have a positive social impact by more accurately defining the limits of the flood plain and floodway and therefore more accurately identifying those projects which could adversely affect flooding.

The revised watercourse cleaning requirements, N.J.A.C. 7:13-2.5, will have a positive social impact by deregulating cleanings performed by hand. The removal of individual pieces of debris such as a fallen tree or discarded appliance that require removal by mechanical means is also deregulated, thus allowing public entities more flexibility in deploying limited personnel and resources to free watercourse channels from debris. The resulting improvement of the aesthetics and recreational value of the watercourses will have an obviously positive social impact. Similarly, necessary activities by mosquito control commissions are deregulated under this proposal resulting in another positive social benefit of reducing yet another threat to public health.

N.J.A.C. 7:13-2.6, Excavation, sets standards for excavation projects in the flood plain. This section will have a positive social impact by ensuring the safety of persons and property affected by the excavation.

N.J.A.C. 7:13-2.7, Disposal of spoils, sets standards for spoil disposal in the flood plain. This section will have positive impact by insuring that spoil disposal will not adversely affect future flood elevations and by allowing exemptions for work performed by Mosquito Commissions for mosquito control.

N.J.A.C. 7:13-2.8, Stormwater management, will have a positive social impact by providing for protection from increased downstream flooding caused by development in the drainage basin. Experience has shown that the old concept of controlling stormwater runoff by maintaining the peak stormwater discharge rate for pre and post-construction is not an effective means of preventing increases to downstream flooding. Studies by the Somerset County Engineer's Office have actually shown that by holding the peak flow rates in this manner, downstream flooding can actually be increased to higher levels than if no control at all was implemented. The problem with the old concept is that it is site specific and fails to account for the increased volume of stormwater runoff generated by the development. The ideal situation would be to manage stormwater on a regional basis. However, baring a regional stormwater management plan, the Somerset County Studies showed that by reducing the peak stormwater discharge rates for the two, 10 and 100-year events downstream flooding could be reduced. Therefore, in an effort to safeguard the public from increased downstream flooding due to poor stormwater management, the DEPE is requiring that all stormwater discharges within the regulatory authority of this chapter shall reduce the post-development stormwater discharge rates, unless there is a regional stormwater management plan in effect or it can be shown through calculations that the volume and rate of stormwater runoff will not be increased by the proposed development.

This section will also have a positive social impact of improving water quality in the watercourse. The U.S. Environmental Protection Agency and the National Oceanic and Atmospheric Association under the authority of the Coastal Zone Management Act Reauthorization Amendment of 1990 required states to implement measure such as those proposed in these rules which will ensure an 80 percent reduction of the average annual Total Suspended Solids (TSS) loading after completion of project construction. The removal of TSS is assumed to control to some degree heavy metals, phosphorus and other pollutants. The DEPE has been requiring water quality treatment on stormwater discharges under this program in the form of sediment removal since the adoption of the regulations in 1984. However, the technology for protecting water quality is growing. The measures listed in the new regulations are measures that have been used in the past and, while still obviously valid, are not meant to preclude use of other equally efficient but less expensive measures or more efficient systems of stormwater management as they are developed. Certainly potential applicants are encouraged to discuss implementation of new measures with the DEPE at an early stage of the design process to minimize time and cost when an application is eventually submitted.

Long-term maintenance is a critical factor in the continued functioning of the stormwater management system. Inadequate maintenance is the most common cause of failure in these systems. Therefore, proposed N.J.A.C. 7:13-2.8(e) has a positive social impact by articulating the applicants responsibility to provide such long term maintenance.

N.J.A.C. 7:13-2.9, Channel modification, will have a positive social impact by clarifying the DEPE's practice of prohibiting channelization which destroys the natural environment of the watercourse. The rule will also have a positive social impact of preventing downstream flooding caused by channelization which reduces flood storage.

N.J.A.C. 7:13-2.10, Underground utilities in the flood plain, will have a positive social impact by ensuring that underground utilities are buried sufficiently to not obstruct flood flows and protected from accidental damage thus ensuring uninterrupted service.

N.J.A.C. 7:13-2.11, Aboveground utilities in the flood plain, will have a positive social impact by ensuring that utilities are sufficiently designed so as not to obstruct flood flows and protected from accidental damage thus ensuring uninterrupted service.

N.J.A.C. 7:13-2.12, Dams, will have a positive social impact by requiring the assessment and minimization of the adverse environmental impacts of dams which currently is not assessed or regulated in the Dam Safety Regulations. The proposal also allows the program to assess the impacts of a proposed dam upon flooding potential which is also not provided for under the Dam Safety Program.

N.J.A.C. 7:13-2.13, Requirements for structures, will have a positive social impact by removing the requirement of strict compliance with access-road requirements for residential developments. The rule also provides a positive social impact by requiring owners of newly constructed structures to advise subsequent purchasers of property that the driveway to a house is subject to flooding, thus allowing the parties to take those measures necessary to protect their interests. The current rules require that an access route elevated at the Flood Hazard Area or one foot above the 100-year flood elevation to a residential development must be provided. In areas where the existing roads were below the flood elevation this requirement proved close to impossible to meet since raising the existing roads could not be performed without adversely affecting existing structures along that road. In these cases, the DEPE either required the applicant to apply for a hardship waiver or required the applicant to provide an access road through another portion of the site. Since the original intent of the access requirement was not intended for individual residences but hotels, hospitals and similar "group" residential facilities, this section was revised to allow for easier compliance with the access requirement without jeopardizing public safety. The regulation will also have a positive social impact by allowing construction of recreational facilities in a larger number of areas.

N.J.A.C. 7:13-2.14, Standards for fill within the Flood plain, will have a positive impact in that it will remove the unrealistic policy of requiring applicants to research the fill history of the site back to 1929. Since reliable records dating back to that time are usually not available, the current rules will now only require an applicant to look as far back as January 31, 1980, the effective date of the Flood Hazard Area Control Act.

N.J.A.C. 7:13-2.15, Additional requirements for fill in the Central Passaic Basin, will have a positive social impact by, again, removing the above-mentioned policy of requiring applicants to research the fill history of the site back to 1929. Applicants shall only be required to research the ground elevations extant as of March 25, 1977 for the purposes of determining compliance with the "zero net" fill requirement since this was the date when the zero net fill requirement was introduced.

N.J.A.C. 7:13-2.16, Bridges and culverts, will have a positive social impact by clarifying the engineering and environmental standards for bridges and culverts which provide increased protection from flooding and minimize the adverse environmental impact of the project.

N.J.A.C. 7:13-2.18, Impacts to other properties, will have a positive social impact by articulating the standards used by the DEPE to assess whether a project poses unacceptable risks to persons and property other than the applicant and the lands on which the project is located. The calculations required by this section can easily be accomplished by using computer models available for the specific purpose.

N.J.A.C. 7:13-3.1, General environmental standards, will have a positive social impact by clarifying the areas in which the environmental standards of this chapter will apply and articulating the general environmental standards by which all applications for permits will be assessed. This section reiterates the policy that the environmental standards apply regardless of drainage area, but exempts from jurisdiction man-made, but not man-altered, watercourses with a total contributory drainage area of less than 50 acres. Man-made watercourses are those watercourses created to convey water in an area where there was no watercourse previously. Man-altered watercourses are natural watercourses which have been enlarged, dredged or in any way altered. Exempting man-made watercourses from compliance with the environmental standards is a reduction of the jurisdiction taken under the current rules but, in the DEPE's judgment such watercourses are few in number and concurrent environmental impact and, furthermore, are not strictly within the DEPE's jurisdiction under the Flood Hazard Area Control Act.

N.J.A.C. 7:13-3.2, Protection of near watercourse vegetation, will have a positive social impact by preserving vegetation along watercourses which will provide passive recreation as well as decrease the potential for soil erosion.

N.J.A.C. 7:13-3.3, Soil erosion and sediment control, will have a positive social impact by preventing excessive sediment to enter the watercourse and reduce its flood carrying capacity and by protecting property from damages caused by erosion.

N.J.A.C. 7:13-3.4, Mitigation, will have a positive social impact by bringing the program into line with other DEPE programs to require applicants to minimize destruction of the environment in the design and construction of a project and to replace any environment destroyed by construction or operation of a project with land of equal or greater environmental value.

N.J.A.C. 7:13-3.5, Projects along trout associated watercourses, will have a positive social impact by protecting the watercourses and trout fishery resources, which provide recreation.

N.J.A.C. 7:13-3.6, Projects affecting other fish resources, will have a positive social impact by restricting construction activity to periods in which Anadromous and warm water fish are not breeding or running, thus protecting New Jersey's recreational fishing stock. Requirements for fish passage in watercourses altered by regulated activities as well as restoration of the original condition of the watercourse are imposed upon applicants to further protect these animals. However, to strike a balance between environmental and financial considerations, the proposed regulations also guarantee permittees 183 days in which permittees may, if they wish, undertake regulated activities.

N.J.A.C. 7:13-3.7, Projects exposing deposits of acid-producing soils, will have a positive social benefit by preventing or minimizing the damages caused by the increased acidity in disturbed soils, such as, damage to structure in the watercourse or bare spots where vegetation cannot grow.

N.J.A.C. 7:13-3.8, Freshwater wetlands, will have a positive social impact by requiring replacement of wetlands destroyed by regulated activities and requiring justification for destruction of more than one-quarter of an acre of wetlands for any project. Wetlands provide flood storage, animal habitat and ensure water quality.

N.J.A.C. 7:13-3.9, Threatened and endangered species, will have a positive social impact by ensuring the continued survival of threatened or endangered species of plants or animals found within the jurisdiction of this chapter by requiring regulated activities to avoid any adverse affects upon such populations of animals and their habitats.

N.J.A.C. 7:13-4.1, Required information for all applications submitted to DEPE, will have a positive social impact by clarifying what information is required for the submission of an application.

N.J.A.C. 7:13-4.2, Notice, will have a positive social impact by clarifying the persons to which notice of an application for a permit should be given. The current rules require an applicant to notify local and county officials and "adjacent property owners." The new rules have been modified to match the notice requirements of other DEPE programs by requiring notice to be given to county and local officials and all property owners within 200 feet of the legal boundaries of the project site.

N.J.A.C. 7:13-4.3, Pre-application conference, will have a positive social impact by ensuring that applicants provide DEPE staff with sufficient information in advance of a meeting in order to more accurately assess which aspects of a project require modification to comply with these rules and to identify what other DEPE permits may be required for the project.

N.J.A.C. 7:13-4.4, Over-the-counter permit processing, will have a positive social impact by providing for an expedited review of minor projects.

N.J.A.C. 7:13-4.5, Optional Soil Conservation District review, will have a positive impact by allowing the Soil Conservation District to design and aprove certain projects for agricultural uses.

N.J.A.C. 7:13-4.6, Emergency permits, will have a positive social impact by clarifying the circumstances under which an emergency permit can be obtained and how to obtain one.

N.J.A.C. 7:13-4.7, Permit application review procedures, will have a positive social impact by harmonizing the program's review procedure with those of the 90-day Construction Permit Rules. The proposed rules also eliminate the need for applications to renew permits every year after the first two years and now provide that a single permit shall cover regulated activities for a period of five years.

N.J.A.C. 7:13-4.8, Hardship waivers, will have a positive social impact. The rule has been amended to omit the requirement that the hardship waiver be unique or peculiar to the applicant, thus ensuring that waivers be available to all persons who meet the same criteria.

N.J.A.C. 7:13-4.9, Permit modification procedures, will have a positive social impact by allowing for the modification of valid permits instead of requiring an applicant to file a new application.

N.J.A.C. 7:13-4.10, Appeal procedure to DEPE, will have a positive social impact by eliminating applicant's confusion in the procedures necessary to appeal a DEPE decision under these rules. The rules have been amended to conform to the procedures applicable to many other DEPE permits as set forth in the 90-day Construction Permit Rules.

N.J.A.C. 7:13-4.11, Permit application review by delegated agencies, will have a positive social impact by requiring delegated agencies to comply with this chapter.

N.J.A.C. 7:13-5.1, Consistency with other requirements in permit review, will have a positive social impact by requiring permittees to be in compliance with all applicable Federal, State and local requirements before commencing construction. This will insure that every aspect of the project, including those aspects outside of the jurisdiction of this chapter, will be properly reviewed.

N.J.A.C. 7:13-5.2, Creation of a county water resources association, will have a positive social impact by allowing for the creatiion of a county water resources association, which could plan and coordinate flood control and water resources projects within a county, thereby providing a regionally coordinated approach which will provide better protection to the public.

N.J.A.C. 7:13-5.3, Delegation of power to counties, will have a positive social impact by allowing the Counties, which have a better overall interaction with and knowledge of local problems, the opportunity to assume responsibility for the administration of this chapter.

N.J.A.C. 7:13-5.4, Penalties, will have a positive social impact by allowing actions to be taken against any person who violates the provisions of this chapter.

N.J.A.C. 7:13-7.1 will have a positive social impact by providing a listing of delineated floodways within the State.

Economic Impact

The deletion of current N.J.A.C. 7:13-2.5, Optional review for projects in small drainage areas, will have a positive economic impact by eliminating a process that no longer is available to the general public and has on occasion wasted an applicant's time and resources in trying to obtain approval.

The deletion of the classification of Projects of Special Concern (PSC), current N.J.A.C. 7:13-5.1 through 5.5, will have little to no economic impact on the cost of a project since the same general categories of environmental standards are applied to all applications for permits under this program. Moreover, since many projects likely to have been classified as PSC are, in all likelihood, located in the environmentally sensitive areas now clearly defined in the rules, the applicant shall still be required to produce data in a greater degree of detail than applications in other areas within the jurisdiction of these rules. However, the removal of the stigma attached to projects classified as PSC should ensure that public comments are directed to the merits of the project rather than its label under these rules and should also save the applicant time and consultant fees that were previously spent trying to avoid the PSC classification.

The statement of the jurisdiction of the DEPE in N.J.A.C. 7:13-1.3 will have a positive economic impact by eliminating public misunderstanding of the DEPE's regulatory jurisdiction , which in the past has caused incomplete applications, additional consulting fees and delays in processing applications. The redefining of jurisdiction in tidal and tidally-influenced areas will reduce costs to an applicant by eliminating the necessity of obtaining a permit which would duplicate the review performed by other programs in the DEPE and by the municipality. The deregulation of certain types of projects will reduce the costs to an applicant for maintaining or expanding a residential or commercial building, or maintaining roadway infrastructure, including bridges and culverts. The savings to an applicant from these amended rules includes the application fee, the consultant fees and the costs associated with preparing the application, amending it to provide missing information, and awaiting the DEPE's decision on the application.

The clarification of prohibited uses in the floodway, N.J.A.C. 7:13-2.2, should have a positive economic impact by giving the public the clear notice needed to avoid those activities prohibited in floodways which would require costly and time-consuming measures to remedy. The new rule also allows for work previously prohibited to be performed consistent with the DEPE's mandate to protect the public from the effects of flooding, thereby affording some property owners options formerly unavailable to them to expand or develop a property. Since the opportunity for development has increased, there is, necessarily, a corresponding increase in the amount and complexity of the engineering needed to prove the structure complies with the safety standards imposed by these rules and this will, plainly, increase consultant fees. However, it may be fairly presumed that no work will be undertaken unless the cost of the application is more than offset by the benefits or profits to the applicant derived from the contemplated improvements. The section on expansion of preexisting uses and the repair of damaged structures in the floodway will allow for expansion of existing residential and commercial structures that were previously prohibited. The negative economic aspect of this section is, again, the added engineering and cost of construction to design and build a structure that will withstand the forces from flooding. This added cost, however, will depend on the depth of floodwaters to which the structure is subjected.

N.J.A.C. 7:13-2.3 which now requires calculation of the regulatory flood along non-delineated streams to be based upon an assumption of full development of the basin may have a negative economic impact upon development in certain areas. In areas in which there is only a Flood Insurance Study developed for the National Flood Insurance Program and implemented by the Federal Emergency Management Agency, the DEPE may not accept these studies as a basis for calculating the 100-year flood plain unless the applicant demonstrates that the studies account for full development in the flood plain, or that an effective basinwide stormwater management plan is being implemented for that watercourse. If the Flood Insurance Study is not accepted by the DEPE, the applicant would be required to produce a new hydrologic and hydraulic analysis for the site, thereby increasing the engineering cost of the project. However, the DEPE believes that these costs are no greater a burden than that placed by the rules upon applicants planning development along watercourses for which there is no Flood Insurance Study. Additionally, the added cost will be small compared to the structural damage caused by future, increased flood elevations caused by unrestricted development of the drainage basin.

N.J.A.C. 7:13-2.3(c) requires that projects be designed so that they do not increase the flood damage potential of the more frequently occurring floods, such as the two, five or 10-year flood events. This requirement will have only a minor negative economic upon applicants through a small increase in consultant fees attributable to these additional engineering calculations.

N.J.A.C. 7:13-2.4, Establishment of flood plain limits and encroachment lines on non-delineated watercourses, is closely tied with N.J.A.C. 7:13-2.3 and therefore will have the same economic impacts as described above.

The revised watercourse cleaning requirements, N.J.A.C. 7:13-2.5, deregulating cleaning operations performed by hand and projects removing large pieces of debris will have a positive economic impact by sparing applicants the time and expense of permit applications. The proposed rule also allows continued maintenance of the watercourse throughout the five year life of the permit, which eliminates the cost of preparing and applying for a permit for each cleaning project after the initial cleaning. Most cleaning projects are undertaken by municipalities to remove sediment and debris that cause drainage problems during flooding. Currently these municipalities must apply for a permit each time they wish to perform the initial cleaning and for each subsequent maintenance cleaning that is proposed. The proposed changes to this rule will eliminate the administrative cost formerly associated with these projects and thereby, perhaps, encourage municipalities to clean watercourses as soon as the need arises, thereby sparing the public the costs associated with flood damage.

N.J.A.C. 7:13-2.6, Excavation, will have a minor negative economic impact on the applicant in the form of consultants fees or hauling costs if the spoils must be removed from the site.

N.J.A.C 7:13-2.7, Disposal of spoils, will have a negative economic impact on the applicant in the form of hauling and disposal costs if the spoils must be removed from the site.

N.J.A.C. 7:13-2.8, Stormwater management, requiring runoff discharges resulting from development of the site to be controlled so that the pre-construction peak flow is not increased downstream from the project, will have a negative economic impact upon individual developer-applicants, but will have a positive economic impact upon the public at large. The requirements for stormwater management contained in this rule will require a developer to devote a larger portion of the land to stormwater management techniques, which will reduce the buildable area of the site being developed. Implementation of these techniques will also increase design and construction costs. However the economic impact to the general public will be positive because these stormwater management design requirements will prevent future flooding downstream, reducing the enormous cost of flood damage. Unfortunately, an economic value cannot be placed upon the improvement in water quality which implementation of these management techniques will achieve.

N.J.A.C. 7:13-2.9, Channel modification, will have no net economic impact upon applicants because the section was only revised to reflect long established DEPE practice for this type of project. Applicants have been meeting these requirements for years and accordingly, the costs of the necessary engineering calculations and design restrictions formalized in this rule have long ago been factored into the costs of construction.

N.J.A.C. 7:13-2.10, Underground utilities in the flood plain, will have a minor negative economic impact on the applicant in the form of increased construction costs to add protection in the form of encasement for crossings under the watercourse. However, since these requirements have been in effect for many years the costs are already factored in on most projects.

N.J.A.C. 7:13-2.11, Aboveground utilities in the flood plain, will have a minor negative economic impact on the applicant in the form of increased construction costs to protect the utility from impact by debris carried by floodwaters.

N.J.A.C. 7:13-2.12, Dams, may have a negative economic impact upon anyone constructing a dam. The rule requires an extensive analysis of the environmental impact of the project and, in cases where no Dam Safety Permit is issued, an engineering analysis of the impacts on flooding. These requirements carry with them corresponding permit and consultant fees which could range from several hundred to several thousand dollars depending on the complexity of the project.

N.J.A.C. 7:13-2.13, Requirements for structures, will have a positive economic impact by removing residential developments from strict compliance with the requirement of an access route at or above flood elevation. Under the current chapter, many applicants had to apply for a hardship waiver from the access requirement in order to get a permit.

N.J.A.C. 7:13-2.14, Standards for fill within the Flood plain, will have a positive impact since applicants will no longer have to incur the costs of employing a consultant to search for virtually non-existent site records dating back to 1929 to determine the fill history of the site. The applicant will now only have to account for fill placed on the site since January 31, 1980. These records are far more readily available and, consequently, the cost of calculating this aspect of the application will be that much less.

N.J.A.C. 7:13-2.15, Additional requirements for fill in the Central Passaic Basin, will have a positive economic impact similar to that of N.J.A.C. 7:13-2.14 in that applicants will no longer have to search for site records dating back to 1929 to determine the fill history of the site. The applicant will only have to account for fill placed on the site since March 25, 1977.

N.J.A.C. 7:13-2.16, Bridges and culverts, will have a minor negative economic impact because these structures will be required to be designed so that upstream pre-construction water surface elevation will remain the same after construction. The current policy of allowing for a two-tenths foot rise in water levels for replacement structures was eliminated because it failed to take into account the fact that the original structure may have already caused an increase in elevation which will have been increased yet again as a result of the replacement. This proposal may require the applicant to build a slightly larger structure thereby increasing construction cost, but these requirements should not result in increased consultant fees.

N.J.A.C. 7:13-2.17, Sewage disposal requirements in the flood fringe, should not have an economic impact in that it does not impose any new standards but only requires septic systems to be designed in accordance with the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A.

N.J.A.C. 7:13-2.18, Impacts to other properties, will not have an economic impact in that these are the generic standards that are already built into the requirements throughout the rule. The consultant fees associated with showing compliance with these standards can range from several hundred to several thousand dollars.

N.J.A.C. 7:13-3.1, General environmental standards, will have a negative economic impact by requiring an environmental report for all proposed regulated activities, which may require additional consultant fees. The impact should be minimal since the DEPE currently requires applicants to address such impacts in the determination of whether or not the project is a Project of Special Concern. The new rules now require that a formal report be submitted with the application.

N.J.A.C. 7:13-3.2, Protection of near watercourse vegetation, may potentially have a negative economic impact on the applicant if a project is designed without regard to the near watercourse vegetation. This impact will vary depending upon the degree that the project must be redesigned. If the project is originally designed taking the near watercourse vegetation into account then there will be no impact.

N.J.A.C. 7:13-3.3, Soil erosion and sediment control, will have a minor Economic Impact in that the requirements here coincide with the requirements of the Soil Conservation Districts, and is almost always already incorporated into the design.

N.J.A.C. 7:13-3.4, Mitigation, will not have an economic impact in that these requirements are being implemented in the program currently. The formal statement of these requirements should actually decrease the cost of compliance by allowing these requirements to be incorporated in the initial project design instead of as a costly redesign after many other plans have already been finalized. The cost associated with mitigation may be as little as the cost of the plants to revegetate a disturbed area or it may involve the costs of purchasing and regrading nearby property, which will vary depending on the area involved.

N.J.A.C. 7:13-3.5, Projects along trout associated watercourses, and sections N.J.A.C. 7:13-3.6, Projects affecting other fish resources, will have a negative economic impact if the applicant fails to account for the timing restrictions imposed along these watercourses. The impact may be in the form of increased costs caused by idle machinery and the delay of the completion of the project. If the timing restrictions are accounted for in the project management then impacts will be minimal.

N.J.A.C. 7:13-3.7, Projects exposing deposits of acid-producing soils, will have a negative economic impact upon the applicant by increasing construction costs to prevent and/or mitigate the adverse affects caused by the exposure of acid-producing soils.

N.J.A.C. 7:13-3.8, Freshwater wetlands, will have a negative economic impact on the appliant by requiring mitigation for the disturbance of more than one-quarter acre of freshwater wetlands. The actual costs will be dependent on the size of the area disturbed and the degree of mitigation required. The formal statement of these requirements should actually decrease the cost of compliance by allowing these requirements to be incorporated in the initial project design instead of as a costly redesign after many other plans have already been finalized.

N.J.A.C. 7:13-3.9, Threatened and endangered species, will have a negative economic impact on the applicant by rendering certain areas of a site unbuildable. If the site design has been prepared there will be added costs to redesign. The formal statement of these requirements should actually decrease the cost of compliance by allowing these requirements to be incorporated in the initial project design instead of as a costly redesign after many other plans have already ben finalized.

N.J.A.C. 7:13-4.1, Required information for stream encroachment applications, will have negative economic impact on the applicant in the form of consultant's fees to prepare and submit the application. The actual cost to the applicant will vary with the complexity of the project and will be dependent upon the amount of engineering and environmental information required.

N.J.A.C. 7:13-4.2, Notice, will have a minor negative economic impact since it requires an applicant to send certified letters to all property owners within 200 feet of the legal boundaries of the property as well as the local County Soil Conservation District. The additional costs will depend upon the size of the property and the number of property owners within 200 feet of the property. However, the DEPE has determined that there is no way to avoid these costs and still provide the notice which neighboring property owners are owed.

N.J.A.C. 7:13-4.3, Pre-application conference, will have a positive impact. Since applicants must incur the expense of having preliminary plans and engineering calculations made in order to realistically assess whether the development meets their needs and budget, these same plans can be submitted to the DEPE in advance of the pre-application conference to allow the DEPE to explore those aspects of the design and project site which might present compliance problems under the rules. Compliance issues which are identified and solved early in the design process ultimately save the applicant money in the form of consulting fees later.

N.J.A.C. 7:13-4.4, Over-the-counter permit processing, will have a positive economic impact on the applicant by providing an expedited review of minor applications.

N.J.A.C. 7:13-4.5, Optional Soil Conservation District review, will have a positive economic impact for agricultural projects by allowing for the design and approval of certain projects by the Soil Conservation District, thereby saving the applicant consultant's fees.

N.J.A.C. 7;13-4.6, Emergency permit, will have a positive economic impact by allowing for the unexpected damages to be repaired almost immediately, thereby preventing increased and more costly damages.

N.J.A.C. 7:13-4.7, Permit application review procedures, will not have an economic impact in that it is administrative in nature. The extension of the life of a permit to five years will have a positive economic impact by eliminating the need for an applicant to apply, with a fee, for three one-year extensions if the project was not completed within the five-years.

N.J.A.C. 7:13-4.8, Hardship waivers, will have a positive impact by providing for the approval of otherwise prohibited projects given sufficient justification.

N.J.A.C. 7:13-4.9, Permit modification procedures, will have a positive economic impact by allowing active permits to be modified instead of requiring a new application.

N.J.A.C. 7:13-4.10, Appeal procedure to the Department, will have a positive economic impact by clarifying the appeal procedure so that it coincides with the 90-day Construction Act.

N.J.A.C. 7:13-5, Implementation, will not have an economic impact because it is administrative rather than regulative.

N.J.A.C. 8:13-7, Delineated floodways, will not have an economic impact because it is informational, containing only a listing of the State delineated floodways.

Environmental Impacts

This chapter as a whole will have a positive impact upon the environment. The specific environmental concerns of the DEPE have been more

clearly defined, as has the specific circumstances and areas in which each applies. New rules concern measures intended to protect warm water and Anadromous fish, threatened and endangered species of plants and animals and which require mitigation in situations in which the project damages freshwater wetlands and other areas.

The deletion of current N.J.A.C. 7:13-2.5, Optional review for projects in small drainage areas, will have a minor but positive environmental impact since these smaller projects will now be subject to review under the same environmental standards as other applications.

The removal of the classification of Project of Special Concern, current N.J.A.C. 7:13-5.1 through 5.5, and the substitution of a jurisdictional statement in N.J.A.C. N.J.A.C. 7:13-3.1(a) describing in detail those areas of environmental sensitivity in which the DEPE shall exert jurisdiction within 50 feet from the top of the stream bank will have a positive environmental impact by placing applicants on notice of the need to design projects to meet specific regulatory criteria. Thus, it is far more likely that projects inappropriate for the site will not even be taken past the theoretical stage of planning and the projects for which applications are filed will more likely be designed efficiently to meet all the regulatory criteria.

The program's deletion of jurisdiction over tidal and tidally influenced areas contained in N.J.A.C. 7:13-3.1, will not have any environmental impact, since the concerns expressed in this chapter are addressed by the requirements of the Uniform Construction Code as well as other DEPE coastal regulation programs. Additionally, this chapter will no longer apply, in fluvial areas, to the headwater areas of watercourses which drain less than 50 acres and have no definable bed or bank, however, these areas will be reviewed under the Freshwater Wetlands Program.

The redefining of prohibited uses in the floodway, N.J.A.C. 7:13-2.2, and N.J.A.C. 7:13-2.3, discussing the calculation of the regulatory flood, will have no environmental impact in that this section deals predominantly with engineering concerns dealing with flooding and not environmental issues.

The new requirements for watercourse cleaning, N.J.A.C. 7:13-2.5, will have a positive environmental impact by allowing for easier removal of trash and debris from the watercourse and by providing for specific protection of threatened and endangered species of plants and animals and their habitats.

The requirements for stormwater management, N.J.A.C. 7:13-2.8, will have a positive environmental impact by preserving and improving the water quality of the receiving watercourse by reducing the amount of suspended solids contained in the stormwater discharges and by requiring maintenance of the stormwater management system to ensure its continued efficiency after the project is constructed.

N.J.A.C. 7:13-2.9, Channel modification, will have no environmental impact because the section was only revised to reflect the current practice. Applicants are already required to meet these requirements.

N.J.A.C. 7:13-2.12, Dams, will have a positive environmental impact because the rule will require an environmental review for dams constructed within the jurisdiction of this chapter that is not required by the Dam Safety Regulations. This review will allow the DEPE to assess the adverse impacts the dam will have on the environment and determine how the project can be redesigned to avoid or minimize these impacts.

N.J.A.C. 7:13-2.14, Standards for fill within the flood plain, and N.J.A.C. 7:13-2.15, Additional requirements for fill in the Central Passaic Basin, and N.J.A.C. 7:13-2.18, Impacts to other properties, will have a positive environmental impact since these engineering standards are intended to ensure that structures can withstand the impact of floods and do not increase the flood potential of the area. Rules which produce development which does not increase flood potential are, ultimately, of environmental benefit since floods damage animal habitat and the environment in general by carrying untreated pollutants and destroying many characteristics of the environment which make it deserving of protection and a source of enjoyment and recreation to the residents of this State.

N.J.A.C. 7:13-2.16, Bridges and culverts, will have a positive environmental impact because it identifies the specific environmental standards associated with these structures in the same section as the engineering standards, thus assisting applicants to plan development which complies with the rules.

N.J.A.C. 7:13-3.1, General environmental standards, will have a positive environmental impact by compelling applicants to identify all permanent and temporary adverse environmental impacts of the proposed project and demonstrate the methods by which the applicant shall minimize such impacts.

N.J.A.C. 7:13-3.4, Mitigation, will have a positive environmental impact by plainly stating the requirement to restore any areas disturbed and replace any areas destroyed by the design or construction of a project. This allows a project to be designed from the earliest stages so as to minimize environmental damage and allows an applicant to plan the details of the mitigation as deliberately and as carefully as this development.

N.J.A.C. 7:13-3.5, Projects along trout associated watercourses, and N.J.A.C. 7:13-3.6, Projects affecting other fish resources, will have a positive environmental impact by protecting anadromous and warm water fish as well as trout by prohibiting construction during times critical to breeding or migration.

N.J.A.C. 7:13-3.8, Freshwater wetlands, will have a positive environmental impact in that it will protect the function of the wetlands in providing flood storage, water quality and habitats. Freshwater wetlands serve to filter surface and ground water and thereby maintain water quality; as a buffer between the uplands and the watercourse to effectively reduce soil erosion; and as habitat for a large portion of the State's fish and wildlife including some threatened and endangered species dependent upon the watercourse ecosystem for essential breeding, spawning, nesting, feeding and wintering habitats. Freshwater wetlands that are filled, cleared or disturbed will no longer provide these functions for the watercourse system. This section identifies disturbances of more than one-quarter of an acre of wetlands contiguous to the watercourse as a significant adverse impact on the biota of the watercourse. As such, justification for the disturbance will be required.

N.J.A.C. 7:13-3.9, Threatened and endangered species, will have a positive environmental impact by eliminating all adverse impacts a project may have upon threatened and endangered species of plants or animals as well as their habitat located within the jurisdiction of this chapter. Projects planned in areas containing such species of plants or animals would have been classified as Projects of Special Concern under the current rules and subject to essentially the same requirements as those proposed herein.

Subchapter 4, Application Procedure for Stream Encroachment Permits, is administrative in nature and will not have an environmental impact. However, the requirements for an environmental report for all applications will have a positive environmental impact by forcing the applicant to account for the impacts the project shall have upon the environment of the project site and to indicate all steps taken to minimize those impacts.

N.J.A.C. 7:13-5, Implementation, will not have an environmental impact because it is administrative rather than regulative.

N.J.A.C. 7:13-7, Delineated floodways, will not have an environmental impact because it is informational, containing only a listing of the State delineated floodways.

Regulatory Flexibility Statement

This chapter will apply to all persons who propose to engage in a regulated use within the jurisdiction of this chapter. These rules will not require small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to do any reporting, recordkeeping or perform any other compliance requirements beyond the initial construction. The costs involved to small businesses will be the same costs that any other person or entity seeking to build in the flood plain are subject to. These costs include engineering and/or environmental consultant fees as well as the application fees. The actual costs will vary depending on the scope of the project. These rules do not provide any lesser requirements or exemptions for small businesses because the overall purpose of the rules is to prevent increased damages due to improper development of the flood plain. Lessening the requirements could result in increased flood damages to the small business itself or adjacent property owners.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:13.

Full text of the proposed new rules follows:

CHAPTER 13
FLOOD HAZARD AREA CONTROL

SUBCHAPTER 1. GENERAL PROVISIONS

7:13-1.1 Purpose and Scope

(a) The general purpose of this chapter is to control development in areas within the jurisdiction of this chapter in order to avoid or mitigate the detrimental effects of development upon the environment and the safety, health and general welfare of the people of the State.

(b) Areas subject to inundation by flood waters are called flood plains. For the purpose of this chapter flood plains are divided into two classes, delineated and non-delineated.

1. Delineated flood plains have been established and officially adopted ("delineated") by the State of New Jersey. Each flood plain has been divided into a floodway and a flood fringe area. The procedure for delineating flood plains is established by N.J.S.A. 58:16A-52.

2. Other flood plains, and the watercourses that create them, are referred to as non-delineated.

(c) The specific intent of this chapter is to minimize potential on and off site damage to public or private property caused by development which, at times of flood, subject structures to flooding and increase flood heights and/or velocities both upstream and downstream. These rules are also intended to safeguard the public from the dangers and damages caused by materials being swept onto nearby or downstream lands, to protect and enhance the public's health and welfare by minimizing the degradation of water quality from point and non point pollution sources and to protect wildlife and fisheries by preserving and enhancing water quality and the environment associated with the flood plain and the watercourses that create them.

(d) Without proper controls, development in the flood plain and the watercourses that create them may adversely affect the flood carrying capacity of these areas, subject new facilities to flooding, reduce natural flood storage that the flood plain provides, increase the volume of storm water runoff, degrade the water quality of the receiving water body, and result in increased sedimentation, erosion or other environmental damage. Any development in areas regulated by this chapter must conform to criteria which, as outlined in this chapter, depend upon the characteristics of the area and the type of activity involved.

(e) The rules in this chapter govern minimum standards for development within areas within the jurisiction of this chapter. The Department shall administer permits pursuant to this chapter, except as provided in N.J.A.C. 7:13-5.3.

7:13-1.2 Definitions

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

"Acts" means the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and N.J.S.A. 13:1D-1 et seq.

"Alteration" means any manmade changes to lands located within the jurisdiction of this chapter.

"Anadromous fish" means fish which travel from salt water to fresh water or up waterways to spawn.

"Applicant" means a person who submits an application for a permit or other decision from the Department under this chapter.

"Application" means a completed CP-1 form along with the appropriate fee, plans, supporting calculations and reports as required by this chapter.

"Bank" means the inclined sides of the channel.

"Bed" means the floor of the channel.

"Cascades" means sections of beds consisting primarily of bedrock, with little rubble, gravel, or other such material present. The current is usually more swift than in riffles.

"Category One waters" means those waters designated in the tables in N.J.A.C. 7:9-4.15(c) through (h) for the purposes of implementing the Antidegradation Polices in N.J.A.C. 7:9-4. These waters may include, but are not limited to:

1. Waters originating wholly within Federal, interstate, State, county, or municipal parks, forests, fish and wildlife lands, and other special holdings that have not been designated as FW1 in N.J.A.C. 7:9-4;

2. Waters classified as FW2 Trout Production waters and their tributaries;

3. Surface waters classified as FW2 Trout Maintenance or FW2 nontrout that are upstream of waters classified as FW2 Trout Production;

4. Shellfish waters of exceptional resource value; or,

5. Other waters and their tributaries that flow through, or border, Federal, State, county or municipal parks, forests, fish and wildlife lands, and other special holdings.

"Central Passaic Basin" means the flood plain along:

1. Central Passaic River: Extending from Little Falls at Beatties Dam upstream to Route 202 in Bernards and Harding Townships;

2. Pompton River: Entire river;

3. Ramapo River: Extending from its confluence with the Pompton River upstream to Pompton Lakes Dam;

4. Pequannock and Wanaque Rivers: Extending from their confluence with the Pompton River upstream to Paterson-Hamburg Turnpike;

5. Dead River: Extending from its confluence with the Passaic River upstream to Liberty Corner Road in Bernards Township;

6. Harrison Brook: Extending from its confluence with the Dead River upstream to Lake Road in Bernards Township;

7. Rockaway River: Extending from its confluence with the Passaic River upstream to the Jersey City Reservoir (Boonton Reservoir);

8. Whippany River: Extending from its confluence with the Passaic River upstream to Route 10;

9. Black Brook: entire reach; and

10. Beaver Dam Brook: Including East and West Ditches from Pompton River to Jacksonville Road in Lincoln Park.

"Channel" means the well-defined bed and banks of a watercourse which confine and conduct flowing water continuously or intermittently.

"Channelization" means any artificial reconstruction of the bed and/or banks such as by straightening, lining, deepening or piping.

"Commissioner" means the Commissioner of the Department of Environmental Protection and Energy.

"Dam" means any artificial dike, levy or other barrier together with appurtenant works, which is constructed for the primary purpose of impounding water on a permanent or temporary basis, that raises the water level five feet or more above its usual mean low water height when measured from the downstream toe-of-dam to the emergency spillway crest or in the absence of an emergency spillway, to the top of dam. Low dams raise the water level less than five feet.

"Delegated agency" means a county agency to which the Department has delegated its power to approve or disapprove certain classes of applications under this chapter or enforce certain provisions of this chapter.

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

"Detention basin" means an impoundment area created by constructing an embankment, excavating a pit or both for the purpose of temporarily storing storm water.

"Development" means any construction activity or other manmade land disturbance.

"Encroachment Line" means a line, described by metes and bounds, which defines the boundary between the floodway and flood fringe area in a non-delineated flood plain and customarily marks the limit of fill to be placed in a delineated flood plain.

"Erosion" means detachment and movement of soil or rock fragments by water, wind, ice or gravity.

"Excavation" means removal or recovery, by any means whatsoever, of minerals, mineral substances or organic substance, other than vegetation, from the water, land surface or beneath the land surface, whether exposed or submerged.

"Fill" means any material placed or deposited within the flood plain or the watercourses that create them which will displace floodwaters.

"Flats" means sections of channel with current too slow to be classified as riffle and too shallow to be classified as a pool. The bottom usually consists of sand or finer materials.

"Flood carrying capacity" means the ability of a watercourse or flood plain to transport flood waters, as determined by its shape, cross-sectional area, bed slope, coefficient of hydraulic friction, and upstream and downstream channel configurations, as used in accepted engineering practices.

"Flood damage potential" means the susceptibility to damage by potential floods at that site, as well as a given site's potential to increase off-site flooding.

"Flood fringe" means that portion of the flood plain outside of the floodway or encroachment lines.

"Flood hazard area design flood" means the flood used in State Adopted Flood Studies. It is the flood resulting from the 100-year flood discharge increased by 25 percent.

"Flood hazard design elevation" means the elevation of the flood hazard area design flood.

"Flood plain" means the area inundated by the regulatory flood including the watercourse that creates it.

"Flood proofing" means any combination of structural and nonstructural design features, additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, structures and their contents.

"Floodway" means the channel and portions of the flood plain adjoining the channel which are reasonably required to carry and discharge the regulatory flood. For the purpose of this chapter the term floodway shall refer to both the delineated floodway on State Adopted Studies and the area between the encroachment lines located on both sides of a non-delineated watercourse.

"Fluvial flood" means a flood which is caused entirely by runoff from rainfall in the upstream drainage area and is not influenced by the tide or tidal surge.

"Freshwater wetland" or "wetland" means an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation; provided, however, that the Department, in designating a wetland, shall use the three-parameter approach (that is, hydrology, soils and vegetation) enumerated in The Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1989), and any subsequent amendments thereto.

"FW" means the general surface water classification applied to fresh waters in the Department's Surface Water Quality Standards, N.J.A.C. 7:9-4.

"FW1" means the waters designated as FW1 in the Department's Surface Water Quality Standards, N.J.A.C. 7:9-4.

"FW2" means the general surface water classification applied in the Department's Surface Water Quality Standards, N.J.A.C. 7:9-4, to those fresh waters that are not designated as FW1 or Pinelands waters.

"Hazardous materials" means those materials as defined by or pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:19-23.11 et seq., or pollutants as defined by the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

"Low water" means the water level characteristic of a channel during low flow conditions.

"Major project" means that class of project defined as major in the 90-Day Construction Permit Rules (N.J.A.C. 7:1C).

"Manual" means the latest version of the Technical Manual for this chapter published by the Department.

"Minor project" means that class of project defined as minor in 90-Day Construction Permit Rules (N.J.A.C. 7:1C).

"Mitigation" means activities carried out in order to compensate for loss or disturbance of the environment caused by regulated activities and may include restoration, creation, enhancement or donation of land of appropriate environmental characteristics.

"Net fill" means the volume of fill left after the total volume of cuts made on the project site has been subtracted from the total volume of fill placed on the project site.

"90-Day Construction Permit Rules" means the rules appearing in N.J.A.C. 7:1C.

"Non-regulated use" means any use not subject to the provisions of this chapter.

"Non-trout waters" means the non-trout waters identified in the Department's Surface Water Quality Standards (N.J.A.C. 7:9-4).

"Obstruction" means, but is not limited to, any structure, fill or other material placed in the flood plain which may impede, retard, or change the direction of the flow of water either by itself or by catching or collecting debris carried by such water or that is placed where the flow of water might carry the same downstream and constitute a hazard to life or property.

"One hundred-year flood" means a flood that is estimated to have a one percent chance, or one chance in a hundred, of being equaled or exceeded in any one year.

"Perennial watercourse" means any watercourse mapped as perennial on either the 7½ inch topographic maps published by the U.S. Geological Survey or the detailed map sheets in County Soil Surveys published by the U.S. Department of Agriculture, Soil Conservation Service, unless site specific information to the contrary is presented to and accepted by the Department.

"Permit" means a permit issued by the Department to engage in activities regulated under this chapter.

"Person" means corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, the Federal government, the State, and all political subdivisions of the State or any agencies or instrumentality thereof.

"Pools" means sections of channel which are deeper and have appreciably slower current than areas immediately upstream or downstream. The bed is usually a mixture of silt and coarse sand; the water depth usually exceeds two feet.

"Prohibited use" means a use which fails to comply with the requirements of this chapter and which shall not be allowed except in the case of exceptional and undue hardship as defined in N.J.A.C. 7:13-2.2.

"Public hearing" means a public meeting convened to allow the public to comment on the project proposed in the application.

"Regulatory flood" means the 100-year flood along non-delineated watercourses or the flood hazard area design flood along delineated watercourses.

"Riffles" means sections of a channel containing gravel or rubble in which surface water is at least slightly turbulent and current is swift enough that the surface of the gravel and rubble is kept fairly free from sand and silt.

"Retention basin" means an impoundment area with a permanent pool made by constructing an embankment, or excavating a pit, or both for the purpose of temporarily storing storm water.

"Soil Conservation District" means a political subdivision of the State of New Jersey authorized under N.J.S.A. 4:24-1 et seq.

"Solid waste" means garbage, sludge, refuse, trash, rubbish, debris or other discarded materials.

"State Soil Conservation Committee" means the agency created pursuant to N.J.S.A. 4:24-1 et seq.

"Stream encroachment" means any manmade alteration, construction, development or other activity within the areas within the jurisdiction of this chapter.

"Stream Encroachment Permit" means a permit issued by the Department, or delegated agency under the provisions of the Acts.

"Structure" means any assembly of materials above or below the surface of land or water including, but not limited to, buildings, fences, dams, fills, levees, bulkheads, dikes, jetties, embankments, causeways, culverts, roads, railroads, bridges and the facilities of any utility or governmental agency. Trees and vegetation are not structures.

"Threatened or endangered species" means those species of animals listed pursuant to "The Endangered and Nongame Species

Conservation Act," N.J.S.A. 23:2A-1 et seq., identified in N.J.A.C. 7:25-4.13, and those species of plants identified in the Endangered Plant Species List, N.J.A.C. 7:5C-5.1.

"Tidal flood" means a flood caused by the tide backing up a channel.

"Trout-associated watercourses" means watercourses that are:

1. Trout production waters;
2. Trout maintenance waters;
3. Non-trout waters upstream from trout production waters (with or without intervening trout maintenance waters);
4. Non-trout waters less than one mile upstream from trout maintenance waters that are not upstream from trout production waters; or
5. Unnamed tributaries flowing into "trout associated" waters which will take the classification of the waters they flow into.

"Trout maintenance waters" means the trout maintenance waters identified in the Department's Surface Water Quality Standards (N.J.A.C. 7:9-4).

"Trout production waters" means the trout production waters identified in the Department's Surface Water Quality Standards (N.J.A.C. 7:9-4).

"Trout stocked waters" means waters that are stocked with trout by the Department's Division of Fish, Game and Wildlife, as listed in N.J.A.C. 7:25-6 and amendments thereto as adopted by the New Jersey Fish and Game Council.

"Upstream/downstream" refers to direction with respect to a fixed point in a waterway.

"Watercourse" means a path which conveys surface water runoff. Flow paths with a total contributory drainage area less than 50 acres must have definable bed and banks to be considered a watercourse.

7:13-1.3 Applicability

(a) All development within the larger of the following areas shall require a permit under this chapter unless specifically exempted as provided in this chapter:

1. The flood plain, as defined at N.J.A.C. 7:13-1.2;
2. Twenty-five feet back from the top of the channel bank; or
3. Fifty feet back from the top of the channel bank along waters

i. Containing deposits of acid-producing soils as defined in N.J.A.C. 7:13-5.10;

ii. Classified as Category One, FW-1, FW-2, or trout-associated;

iii. Which are a critical part of the habitat supporting a threatened or endangered species of plant or a current population of any species of threatened or endangered animal on a permanent or temporary basis, for any purpose such as resting, breeding or feeding, during any portion of its life-cycle; or

iv. Located within documented, historic habitat for threatened or endangered species of animals, which habitat remains suitable for breeding, resting or feeding by those species of animal during any portion of its life-cycle.

(b) New Jersey's geography and location along the Atlantic coastline subjects the State to both tidal and fluvial flooding. The effects of development on flood elevations vary depending on the type of flooding and the area in which it occurs. For the purpose of this chapter, three areas of concern have been identified based on the type of flooding and the impact of development in that particular area. These areas are as follows:

1. Tidal: Tidal flooding is the result of higher than normal tides which in turn inundate low lying coastal areas. The 100-year tidal flood elevation will not be affected by development. Therefore, certain areas in which the regulatory flood is the 100-year tidal flood will not be regulated under this chapter. The elevation of the 100-year tidal flood, which varies along the coast, can be obtained from the Department.

i. Tidal water bodies not regulated under this chapter shall include, but not be limited to, the Atlantic Ocean and all water bodies named on the U.S. Geological Survey 7½ inch topographic maps as "bays," "canals," "coves," "guts," "harbors," "inlets," "sounds," "thorofares," and "channels," except for: the portion of the Delaware River near Camden called "Back Channel," all man-made lagoons and canals and all sections of the "Intracoastal Waterway."

ii. The lower reach of a watercourse that flows into a tidal water body will be subject to the same flooding characteristics as the tidal water body. Subparagraph (b)1ii(1) through (16) below identifies reaches along specific watercourses that will be considered tidal for the purposes of this chapter and, therefore, not regulated under this chapter. Along those watercourses not specifically identified in (b)1ii(1) through (16) below that flow into tidal waterbodies listed in (b)1 above, the reach between the mouth of the watercourse and the closer of either the first bridge or culvert upstream or the point upstream where the regulatory flood exceeds the 100-year tidal elevation will be considered a tidal water body for the purposes of this chapter and, therefore, not regulated under this chapter.

(1) Arthur Kill (Middlesex Co./Union Co.): entire reach;

(2) Comptons Creek (Monmouth Co.) Raritan Bay to Campbell Avenue;

(3) Deal Lake (Monmouth Co.) Atlantic Ocean to Wickapecko Drive;

(4) Hackensack River (Hudson Co.) Newark Bay to the Pulaski Skyway;

(5) Hudson River (Bergen Co./Hudson Co.);

(6) Manasquan River (Monmouth Co./Ocean Co.): Atlantic Ocean to Route 70;

(7) Metedeconk River (Ocean Co.): Barnegat Bay to Route 70;

(8) Navesink River (Monmouth Co.): Shrewsbury River to Coopers Bridge;

(9) Passaic River (Essex Co./Hudson Co.) Newark Bay to the Pulaski Skyway;

(10) Raritan River (Middlesex Co.): Raritan Bay to The New Jersey Turnpike;

(11) Shark River (Monmouth Co.): Atlantic Ocean to confluence with Laurel Gully Brook;

(12) Shrewsbury River (Monmouth Co.): Sandy Hook Bay to Seven Bridge Bay;

(13) Waretown Creek (Ocean Co.) Atlantic Ocean to Route 9;

(14) Whale Brook (Middlesex Co./Monmouth Co.): Raritan Bay to Route 35;

(15) Wreck Pond (Monmouth Co.) Atlantic Ocean to Route 71; amd

(16) All tidal watercourses flowing into Raritan Bay, north of Route 36 in Monmouth County.

2. Tidally influenced: Tidally influenced areas are subject to both tidal flooding and flooding caused by the tidal wave traveling up a watercourse. Since the Department is concerned with environmental impacts in the flood plain and obstructions to flow in the floodway produced by development in these areas the engineering standards for the flood fringe will not apply in these areas.

3. Fluvial: Fluvial flooding is the result of storm water runoff which exceeds the capacity of the watercourse to carry the flow without endangering life or property. In this area, development may affect upstream and/or downstream flood elevations by increasing or decreasing obstructions to flow. Therefore, in this area, all of the requirements of this chapter shall apply.

(c) This chapter shall not apply to development along the Delaware and Raritan Canal except insofar as such activities affect watercourses that flow into, over, under, or parallel to the canal.

(d) This chapter shall not apply to lands that are regulated pursuant to "The Wetlands Act of 1970," N.J.S.A. 13:9A-1 et seq. or to lands located within tidally influenced flood plains that are regulated pursuant to the Waterfront and Harbor Facilities Act, N.J.S.A. 12:5-1 et seq. or the Coastal Area Facilities Review Act (CAFRA), N.J.S.A. 13:19-1 et seq.

(e) Non-regulated uses in the floodway are as follows:

1. For purposes of this section, non-regulated uses are uses which are not prohibited in N.J.A.C. 7:13-2.2, and which:

i. Do not further obstruct flood flow, or in any way reduce the cross-sectional area of the floodway open to the flow of water during the regulatory flood, unless the obstruction will be insignificant, such as the those activities listed in (e)2 below;

ii. Do not require the erection of structures, except as specifically noted in (e)2 below;

iii. Do not require channel modification or relocation;

iv. Do not alter the cross-sectional area of a water-control structure such as a bridge, culvert or dam that is open to flood waters during the regulatory flood;

v. Do not increase off-site flood damage potential by raising flood elevations off of the property on which the use is proposed by more than two-tenths of a foot or 2.4 inches;

vi. Do not adversely affect those areas described in (a) above;

vii. Do not cause or contribute to a violation of any applicable State water quality standard or otherwise adversely affect water quality; and

viii. Are undertaken with the land owner's express written permission.

2. Non-regulated uses which satisfy the conditions of (e)1i and ii above may include, but are not limited to:

i. Lawns, gardens and areas specifically designed and intended for use by children;

ii. Areas specifically marked and designated for private and public recreation such as: playing fields with backstops and/or open bleachers, picnic grounds, swimming areas, parks, wildlife and nature preserves, game farms, hunting and fishing areas, boat launching ramps constructed at or below grade, shooting preserves, bicycle paths, hiking and horseback riding trails, as well as in ground swimming pools constructed at or below existing grade;

iii. Hand removal of debris along a reach of the watercourse, or the removal of individual major obstructions in the channel, such as a fallen tree or other large or heavy object, such as abandoned vehicles, furniture or other trash that cannot be removed by hand. No equipment shall be allowed in the channel unless specifically approved in writing by the Department;

iv. Open decks attached to residential structures, properly anchored in accordance with the Uniform Construction Code and all applicable local building codes;

v. Minor repair, maintenance or replacement-in-kind of existing roads, bridges, culverts, gauging structures (including weirs) or retaining walls which will not change the cross-sectional area open to flow during the regulatory flood or increase the footprint of the structure;

vi. Agriculture uses such as general cultivation, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, forestry, sod farming, wild crop harvesting and on-going farming operations;

(1) Specific soil conservation practices such as terracing, construction of diversions, subsurface tile drainage and the construction of grassed waterways and dug ponds will be considered non-regulated uses only when approved in writing by the appropriate County Soil Conservation District Office and the local U.S.D.A. Soil Conservation Service;

vii. Docks and boathouses along bodies of water labeled as a lake, reservoir or pond on the USGS Quadrangle Maps that are built on pilings and remain open underneath to allow water to pass freely. For boathouses the floor must be above the regulatory flood elevation;

viii. Utility poles or towers which cannot be located outside of the floodway. Poles and towers must be properly anchored to withstand the structural loads and stresses (both hydrostatic and hydrodynamic) from flooding equal to the regulatory flood elevation; and

ix. Utilities "jacked" under watercourses that do not disturb the channel.

3. Irrigation head gates along watercourse banks are non-regulated uses when approved in writing by a County Agriculture Agent pursuant to N.J.A.C. 7:20A-1.

(f) Non-regulated uses in the flood fringe are as follows:

1. For the purpose of this section, non-regulated uses are land uses within flood fringe areas which:

i. Do not further reduce the volume of flood storage available, unless the reduction will be insignificant and offset by the benefits to the public health, safety and welfare such as those activities listed in (f)2 below;

ii. Do not require any hydrologic or hydraulic calculations to determine the impact;

iii. Do not adversely affect those areas described in (a) above;

iv. Do not cause or contribute to a violation of any applicable State water quality standard or otherwise adversely affect water quality; and

v. Are undertaken with the land owner's express written permission.

2. Non-regulated uses which satisfy the conditions of (f)1 above may include the following and other uses similar in character and environmental impact:

i. Residential and commercial: Improvements such as lawns, play areas specifically designed for use by children, gardens or landscaping; fences; anchored dog houses; auxiliary utility buildings up to 100 square feet; pole barns which shall remain permanently open on all sides, driveways at grade, barbecue pits, open decks attached to residential structures and one or more additions to an owner occupied single-family residential structure up to a total of 300 square feet;

ii. Private and public recreation: Areas specifically marked and designated as: playing fields or courts including backstops and/or open bleachers, bicycle paths, picnic grounds, swimming areas, parks, wildlife and nature preserves, game farms, hunting and fishing areas, boat launching ramps constructed at grade, shooting preserves, hiking and horseback riding trails, driving ranges, archery ranges, target ranges, trap and skeet ranges, fish hatcheries; anchored auxiliary utility buildings up to 100 square feet as well as fences and in-ground and above-ground pools provided that they do not displace more than 100 cubic yards of flood plain storage;

iii. Agriculture: General cultivation, pasture, grazing, fences, irrigation, outdoor plant nurseries, horticulture, viticulture, forestry, sod farming, wild crop harvesting, on-going farming operations, and registered farming operations, excluding greenhouses and all other structures related to any of the foregoing uses.

(1) Specific soil conservation practices such as terracing, construction of water diversions, subsurface drainage and the construction of grassed waterways and dug ponds will be considered non-regulated uses only when approved in writing by the appropriate County Soil Conservation District Office;

(2) Plastic covered greenhouses and other auxiliary utility buildings constructed without permanent foundations and anchored, pursuant to the Uniform Construction Code and all applicable local building codes, and fences associated with agricultural uses.

iv. Utility poles and towers; and

v. Roadway repairs and maintenance that will not raise the existing road grade.

(g) Persons may submit a request for a written jurisdictional determination pursuant to this section. A request for a jurisdictional determination shall contain a complete description of the work proposed and an engineering site plan showing the described work as well as existing and proposed topography. If the Department determines that it has jurisdiction over the proposed work, a permit pursuant to this chapter shall be obtained before any work commences.

7:13-1.4 Construction

(a) The provisions of this chapter shall be liberally construed to permit the Department to fulfill its statutory obligations.

(b) The Commissioner may amend, repeal or rescind this chapter or any part thereof in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

7:13-1.5 Program Information

Information and forms relating to permits under this chapter may be obtained from:

Department of Environmental Protection
and Energy
Land Use Regulation Program
CN 401
Trenton, New Jersey 08625
(609) 292-1235

7:13-1.6 Other State statutes, rules and regulations

The powers, duties, and functions vested in the Department under the provisions of the Acts or the provisions of this chapter, shall not be construed to limit in any manner the powers, duties, and

functions vested therein under any other provision of law or regulation except as specifically set forth in this chapter.

7:13-1.7 Severability

If any section, subsection, provision, clause or portion of these rules or the application thereof to any person or circumstance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these rules and their application to persons and circumstances other than those to which they have been held invalid shall not be affected thereby.

SUBCHAPTER 2. PROJECT STANDARDS

7:13-2.1 General

(a) The engineering standards of this subchapter will only apply along watercourses within the jurisdiction of this chapter that have a total contributory drainage area greater than 50 acres.

1. The engineering standards for development in the flood fringe area will not apply to tidally-influenced streams as described in N.J.A.C. 7:13-1.3(b).

(b) The environmental standards of this subchapter will apply along all watercourses under the jurisdiction of this chapter regardless of the drainage area except along manmade, but not man-altered, watercourses with a total contributory drainage area less than 50 acres.

7:13-2.2 Prohibited uses

(a) The following are prohibited uses in floodways:

1. The addition of any fill, new structures or fences which would raise the existing grade of the receiving area and/or create an obstruction to flow, except as provided in (b) below;

2. The addition of any solid or hazardous waste or pollutant;

3. The discharge, processing, storage or disposal of pesticides, domestic or industrial wastes, radioactive materials, petroleum products or other hazardous materials except as specifically authorized by law and pursuant to permits, licenses and grants from all authorities with jurisdiction over such activities;

4. The storage of materials or equipment;

5. The construction of individual subsurface sewage disposal systems; and

6. The construction of off-channel detention/retention basins.

(b) Exceptions to (a)1 above are as follows:

1. Land uses existing prior to (the effective date of these new rules) which were in conformance with all relevant laws and regulations when the use commenced or which have subsequently been specifically and plainly permitted or approved since then pursuant to all applicable Federal, State or local laws may be maintained. Such uses may be expanded or enlarged only if:

i. No further obstruction to flow is created;

ii. The lowest floor elevation of any structure that is expanded is at or above the regulatory flood elevation;

iii. The structure is flood proofed or treated to minimize futu flood damage;

iv. The owner submits an application for a permit under this chapter together with drawings of the proposed changes and the application is approved by the Department; and

v. Calculations are submitted to the Department which prove that new structures, alone or in combination with existing structures, are designed, connected and anchored to resist impact from debris, flotation, collapse or permanent lateral movement caused by expected structural loads and stresses (including both hydrostatic and hydrodynamic loads) from flooding to the regulatory flood elevation. Calculations shall be certified as true and accurate by a New Jersey licensed engineer or architect.

2. Structures (or portions thereof) constructed prior to (the effective date of the new rules) which were constructed in accordance with all relevant laws and regulations in effect at the time of their construction or which have subsequently been specifically and plainly permitted or approved since then pursuant to all applicable Federal, State or local laws and which were damaged by flooding or any means other than flooding may be restored provided that:

i. The restored structure will not create a larger obstruction to flow than the original structure;

ii. The lowest finished floor elevation of the restoration is at or above the regulatory flood elevation, where feasible;

iii. The work done is flood proofed or similarly treated to minimize future flood damage;

iv. The owner submits an application for a permit under this chapter together with drawings of the proposed reconstruction and the application is approved by the Department; and

v. The structures are designed, connected and anchored to resist impacts from water and debris, flotation, collapse or permanent lateral movement due to structural loads and stresses (both hydrostatic and hydrodynamic) from flooding equal to the regulatory flood elevation, where feasible. Calculations shall be certified as true and accurate by a New Jersey licensed engineer or architect.

3. Sanitary landfills constructed prior to (the effective date of these new rules) and constructed in accordance with all relevant laws and regulations in effect at the time of construction or which have subsequently been specifically and plainly permitted or approved since then pursuant to all applicable Federal, State or local laws may be expanded vertically provided that:

i. No horizontal expansion is made;

ii. The side slopes of the landfill are not steeper than a ratio of two horizontal to one vertical;

iii. Soil erosion and sediment control measures in accordance with the requirements of this chapter are taken;

iv. The flood damage potential is not increased; and

v. The other applicable provisions of law are complied with.

(c) The following are prohibited uses in the flood fringe:

1. The disposal or storage for any period of time of pesticides, industrial, hazardous or solid wastes, radioactive materials, petroleum products or other hazardous materials, which could during the regulatory flood enter the flood waters and endanger the public health, safety and welfare. Wastewater and water treatment plants to be located in the flood fringe shall comply with the requirements of this chapter.

7:13-2.3 Regulatory flood

(a) The regulatory flood for delineated watercourses is the flood hazard area design flood. This flood represents the 100-year flood flow increased by 25 percent to allow for future development in the drainage basin. Flood profiles, mapping and the corresponding computer models for delineated watercourses may be obtained from the Department by contacting:

Flood Plain Management
501 East State Street
CN-401
Trenton, New Jersey 08625
(609) 292-2296

(b) The following pertain to non-delineated watercourses:

1. The volume of flood waters and the resulting flood elevations are increased as a drainage basin is developed. The State delineations account for this increased flooding by adding an additional 25 percent to the calculated 100-year flood discharge. Therefore, in order to properly carry out the intent of the Acts and protect life and property in or near the flood plain, the regulatory flood flows along non-delineated streams shall be calculated assuming that the entire contributory drainage area is fully developed in accordance with the current zoning plan, to the maximum impervious cover allowed thereunder, and in accordance with applicable storm water management regulations.

2. The Flood Insurance Program, administered by the United States Federal Emergency Management Agency (FEMA), classifies flood plain areas in a manner similar to the State of New Jersey and publishes Flood Insurance Rate Maps as well as Floodway Maps for individual municipalities that are in the program. However, since the FEMA maps only reflect the 100-year flood plain at the time of the study and did not anticipate future development in the drainage basin, they can not be used to establish the regulatory flood elevation for the purposes of this chapter unless it can be demonstrated to the satisfaction of the Department that the FEMA study reflects full development in the Drainage basin or that there is a viable basin-wide storm water management system in place that will not increase the peak flows developed by the FEMA study.

(c) All projects shall be designed so that they do not increase the flood damage potential during the regulatory flood or any lower-frequency level of flood (such as the two or 10-year floods) in either delineated or nondelineated flood plains.

1. For example, water-control structures constructed onstream to impound water for flood control or other purposes may not significantly affect the 100-year flood elevation but can significantly increase the lesser-frequency floods such as the two or 10 year floods. Since the lesser-frequency floods are more likely to occur, projects such as these can significantly increase the flood damage potential in the area and must meet design requirements of this section.

7:13-2.4 Establishment of flood plain limits and encroachment lines on non-delineated watercourses

(a) The boundaries of the flood plain along non-delineated watercourses shall be established by a standard step backwater analysis using the flow rate developed assuming full development of the contributory drainage area.

(b) The encroachment lines shall be set anywhere outside of the floodway, which is established through equal conveyance reduction calculations, using the flood elevation determined by the standard stop backwater analysis described in (a) above and the specific site cross-sections. The allowable rise in water surface shall be no more than two-tenths of a foot.

7:13-2.5 Watercourse cleaning

(a) Watercourse cleaning permits shall be issued for projects which involve the removal of accumulated material from the channel by mechanical means, only if there is a demonstrated need for the removal of the material that cannot be met, remedied or addressed by other means and the following environmental standards are met:

1. Only accumulated silt, sediment or debris found in the channel may be removed from the watercourse. Removal shall not extend beyond or below the natural channel. Removal of material below the natural watercourse channel shall be considered a channel modification and subject to the requirements of N.J.A.C. 7:13-2.9;

2. Spoils shall be disposed of in accordance with all Federal, State and local laws;

3. The use of heavy equipment within the channel shall be avoided to the greatest extent possible;

4. Disturbance to near-stream vegetation shall be minimized to the greatest extent possible;

5. Cleaning shall not adversely affect the fisheries resources or any species of threatened or endangered species; and

6. Cleaning shall not adversely affect the habitat of any species of Threatened or Endangered animal or plant, whether currently occupied or documented, historic habitat.

(b) Public entities may apply for a cleaning and maintenance permit for portions of any watercourse under their jurisdiction. Upon application, the permit may allow for the initial cleaning and subsequent maintenance of the cleared channel for the five year life of the permit provided that the requirements of (a) above are satisfied. Additional watercourses, not included in the original permit, may be added during the life of the permit through an application to modify the permit pursuant to N.J.A.C. 7:13-4.9 provided that the requirements of (a) above are satisfied.

(c) The required information for the watercourse cleaning application is the same as that outlined in N.J.A.C. 7:13-4.1. In addition, the application shall contain the following:

1. A narrative which:

i. Describes the project area including the specific points of access to the watercourse;

ii. States why the project is required and its specific objectives;

iii. Specifies the methods of excavation and types of equipment to be used on each segment of the watercourse; and

iv. Specifies the methods and locations of spoil disposal and the methods of soil erosion and sediment control to be used during the project;

2. Color photographs of the areas of the watercourse(s) to be cleaned and of the access points; and

3. Plan drawing(s) of sufficient scale, but no greater than one inch = 200 feet, showing the exact limits of work for each reach of the watercourse affected and cross-sections showing the material to be removed. All specific snags, rocks, logs, sand bars, etc., to be removed must be identified on the plan.

i. When a Mosquito Commission is the applicant, drawings may be signed by the Mosquito Commission superintendent.

(d) Spoil disposal methods and soil erosion and sediment control techniques shall comply with the provisions of this chapter.

(e) Projects intended solely for mosquito control shall be granted by the Department if the applicant meets the following criteria:

1. The applicant has complied with the notice requirements of N.J.A.C. 7:13-4.2;

2. In the case of projects of significant public interest, the applicant has convened a public hearing informing the public of the purpose and scope of the project and responding to public comment;

3. The applicant has demonstrated that no reasonable alternative exists whereby the objectives of the project can be satisfied;

4. The applicant has demonstrated that the adverse environmental impacts of the project will be minimized; and

5. In cases where the applicant is the county mosquito control agency or Federal government, such agencies submit individual, site-specific project proposals to the Administrator of the State Office of Mosquito Control Coordination, and the Administrator determines that the project is necessary to control a documented mosquito problem to existing residents.

7:13-2.6 Excavation

(a) Engineering and environmental standards for excavation are as follows:

1. All projects involving permanent excavation within the flood plain shall not have cut faces at slopes steeper than a ratio of two horizontal to one vertical.

2. Excavation projects shall not be so deep as to affect any wells in the surrounding areas or to cause any ground water pollution.

3. The Department may set special conditions concerning the character, excavation methods, and disposal sites of any excavated materials as required to ensure the safety of persons and property affected by the excavation.

7:13-2.7 Disposal of spoils

(a) Engineering standards for disposal of spoils are as follows:

1. Disposal of spoils is prohibited within the floodway of any flood plain under the jurisdiction of this chapter, except for watercourse cleaning projects approved by the Department.

2. Any material permitted by the Department to be disposed of in the flood fringe area shall be spread evenly to a depth specified in writing by the Department and shall not inhibit the positive drainage of the area.

3. Where watercourse cleaning spoils feasibly cannot be removed from the site, a description of the method of on-site disposal shall be indicated on the plan. The Department may set special conditions concerning excavation methods, contents and disposal sites of any excavated materials as required to ensure the safety of persons and property affected by the project.

(b) Environmental standards for disposal of spoils are as follows:

1. No spoils shall be placed within 25 feet of the top of bank or within the area described in N.J.A.C. 7:13-1.3(a)3, except for watercourse cleaning projects approved by the Department. The natural characteristics of this 25 or 50 foot area shall be preserved to the greatest extent possible, with selective tree removal permitted only when absolutely necessary. Brush and trees that when measured 4.5 feet from the ground are less than four inches in diameter may be selectively and sparingly cleared to provide access to the watercourse or site.

2. Spoil material shall be stabilized within 48 hours of its placement according to the "Standards for Soil Erosion and Sediment Control," N.J.A.C. 2:90. Details of the methods of stabilization selected by the applicant shall be included on the plans submitted to the Department.

(c) In the case of projects performed by Mosquito Commissions for the sole purpose of mosquito control, the disposal of spoils will be reviewed pursuant to the requirements of N.J.A.C. 7:13-2.5(e).

7:13-2.8 Stormwater management

(a) Engineering standards for stormwater management are as follows:

1. Stormwater runoff discharges within the regulatory jurisdiction of this chapter resulting from the development of the site, for the two, 10 and 100 year storm events shall be controlled so that the pre-project construction peak flow rate and velocity of the receiving watercourse is not increased at or downstream of the point of discharge. If a regional stormwater management plan for the watershed containing the watercourse affected by the development has been developed, the applicant shall design the project and its management of stormwater to conform to that regional plan. If no regional stormwater management plan has been developed, the applicant shall either:

i. Show through a hydrologic and hydraulic analysis of the subject site that the volume and rate of runoff from the two, 10 and 100 year storm events for the post-construction site conditions does not exceed the pre-construction volume and rate of runoff; or

ii. Design the stormwater system so that the post-project construction peak runoff rate for the two year storm event is 50 percent of the pre-project construction peak runoff rate and the post-development peak runoff rate for the 10 and 100 year storm events are 75 percent of the pre-project construction peak runoff rate.

2. The design storms used to achieve the required level of site runoff control described above shall be defined as either the 24-hour storm using the rainfall distribution recommended by the U.S. Soil Conservation Service, or as the total rainfall uniformly distributed throughout the critical storm duration as determined by the Modified Rational Method. A 20 acre drainage area limit shall be used for the Modified Rational Method unless otherwise stipulated by the Department.

3. For the purposes of choosing runoff coefficients, all lands in the site shall be assumed, prior to development, to be "in good hydrologic condition" if the lands are pastures, lawns or parks, "with good cover" if the lands are woods, or "with conservation treatment" if the land is cultivated, regardless of conditions existing at the time of computation. For land to be considered cultivated, it shall have been used for such purposes uninterruptedly for a period of at least 10 years prior to the time of computation. If such uninterrupted use has not occurred or cannot be satisfactorily documented, woods shall be assumed to be the redeveloped land condition. In computing pre-project construction runoff, all significant land features, such as ponds, depressions or hedgerows which increase the ponding factors shall be accounted for.

4. The applicant shall provide plans and calculations to the Department which to show that the discharge attributable to the proposed project will not cause erosion along the flow path between the outfall and the receiving waterbody. All storm water discharge paths shall be stabilized in accordance with the criteria in N.J.A.C. 7:13-3.3.

(b) Environmental standards for stormwater management area as follows:

1. Stormwater systems whose discharges come under the jurisdiction of this chapter shall be designed to reduce, to the maximum extent possible, the total suspended solids (TSS) generated by the development for storm events up to the water quality design storm, and to retain as closely as possible the pre-project construction hydrologic conditions on the site.

2. The water quality design storm shall be defined as either 1.25 inches of rainfall falling uniformly in two hours or the one year 24 hour storm using the U.S. Soil Conservation Service type III rainfall distribution. Due to the relatively small amount of rainfall produced by the design storms, a separate and accurate determination of the runoff from the pervious and impervious areas of the site shall be provided to ensure curve numbers that produce an inaccurate calculation of peak rate of runoff.

3. Stormwater systems shall be designed so that there is no degredation of water quality below the Department's Surface Water Quality Standards Standards, N.J.A.C. 7:9-4.

(c) Development within the jurisdiction of this chapter shall incorporate land uses and best available technology (such as cluster land development, minimum site disturbance, open space acquisition, use of sheet flow from streets and parking areas, protection of wetlands, steep slopes and vegetation) in their design in order to minimize the volume of stormwater and TSS generated, maintain on-site infiltration, simulate natural drainage systems and minimize the discharge of pollutants to ground or surface waters.

(d) The following list of stormwater management techniques and design conditions are some of the techniques available for meeting the requirements of (b) above. These techniques may be used, depending on the site conditions and type of development, alone or in combination. Other stormwater management techniques may be used if it can be shown to the Department's satisfaction that they satisfy the requirements of (a) and (b) above.

1. The use of artificial wetlands is encouraged by the Department provided that:

i. The water depth in the wetlands is less than one foot (six inches is optimal), except as noted in (d)1vi below;

ii. At least one-half of the perimeter of the water area is graded to form a 10 to 20 foot wide shallow bench for aquatic emergents;

iii. The surface area of the artificial wetlands is at least three percent of the total area of the contributing watershed;

iv. Vegetation is commercial wetland plant stock, either live plants or dormant rhizomes, instead of transplants from existing wetlands areas or seeding;

v. At least two hardy and rapid colonizing indigenous primary wetlands species are planted over 30 percent of the total shallow water area. Each species shall be planted in three or four monospecific stands with individual plants spaced two to three feet apart. Up to three less aggressively colonizing secondary wetlands species shall be randomly distributed in clumps around the perimeter of the marsh; and

vi. At least 25 percent of the total surface area of a basin designed exclusively to act as a shallow marsh is open water with a depth of at least two feet in order to provide habitat for waterfowl and other marsh birds.

2. The use of wet ponds/retention basins is encouraged by the Department provided that:

i. Such basins are not located within the floodway of the watercourse unless they are constructed on-channel;

ii. The volume of the permanent pool is at least three times the volume of the expected runoff from the water quality design storm, or the detention times listed in (a) above are met;

iii. The pool is shallow enough to avoid thermal stratification and deep enough to minimize algal blooms and resuspension of decomposing organics and other previously deposited materials;

iv. The flow from the contributory drainage area is sufficient in dry weather to maintain the permanent pool during the summer months and prevent stagnation;

v. The configuration of the permanent pool promotes maximum sedimentation and minimizes plug flow;

vi. Where feasible, native fish stock is used to control mosquitoes; and

vii. When discharging into a trout associated watercourse, there are no adverse effects to the fish resulting from differences in temperature between the discharge and the waters in the receiving watercourse.

3. The use of detention basins is encouraged by the Department provided that:

i. The basin is not located within the floodway of the watercourse;

ii. Beginning at the time of peak storage in the basin for the water quality design storm, no more than 90 percent of the total peak storage volume is released over an 18 hour period for residential developments or over a 36 hour period for commercial developments. The rate of release shall be as uniform as possible;

iii. The minimum outlet diameter, width or height is three inches. If this minimum outlet size does not allow for the detention times required in (d)3ii above, then alternative techniques for the removal of TSS prior to discharge into the basin shall be provided; and

iv. The species of native or non-intrusive exotic vegetation used in the basin is an approved by the Department and the appropriate County Soil Conservation District.

4. If the Department determines that the techniques noted in (d)1, 2 and 3 above are not feasible or justified, then the use of stabilized, vegetated or biofilter swales is permissible provided that:

i. The water velocity does not exceed two feet per second (FPS) to allow for settlement of TSS during the water quality design storm. The slope shall not be less than 0.5 percent so that positive drainage is maintained. The swale shall be of sufficient length to allow for settlement of TSS taking into consideration the velocity, depth of flow and expected loading of TSS;

ii. Where feasible, vegetation shall be used in the swale to filter out the TSS and to provide a secondary treatment by absorption of pollutants leached into the soil. Vegetation used in the swale shall be native or non-intrusive exotic species approved by the County Soil Conservation District; and

iii. If the swale is designed to provide infiltration, the soil texture shall be sand, loamy sand or sandy loam as defined by the U.S. Department of Agriculture and there shall be a minimum of three feet separation between the bottom of the swale and the seasonal high water table.

5. The use of infiltration basins is discouraged because of their high failure rate. However, if the Department determines that the techniques in (d)1, 2, and 3 above are not feasible or justified they will be permitted provided that:

i. There is at least three feet or more vertical separation between the bottom of the basin and the seasonal high water table;

ii. The soil texture is sand, loamy sand or sandy loam as described by the U.S. Department of agriculture;

iii. No topsoil is placed in the basin;

iv. The basin bottom is scarified after the basin is formed, after which no other construction within the basin may occur;

v. The entire volume of runoff generated by the water quality design storm is contained in the basin and recharged into the ground within 72 hours; and

vi. A backup drainage system is provided to handle the excess flows from the basin in the event of a basin failure.

6. The use of sediment traps and oil/grease separators is strongly discouraged because of their limited capacity and the high degree of maintenance required to keep them operational. However, if the Department determines that there are absolutely no other feasible alternatives, the Department will allow them provided that the drainage areas served are less than one-tenth of an acre in size and the applicant's comprehensive maintenance plan is approved by the Department.

7. The use of porous asphalt pavement is discouraged due to problems with maintenance and continued functioning. However, if the Department determines that there are absolutely no other feasible alternatives, the Department will allow its use provided that:

i. The soil beneath the pavement is sand, loamy sand or sandy loam as defined by the U.S. Department of Agriculture;

ii. The porous pavement is buffered with vegetative screening to prevent the intrusion of aeolin sand and silt;

iii. The permittee undertakes a strict maintenance schedule including but not limited to vacuum sweeping on a weekly basis and high pressure water washing on a monthly basis;

iv. The porous pavement is used in light traffic areas subject to automobiles only and is marked by a sign restricting traffic to only passenger vehicles;

v. No asphalt sealer is used; and

vi. No sand is used during periods of snow and ice.

8. The use of underground basins and perforated pipes for the purpose of infiltration is strongly discouraged because of restricted access which discourages proper maintenance. However, if the Department determines that there are absolutely no other feasible alternatives, the Department will allow their use provided that:

i. The soil in the area is sand, loamy sand or sandy loam as defined by the U.S. Department of Agriculture; and

ii. Runoff is filtered to remove TSS prior to discharge into the basin or pipe.

(e) Maintenance shall be required as part of all stormwater management plans. Specific maintanence techniques and schedules shall be provided each type of system used on the site. The maintenance plan approved by the Department shall be recorded upon the deed of record for the property.

1. The maintenance plan shall include the name address and telephone number of the party or parties responsible for long term maintenance. Documentation of their assumption of this responsibility shall be submitted to the Department as part of the permit application. The transfer of maintenance responsibility to individual property owners in residential subdivisions is prohibited except through a homeowners association agreement.

2. Written maintenance and repair records for all storwater management systems shall be maintained for at least five years by the person(s) identified in (e)1 above and shall be provided to the Department upon request.

3. Maintenance of artificial wetlands shall include, but not be limited to:

i. Documented visual inspection of all components of the system at least once every six months;

ii. Documented removal of silt, litter and other debris from all catch basins, inlets and drainage pipes at least once every six months or upon noticeable buildup; and

iii. Vvegetation removal and replacement at least once a year.

4. Maintenance of detention basins shall include, but not be limited to:

i. Ddocumented visual inspection of all components of the system at least once every six months;

ii. Documented removal of silt, litter and other debris from all catch basins, inlets and drainage pipes at least once every six months or upon noticeable buildup;

iii. Documented maintenance, including grass cutting, and necessary replacement of all landscape vegetation within the basin at least once a year; and

iv. Documented aeration of basin bottoms at least once a year and scraping and replanting at least once every five years to prevent the sealing of the basin bottom.

5. Maintenance of wet ponds/retention basins shall include, but not be limited to, annual, documented monitoring of water quality, dissolved oxygen, vegetative growth and fish population.

7:13-2.9 Channel modification

(a) Channelization of an existing watercourse or watercourse relocation is prohibited except where necessary to control existing flooding and/or erosion which threatens life or property or in cases which the Department determines that the effects of channelization are offset by the resulting restoration or improvement of the natural characteristics of the nearby environment.

(b) Engineering standards for channel modifications are as follows:

1. When change in the watercourse channel is proposed, the applicant shall submit plans reflecting the manner in which the channel shall be stabilized at the point of each change to ensure that no erosion occurs at either high or low flows. If a change in slope causes a hydraulic jump to occur just downstream of the constructed area, the applicant shall submit plans describing methods to protect the integrity of the downstream channel.

2. If the channel modification results in a reduction of the water surface, the change in the volume of flood storage in the flood fringe shall be considered as fill for the purposes of this chapter.

(c) Environmental standards for channel modification are as follows:

1. Reconstruction of aquatic habitat damaged or destroyed during channel modifications is required (N.J.A.C. 7:13-3.4) whether or not the watercourse is trout-associated. This includes but is not limited to replication of aquatic characteristics such as percent meandering, bottom substrate type, pool/riffle ratio, stream width, depth and gradient, and the placement of habitat enhancement devices within the watercourse. Provision for Fish Passage (N.J.A.C. 7:13-3.6(c)) is required, as is vegetative bank stabilization to reestablish any near-watercourse habitats damaged or destroyed as a result of the construction of the project.

7:13-2.10 Underground utilities in the flood plain

(a) Underground utilities include, but are not limited to, electric cables, telephone cables, sanitary sewer lines, water lines, gas mains, petroleum pipelines, and other pipes carrying various types of materials.

(b) Engineering standards for underground utilities in the flood plain are as follows:

1. The top of pipe or encasement shall be at least three feet below the invert of the watercourse. In special circumstances, such as hard rock bottoms, this may be reduced with the approval of the Department.

2. Sanitary sewer, petroleum product and gas lines shall be encased in six inches of concrete or a larger steel pipe for protection. A stainless steel plate, at least one-quarter inch thick, may be substituted for the top six inches of encasement if three feet of vertical clearance cannot be achieved. The encasement requirement may be waived by the Department if a minimum of four feet of cover is maintained for as long as the crossings are in use.

3. The crossing shall be horizontal under the watercourse, and the pipe or encasement shall extend a minimum of 10 feet beyond the top of banks. This requirement may be modified by the Department for good cause shown by the applicant in cases in which the modification shall pose no additional risk to life or property either alone or taken in conjunction with the rest of the project.

4. The inclined leg of the crossing shall not be steeper than a ratio of one vertical to two horizontal, except as modified in writing by the Department for good cause shown by the applicant and in cases in which the modification shall pose no additional risk to life or property either taken alone or in conjunction with the rest of the project.

5. If manholes are to be located in the flood plain, the top of the manhole shall be flush with the ground and shall have a watertight cover.

6. For large or tidal watercourses, a cable may be laid directly on the watercourse bed. The cable shall be laid with slack so as to be readily moveable.

7. Utilities crossing over or under a piped reach of stream or culvert do not need to be encased but shall maintain a minimum one foot vertical distance above or below the pipe or culvert.

(c) Environmental standards for underground utilities in the flood plain are as follows:

1. The width of trenches for installation of underground utilities shall be limited to the minimum necessary to permit installation. Upon installation of the utility, trenches outside the channel shall be backfilled to the pre-excavation ground elevation and planted with native species of vegetation. Trenches within the channel shall be backfilled to the pre-excavation ground elevation and stabilized in a manner that will mimic the characteristics and nature of the natural channel as closely as possible.

7:13-2.11 Aboveground utilities in the flood plain

(a) Engineering standards for aboveground utilities in the flood plain are as follows:

1. Cables or pipes may be attached to a bridge at a point above the lowest member crossing the watercourse. However, if cables or pipes are located on the outside of a structure, the crossing shall be located on the downstream face of the structure, when at all possible. If the crossing must be located on the upstream face of the structure, the crossing shall be protected from damage due to impact with debris in the event of a flood.

2. Cables or pipes shall not be installed within a culvert or bridge opening except upon a determination by the Department that no other feasible location exists.

3. Crossings of cables or pipes over areas within the jurisdiction of this chapter shall be at least one foot above the regulatory flood elevation and shall be protected to prevent damage from impact with floating debris.

4. Electric and telephone aerial crossings shall be designed to withstand flood flow forces and erosion and shall be located outside the floodway unless the Department determines that no other location is available.

7:13-2.12 Dams

(a) All dams and structures related thereto proposed to be located in areas under the jurisdiction of this chapter shall meet the standards in this section.

(b) Engineering standards are as follows:

1. Dams constructed across a watercourse regulated under this chapter which have received a Dam Safety Permit shall not be subject to any engineering review under this chapter.

2. The structural stability of dams is regulated pursuant to the Safe Dam Act, N.J.S.A. 58:4-1 et seq., and will not be reviewed under this chapter. All other applicable engineering standards of this chapter shall apply.

3. For the purpose of this chapter, off-channel dams and the resulting impoundments shall be considered as fill if constructed in the flood plain.

4. Any backwater created by an off-channel dam shall be contained within the applicant's property unless written consent is obtained from all affected property owners. The applicant shall advise the Department and all affected property owners of the anticipated effects of such backwater on both surface water and ground water.

(c) Environmental standards are as follows:

1. The environmental standards of this chapter shall apply to all dams proposed for construction in areas within the jurisdiction of this chapter.

2. It is unlawful to construct a dam in any water of this State which is a runway for migratory fish without installing a fish ladder or other contrivance to permit a fish to pass the dam in either direction (see N.J.S.A. 23:5-29-1).

i. The determination of whether a watercourse is currently a runway for migratory fish is made by the Division of Fish, Game and Wildlife during the Department's review of an application for a permit under this chapter. Applicants are encouraged to discuss the matter with this program and the Division of Fish, Game and Wildlife prior to filing any application.

3. Low dams across trout-associated watercourses shall not be allowed unless the applicant demonstrates and the Department determines that there is a legitimate need for the dam that cannot be accomplished in another fashion with less impact upon the environment.

7:13-2.13 Requirements for structures

(a) Engineering standards for structures proposed to be located in areas within the jurisdiction of this subchapter are as follows:

1. All structures proposed to be located in areas within the jurisdiction of this chapter shall be designed, connected and anchored to resist flotation, collapse or permanent lateral movement due to structural loads and stresses (including hydrostatic and hydrodynamic) produced by flooding equal to the regulatory flood elevation, and the freeze/thaw cycle of the soil.

2. All structures within the channel shall be designed, connected and anchored to resist undermining caused by stream bed erosion.

3. All hospitals, clinics, nursing homes, schools of any sort, day care centers, hotels, private residences and similar buildings which are proposed in areas under the jurisdiction of this chapter shall be elevated so that the lowest floor, including any basement, is at or above the regulatory flood elevation. This requirement applies to buildings proposed to be located on lands previously in the flood plain but legally filled after January 31, 1980, and raised above the regulatory flood elevation.

4. Any hospital, clinic, school of any sort, nursing home, day care center, hotel or other similar facility proposed to be built in, or which will require access through, areas under the jurisdiction of this chapter shall have at least one driveway or access route elevated to or above the regulatory flood elevation.

5. All proposed residential developments or subdivisions proposed to be built in, or which will require access through, areas under the jurisdiction of this chapter and which create more than one new residence shall, where feasible, have at least one driveway or access route at or above the regulatory flood elevation. If such a route is not feasible, then all on-site roads, parking areas and driveways shall be constructed at or above the regulatory flood elevation to the extent possible.

6. Driveways within the jurisdiction of this chapter which serve only one single-family residence shall be elevated at or above the regulatory flood elevation except as provided below. In the event the applicant homeowner or builder, as the case may be, refuses to comply with this requirement, the applicant shall acknowledge, in writing, the fact that the driveway may be inundated by floodwaters and damaged or destroyed, and said applicant shall cause the Deed of Record for that residence to state that the driveway is subject to flooding and at what frequency storm the driveway will be inundated.

7. Except as stated below, all commercial and industrial structures, including water supply and wastewater treatment facilities proposed to be located in areas under the jurisdiction of this chapter, shall be elevated so that the lowest floor, including any basement, is at or above the regulatory flood elevation.

i. The Department may exempt structures from this requirement upon written application by the owner or builder providing all evidence needed for the Department to reasonably conclude that raising the structure is economically or physically impracticable and that said structures is flood proofed up to the regulatory flood elevation.

ii. The applicant shall submit a plan or document from a licensed professional engineer or architect certifying that the design described on the plans submitted to the Department conforms with the requirements of (a)7i above.

8. Recreation areas and non-residential parking lots proposed to be located within the jurisdiction of this chapter may be inundated by floods if the applicant demonstrates that no undue risk is posed to persons or property thereby and the applicant and/or owner posts a sign in a prominent location that the area is subject to flooding.

9. Applications for projects containing vertical retaining walls extending four feet or more above the watercourse bed or ground elevation at the base of the wall shall include a stability analysis of the wall calculated by a New Jersey licensed professional engineer.

7:13-2.14 Standards for fill within the flood plain

(a) Engineering standards for fill within the flood plain are as follows:

1. There shall be no fill in the floodway except as provided in N.J.A.C. 7:13-1.3(e). For regulated activities proposed in the flood fringe area, the volume of net fill to be placed on an applicant's property is limited to 20 percent of the total volume of flood storage on that portion of the property located in the flood fringe which located in the area between the existing ground surface as of January 31, 1980, and the elevation of the regulatory flood.

2. The applicant shall submit engineering plans and calculations which demonstrate that the 20 percent net fill limit in (a)1 above shall not be exceeded as a result of any activity undertaken in connection with the proposed project.

3. All fill shall be graded in a manner so as not to adversely affect overland drainage flows.

4. Fill shall be placed so that slopes are not steeper than a ratio of two horizontal to one vertical.

5. Fill shall be compacted and stabilized in accordance with the "Standards for Soil Erosion and Sediment Control in New Jersey" or the latest amendment thereto, N.J.A.C. 2:90.

6. When a permit allows the placement of fill, any subsequent subdivision of that property shall not increase the total amount of fill allowable under the previous permit. Additional fill may be placed on the newly-divided property only to the extent that the total amount of fill under the previous permit has not been exceeded.

7. An exemption from the 20 percent net fill requirements of this section will be allowed for Federal, State, county or municipal highway or road projects that cannot meet the requirement due to limited right-of-way, provided that the applicant demonstrates to the Department's satisfaction that:

i. There is a need for the project which can not be accomplished by any other means; and

ii. The project has been designed so that the total volume of fill is minimized to the greatest extent possible.

8. The 20 percent net fill requirement is not applicable to projects whose primary purpose, according to the Department, is for flood control and have been so approved by the Department.

9. In cases where dikes, levees, floodwalls or other structures not approved as flood control projects by the Department impede the entry of flood waters into an enclosed space, the volume of the enclosed space shall be considered as solid fill for purposes of calculating compliance with the twenty percent net fill requirement.

10. When proposed channel modifications will lower the pre-project construction water surface, the Department shall consider the volume of flood storage lost as solid fill for the purposes calculating compliance with the twenty-percent net fill requirement.

7:13-2.15 Additional requirements for fill in the Central Passaic Basin

(a) Engineering standards for fill in the Central Passaic Basin are as follows:

1. In addition to the requirements of N.J.A.C. 7:13-2.14, any application proposing to place fill within the Central Passaic Basin shall create a volume of flood storage within the Central Passaic Basin equal in volume to the amount of fill proposed.

2. Flood storage can be created by:

i. Excavating an area in the Central Passaic Basin between the ground surface as of March 25, 1977, and the higher of the mean low water level of the adjacent watercourse or the seasonally-adjusted high groundwater level. The excavation area shall be graded so that flood waters will freely enter and exit; or

ii. Completely removing fill and/or structures legally placed or constructed in the flood plain after March 25, 1977 so that flood waters may freely enter and exit.

3. An exemption from the zero net fill requirements of this section will be allowed for Federal, State, county or municipal highway or road projects that cannot meet the zero net fill requirement due to limited right-of-way, provided that the applicant demonstrates to the Department's satisfaction that:

i. There is a need for the project which can not be accomplished by any other means; and

ii. The project has been designed so that the total volume of fill proposed is minimized to the greatest extent possible.

4. The requirements of this section are not applicable to projects whose primary purpose, according to the Department, is for flood control and have been so approved by the Department.

5. In cases where dikes, levees, floodwalls or other structures not approved as flood control projects by the Department impede the entry of flood waters into an enclosed space, the volume of the enclosed space shall be considered as solid fill for the purposes of calculating compliance with the zero net fill requirement.

6. In order for the Department to approve any application proposing a net increase of fill in the Central Passaic Basin, a Stream Encroachment Permit for the corresponding excavation of material must have already been issued or, applied for and approved concurrently with the application made under this chapter.

7. No fill shall be placed within the Central Passaic Basin pursuant to any permit issued by the Department until the applicant has commenced creation of the flood storage mandated under the permit.

7:13-2.16 Bridges and culverts

(a) Applications to construct bridges and culverts across watercourses will be reviewed in accordance with the criteria set forth in this section.

(b) Engineering standards are as follows:

1. New bridges and culverts that are not replacements or repairs shall be designed so that they will not increase the upstream water surface elevation off of the applicants property by more than two-tenths of a foot during the 100-year flood. The applicant shall submit a standard step backwater analysis for existing and post-construction conditions in the affected watercourse to determine upstream flood impact of any new bridge or culvert.

i. The standard step analysis for existing conditions shall be calculated starting from the next control point downstream or if no control point is available, several hundred feet downstream with at least five

cross-sections included before reaching the structure in question and continue upstream to at least the next upstream property or right-of-way limit.

ii. The post-construction standard step backwater analysis shall begin at the upstream face of the new structure using a starting water surface elevation calculated by a separate analysis of the bridge or culvert.

iii. If flood elevations are being calculated by a computer model based on the standard step backwater analysis, such as a HEC-2 model, then the bridge or culvert should be coded into the model as "recommended" in the model's documentation. If a computer model other than HEC-2 is used, complete documentation for the assumptions made by the model shall be submitted with the application, unless the Department advises the applicant that it is familiar with the model.

2. Replacements or repairs of bridges and culverts shall be designed so that:

i. If the size of the area open to the passage of floodwaters is decreased as a result of the construction of the structure, there shall be no increase to the upstream water surface outside the applicant's property during the regulatory flood. A standard step backwater analysis shall be performed for existing and post-construction conditions in the affected watercourse to determine the change in upstream water surfaces as a result of the construction of the proposed project. The analysis shall begin at the upstream face of the structure using a starting water surface elevation obtained through a separate analysis of existing and post-construction conditions of the affected watercourse.

ii. If the size of the area open to the passage of floodwaters is increased as a result of the construction of the proposed structure, the structure shall be designed so that the flow rate through the structure will not increase so as to cause increased flooding downstream off of the applicant's property during the regulatory flood. Documentation, which may include a detailed routing of the affected watercourse, shall be submitted to the Department to show that there is no downstream increase in flooding due to the increased area open to floodwaters. The routing shall continue to the next downstream control point.

iii. If flood elevations are being calculated by a computer model such as HEC-1 (routing) or HEC-2 (standard step), then the bridge or culvert should be coded into the model as "recommended" in the model's documentation. If a computer model other than HEC-1 or HEC-2 is used, the applicant shall submit to the Department complete documentation for all the assumptions made by the model unless the Department advises the applicant that it is familiar with the model.

3. Bridges and culverts, whether new or replacement, may be designed to be overtopped during the regulatory flood provided that:

i. The applicant and landowner, as the case may be, submits to the Department a written acknowledgement of responsibility for all direct and indirect damage to property on which the structure is placed arising from inundation of the structure or property by flood waters;

ii. The structure is designed to remain stable and resistant to erosion during the regulatory flood; and

iii. The structure meets the criteria above in (a)1 and 2 as well as the access requirements set forth in N.J.A.C. 7:13-2.13.

4. Channel transitions in excess of 100 feet in length upstream or downstream of the proposed bridge or culvert shall be considered channel modifications and shall meet the requirements of N.J.A.C. 7:13-2.9.

(c) Environmental standards are as follows:

1. New bridges and culverts shall span the flood plain unless the applicant demonstrates to the Department's satisfaction that such a design would be prohibitively expensive to construct and that no additional significant risk is created to persons or property downstream as a result of construction of the proposed design, considering the ability of the structure to withstand the regulatory flood.

2. Channel transitions shall be minimized to the greatest extent possible.

3. Applicants seeking to construct any bridge or culvert, whether new or replacement, shall provide fish passage as described in N.J.A.C. 7:13-3.6(c) through the culvert itself and within the upstream and downstream channel transition areas for those watercourses that are currently populated by fish on a seasonal or permanent basis or which are likely to be so inhabited in the future.

i. Any channel created or modified as a result of construction of any bridge or culvert shall be designed and constructed so that during low flow conditions the water depth therein is at least as deep as in the existing channel or no less than 10 inches deep, whichever is less, except as provided in (c)3ii below;

ii. Exceptions to the requirement in (c)3i above shall not be granted by any agency designated by the Department to supervise any aspect of the permiting or construction of any structure pursuant to this chapter. Requests for exemption from the requirements of section (c)3i above shall be submitted to and granted by the Department if:

(1) The existing channel does not allow for the upstream passage of fish during low-flow conditions; or

(2) Fish passage in the particular channel segment is irrelevant because of upstream or downstream conditions unfavorable to fish passage; or

(3) Other conditions such as public need or extreme hardship make this requirement impracticable.

4. Maintenance of the existing watercourse bed shall be a priority in project design.

5. The use of standard box culverts in trout associated waters, in waters used by Anadromous fish, and in warm-water game fish waters shall be avoided and alternative methods shall be utilized where at all practicable. Alternative methods can include spanning the watercourse bed and watercourse banks, construction of an arched culvert where the existing watercourse bed remains undisturbed, and the use of an oversize culvert installed below grade with the natural substrate replaced over the concrete flooring. Where the applicant proposes to place a natural substrate over the concrete floor of an oversize culvert, the applicant shall provide calculations to show that the substrate will remain stable.

7:13-2.17 Sewage disposal requirements in the flood fringe

Individual or community subsurface sewage disposal systems within the flood fringe area shall be constructed in accordance with Department's Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A.

7:13-2.18 Impacts to other properties

(a) Unless the owners of property located either upstream and/or downstream of the project site accept liability for any damages or inconveniences that may occur as a result of the proposed project and written proof of such an agreement is presented to the Department, the applicant shall design and construct the project so that the following conditions are satisfied:

1. The project shall not increase the flood elevation upstream or downstream of the property on which the project is located by more than two-tenths of a foot if the applicant's property includes the flood plain on both sides of the water body, or by more than one-tenth of a foot if the applicant's property is only on one side of the waterbody.

i. This limitation shall not apply to replacement bridges or culverts, which must be designed so that there is no increase to the flood elevation upstream from the project;

2. No portion of the proposed project shall be located on property other than that owned by the applicant; and

3. The project is designed so that a concentrated flow of storm water is not discharged across properties adjacent to those owned by the applicant.

(b) The applicant shall provide the Department with calculations describing both existing and post-construction flood elevations on the subject property and adjacent properties upstream and downstream of the proposed project.

1. The applicant shall submit a standard step backwater analysis to the Department to show the impacts to upstream flood elevations

from the regulated activities. The analysis shall extend at least 100 feet beyond the applicant's upstream property limit.

2. The applicant shall submit a detailed stream routing analysis to the Department to show impacts to downstream flood elevations from the regulated activities. The analysis shall extend at least 100 feet beyond the applicant's downstream property limit.

3. If the applicant chooses to rely upon a computer model other than HEC-1 or HEC-2 for any portion of the application to the Department, the applicant shall include all supporting documentation describing the assumptions underlying each model or computer program used, unless the Department advises the applicant that it is familiar with each computer model the applicant has submitted.

SUBCHAPTER 3. GENERAL ENVIRONMENTAL STANDARDS

7:13-3.1 General

(a) The standards of this subchapter apply along all watercourses under the jurisdiction of this chapter regardless of the drainage area, except along man-made, but not man-altered, watercourses with a total contributory drainage area less than 50 acres or as otherwise indicated in this subchapter or expressly waived by the Department pursuant to the provisions of this chapter.

(b) Minimization of environmental damage shall be as follows:

1. The applicant shall describe to the Department all steps taken by the applicant to minimize pollution, impairment or destruction of the environment within the areas under the jurisdiction of this chapter, during both construction and operation of the project, describing short and long-term environmental impacts and describing the cumulative impacts of each upon the environment.

2. All projects regulated under this chapter shall be designed in accordance with Federal, State and local statutes, regulations, and ordinances.

3. The Department will not approve any regulated activity which it determines is likely to significantly and adversely effect the biota of the watercourse or its water quality including, but not limited to, adverse effects on potable water supplies, flooding, drainage, channel stability, threatened and endangered species of plants and animals or upon their current or documented historic habitats, navigation, energy production, municipal, industrial or agricultural water supplies and fisheries.

7:13-3.2 Protection of near watercourse vegetation

(a) Trees, shrubs, grasses, and other existing vegetation located within the areas under the jurisdiction of this chapter shall not be disturbed unless an applicant has demonstrated to the satisfaction of the Department that there is no alternative to the proposed project design which will eliminate or further minimize the disturbance and the applicant has submited a plan to compensate or cure the effects of the disturbance which is acceptable to the Department. Among other environmental factors, the applicant shall address the effects of the removal of vegetation on water quality and the effect of sedimentation or erosion on the biota of the watercourse. Trees shall be left standing, and bushes and stumps shall not be removed, except as expressly allowed by the Department. Access roads to work sites shall not be constructed within the areas under the jurisdiction of this chapter.

(b) Vegetative debris from construction shall not be disposed of in the floodway. This prohibition shall not apply to vegetative mulches applied for soil erosion and sediment control or for agricultural purposes. However, waste mulch not serving to control erosion or sediment shall not be disposed of in channels.

7:13-3.3 Soil erosion and sediment control

(a) All applications for permits pursuant to this chapter shall describe soil erosion and sediment control measures to control and minimize disturbance of any surface area under the jurisdiction of this chapter during construction and use of the proposed structure.

(b) In planning soil erosion and sediment control measures, applicants for permits under this chapter shall be guided by the latest revised version of the "Standards for Soil Erosion and Sediment Control in New Jersey" promulgated by the New Jersey State Soil Conservation Committee pursuant to the Soil Erosion and Sediment Control Act of 1975 as amended, N.J.S.A. 4:24-42 et seq. and N.J.A.C. 2:90. The Department recommends the use of Geotechnical materials to stabilize disturbed areas, whenever possible.

(c) The applicant shall meet the following additional soil erosion and sediment control requirements:

1. The area of soil disturbance shall be no larger than that which is absolutely necessary for the construction of the project;

2. Applicants shall provide the Department with soil disturbance plans which minimize the exposure of soils to erosion to the greatest extent possible;

3. If erosion and sediment control measures such as diversions, sediment basins, or sediment barriers (the purpose of which is to divert surface runoff before it reaches exposed soil or to intercept sediment eroded from exposed soil) are part of the erosion and sediment control plan for the project, such measures shall be implemented prior to any major soil disturbance or in their Department approved sequence with respect to other phases of the project in order to minimize sediment delivery to waterways. All soil erosion and sediment control practices shall be left in place until the soil is stabilized by vegetation or engineering measures;

4. Disturbed soil on the banks of waterways shall be protected within 48 hours of disturbance by rip-rap, sandbags, sod, or Department-approved mulch netting, as conditions warrant, in accordance with the "Standards for Soil Erosion and Sediment Control."

i. Asphalt or other liquid binders shall not be applied for the purpose of anchoring mulch along the banks of a watercourse.

ii. Neither calcium chloride nor any spray-on adhesive shall be applied for dust control along the banks of a watercourse;

5. In areas where vegetative methods (including "mulch only") are relied upon for erosion and sediment control without down-slope controls to intercept sediment (such as sediment basins or sediment barriers), the applicant shall seed, mulch, or place sod within 48 hours of soil exposure in accordance with the "Standards for Soil Erosion and Sediment Control." Seeding shall always be accompanied by mulching and adequate watering.

i. If weather conditions are unfavorable for successful seeding, sod placement or the establishment of vegetation, the area shall be mulched within 48 hours of soil exposure in accordance with the "Standards for Stabilization with Mulch Only" in the "Standards for Soil Erosion and Sediment Control."

ii. In areas without downslope sediment controls, slopes exceeding 15 percent gradient shall be protected within 48 hours of soil exposure by special treatment, such as water diversion berms, sodding or Department-approved mulch netting, in accordance with the "Standards for Soil Erosion and Sediment Control"; and

6. Sediment-laden water ("pumpage") from the dewatering of trenches or other excavations shall not be pumped directly into waterways or wetlands without treatment except as expressly approved by the Department.

i. Pumpage shall be piped to sediment basins or sediment barriers that meet the "Standards for Soil Erosion and Sediment Control." Mechanical filtration or sedimentation devices shall be used to minimize the discharge of sediment into waterways.

ii. Pump intakes shall be placed near the water surface to minimize the sediment content of pumpage.

iii. Upon good cause shown by the applicant why the foregoing requirements cannot feasibly be met, the Department may permit pumpage to be spread onto land located as far from the watercourse bank as possible, provided that the applicant avoids damage to trees not approved for removal by the Department.

(d) When Soil Conservation District or exempt public entity certifies that a sediment and soil erosion plan meets both the "Standards for Soil Erosion and Sediment Control in New Jersey" and the additional requirements contained in this section, the Department or designated agent shall accept this certification as proof that the plan satisfies the requirements of this section.

7:13-3.4 Mitigation

(a) As a condition to the issuance of all permits under this chapter, permittees are required to take all measures necessary to minimize adverse environmental impacts arising from the construction and use of the proposed project, and to restore vegetation,

habitats, and land and water features to their pre-construction condition, and to prevent sedimentation and erosion to the greatest extent possible. The applicant shall submit a plan for the review and approval of the Department by which the applicant shall restore any area disturbed and replace any area destroyed by the construction or operation of the proposed project with vegetation of equal or higher quality than that which existed on the site before construction, whether said disturbance or destruction was approved by the Department pursuant to a permit under this chapter, or not.

(b) Mitigation described in (a) above shall be performed prior to or concurrently with the activities that will permanently disturb the environment, and immediately after activities that will temporarily disturb the environment.

(c) The permittee shall restore disturbed areas at a ratio of one to one. Under no circumstances shall the mitigation area be smaller than the disturbed area. The permittee shall create or replace areas totally destroyed and unavailable for restoration (such as when a structure is placed upon them or they are paved) at a ratio of two acres created to one acre destroyed unless the applicant can prove to the Department through the use of productivity models or other similar studies, that creation of a lesser area will provide natural resources of a quality higher than the resources destroyed. The permittee shall monitor the site to ensure that all site plantings survive at least one full year after planting and shall replace all plantings which fail within that time with a plant of identical quality and environmental value which must also survive for one full year after it is planted. Creation of habitats from other existing-climax habitats is prohibited.

(d) The Department shall not consider a mitigation proposal in determining whether an applicant should be awarded a permit, but it shall require mitigation as a condition of any permit it awards under this chapter.

(e) Any mitigation approved by the Department at a site other than the project site shall be located on private property and used with the express written permission of the landowner. No future development will be permitted on any mitigation site without a permit issued pursuant to this chapter.

(f) Mitigation required as a result of projects undertaken by the Federal, State and local government shall be exempt from the requirements of (e) above.

(g) For every mitigation plan authorized under this chapter, an applicant shall execute a Department-approved conservation easement and place a restriction on the deed for the subject parcel prohibiting any and all regulated activities in the area mitigated by the permittee. The wording of the restriction shall be approved by the Department and shall run with the land and be binding upon all affected landowners and their successors-in-interest. When mitigation has been planned as part of the regulated activity, the permit will not become effective until the deed restriction is registered with the county clerk.

7:13-3.5 Projects along trout associated watercourses

(a) The removal of trees and shrubs within 50 feet of the top of bank of a trout-associated watercourses is prohibited unless the applicant demonstrates that there is absolutely no other alternative to the removal of the vegetation in order to accomplish an essential part of the project. If the Department allows the removal of trees and shrubs, the applicant shall remove such vegetation from the most northerly or easterly bank of the watercourse affected by the project, rather than the southerly or westerly bank, unless expressly approved by the Department in writing.

(b) Construction equipment shall not be placed or operated in a trout-associated watercourse unless the Department issues a written determination that certain specific uses are absolutely necessary to accomplish an essential aspect of the project. Fording watercourses with construction equipment is permitted only where the watercourse bottom is firm, the approaches are stable, and such activity does not create bank erosion not already described by the applicant and incorporated into the applicant's erosion and sediment control plan already approved by the Department.

1. The Department may require the applicant to construct temporary bridges or culverts if equipment crossings of watercourses are necessary in areas which fail to meet the requirements of the preceding section.

2. All crossings of watercourses shall be made at right angles to the watercourse and the applicant shall take all measures necessary to ensure that no petroleum products or sediment is washed into the watercourse as a result of the crossing.

3. Any watercourse bank that is disturbed shall be stabilized within 48 hours in accordance with the requirements of this chapter in order to minimize the potential for erosion.

(c) Construction equipment shall not be washed in trout-associated watercourses or where wash water would drain as surface runoff into such watercourses.

(d) Unless modified with the express written approval of the Department, any development proposed in areas under the jurisdiction of this chapter which, in the opinion of the Department, could introduce sediment into the watercourse or which could cause an increase in the natural level of turbidity in the watercourse shall comply with the following requirements:

1. All regulated activities located within 50 feet of the top of bank along trout associated watercourses or on waters less than one mile upstream from trout associated watercourses authorized pursuant to this chapter are prohibited during the following periods critical to spawning along such waters as identified in the Department report, "Classification of New Jersey Waters as Related to Their Suitability for Trout":

i. Brook Trout/Brown Trout Production Watercourses: September 15 through March 15 inclusive;

ii. Rainbow Trout Production Watercourses: February 1 through April 30, inclusive;

iii. Projects authorized pursuant to this chapter which are located along trout production watercourses shall suspend all construction activity during the period of September 15 through March 15, inclusive;

iv. Projects authorized pursuant to this chapter which are located along trout-stocked watercourses, or one mile or less upstream from trout-stocked and trout maintenance watercourses shall suspend all construction activity during the period of March 15 through June 15, inclusive.

2. Upon application by the permittee, the Department may specifically modify the requirements above for the following reasons:

i. Cases in which the Department determines that the likelihood of particular types of damage to trout-associated watercourses from the particular activity proposed by the permittee during the period of low flow in the June 1 through June 15 period would be less than the likelihood of particular types of damage arising from such activities in these watercourses at higher flows during other periods of the year;

ii. In cases where the combined effect of compliance with this subsection, N.J.A.C. 7:13-3.6(a) and 3.6(b) would restrict construction to less than 183 days of a calendar year, the applicant shall describe for review and approval by the Department those specific steps to be implemented to minimize the impact of construction activity upon the affected watercourse and upon approval of such a plan the Department shall allow construction activity to continue for no more than 183 days of each year on the days specified in the applicant's plan; and

iii. In cases which the Department determines that construction must be undertaken during non-school periods in order to avoid unacceptable risk or excessive delay to school buses or vans.

(e) The mining of bottom material from a trout-associated watercourse is prohibited. This does not prohibit the incidental use or sale of watercourse bottom material removed during the course of Department-approved channelization, watercourse cleaning or other regulated activities authorized by the Department and performed for purposes other than mining.

(f) Where logs or boulders create pools or riffles that provide fish habitat, removal of such logs or boulders is prohibited unless the Department determines that their removal is necessary to accomplish an essential aspect of the project.

(g) Channelization of trout-associated watercourses is prohibited unless the Department determines that:

1. There is a compelling public need for the proposed project greater than the need to preserve the natural condition of the channels of such watercourses and that need cannot be met by essentially similar projects in the region which are under construction or expansion or which have already received the necessary governmental permits and approvals and the project cannot be accomplished in a less-destructive manner; and

2. The project meets the requirements of (h) and (i) below.

(h) Any application for channelization of a trout-associated watercourse shall include a map of the existing watercourse channel that identifies the location, dimensions and area of cascades, riffles, flats and pools, except as follows:

1. Channel modification directly and inextricably linked to the construction or maintenance of bridges or culverts, including transition zones up to 100 feet upstream or downstream from such bridges or culverts;

2. Minor bank re-establishment or bank protection projects limited to 100 feet of channel length; or

3. Other projects which require 100 feet or less of channel modification including, but not limited to sewer headwalls, sewer outlet works, sewer outlet diffusers, minor water intake facilities and channel crossings of utilities.

(i) A new or modified channel of a watercourse shall be designed and constructed in such a manner as to duplicate or preserve the pre-construction character of the channel including proportion of shading, pools, flats, riffles and cascades and, particularly in the case of trout associated watercourses, areas for fish cover and shelter.

7:13-3.6 Projects affecting other fish resources

(a) Construction activity within 50 feet of the banks of watercourses which support anadromous fish are prohibited during the following dates:

1. For projects on waters identified as anadromous migratory pathways (watercourses): April 1 to June 30, inclusive; and

2. For projects on waters used by American Shad for migrations on the Delaware River System:

i. Mouth of bay to Delaware Memorial Bridge and tidal Maurice River: March 1 through June 30 and October 1 through November 30;

ii. Delaware Memorial Bridge to New York State line and the tidal portions of Rancocas and Raccoon Creeks: April 1 through June 30 and September 1 through November 30;

iii. Timing restrictions for formerly-native or introduced fish species, such as, but not limited to, the Atlantic Salmon, Chinoock Salmon, or Coho Salmon which may or will in the future be reintroduced to State waters, will be developed as those species become established.

(b) Construction activity within 25 feet of the banks of waterbodies identified as supporting warm-water fish including but not limited to smallmouth bass, largemouth bass, pickerel, walleye and yellow perch shall be prohibited during the following dates:

1. Waterbodies supporting general game fish: May 1 to June 30 inclusive;

2. Waterbodies supporting pickerel: Ice Out to April 30 inclusive; and

3. Waterbodies supporting walleye: March 1 to May 30 inclusive.

(c) Channel modifications at bridges and culverts (including their upstream and downstream transition zones), channelization projects, watercourse cleaning projects, and other channel modifications (excluding dams) shall comply with the following fish passage requirements:

1. Any new or modified channel of a watercourse shall be designed and constructed in such a manner so that, during low-flow conditions, the water depth is at least as deep as in the existing channel or 10 inches deep, whichever is less, unless the Department determines in writing that the project cannot be constructed or redesigned to fulfill its intended use without modification of this requirement.

2. Exceptions to the requirement i (c)1 above shall not be granted by any delegated agency, but may be considered by the Department if:

i. The pre-construction channel does not allow for the upstream passage of fish during low-flow conditions;

ii. Fish passage in the particular channel segment in its pre-construction condition is irrelevant because of upstream or downstream conditions unfavorable to fish passage; or

iii. The Department determines that other circumstances such as public need for the project or exceptional and undue hardship compel waiver of this requirement.

(d) Channelization of watercourses supporting the fisheries resources described in this section is prohibited unless the Department determines that:

1. There is a compelling public need for the proposed project greater than the need to preserve the natural condition of the channels of such watercourses and that need cannot be met by essentially similar projects in the region which are under construction or expansion or which have already received the necessary governmental permits and approvals and the project cannot be accomplished in a less-destructive manner; and

2. The requirements of (e) and (f) below are met.

(e) Any application for channelization of a watercourse which supports the fisheries resources described in this section shall include a map of the existing watercourse channel that identifies the location, dimensions and area of cascades, riffles, flats and pools, except as follows:

1. Channel modification directly and inextricably linked to the construction or maintenance of bridges or culverts, including transition zones up to 100 feet upstream or downstream from such bridges or culverts;

2. Minor bank re-establishment or bank protection projects limited to 100 feet of channel length; or

3. Other projects which require 100 feet or less of channel modification including, but not limited to sewer headwalls, sewer outlet works, sewer outlet diffusers, minor water intake facilities and channel crossings of utilities.

(f) The new or modified channel of a watercourse shall be designed and constructed in such a manner as to duplicate or preserve the pre-construction character of the channel including proportion of shading, pools, flats, riffles and cascades and areas for fish cover and shelter.

7:13-3.7 Projects exposing deposits of acid-producing soils

(a) The requirements of this section apply only to deposits of acid-producing soils that are sometimes found in the following Coastal Plain geologic formations:

1. Raritan Formation;
2. Magothy Formation;
3. Merchantville Formation;
4. Woodbury Clay;
5. Englishtown Sand;
6. Marshalltown Formation;
7. Navesink Formation;
8. Red Bank Sand; and
9. Kirkwood Formation.

(b) The map showing the general location of these deposits can be found in the Technical Manual.

(c) The requirements of the section are applicable to projects under the jurisdiction of this chapter which shall affect deposits of acid-producing soil, whether or not encroachments are classified as "major" or "minor" in the 90-Day Construction Permit Rules (N.J.A.C. 7:1C).

(d) Where it is known in advance that deposits of acid-producing soils would be exposed by the proposed regulated activity, the application for a permit under this chapter shall include a written site evaluation prepared by a professional which identifies the extent of exposure, the applicant's plan to mitigate the impacts of such exposure, and the result of the special laboratory analysis of the soils, if required by (g) below.

(e) If, after the Department determines an application under this chapter complete for review, the Department or the applicant determines that deposits of acid-producing soils would be or have been exposed by the regulated activity, the Department may, time permitting, permit the applicant to amend the application by submitting a site evaluation and mitigation plan as described above within a time stipulated in writing by the Department, or deny the application on its merits. Ammended applications may be submitted in accordance with N.J.A.C. 7:13-4.7(g).

(f) If construction activity (pursuant to a permit issued under this chapter or otherwise) reveals deposits of acid-producing soils not described to the Department in an application for a permit to conduct regulated activities at the location containing such soils, the Department shall order the permittee, or other person as the case may be, to desist from further exposure of acid-producing deposits and to apply Department-specified mitigation measures to deposits already exposed, pending the Department's review and approval of a site mitigation and evaluation plan, and an application for a permit under this chapter, as the case may be.

(g) Special laboratory analysis requirements are as follows:

1. If the Department determines that deposits of acid-producing soils have been or will likely be exposed as a result of regulated activities proposed by an applicant, or as a result of activities undertaken by a permittee or undertaken illegally by a person who has not yet applied for a permit under this chapter, and the Department determines that it requires more information about characteristics of such deposits to approve or disapprove an application to conduct such regulated activities, the Department may require the permittee, or applicant as the case may be, to include in its site evaluation and mitigation plan the following chemical analysis of samples of deposits taken from pre-construction borings along the relevant sections of the watercourse channel or flood plain as stipulated by the Department. The following tests shall be performed by a State-certified Laboratory, using methods specified in the Technical Manual:

i. pH;

ii. Cation exchange capacity;

iii. Exchangeable cation content;

iv. Potential acidity; and

v. Extractable metals (Fe, Al, Mn, Cu, Zn, Ni, Cr, Cd, Pb) and sulfate.

2. The Department may also require laboratory analysis of physical characteristics of the soil. These chemical and physical tests shall be performed by a State-certified laboratory employed by the permittee or the applicant, as the case may be, in accordance with procedures specified by the Department in the Technical Manual. In the event an order has been issued stopping activities regulated pursuant to this chapter, no such activity may commence until the Department reviews the test results required under this section and approves an application under this section including the site evaluation and mitigation plan.

(h) When acid-producing deposits are to be or have been exposed, mitigation measures shall be taken by the person engaging in the regulated activity, including:

1. Minimizing the area and time of exposure of acid-producing soils;

2. Minimizing the spread or mixing of acid-producing soils onto or into soil free of such deposits and controlling the disposal of such deposits inside or outside the flood plain;

3. Covering deposits of acid-producing soils with limestone and non-acid-producing soil to permit the establishment of vegetation; and

4. Providing prompt, temporary and permanent stabilization of areas where acid-producing soils are exposed.

(i) When acid-producing soils are exposed within a watercourse channel or along watercourse banks within the jurisdiction of this chapter as the result of activities regulated under this chapter, the person engaging in such activities shall undertake mitigation measures in order to:

1. Minimize the area and time of exposure;

2. Neutralize acid generated in the brief period of exposure; and

3. Keep post-construction oxidation rates from exceeding pre-exposure oxidation rates.

7:13-3.8 Freshwater wetlands

(a) Any disturbance of the vegetation or soil of more than one-quarter acre of freshwater wetlands located within the jurisdiction of this chapter and contiguous to the watercourse constitutes a significant and adverse impact on the biota of the watercourse. A permit application which proposes such a disturbance shall not be approved by the Department unless the applicant demonstrates to the Department's satisfaction that:

1. The disturbance is absolutely necessary to construct the project or that the project cannot be redesigned to reduce or eliminate the disturbance and still meet the objective and purpose of the project; and

2. That effective measures shall be taken by the applicant to mitigate or replace wetlands to be disturbed or destroyed with wetlands of the same or higher quality.

7:13-3.9 Threatened and endangered species

(a) In addition to the other requirements set forth in this chapter, the Department shall issue a permit for an activity regulated under this chapter only if the activity will not adversely affect populations of species of threatened or endangered plants or animals living in the areas under the jurisdiction of this capter and will not adversely affect their habitats located within the jurisdiction of this chapter, which habitats are either currently occupied by species of threatened or endangered plants or animals, or which are documented, historic habitat for threatened or endangered species of plants or animals and which remain suitable for breeding, resting, or feeding by those species of animal during any portion of their life-cycle.

(b) Those persons undertaking threatened and endangered plant or animal surveys/assessments on behalf of an applicant for a permit under this chapter shall possess the education and experience in wildlife biology, zoology or botany necessary to perform the required surveys/assessments. The Department may request additional information and/or surveys/assessments if it finds the surveys/assessments inadequate or that the minimum data have not been supplied. Threatened and endangered species surveys/assessments shall include the following data:

1. The name and address of all persons participating in the survey, the date and time of the investigation including total number of hours spent by each individual specifically for species observation, and the number of observers present on the site at any one time, including their location on the site relative to one another;

2. The site conditions during the survey and observation, that is, precipitation, wind speed and direction, and temperature, artificial or natural noises, nearest human activity or development to site, aside from the observers listed in (b)1 above;

3. The method and specifics of species sightings, indicating whether the subject was sighted directly or identified by call, track, scat, remains or other indirect evidence of presence, the date and time of each such sighting or discovery of evidence, and the relative age and condition of any indirect evidence observed and its location on the property. If the species is observed directly, note the number of individuals, activity of each when observed, each individual's sex and age, location of each individual observed on or near the project site, as the case may be, and the distance between the animals and the observer at each sighting;

4. A description of the techniques and methodology(s) employed by the observer during the site investigation;

5. The acreage of the surveyed area and breakdown of acreage as per habitat/cover type shown on the USGS Quad map and NWI maps with site boundaries delineated;

6. A description of each habitat and cover type on site including vegetation, hydrology, soils and natural communities. These habitats shall be assessed for suitability and compatibility to the life history of the target species. If no target species are observed, a discussion of the site's suitability for the species shall be provided.

(c) If, while reviewing the merits of an application deemed complete for review without a threatened and endangered species survey/assessment, the Department determines that the project or its con-

struction would significantly damage or destroy threatened and endangered plants or animals or their current or historic habitats the Department shall, time permitting, either request the applicant to submit a threatened and endangered species survey to the Department within the time stipulated by the Department in accordance with the criteria outlined in (b) above or deny the application on its merits. Amended applications may be submitted pursuant to N.J.A.C. 7:13-4.7(g).

SUBCHAPTER 4. APPLICATION PROCEDURE FOR STREAM ENCROACHMENT PERMITS

7:13-4.1 Required information for all applications submitted to the Department

(a) The standard application form, CP-1, shall be completed by the applicant or the applicant's authorized agent including all signatures and seals. Notarization is not necessary.

(b) The Engineering Data Sheet shall be completed and all required information for the type of project shall be supplied along with a copy of the completion check list and, where applicable, a copy of any pre-application conference minutes.

(c) The fee as required by the 90-Day Construction Permit Rules (N.J.A.C. 7:1C) shall be included with all applications for permits.

(d) Certification of notification required by N.J.A.C. 7:13-4.2 shall be submitted.

(e) Six sets of plans prepared in accordance with the requirements of this chapter outlined on the Engineering Data Sheet shall be submitted.

(f) A Soil Erosion and Sediment Control Plan shall be submitted.

(g) Two sets of color photographs showing the work area shall be submitted.

(h) Except for applications by public entities which have asserted the right of eminent domain, the applicant shall provide evidence of easements or other property owner's permission for any work outside the applicant's property or which will physically affect properties not owned or controlled by the applicant.

(i) Any application made pursuant to this chapter affecting any land within the Pinelands Area as defined in N.J.S.A. 13:18A-11 is not complete for review until the applicant submits to the Department a Certificate of Filing, a Certificate of Compliance or an Resolution of Approval from the Pinelands Commission for the proposed development and proposed activities on that land.

(j) Three copies of an environmental report bound or in loose-leaf form, on 8½ by 11 inch paper shall be submitted to the Department. All maps, plans and aerial photographs shall contain a north arrow, graphic scale, date of preparation, name of author, and source of information. The report shall contain a detailed environmental inventory and assessment which describes and documents in narrative and map form (including Soil Conservation Service soil maps) possible short and long term effects of each proposed activity upon the site as well as upon adjacent areas upstream and downstream. To the extent required to meet the requirements of this chapter, the report shall include:

1. A description of the scope and nature of the proposed activity including reasons why the proposed structures and their location are the most appropriate for the site and why they minimize to the greatest extent possible any adverse affects upon the pre-construction character of the site. The report shall also describe and analyze alternatives to the proposed activity, including the no-build option;

2. Temporary and permanent physical changes to the site which would result from the proposed activity and the impact of these changes on the project site and the adjacent properties, including details regarding:

i. The effect of the project on public health, safety, and welfare; water quality and quantity; flood storage; existing and potential water uses; parks and/or preserves; vegetation, wildlife, and fisheries, including threatened and endangered species;

ii. All measures to be taken during construction and thereafter to reduce detrimental on-site and off-site effects of both construction and use of the structure in question; and

iii. Adverse environmental impacts which cannot be avoided or mitigated;

3. Project location using the State plane coordinate system;

4. For encroachments along trout-associated watercourses, the environmental report shall identify:

i. The method for disposing of sediment-laden pumpage from dewatering operations;

ii. Channel segments along which trees or shrubs shall be removed; and

iii. Places where construction vehicles shall operate on the banks of trout-associated watercourses and the physical character of the watercourse bed at such places;

5. For all proposed detention and retention basins, the applicant's environmental report shall address the effects of the basin on the watercourse habitat (that is, what plants and animals will be disturbed or displaced, the degree of destruction or disturbance and how these effects shall be mitigated or remedied by the applicant), and whether or not the basin will contribute to or constitute a breeding habitat for mosquitoes;

6. A site evaluation and mitigation plan for acid-producing soils, where applicable;

7. A threatened and endangered animal and plant survey or habitat suitability assessment; and

8. An Environmental Report, prepared using an interdisciplinary approach, containing the identity and qualifications of the persons who prepared each element of the report. References to data, reports or treatises not contained completely in the Environmental Report shall be cited throughout the text as appropriate, and in a consistent manner. Complete copies of all documents cited in the report shall be made available to Department personnel, at the applicant's expense, upon reasonable advance notice.

(k) If applicable, the application shall include the date on which the proposed application was preconferenced with the Department pursuant to N.J.A.C. 7:13-4.3, and the name of the Department personnel who preconferenced the application.

(l) Any application which does not contain the information required in this section fshall be considered incomplete and ineligible for review, or alternatively, shall be denied.

7:13-4.2 Notice

(a) The applicant shall provide notice to those persons described in (a)1 to 5 below, of the filing of an application for a permit under this chapter for projects considered a major project under the 90-Day Construction Permit Rules (N.J.A.C. 7:1C), for projects along trout associated watercourses, for projects exposing acid-producing soils, for projects requesting a hardship exemption and for an appeal of the Department's decision on an application deemed complete for review. The notice shall include a description of the nature and location of the proposed project, data on the application (a copy of the CP-1 form will be acceptable to fulfill these requirements) and a request that written comments be sent to the Department at the address stipulated in N.J.A.C. 7:13-1.5. The notice shall be sent to the following agencies and individuals:

1. The municipal planning board, engineer, construction official, environmental commission and clerk's office of the municipality in which the project is located. Also the municipality across the watercourse and the municipality next downstream on both sides of the waterway, if within one mile of the project must be notified;

2. All property owners within 200 feet of the legal boundary of the property or properties on which the project shall be constructed;

3. The county planning board, county engineer, county environmental commission and county mosquito control commission;

4. The local county Soil Conservation District; and

5. Any other agencies or bodies as requested by the Department or the county.

(b) If the proposed project is a linear facility such as a pipeline or road of more than one-half mile, instead of notifying all property owners within 200 feet of the property lines, the applicant may instead give public notice of the filing of the application in at least one newspaper of local circulation and one newspaper of regional circulation in the municipality in which the property on which the proposed project is located. In addition, notice shall be given to the owners of all real property within 200 feet of any above-surface

structure related to the linear facility, such as pumping stations, treatment plants, power substations, grade separated interchanges or similar structures (not including utility support structures or conveyance lines).

7:13-4.3 Pre-Application conference

(a) A pre-application conference is not required of the applicant but is highly recommended. Department staff will advise the applicant of the areas in which the project may or may not comply with the requirements of this chapter, but under no circumstances shall any discussion at such a meeting compel or estop the Department from approving or denying any application submitted to it for a permit under this chapter.

(b) Pre-application conference requests shall be made in writing by the applicant or its authorized agent and directed to the chief of the region in which the proposed project shall be located at the address stipulated in N.J.A.C. 7:13-1.5. The request shall include sufficient maps, plans, photographs, surveys or other related information to allow the Department to identify major areas of concern under the regulations which might apply to the project.

(c) All applications for permits submitted as a result of such conferences shall list the date of the conference(s) and parties present at each such conference.

(d) A pre-application conference may also be used to deliver an application to the Department to be checked for administrative completeness.

(e) If the proposed project will require other permits from the Department, it is strongly recommended that the applicant first contact the Office of Permit Information and Assistance before filing any single permit application in order to properly coordinate the entire permitting process.

7:13-4.4 Over-the-counter permit processing

One day permit processing is available for certain minor applications to the extent provided for in the 90-Day Construction Permit Rules (N.J.A.C. 7:1C), Department workload permitting.

7:13-4.5 Optional Soil Conservation District review

Certain farming practices which would otherwise constitute regulated activities may be reviewed by the local Soil Conservation District as authorized by the agreement between the Department and the State Soil Conservation Committee in September 1978, entitled "Stream Encroachment Permit Procedures for Soil Conservation District Projects" and any subsequent amendments thereto. A recommendation of approval from the Soil Conservation District under the authority conferred upon the District in this agreement and the engineering plans relied upon by the District in making its recommendation shall be forwarded to the Department.

7:13-4.6 Emergency permit

(a) The Department may issue an emergency permit for a regulated activity only if:

1. Severe environmental degradation will occur or an undue and immediate risk of loss of life or substantial loss of property is more probable than not if the permit is not granted; and

2. There is a high probability that the anticipated threat or loss will occur before the Department can review an application and issue a permit under procedures otherwise required by the Acts, this chapter and other applicable State laws.

(b) The emergency permit shall incorporate the regulatory standards and criteria for non-emergency uses to the greatest extent permissible under the circumstances unique to the site.

(c) Persons applying for an emergency permit shall:

1. Inform the Department by telephone (and if possible facsimile letter) of the nature and extent of work to be performed, the nature and reason for the emergency, the period of time the applicant knew of the circumstances which underlie the emergency, the precise location of the proposed work, the identity of the property owner and whether said owner has given his or her permission for the work to be done;

2. Expeditiously perform the emergency work permitted authorized by the program Administrator or his or her acting designate and advise all planning boards, authorities and nearby property owners, as described in N.J.A.C. 7:13-4.2(a), of the work as soon as possible. The applicant shall also immediately advise the Administrator if the work authorized shall not be done and the reasons why. A verbal permit shall be verified by the Department in writing. Under no circumstances shall the Department or its personnel be liable for any damage to property or loss of life incurred by the applicant or any other nearby property owner as a result of the emergency work authorized under this section; and

3. Upon completion of the work in accordance with the Department's instructions, the applicant shall file a complete application with appropriate fees and "as-built" drawings for Department review to determine if modifications which may include mitigation or stabilization measures are required under this chapter. Upon completion of the review, a formal permit will be issued.

7:13-4.7 Permit application review procedures

(a) Within a maximum of 20 State working days following the date of receipt of an application for a permit under this chapter (other than an emergency permit), the Department shall:

1. Accept the application for filing, assign an agency project number to it, classify the application complete for review and proceed to review it on the merits;

2. Accept the application for filing, assign an agency project number to it, but classify the application as incomplete and request in writing that the applicant submit within a specific period of time specific information to assist the Department in its review of the substantive merits of the application. In such cases, the application will not be considered complete for substantive review until all the information requested by the Department has been received; or

3. Return the application without filing, explaining why it is unacceptable for review, and return the filing fee (if any) if the applicant advises the Department that it does not intend to reapply.

(b) Following the assignment of the agency project number, a report of the "20-day" status of the application pursuant to (a) above will be published in the DEPE Bulletin.

(c) If, while reviewing the merits of an application deemed complete for review, the Department determines that further information is required from the applicant to assess the accuracy of statements in the application or to otherwise determine whether the proposed regulated activity complies with these rules, the Department may, time permitting, permit the applicant to amend the application by submitting this additional information within a specified time, or, deny the application on its merits. Amended applications for permits may be submitted pursuant to (g) below.

(d) The Department will mail a letter granting or denying applications within 90 days of receipt of a complete application or the application will be automatically approved, subject to any standard conditions that apply to the type of development involved.

(e) The Department will grant a one-time 30-day extension of time to the 90-day review period if agreed to by both the applicant and the Department, provided that the applicant or the Department requests, from the other, such an extension either by telephone or in writing prior to the expiration of the 90-day review period. Telephone applications for an extension made by an applicant must be made to the Region head in charge of such applications at the Department or his or her designated agent.

(f) Permits under the jurisdiction of this chapter are valid for five years. If no construction has begun at the end of the five years, application for a new permit is required if the applicant still wishes to undertake the project. The project shall comply with the requirements in effect at the time the newest application for a permit is deemed complete for review. If construction has begun but has not been completed at the end of five years, construction shall cease until the Department has reviewed the applicant's application for a new stream encroachment permit. In that application, the project shall be revised to the greatest extent possible to meet the regulatory requirements in effect at that time.

(g) In the event of a Department denial of an application under this chapter or an applicant's withdrawal of such a permit application, the applicant may, only once, submit an amended application for reconsideration or an amended application containing a request for a hardship waiver under N.J.A.C. 7:13-4.8, one or the other, within

one year of the date of the Department denial and have the previously submitted fee credited to the new application. Additional applications for reconsideration, additional amended applications or requests for hardship waivers shall require the regulatory processing fee in order to be accepted for filing by the Department.

7:13-4.8 Hardship waivers

(a) A waiver from strict compliance with the requirements of this chapter may be granted by the Department for any of the following reasons:

1. Cases in which the Department determines that there is no feasible and prudent alternative to the proposed project, including the no-action alternative, which would avoid or substantially reduce any anticipated adverse effects and where the waiver is consistent with the reasonable requirements of the public health, safety and welfare;

2. Cases in which the Department determines that the costs of strict compliance are unreasonably high in relationship to the benefits achieved by strict compliance; or

3. Cases in which the Department and applicant agree to alternative requirements that, in the judgment of the Department, provides better protection to the public health, safety and welfare.

(b) A public hearing concerning the waiver application shall be required upon request by the Department or at least five members of the public.

(c) Except as otherwise provided in this chapter, a delegated agency may grant waivers in accordance with this subsection. Where granted, such waivers are subject to the appeal procedures in N.J.A.C. 7:13-4.10.

(d) In order for the Department to grant a hardship waiver, the applicant shall demonstrate the following:

1. That by reason of the extraordinary or exceptional situation or condition of the property, the strict enforcement of this chapter would result in exceptional and undue hardship upon the applicant in question;

2. That the waiver will not substantially impair the appropriate use or development of adjacent property and will not pose a threat to the environment or public health, safety and general welfare; and

3. That the exceptional or undue hardship claimed as grounds for the waiver has not been created by the applicant or persons under his or her control.

(e) The applicant shall submit with an application for a hardship waiver as much of the following information as is relevant to the project:

1. A plan for flood proofing the structure to be constructed, the implementation of which shall be a condition of the waiver;

2. Proof that appropriate steps shall be taken to anchor structures as mandated by the Uniform Construction Code and local building and construction codes in order to prevent flotation, collapse, or lateral movement;

3. An analysis of the consistency between the proposed project and the goals, objectives and limitations of the comprehensive land use plan and flood plain program applicable to the area;

4. Proposed routes to and from the property during floods;

5. The projected height, velocity and duration of the flood waters expected at the site during the regulatory flood;

6. The type of soil(s) at the proposed site;

7. A statement concerning the current and post-construction land use and value assuming the waiver is granted, including a present-worth cost benefit analysis, and the same analysis assuming denial the hardship waiver;

8. A description of the existing development in the area and the impact of the proposed work on that development;

9. Evidence that the project will not distort or reduce the affected watercourse's flood carrying capacity so as to cause significant flooding problems both upstream and downstream from the proposed project;

10. An analysis of the extent to which the sediment regime and water quality of the watercourse will be affected by the proposed waiver; and

11. A description of the potential effects of the project upon the environment, assuming the waiver is granted.

(f) The applicant shall also submit proof of public notice for consideration for a hardship waiver as required by N.J.A.C. 7:13-4.2.

(g) The applicant shall submit the request for a waiver along with the appropriate documentation to the Department.

1. The Department shall notify the applicant of the results of its review within 90 days of the receipt of an application deemed complete for substantive review by the Department.

2. Before making a decision on a request for a waiver of strict compliance, the Department may request the applicant to provide additional information and/or documentation as provided in N.J.A.C. 7:13-4.7(a).

(h) The denial of a waiver shall be without prejudice. However any additional application for relief under this section shall be accompanied by a new fee in order to be accepted for filing by the Department.

(i) A hardship waiver granted pursuant to this section does not relieve the applicant from obtaining any other approvals, certifications or permits required by Federal, State or local law.

7:13-4.9 Permit modification procedures

(a) There shall be no modifications to Department-approved plans or any permit condition without the express written permission of the Department. Six sets of plans accompanied by a letter requesting the modification and a fee as specified in the 90-Day Construction Permit Rules (N.J.A.C. 7:1C) are required to apply for modification of a permit condition or any approved plan. Only items already approved on the original permit may be modified.

(b) Modifications to Department-approved projects that will affect the hydraulic capacity of the watercourse shall not be considered or approved by the Department under this section. Such modifications must be contained in a new application for a new Permit and must comply with the regulations in effect on the date that the new permit application is deemed complete for review.

7:13-4.10 Appeal procedure to the Department

(a) Any person who considers himself or herself aggrieved by the approval or denial of an application for a permit may, within 10 days of publication of notice of the decision in the DEPE Bulletin, or within 10 days of publication of notice of the decision by the permittee pursuant to (b) below, whichever occurs first, direct a written request for a hearing to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.

1. The written request for a hearing on appeal shall include the appropriate agency project number and, where the appeal is taken by someone other than the applicant, evidence that a copy of the written request for hearing an appeal has been mailed to the applicant/permittee.

2. Within 14 days of the date on which the initial request for a hearing was postmarked, the person appealing the decision shall submit an additional statement describing, in detail, how that person is aggrieved by the decision, and which findings of fact and conclusions of law are being challenged.

(b) A permittee may publish notice of the Department's final decision in a newspaper of Statewide circulation and a newspaper of regional circulation which includes the municipality in which the project site is located. The permittee shall provide a copy of the Department's decision to any person who requested such notice by certified mail. The Department shall maintain a list of such newspapers and a list of all persons who have requested notice of the decision.

(c) Pending appeal of the Department decision and the Commissioner's final decision on the appeal, a person may apply to the Commissioner for a stay of the issuance of a permit by written request and for good cause shown therein. The Commissioner may stay the issunce of the permit upon such terms and conditions as the Commissioner may deem proper in his or her sole discretion. The request for stay of issuance of the permit shall be made within 21 days of the issuance of the Department approval of the permit application.

(d) Where a request for a hearing concerning a Department decision on a permit application has been granted by the Depart-

ment, the request shall be referred to the Office of Administrative Law for a fact-finding hearing if required pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), after which, the Commissioner shall issue a final decision adopting, rejecting or modifying the findings of fact and conclusions of law of the administrative law judge, within the time frame specified in N.J.S.A. 52:14B-10.

7:13-4.11 Permit application review by delegated agencies

When authority to approve certain types of regulated activities is delegated in writing by the Department to another agency under provisions of this chapter and the Acts, that agency shall apply the standards and criteria of this chapter to all matters arising under the jurisdiction of this chapter which have been delegated to that agency.

SUBCHAPTER 5. IMPLEMENTATION

7:13-5.1 Consistency with other requirements in permit review

(a) A permit under this chapter is expressly conditioned upon the permittee complying with all other applicable Federal, State and local statutes, rules and regulations, orders, standards, plans, and ordinances which may apply to the work necessary to accomplish the proposed project, and obtaining all other permits, licenses or approvals required for the work which is a part of the proposed project. The issuance of a permit pursuant to this chapter shall not obligate the Department to grant or deny an application by the permittee for any other license, permit or approval issued by the Department.

(b) In cases where the Department has not delegated authority under N.J.A.C. 7:13-5.3, no local agency or employee thereof shall grant any application for development as defined in the "Municipal Land Use Law" (N.J.S.A. 40:55D-1 et seq.) for an activity regulated under this chapter until an application for a permit under this chapter has been approved by the Department.

7:13-5.2 Creation of a county water resources association

The governing body of any county may, by ordinance or resolution, as the law may provide, create a county water resources association to discuss and coordinate county flood control and water management programs, to advise the county governing body on these issues and to undertake any other such duties concerning water management as the county governing body may legally delegate to it by ordinance or resolution. Members of this Association shall be appointed by the county governing body and may include the chief administrative officer or executive of any county planning agency, county engineer's office, county utility authority, county health department, county mosquito commission, county soil conservation district, county parks agency and any other person with relevant experience or training.

7:13-5.3 Delegation of power to counties

(a) Except as otherwise expressly provided in this chapter, the Department may delegate its authority to review and decide any application made to it pursuant to this chapter as well as its power to enforce any aspect of its legal obligations arising under the Acts to a county governing body which shall expressly agree to accept such designation, and follow the rules stated herein, and which, in the Department's judgment, retains those employees with professional training and education capable of properly administering the provisions of this chapter.

1. A county wishing to apply for authority to issue permits pursuant to the provisions of this chapter or to undertake enforcement of any of the provisions of this chapter shall submit a written request to the Department and specifically describe those aspects of the permitting and enforcement authority of the Department under this chapter which it wishes to assume. The county shall also submit evidence of a formal approval by the county governing body agreeing to apply for delegation of the authority or obligations described in the application and agreeing to adopt, in the event the request is granted, an ordinance or resolution containing all provisions of this chapter relevant to the duties and obligations to be assumed by the county. The request shall also describe in detail the personnel, physical resources and source and amount of funding by which the county shall fulfill the obligations the county wishes to assume.

2. A county to which permitting authority or enforcement obligations have been delegated pursuant to this subsection shall preserve, for the Department review, all documents, plans, maps, memoranda and notes as necessary which document that it has discharged its delegated duties in accordance with the applicable provisions of this chapter.

3. The Department shall review the county records pertaining to all duties delegated to the county under this subsection at least once every 365 days after the date of the formal delegation of duties to the county, and may at any time revoke such delegation if, in the judgment of the Department, the county has failed to properly administer powers delegated to it, which may include a failure to maintain the records stipulated in (a)2 above.

4. The county governing body to which permitting functions under this chapter have been delegated shall not charge fees in excess of those promulgated by the Commissioner pursuant to N.J.S.A. 13:1D-33.

(b) The Department shall not delegate the powers to review or decide any application for a permit pursuant to this chapter filed by a State agency.

7:13-5.4 Penalties

Any person who violates a provision of this chapter shall be subject to penalty and injunctive relief, as applicable, pursuant to N.J.S.A. 58:16A-63 and 58:10A-1 et seq.

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. DELINEATED FLOODWAYS

(OAL NOTE: The text of proposed N.J.A.C. 7:13-7.1 includes no changes from N.J.A.C. 7:13-7.1 currently in the New Jersey Administrative Code. Given the extensive text of these rules, its text is not reproduced as part of this proposal, but may be found in the New Jersey Administrative Code.)

(a)

ENVIRONMENTAL REGULATION—LAND USE REGULATION PROGRAM

Flood Hazard Area Control Rules

Proposed Readoption: N.J.A.C. 7:13

Authorized By: Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 58:16A-50 et seq., 58:10A-1 et seq. and 13:1D-1 et seq.

DEPE Docket Number: 07-94-01.

Proposal Number: PRN 1994-117.

Submit written comments, identified by the Docket Number given above, by March 24, 1994, to:

Janis Hoagland, Esq.
Administrative Practice Officer
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

Under Executive Order No. 66(1978), the Flood Hazard Area Rules at N.J.A.C. 7:13 expire on July 17, 1994. As required by Executive Order No. 66, the Department of Environmental Protection and Energy (Department) has reviewed these rules and has determined that they are necessary, reasonable, and proper for the purpose for which they were originally promulgated. However, the Department also recognizes that substantial amendments to N.J.A.C. 7:13 are necessary.

Time constraints dictate that the Department propose to readopt the existing rules in order to prevent their expiration under Executive Order No. 66(1978), while the Department proposes to repeal and repromulgate N.J.A.C. 7:13 elsewhere in this issue of the New Jersey Register. The Department is proposing to repromulgate N.J.A.C. 7:13 with significant amendments to make the rules easier to understand, to reflect the structural changes within the Department and to bring the regulations into compliance with relevant court decisions and actual agency procedure which has evolved since the initial adoption in 1984.

In light of the limited purpose of this proposed readoption, the Department requests that interested persons direct their comments concerning N.J.A.C. 7:13 generally to the parallel proposal to repromulgate the chapter in a substantially revised form.

The flood hazard area rules were adopted effective May 21, 1984, as part of an extensive amendment and recodification of existing rules governing delineated floodways. The stream encroachment permit program authorized by the flood hazard area rules is administered by the Land Use Regulation Program. Not all stream encroachments require approval of the Stream Encroachment Section in the program. For stream locations with a drainage area less than 320 acres and for general stream cleaning and maintenance projects, the rules require approval by local or county authorities. Also, the rules allow local Soil Conservation Districts to review certain farming practices which would otherwise constitute stream encroachments. Last, the rules allow the Department to delegate regulatory authority over the flood fringe areas of delineated streams to municipal governments.

A summary of the provisions of each subchapter of N.J.A.C. 7:13 follows:

Subchapter 1, General provisions, describes the purpose, scope, construction, and applicability of the chapter, defines terms used in the chapter, and states where to find information on the permit process.

Subchapter 2, General Procedures for the Stream Encroachment Permitting Process, describes the stream encroachment permit process as follows: N.J.A.C. 7:13-2.1 lists the information required on all stream encroachment applications submitted to the Department. N.J.A.C. 7:13-2.2 states when and to whom notice of a stream encroachment permit application is due. N.J.A.C. 7:13-2.3 describes the pre-application conference. N.J.A.C. 7:13-2.4 describes over-the-counter permit processing. N.J.A.C. 7:13-2.5 addresses optional approval by local municipal or county engineers for projects in small drainage areas. N.J.A.C. 7:13-2.6 addresses approval by Soil Conservation Districts for certain agricultural projects. N.J.A.C. 7:13-2.7 contains the procedure for obtaining an emergency permit waiver. N.J.A.C. 7:13-2.8 describes the Department's permit application review procedures. N.J.A.C. 7:13-2.9 outlines the procedure for applying for a hardship waiver for exemption from the permit process. N.J.A.C. 7:13-2.10 addresses extensions of time or modifications in detail for stream encroachment permits which have already been issued. N.J.A.C. 7:13-2.11 describes the procedure for requesting a hearing to appeal an adverse decision on a permit application. N.J.A.C. 7:13-2.12 addresses the extent of the Department's authority when it delegates permit authority to other agencies.

Subchapter 3, General Standards for Permitting Stream Encroachment Within the Floodways of Delineated Streams and Within Encroachment Lines of Non-delineated Streams, sets forth prohibited uses and restrictions on regulated activities within these zones. N.J.A.C. 7:13-3.1 lists prohibited uses in the floodway of delineated streams or within encroachment lines of non-delineated streams. N.J.A.C. 7:13-3.2 lists non-regulated uses within the floodway of delineated streams or within encroachment lines of non-delineated streams. N.J.A.C. 7:13-3.3 states that uses not covered by N.J.A.C. 7:13-3.1 and 3.2 are regulated uses, subject to the provisions of this chapter. N.J.A.C. 7:13-3.4 outlines when and what types of soil erosion and sediment control measures are required on projects coming within the jurisdiction of this chapter. N.J.A.C. 7:13-3.5 prohibits the unnecessary removal of vegetation within 25 feet of the bank of a stream, and the disposal of vegetative waste within the floodway. N.J.A.C. 7:13-3.6 contains guidelines for stream cleaning projects within the flood hazard area. N.J.A.C. 7:13-3.7 governs excavation projects within the flood hazard area. N.J.A.C. 7:13-3.8 restricts disposal of spoils within the flood hazard area.

N.J.A.C. 7:13-3.9 prohibits off-stream retention and detention basins in the floodway, and requires that basins be designed in accordance with the Stormwater Management Rules at N.J.A.C. 7:8. N.J.A.C. 7:13-3.10 contains guidelines on channel modification of streams. N.J.A.C. 7:13-3.11 sets forth requirements for underground utility crossings under streams. N.J.A.C. 7:13-3.12 governs aboveground utility crossings which cross streams. N.J.A.C. 7:13-3.13 sets stability criteria for structures constructed in floodways. N.J.A.C. 7:13-3.14 requires that fish passage be maintained whenever channel modifications are proposed as part of the stream encroachment project. N.J.A.C. 7:13-3.15 governs dams under the jurisdiction of this chapter.

Subchapter 4, Regulation of Stream Encroachments in the Flood Fringe Area of Delineated Streams Between the Encroachment Lines and the Boundaries of the 100-year Flood Plain of Non-delineated Streams, contains the procedure for delegating the Department's permit authority to municipalities and describes prohibited uses and restrictions on regulated activities within these zones. N.J.A.C. 7:13-4.1 contains general guidelines for projects in the flood fringe area of delineated streams and outside the encroachment lines but within the 100-year flood plain of non-delineated streams. N.J.A.C. 7:13-4.2 allows municipalities to assume regulatory authority over the flood fringe area by adopting a flood fringe area ordinance complying with the minimum standards of this chapter, the National Flood Issuance Program and Federal "Criteria for Land Management and Use," 44 CFR 603(a) through (d). N.J.A.C. 7:13-4.3 sets forth the application procedures for obtaining permits from municipalities which have adopted a compliant flood fringe ordinance. N.J.A.C. 7:13-4.4 requires delegated municipalities to establish appeal procedures for applications in flood fringe areas. N.J.A.C. 7:13-4.5 lists prohibited uses in the flood fringe area of delineated streams and outside the encroachment line but within the 100-year flood plain of non-delineated streams. N.J.A.C. 7:13-4.6 lists non-regulated uses in the flood fringe area of delineated streams and outside the encroachment line but within the 100-year flood plain of non-delineated streams. N.J.A.C. 7:13-4.7 regulates all uses not specifically prohibited or not regulated by N.J.A.C. 7:13-4.5 and 4.6. This section lists specific requirements for structures, fill, soil erosion, and sediment control, excavation, disposal of spoils, retention and detention basins, manholes, minimization of environmental damage and sewage disposal. This section also contains the 20 percent "net fill" requirements, the zero "net fill" requirement for the Central Passaic Basin, access requirements for the Central Passaic Basin, access requirements for certain types of structures, and the requirement that the retention and detention basins be designed in accordance with the Stormwater Management Rules at N.J.A.C. 7:8.

Subchapter 5, Special Cases, governs Projects of Special Concern, which are certain stream encroachment projects with potentially serious adverse effects on the environment. N.J.A.C. 7:13-5.1 contains general provisions regarding Projects of Special Concern. N.J.A.C. 7:13-5.2 lists criteria for determining Projects of Special Concern. N.J.A.C. 7:13-5.3 sets forth procedural requirements applicable to Projects of Special Concern. N.J.A.C. 7:13-5.4 lists conditions that must be met before a permit for a Project of Special Concern can be approved. N.J.A.C. 7:13-5.5 states that low dams are subject to the requirements of N.J.A.C. 7:13-5.3(d), which encourages an applicant to participate in a pre-application conference, and N.J.A.C. 7:13-5.3(e), which requires a fact-finding meeting be held prior to the Department's final decision, whether or not the project is classified as a Project of Special Concern. N.J.A.C. 7:13-5.6 governs projects along trout streams. N.J.A.C. 7:13-5.7 requires stream encroachment projects to comply with the provisions for protection of coastal fish resources in the Department's Coastal Resource Development Policies (now titled Coastal Zone Management) at N.J.A.C. 7:7E. N.J.A.C. 7:13-5.8 requires stream encroachment projects to comply with the shellfish protection provisions of the Department's Coastal Resource Development Policies (now titled Coastal Zone Management) at N.J.A.C. 7:7E. N.J.A.C. 7:13-5.9 states that bridge approaches are considered part of the permit application for bridge projects. N.J.A.C. 7:13-5.10 governs projects which may expose acid-producing deposits.

Subchapter 6, Implementation, contains general procedures for the stream encroachment permit program. N.J.A.C. 7:13-6.1 requires that stream encroachment projects be consistent with other applicable rules in addition to these rules, and states that stream encroachment permits are not valid until all other applicable approvals are obtained. N.J.A.C. 7:13-6.2 allows counties to create county water resources associations to oversee flood control and water resources programs. N.J.A.C. 7:13-6.3 contains procedures by which the Department can delegate stream encroachment permitting to the counties. N.J.A.C. 7:13-6.4 provides that violators of these rules are subject to the penalties pursuant to the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

Subchapter 7, Delineated Floodways, lists delineated floodways by type.

Social Impact

The readopted chapter will have a positive effect on the people of the State by continuing the State's regulation of construction and other activities in flood prone areas. The existing rules have provided positive social benefits in the following ways: minimizing loss of and damage to public and private property which would otherwise have been caused by land uses which increase flood water heights and/or velocities; safeguarding the public from damage caused by materials being swept onto nearby or downstream lands; protecting the public health by minimizing stream water quality degradation during flooding incidents; and preserving wetlands and wetland associated natural values (for those projects not coming under the jurisdiction of the freshwater wetlands rules, N.J.A.C. 7:7A, effective July 1, 1988). These positive social impacts have been realized by both the general public and those property owners who might otherwise have been subject to flood-related damages.

Economic Impact

Readoption of the existing flood hazard control rules will continue to provide economic benefits for some property owners and the public in general, while continuing to impose costs on prospective builders within the flood hazard area. By reducing damages to persons and public and private property in the event of a flood, the flood hazard area rules have had a positive economic impact on property owners within the flood hazard area and on the general public. Without the flood hazard area rules, property owners within the flood hazard area would be subject to potential financial loss as a result of the increased flooding, and it is likely that a substantial portion of this financial burden would be passed on to local municipalities, counties and the State.

The readopted chapter will continue to have several types of economic impact on applicants for stream encroachment projects. Property owners within the flood hazard area will be subject to regulation and/or prohibition of certain types of land use, which may reduce the development value of their property. For those projects requiring approval from the Department, applicants will incur application fees (see N.J.A.C. 7:1C-1.5(a)4) and the engineering fees associated with preparing the application. Application fees for stream encroachment permits range from no fee to $200.00 to $2,000 per project element; engineering fees for a single-family dwelling project may reach $4,000 to $5,000. Construction costs on certain projects may increase as a result of modifying structures or whole projects to comply with the flood hazard area rules. Also, the rules require additional public notice for projects of special concern at the applicant's expense. Losses in property value and the compliance costs associated with the flood hazard area rules may be offset by the economic loss avoided as a result of regulating inappropriate uses of the flood hazard area.

Environmental Impact

The existing flood hazard area rules contain a number of provisions designed to mitigate adverse environmental impacts that would otherwise be caused by stream encroachment activities; readopting this chapter will continue to minimize the environmental impact of activities in the flood hazard area. Depending on the nature and/or location of a proposed activity, the existing rules require some applicants for stream encroachment projects to submit an Environmental Report describing and analyzing the possible short- and long-term impacts of proposed activities. The Department estimates that Environmental Reports have been required for 30 percent of current project applications.

In a similar fashion, the existing rules designate certain projects of potential substantial environmental impact as Projects of Special Concern. Projects of Special Concern are subject to special public notice provisions, and the Department cannot delegate permit approval authority for these projects. Because of their potentially serious adverse effect, Projects of Special Concern are not approved unless denial of the application would damage the public interest, cause hardship to the applicant, or produce costs disproportionately large relative to the adverse effects of the project.

In addition, all projects within the flood fringe area or corresponding area of a nondelineated stream are subject to a 20 percent net fill limitation during construction (see N.J.A.C. 7:13-4.7). This provision minimizes the artificial increases in flood heights which result when valley storage is eliminated by unrestricted filling of flood fringe areas, thereby minimizing environmental degradation of the flood hazard area.

Several provisions of the existing flood hazard area rules were promulgated specifically to minimize the environmental impacts of stream encroachment activities on fish and wildlife. First, the flood hazard area rules establish construction criteria and seasonal restrictions for stream encroachment in various types of trout-related streams. Second, the Department requires applicants to maintain fish passage in all streams where channel modifications occur. Third, the existing rules impose special restrictions in areas where construction in the flood hazard area may expose acid-producing geologic deposits; these restrictions act to minimize fish kills and environmental damage from acidic releases. Fourth, the existing rules address soil erosion and sediment control, protection of near-stream vegetation, and stream cleaning; these provisions ensure stream channel integrity and provide habitat protection for fish and wildlife. Fifth, stream encroachment projects are required to comply with the Department's coastal fish protection and shellfish protection policies (see N.J.A.C. 7:13-5.7 and 5.8, and N.J.A.C. 7:7E).

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that approximately 55 percent of builders and property owners affected by the proposed readoption will be "small businesses" employing fewer than 100 full-time employees. To comply with the readopted rules, affected small businesses may have to submit an application for a stream encroachment permit, which may require engineering support work, legal assistance, and assistance in evaluating the environmental impact of this project. As per the Ninety-Day Construction Permits rules, N.J.A.C. 7:1C-1.5(a)4, application fees for stream encroachment permits range from no fee to $200.00 to $2,000 per project element. Engineering fees for a single family dwelling project may reach $4,000 to $5,000; legal fees and consulting fees will vary widely depending on the complexity of the project. The Department anticipates that small businesses will not incur additional capital costs in complying with the readopted rules.

In developing the existing rules, the Department balanced the need to protect the public and the environment from the adverse impacts of unregulated development in the flood hazard area against the economic impact of the rules. The Department has determined that to minimize the impact of the flood hazard area rules on small businesses would endanger public health, public safety, and the environment. Given the purpose of these rules to abate increased flood damage potential due to development, a reduction and/or differentiation in requirements based upon business size alone may well result in diminution of the rules' effectiveness, leading to a greater flood hazard as development progresses. Therefore, no exemption from coverage was provided in the existing rules, and there is no basis for exempting small businesses in the proposed readoption.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:13.

(a)

DIVISION OF WATER QUALITY

Water Pollution Control Act Rules

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

Authorized By: Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 13:1D-9, 58:10A-1 et seq., 58:10A-21 et seq., 58:11-49 et seq., 58:11-64 et seq., 58:1A-1 et seq., P.L. 1988, c.56, 57, and 63.

DEPE Docket Number: 03-94-01/28.

Proposal Number: PRN 1994-109.

Submit written comments, identified by the Docket Number given above, by March 24, 1994 to:

Janis E. Hoagland, Administrative Practice Officer
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:14, entitled "Water Pollution Control Act," expires on April 27, 1994. As required by Executive Order No. 66, the Department of Environmental Protection and Energy ("Department") has reviewed the rules and determined them

to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Department proposes to readopt N.J.A.C. 7:14 without amendments.

N.J.A.C. 7:14-1, 3, 5 and 7 are "Reserved."

N.J.A.C. 7:14-2, Construction of Wastewater Treatment Facilities, was originally adopted pursuant to the authority of N.J.S.A. 58:10A-1 et seq. (see 14 N.J.R. 1155(b)) and became effective on October 18, 1982. These rules were readopted without amendments and became effective on April 27, 1989 (see 21 N.J.R. 1530(a)). The rules standardize certain procedures in the construction of wastewater treatment facilities. N.J.A.C. 7:14-2 sets forth requirements for construction procedures, drawings for sewer lines, permits, easements, field layouts, engineering designs, overhead and profit factors, contractor payments, mobilization in contracts, bid items, unit prices, roadway paving, excavation material, construction equipment and contractor's guarantees. The Department proposes to readopt these rules without change.

N.J.A.C. 7:14-4, Sludge Quality Assurance, was originally adopted pursuant to the authority of N.J.S.A. 13:1D-9(c), 58:10A-1 and 58:11-51 (see 11 N.J.R. 544(e)) and became effective on October 18, 1979. The rules were readopted with amendments and became fully effective on June 5, 1989 (see 21 N.J.R. 1530(a)). The rules require routine analysis and reporting on all sludge produced by domestic and industrial treatment works.

The Department is responsible for administering a regulatory program that ensures the safe use and management of sludge generated by all treatment works in order to protect public health and the environment. On February 19, 1993, under authority of Sections 405(d) and (e) of the Clean Water Act (CWA), as amended (33 U.S.C. 1251 et seq.), the U.S. Environmental Protection Agency promulgated regulations (40 CFR Part 503) to protect public health and the environment from any reasonably anticipated adverse effects of certain pollutants that may be present in sewage sludge. The Department is currently working on amendments to the New Jersey Pollutant Discharge Elimination System (NJPDES) rules at N.J.A.C. 7:14A to resolve conflicts between the existing State sludge program requirements and the new Federal sludge program requirements. Of fundamental importance is the need to control sludge quality. In addition, the Water Pollution Control Act, at N.J.S.A. 58:10A-6(f)(7), directs the Department to issue permits to limit concentrations of heavy metals, pesticides, organic chemicals and other contaminants in sludge in conformance with land-based sludge management criteria. Preventing the contamination of sludge before it is used or disposed of is more equitable and efficient than requiring others to contain the contaminated sludge or to deal with the consequences.

Based on the above, the Department is proposing to readopt the Sludge Quality Assurance rules at N.J.A.C. 7:14-4. However, the Department is not proposing any changes at this time. In addition to the Department's efforts to amend the NJPDES rules at N.J.A.C. 7:14A, the Department is currently conducting studies to evaluate the analytical methods for the analysis of constituents in sludge. After completion of these initiatives, the Department anticipates proposing appropriate amendments to the Sludge Quality Assurance rules, which are anticipated to be proposed in the summer of 1995.

N.J.A.C. 7:14-8, Civil Administrative Penalties and Requests for Adjudicatory Hearings, was adopted pursuant to the authority of N.J.S.A. 58:10A-10, 58:11-71, 58:1A-16 and 58:10A-32 (see 20 N.J.R. 1884(a)) and became effective originally on August 1, 1988. These rules implement P.L. 1988 c.170, which increased the maximum civil administrative penalties for violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. N.J.A.C. 7:14-8 sets forth the procedures for the assessment, payment and settlement of civil administrative penalties, the procedures to request and conduct an adjudicatory hearing and the procedures to determine civil administrative penalties.

Amendments to N.J.A.C. 7:14-8 were adopted, effective August 5, 1991 (see 23 N.J.R. 1089(a) and 23 N.J.R. 2366(a)) to reflect the legislative requirements that the Department assess certain mandatory minimum penalties for violations of the Water Pollution Control Act as amended by the Clean Water Enforcement Act (P.L. 1990, c.28). Based on input received during the comment period on those amendments, additional amendments to N.J.A.C. 7:14-8 were adopted, effective April 6, 1992 (see 23 N.J.R. 2238(a) and 24 N.J.R. 1334(a)), which included additional program clarifications regarding pH and definitions. The Department now proposes to readopt the provisions of N.J.A.C. 7:14-8 without change.

Social Impact

The proposed readoption of N.J.A.C. 7:14-2, concerning the construction of wastewater treatment facilities, will continue to affect local governments, sewerage and utilities authorities, engineering consultants and construction contractors. The proposed readoption of these rules will have a positive impact on those affected because the standardization of certain procedures in the construction of wastewater treatment facilities will facilitate compliance with the regulatory provisions and the Department's funding program requirements.

The proposed readoption of N.J.A.C. 7:14-4 will maintain a positive social impact by continuing the Department's efforts to control sludge quality.

The Department's proposed readoption of N.J.A.C. 7:14-8 will continue to have a positive social impact by discouraging noncompliance with the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, the Water Supply and Wastewater Operators' Licensing Act and the Water Supply Management Act. The proposed readoption will continue to allow potential violators to more adequately understand the penalties involved with noncompliance.

Economic Impact

The proposed readoption of N.J.A.C. 7:14-2 will continue the cost reductions to governmental agencies, funding recipients, engineering consultants and construction contractors provided by the original adoption of the subchapter. Standardizing the procedures in the construction of wastewater treatment facilities will provide a uniform and efficient system for design and construction.

The proposed readoption of N.J.A.C. 7:14-4 will continue to require reporting on a basis that is proportional to the potential to cause harm to human health or the environment as provided for in the existing rule. In other words, larger treatment works are required to report more frequently than smaller treatment works.

The economic impact of N.J.A.C. 7:14-8 will continue to be confined to the violators of the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, the Water Supply and Wastewater Operators' Licensing Act and the Water Supply Management Act. The extent of the economic impact on violators will continue to depend on the conduct of the violator, the seriousness of the violation and the particular provisions violated.

Environmental Impact

The Department expects positive environmental impacts from the proposed readoption of N.J.A.C. 7:14-2. The standardization of the construction of wastewater treatment facilities will continue to ensure that the environmental protection requirements in the construction standards are met. Efficient construction of these treatment facilities will result in more environmentally sound wastewater treatment construction practices.

The Department expects positive environmental impacts from the proposed readoption of N.J.A.C. 7:14-4. The sludge quality information obtained through these rules will continue to be utilized by the Department and the various treatment works to develop acceptable sludge management alternatives. Preventing the contamination of sludge before it is used or disposed is more equitable than requiring others to contain the contaminated sludge or deal with the consequences.

With the proposed readoption of N.J.A.C. 7:14-8, the Department expects continued positive environmental impact because the rules serve as a strong deterrent to those who would violate New Jersey's environmental statutes and provide the regulated community with the incentive to conduct their activities in conformance with the Department's rules.

Regulatory Flexibility Analysis

The proposed readoption of N.J.A.C. 7:14-2 would apply to sewerage and utilities authorities, engineering consultants and construction contractors, many of which are considered to be "small businesses" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to comply with these rules, the small businesses must design and construct the wastewater treatment facilities in accordance with standardized procedures. The cost of compliance with these rules is anticipated to decrease the cost associated with the construction of wastewater treatment facilities because the standardized procedures will eliminate redundant and unnecessary procedures. Due to the standardization of the construction procedures, the compliance requirements of the rules are uniform in their application to those regulated. The Department has determined, in order to protect human health and the

environment from the pollutants in wastewater, that it would not be appropriate to take into consideration the size of a business involved in the construction of wastewater treatment facilities. The Department has balanced the need to protect the environment against the economic impact of N.J.A.C. 7:14-2 and has determined that to minimize the impact on small businesses would endanger the environment, public health and public safety and, therefore, no exemption from coverage is provided.

The proposed readoption of N.J.A.C. 7:14-4 applies to those businesses which operate a domestic or industrial treatment works. There are currently an estimated 450 domestic treatment works and 800 industrial treatment works required to report under the Sludge Quality Assurance rules, many of which could be considered "small businesses" as defined by the New Jersey Regulatory Flexibility Act. The cost of compliance will vary, depending on the number of constituents required to be analyzed. In developing the rules, the Department has provided differing reporting requirements based on the size of the facility for domestic treatment works (see N.J.A.C. 7:14-4.5, 4.7 and 4.11) and has provided a means for reducing the reporting requirements for industrial treatment works (see N.J.A.C. 7:14-4.7 and 4.11). The proposed readoption retains these requirements.

This proposed readoption, specifically considering the provisions of N.J.A.C. 7:14-8, will not impose additional reporting, recordkeeping or other compliance requirements on small businesses operating in compliance with the Water Pollution Control Act and the rules promulgated thereunder. The purpose of N.J.A.C. 7:14-8 is to set forth the procedures used by the Department to assess civil administrative penalties against violators of various environmental statutes. Businesses, be they large or small, will not be required to comply with the requirements of these rules as long as they do not violate the various environmental statutes and accompanying rules. With respect to the requirements for notices of affirmative defenses to be raised in adjudicatory hearings, there are no initial capital costs for compliance; the cost of providing the requisite notice is minimal. These minimal costs cannot be reduced for small businesses without risk to public health, safety, welfare and the environment.

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

(a)

DIVISION OF FISH, GAME AND WILDLIFE ENDANGERED AND NONGAME SPECIES PROGRAM

Regulations Implementing the Wild Bird Act of 1991

Possession of Wild-caught Bird Species for Breeding, Zoological, Scientific or Educational Purposes

Banding of Birds; Alterations of Appearance

Bird Breeder Permit; Permit Fee

Bird Hobby Permit; Permit Fee

Permit Required; General Possession Criteria; Miscellaneous Provisions; Notice of Denial of Permit, Procedure, Review, Time Limitations, Hearings

Proposed New Rules: N.J.A.C. 7:25-4.19 and 4.20

Proposed Amendments: N.J.A.C. 7:25-4.1, 4.2, 4.4, 4.6, 4.7, 4.11, 4.12, 4.14 and 4.15

Authorized By: Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 23:4-50, 2A-58-1 et seq., 13:1B-30 et seq. and 23:1-1 et seq.

DEPE Docket Number: 68-93-12/169.

Proposal Number: PRN 1994-71.

Submit written comments, identified by the Docket Number given above, by March 24, 1994 to:

Janis Hoagland
Office of Legal Affairs
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Proposed new rules N.J.A.C. 7:25-4.19 and 4.20 implement The Wild Bird Act, P.L. 1991, c.253, which amends N.J.S.A. 23:4-50 and bans the acquisition and sale of wild-caught birds, effective December 10, 1991. The proposed rules control all aspects of the wild-caught bird ban and establish a new permit category to allow exception to the rule for breeding legally possessed wild-caught birds. New criteria for possession and transfer of legally possessed wild-caught birds are established and shall also apply to permits for possession of birds for zoological, exhibition, scientific or educational purposes. The Act and regulations promote the captive-breeding of birds and thereby reduce the number of birds taken from their natural habitat for use in the animal dealing trade, thus conserving and increasing their number. To finance personnel and equipment to implement and enforce the Act, N.J.A.C. 7:25-4.6(c) is amended to increase the hobby permit fee for those hobbyists possessing birds from $10.00 to $20.00. Authority to increase permit fees to meet these expenses is set forth in N.J.S.A. 23:2A-5(b).

Other amendments to this subchapter clarify the intent of the regulations. At N.J.A.C. 7:25-4.1, definitions for "butt-end band," "captive-bred bird," "color mutation," "seamless leg band" and "wild bird" are added. N.J.A.C. 7:25-4.2 and 4.12 clarify the reasons for denial, suspension or revocation of a permit and clarify the rights of applicants to appeal according to Administrative Procedures Act and the Uniform Administrative Procedures Rules of Practice. N.J.A.C. 7:25-4.4 is amended to conform the number and names of species exempt from permit requirements with those exempt from the Act. Amendments to N.J.A.C. 7:25-4.6 create a bird breeder permit, simplify the permit fee list and describe annual reporting requirements for hobby, scientific holding, animal exhibitor and animal theatrical agency permittees consistent with other permit categories. N.J.A.C. 7:25-4.7 is amended to clarify the requirement to provide veterinary care to licensed species. N.J.A.C. 7:25-4.9 is amended to clarify the Division's policy to deny permits to possess potentially dangerous species when animals of any species (including birds) are maintained in situations which adversely affect their health or which could constitute a hazard to the public. The language previously contained in N.J.A.C. 7:25-4.11(b) has been moved to N.J.A.C. 7:25-4.2 in order to place all provisions concerning suspensions and revocations of permits under a single section and thereby clarify the rights of the permittee. N.J.A.C. 7:25-4.11(b) is reserved for future use. N.J.A.C. 7:25-4.14 and 4.15 are amended to articulate the requirements for sponsors of applicants for a permit to possess endangered species of animals and to ensure that animals (including birds) are possessed by responsible persons who are likely, under supervision, to produce scientifically reliable data of use to the zoological community working to conserve that species of animal.

Social Impact

Regulating the acquisition and sale of wild-caught birds will have a positive social impact by greatly reducing public access to wild-caught birds, including those which have been smuggled into this country illegally. While these regulations will make various rare species of birds difficult to obtain, New Jersey residents may obtain a large variety of other bird species to breed or simply possess. Any number of birds may be possessed (or bred) under a single hobby (or bird breeder) permit. Banding or subcutaneous implants on birds will have a positive social impact by permanently identifying those birds lawfully possessed under the Act, thus aiding enforcement of the Act and increasing the likelihood of public compliance with the Act. The Division shall provide all permit applicants a list which shall stipulate the exact size band needed for the species of bird in question and the name and address of the manufacturer from which the applicant shall procure the band. It is important to note, however, that the regulations exempt from banding those commonly-owned captive-raised birds such as certain finches, budgerigars and parrot color mutations since they are easily identifiable by experienced persons as captive-raised birds without reference to a band. The banning of hybrid breeding of birds (cross-breeding of different species) will have a positive social impact by preserving intact the genetic integrity of different bird species and by reducing confusion in the identification of birds for purposes of enforcing the Act. Any loss in profit from hybrid bird sales will be more than compensated for by the increase in sales from captive-raised birds, demand for which will increase as a result of these regulations. Thus, both the Act and these amended regulations

have a positive social impact by promoting both the domestic avicultural market and the survival of bird species for enjoyment of future generations.

The regulations will not interfere with persons moving to New Jersey since a permit will be issued to continue possession of all birds upon receipt of proof that the birds were acquired before December 10, 1991. The regulations also have a positive effect upon public health and safety by reducing the opportunities for human and animal exposure to infectious diseases transmitted from improperly quarantined or smuggled wild-caught birds.

The number of species exempt from regulation will be reduced to match those species exempt from the Act. A simplified list of exempt species has the positive social impact of increasing the likelihood of public compliance with the Act. Although more people will be required to obtain permits as a result, many people with formerly exempt species also possess regulated species, and thus are already obligated to obtain a permit from the Division. The amended regulations simplify the fee list for permits and articulate the annual reporting requirements for certain permits, thus facilitating public compliance with the law. Amendment to the regulations establishing a permit to possess potentially dangerous species has a positive social impact by allowing denial of permit applications when animals are maintained in situations which adversely affect their health or which constitute a hazard to the public. The clarification of the responsibilities of sponsors to those applying for permits to possess endangered species of animals will benefit the public by ensuring that the animal is possessed only for projects which will produce scientifically reliable data of value to the zoologists working to conserve the species at no harm to the individual animal.

The amendments bringing the regulations in compliance with the Administrative Procedure Act will have a positive social impact by providing a general description of procedures relevant to agency suspension or revocation of permits in a single section for easy reference by the regulated public. Past regulations addressed such issues in a disjointed fashion which may not have adequately advised permittees of the procedures by which to contest a proposed agency action. A clear recitation of the agency's procedures for suspension or revocation of permit privileges assures the regulated public that it will have an adequate opportunity to contest any proposed agency action with respect to the permits issued in this chapter and affirms the agency's commitment to conform its revocation and suspension procedures to the mandates of the Administrative Procedure Act.

Economic Impact

Regulations implementing the ban on wild-caught birds will not increase the economic burden on permittees beyond that amount needed to administer and enforce the restrictions imposed by the Act. Since this is a new regulatory program, however, the Division can only estimate the number of permits which will be issued, the costs of enforcing the Act and the amount of fines it will receive from violations.

Under the current regulations, persons who possess mammals, reptiles, amphibians or non-exempt birds are required to obtain a hobby permit from the Division at a total cost of $10.00. The proposed amendments will require those persons who possess regulated birds to obtain a bird hobby permit at a total cost of $20.00, an increase in revenue for the Division of $10.00 a permit for every hobby permit holder who owns birds regulated by the Act. The Division predicts that it will issue approximately 4,000 bird hobby permits, based upon its contact with the public and the aviculture industry over the years. Accordingly, bird hobby permit fees will generate approximately $40,000 in new revenue for the Division. Any number of birds may be possessed under the bird hobby permit for the same $20.00 fee, as well as any reptiles, amphibians or mammals the permit applicant may have. Those persons possessing only reptiles, amphibians or mammals will continue to pay only $10.00 for a regular hobby permit.

The Division expects to issue 30 to 60 bird breeder permits at $150.00 a permit. Accordingly, bird breeder permit fees will generate, on an average, approximately $7,500 in additional revenue for the Division. Only those bird breeders wishing to acquire wild-caught birds must obtain a bird breeder permit. Bird breeders propagating their existing stock of birds may continue to breed these birds under valid Division hobby or pet shop permits, whichever is applicable.

Thus, total new revenue to the Division from bird-related permit fees will approximate $47,500. Employing and equipping a person with appropriate educational background who will be occupied exclusively with permitting and inspection obligations under the Act will cost the Division at least $40,000. The Division anticipates that enforcement of the Act is likely to be costly until the avicultural community and bird fanciers become accustomed to the restrictions of the Act. Accordingly, the remaining funds generated from permit fees and any violation penalties will be needed for attorney fees and law enforcement reimbursements for violations of the Act for the first year of the program. However, revenue from penalties is likely to drop over time as compliance becomes more common.

The proposed bird breeder permit fee of $150.00 is modest compared to most breeders' profits from the sale of birds. However, the fee is needed to meet the anticipated administrative costs for processing breeder permits, which contain detailed documentation for numerous birds which must be verified by the Division before this permit will be issued. The $20.00 hobby permit is also a modest investment for a permit to possess birds whose purchase and maintenance costs greatly exceed this amount. Banding of birds will cost only $.05 to $5.00 per bird, but it is important to note that the most widely-owned captive-raised birds such as certain finches, budgerigars and parrot color mutations are exempt from banding since they are easily identifiable by experienced persons as captive-raised birds without reference to a band. Subcutaneous micro-chip implants are optional under the regulations, and although far more expensive than banding, may be a wise investment for those with rarer, more costly birds.

The name and address of the manufacturer of bands and subcutaneous implants who best meets the Department's specifications for these items, along with a list of band sizes for each species of bird, shall be mailed to all bird breeders known to the Division along with a copy of an application for a permit under this chapter. Individuals who apply for a permit under this chapter shall be provided a copy of this information as soon as the Division receives his or her application for a permit under this chapter. Applicants shall be solely responsible for all costs associated with obtaining and attaching either a subcutaneous implant or a leg band of the correct type and size.

The Division acknowledges that breeders of hybrid species (the product of cross-breeding different speices of bird) may experience reduced profit as a result of the regulatory ban upon breeding of hybrid birds. Cross breeding is commonly done to introduce colors or physical features into bird species which rarely exhibited such colors or traits in nature, and may be detrimental to the health of the bird. The Division has consulted numerous aviculturalists and zoologists who have advised the Division without any reservation whatsoever that hybrid breeding does nothing for the long term benefit of the species involved and is counterproductive to the Department's goal of protecting wildlife since hybrid breeding reduces, over time, the number of individuals of a species extant with natural genes of benefit to that species. Furthermore, the Division anticipates substantial enforcement problems arising from the hybrid breeding of certain birds to produce those traits which are usually found in species commonly identified as smuggled, wild-caught birds. Accordingly, the Division has determined that the mandates of the Act can be most efficiently enforced by banning such hybrid breeding. It is anticipated that breeders will recoup whatever economic loss they may sustain as a result of this restriction by the sale of permitted captive-bred species for which demand is sure to rise as a result of the Act's restriction upon possession of wild-caught birds.

The amendments to N.J.A.C. 7:25-4.4, reducing the number of species exempt from the regulations to conform to the species exempt under the Act, will require more people to obtain permits, but the fee for possessing these birds as pets is minimal and applicants commonly will expend far greater sums to purchase and maintain birds. The income to the permit program will be only marginally increased due to this reduction in the list of exempt species. The amendments proposed for all other regulations will have no economic impact on the public.

Environmental Impact

The regulations implementing the Act's ban upon the acquisition and sale of wild-caught birds will have a positive environmental impact by decreasing the likelihood that native species of wildlife or captive animals will be exposed to diseases from birds of unknown origin. Additionally, fewer birds are expected to be captured and imported for commercial use in New Jersey, thus conserving this invaluable natural resource for the enjoyment of future generations in many countries in addition to the United States. Banning the production of hybrid birds in New Jersey will have a positive environmental impact by protecting the natural genetic identity of each species from alteration and thus conserving the existing number of bird species.

The amendments to N.J.A.C. 7:25-4.4 which reduce the list of birds exempt from regulation to conform with those species exempt from the Act will have a positive environmental impact by protecting a larger number of bird species from indiscriminate collecting, thus preserving and increasing the number of bird species for the benefit of future generations.

Proposed amendments to N.J.A.C. 7:25-4.6 establishing a new bird breeder permit, simplifying fee schedules and clarifying reporting requirements for various permits (including those applicable to bird species) will assist in effective administration of the regulations and ensure a greater degree of compliance with the regulations, with the consequent positive environmental impact of protecting native and captive exotic and nongame wildlife as envisioned by each of the permit programs affected.

Proposed amendments to N.J.A.C. 7:25-4.9 limiting permits to possess potentially dangerous species to situations which will not adversely affect the health of the animal or the public safety will have a positive environmental impact of protecting the public and the environment to the extent the Division can reasonably anticipate any ill-effects from the presence of the animal and will also assist the Division in protecting the animal itself from abuse or injury.

Proposed amendments to N.J.A.C. 7:25-4.14 and 4.15, articulating the obligations of sponsors for those applying for permits to possess endangered species of animals (including birds), will have a positive environmental impact by greatly increasing the likelihood that permittees granted temporary possession of such animals will produce scientifically reliable data of use to the zoological community in its efforts to conserve that endangered species. Moreover the criteria will allow the Division to deny applications to possess endangered species for purposes inimical or of no net benefit to the survival of the species or to the individual animal.

Regulatory Flexibility Analysis

Since all persons who possess wild-caught birds must prove that those birds were possessed before December 10, 1991, these regulations impose recordkeeping requirements as defined by the Regulatory Flexibility Act, N.J.S.A 52:14B-19, on those small businesses which breed and sell regulated birds. While the proofs required are the same for businesses and individual bird hobbyists, it is far more likely that businesses will be less burdened by this proof obligation since they may have two or three types of proof of pre-Act possession available (that is, veterinarian records, business inventory or tax records) when only one type is usually sufficient. The regulations strive to reduce the need for business record keeping by exempting from regulation certain species which are obviously captive-raised such as certain finches, budgerigars, cockatiels and parrot color mutations, which are frequently the largest number of birds sold by dealers. The regulations do not interfere with the relocation of bird dealers or breeders into New Jersey by allowing bird breeders or businesses selling regulated birds to prove pre-Act possession of all regulated birds, regardless of prior residence.

The regulatory requirement to band regulated birds will no doubt fall most heavily on those businesses with many regulated birds to band. However, those in the business of breeding and/or selling birds will benefit most from this one-time expense since banding functions as a method of inventory as well as quality control, protecting existing stock from diseases introduced by wild-caught or otherwise illegal birds. Businesses will also gain public good will and foster consumer confidence with display and (where permitted) sale of regulated banded birds, assuring the public of that business' compliance with the Act and allowing the public to acquire a bird, often at great expense, with confidence that the bird complies with the requirements of the Act as posted publicly in each and every pet shop.

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

7:25-4.1

[(a)] **The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.**

"Butt-end band" means a band with an open seam locked around the leg of a bird of any age using pliers or a similar tool and which is obtained from a source approved by the Department, inscribed with a code approved by the Department in sizes stipulated by the Department for each species of bird.

"Captive-bred bird" means any bird that is hatched in captivity from eggs produced by captive parent birds.

"Color mutation" means a color which is different and distinctive from the normal, natural color for that species of animal, as defined in reference texts commonly recognized as authoritative in the field of zoology, ornithology or aviculture, which is produced by breeding together animals with aberrant (mutated) color-producing genes.

...

"Seamless leg band" means a solid ring leg band from a source approved by the Department, inscribed with a code approved by the Department, in sizes stipulated by the Department for each species of bird, which is slipped onto the leg of a newly hatched captive-bred bird and which is incapable of being removed or reopened when the bird has reached adult size without either destroying the band or injuring the bird.

...

"Wild bird" means any bird other than a native, introduced, or feral game bird as defined in N.J.S.A. 23:4-49 and other than a domesticated bird such as a chicken, turkey, guinea fowl, goose, duck, pigeon, or peafowl. "Wild bird" also means the egg of a wild bird.

7:25-4.2 Permit required

(a) Except as hereinafter provided[;], no person shall [have in] [possession] **possess** any nongame species or exotic species of any mammal, bird, reptile or amphibian unless such person has first received [a] **both the appropriate** permit from the Department [of Environmental Protection] **as listed in N.J.A.C. 7:25-4.6(a) as well as any other state, municipal, or Federal permits or licenses which may be required to possess such species. Any permit issued to an applicant by the Department for the possession of any animal shall not exempt that applicant from compliance with any other law of the State of New Jersey or any municipal or Federal law. An application to the Department for a permit shall be made using** [The permit shall be] the form prescribed by the Department. **Any false representation by the applicant or a permittee who knows or reasonably should know that the representation is false, and who has submitted the representation to induce the Department to issue a permit or take any other action, shall subject the applicant or permittee to all penalties available under State law, including revocation of any permit obtained based upon false information. All permits issued by the Department under this chapter are valid only when used by the permittee in accordance with the terms and conditions of the permit and the regulations governing that permit. The Department shall, upon written notice to the permittee, revoke any permit listed in N.J.A.C. 7:25-4.6(a) issued to any person who ceases to consistently meet the eligibility criteria for that particular permit and may, in its discretion, seek an order from the Director or a court of competent jurisdiction allowing immediate removal of any animal possessed under that permit. Written notices of violation against a permittee shall set forth the terms of the permit or the regulation which the Department alleges the permittee has violated and the penalty sought. Notices of violation shall be brought and if not settled, contested, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14-1 et seq., or the rules of the court with jurisdiction over the claim of violation. The Department may settle all claims for penalties pursuant to N.J.S.A. 23:2A-10. Revocation of all Department-issued permits for repeated violations shall occur as set forth in (c) below.**

(b) (No change.)

(c) [The] **Upon written notice to the permittee, the** Department may suspend [the] **any type of exotic or nongame species** permit described in (a) above **as listed in N.J.A.C. 7:25-4.6** for [up to two years] **six months based** upon **final agency action establishing that a** violation of [any] **a** permit condition **has occurred** or **that a violation of** any regulation[s] appearing [at N.J.A.C. 7:25-4] **in this subchapter has occurred as a result of a plea of guilt, court conviction or final agency action establishing guilt. A notice of suspension may be mailed to the permittee together with any administrative notice of violation on which it is based, but the suspension shall not take effect until the deadline to request a hearing concerning the notice of violation has elapsed. In the event of a timely request**

to the Department for a hearing on an administrative notice of violation, no proposed suspension shall take effect until final agency action on the notice of violation and, if appealed, until all appeals of the final agency action have been concluded and the violation has been affirmed. In the event of municipal or Superior Court conviction of a violation of any regulation in this subchapter, no proposed suspension mailed to the permittee shall take effect until all appeals from the conviction have been concluded and conviction of the violation has been affirmed. If the permit expires during the period of its suspension, no application for any other permit to reacquire possession of any animal possessed pursuant to the suspended permit may be made until the six month suspension period has elapsed. During the suspension period, all animals possessed pursuant to any suspended permit must be removed from the custody and control of the permittee and placed in the custody of an individual licensed by the Division or, as permitted by Federal law, with a person residing outside of New Jersey in accordance with that state's laws, at the sole expense of the permittee.

(d) [The department] **upon written notice to the permittee, the Department** may revoke [the] **all Division-issued** permits described in (a) above **as listed in N.J.A.C. 7:25-4.6** upon **a** finding **that** in any five year period, two or more violations of any permit condition or any regulations appearing [at N.J.A.C. 7:25-4] **in this subchapter have occurred.** [No] **Except by order of the Division Director as provided below, no** permit **whatsoever** shall be issued **by the Division** to the violator **of permit conditions or regulations** within two years from the date of **the final agency action affirming a violation or within two years of a conviction or guilty plea in municipal or Superior Court, whichever constitutes** the second violation or within three years from the date of **the final agency action affirming a violation or within three years of a conviction or guilty plea in municipal or superior court, whichever constitutes** the third or subsequent violation. **The two and three year period of disqualification above shall be computed beginning from the date of any court order or final agency action affirming the violation which is not appealed, or, if appealed, from the filing date of the order as entered by the last court of competent jurisdiction to which any party has appealed which affirms the conviction or final agency action. In the event of the imposition of a two or three year period of disqualification, a permittee whose violations do not arise from possession of animals authorized pursuant to a hobby permit previously issued to the now-disqualified permittee may petition the Division Director to retain the hobby permit and the animal specifically authorized for possession pursuant to that permit which was in the physical possession of the permittee prior to the date of the Notice of Revocation if the Director determines, in his or her sole discretion and based upon the evidence submitted by the permittee, that there is a high probability that the animal's well-being will be jeopardized or its life endangered if the animal is separated from daily contact with the permittee during the course of the disqualification period. In the event the Director denies this petition, the former permittee may petition the Director for permission to reapply for a hobby permit to regain possession of the animal if the Division Director determines that there is physical evidence verified by an affidavit from a licensed veterinarian submitted by the former permittee that the animal's life is plainly in danger or its well-being is jeopardized solely as a result of its separation from the former permittee. The permittee may not possess any animals under a hobby permit issued or extended at the discretion of the Director other than those animals authorized by the Director and originally possessed by the permittee and the offspring from interbreeding between those individual animals. No animal may be possessed pursuant to a hobby permit extended by discretion of the Director if possession of the animal violates any Federal, state or local law.**

1. The violator may request a **hearing to contest an administrative notice of violation, proposed** suspension or revocation [hearing], as the case may be, in accordance with the Administrative Procedure Act, N.J.S.A 52:14B-1 et seq., and the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1[-1 et seq]. **No administrative hearing shall be afforded a violator in order to contest a notice of proposed suspension or revocation based upon repeated violations as set forth in (c) above when the objection to the proposed suspension or revocation constitutes a challenge to the facts underlying a violation for which an opportunity for a hearing and appeal has already been afforded the permittee.**

2. The request for [suspension or revocation] **an administrative** hearing must be received in writing by the Department within 20 days from **the date of mailing of the Division's** notice of **violation or** intent to suspend or revoke the permit. **If a timely request for a hearing concerning any notice of proposed agency action is not received by the Department, any alleged violation contained in the notice shall be deemed admitted by the permittee and any suspension or revocation proposed in that notice, or in any separately-mailed notice, shall become effective without further action by the agency on the date stipulated in the notice of suspension or revocation.**

7:25-4.4 Exempted species

(a) The following listed species of exotic or nongame mammals, birds, reptiles or amphibians may be possessed in this state without a permit.

1. Birds:

i. Budgerigar—Melopsittacus undulatus;
ii. Cockatiel—Nymphicus hollandicus;
[iii. Lovebird—Agapornis spp.;
iv. Orange-chinned parakeet—Aratinga canicularis;
v. Canary-winged parakeet—Brotogeris versicolorus;
vi. Nanday conure—Nandayus nenday;
vii. Mealy parrot—Amazona farinosa;
viii. Bullfinch—Pyrrhula pyrrhula;
ix. Chaffinch—Fringilla coelebs;
x. Brambling—Fringilla montifringilla;
xi. Green finch—Carduelis chloris;
xii. Serin—Serinus serinus;
iii. Shafttail finch—Poephila personata & acuticauda;]
[xiv.]**iii.** Peafowl—Pavo cristatus**;**
[xv. Ring-necked dove—Streptopelia risoria;]
[xvi.]**iv.** Rock dove—Columba livia;
[xvii.]**v.** Canary—Serinus canaria;
[xviii.]**vi.** [English] **House** sparrow—Passer domesticus;
[xix.]**vii.** European starling—Sturnis vulgaris;
[xx. Zebra finch—Poephila guttatus;
xxi. Society finch—Lonchura domesticus;
xxii. Mannikins—Lonchura spp. Munia spp.;
xxiii. Green singing finch—Serinus mozambicus;
xxiv. Fire finch—Lagonostica spp.;
xxv. Cordonbleu—Uraeginthus spp.;
xxvi. Common waxbill—Estrilda spp.;
xxvii. Strawberry finch—Amandava amandava;
xxviii. Lady Gould finch—Chloebia gouldiae.]

2.-4. (No change.)

(b) (No change.)

7:25-4.6 Categories of permits, expiration, fees, sales receipts required, records and reports required

(a) The Division may issue, but shall not be limited to, the following categories of permits:

1.-13. (No change.)

14. Bird Breeder—issued to persons meeting the regulatory criteria for possessing wild-caught bird species to acquire birds for use as new breeding stock to increase genetic variety (see N.J.A.C. 7:25-4.19). This permit does not authorize the resale of wild-caught birds acquired under this permit except with the permission of the Department to another holder of a bird breeder permit. Those engaged in the retailing or wholesaling of birds must also have a pet shop or animal dealer permit.

(b) (No change.)

(c) The possession permits shall require an annual [issuance fee] **application** and inspection fee as listed:

Categories of Permits	Annual **Application and** Inspection Fee	[Annual Fee]
Individual Hobby	[None] **$10.00**	[$10.00]
Individual Hobby/Birds	**$20.00**	
Scientific Holding	[$25.00] **$35.00**	[$10.00]
Zoological Holding —less than 10 animals	[$50.00] **$60.00**	[$10.00]
Zoological Holding —more than 10 animals	[$100.00] **$110.00**	[$10.00]
Pet Shop	[$90.00] **$100.00**	[$10.00]
Animal Dealer	[$90.00] **$100.00**	[$10.00]
Animal Exhibitor		
Single Exhibit	[$25.00] **$35.00**	
Annual	[$100.00] **$110.00**	[$10.00]
Animal Theatrical Agency	[$100.00] **$110.00**	[$10.00]
Scientific Collecting	[None] $22.00	[$22.00]
Special Purpose Salvage	[None] $7.00	[$7.00]
Special Wildlife Salvage	[None] $7.00	[$7.00]
Endangered Species	[None] $7.00	[$7.00]
Depredation Control	[None] $22.00	[$22.00]
Rehabilitation	[None] $7.00	[$7.00]
Bird Breeder	**$150.00**	

(d) Pet shop, animal dealer, zoo, nature center and animal theatrical agency possession permits must be displayed in a prominent place. The sale of exotic mammals, birds, reptiles or amphibians, or nongame species to any individual must be accompanied by an "Exotic or Nongame Sales Receipt" the form of which shall be prescribed by the Department, **and an application packet**. This "Exotic or Nongame Sales Receipt" will be a temporary possession permit valid for a period of 20 days after the date of sale.

(e) Pet shops and animal dealers shall submit to the Division an annual inventory of acquisitions, sales and exchanges, **and white copies of temporary permits issued for sale of any regulated species,** upon expiration or renewal of their permits.

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

(j) Any person holding an Exotic or Nongame Species Possession Permit pursuant to this subchapter which expires or is revoked shall file a report with the Division within 15 days after expiration or revocation explaining the final disposition of all animals in his or her possession during the calendar year of issue. The explanation shall set forth the following information: the species and number of individuals of each species possessed; the date of birth and current age of each animal; births; deaths and cause of each death; the complete name, address and telephone number of the person to whom an animal was transferred or sold; the date the animal was transferred or sold; and the current location of each animal's records.

(k) Pet shops or other establishments dealing in birds other than canary, budgerigar and cockatiel shall prominently display a sign visible to the public on the premises where such birds are offered for sale, which states: After December 10, 1991, only captive-bred birds or birds legally in possession pursuant to New Jersey regulations prior to December 10, 1991 may be offered for sale or purchased in New Jersey. All birds offered for sale except those exempted by New Jersey regulations, must also be marked with a band or micro-chip approved by the New Jersey Division of Fish, Game and Wildlife. To report violations, or questions, call (908) 735-5450.

7:25-4.7 General possession criteria

(a) Prior to the issuance of any permit permitted by these regulations, every applicant shall, in forms provided by the Department, demonstrate that:

1.-3. (No change.)

4. [The availability of competent and adequate licensed veterinary services for the care and treatment of the animal] **The animal shall receive prompt treatment for any illness or injury from a licensed veterinarian**; and

5. (No change.)

7:25-4.9 Criteria for the possession of potentially dangerous species

(a) In addition to the general criteria enumerated above in N.J.A.C. 7:25-4.7, every person applying for a permit to possess potentially dangerous species shall meet each and every of the following criteria to the satisfaction of the Division.

1.-2. (No change.)

3. [Other Licenses and Permits: Persons applying to possess potentially dangerous species must obtain, in addition to New Jersey Exotic Species or Nongame Species Permit, all other applicable permits covering the possession of such species. Any permit issued for the possession of such animal by the department of Environmental Protection, shall not exempt an applicant from compliance with any other law of the State, and subdivision of the State, any municipality, or the federal government.] **Protection of the Public: The housing facilities shall also be constructed to prevent public access to and contact with the animal. The potentially dangerous species shall not be kept as a pet, for hobby purposes or in situations, which, in the judgment of the Department, could adversely affect the health of the animal or which could constitute a hazard to the public.**

4.-5. (No change.)

6. [Protection to the Public: The housing facilities must also be constructed to prevent public access to and contact with the animal. The potentially dangerous species may not be kept as a household pet except when necessitated by the infancy of the animal. The public must not be allowed access to the animal including animals used for exhibition purposes.] **Other restrictions: Under no circumstances shall a person issued a pet shop or animal dealer permit possess any potentially dangerous species on the commercial premises, except in emergencies and for a limited period of time as stipulated by the Department in writing and subsequently agreed to by the animal dealer or pet shop owner, who shall assume full responsibility for the safety and welfare of both the animal and the public during its temporary storage. A potentially dangerous animal already on display at the premises of a pet shop or animal dealer and already under a permit for such display as of the effective date of this amendment may remain so displayed under the terms and conditions of that permit for the lifetime of that animal.**

7:25-4.11 Miscellaneous provisions

(a) (No change.)

(b) [Any person, issued a permit, who violates or fails to continually conform to the criteria established for such a permit, shall be considered to have violated an express condition required for such a permit, and shall be deemed to be in possession of an animal without a permit. Such person shall be subject to prosecution for possession of the animal without a permit, and may be subject to the penalty prescribed by N.J.S.A. 23:2A-10.] **(Reserved)**

(c) (No change.)

7:25-4.12 Notice of a denial of permit, procedure, review, time limitations, hearing

(a) In the event of a denial of [permit] **an** application for any permit required by this subchapter or the revocation of any permit, the Division [may] **shall** issue to the applicant or prior permittee a written statement setting forth the reasons for the denial or revocation.

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

7:25-4.14 Requirements for possession of endangered wildlife species

(a) Individuals wishing to apply for a permit to possess endangered wildlife must meet all criteria for [the] **a** Federal endangered species permit (issued by the United States Fish and Wildlife Service)**, when applicable,** and for the New Jersey nongame and exotic species permit **pursuant to N.J.A.C. 7:25-4.7** (issued by the Division of Fish, Game and Wildlife). The Department will require and review the Federal permit before issuing a State permit.

[(b) Individuals applying for a permit to possess endangered wildlife species in New Jersey must be sponsored by a recognized scientific institution, zoological society or similar accredited organization. This sponsorship places the responsibility for the individual and

animals concerned with the sponsoring agency. A written statement of sponsorship must be supplied with the application for a permit to keep endangered species.

(c) Individuals applying for a permit to possess endangered wildlife species must demonstrate a working knowledge and expertise in handling and caring for the species desired. The individual must be able to demonstrate this expertise and ability to the satisfaction of the Department.

(d) Individuals applying to possess endangered wildlife species must obtain, in addition to a State exotic species permit and Federal endangered species permit, any and all other applicable permits covering the possession of endangered wildlife species. Local ordinances covering the possession of "wild" animals must be observed.

(e) Individuals applying to possess endangered wildlife species must submit to the Department a written statement of the purpose and intent of keeping the species. The statement should provide information regarding the individual's compliance with the purpose and intent of the Federal Endangered Special Act of 1973, Public Law 93-205, 87 stat. 884, and the State Endangered and Nongame Species Conservation Act of 1973, c.309 s.1, effective December 14, 1973. Amateur attempts or intent to propagate an endangered species will not be considered as sufficient purpose for an individual to be issued a permit to keep an endangered species.

(f) The Department may suspend the permit described in (a) above for up to two years upon the violation of any permit condition or any regulations appearing at N.J.A.C. 7:25-4. The Department may revoke the permit described in (a) above upon finding in any five-year period two or more violations of any permit condition(s) or any regulations appearing at N.J.A.C. 7:25-4. No permit shall be issued to the violator within two years from the date of the second violation, or within three years from the date of the third or subsequent violation.

1. The violator may request a suspension or revocation hearing, as the case may be, 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. The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Request, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402.

2. The request for suspension or revocation hearing must be received in writing by the department within 20 days from the notice of intent to suspend or revoke the permit.]

(b) The Division shall issue a permit for possession of specific individual animals classified as endangered wildlife to an applicant who fulfills the criteria in (a) above, and who:

1. Has obtained a sponsoring organization and designated professional who have submitted to the Division all information required in (a)2 and 3 below;

2. Has submitted to the Division a detailed written proposal for scientific research to be completed by the applicant within the time stated by the applicant which, in the judgment of the Division, requires use of the species in question, will not jeopardize the animal's health and has a reasonable probability of yielding, when performed by the applicant under the supervision of the Division and the sponsor pursuant to scientific protocol approved in writing by the Division, scientifically-reliable, new information of use to researchers or zoologists specializing in the study or conservation of the species in question;

i. All proposals shall stipulate the intervals at which the applicant shall submit periodic reports to the Division stating the applicant's progress with the research and improvements in the applicant's expertise in handling and caring for the animals; and

3. Has submitted to the Division written records of the applicant's relevant education, past and current research, publications, funding, equipment and any other information (including personal demonstration as may be required by the Division) which demonstrates to the satisfaction of the Division that the applicant has working knowledge and expertise in handling and caring for the species in question, and that it is reasonably probable that the the applicant will accept guidance from both the sponsor and the Division to improve that expertise and that the applicant will accomplish the research within the time stated to the Division in accordance with the scientific protocol approved by the Division.

(c) Amateur attempts or intent to propagate an endangered species will not be considered as sufficient purpose for an individual to be issued a permit to keep an endangered species.

(d) Applicants for a permit to possess endangered wildlife species in New Jersey must be sponsored by a scientific institution, zoological society or similar organization accredited by its professional peers. The goal of sponsorship is to improve the applicant's expertise in the handling, care and breeding of the animal in question, to ensure that the applicant's research requires use of the species in question and has a reasonable probability of producing scientifically-reliable, new data useful to other researchers or zoologists specializing in the study and conservation of the species in question. All research proposals, scientific protocols (including the frequency of reports to the Division by the applicant), and supervisory procedures must be described in writing to the Division by the applicant and receive written approval from both the Division, the sponsor, and the monitoring professional for a permit to be issued. Any permit issued pursuant to this section is conditioned upon the applicant's consistent compliance with instruction from the Division and the professional monitoring the applicant's research as well as the diligent pursuit and timely completion of the Division-approved research project by the applicant pursuant to the scientific protocols approved by the Division. Applicants shall produce their research and exhibit their animals to Division personnel on 24 hours notice. Should the Division determine that the applicant has failed to meet these conditions, the Division shall suspend or revoke the applicant's permit and place the animals possessed pursuant to that permit under immediate constructive seizure, pending permanent removal of the animals by the Division from the possession of the applicant at the applicant's own expense. All research by the applicant shall cease immediately upon receipt of a notice of suspension or revocation, except as approved in writing by the Division.

(e) An offer of sponsorship must contain the following:

1. An agreement to commit the organization to the responsibilities of sponsorship as defined in this section, executed by the president, director or other employee of the organization with authority to so bind the organization;

2. Confirmation that the organization is acquainted with the relevant training and experience of the applicant, has reviewed the applicant's proposed research and has determined that it is reasonably probably that the proposed research, as performed by the applicant pursuant to the supervision and scientific protocol described by the sponsor shall yield scientifically-reliable, new information which will be useful to other researchers or zoologists specializing in the study or conservation of the species in question. All scientific protocol and supervisory practices proposed are subject to approval by the Division. Any Division modification of the proposed protocol or practices shall be resubmitted to the sponsoring organization for its comment;

3. The name and address of a professional with well-established, recently-practiced expertise in the handling, care and breeding of the species at issue (or a species closely related) who has agreed to monitor all aspects of the applicant's research on behalf of the organization in accordance with the procedures approved in advance of commencement of the work by the Division and fulfill all the obligations set forth in (e)4 below. The sponsoring organization shall acknowledge its responsibility to locate another professional with credentials acceptable to the Division who shall monitor the applicant's work, report to the Division, and fulfill all the obligations set forth in (e)4 below in the event the professional initially chosen and approved by the Division is unable, for reasons unrelated to the performance of the applicant, to continue in assisting the Division in monitoring the applicant's work;

4. A letter from the professional identified in (e)3 above which lists his or her professional qualifications, verifies that he or she has personally met the applicant, reviewed the applicant's relevant training and experience as well as the proposed research, finds the research meritorious and believes, based upon his or her experience, that it is reasonably probable that the proposed research, as

performed by the applicant within the time stated by the applicant pursuant to the supervision and scientific protocol described by the professional, shall yield scientifically-reliable, new information which will be useful to the other researchers or zoologists specializing in the study or conservation of the species in question. All scientific protocol and supervisory practices proposed are subject to approval by the Division. Any Division modification of the proposed protocol or practices shall be resubmitted for the professional's comment. The professional shall agree in writing to guide the applicant in the proper handling, care and breeding of the animals in question and review the applicant's research protocol and data as frequently as needed to ensure the applicant's research meets the criteria for the issuance of this permit. The professional shall agree to personally meet with the applicant and review the applicant's work no less than once every three months and to submit a written report to the Division on the applicant's progress every three months. The applicant may prepare and submit this report as long as the report is approved in writing by the professional in advance of its submission to the Division. Reports must be submitted to the Division no later than the 15th day following the end of each three month reporting period;

5. A written statement that the professional agrees to notify the Division and the sponsoring organization in writing if the applicant fails to follow the professional's or the Division's guidance or the scientific protocol approved by the Division and the professional believes that such failure is jeopardizing the probability that scientifically-reliable, useful, new information shall be produced as a result of the applicant's research or that the research cannot be accomplished within the time stated by the applicant; and

6. The applicant shall execute a written acknowledgement releasing the Department, the sponsoring organization and any professionals monitoring the applicant's work from liability for any damages of whatsoever nature arising from the suspension of revocation of any permit issued by the Division. The applicant shall be solely responsible for all costs of maintaining and relocating at the direction of the Division all the animals possessed under this permit when a permit is suspended, revoked or expires.

7:25-4.15 Protection of animal and welfare of public

(a) (No change.)

(b) The housing facilities must be constructed to prevent public access to and contact with the animal, **including all animals used for exhibition purposes**. The [facilities should be separated from the residence of the owner, and the] animal may not be kept as a [household] pet, [except when necessary during infancy for specific care.] **for hobby purposes or in situations which, in the judgment of the Department, could adversely affect or provide no net benefit to the health of the animal or the welfare of the species.** [The public must not be allowed access to the animal, including all animals used for exhibition purposes.] The individual must demonstrate to the satisfaction of [division] **Division** personnel that the security of the housing and caging facilities protects the animal and the public.

(c) (No change.)

7:25-4.19 Criteria for possession of wild-caught bird species for breeding, zoological, scientific or educational purposes

(a) No permit shall be issued for the purpose of selling any wild-caught bird. Except as provided in this subchapter, a person issued a permit to possess wild bird species shall possess only birds bred from captive parent birds and eggs produced from captive parent birds. To preserve the genetic integrity of species of regulated birds, distinct species of birds shall not be cross-bred with other different species of birds to produce hybrid birds.

(b) In addition to meeting the general criteria in N.J.A.C. 7:25-4.7, every person applying for a permit to possess individuals of a species of wild-caught bird shall meet each and every of the following criteria:

1. Education and background, as follows:

i. A person applying for a permit to possess individuals of species of birds which have been wild-caught, or their eggs, primarily for breeding purpose, including those persons designated by institutions or businesses as those responsible for breeding birds, shall affirmatively demonstrate that he or she possesses extensive and thorough experience in breeding the species which is the subject of the application, or of a closely related species.

ii. A person applying for a permit to possess individuals of species of birds which have been wild-caught or their eggs primarily for zoological, scientific or educational purposes which include breeding only as a secondary purposes, including those persons designated by institutions or businesses as those responsible for breeding and handling birds, shall demonstrate that he or she possesses a thorough knowledge of the handling, care and breeding of the species which is the subject of the application, or of a related bird species. As a condition for the issuance of the permit the Division may require that the applicant be supervised by an aviculturalist approved by the Department. In the case of scientific or educational projects of limited duration, the applicant shall identify the final disposition of the bird(s);

2. Any person applying to possess individuals of species of birds which have been wild-caught, or their eggs, shall obtain, in addition to a New Jersey Exotic Species or Nongame Species Permit, all other permits applicable to the possession of such species. Any permit issued for the possession of birds by the Department shall not exempt an applicant from compliance with any other relevant Federal, state, county or municipal law;

3. Any person applying to possess individuals of species of birds which have been wild-caught, or their eggs, shall state in writing the purpose and intent of keeping the birds, the species of birds, and the number of individuals of each species the applicant intends to possess under the permit. In the case of multiple purposes and intents, the applicant shall rank his or her intentions in order of decreasing importance to the applicant;

4. Any person applying to possess individuals of species of birds which have been wild-caught, or their eggs, shall describe in written detail the caging facilities for each bird species, including those aspects of the facilities designed to prevent escape. For each building in which birds are to be housed, its street address and on which floors the birds are to be housed shall be stated. For each room in which birds are to be housed, that room's dimensions, the nearest source of natural and artificial light available for each bird, the type of heating, cooling and ventilation in each room and its source in each room relative to each bird's caging facilities and the location of each room within the building shall be described. Acceptance of any permit authorized under this subchapter shall entitle and authorize Department personnel to inspect the housing and caging of the licensed birds from 8:00 A.M. to 9:00 P.M., Monday through Saturday, in order to determine if the housing and caging is suitable for the species and will ensure accomplishment of the applicant's stated purposes;

5. Any person applying to possess individuals of species of birds which have been wild-caught, or their eggs, shall describe in written detail a reliable, continuous source of food for each bird species, including adult, nestling and hatchling diets for each bird species to be kept; and

6. Except as stated in this section, no person or organization shall possess for any purpose any wild-caught bird or egg produced from such a bird unless that person or organization produces credible documentary evidence that the bird (or egg) was legally possessed pursuant to this subchapter before December 10, 1991, the effective date of the Wild Bird Act.

i. All wild-caught birds possessed before December 10, 1991 by persons or organizations with a permit or other written approval from the Department are exempt from this proof requirement. The Department may consider, among other things, the following as proof of a wild-caught bird's pre-Act status: affidavits from persons with relevant knowledge and sworn-true copies of such documents as bills of lading, contracts of sale, pet shop records and veterinary records.

ii. No person or institution shall sell or otherwise transfer possession of any wild-caught bird or its egg which is possessed pursuant to a Department permit, or purchase or otherwise receive any new wild-caught birds without first obtaining written permission from the Department.

iii. Sellers or transferrers of both pre-Act and post-Act birds shall maintain written documentation as per (b)6i above showing that all birds are either captive-bred or were legally possessed pursuant to these regulations before December 10, 1991. Copies of such documents for each regulated bird sold or otherwise transferred must be provided to the purchaser or receiver of each bird and to the Department.

7:25-4.20 Birds which must be banded; criteria for identifying and marking birds; permitted alterations of appearance; miscellaneous

(a) Regulated birds possessed under a permit issued prior to the effective date of these regulations shall be exempt from banding until the bird is sold or otherwise transferred to a different person. All other regulated birds shall not be possessed until such time as an application to possess the bird, accompanied by proper documentation, is made to the Department and the bird is banded in accordance with this subchapter. Department denial of an application to possess regulated bird(s) shall result in the forfeiture of the bird(s) to the Department without compensation to the applicant.

(b) The natural appearance of any bird shall not be altered by any person in any way for any purpose, except as follows:

1. Seamless or butt-end bands as provided in this section;

2. Subcutaneous coded identification as provided in this section;

3. Clipped flight feathers of wind; or

4. Surgical or other medical procedure mandated in writing by a licensed veterinarian to preserve the life or health of the bird.

(c) Captive-bred birds hatched in New Jersey shall have seamless bands slipped onto one of their legs. A proper-sized seamless band slipped onto the leg of a hatchling shall be of such a size as to later fit a full-grown adult comfortably, but must not be so large that it could have been slipped over the foot of an older or full-grown bird. The Division shall publish and distribute a list of those species of birds exempt from the banding requirements because of adverse health effects.

(d) Captive-bred birds hatched outside the State of New Jersey and wild-caught birds (except for zebra finches, society finches, canaries, budgerigars and cockatiels) which remain in New Jersey for more than 48 hours and are not wearing seamless bands shall have butt-end bands placed around one of their legs upon arrival in New Jersey. All aviculturally recognized color mutations of any parrot species will be exempt from banding due to their captive-bred origin.

(e) In lieu of or in addition to banding as set forth in (a) through (d) above, birds may be identified by micro-chips (subcutaneous implants or coded information) obtained solely from manufacturers expressly authorized by the Department.

(a)

DIVISION OF FISH, GAME AND WILDLIFE
FISH AND GAME COUNCIL
1994-95 Fish Code
Snapping Turtles, Bull Frogs and Green Frogs
Proposed Amendment: N.J.A.C. 7:25-6.22

Authorized By: Fish and Game Council, Cole Gibbs, Chairman.
Authority: N.J.S.A. 13:1B-29 et seq. and 23:1-1 et seq.
DEPE Docket Number: 02-94-01/395.
Proposal Number: PRN 1994-114.

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

Thursday, March 3, 1994 at 7:30 P.M.
Assunpink Wildlife Conservation Center
Eldridge Road
Assunpink Wildlife Management Area
Robbinsville, New Jersey 08691

Submit written comments by March 24, 1994 to:

Robert McDowell, Director
Division of Fish, Game and Wildlife
Department of Environmental Protection and Energy
CN 400
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to the 1994-95 Fish Code at N.J.A.C. 7:25-6.22 establishes an open season for the taking of snapping turtles which will extend from June 16, 1994 through April 30, 1995. It also establishes an open season for the taking of bull frogs and green frogs which will extend from July 1, 1994 through March 31, 1995. The existing 1994-95 Fish Code provides an open season for the taking of these species which extends from June 1 to October 31, 1994. The proposed amendment also eliminates the exception in the existing 1994-95 Fish Code that allows for the taking of these species, during the closed season, under special permits issued by the Division of Fish, Game and Wildlife. The New Jersey Fish and Game Council is proposing this amendment to more adequately protect these species during their breeding periods.

Social Impact

The primary impact of the proposed amendment will be to prohibit the taking of snapping turtles, bull frogs and green frogs during the breeding season, when they are most vulnerable to being taken. The long-term benefit of the proposed amendment will be to insure that there will be increased stocks of these species available for harvest in the future. Those sportsmen that commented on this section of the 1994-95 Fish Code at, and subsequent to, the public hearing favored increased protection of these species during the breeding season, thereby, favoring the projected long-term benefit over a larger immediate harvest (see 25 N.J.R. 4905(a)). It should also be noted that prior to the adoption of the 1994-95 Fish Code, there was no legal means described for the taking of these species, which technically meant that there was no legal way to take them. Despite this, there was a substantial unregulated, commercial harvest of these species, especially snapping turtles, the legality of which was highly questionable.

Economic Impact

The proposed amendment will reduce the immediate harvest of these species in order to provide for a sustainable, long-term fishery. This situation already exists, to a lesser degree, with the adoption of the 1994-95 Fish Code which set seasons and bag limits for these species.

Environmental Impact

The snapping turtle is characterized as a long-lived, low annual producer with the adult largely "immune" to natural predation. The mortality rates for eggs and hatchlings, however, are very high. This makes the protection of the adult breeding female extremely important to the maintenance of the population. Since nesting takes place out of water, the female is extremely vulnerable to capture by man. These nesting females will be the individuals most protected by this proposed amendment, and as a result, the reproductive potential of this species, as well as bull frogs and green frogs, will be improved. This amendment represents a more conservative environmental position than originally proposed, reflecting a general lack of information on these populations. Considerable pertinent information has been brought to the Council's attention directly as a result of the proposal to regulate these species in the 1994-95 Fish Code, and the reporting requirement of the turtle and frog permit system is expected to enlarge that data base which will result in wiser management of these species in the future.

Regulatory Flexibility Statement

The proposed amendment to the 1994-95 Fish Code imposes restrictions on anglers engaged in recreational fishing. The requirements are not, therefore, imposed upon small businesses, as defined under 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]):

7:25-6.22 Snapping turtles, bull frogs and green frogs

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

(c) The open season for **the** taking of snapping turtles[,] **shall extend from June 16, 1994 through April 30, 1995. The open season**

for the taking of bull frogs and green frogs shall be from [June 1 to October 31] **July 1, 1994 through March 31, 1995.**

(d) Snapping turtles, bull frogs and green frogs may be taken in numbers greater than the daily limit[, and beyond the dates of the open season,] under special permit issued by the Division at its discretion.

1.-4. (No change.)

(e) (No change.)

(a)

OFFICE OF AIR QUALITY MANAGEMENT

Control and Prohibition of Air Pollution By Vehicular Fuels

Proposed Amendments: N.J.A.C. 7:27-25.1, 25.3 and 25.8

Authorized By: Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.

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

DEPE Docket Number: 05-94-01/404.

Proposal Number: PRN 1994-118.

A **public hearing** concerning this proposal will be held on:

Friday, March 25, 1994, at 10:00 A.M.
First Floor Hearing Room
Department of Environmental Protection and Energy
State of New Jersey
401 East State Street
Trenton, New Jersey

Submit written comments, identified by the DEPE docket number given above, by April 8, 1994, to:

Janis Hoagland, Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection and Energy (the Department) is proposing amendments to portions of N.J.A.C. 7:27-25 (subchapter 25), Control and Prohibition of Air Pollution by Vehicular Fuels. Subchapter 25 governs the volatility and the oxygen content standards of gasoline. The proposed amendments to subchapter 25 would suspend the previously promulgated 2.7 percent by weight oxygen content standards for gasoline for both the Northern oxygen program control area and the Southern oxygen program control area, effective on and after January 1, 1995. They would also relieve wholesale purchaser-consumers of the obligation to label their gasoline pumps pursuant to N.J.A.C. 7:27-25.8.

In accordance with Section 211(m) of the Clean Air Act Amendments of 1990 (CAAA), New Jersey implemented the oxygenated fuels program effective November 1, 1992. The program was implemented as a control measure to bring the State into attainment of the National Ambient Air Quality Standard (NAAQS) for carbon monoxide (CO). The oxygenated fuels program requires that motor vehicle fuel for sale in New Jersey contain a minimum of 2.7 percent by weight oxygen content during the oxygen program control period. This control period is from October 1 through April 30 in the Northern oxygen program control area and from November 1 through the end of February in the Southern oxygen program control area. For a more detailed discussion of the establishment and requirements of the oxygenated fuels program, please refer to the July 6, 1992, New Jersey Register, 24 N.J.R. 2386(a) and the October 5, 1992, New Jersey Register, 24 N.J.R. 3539(a).

Data from the Department's ambient air monitoring network indicates that since the oxygenated fuels program has been in effect, ambient air in the State meets the NAAQS for CO. Therefore, the Department is in the process of making demonstrations to the United States Environmental Protection Agency (EPA) that the standard has been attained and will be maintained.

The Department has already submitted to the EPA a request to redesignate areas in the Southern oxygen program control area as being in attainment of the NAAQS for CO. This request is based on the air monitoring data which indicate that the Southern oxygen program area is in compliance with the NAAQS for CO and on evidence that the attainment in this area of the NAAQS for CO is due to permanent and enforceable measures. For further discussion of New Jersey's redesignation request, please refer to the New Jersey Carbon Monoxide State Implementation Plan—Redesignation and Maintenance Plan for Camden County (November 1993) and the New Jersey Carbon Monoxide State Implementation Plan—Redesignation and Maintenance Plan for the Nine Not Classified Areas (November 1993). A copy of these plans may be requested from:

New Jersey Department of Environmental Protection and Energy
Bureau of Air Quality Planning
401 East State Street, 7th Floor
CN 418
Trenton, New Jersey 08625-0418

The Department will also be preparing a request that the EPA redesignate areas in the Northern oxygen program control area as being in attainment of the NAAQS for CO. This request will also be based on the air monitoring data which indicate that all non-attainment areas in the Northern oxygen program area are in compliance with the NAAQS for CO and on evidence that the attainment in this area of the NAAQS for CO is due to permanent and enforceable measures. When it submits this request, the Department will place a Public Notice in the New Jersey Register informing the regulated community and all other interested persons of the availability of copies of this Redesignation submittal and of the public hearing to be held on this submittal.

Pursuant to the provisions of Section 107(d)3 of the CAAA, the Department has included in its requests to redesignate Camden County and the nine not classified areas a maintenance plan that ensures that the NAAQS for CO will continue to be met. This plan is based on the implementation in 1995 of two CO-reducing programs which the Department anticipates will be sufficient to ensure that the State continue to meet the NAAQS for CO.

The first of these is the enhanced inspection and maintenance program (Enhanced I/M) which has been proposed by the Department, in conjunction with the Department of Law and Public Safety, Division of Motor Vehicles (DMV), to be phased in starting January 1, 1995 (see 25 N.J.R. 3322(a), 3418(a), 5400(a) and 5130(a)). This program is projected to result in a significant reduction of CO emissions from motor vehicles. The second is the Federally-mandated Reformulated Gasoline (RFG) Program, which will also begin in New Jersey on January 1, 1995. Under this program, gasoline sold in New Jersey will be required to contain a minimum of 2.0 percent by weight oxygen content, year-round.

The Department anticipates that the combined effect of these CO-reducing programs will obviate the need for the 2.7 percent oxygenated fuels program to ensure that the State continues to meet the NAAQS for CO. Please see Projected Maintenance Demonstration (2005), p. 13 of the New Jersey Carbon Monoxide State Implementation Plan—Redesignation and Maintenance Plan for Camden County (November 1993) and Projected Maintenance Demonstration (2005), p. 18 of the New Jersey Carbon Monoxide State Implementation Plan—Redesignation and Maintenance Plan for the Nine Not Classified Areas (November 1993). Therefore, the Department is proposing these amendments which would exempt refiners, importers, blenders, distributors, wholesale purchaser-consumers and retailers from the oxygenated gasoline requirements of this subchapter.

Rather than rescinding the 2.7 percent oxygenated fuels program, these amendments retain the program as a contingency measure. Section 175A(d) of the CAAA requires the State to provide for contingency measures to be employed in the event that it does not continue to meet the health standard for CO. Accordingly, these proposed amendments provide that, should the Department determine at any time after January 1, 1995 that the State has failed to meet the NAAQS for CO, the 2.7 percent oxygen content standards for gasoline in this subchapter would again go into effect in the oxygen program control area where the exceedance was recorded. The oxygenated fuels program would resume as of the first day of the next oxygen program control period following the date of the Department's measurement of the exceedance of the NAAQS for CO in that oxygen program control area. The oxygen content standards of gasoline would then remain in effect until the Department makes a determination, based on its ambient air quality monitoring, that

the NAAQS for CO has again been met and will continue to be met through the use of appropriate, enforceable strategies. The Department will provide notice in the New Jersey Register of any exceedance and resulting revocation of the oxygen control program exemption as well as notice of re-attainment of the NAAQS for CO.

In addition to suspending the 2.7 percent oxygen content standards, these proposed amendments also would define "NAAQS" at N.J.A.C. 7:27-25.1 and relieve wholesale purchaser-consumers of the gasoline pump labelling requirements set forth at N.J.A.C. 7:27-25.8. This change is being proposed in response to a comment submitted by Donald L. Hoven of the Hackensack Water Company, objecting to the requirement that wholesale purchaser-consumers, as well as retailers, label their fuel pumps with a statement indicating that the pump is dispensing oxygenated fuel. This comment was submitted in response to a prior proposal of amendments to N.J.A.C. 7:27-25 (see 25 N.J.R. 4039(a)). Mr. Hoven pointed out that labelling of the fuel pumps of wholesale purchaser-consumers is not useful as a means of providing information to the public since such pumps are not used by members of the general public. He also pointed out that such pump labelling is not required in New York State.

In response to this comment, the Department indicated in the adoption document prepared for the September 7, 1993 proposal and published elsewhere in this New Jersey Register that it would propose the recommended deletion in its next amendments to N.J.A.C. 7:27-25. In fulfillment of this, such a deletion is proposed herein.

Final action by the Department on these proposed amendments will be determined by the Department based, among other factors, upon any response the EPA and the public law may have had to the Department's redesignation requests.

Social Impact

The suspension of the oxygenated fuels program would have a positive social impact. The reformulated gasoline (RFG) to be sold on and after January 1, 1995, will continue to be oxygenated under the RFG program. However, during the oxygen content control period, the level of oxygenate will be lower than it would have been pursuant to the 2.7 percent oxygen control program requirements proposed herein to be suspended. That is, the reformulated gasoline will be oxygenated to a minimum of 2.0 percent as opposed to a minimum of 2.7 percent.

Some individuals have reported to the Department that they are sensitive to the commonly used oxygenate methyl tertiary butyl ether (MTBE) and that exposure to gasoline meeting the 2.7 percent oxygenate standards causes them to experience a variety of symptoms, such as headaches, nausea and dizziness. The suspension of the oxygenated fuels program proposed herein would lower the exposure of these chemically-sensitive individuals to this oxygenate. The Department anticipates that this in turn would reduce the adverse health effects such individuals experience.

Furthermore, some individuals have complained about the odor associated with some oxygenate additives. The reduced level of oxygenate in gasoline should diminish, perhaps below the odor threshold level, these odors or at least make them less noticeable.

Refiners, importers, blenders and distributors should also benefit from the exemptions in these proposed amendments. The lower oxygenate standard of the RFG program should provide them greater flexibility in the level of oxygenate in the gasoline they produce, import or distribute. Furthermore, as the RFG program is a Federal program, they will avoid the inconvenience of providing a gasoline to meet New Jersey standards which is different from gasoline that is acceptable in other states. They will also be relieved from the testing and recordkeeping requirements that are specific to New Jersey's oxygenated fuels program.

Gasoline retailers and wholesale-purchasers should also benefit as they will be relieved of the fuel pump labelling requirements set forth at N.J.A.C. 7:27-25.8.

Another social benefit is the greater equity that will be achieved in the vehicle inspection program. Some older cars experience a lower failure rate with oxygenated gasoline. This means that certain marginal older vehicles that would fail if inspected during the summer months may pass if they are inspected while they are operated on 2.7 percent oxygenated fuel during the oxygen program control period. And, at present, some cars tested in the winter months during the oxygen program control period have an advantage in terms of passing inspection. This seasonal inequity would be eliminated by this proposed suspension of the 2.7 percent oxygenated fuel program. When the RFG program goes into effect, the 2.0 percent oxygenate in the fuel will still lower somewhat the failure rate. However, RFG will be oxygenated year-round, eliminating this seasonal bias in the vehicle inspection program.

Economic Impact

The oxygen control program revisions proposed herein should have no large economic impact on the State, though the impacts that result should be positive overall.

Currently, the price differential between non-oxygenated and oxygenated gasoline in New Jersey is less than three cents per gallon. The retail cost of RFG program fuel will exceed the cost of non-oxygenated gasoline probably by about the same differential.

A positive economic impact for refiners, blenders, importers and distributors would derive from the fact that they will need to meet only one (the Federal, not New Jersey's as well) set of fuel standards. They will also be relieved from the costs of the additional testing and recordkeeping requirements imposed by New Jersey's oxygenated fuels program. Gasoline retailers and wholesale purchaser-consumers will benefit as well by being relieved from the costs associated with labelling their fuel pumps.

A limited negative economic impact of this proposal would be the costs incurred by those motorists whose vehicles fail the inspection/maintenance (I/M) emission test and which would not fail if the vehicle were fueled with gasoline meeting the 2.7 percent oxygen content standard. Oxygenate in gasoline reduces the emission level of CO. Some vehicles may fail the emission test when using the reformulated gasoline with its lower (2.0 percent) level of oxygenates which would pass with 2.7 percent oxygenated gasoline. These motorists would incur the expense of repairing the vehicle in order to pass the I/M test using the lower (2.0 percent) oxygen content fuel.

Environmental Impact

The implementation of these proposed amendments should not have a significant impact on the environment. The State of New Jersey is already meeting the NAAQS for CO throughout the State. With the adoption of these proposed amendments, in conjunction with the phasing in of an Enhanced Inspection and Maintenance Program and the implementation of the Federal reformulated gasoline (RFG) program the State should continue to meet the NAAQS for CO. (For further discussion of these environmental impacts, please refer to the Department's Carbon Monoxide State Implementation Plans Redesignation and Maintenance Plans, dated November 1993.)

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these proposed amendments would not impose additional reporting or recordkeeping requirements on small businesses, nor would they impose additional compliance requirements on small business as defined in the Regulatory Flexibility Act. In fact, they would relieve refiners, importers, blenders and distributors which are small businesses from certain testing and recordkeeping requirements. The amendments would also eliminate certain labelling requirements to which gasoline retailers and wholesale purchaser-consumers are subject.

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

7:27-25.1 Definitions

Words and terms, when used in this subchapter, have meanings as defined at N.J.A.C. 7:27-1.4 or as follows, unless the context clearly indicates otherwise:

...

"National ambient air quality standard" or "NAAQS" means an ambient air quality standard promulgated at 40 CFR 50.

...

7:27-25.3 General provisions

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

(c) Except as provided for at N.J.A.C. 7:27-25.9 **and (d) below**, no refiner, importer, blender, distributor, wholesale purchaser-consumer, or retailer shall provide, store, offer for sale, sell, transport, import, or exchange in trade gasoline for use in New Jersey, unless:

1.-2. (No change.)

(d) [The standards set forth in (c) above shall become operative on November 1, 1992 or on such delayed effective date as EPA

establishes, pursuant to 42 USC 7545 (m)(3)(C), due to a determination that there is or is likely to be, for any control area, an inadequate domestic supply of or distribution capacity for:

1. Oxygenated gasoline that meets the standard set forth in (c) above; or

2. The oxygenates needed to blend into gasoline to make fuel that conforms with (c) above.] **On and after January 1, 1995, refiners, importers, blenders, distributors, wholesale purchaser-consumers, and retailers shall be exempt from the provisions of (c)1 above, the oxygen content testing and recordkeeping provisions of N.J.A.C. 7:27-25.4(a) and (b), and the labelling requirements pertaining to oxygenated gasoline at N.J.A.C. 7:27-8. However, such exemption shall be revoked for a given control area as of the first day of the next applicable oxygen content control period (that is, October 1 in the Northern oxygen program control area or November 1 in the Southern oxygen program control area) should the Department determine that an exceedance of the NAAQS for CO has been recorded at any location in that control area during the applicable oxygen program control period. The Department shall publish notice of the recording of any such exceedance and of such revocation no less than 90 days prior to the first day of the next applicable oxygen content control period. The revocation shall remain in effect until the first day of the next applicable oxygen program control period subsequent to the Department's publication of a notice in the New Jersey Register that the Department, through ambient air quality monitoring, has determined that the NAAQS for CO has been attained and that the permanent and enforceable CO control measures in effect are sufficient to ensure the maintenance of the attainment of the NAAQS for CO.**

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

7:27-25.8 Labeling

(a) During any oxygen content control period in which the gasoline provided, offered for sale, sold or otherwise exchanged in trade at a facility owned or operated by any retailer [or wholesale purchaser-consumer] is subject to the oxygen content standards set forth at N.J.A.C. 7:27-25.3, the retailer or wholesale purchaser-consumer shall label as specified in (b) through (d) below each fuel pump or other gasoline dispensing device.

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

(a)

POLICY AND PLANNING/AIR QUALITY MANAGEMENT

Control and Prohibition of Mercury Emissions

Proposed New Rules: N.J.A.C. 7:27-27
Proposed Amendment: N.J.A.C. 7:27A-3.10

Authorized By: Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.

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

DEPE Docket Number: 04-94-01/125.

Proposal Number: PRN 1994-110.

A **public hearing** concerning this proposal will be held on:
Tuesday, March 29, 1994 at 10:00 A.M.
Department of Environmental Protection and Energy
401 East State Street
Hearing Room—First Floor, East Wing
Trenton, New Jersey 08625

Submit written comments by April 12, 1994 to:
Janis E. Hoagland, Esq.
Department of Environmental Protection and Energy
Office of Legal Affairs
CN 402
Trenton, New Jersey 08625-0402

These proposed new rules and amendments will become operative 60 days after adoption by the Commissioner (see N.J.S.A. 26:2C-8).

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy (DEPE) is proposing new rules, N.J.A.C. 7:27-27, Control and Prohibition of Mercury Emissions, and related amendments to N.J.A.C. 7:27A-3.10, Civil Administrative Penalties and Requests for Adjudicatory Hearings (the Penalty Code). The proposed rules will apply to municipal solid waste (MSW) incinerator owners and operators. The purpose of the proposed rules is to reduce the amount of mercury emitted into the environment by the incineration of solid waste through the establishment of emission standards for MSW incinerators. Mercury in all its chemical forms has long been known to be toxic to humans and other species, especially with respect to adverse effects on mammalian nervous systems.

While natural processes also contribute mercury to the environment (for example, volcanic eruptions and degassing of mercury from the earth's crust and the oceans), the predominant contributor to global emissions is human activities. Nationally, several types of industrial and other activities emit significant amounts of mercury to the ambient air. These activities include combustion of coal and other fossil fuels for electricity production and industrial uses, incineration of MSW and medical waste, incineration and land application of sewage sludge and landfill disposal. The largest sources nationally and internationally are coal combustion for industrial uses and electrical power generation, followed by MSW incineration. Combustion of MSW and coal are also the largest sources of atmospheric mercury emissions in New Jersey.

In February 1992, Scott A. Weiner, then DEPE Commissioner, formed the Mercury Emissions Standard-Setting Task Force, a body made up of representatives from the DEPE, the regulated industry, county government, environmental organizations, and other interested parties, to assist in the development of a statewide mercury emissions standard for MSW incinerators. The Task Force met numerous times over an 18-month period and produced a final report entitled "Mercury Emissions Standard-Setting for MSW Incinerators." Acting Commissioner Jeanne Fox accepted the final report on July 30, 1993. The task force recommended that the DEPE set a stringent mercury emissions standard of 28 micrograms per dry standard cubic meter (ug/dscm) corrected to seven percent oxygen for all MSW incinerators in New Jersey, to be achieved by the year 2000, with an interim standard of 65 ug/dscm to be met by the year 1996. The report recommended that the standard be achieved through the installation of new air pollution control technology at all MSW incinerators, and the implementation of programs for the source reduction and source separation of mercury containing waste materials, such as batteries, flourescent light bulbs, and thermometers, prior to incineration of MSW. The source reduction and source separation programs, applied to mercury containing products in the solid waste stream, would also benefit and significantly reduce mercury emissions from medical waste incinerators.

As recommended by the Task Force, the Department reserved sections of the proposed rules to evaluate and develop standards for other sources of mercury emissions, such as hospital waste incinerators, sewage sludge incinerators, hazardous waste incinerators, and coal burning boilers.

The specific provisions of the proposed rules at N.J.A.C. 7:27-27 (subchapter 27) are discussed in detail below:

N.J.A.C. 7:27-27.1 Definitions

The proposed rule defines the terms solid waste, MSW and medical waste which are consistent with those used in the New Jersey solid waste management rules (N.J.A.C. 7:26-1.4). The definition of coal was derived from the Federal New Source Performance Standards (NSPS) Subpart D. The definitions of hazardous waste and hazardous waste incinerator are consistent with hazardous waste regulations (N.J.A.C. 7:26-1.4). The definition of sewage sludge is derived from the newly adopted Federal 503 regulation (FR. Vol. 58, No. 32, Page 9390).

The following terms used in subchapter 27 have the same definitions used elsewhere in N.J.A.C. 7:27:

air contaminant
control apparatus
department
equipment
facility
incinerator
manufacturing process
person
preconstruction permit
source emission testing

The following terms are newly defined for the purpose of this subchapter:

coal burning boiler
mercury
owner
operator
ug/dscm

N.J.A.C. 7:27-27.2 Applicability

The proposed new rules govern MSW incinerators. An MSW incinerator is one type of "thermal destruction facility," a term defined in the Department's solid waste rule, N.J.A.C. 7:26-1.4. It means a nonhazardous solid chemical waste facility which utilizes a thermal device to either burn waste or chemically decompose waste by heating it in an oxygen deficient atmosphere.

The purpose of the proposed rule is to require MSW incinerators to install and use control technology to reduce mercury emissions. After further evaluation and input from the Mercury Emissions Reduction Task Force, the Department intends to propose additional provisions which would regulate mercury emissions from medical waste incinerators, sewage sludge incinerators, hazardous waste incinerators, and coal burning boilers in the future.

N.J.A.C. 7:27-27.3 General provisions

This section contains general provisions regarding joint and several liability, compliance with all applicable requirements of this subchapter and civil and applicable criminal penalties. These provisions are analogous to similar provisions in other air pollution control rules or rule proposals.

N.J.A.C. 7:27-27.4 Municipal solid waste (MSW) incinerators

This section would require MSW incinerators having a capacity equal to or greater than 9.6 tons per day to install and operate mercury emission control technology. Incinerators that charge 9.6 tons per day or more MSW are large incinerators, which usually receive waste from many different sources within a county and from other counties. These facilities do not have control over the mercury content of the waste. Therefore, large MSW facilities must install air pollution control devices to reduce mercury emissions.

The control technology must reduce the mercury emissions from the MSW incinerator by at least 80 percent, when the mercury concentration in the flue gas is greater than or equal to 140 ug/dscm corrected to seven percent oxygen. To determine that the air pollution control apparatus is designed to achieve the required control efficiency, the Department will review and compare the design documents with the design of air pollution controls installed on similar operating facilities.

Small MSW incinerators usually receive MSW from a captive source (that is, a small MSW incinerator in a commercial establishment). The owner and operator of a small incinerator may implement effective measures to remove mercury containing materials from MSW and thereby may achieve less than 28 ug/dscm corrected to seven percent oxygen by employing source separation techniques only. Therefore, mercury air pollution control apparatus would not be required for such incinerators.

Small MSW incinerators located at apartment buildings would not be able to achieve the standard without installing mercury air pollution control devices. The owner and operator of apartment incinerators would likely shut down the incinerators to avoid the capital, operating and testing costs of the mercury air pollution controls.

This section would also establish maximum allowable mercury emission limits for MSW incinerators of any capacity, along with averaging times and stack test methods for determining compliance. MSW incinerators would be required to either reduce mercury emissions by at least 80 percent or achieve an emission limit that does not exceed 65 micrograms per dry standard cubic meter corrected to seven percent oxygen by January 1, 1996, and an emission limit that does not exceed 28 micrograms per dry standard cubic meter corrected to seven percent oxygen by January 1, 2000. Chapters 2 and 6 of Volume III and the Executive Summary, Volume I, of the Final Report on Municipal Solid Waste Incineration, Task Force on Mercury Emissions Standard Setting address control efficiency and emission limits for MSW incinerators, and explain how the Department has determined that these requirements are attainable. The Task Force Report indicates that the mercury emissions from MSW incinerators can be reduced by at least 80 percent by source reduction, recycling and separation of waste materials containing mercury, and at least an additional 80 percent reduction in mercury emissions can be achieved by installing air pollution control technology at MSW incinerators. This would mean an overall greater than 96 percent reduction of mercury emissions from MSW incinerators.

Compliance with the 80 percent control efficiency or the emission limits would be determined by EPA Reference Method 29 or an equivalent method that is as conservative and reliable as EPA Reference Method 29. EPA Reference Method 29 is the most accurate testing method that is available to measure the mercury emissions. Each MSW incinerator would be required to perform three source emission tests at the inlet of the air pollution control apparatus and three source emission tests simultaneously at the outlet of the air pollution control apparatus on a quarterly basis. The control efficiency would be determined on a quarterly basis by averaging the three source emission test results. The annual average emission rates would be determined by averaging all source emission test results performed in a calendar year.

Any person who achieves and maintains compliance with the proposed mercury emission standards for two consecutive years may reduce the frequency of source emission testing from three source emission tests performed quarterly to three sources emission tests performed in the first quarter of each calendar year.

One of the goals of the Mercury Emissions Standard Setting Task Force was to establish a mercury emission standard that would be protective of human health. A model was developed in Volume II (Environmental and Health Issues) of the Task Force Report to assess the possible environmental impact of mercury emissions from a generic MSW incinerator. The report focused on the accumulation of mercury in freshwater fish living in nearby lakes and ponds, since this was found to be the most important route of exposure for sensitive individuals in the New Jersey population. Based on the generic model results, emissions from MSW incinerators operating at currently permitted levels may result in significant increases in mercury levels in New Jersey freshwater fish (through deposition of mercury to water and soil) and a significant increase in the ingestion of methylmercury. This increased ingestion could constitute a significant fraction (more than one percent) of the acceptable daily intake (ADI) for mercury for a portion of the State's population eating locally caught freshwater fish. (For some scenarios the model predicts that the ADI would be exceeded.) A decrease of 96 percent in the modeled mercury emissions would reduce the predicted methylmercury ingestion to about a third or less of the ADI, which should be protective of public health after the existing background exposure is considered. For more information on the health impacts, please refer to Environmental Impact Section and Volume II of the Final Report of the Mercury Emissions Standard Setting Task Force.

This section would also establish a 30 day time limit from the operative date of the rules to apply for a permit to construct the mercury control apparatus. Also, this section would require owners and operators of MSW incinerators to perform optimization tests to determine the optimum reagent feed rate that minimizes the mercury emissions below the allowable level without using excessive amounts of reagent. This would then become the minimum reagent feed rate at which the MSW incinerator would be required to operate. The optimization tests would include operating the MSW incinerator at different reagent feed rates and determining the mercury control efficiencies that can be achieved using EPA Reference Method 29. In establishing the optimum reagent feed rate, consideration would be given to the reasonableness of the quantity of reagent used versus the mercury emission level achieved.

N.J.A.C. 7:27-27.9 Reporting and recordkeeping

This section would require that stack test reports be submitted to the Department within 30 days after completion of the source emission tests and certified by a licensed professional engineer or an industrial hygienist. It also would require that all required records (test reports, etc.) be kept on site for inspection by the Department for at least five years. These provisions are consistent with similar provisions in other air pollution control rules.

N.J.A.C. 7:27-27.10 Penalties

This section would require that any owner or operator who fails to comply with any applicable provision of this subchapter is subject to civil penalties in accordance with N.J.A.C. 7:27A-3 and applicable criminal penalties.

N.J.A.C. 7:27-3.10 Civil administrative penalties for violations of rules adopted pursuant to the Act

N.J.A.C. 7:27-3.10(e)27 would establish civil administrative penalties for violations of each requirement of subchapter 27. In establishing the

proposed penalty amounts, the Department has applied the following criteria:

1. The potential or actual health and environmental impacts of the violation, including the characteristics and quantity of the air contaminants regulated, the magnitude of the areas affected and the air quality of the area affected;

2. The deterrent value of the penalty and whether the proposed penalty amounts are appropriate to ensure compliance with N.J.A.C. 7:27-27; and

3. Consistency with penalties in N.J.A.C. 7:27A-3 for violations of other comparable rules in N.J.A.C. 7:27. The Table below cross-references the violations for which the proposed provisions establish penalties, with the comparable provisions for which the existing rules establish similar penalties.

Provision of subchapter 27 for which a penalty for violation is proposed:	Provision of existing rules with corresponding penalty for comparable violation:
N.J.A.C. 7:27-27.4(a)	N.J.A.C. 7:27-8.3(a) and (b)
N.J.A.C. 7:27-27.4(b)1 and (b)2	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-27.4(c)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-27.4(f)	*
N.J.A.C. 7:27-27.4(h)	N.J.A.C. 7:27-8.3(a)
N.J.A.C. 7:27-27.4(i)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-27.4(j)	**N.J.A.C. 7:27-[16.6(i)2]16.18(j)2
N.J.A.C. 7:27-27.4(k)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-27.9(a), (b) and (c)	**N.J.A.C. 7:27-[16.6(i)2]16.18(j)2
N.J.A.C. 7:27-27.9(d) and (f)	**N.J.A.C. 7:27-[16.4(m)2]16.6(m)
N.J.A.C. 7:27-27.9(e)	N.J.A.C. 7:27-16.6(m)
N.J.A.C. 7:27-27.9(g)	**N.J.A.C. 7:27-[16.9(a)]16.22(a)

*Proposed penalty for violation of N.J.A.C. 7:27-27.4(f) is based on provisions proposed for violation of N.J.A.C. 7:27-8.4(c)1 in 25 N.J.R. 3963 (September 7, 1993).

**See 25 N.J.R. 3339(a) (August 2, 1993) for proposed amendments to and recodification of N.J.A.C. 7:27-16. Material in brackets [ ] shows the existing citation. Material underlined shows the proposed new citation.

Pursuant to N.J.A.C. 7:27A-3.12, the Department retains the ability to assess penalty amounts, in addition to the penalties established under N.J.A.C. 7:27A-3.10(e)27, to offset any economic benefit that the violator may have realized as a result of not complying with the rules.

Task Force Review and Comments

On August 23, 1993, the Department distributed a preliminary draft of the proposed rules on the Control and Prohibition of Mercury Emissions at MSW incinerator facilities for review and comment by the members of the Task Force. Subsequently, the Department received several written comments from the members of the Task Force. After review of these comments, the following provisions were incorporated to the draft rule:

1. A reserved section heading for coal burning boilers (N.J.A.C. 7:27-27.8) has been added for future rule provisions, along with other reserved sections on hospital waste incinerators, sewage sludge incinerators and hazardous waste incinerators. These reserved sections indicate the Department's commitment to further evaluate mercury emissions from these sources and adopt appropriate mercury emission limits in the future.

2. A provision has been included to require the owners and operators of MSW incinerators to perform optimization tests to determine the optimum reagent feed rate that minimizes the mercury emissions.

3. Task force members also requested clarification of the required start-up dates for stack emission testing. Pursuant to N.J.A.C. 7:27-27.4(c), three mercury emission test runs would be required every quarter beginning January 1, 1996. Clarification has been provided that these tests may be performed any time during each quarter, provided they are completed within that quarter, and there is at least a 45 day interval between each quarterly stack test.

One task force member recommended installation of continuous emission monitoring (CEM) for mercury, when available. This has not been included because the cost and reliability of such monitoring is still uncertain. However, if a certifiable CEM for mercury is developed in the future, the Department may allow compliance with the rule limits (N.J.A.C. 7:27-27.4(b)1 and 2) to be determined with such a CEM, by appropriate modification of the permit conditions. Any requirement for such a CEM would be established through either rulemaking or the permitting process.

Source Separation and Reduction

These rules would mandate installation of air pollution control equipment to achieve an 80 percent reduction of mercury emissions across the air pollution control equipment at most MSW incinerators, but do not include requirements for source separation and source reduction, which are also necessary for the numerical standards recommended by the task force to be achieved.

To achieve the numerical standards recommended by the task force, a two-part approach involving both the public and private sectors must be implemented. Operators of MSW incinerators will be retrofitting these facilities with state-of-the-art air pollution control technology which will substantially reduce current levels of mercury emissions. Additionally, the "Dry Cell Battery Management Act" (N.J.S.A. 13:1E-99.59 et seq.), signed into law in January 1992, is expected to result in up to 80 percent reduction of mercury in MSW incinerators by 1995. The "Toxic Packaging Reduction Act" (N.J.S.A. 13:1E-99.44 et seq.), also signed in 1992, will further reduce the levels of mercury and other heavy metals in packaging materials.

To further implement the waste management component of the mercury reduction strategy, the Department is developing a solid waste rule that would require the counties to submit specific plans and proposed timeframes for the removal and separate management of consumer batteries, fluorescent light bulbs, thermometers, thermostats, all of which contain mercury and other heavy metals. As a component of this plan submission, each county is expected to be required to prepare an inventory of potential generators of the mercury containing materials of concern, such as jewelers, hospitals, and large commercial/institutional/industrial buildings, and prepare plans for facilitating separate collection/drop-off of these materials. The plan would also be required to contain specific schedules for expanding existing household hazardous waste collection programs and/or participation in permanent household hazardous waste collection programs, and expanded public education on mercury waste source separation. The Department and affected counties would establish mutually agreed upon schedules to ensure implementation of some mercury reduction programs by December 31, 1995, and others by December 31, 1999.

Social Impact

The proposed new rules will have a positive impact on the quality of life in New Jersey. This subchapter will reduce the mercury that is emitted by municipal solid waste (MSW) incinerators and thus reduce the exposure to mercury of those who live or work in New Jersey. In combination with other companion mercury reduction actions outlined below, the amount of mercury in the environment will be significantly decreased, thereby reducing the accumulation of mercury in aquatic ecosystems.

New Jersey is currently in the process of implementing programs that will reduce the quantity of mercury, as well as other heavy metals, in the solid waste stream. These programs are mandated in two amendments to the Solid Waste Management Act, which were passed by the Legislature and signed into law by Governor Florio on January 20, 1991. The amendments are the "Dry Cell Battery Management Act," N.J.S.A. 13:1E-99.59 et seq. and the "Toxic Packaging Reduction Act," N.J.S.A. 13:1E-99.47 et seq. The implementation of the "Dry Cell Battery Management Act" will limit the mercury content in batteries, which is expected to reduce the mercury content of New Jersey solid waste by up to 80% by 1995. In addition, the "Toxic Packaging Reduction Act" will reduce the mercury levels in pigments used in packaging. In addition to regulatory efforts, manufacturers of alkaline batteries have accelerated their source reduction efforts and plan to have all mercury out of their alkaline batteries by January 1, 1994 (two years ahead of schedule). Other product manufacturers, such as fluorescent light bulb manufacturers, are also redesigning their products to reduce the mercury in their products. The Department is currently exploring a source separation approach for discarded fluorescent bulbs and has established a working group of fluorescent bulb manufacturers, electric utilities, solid waste districts, and

fluorescent bulb transporters and recycling facilities to evaluate and assist in the implementation of a statewide system. This program would complement the overall expansion of the USEPA "Green Lights" program, which is designed to assist in the conversion to more efficient lighting sources in order to reduce consumption of electricity. Since expanded use of fluorescent bulbs is part of the "Green Lights" program, it is important to focus on the management of the mercury in these bulbs.

These source reduction and source separation efforts will reduce the mercury concentration of MSW incinerators emissions in New Jersey by 50 to 80 percent by 1995. It will also be necessary for counties that dispose of solid waste to develop plans and schedules for the removal of additional sources of mercury from the waste stream. The Division of Solid Waste Management (DSWM) currently requires counties to submit plans and schedules to remove materials of concern (including mercury) from the incoming solid waste stream, as part of the process of approving amendments to each county's Solid Waste Management Plan. These efforts are described in detail in Vol III, Technical and Regulatory Issues, of The Mercury Emissions Standard Setting Task Force Report. Mr. Michael Winka, Executive Assistant, in the Division of Solid Waste Management, authored this section of the task force report and can be contacted at (609) 530-8591 for questions on source separation of mercury containing waste.

The proposed amendments to the rules governing civil administrative penalties will have a positive social impact, by encouraging compliance and discouraging noncompliance with the State's air pollution control laws and regulations.

Economic Impact

The proposed new rules will impact five existing New Jersey Resource Recovery Facilities (one located at Fort Dix Military Base and one each located in Camden, Essex, Gloucester and Warren Counties), one proposed facility (Mercer County), one facility under construction (Union County) and all other MSW incinerators, including those in apartment complexes.

Installation of Control Apparatus

The cost of achieving the recommended level of mercury emission reductions is considered to be reasonable when compared to total per ton tipping fees at major MSW incinerators. Based on information submitted by the Pollution Control Financing Authority of Warren County, the capital, testing and operating costs for add-on technology to control mercury emissions (using an activated carbon injection system, the most likely method of achieving the standard) are estimated to be $3.88 to $5.50 per ton of waste processed at the facility. The estimated costs provided by the separate facilities are listed below.

Mercer County RRF	$2.35 per ton of MSW
Essex County RRF	$2.84 per ton of MSW
Camden County RRF	$1.37 to $3.78 per ton of MSW
Warren County RRF	$3.88 to $5.50 per ton of MSW
Gloucester County RRF	$1.10 per ton of MSW
Union County RRF	$1.14 per ton of MSW

The Minnesota Pollution Control Authority in their recent report entitled "Technical Work Paper on Mercury Emissions from Waste Combustors" prepared by Radian Corporation dated December 1992, estimated the cost for carbon injection system at approximately $0.63 per ton for an 800 tons per day MSW incinerator. The Burnaby MSW incinerator (British Columbia, Canada) estimated the cost for carbon injection system at approximately $0.30 to $0.50 per ton of MSW. These do not include the cost of testing.

Since costs are site specific, each county must determine the appropriate cost per ton of MSW. These costs will ultimately be passed on to the individual homeowner and businesses in the towns which contribute waste to the various incinerators or a direct service fee from solid waste haulage companies contracted with by individual homeowner or businesses. Other costs will be the future cost of implementing the source separation programs (separate collection of batteries, for instance). As manufacturers reformulate their products to eliminate mercury, any increased cost would likely be passed on to the consumer. These costs, as well as other types of mercury emissions control, are described in Chapter 6, "Mercury Emissions Controls for Municipal Solid Waste Incinerators" of Volume III of the Task Force Report.

On an average a New Jersey resident generates approximately one ton of MSW per year. Assuming an average household consists of three persons, it is estimated that the range of mercury control per household would be approximately $3.00 to $16.50 per year ($1.00 to $5.50 per ton of MSW × 1 ton of MSW/person/year × 3 persons/household). Other costs of source separation of fluorescent bulbs is approximately $3.00 to $3.60 per household per year and battery recycling is approximately $4.50 per household per year.

Emissions Testing

Owners and operators of equipment regulated under this proposed rule are required to conduct source emission testing quarterly, with a total of six samples taken each quarter for each incinerator. The Department estimates that the cost of this testing is approximately $2,000 per test run. For a facility that has two incinerators, the cost of testing would be approximately $96,000 per year (4 quarters × 2 sources × 6 inlet and outlet test runs × $2000). For a 200 ton per day incinerator this would equate to about $0.70 per ton of waste. For a 750 ton per day incinerator, testing costs would be about $0.20 per ton of waste.

Penalties

The proposed amendments to N.J.A.C. 7:27A-3.10 will have an adverse economic impact only upon persons who violate subchapter 27. The extent of economic impact on those persons will depend on a variety of factors, including the nature of the violation and the extent of its potential effect upon public health, welfare and the environment. The economic impact of the proposed amendments to N.J.A.C. 7:27A-3.10 will also depend on the existence of mitigating or aggravating circumstances in connection with the violation. In the Department's experience, mitigating circumstances occur more frequently than aggravating circumstances. Therefore, on the average it is more likely that the flexibility in determing penalties provided by the proposed amendments will reduce the economic impact of penalties for violation of the State's air pollution control laws and regulations.

Apartment Incinerators

It is expected that any remaining small incinerators in apartment buildings will be shut down because they cannot be brought into compliance with the rule at a reasonable cost. The cost that the apartment building owners and residents will have as a result of the shutdowns of these incinerators is discussed below.

The cost for solid waste management in New Jersey including collection and disposal, for the individual household contracting with a private collector ranges from $10.00 to $30.00 per month. The factors that effect those costs are the type of collection service, the frequency of the service and the type of disposal facility. The range of cost per household across New Jersey would be between $120.00 to $450.00 per year based on an individual household contracting with a private solid waste collection company. These costs were developed based on currently approved tariffs as managed by the Bureau of Rates and Tariffs in the Division of Solid Waste Management. Since an apartment building would consist of a number of households, the cost to the entire building would be lower than on an individual basis. Further, a recent study by the League of Municipalities calculated the average New Jersey solid waste collection and disposal cost per household at $220.00 per year. To determine the net cost, the current costs per household for operating the incinerator must be subtracted from the costs of collection and disposal. At $25,000 per year per incinerator for 100 families, the current incinerator cost would be $250.00 per year per family. Therefore, the shutting down of any existing incinerator is not likely to result in significant cost increases over the long term.

Environmental Impact

The Environmental and Health Issues Subcommittee of the Task Force on Mercury Emissions Standard Setting investigated several exposure pathways and identified the fish ingestion pathway as the pathway of most concern for mercury emissions (see Final Report on Municipal Solid Waste Incineration, Vol. II). Using an exposure model, a risk assessment was performed to describe the incremental increase of methylmercury intake from the ingestion of locally-caught fish which may be associated with total mercury emissions from MSW incinerators and similar mercury emitting facilities. The reason why mercury from an emission source through deposition to surface water and final fish uptake and ingestion is a critical pathway is the potential for bioaccumulation of organic mercury. The Risk Assessment determined that in complex terrain in a rural area (where ambient air concentrations of mercury are likely to be higher and runoff rates are also higher), the average daily intake of mercury through local fish ingestion could be significant for some persons if emissions are not reduced.

Most adults in New Jersey do not appear to be at risk of ingesting excessive amounts of mercury through the consumption of either saltwater or freshwater fish. There exists, however, a potential for adverse effects on the development of the nervous system of children, exposed in utero to mercury, if their mothers eat large amounts of fish containing methylmercury. The Risk Assessment concludes that it is prudent to implement more stringent controls on emissions of mercury, although the Risk Assessment was not sufficiently accurate to determine the exact amount of emission reductions that should be required. By reducing emissions of mercury, the proposed rules will have a positive impact on human health.

The proposed rules will also reduce the mercury exposure for a wide range of wildlife. Many species of invertebrates, fish, birds and mammals have been found to be sensitive to extremely small mercury exposures. Therefore, reducing mercury emissions will have a positive impact on many ecosystems in New Jersey by reducing the likelihood that fish, birds, and other animals may be exposed to harmful concentrations of mercury.

Regulatory Flexibility Analysis

The proposed new rules apply to both large and small incinerators. Small businesses subject to the proposed new rules include apartment management companies which operate small apartment incinerators burning municipal solid waste. The proposed rules do not establish exemptions or differing requirements for small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

There are approximately 100 remaining small apartment incinerators, with an average burning rate of 1,000 pounds per day. The Department expects that the cost of compliance with the requirements of the proposed rules will be substantial for small apartment incinerator owners, because the testing and control equipment costs can not be spread out over large amounts of municipal solid waste (MSW). The overall impact of these rules on such small incinerators would most likely be to phase-out their operation somewhat faster than the current phase-out rate.

All apartment incinerators coming due for renewal of their certificates to operate are already required to stack test to demonstrate compliance with existing permits and applicable rules. The Department has found that rather than stack test and upgrade air pollution control equipment, most small apartment incinerator owners/operators elect to cease operation. They then develop recycling programs and contract for waste collection by private haulers. Consequently, about 500 small incinerators have shut down since 1980. The shutdown of small incinerators is consistent with the State's overall waste management policy that any incineration be done in well controlled, fully monitored, professionally operated units.

If owners/operators of small incinerators elect to continue operation, then they will be required to obtain professional services (installation of mercury control technology, conduct quarterly stack tests, etc.) to comply with subchapter 27. The proposed rules also establish applicable reporting and recordkeeping requirements. These recordkeeping requirements involve results of the source emission testing performed pursuant to N.J.A.C. 7:27-27.4(c). Since most small businesses do not have inhouse mercury testing expertise, most will be required to obtain additional professional services to comply with the recordkeeping and reporting requirements. The information to be contained in these records and reports is essential to enable the Department to monitor compliance with subchapter 27. Accordingly, the Department has not proposed reduced recordkeeping or reporting requirements for small businesses, or exempted them from these requirements.

The large MSW incinerators which are affected by these rules are not small businesses as defined in the New Jersey Regulatory Flexibility Act.

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

SUBCHAPTER 27. CONTROL AND PROHIBITION OF MERCURY EMISSIONS

7:27-27.1 Definitions

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

"Air contaminant" means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases.

"Coal" means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials, Designation D388-77.

"Coal burning boiler" means a furnace used in the process of burning coal for the purpose of producing steam by heat transfer.

"Control apparatus" means any device which prevents or controls the emission of any air contaminant directly, or indirectly into the outdoor atmosphere.

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

"Equipment" means any device capable of causing the emission of any air contaminant either directly or indirectly into the outdoor atmosphere, and any stack or chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment.

"Facility" means the combination of all structures, buildings, equipment, source operations, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person.

"Hazardous waste" means any solid waste or combination of solid wastes, including toxic, corrosive, irritating, sensitizing, radioactive, biologically infectious, explosive or flammable solid waste, which poses a present or potential threat to human health, living organisms or the environment, provided that the solid waste is hazardous in accordance with the standards and procedures set forth in N.J.A.C. 7:26-8.

"Hazardous waste incinerator" means any enclosed device burning hazardous waste using controlled flame combustion that neither meets the criteria for classification as an industrial boiler nor is defined as an industrial furnace. It also includes boilers and industrial furnaces which do not conform with the criteria for these devices under N.J.A.C. 7:26-9.1(c)9.

"Incinerator" means any device, apparatus, equipment, or structure using combustion or pyrolysis for destroying, reducing or salvaging any material or substance, but does not include thermal or catalytic oxidizers used as control apparatus on manufacturing equipment.

"Manufacturing process" means any action, operation or treatment embracing chemical, industrial, manufacturing, or processing factors, method or forms including, but not limited to, furnaces, kettles, ovens, converters, cupolas, kilns, crucibles, stills, dryers, roasters, crushers, grinders, mixers, reactors, regenerators, separators, filters, reboilers, columns, classifiers, screens, quenchers, cookers, digesters, towers, washers, scrubbers, mills, condensers, or absorbers.

"Medical waste" means any solid waste which is generated in the diagnosis, treatment (for example, provision of medical services), or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. The term does not include any hazardous waste identified or listed under 40 CFR Part 261 or any household waste generated from home self-care as defined in N.J.A.C. 7:26-3A.5.

"Mercury (Hg)" means all inorganic and organic compounds of mercury, including elemental mercury, expressed as elemental mercury.

"Municipal solid waste (MWS)" means residential, commercial and institutional solid waste generated within a community.

"Operator" means any person who operates, leases, controls, or supervises a facility.

"Owner" means any person who owns a facility.

"Person" means any individual or entity and shall include, without limitation, corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals, and shall also include, without limitation, all political subdivisions of this state or any agencies or instrumentalities thereof.

"Preconstruction permit" means a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C-9.2.

"Sewage sludge" means a solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic

septage, scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge.

"Solid waste" has the meaning as defined for this term at N.J.A.C. 7:26-1.6.

"Source emission testing" means the testing of a discharge of any air contaminant from equipment, control apparatus or source operation through any stack or chimney.

"Ug/dscm" means a measurement of the concentration of a specified substance, expressed as micrograms per dry standard cubic meter.

7:27-27.2 Applicability

Municipal solid waste incinerators are subject to the provisions of this subchapter.

7:27-27.3 General provisions

(a) Each owner or operator of any equipment or source operation subject to this subchapter is responsible for ensuring compliance with all applicable requirements of this subchapter.

(b) If there is more than one owner or operator of the equipment or source operation, each owner and each operator is jointly and severally liable for any penalties for violation of this subchapter.

(c) Any person who fails to comply with any applicable provision of this subchapter shall be subject to civil penalties in accordance with N.J.A.C. 7:27A-3 and to applicable criminal penalties and sanctions including, but not limited to, those set forth at N.J.S.A. 2C-28.3 and N.J.S.A. 26:2C-19(f)1 and 2.

7:27-27.4 Municipal solid waste (MSW) incinerators

(a) Each owner or operator of a MSW incinerator subject to the requirements of this subchapter, which is capable of incinerating 9.6 tons or more of MSW per day, shall install and operate mercury emissions control apparatus by December 31, 1995, designed to reduce at a minimum 80% of the emissions of mercury from any MSW incinerator. Such design shall be capable of reducing the concentration of mercury in the flue gas from the MSW incinerator from 140 ug/dscm (corrected to seven percent oxygen) to 28 ug/dscm (corrected to seven percent oxygen) or less after the control apparatus. Compliance with this section shall be determined by comparing the design of the mercury emission control apparatus with the design of the control apparatus installed on similar operating facilities.

(b) Each owner or operator of a MSW incinerator subject to the requirements of this subchapter shall operate the MSW incinerator in accordance with provisions specified in either (b)1 or 2 below:

1. The emission of mercury from any MSW incinerator, as determined pursuant to (c) below, shall not exceed:

i. Commencing on January 1, 1996 through and including December 31, 1999, 65 ug/dscm, based on an annual average corrected to seven percent oxygen; and

ii. On and after January 1, 2000, 28 ug/dscm, based on an annual average corrected to seven percent oxygen; or

2. On and after January 1, 1996, mercury emissions at the exit of the control apparatus of any MSW incinerator, as determined pursuant to (c) below, shall not exceed 20 percent of the mercury emissions in the effluent from the MSW incinerator, prior to the inlet to the control apparatus, based on each quarterly average.

(c) Commencing in January 1996, the owner or operator of a MSW incinerator, subject to (b) above, shall perform on a quarterly basis, three source emission tests to measure mercury in the gas stream at the inlet of the air pollution control apparatus serving each incinerator and simultaneously perform three source emission tests to measure mercury in the gas stream at the exit of the control apparatus. There shall be at least a 45 calendar day interval between the testing performed for a given quarter and the testing performed for the preceding quarter, unless a shorter period is approved by the Department. Any MSW incinerator without control apparatus shall perform three source emission tests to measure mercury in the gas stream in the stack.

(d) Compliance with (b) above shall be determined as follows:

1. Compliance with (b)1 above shall be determined annually based on the average of all source emission tests performed in a calendar year; or

2. Compliance with (b)2 above shall be determined quarterly based on the average of the three source emission tests performed during that quarter.

(e) Notwithstanding the provisions of (c) above, any person who achieves and maintains compliance with (b)1 or 2 above, for all applicable incinerators located at a facility, during two consecutive calendar years may reduce the frequency of source emission testing from three source emission tests performed quarterly to three source emission tests performed in the first quarter of each calendar year. However, if subsequent source emission testing fails to demonstrate compliance with (b) above, then the frequency of source emission testing shall revert to that indicated in (c) above.

(f) Source emissions tests performed pursuant to (c) and (e) above shall be conducted in accordance with a source emission test protocol approved by the Department. To obtain the approval of the Department of a source emission test protocol, the owner or operator shall submit to the Department a proposed source emission test protocol, setting forth all test methods, including, but not limited to, sampling and analytical procedures to be used; describing the sampling equipment and the source sampling location(s); and providing sample calculations to be used to determine the concentration of mercury in the gas stream. The owner or operator shall submit the proposed protocol no less than 90 calendar days prior to the conduct of source emission tests for review and approval to the following address:

Chief
Bureau of Technical Services
Department of Environmental Protection and Energy
CN-411
Trenton, New Jersey 08625-0411

(g) The Department shall not approve any proposed source emission test protocol submitted pursuant to (f) above unless the test method proposed to measure mercury is:

1. EPA Reference Method 29; or

2. An equivalent method demonstrated, to the satisfaction of the Department, to be as conservative and reliable as EPA Reference Method 29 for measuring mercury.

(h) Any person who is required to alter any equipment or control apparatus in order to operate in conformance with any requirement of this subchapter shall apply to the Department for a preconstruction permit in accordance with N.J.A.C. 7:27-8.3, within 30 calendar days from the operative date of this subchapter.

(i) The owner or operator of any MSW incinerator shall conduct tests to determine the optimized reagent feed rate, for mercury emissions control apparatus, to minimize the emissions of mercury below the applicable limits of (b) above, as follows:

1. The optimization tests shall be performed during the first quarter of the source emission tests required pursuant to (c) above.

2. If the owner or operator of any MSW incinerator owns or operates more than one identical incinerator, then optimization tests may be performed on one incinerator, and the results applied to other incinerators which are identical to that incinerator.

(j) The owner or operator of any MSW incinerator shall, at the conclusion of the optimization tests, submit to the Department within 60 calendar days, an optimized reagent feed rate which minimizes mercury emission below the applicable limits, while considering the amount of reagent used.

(k) The owner or operator of any MSW incinerator shall operate each MSW incinerator at, or above, the optimized reagent feed rate approved by the Department.

7:27-27.5 Hospital waste incinerators (Reserved)

7:27-27.6 Sewage sludge incinerators (Reserved)

7:27-27.7 Hazardous waste incinerators (Reserved)

7:27-27.8 Coal burning boilers (Reserved)

7:27-27.9 Reporting and recordkeeping

(a) Unless prior approval is granted by the Department for later submittal, the owner or operator subject to the testing requirements of N.J.A.C. 7:27-27.4(c) or (e) shall submit a copy of the report of the results of each source emission test conducted at any MSW incinerator pursuant to this subchapter within 30 calendar days after completion of the three source emission tests required for that quarter or year, as applicable to the following address:

Chief
Bureau of Technical Services
Department of Environmental Protection and Energy
CN-411
Trenton, New Jersey 08625-0411

(b) Unless prior approval is granted by the Department for later submittal, the owner or operator subject to the optimization requirements of N.J.A.C. 7:27-27.4(i) shall submit a copy of the report of the results of optimization tests conducted at any MSW incinerator pursuant to this subchapter within 60 calendar days after completion of the required tests, to the following address:

Chief
Bureau of Air Quality Engineering
Department of Environmental Protection and Energy
CN-027
Trenton, NJ 08625-0027

(c) If compliance is based on annual averages pursuant to N.J.A.C. 7:27-27.4(d)1, an owner or operator of a MSW incinerator shall report the annual average mercury emissions by January 30 of each year. If compliance is based on quarterly averages pursuant to N.J.A.C. 7:27-27.4(d)2 or (e), an owner or operator of a MSW incinerator shall report within 30 calendar days after completion of each calendar quarter. Such reports shall be submitted to:

Assistant Director
Air and Environmental Quality Enforcement
Department of Environmental Protection and Energy
CN-422
Trenton, NJ 08625-0422

(d) Any owner or operator of a MSW incinerator that submits to the Department a source emission test report for a MSW incinerator shall have such report reviewed prior to submission and certified by a licensed professional engineer or an industrial hygienist certified by the American Board of Industrial Hygienists.

(e) Any owner or operator of a MSW incinerator shall maintain at the facility a complete record, including all test reports, of all source testing conducted at the facility on equipment subject to this subchapter. The Department may specify in writing that such reports be maintained in a specific format.

(f) Any owner or operator of a MSW incinerator who submits to the Department a source emission test report shall certify that report in accordance with N.J.A.C. 7:27-8.24.

(g) The owner or operator shall make any record made pursuant to (e) above available to the Department, or its authorized representatives thereof, for inspection for a period of five years after the date the record is made.

7:27-27.10 Penalties

Failure to comply with any provision of this subchapter shall subject the owner or operator to civil penalties in accordance with N.J.A.C. 7:27A-3 and applicable criminal penalties including, but not limited to, those set forth at N.J.S.A. 2C-28.3 and N.J.S.A. 26:2C-19(f)1 and 2.

7:27A-3.10 Civil administrative penalties for violations of rules adopted pursuant to the Act

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

(e) The Department shall determine the amount of the civil administrative penalty for offenses described in this section on the basis of the provision violated and the frequency of the violation. Footnotes 3, 4, and 8 set forth in this subsection and (f) below are intended solely to put violations on notice that in addition to any civil administrative penalty assessed the Department may also revoke the violator's operating certificate or variance. These footnotes are not intended to limit the Department's discretion in determining whether or not to revoke an operating certificate or variance, but merely indicate the situations in which the Department is most likely to seek revocation. The number of the following subsections corresponds to the number of the corresponding subchapter in N.J.A.C. 7:27.

1.-25. (No change.)

26. [reserved]

27. The violations of N.J.A.C. 7:27-27, Control and Prohibition of Mercury Emissions, and the civil administrative penalty amounts for each violation are as set forth in the following table:

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-27.4(a)	Install/Operate Air Pollution Control Equipment	$4,000	$8,000	$20,000	$50,000
	Rule Summary				
N.J.A.C. 7:27-27.4(b)1 N.J.A.C. 7:27-27.4(b)2	Mercury Emissions Detected by Stack Tests from Source Operation				
	1. Less than 25 percent over the allowable standard	$8,000[3]	$16,000[3]	$40,000[3]	$50,000[3]
	2. From 25 through 50 percent over the allowable standard	$10,000[3]	$20,000[3]	$50,000[3]	$50,000[3]
	3. Greater than 50 percent over the allowable standard	$10,000[3]	$20,000[3]	$50,000[3]	$50,000[3]
Citation	**Rule Summary**				
N.J.A.C. 7:27-27.4(c)	Perform Source Emission Tests to Measure Mercury	$3,000	$6,000	$15,000	$45,000
Citation	**Rule Summary**				
N.J.A.C. 7:27-27.4(f)	Submit Source Emission Test Protocol	$1,000	$2,000	$5,000	$15,000
Citation	**Rule Summary**				
N.J.A.C. 7:27-27.4(h)	Submit Application for Preconstruction Permit	$2,000	$4,000	$10,000	$30,000

Citation	Rule Summary				
N.J.A.C. 7:27-27.4(i)	Conduct Optimization Tests	$1,000	$2,000	$5,000	$15,000
Citation	**Rule Summary**				
N.J.A.C. 7:27-27.4(j)	Submit Optimized Reagent Injection Rate	$500	$1,000	$2,500	$7,500
Citation	**Rule Summary**				
N.J.A.C. 7:27-27.4(k)	Operate at Optimized Reagent Injection Rate	$2,000	$4,000	$10,000	$30,000
Citation	**Rule Summary**				
N.J.A.C. 7:27-27.9(a)	Submit Source Emission Report	$500	$1,000	$2,500	$7,500
Citation	**Rule Summary**				
N.J.A.C. 7:27-27.9(b)	Submit Optimization Test Report	$500	$1,000	$2,500	$7,500
Citation	**Rule Summary**				
N.J.A.C. 7:27-27.9(c)	Submit Report	$500	$1,000	$2,500	$7,500
Citation	**Rule Summary**				
N.J.A.C. 7:27-27.9(d)	Certify Source Emission Test Report	$300	$600	$1,500	$4,500
Citation	**Rule Summary**				
N.J.A.C. 7:27-27.9(e)	Maintain Records	$500	$1,000	$2,500	$7,500
Citation	**Rule Summary**				
N.J.A.C. 7:27-27.9(f)	Certify Source Emission Test Report	$300	$600	$1,500	$4,500
Citation	**Rule Summary**				
N.J.A.C. 7:27-27.9(g)	Make Records Readily Available	$500	$1,000	$2,500	$7,500

[3]Revoke Certificate to Operate Under N.J.A.C. 7:27-8 or Revoke Operating Permit Under N.J.A.C. 7:27-22 (if applicable).

HEALTH

(a)

PUBLIC HEALTH COUNCIL

State Sanitary Code

Collection, Processing, Storage and Distribution of Blood

Proposed Readoption with Amendments: N.J.A.C. 8:8

Authorized By: Public Health Council, William Frascella, Jr., O.D., Chairman.

Authority: N.J.S.A. 26:1A-7 and 26:2A-7; 21 CFR 600-640.

Proposal Number: PRN 1994-100.

A **public hearing** concerning these proposed amendments will be held on Monday, March 14, 1994 at 1:00 P.M. at the following address:

Department of Health
Room 106 (Auditorium)
Health-Agriculture Bldg.
Trenton, NJ 08625-0360

Submit written comments by March 24, 1994 to:

Samuel Thompson, Ph.D.
Director, Clinical Laboratory Improvement Services
New Jersey Department of Health
CN-360
Trenton, New Jersey 08625-0360
609-530-6150

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:8 expires on April 12, 1994. The Department of Health has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally intended.

Prior to 1963, there was no agency that controlled blood banking. It was determined that the use of human blood and its derivatives had increased to such proportions that there was a need to establish minimum standards under which blood banks would operate to protect the public health. In 1963, legislation designed specifically to license, inspect and evaluate all blood banks was passed. Rules have been in effect since they were originally adopted on July 10, 1963. At that time, the Health Department was given the authority to license and regulate blood banks. Since 1975, the Health Department's Clinical Laboratory Improvement Program, now known as the Clinical Laboratory Improvement Service (CLIS), has been responsible for this function.

In 1983, it was determined that Acquired Immune Deficiency Syndrome (AIDS) could be transmitted from blood and blood products. Since then, many changes have occurred in the services that blood banks provide and the Department has taken an active role in assuring the safety of the blood supply. In April 1983, the Department recommended all blood banks follow the guidelines released by the Office of Biologics, Food and Drug Administration, regarding decreasing the risk of transmitting AIDS from blood and plasma donors. In June 1985, after Human Immunodeficiency Virus (HIV) antibody testing was licensed, the Department sent interim recommendations and policy guidelines regarding HIV, the virus related to AIDS transmission, antibody testing to all blood banks. These guidelines recommended that blood banks test each unit of blood for HIV by an FDA licensed procedure and that all negative units be labeled regarding the results of the test. Definition and disposition of reactive units were also outlined. In February 1987, the Department considered it appropriate to incorporate these guidelines and some additional criteria into existing blood bank rules. N.J.A.C. 8:8 was revised to include AIDS screening requirements, and Human Immunodeficiency Virus testing requirements.

As a result of AIDS, collection of blood and blood components has become more complex. In addition, pressure from the public to increase

the safety of the blood supply required blood banks to offer many new services such as autologous and directed donation programs. To account for these services, CLIS blood bank license applications were revised beginning calendar year 1988. Currently, blood banks receive licensure for each service performed and they are required to notify the Department whenever services performed change.

In 1989, amendments to the rules placed a strong emphasis on blood bank management, adherence to established protocols and new services by creating new subchapters for Management and Home Collection and Transfusion.

The proposed readoption has been developed as a result of CLIS's experience in regulating blood banks throughout this time-frame. It places a strong emphasis on quality assurance, integrity of computer records, testing requirements, and proper identification procedures. In addition, existing rules have been revised for clarity and recodified.

Highlights of each of the revised subchapters of this chapter follow:

N.J.A.C. 8:8-1 outlines the general requirements of this chapter, and contains sections on compliance, definitions, licensure, inspection, proficiency testing, brokers, exemptions and waiver. Additionally, as part of this rulemaking, N.J.A.C. 8:8-1 has been amended to provide clarity and needed guidance to the regulated community. The definition of blood bank at N.J.A.C. 8:8-1.2 has been revised to reflect the use of blood for therapeutic or prophylactic purposes. An expanded licensure section at N.J.A.C. 8:8-1.3 increases the Department's control over blood bank activities by requiring blood banks to obtain a license renewal and/or notify the Department of changes to a license, 30 days prior to the change. The fees currently at N.J.A.C. 8:8-1.3(f) have been recodified to (g), but have not been changed.

N.J.A.C. 8:8-2 continues to specify the requirements for blood bank personnel. It has been expanded to clearly define the director's role in the operation of the blood bank. It also provides additional flexibility for the qualifications of the blood bank director and the supervisor.

N.J.A.C. 8:8-3 specifies the requirements for facilities, equipment and contaminated material. It has been amended to require a private screening area for donor questioning and to reflect the current certification requirements for out-of-State laboratories.

N.J.A.C. 8:8-4 outlines the management requirements of this chapter. It has been revised to reflect the importance of the blood banks' development of a quality assurance program as a method of self-assessment. Additionally, the blood bank's role in retrieval of unsuitable components that are accidentally released for use is defined.

N.J.A.C. 8:8-5 continues to specify record and reporting requirements. N.J.A.C. 8:8-5.1, records has been expanded to include preparation of worklists, computer record maintenance and retention requirements, and the use of a sequential numeric or alphanumeric identifier to trace blood from source to final disposition. N.J.A.C. 8:8-5.2, Reporting requirements, has been expanded to require that fatal transfusion reactions be reported by the next working day by telephone, errors be reported when unsuitable blood and blood components are available for transfusion or distribution; and when the wrong blood or blood component is transfused. The reporting requirements for transfusion-associated-hepatitis and accidents resulting in the use of unsuitable blood and blood components have been deleted.

N.J.A.C. 8:8-6 outlines requirements for donor selection. It has been modified to clarify current donor selection criteria, including screening donors for HIV-2.

N.J.A.C. 8:8-7 specifies procedures for the preparation, processing and testing of blood and blood components. It has been reorganized to include the preparation of blood and blood components under N.J.A.C. 8:8-7.1, General criteria and to consolidate testing requirements. Major revisions include the use of FDA licensed reagents for screening tests and the addition of tests for antibodies to Hepatitis C Virus (HCV), Human Immunodeficiency Virus type 2 (HIV-2) and Human T-Lymphotrophic Viruses I/II (HTLV-I/II).

N.J.A.C. 8:8-8 states the criteria required for the collection of blood. It has been modified for clarity. The use of autologous blood for transfusion to a recipient other than the original donor ("crossing over") has been prohibited. Additionally, a mechanism has been provided to waive the requirement for a physician to be on the premises when a closed system plasmapheresis is performed.

N.J.A.C. 8:8-9 outlines the requirements for recipient blood testing. Modifications stress verification of sample identity and include N.J.A.C. 8:8-9.2, originally at N.J.A.C. 8:8-5.2, which requires the blood bank to have a system to detect suspected transfusion reactions. Text regarding the warming of blood, additives to, and irradiation of, blood has been deleted at N.J.A.C. 8:8-9.3(b)5ii and iii, 6 and 7.

N.J.A.C. 8:8-10 specifies requirements for issue and administration of blood and blood components for transfusion. Revisions stress the verification of the identity of the recipient with their intended blood component at the patient's bedside by two qualified individuals and clarification of requirements for irradiation of blood.

N.J.A.C. 8:8-11 refers to blood storage requirements. It has been modified for clarity.

N.J.A.C. 8:8-12 has been expanded to include all transfusions performed in out-of-hospital situations. It clarifies the roles of the facility providing the blood and blood components and the facility performing the blood transfusion. N.J.A.C. 8:8-12.2, Home collection has been deleted, since it has been found to be redundant, as it is included under general collection requirements. A section on out-of-hospital transfusion of blood in emergency situations has been added.

Additionally, the Department is soliciting comments on the merits of the retention or deletion of the self-deferral requirement or confidential unit exclusion requirement at N.J.A.C. 8:8-6.5(g). Blood banks are asked to submit their comments with supporting documentation for their position.

Social Impact

Human blood and blood components are used as a frequent and necessary therapeutic or prohpylactic procedure in medical practice. Since blood is a biological fluid, the improper transfusion of this substance can lead to the spread of diseases such as AIDS and hepatitis. The potential for blood and blood components to transmit these diseases, especially AIDS, has caused great concern within the Department, the blood bank community and among users and recipients of these components.

The purpose of these rules is to assure that both donors and recipients are provided with safe conditions and that all blood and blood components are safe for human use. Institution of the requirements proposed in these rules should decrease the risk of transmitting transfusion-related diseases by standardizing the procedures blood banks use.

A beneficial effect of the rules should be to reassure the public and to restore the public's confidence in the blood supply.

Economic Impact

The proposed readoption with amendments will affect all entities that wish to initiate or presently perform activities related to blood banking in New Jersey. The economic impact of the rule will be dependent upon the services that a facility performs. Currently, in New Jersey, 146 facilities are licensed as blood banks. It is anticipated that the greatest economic impact will be in relation to possible modifications in computer systems already in use and the development of quality assurance procedures. The exact cost of possible computer modifications cannot be adequately estimated because of the numerous computer systems in use throughout the State. Actual expenditures incurred by a facility due to quality assurance requirements will depend upon whether existing staff can absorb the additional requirements to their workload.

The major direct cost element, the cost of performing testing for antibody to Hepatitis C Virus, antibody to Human Immunodeficiency Virus type 2 and antibody to Human T-Lymphotrophic Viruses I/II, varies depending upon volume of testing. Current indications suggest higher test costs for small testing centers. Estimates of the increased costs for these three tests range from about $9.00 to $12.00 per unit of blood. However, in one blood center where testing on the premises was discontinued and centralized at another facility, costs per unit of blood went down $3.00. The State estimates that the proposed rule would require testing to be performed on about 320,000 units of blood per year. Other direct costs of the testing program include the cost of retesting blood that has reactive test results, and the cost of disposing of and replacing discarded blood. Costs associated with blood replacement may be significant.

It is anticipated that some or all of the testing costs will be offset by the reduction in major medical costs and morbidity for those who are spared from hepatitis, HIV infection and other diseases that will be prevented as a result of the testing program.

Regulatory Flexibility Analysis

Facilities licensed as blood banks in the State include free-standing blood centers, hospitals, dialysis centers, home infusion companies and doctor's offices. Approximately 20 of the blood banks affected by this

proposed readoption with amendments are small businesses, as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules and amendments do impose reporting, recordkeeping and compliance requirements on such small businesses (see Summary above), which probably will need additional personnel or incur other costs (for example, revising recordkeeping systems) to comply with these rules. However, it is unlikely that increased capital costs or a need for outside professional services will arise from these rules. Current capital costs arise from personnel, documentation, recordkeeping and quality assurance requirements. No exemptions from these rules or lesser requirements can be provided to small businesses due to the need for the establishment of minimum standards under which blood banks must operate to protect the safety of the State's blood supply.

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

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

SUBCHAPTER 1. GENERAL PROVISIONS

8:8-1.1 Compliance

(a) Persons operating blood banks in this State shall meet the qualifications and conduct blood banks in conformity with N.J.S.A. 26:2A-**2 et seq**. and all [regulations of] **rules in** this [C]chapter.

(b) Failure to comply with [these regulations] **N.J.S.A. 26:2A-2 et seq. and with this chapter** shall be cause for revocation of license and imposition of penalties as prescribed by [law] **N.J.S.A. 26:2A-2 et seq.**

8:8-1.2 Definitions

For the purpose of this Chapter, the terms listed below shall be defined and interpreted as follows:

"Accident" means a non-preventable occurrence.

...

"Blood bank" means any facility involved in the handling of human blood, blood component or products and which participates in any of the following operations: collection, processing, donor [and] **or** recipient testing, [the] storage [and], distribution**, and administration** of blood and blood components **for therapeutic or prophylactic purposes.**

["Blood bank director" means a physician licensed in the State with general responsibility for all procedures and policies relating to the donor and recipient, as well as, the collection, processing, storage and distribution of all blood and blood components.]

"Blood components" means those preparations that are separated from whole blood and are intended for use as final products for [transfusion,] **therapeutic or prophylatic purposes,** for further manufacturing, or as products used for in vitro testing.

...

"Code of Federal Regulations" means the current Code of Federal Regulations, **as amended and supplemented,** Title 21**, parts 600 through 640**.

"Collection" means the procedure for obtaining blood by donor **or recipient** phlebotomy.

...

"Error" means a preventable occurrence.

...

"Hemapheresis" means the process of separating freshly drawn whole blood into various **blood** components **and products**, some of which are retained while the remainder [is] **are** reinfused into the donor.

["HIV" means the Human Immunodeficiency Virus, formerly known as the Human T-Lymphotropic Virus Type III/ Lymphadenopathy-Associated Virus (HTLV-III/LAV) and currently known as HIV-1.]

"HIV-1" means the Human Immunodeficiency Virus type 1.

"HIV-2" means the Human Immunodeficiency Virus type 2.

...

"Homologous **or allogeneic** donation" means the collection of blood or blood components for subsequent transfusion to a recipient other than the donor.

...

"Mobile unit" means a moveable**, transient** unit that is used to collect blood from donors not at the blood bank site.

"Standards of the American Association of Blood Banks" means the current standards, as amended and supplemented, of the American Association of Blood Banks, National Office, 8101 Glenbrook Rd., Bethesda, MD 20814-2749.

["Stationary collection site" means a site for a blood bank that is permanently located at another facility and performs no functions other than collection.]

...

["Subsidiary blood bank" means a blood bank that is owned or controlled by a parent blood bank.]

["Surrogate testing" means the use of alanine-amino transferase (ALT) and Hepatitis B Core Antibody tests to determine the possible presence of non-A, non-B hepatitis.]

...

8:8-1.3 Licensure

(a) Application for an initial license to conduct a blood bank, as required under the provisions of N.J.S.A. 26:2A-[1]**2** et seq., commonly known as the Blood Bank Licensing Act and this chapter, shall be made on forms provided for that purpose by the State of New Jersey.

(b) A blood bank license shall be obtained whenever any function related to the collection, processing, storage, distribution or the administration of blood and blood components is performed.

Recodify [(b)] to **(c)** A **separate** blood bank license shall be obtained for each [subsidiary] **permanent** location of a blood bank **even if the blood bank is owned and operated by another licensed blood bank of the same or different name.**

Recodify [(c)] to **(d)** (No change in text.)

Recodify [(d)] to **(e)** Amendments to the license shall be as follows:

1. A license renewal shall be obtained [within 14 days] **30 days prior to a change in the location or the name of the blood bank.** [whenever the name or the location of blood bank is changed.]

2. The Department shall be notified in writing, [within 14 days] **30 days prior to a change,** whenever the ownership, corporate structure, director, and/or services of a blood bank change.

Recodify [(e)] to **(f)** The blood bank shall perform only those services, related to this chapter for which they specifically request and receive licensure. In the case of new services, written approval shall be received from the Department **prior to initiating the new service**.

(g) Blood and blood components for therapeutic or prophylactic purposes shall only be distributed to a New Jersey licensed blood bank unless a situation exists where it cannot be anticipated that blood and blood components will be necessary on an emergency basis to treat a life-threatening situation.

Recodify [(f)] to **(h)** (No change in text.)

8:8-1.4 Inspection

(a) (No change.)

(b) Reports of inspections of blood banks made by the Office of Biologics [or any private national accrediting agency approved by the Department] may be accepted for purposes of approving and issuing renewal of licenses.

8:8-1.5 Proficiency testing

(a) (No change.)

(b) Records of all proficiency testing results [must] **shall** be maintained, including results and interpretations[, and a periodic review by the blood bank director].

(c) Proficiency test results shall be periodically reviewed and evaluated by the blood bank director.

8:8-1.6 through 8:8-1.8 (No change.)

SUBCHAPTER 2. PERSONNEL

8:8-2.1 Blood bank director

(a) The blood bank director shall administer the blood bank as follows:

1. The director shall be responsible **and shall have authority** for all procedures and policies relating to all phases of donor and recipient testing as well as the collection, processing, storage, [and] distribution **and administration** of all blood and blood components.

2. The director shall be responsible for compliance with N.J.S.A. 26:2A-2 et seq. and the rules set forth in this chapter.

Recodify [2.] to **3.** The director shall not individually serve as director or co-director of more than three blood banks, laboratories or one health system. [3.] If the blood bank is an integral part of the clinical laboratory, this [will] **shall** be considered one facility.

4. The director shall spend an adequate amount of time in the blood bank to direct and supervise the technical performance of the staff. [He] **The director** shall be readily available for personal or telephone consultation.

5. The director [is] **shall be** responsible for the employment of qualified blood bank personnel, [and] their in-service training **and their adherence to established policies and procedures.**

6. (No change.)

(b) Qualifications

1. The blood bank director shall be a physician licensed to practice medicine in the State of New Jersey. The physician requirement shall be waived for industrial manufacturers, brokers and facilities licensed to transfuse in emergency situations only (see N.J.A.C. 8:8-12.3).

Recodify [1.] to **2.** The blood bank director [must] **shall** have four years of full time [clinical] experience[,] **and/or training appropriate to the services provided by the blood bank, as described in (b)3 below** [of which at least two years were spent acquiring proficiency in blood banking].

Recodify [2.] to **3.** [This] **Appropriate** experience **shall** [must include all phases of blood banking] include[ing] but **shall** not **be** limited to:

i. Evaluation of donor suitability;

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

Recodify [ii.] to **iii.** [The] **Blood and blood component** collection, preparation, storage, processing and distribution;[, and where applicable;] **and**

Recodify [iii.] to **iv.** [Transfusion] **Administration** of [whole] blood and blood components **for therapeutic or prophylactic purposes.**

8:8-2.2 Donor **and/or transfusion** related personnel

(a) The blood bank shall have one or more supervisors who under the general direction of the blood bank director supervise all functions related to the collection/**transfusion** of blood and blood components, and in the absence of the blood bank director are responsible for proper performance of these procedures.

(b) General provisions for donor related personnel are:

1. Each blood bank during the collection **or transfusion** of blood shall have a responsible individual on the premises who, according to N.J.A.C. 8:8-2.2(c), [is] **shall be** qualified to provide emergency care.

2. An adequate number of phlebotomists **or transfusionists** shall be available.

3. All other personnel associated with donor **or transfusion** related functions [must] **shall be** suitably trained and supervised in the performance of their prescribed tasks.

(c) Donor **or transfusion** emergency care personnel qualifications [are] **shall be** as follows:

1. (No change.)

i. Has demonstrated his or her familiarity with donor **or transfusion recipient** eligibility standards to the satisfaction of the director of the blood bank;

ii. Has taken an eight hour course in cardiopulmonary resuscitation **(CPR)** within three years and **holds a current CPR certification.** [successfully passed a practical and written exam on the subject matter.]

(d)-(e) (No change.)

8:8-2.3 [Laboratory] **Blood bank** personnel

(a) The [laboratory] **blood bank** shall have one or more supervisors who under the general direction of the blood bank director supervise technical personnel, perform tests requiring special skills, and in the absence of the director [are] **shall be** responsible for proper performance of all [laboratory] **blood bank** procedures.

(b) There shall be a sufficient number of properly qualified technical personnel to meet volume and complexity of technical procedures performed by the [laboratory] **blood bank.**

(c) The [laboratory] **blood bank** supervisor [and laboratory personnel must] **shall** meet the requirements of N.J.A.C. 8:44 [under Regulations for Supervision and Technical Personnel] **or possess a Specialist in Blood Banking (SBB) with two years experience subsequent to graduation. The two years of experience shall be waived if the individual was a blood bank supervisor prior to obtaining the SBB.**

SUBCHAPTER 3. FACILITIES, EQUIPMENT AND CONTAMINATED MATERIAL

8:8-3.1 Facilities and equipment

(a) Quarters, environment, and equipment [acceptable to the Department] shall be provided to maintain safe and acceptable standards for handling of human blood and blood components.

(b) Blood donor facilities shall consist of at least a waiting room, **private screening area for donor questioning,** bleeding area, donor recovery area, lavatory facilities and the proper equipment for collection and immediate storage of blood.

(c) The blood bank shall also provide a processing laboratory[.] **as follows:**

1. (No change.)

2. All laboratory tests required for proper donor blood processing, not performed by the collecting facility, [must] **shall** be referred to a laboratory or blood bank licensed by the Department [or possess a Federal interstate license] **or certified by the Health Care Financing Administration (HCFA), if out-of-State.**

8:8-3.2 (No change.)

SUBCHAPTER 4. MANAGEMENT

8:8-4.1 Quality control **and quality assurance**

(a) All blood banks shall have [a] quality control [program] **and quality assurance programs** which [is] **shall be** [acceptable to the Department, assures] **in** compliance with these rules, and [is] **shall be** sufficiently comprehensive to ensure that blood and blood components, reagents and equipment perform as expected.

(b) The quality control [program] **and the quality assurance programs** shall include at least the following:

1. Written [quality control policies] **procedures that include all policies and procedures developed for use;**

2. (No change.)

3. [Periodic] **Evidence of periodic** evaluation of reagents and equipment including the date of performance;

4. [Periodic] **Evidence of periodic** evaluation of blood and blood components in accordance with, whichever is more stringent, the current Code of Federal Regulations and/or the current Standards of the American Association of Blood Banks;

5. Evidence of periodic evaluation to determine that policies and procedures are appropriate and are followed;

6. Evidence of daily review of computer maintained error correction records by the blood bank director or supervisor.

Recodify [5.-6.] to **7.-8.** (No change in text.)

8:8-4.2 Procedures

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

(c) The actual test procedures used shall coincide with the manufacturers' **current** product insert [unless data to support modifications] or written documentation from the manufacturer [are available].

(d) The most current edition of the manufacturer's product inserts shall be available.

Recodify [(d)-(e)] to **(e)-(f)** (No change in text.)

8:8-4.3 Documented review

(a) When blood or blood components are collected and/or prepared, a key person in the operation of the blood bank shall

conduct a documented review prior to the release and final labelling of blood and blood components to ensure that blood from unsuitable donors [will] **shall** not be distributed for transfusion or further manufacture. If this function is performed by computer, validation of the computer program, as outlined in N.J.A.C. 8:8-5.1(d), shall be performed. This review procedure shall be in writing and the procedure shall include tracking of all collected and/or prepared blood and blood components, to assure that:

1.-4. (No change.)

5. If required tests are performed by the blood bank, the testing is performed correctly and properly interpreted as determined by at least the following criteria:

i.-ii. (No change.)

iii. Test results on the machine printout can be traced to the [work record] **worklist**;

iv.-vi. (No change.)

6. If required tests are performed by personnel outside the blood bank, the criteria used to determine a final reactive or nonreactive result coincides with the blood bank's own policy of interpreting results used to discard blood and blood components for transfusion; **and**

7. That all blood and blood components from donations that have positive or questionable test results are quarantined until their final disposition is determined or they are destroyed[;].

[8. Autologous donations that are "crossed over" meet all criteria of a homologous donation before they are released into the general blood supply.]

(b) (No change.)

8:8-4.4 Errors and accidents

(a) If **an error occurs and** any component prepared from a unit improperly tested, not tested, or tested properly but improperly interpreted for ABO or infectious diseases is [accidentally] labeled and released for transfusion, fractionation, reagent production, research or other use, immediate effort shall be made to locate and quarantine all components until satisfactory resolution occurs.

(b) If an accident occurs and any component is released, which is not suitable for transfusion, fractionation, reagent production, research or other use, immediate effort shall be made to locate and destroy all components.

[(b)](c) If a whole blood unit or any blood component has been transfused prior to recognition of the error **or accident**, the medical director of the blood collection facility shall be immediately notified and shall take immediate appropriate action to resolve the problem. If the error **or accident** has resulted in the transfusion of blood or blood components that could result in infectious disease or other harmful consequences, appropriate medical staff from the collection facility shall notify the patient/recipient's hospital blood bank director who shall document that the patient/recipient's physician is notified of the error **or accident** and advised that it is his or her responsibility to notify the patient/recipient, or his/her representative, of the error. Thorough and complete documentation shall be made as to these actions.

SUBCHAPTER 5. RECORDS AND REPORTING REQUIREMENTS

8:8-5.1 Records

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

(c) Worklists or loadlists that list the sequence of specimens tested shall be prepared prior to testing.

Recodify [(c)] to **(d)** (No change in text.)

Recodify [(d)] to **(e)** If records are maintained on computer systems, the following apply:

1.-3. (No change.)

4. Written procedures shall be available for describing each of the blood bank's methods for performing requirements in [(d)] **(e)**1 through 3 above.

5. The computer shall automatically note, at the time of correction, when corrections are made to verified results.

6. The computer record shall maintain the original verified entry and it shall show the corrected entry with automatic notation of date, time and person making the change.

7. Records maintained on computer shall comply with all requirements of this chapter.

8. The computer shall list donor collection records by the sequential donor numeric or alphanumeric identifier.

Recodify [(e)] to **(f)** The records shall:

1. (No change.)

2. Make it possible to trace a unit of any blood or blood component **by a sequential numeric or alphanumeric identifier** from source ([for example,] donor **collection** [or shipping] facility) to final disposition (for example transfused, shipped, autoclaved);

3. (No change.)

4. Be made available on forms provided by the Department for the purpose of preparing the State's Statistical Summary of Blood Use report annually by January 31, of each year[, and biannually for the State's HIV Statistical Summary]; and

5. (No change.)

Recodify [(f)] to **(g)** (No change in text.)

Recodify [(g)] to **(h)** If computers are used, [hard copies of the test results shall be available and used] **an alternate method shall be available and used which allows access to the information required in (g) above** in the case of computer failure.

Recodify [(h)] to **(i)** Records shall include at least the following:

1. Donor records:

i. An annual record of each unit of blood and blood component, listed by **sequential** [donor unit number] **numeric or alphanumeric identifier**, as to its source bank and [destination (this may be] final disposition[)];

ii. to x. (No change.)

xi. Reissue records, including records of proper temperature maintenance[.]**; and**

xii. A system that relates a donor with each previous donation.

2. Recipient records shall include:

i. An alphabetical file [on] **of** the recipient and all units administered [(transfusion services only)];

ii. Each recipient's ABO and Rh type available for immediate reference **for** at least [for the duration of the current hospitalization] **the past 12 months**;

iii. Patients known to have significant unexpected antibodies, adverse reactions to transfusion and/or difficulty in blood grouping and typing available for immediate reference for at least **the past** five years;

iv. (No change.)

v. Test results, interpretations and release [(] **or** issue[)] date for compatibility testing;

vi. (No change.)

3. to 5. (No change.)

6. A data sheet for each cytapheresis procedure and the following information recorded: volume of blood processed; anticoagulants given; duration of procedure; volume of product; drugs given; identity of the donor; any **reactions that occurred and how they were treated and any other information necessary to ensure the proper preparation of the component and the safety of the donor.**

7. Quality control **and quality assurance** records, including but not limited to: periodic evaluation of personnel, blood and blood components, reagents, equipment, including dates of performance; test performed; observed results; interpretations; identification of personnel performing the test; any appropriate correction action taken; and review by supervisor and/or director.

8. to 10. (No change.)

Recodify [(i)] to **11.** [There shall be a means] **A method** to identify persons performing each significant step in collecting, processing, compatibility testing and distributing blood or blood components[.]**; and**

12. Shipping records from the blood distributor with written documentation that indicates that, at the time of blood and blood component receipt, components listed on the shipping record were verified as received.

8:8-5.2 Reporting requirements

(a) Transfusion reactions shall be reported as follows:

1. (No change.)

2. [Each blood bank and transfusion service shall have a system for detecting, reporting and evaluating suspected adverse reactions to transfusion in accordance with current acceptable standards approved by the Department.] **Any fatal transfusion reaction shall be reported by telephone by the next working day of the event, with written follow-up on forms provided by the Department within 10 days of occurrence.**

(b) Transfusion associated [hepatitis and] AIDS shall be reported as follows:

1. Any known or presumed case of transfusion associated [hepatitis or] AIDS brought to the attention of a blood bank shall be reported to the Department within 10 days on forms provided for this purpose.

2. (No change.)

(c) Errors, **as outlined in N.J.A.C. 8:8-4.4(a)** [and/or accidents], that result in [shipment] **the availability** of unsuitable blood and blood components **for transfusion or distribution,** shall be reported to the Department within 10 days of recognition of the error.

(d) Errors that result in the wrong blood or blood component being transfused, regardless of harm to the recipient, shall be reported to the Department within 10 days of recognition of the error.

CHAPTER 6. CRITERIA FOR DONOR SELECTION

8:8-6.1 (No change.)

8:8-6.2 Medical history; physical examinations; bleeding limitations

Medical history, physical examinations, and bleeding limitations of the donor shall be consistent with, whichever is more stringent, the most recent Code of Federal Regulations or **the most recent** Standards of the American Association of Blood Banks. If necessary, these documents may be reviewed at the Department of Health, Clinical Laboratory Improvement Services, Princess South, Princess Road, Building 17F, Lawrenceville, New Jersey.

8:8-6.3 Donor selection

(a) through (b) (No change.)

(c) Before blood or blood components are issued for distribution, permanent deferral records, which include **reason for deferral for** donor past medical history and [test results] **all tests required in N.J.A.C. 8:8-7.2. Testing** shall be reviewed to determine if the blood and blood components meet all the requirements for homologous use. Blood and blood components which do not meet these requirements can not be used for homologous transfusion.

8:8-6.4 Information provided to the donor

(a) Consent shall be obtained in writing from the prospective donor after the procedure has been explained in terms the donor can understand and after the donor has had an opportunity to ask questions and refuse consent. **Consent shall include information on significant risks of the procedure and tests performed to reduce the risks of infectious disease to the recipient.**

(b) through (c) (No change.)

8:8-6.5 AIDS screening requirements

(a) through (c) (No change.)

(d) The collecting agency shall ensure that all blood and blood components collected in New Jersey, including those obtained from hemapheresis, be screened for HIV**-1 and HIV-2** as specified in N.J.A.C. 8:8-[8.3(b)3]**7.2.** Laboratory tests not performed by the collecting facility shall be referred to a blood bank or laboratory [approved] **licensed** to perform HIV testing by the Deaprtment **or, if out-of-State, certified by the Health Care Financing Administration (HCFA)** [possesses a Federal interstate license] to perform HIV testing. It shall be the responsibility of the receiving blood bank to assure that any blood brought in from out-of-State sources [is] **shall be** tested for HIV **types 1 and 2**. If the blood is used for homologous transfusion, it [must] **shall** be tested as all other blood and blood components.

(e) Blood and blood components that are positive, as currently defined by the Department, to [a] serologic [test] **tests** for HIV **types 1 and 2** or collected from a donor known to be positive to [a] serologic [test] **tests** for HIV **types 1 and 2** shall either be discarded or used for research purposes only.

(f) through (k) (No change.)

[(l) Statistical summaries of HIV test results, which do not include the identity of the donor, shall be made available on forms provided by the Department for the purpose of preparing a statistical summary report].

SUBCHAPTER 7. BLOOD AND BLOOD COMPONENTS

8:8-7.1 General criteria

(a) through (d) (No change.)

(e) [At the time of collection of the blood or blood component the label shall have a unique numeric or alphanumeric identification]. **The preparation of all blood and blood components shall be consistent with, whichever is more stringent, the Code of Federal Regulations, as amended or supplemented, or the Standards of the American Association of Blood Banks, as amended or supplemented. If necessary, these documents may be reviewed at the Department of Health, Clinical Laboratory Improvement Services, Princess Road, Bldg. 17F, Lawrenceville, New Jersey.**

8:8-7.2 Testing

[(a) The preparation of all blood and blood components shall be consistent with, whichever is more stringent, the most recent Code of Federal Regulations or Standards of the American Association of Blood Banks. If necessary these documents may be reviewed at the Department of Health, Clinical Laboratory Improvement Services, Princess Road, Bldg. 17F, Lawrenceville, New Jersey.]

Recodify [(b)] to **(a)** (No change in text.)

(b) FDA licensed reagents shall be used for screening tests, if they are available.

(c) Required infectious disease testing includes a serologic test for syphilis (STS), Hepatitis B Surface Antigen (HBsAg), antibody to Hepatitis C Virus (HCV), Hepatitis B Core Antibody (HBcAb), antibody to Human Immunodeficiency Virus type 1 (HIV-1), antibody to Human Immunodeficiency Virus type 2 (HIV-2), antibody to Human T-Lymphotrophic viruses I/II (HTLV I/II) and Alanine aminotransferase (ALT).

(d) Testing shall be performed as required in N.J.A.C. 8:8-4.2 and comply with this chapter.

[1. Syphilis: Current Code of Federal Regulations referring to approved syphilis testing must be observed.

2. Hepatitis:

i. A sample of blood from each donation shall have a serological test for HBsAg which is acceptable to the Department.]

Recodify [ii.] to **(e)** The blood or blood components shall not be used for [transfusion] **therapeutic or prophylactic** purposes unless results of test(s) are clearly negative **or in the case of ALT testing within acceptable established limits** except where delay occasioned by testing may result in a serious threat to the health and well-being of the recipient.

Recodify [iii.] to **(f)** (No change in text.)

[3. Human immunodeficiency virus:

i. Each donation of blood or blood component shall be tested by serologic test(s) for HIV approved for such use by the Department.

ii. The blood or blood components shall not be used for transfusion purposes unless results of test(s) are clearly negative, except where delay occasioned by testing may result in a serious threat to the health and well-being of the recipient.

iii. In instances where untested blood or blood components are transfused, the attending physician shall attest in writing to the existence of an emergency and if the test is subsequently positive, the recipient's physician must be notified.

4. Surrogate testing for non-A, non-B Hepatitis:

i. Each donation of blood or blood components shall be tested for alanine-amino transferase (ALT) and Hepatitis B Core Antibody testing by test procedures that are acceptable to the Department.

ii. The blood or blood components shall not be used for transfusion purposes unless results of test(s) are considered normal except where delay occasioned by testing may result in a serious threat to the health and well-being of the recipient.

iii. In instances where untested blood and blood components are transfused, the attending physician shall attest in writing to the existence of an emergency and if the test is subsequently considered to be abnormal the recipient's physician shall be notified.]

Recodify [5.] to **(g)** (No change in text.)

Recodify [i.] **to 1.** (No change in text.)

Recodify [ii.] to **2.** The ABO type of each blood donation shall be determined by testing the red cells of the donor using known Anti-A and Anti-B sera, and by testing the serum or plasma for expected antibodies using known A1 and B red blood cells. [(1)] The two methods of testing shall be recorded and be in complete agreement before any label or release can be effected for the unit of blood.

Recodify [(2)] to **3.** (No change in text.)

[iii.] **4.** Previous records of ABO type shall not serve as identification of units, subsequently given by the same donor.[(1)] New determinations shall be made for each collection.

Recodify [6.] to **(h)** (No change in text.)

Recodify [i.-iii.] to **1.-3.** (No change in text.)

Recodify [7.] to **(i)** (No change in text.)

Recodify [i.-ii.] to **1.-2.** (No change in text.)

[iii. Screening procedures must employ fresh serum not older than 48 hours.]

Recodify [iv.] to **3.** (No change in text.)

Recodify [8.] to **(j)** (No change in text.)

Recodify [(c)] to **(k)** (No change in text.)

SUBCHAPTER 8. COLLECTION OF BLOOD

8:8-8.1 General criteria

(a) Blood banks wishing to employ the techniques set forth in this subchapter shall file their protocol and a request in writing to the Department, **prior to initiation of this service**.

(b) (No change.)

8:8-8.2 Donor's emergency care

(a) through (b) (No change.)

(c) This rule [does] **shall** not waive the requirements for physicians' attendance at a location **where** [a] plasmapheresis is being performed **in an opened system**.

(d) If home collections are performed, a second responsible person shall be available on the premises to help with emergency situations.

8:8-8.3 Medical contingency plan

(a) Each location for collection of whole blood units **or the transfusion of blood and blood components** shall have a current medical contingency plan specific for that location which [will] **shall** include:

1. through 4. (No change.)

(a) through (b) (No change.)

(c) Untested autologous blood collected from a donor/recipient, that has been tested in the last 30 days, shall not be labeled according to uniform labeling for homologous blood. It shall be labeled with:

1. A statement that it was collected from a donor known to be negative or positive to FDA required tests; and

2. The date that the autologous donor/recipient was tested.

8:8-8.9 (No change.)

8:8-8.10 Autologous collection/transfusion

(a) Blood banks wishing to employ the techniques set forth in this section shall file their protocol and a request in writing to the Department, **prior to initiation of the service**.

(b) through (d) (No change.)

(e) Donor processing for autologous transfusion shall be as follows:

1. through 2. (No change.)

3. [If "crossing over" is allowed, at the time of collection each donation shall be tested as required in N.J.A.C. 8:8-7.2.] **"Crossing over" shall not be allowed.**

4. Blood and blood components that test positive or abnormal and are transfused to the donor/recipient shall be labelled [to warn personnel handling the blood that positive test results were obtained] **with a Biohazard label**.

(f) Criteria for donation shall be as follows:

1. through 2. (No change.)

3. The hemoglobin concentration of patient-donor [should] **shall** be no less than 11 gms. per dl. The packed cell volume, if substituted, [should] **shall** be no less than [34] **33** percent.

4. through 5. (No change.)

(g) Pretransfusion testing of blood and blood components for autologous transfusion [that are not "crossed over"] shall be subject to the following:

1. through 3. (No change.)

(h) [A documented review procedure shall be performed to "cross-over" autologous donations for homologous transfusion use. The procedure used shall insure that blood that is not acceptable for homologous use by donor medical history, required testing and permanent deferral status is not transfused or made into components for further manufacture.] **If donor qualifications for autologous donations vary from homologous criteria, all satellite bags shall be labeled "Autologous Use Only" immediately prior to or at the time of the collection.**

8:8-8.11 Directed donation

(a) Blood banks wishing to employ the techniques set forth in this section shall file their protocol and a request in writing to the Department, **prior to initiating the procedure**.

(b) through (d) (No change.)

8:8-8.12 [Intraoperative] **Perioperative** autologous transfusion

(a) Facilities initiating the [intraoperative] **perioperative** autologous transfusion procedure [must] **shall** notify the Department in writing within 30 days.

(b) [Current guidelines established by the] **Standards of the** American Association of Blood Banks **related to perioperative procedures, as amended or supplemented,** [must be observed] **shall be followed**.

8:8-8.13 (No change.)

8:8-8.14 Routine plasmapharesis

(a) Blood banks wishing to employ these techniques shall file a request in writing with the Department, including their protocol and other relevant details, **prior to initiation of the procedure**.

(b) (No change.)

(c) The procedures used shall meet with the approval of the Department and shall include as a minimum the following requirements:

1. (No change.)

2. A licensed physician on the premises shall supervise the performance of these procedures, including the reinfusion of red cells. **This requirement may be waived for plasmapheresis procedures using a closed system subject to the following conditions:**

i. A request for a waiver shall be submitted in writing to, and approved by, the Department;

ii. N.J.A.C. 8:8-8.2, Donor's emergency care, shall be strictly followed;

iii. Donor emergency care personnel, as required under N.J.A.C. 8:8-2.2(c), shall be on the premises; and

iv. A contingency plan to assure that a physician is available for emergency purposes during the procedure shall be in use. The physician response time shall be no longer than 15 minutes.

3. through 12. (No change.)

8:8-8.15 Cytapheresis

(a) Blood banks wishing to employ these techniques shall file their protocol and a request in writing with the Department, **prior to initiation of the procedure**.

(b) (No change.)

(c) The procedures used shall meet with the approval of the Department and shall [include as a minimum the following requirements:] **comply with all requirements of this chapter.**

[1. N.J.A.C. 8:8-6 Criteria for Donor Selection.]

Recodify [2.] to **(d)** (No change in text.)

Recodify [i.-iii.] to **1.-3.** (No change in text.)

Recodify [iv.] to **4.** A contingency plan to assure that a physician is available for emergency purposes during the procedure **shall be in use.** The physician response time [is to] **shall** be no longer than 15 minutes.

Recodify [3.-6.] to **(e)-(h)** (No change in text.)

Recodify [i.-ii.] to **1.-2.** (No change in text.)

8:8-8.16 (No change.)

SUBCHAPTER 9. RECIPIENT BLOOD TESTING

8:8-9.1 General provisions

(a) The requirements in this section shall apply to both hospital and out-of-hospital transfusion of blood for therapeutic or prophylactic purposes.

Recodify [(a)] to **(b)** (No change in text.)

Recodify [(b)] to **(c)** The recipient's first and last names and **a traceable, nonchangeable** identification number [are required.]

Recodify [(c)-(d)] to **(d)-(e)** (No change in text.)

Recodify [(e)] to **(f)** The sample for compatibility testing shall be:

1. (No change.)

2. Labeled with at least the recipient's first and last names, **traceable, nonchangeable** identification number, the identity of the person drawing the sample and the date the sample was drawn;

3. through 4. (No change.)

Recodify [(f)] to **(g)** Testing of the recipient's blood shall include at least the following:

1. Determination of ABO type:

i. ABO typing shall be performed on each sample of recipient blood as in N.J.A.C. 8:8-7.2[(b)5.] and iii.]

ii. (No change.)

2.-5. (No change.)

8:8-9.2 Suspected transfusion reactions

Each blood bank and transfusion service shall have a system for detecting and evaluating suspected adverse reactions to transfusion in accordance with current Standards of the American Association of Blood Banks. All suspected transfusion reactions shall be evaluated promptly.

Recodify 8:8-9.2 as **8:8-9.3** (No change in text.)

8:8-[9.3]**9.4** Urgent requirement for blood

(a) (No change.)

(b) The following standards **shall** apply to urgent situations:

1.-4. (No change.)

5. Required tests should be completed promptly.

[ii. The warming system must be equipped with a visible thermometer.

iii. Blood must not be warmed above 37°C.

6. Additives to blood shall be regulated as follows:

i. Drugs or medications, including those intended for intravenous use, shall not be added to blood or components with the exception of sodium chloride injection U.S.P. (0.9 percent) or additive solution systems.

ii. Other solutions intended for intravenous use may be in contact with blood or components in the infusion set provided adequate evidence of safety is available.

7. Irradiation of blood shall be consistent with current acceptable guidelines of the American Association of Blood Banks.]

6. The identification number required in N.J.A.C. 8:8-9.1 and N.J.A.C. 8:8-10.1 shall be traceable. Nonchangeable numbers are not required.

SUBCHAPTER 10. ISSUE AND ADMINISTRATION OF BLOOD AND BLOOD COMPONENTS FOR TRANSFUSION

8:8-10.1 Issue of blood

(a) A blood transfusion request form indicating the recipient's name, **traceable, nonchangeable** identification number, and ABO and D types shall be completed for each unit of donor blood or component.

(b) (No change.)

(c) At the time the blood or blood component is released from the blood bank for transfusion, the person receiving the blood shall present a written request with sufficient information for the positive identification of the recipient. At a minimum the recipient's first and last names, traceable, nonchangeable identification number and the date of transfusion [are] shall be required. **The blood bank shall write the unit number and the type of component issued on the request slip.**

(d) (No change.)

[(e) Prior to transfusion the inspection of blood shall be as follows:

1. The blood shall be inspected immediately before issue from the laboratory.

2. If abnormal in color or appearance, the blood shall not be used for transfusion.]

8:8-10.2 Administration of blood and blood components

(a) Identification of the recipient and the blood container shall be as follows:

1. (No change.)

2. [Immediately] **At the bedside, immediately** prior to transfusion, **two qualified individuals (one qualified by a State Professional Board as a transfusionist and the other determined to be qualified by the blood bank director) shall check and match** [the transfusion form shall be signed indicating that] all information identifying the container with **identifying information on the person of** the intended recipient [has been matched]. **If the information does not match, the initiation of transfusion shall be suspended until the discrepancy is adequately investigated and resolved.**

3. [It is required that a second qualified person check the same information before transfusion and sign the transfusion form.] **At the bedside, immediately after the identifying information in N.J.A.C. 8:8-10.2(a)2. is matched, and before the transfusion is initiated, the two qualified individuals that checked this information shall sign the transfusion form to attest that this information was checked and that it matched.**

4. (No change.)

(b) Blood transfusions shall be conducted as follows:

1. through 3. (No change.)

4. Irradiation of blood shall be consistent with current acceptable [guideline] **standards** of the American Association of Blood Banks **or current guidelines issued by the Food and Drug Administration, whichever is more stringent.**

8:8-10.3 (No change.)

SUBCHAPTER 11. STORAGE OF BLOOD

8:8-11.1 through 11.6 (No change.)

8:8-11.7 Expiration dates of blood and blood components

(a) (No change.)

(b) Expiration dates shall be in accord with the Code of Federal Regulations, **as amended or supplemented.**

8:8-11.8 (No change.)

SUBCHAPTER 12. [HOME COLLECTION AND TRANSFUSION] **OUT-OF-HOSPITAL TRANSFUSIONS**

8:8-12.1 General provisions

(a) Any facility that issues blood and blood components to an Out-of-Hospital Transfusion (OOHT) service shall be a blood bank

licensed in accordance with this chapter to perform "Transfusion Services" and "Processing (Routine)".

(b) The OOHT service and the New Jersey licensed "Transfusion Service" shall have a written agreement that specifies the division of responsibilities for assuring compliance with this chapter. If the OOHT service performs no function other than transfusion of the blood, the New Jersey licensed transfusion service shall agree in this written document to perform recipient testing required in N.J.A.C. 8:8-9.1 and N.J.A.C. 8:8-9.2., and to provide technical consultation when necessary.

Recodify [(a)] to (c) Blood banks wishing to employ the techniques set forth in this subchapter shall file their protocol and a request in writing with the Department, **prior to initiation of the procedure**.

Recodify [(b)-(c)] to **(d)-(e)** (No change in text.)

[8:8-12.2 Home collection

(a) The home collection procedure shall be performed as part of the services of a blood bank licensed to collect blood and blood components.

(b) Donor safety shall be assured by at least the following:

1. If a physician is not present, the phlebotomist shall be a person able to administer emergency care and shall be a registered nurse (R.N.) holding a current certificate of registration who has fulfilled the following requirements:

i. Has demonstrated his or her familiarity with donor eligibility standards to the satisfaction of the director of the blood bank; and

ii. Has taken an eight hour course in cardiopulmonary resuscitation within three years and successfully passed a practical and written exam on the subject matter.

2. A second responsible person shall be available on the premises to help with emergency situations.

3. Adherence to N.J.A.C. 8:8-8.3, Medical contingency plan.

(c) Procedures used shall comply with N.J.A.C. 4, Management, N.J.A.C. 8:8-5, Records and Reporting Requirements, N.J.A.C. 6, Criteria for Donor Selections, and N.J.A.C. 8:8-8.2 through 8.7, Collection of Blood.]

Recodify [8:8-12.3] to **8:8-12.2** [Home transfusion] **Out-of-hospital transfusions (OOHT)**

(a) [Home transfusion] **Out-of-hospital transfusions (OOHT)** shall be done under medical supervision, and the patient shall be observed during the transfusion and for an appropriate time thereafter for suspected adverse reactions. Specific instructions concerning possible adverse reactions shall be provided **in writing** for the patient.

(b) (No change.)

(c) [The home transfusion procedure] **OOHT services** shall be [performed as part of the services of a blood bank licensed] **licensed** to transfuse blood and blood components, **in accordance with this chapter**.

(d) (No change.)

(e) The procedures used shall comply with N.J.A.C. 8:8-4, Management, N.J.A.C. 8:8-5, Records and Reporting Requirements, N.J.A.C. 8:8-10.2, Administration of blood and blood components, and N.J.A.C. 8:8-11.1, **8:8-11.4** and 11.8, Storage of blood.

(f) Blood banks functioning only as [home transfusion] **OOHT** services shall also comply with N.J.A.C. 8:8-2, Personnel, N.J.A.C. 8:8-3.2, Contaminated material, N.J.A.C. 8:8-7.1(a), (b) and (d), Blood and blood components, and N.J.A.C. 8:8-9.1[(d) and (e)], Recipient blood testing.

8:8-12.3 Out-of-hospital transfusions (OOHT) in emergency situations

(a) Facilities not routinely using blood and blood components for therapeutic or prophylactic purposes that can anticipate that they may use them on an emergency basis to treat a life-threatening situation, shall be licensed as outlined in 8:8-1.3, Licensure.

(b) The facilities described in (a) above shall comply with N.J.A.C. 8:8-5, Records and Reporting Requirements, N.J.A.C. 8:8-9, Recipient Blood Testing and N.J.A.C. 8:8-10.1, Administration of blood and blood components.

(c) If a situation exists in which it cannot be anticipated that blood or blood components for therapeutic or prophylactic purposes are necessary on an emergency basis to treat a life-threatening situation, a licensed blood bank shall be permitted to release blood and blood components to an entity not licensed as a blood bank provided that:

1. The attending physician shall attest in writing to the existence of the emergency and the licensed blood bank shall maintain this documentation as required in 8:8-5.1, Records.

2. N.J.A.C. 8:8-9, Recipient Blood Testing and N.J.A.C. 8:8-10.1, Administration of blood and blood components are followed.

(a)

THE COMMISSIONER

Certificate of Need
Home Health Agency Policy Manual
Proposed New Rules: N.J.A.C. 8:33L

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

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

Proposal Number: PRN 1994-115.

Submit comments by March 24, 1994 to:

Maria Morgan, Director
Health Planning and Community Initiatives
New Jersey Department of Health
CN 360, Room 403
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

Certificate of Need review for home health agencies has been required in New Jersey since 1971, when this type of health service was included under the Health Care Facilities Planning Act (N.J.S.A 26:2H-1 et seq.). These proposed rules replace the Certificate of Need Home Health Agency Policy Manual rules which expired November 16, 1992. During 1993, the Department of Health convened an Advisory Committee to review and make recommendations regarding certain aspects of these rules. Issues addressed by the Advisory Committee included the formula used for computing the need for new home health agencies, indigent/uncompensated care, and servicing special needs populations.

Decisions about the approval of new or expanding home health agencies will be based upon the presence of certain documented access problems in the proposed home health agency's service area. Furthermore, the rules will enable the Commissioner of Health, at his or her discretion, to revoke the license of Certificate of Need approved agencies which fail to demonstrate a minimally acceptable volume of visits and/or to demonstrate good faith efforts to ameliorate the service area's access problems. Such licensure revocation procedures would be conducted in accordance with the Administrative Procedures Act (N.J.S.A 52:14B-1 et seq.).

The proposed home health rules are primarily based on those rules which expired in 1992. Revisions which were made incorporate recommendations made by the Home Health Advisory Committee convened by the Department.

The major provisions of the proposed new rules are as follows:

1. N.J.A.C. 8:33L-2.1 describes what constitutes a home health agency's service area.

2. N.J.A.C. 8:33L-2.2 specifies that new agencies must demonstrate the capability to provide a minimum of 5,000 skilled nursing visits per year. Exceptions to this requirement include agencies serving counties with a low population density, in which case a minimum of 4,000 nursing visits per year must be demonstrated, and existing agencies which propose to expand into a new service area, in which case a minimum of 2,000 nursing visits must be demonstrated.

3. N.J.A.C. 8:33L-2.3 addresses proposed agencies' need to achieve cost efficiency without compromising quality of care. This section includes a provision to encourage subcontracting of some services while precluding the full subcontracting of nursing services.

4. N.J.A.C. 8:33L-2.4 delineates the forms of documentation which must be submitted with the home health agency's Certificate of Need application. These include the proposed agency's referral sources, financial feasibility projections, access problems to be ameliorated by the agency, experience in providing services, volume of proposed visits by type and the number of staff providing, and provision of the full range of services under N.J.A.C. 8:42-3.1.

5. The four access problems which constitute a basis for certificate of need approval are identified in N.J.A.C. 8:33L-2.4(a)3i through iv. They include: the absence of seven-day-a-week, 24-hour-a-day home health coverage by existing agencies in the service area; the absence of agencies in the service area which provide speech pathology, occupational therapy, and social work services; the absence of home health agencies offering certain "high-tech" services; and the absence of a Medicare-certified hospice program in the service area.

6. Six prioritization criteria for the review of batched Certificate of Need applications are specified in N.J.A.C. 8:33L-2.4(b).

7. N.J.A.C. 8:33L-2.4(c) states that the newly approved agencies shall be granted a period of two years subsequent to Certificate of Need issuance during which time they must establish their ability to ameliorate the service area's access problems. During that time period, no additional agencies will be granted Certificate of Need approval to address those same access problems in the service area.

8. To ensure consumer choice of home health providers, N.J.A.C. 8:33L-2.4(d) requires every county or sub-area of a county to be served by a minimum of three home health agencies. Subsection (e) contains staff education requirements regarding universe precautions and a requirement that no one be denied care based on his or her diagnosis. Subsection (f) requires the completion, at least annually, of a Department survey and cost report. Subsection (g) requires an affiliation with the Department's AIDS Division. Subsection (h) requires documentation of access to medically indigent patients in areas of population exceeding 30,000. Subsection (i) contains requirements regarding provision of care to special needs populations.

9. N.J.A.C. 8:33L-2.5 outlines special requirements for hospital-related home health agency applicants for a Certificate of Need, including a provision to maximize consumer choice for home health agenices for patients being discharged from the hospital.

10. N.J.A.C. 8:33L-2.6 specifies requirements and conditions which must be met by home health agencies which are the subject of a transfer of ownership.

11. N.J.A.C. 8:33L-2.7 describes the requirement that approved agencies shall provide a minimum of three percent of their total annual home health visits in the form of free visits to medically indigent patients. In addition, approved agencies shall maintain a sliding fee schedule.

Key changes from the former rules are as follows:

- Volume requirements have increased to more accurately reflect the current market. For example, new agencies must achieve 5,000 skilled nursing visits per year within the first two years of operation and increase to 10,000 visits per year within five years.
- the staffing formula was deleted and replaced with standards which are in compliance with licensing rules.
- Documentation required for the CN application was further refined to include specific services provided and the type and volume of visits proposed.
- Prioritization criteria will include consideration to agencies servicing low-income populations within municipalities of 30,000 or more.
- Special needs populations and complex treatment modalities are defined.
- The number of patients per 1,000 Medicare beneficiaries served in New Jersey has decreased since 1986 to significantly less than the national average. This suggests that access to home health care may be a problem. Therefore, we are recommending that the minimum number of home health agencies per county be increased from two to three.
- Medical indigency is redefined as at or below 250 percent of the Federal poverty line, as published annually in the Federal Register.

Social Impact

Home health care has beocme an increasingly important element of the health care industry. In recent years there have been numerous public policy initiatives, as well as demographic and social changes, which have contributed to expansion of the need for home health services. Growth of the elderly population, reduced hospital stays due to changes in reimbursement for hospital care, and the increase in the number of managed care plans are a few of the factors which have resulted in a rising demand for home health care.

Within the home health industry there are several types of provider agencies. These rules distinguish between agencies which are licensed by the State Department of Health and certified by Medicare (that is, eligible to collect Medicare reimbursement) and those which are neither licensed nor certified. The latter group includes temporary and private duty nursing agencies, hospice only and homemaker agencies. The rules proposed herein do not apply to these home care providers. Only those providers which fit the definition of a home health agency and which propose to meet State licensing and Medicare-certification standards for home health care will be subject to the rules. According to the definition stated in N.J.A.C. 8:33L-1.2, a "home health agency" must offer "preventive, rehabilitative, and therapeutic services primarily to patients in their homes. All home health agencies shall provide nursing, homemaker-home health aide, and physical therapy services in the patient's home or place of residence."

In New Jersey there are approximately 59 licensed agencies at the present time. Medicare utilization data for 1992 indicates that the number of patients per 1,000 Medicare beneficiaries served in New Jersey is 62 per 1,000, compared to the national average of 71 per 1,000. The average number of home health visits per Medicare patient served is also lower for New Jersey (34 visits) than for the nation (63 visits). At the same time, the average charge for visits in New Jersey at $80.00 was higher than the national average of $76.00. This data would suggest that New Jersey's home health costs have increased, while access to care may be a problem for some Medicare patients.

As a result, it is the Department of Health's intention that the rules proposed herein address any access problems by promoting the continued, orderly development and expansion of home health services where and when they are needed. The rules contain incentives for existing home health agencies in the State to offer a full array of accessible services. However, in those service areas where existing agencies are not adequately addressing certain access problems, the proposed rules will allow for the approval of additional agencies.

Another socially beneficial aspect of the rules is that they include provisions to encourage consumer choice of home health providers. For example, they permit the Certificate of Need approval of a third agency in areas which are currently served by only two licensed agencies so that patients may select the provider offering the most appropriate mix of services. In addition, consumer choice will be promoted among patients dischargd from hospitals which operate a home health agency. Hospital-related home health agencies receiving Certificate of Need approval will be required to maintain referral relationships with all existing, licensed home health agencies in the service area and to allow for the distribution of brochures from these agencies to the hospital's patients.

Economic Impact

Medicare is the primary source of payment for home health agency services. In New Jersey, approximately 58 percent of all licensed agency visits are reimbursed by Medicare. Medicaid is the payer for an additional 35 percent of home health services rendered in the State; it is estimated that $45 million was expended by Medicaid for home health care in the first six months of 1993. Out-of-pocket payments, private insurance, and other payers have traditionally covered the costs of care for only a small percentage of patients, although there may be a shift in this distribution with the expansion of managed care plans who encourage early discharge.

Both Medicare and Medicaid reimburse for home health services on the basis of reasonable costs or customary charges, whichever are lower. Generally, Medicare requires that agencies document uniformity of charges for all classes of patients. This prevents agencies from charging Medicare patients more or less than patients whose care is paid for by other sources; it also precludes the shifting of cost from one class of patients to another. One implication of this reimbursement framework is that home health agencies typically have limited options for covering the cost of care to the medically indigent. The U.S. Health Care Financing Administration continues to scrutizine the home health care delivery system for the purpose of containing rising Medicare expenditures.

Large numbers of chronically ill elderly need home health care for which there is currently no adequate source of payment. Over one million elderly living at home are said to lack needed home care, primarily in the form of assistance with activities of daily living. In New Jersey, Medicaid pays for this care for patients who meet specific eligibility criteria. However, there remain many chronically ill individuals in need of home health services who are not so indigent as to qualify for Medicaid, but who nonetheless cannot afford to pay out-of-pocket.

The cost of uncompensated care poses a problem for many home health agencies. To avoid unduly burdening home health providers while

promoting access to needed care for the medically indigent, the rules proposed herein encourage all agencies to offer a reasonable amount of free care to patients who lack the resources to pay. After discussions with the Department's Home Health Advisory Committee, this amount was determined to be, at a minimum, three percent of each agency's total visits. This aspect of the rules is not deemed adequate to fully resolve the problem of medically indigent care coverage; the Department will continue to explore alternative mechanisms to pay for these costs.

In summary, the rules proposed herein should not have a negative economic impact on current home health agencies and will not impose any new economic burdens on the Department of Health or any other State agency. The criteria for approval of new or expanded agencies will facilitate the controlled growth of the home health industry to meet access needs while precluding a rapid, destabilizing proliferation of agencies.

Regulatory Flexibility Analysis

The Department of Health has determined that compliance with the proposed rules, as well as with all of N.J.A.C. 8:33, is required by all health care facilities, which provide health care services as they are defined in N.J.A.C. 8:33-1.6 Definitions. The Department acknowledges that many applicants may propose to develop home health agencies which could conceivably have less than 100 full-time employees and therefore be categorized as small businesses defined in the New Jersey Flexibility Act, N.J.S.A. 52:14B-16 et seq. Requirements imposed are described in the Summary above. The Department anticipates no change or increase in costs for those agencies already in operation. For those seeking to begin operation, or to expand their services, costs will vary from region to region. No outside professional services are needed to comply. However, the Department believes that the volume requirements included in the new rules (see Summary and Social Impact) will assure that agencies which do seek certificate of need approval will be viable. In order to promote the orderly development of health care services, the Department must assure that these rules will be equitably and uniformly applied regardless of the type or size of applicant organization. This action will assure that home health agency services of demonstrated need, efficiently provided, properly utilized, and at a reasonable cost, are established to promote the public health.

Full text of the proposed new rule follows:

CHAPTER 33L
CERTIFICATE OF NEED
HOME HEALTH AGENCY POLICY MANUAL

SUBCHAPTER 1. GENERAL PROVISIONS

8:33L-1.1 Purpose and scope

(a) The Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq.) establishes as a policy of the State of New Jersey that health care services "of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health," N.J.S.A. 26:2H-1. This Act has given the State Department of Health the "central responsibility for the development and administration of the State's policy with respect to health planning, hospital and related health care services and health care facility cost containment and all public and private institutions, whether state, county, municipal, incorporated, not incorporated, serving principally as residential health care facilities, nursing or maternity homes or as facilities for the prevention, diagnosis, or treatment of human disease, pain, injury, deformity, or physical condition," N.J.S.A. 26:2H-1.

(b) The statute goes on to stipulate that "no health care facility shall be constructed or expanded, and no new health care services shall be instituted ... except upon application for and receipt of a certificate of need" (N.J.S.A. 26:2H-7). Consequently, the rules which are detailed below specify the certificate of need requirements for all new or expanding home health agencies, or for home health agencies which are transferring ownership. These rules do not, however, apply to homemaker or temporary nursing agencies, which are not Medicare-certified and which do not propose to become Medicare-certified, or programs which are hospice only.

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' need 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 by the home health agency.

"Department" means the New Jersey State Department of Health.

"Home health agency" or "agency" means a facility which is licensed by the New Jersey State Department of Health to provide preventive, rehabilitative, and therapeutic services primarily to patients in their homes. All home health agencies shall provide nursing, homemaker-home health aide, and physical therapy services in the patient's home or place of residence.

"Hospice" means a comprehensive program of palliative/supportive services for dying persons and their families, utilizing an interdisciplinary team of professionals and volunteers. The program provides components of physical, pscyhological, social, and spiritual care, including bereavement counseling, institutional respite, inpatient care, and home care.

"Hospital-related home health agency" means a home health agency for which the license is held by a hospital, or by a subsidiary corporation of a hospital, or an agency which is a member of a corporate system which includes a licensed hospital in the service area proposed in the agency's certificate of need application.

"Low income municipality" means any municipality with a population of 30,000 or more where 15 percent of families are living below the Federal poverty level, 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 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 250 percent of the Federal poverty guidelines, as published annually in the Federal Register) and who also lacks third party payment coverage 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.

"Seven-day-a-week, 24 hour-a-day service" means continuous nursing staff coverage which is available to the home health agency's new referrals (that is, patients for whom the agency has received written physician's orders) and current patients during evenings, nights, weekends, and holidays.

"Skilled nursing visit" means personal contact between an individual patient and a registered nurse or licensed practical nurse who is sent from a home health agency. The visit takes place in the patient's place of residence and is conducted for the purpose of providing preventive, rehabilitative, or therapeutic nursing care, including, but not limited to, health assessment, monitoring, counseling, and complex therapies such as total parenteral nutrition (TPN), central line infusions and ventilator care.

"Special needs populations" means those patients with diagnoses which continuously require comprehensive skilled nursing care including treatment modalities such as TPN and chemotherapy. For example, these can include pediatric, HIV-infected or medically indigent patients.

SUBCHAPTER 2. REQUIREMENTS

8:33L-2.1 Service area

(a) The service area of a home health agency shall be the county within which the agency's office is located, or a specified sub-area

of that county, or two or more counties or the sub-areas of two or more counties. Each office of an agency shall be staffed and equipped in accordance with the Department of Health Standards for Licensure, as required by N.J.A.C. 8:42.

(b) Any proposed establishment of a new service area as described in (a) above, or any proposed expansion of or other change in an existing agency's service area, shall require Certificate of Need approval through a full review process, pursuant to N.J.A.C. 8:33.

(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 within the first two years of operation 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 requirements pursuant to N.J.A.C. 8:42. The volume of skilled nursing visits shall be increased to 10,000 visits per year within five 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. Agencies serving counties 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 section these counties are Cumberland, Hunterdon, Salem, Sussex, and Warren. In these low population density counties, a home health agency must demonstrate the capacity to provide a minimum of 4,000 skilled nursing visits per year within the first two years, in addition to all other services provided to comply with the requirements for licensure pursuant to N.J.A.C. 8:42. The volume of skilled nursing visits shall be increased to 8,000 visits per year within five years after the date of the agency's Certificate of Need approval and shall be maintained annually;

2. Existing agencies which receive Certificate of Need approval to expand their service area, in which case the agency shall demonstrate the capability to provide a minimum of 2,000 skilled nursing visits per year in each newly approved service area, in addition to providing all other services necessary 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; and

3. Agencies proposing to serve a low income municipality or a special needs 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) Certificate of need approval for the expansion of an existing home health agency into a new service area shall only be granted if the existing agency is providing at least 5,000 skilled nursing visits per year if the agency is located in a low population density county as described in (b)1 above. This minimum volume of visits shall be maintained annually in addition to the visits approved for the new service area, as described in (b)2 above.

(d) If an agency receives certificate of need approval to offer services in a specified service area and, after five years from the date of certificate of need approval, is unable to demonstrate to the satisfaction of the Department of Health, the applicable volume of skilled nursing visits specified in (a) through (c) above, the Commissioner of Health may, in accordance with this chapter, revoke the agency's license or may institute other licensure penalties. Any licensure revocation procedure shall be conducted in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure rules (N.J.A.C. 1:1).

8:33L-2.3 Cost efficiency

(a) Applicants for certificate of need approval shall document that the least costly alternatives, either directly provided or subcontracted services, will be utilized, where the services meet applicable quality of care standards. However, because of the potential for problems with providing continuity of care, agencies proposing the full subcontracting of nursing services shall not receive certificate of need approval.

(b) Consistent with applicable licensure rules (N.J.A.C. 8:42), agencies shall be precluded from fully subcontracting for all nursing services. Violation of this condition at any time shall constitute a sufficient basis for the Commissioner of the Department, within his or her discretion, in accordance with this chapter, to revoke the agency's license or institute other licensure penalties. Any 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).

(c) To maximize productivity without compromising the quality of care, staffing should be adequate to meet the demands of patient volume in accordance with the provisions of N.J.A.C. 8:42.

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. Documentation of proposed referral sources. Letters of support from community agencies and health care facilities shall be submitted indicating to the satisfaction of the Department of Health the number of referrals which can be expected annually and indicating a willingness to establish referral arrangements upon home health agency licensure;

2. Documentation of the financial feasibility of the project. Expense and revenue projections shall be submitted covering a period of at least two years beyond the point at which expenses are expected to no longer exceed revenues. Also required for submission is third party verification of the availability of sufficient capitalization to meet start-up costs for the period until revenues exceed expenses or for the first six months of operation, whichever is longer;

3. 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 in (a)3i through iv 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. Access problems to be considered include the following:

i. Absence of an existing home health agency providing care in the proposed service area which offers skilled nursing services on a seven-day-a-week, 24-hour-a-day basis, as defined at N.J.A.C. 8:33L-1.2 and as indicated by results from an annual survey con-

ducted and reported by the Department of Health and by annual licensure inspection reports. For the purpose of this section, on-call staff are required to be responsive within one hour of attempted contact via an answering service or direct telephone contact. Tape answering machines are not considered sufficient for the provision of on-call coverage during evenings, nights, weekends, and holidays.

ii. Absence of existing home health agencies providing care in the proposed service area which, in addition to those forms of care required for agency licensure, offer speech pathology, occupational therapy, and social work services. These services may be made available either through direct provision or through sub-contracting by the home health agencies. 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.

iii. Absence of existing home health agencies providing care in a proposed service area which offer complex treatment modalities. For the purpose of this rule, complex treatment modalities shall include mechanical ventilator care, intravenous and central line 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 sub-contracting 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. Absence of a Medicare-certified hospice program providing care for the terminally ill in the proposed service area. Agencies receiving Certificate of Need approval to correct this access problem shall be required to obtain Medicare certification as a hospice program and to maintain this certification continuously. Documentation of areas served by Medicare-certified hospice programs shall be reported by the Department of Health based on information supplied by the Department's Division of Health Facilities Evaluation, supplemented by information from the New Jersey Hospice Organization;

4. Documentation of experience in the provision of preventive, rehabilitative and therapeutic services to patients;

5. Documentation on the volume of proposed visits by type and the number of staff who will be providing these visits; and

6. Documentation that the full range of services, for example, nursing, physical therapy, occupational therapy and speech therapy, will be provided in accordance with N.J.A.C. 8:42-3.1.

(b) Where there is more than one certificate of need application for a home health agency in a service area with documented access problems as identified in (a)3 above, priority shall be given to approving that application which proposed to correct all or the greatest number of identified access problems in the service area and which is in compliance with all other applicable criteria in this chapter. Additional prioritization criteria include the following:

1. The broadest range of services, including the provision of health promotion, chronic illness care, and illness prevention programs to the community;

2. The greatest amount of free (that is, no pay) care to medically indigent patients;

3. Patient volume of special needs populations;

4. The expansion of an existing agency, provided that the agency has been operational for a minimum of three years, has a track record of quality care as determined by the Department of Health's Division of Health Facilities Evaluation, and has a record of compliance with previous conditions of certificate of need approval;

5. The expansion of an existing agency with a documented history of a greater than average amount of care provided on a no pay basis to medically indigent patients; and

6. The ability to implement the project quickly.

(c) When a home health agency receives certificate of need approval to ameliorate a service area's access problems as specified in (a)3 above, that approved agency shall be given a two year period to correct the identified access problems. No additional agencies shall be approved in the service area for the purpose of addressing those same access problems during the two year period subsequent to the date of Certificate of Need issuance. The approval of an agency shall be conditioned such that the Commissioner of Health may revoke the agency's license if the applicant fails to demonstrate good faith efforts to ameliorate the access problems as specified in the certificate of need application. 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).

(d) To insure consumer choice, every county or sub-area of a county shall be served by a minimum of three home health agencies. If an area is served by only two home health agencies, and it exhibits none of the access problems identified in (a)3 above, an additional agency may still receive Certificate of Need approval to serve that area, provided that it complies with all other applicable requirements in this chapter.

(e) Applicants shall submit a copy of proposed staff education materials, 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.

(f) Agencies receiving certificate of need approval shall be required to complete and return the Department of Health's survey of home health agencies and to submit a complete cost report on an annual basis, or more frequently, if requested by the Department. Unless otherwise specified by the Department, a separate survey shall be completed for each county served by the agency. This survey shall include, but not be limited to, questions regarding the number of clients served according to age groupings, types (for example, skilled nursing, occupational therapy and social work) and numbers of visits provided, number of visits according to reimbursement source (including no-pay visits to medically indigent patients), and agency charges for services rendered.

(g) 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.

(h) 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 30,000 or group of contiguous low income municipalities with a population of at least 30,000. 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)3 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 all other home health agencies already serving the proposed service area.

(i) To promote the availability of care for special needs populations 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)3 above.

1. As a condition of certificate of need approval, home health agencies approved to serve a special needs population shall be permitted to provide home health services only to members of the

identified 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 service a special needs 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 special needs 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 special needs 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 identified population and of how these program and services will be integrated within the area's existing health care system;

iv. Evidence that the health problems of the special needs 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 special needs population; and

vi. Verfication 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-2.5 Special requirements for hospital-related home health agency applicants

(a) In addition to the applicable documentation required by N.J.S.A. 8:33L-2.4, home health agencies which are hospital-related shall submit all of the following with their certificate of need applications:

1. Documentation describing the related hospital's existing discharge planning system, identifying improvements which will be effected as a result of establishment of the proposed agency, and explaining why these improvements could not be effected by making use of existing home health providers in the proposed service area;

2. Documentation that consumer choice of home health service providers shall be promoted within the related hospital. Evidence that referral relationships with other licensed home health service providers in the service area will be established and maintained shall be provided in the application. Hospital-related home health agencies receiving certificate of need approval shall be required to allow for the distribution of brochures from all licensed home health agencies in the service area to all patients in the related hospital. Arrangements shall be required to insure that referrals will be made to home care intake coordinators from other home health agencies in the service area, if this is desired by the patient or the patient's family; and

3. Documentation regarding home follow-up for patients discharged early due to managed care payment plans, for example, postpartum follow-up.

8:33L-2.6 Transfer of ownership for home health agencies

(a) The transfer of ownership of a home health agency shall require licensure approval in accordance with N.J.A.C. 8:42.

(b) The service area of an existing home health agency may not be modified in the certificate of need application for transfer of ownership.

(c) If two or more agencies are merged through the transfer of ownership, the resulting service area shall be that of the combined, pre-existing agencies.

(d) Conditions placed on the approval of certificate of need applications of home health agencies which are the subject of transfer of ownership shall be assigned to the transfer of ownership approval, unless these conditions are amended or deleted by the Commissioner of the Department of Health.

(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) Applicants proposing the transfer of ownership to an entity that conforms with the definition of a "hospital-related home health agency" as defined in N.J.A.C. 8:33L-1.2 shall comply with all applicable requirements in N.J.A.C. 8:33L-2.5.

(g) As a condition of certificate of need approval of a transfer of ownership, the new agency shall provide a copy of a policy, including marketing materials, for the provision of services regardless of ability to pay, and for the provision of charity care at a minimum of three percent of its total annual home health reimbursable cost centers.

(h) No patient under treatment at the time of the transfer of ownership approval shall lose service or experience any increase in charges as a result of the change in ownership.

8:33L-2.7 Care for medically indigent patients

(a) As a condition of certificate of need approval, applicants proposing new agencies or expansion of existing agencies shall be required to provide a copy of a policy including marketing materials for the provision of services, regardless of ability to pay, and for the provision of charity care at a minimum of three percent of its total annual home health reimbursable cost centers.

(b) As a condition of certificate of need approval, applicants shall be required to maintain a sliding fee scale to be used for all proposed home health services. The sliding scale shall incorporate provisions for patients to receive care free of charge, if they meet the definition of "medically indigent," as stated in N.J.A.C. 8:33L-1.2. The proposed fee schedule shall allow for partial payment by patients who have incomes above 250 percent of the Federal poverty guidelines (see definition of "medically indigent") but below 300 percent of the Federal poverty guidelines. The sliding scale shall be submitted with the certificate of need application. Any changes in the schedule are subject to prior approval by the Department.

(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 charity care shall accept as a condition of approval that failure to provide the proposed percentage of charity care annually shall, at the discretion of the Commissioner of Health, and based on the applicant's compliance with this chapter, result in revocation of the agency's license or other licensure penalties. 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 Procedures Rules (N.J.A.C. 1.1).

(a)

DIVISION OF HEALTH FACILITIES, EVALUATION AND LICENSING

Chapter IV of State Sanitary Code
Proficiency Testing
Proposed Amendment: N.J.A.C. 8:44-2.5

Authorized By: Public Health Council, William Frascella, O.D., Chairperson.

Authority: N.J.S.A. 26:1A-7 and N.J.S.A. 45:9-42.34.

Proposal Number: PRN 1994-101.

A public hearing concerning this proposal will be held on **March 14, 1994** at **1:30 P.M.** at:

New Jersey Department of Health
Health & Agriculture Building
Auditorium
CN 360
Trenton, New Jersey 08625

Submit written comments by March 24, 1994 to:
Samuel D. Thompson, PhD.
Clinical Laboratory Improvement Services
CN 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

Since 1975, the State Department of Health, through the Clinical Laboratory Improvement Service (CLIS), has administered a proficiency testing (PT) program for licensed clinical laboratories as mandated in the New Jersey Clinical Laboratory Improvement Act, N.J.S.A. 45:9-42.37, where it is stated that "The Department shall establish and conduct . . . a program to . . . test the proficiency of clinical laboratories . . ." However, Chapter IV (Laboratories) of the State Sanitary Code—N.J.A.C. 8:44-2.5(b) merely implies this responsibility by stating that laboratories ". . . must successfully participate in a proficiency testing program . . . " resulting in ambiguity for those who must comply with licensure requirements. Amendment of this rule to reflect the explicit intent of the statute clarifies that, for State licensure purposes, laboratories must enroll in the Department's proficiency testing program.

Social Impact

Proficiency testing has long been a standard for measuring the ability of laboratories to perform clinical tests. However, every proficiency testing program, depending on their method of evaluation, varies in their interpretation of satisfactory performance. Thus, satisfactory performance in any given PT program cannot be relied upon to accurately reflect a laboratory's performance or follow-up an unsatisfactory performance. This proposed amendment will ensure that, through enrollment of all laboratories in the Department-sponsored program, the Department will be able to evaluate every New Jersey licensed clinical laboratory in the same manner and that immediate action will be taken to correct poor performance by a program participant. This method of evaluation will assure those who utilize the laboratories a minimum standard and that the public's health will be protected.

Economic Impact

The proposed amendment should not have a significant impact on New Jersey licensed laboratories currently enrolled in PT programs. In fact, more than 80 percent of the laboratories are currently enrolled in the State program. For the most part, CLIS fees are comparable to other PT providers. It is estimated that, since all fees for previously available surveys remained unchanged for 1994, the vast majority of laboratories will see no significant economic impact. However, a bigger impact will be felt by those New Jersey licensed laboratories which, in addition to CLIS enrollment, chose to enroll in other PT programs for the purpose of obtaining accreditation through various agencies. However, according to 1993 figures, no more than 14 percent of the New Jersey licensed laboratories have chosen to enroll in PT programs other than the CLIS program. Exact costs for these laboratories are dependent upon PT requirements for both State licensure and accreditation. In New Jersey, accreditation by professional accrediting agencies is voluntary and is not accepted in lieu of State licensure. Therefore, only those laboratories electing to continue their voluntary enrollment in other PT programs will incur increased costs. Should laboratories choose not to enroll in other PT programs, those organizations which previously offered these services will experience a negative economic impact.

The total fee for an average hospital or large independent laboratory enrolled in a survey for each specialty and/or subspecialty required for State licensure and available from CLIS is less than $5,000 a year.

The Program's administrative costs will continue to be funded through the collection of survey fees, in accordance with N.J.A.C. 8:45.

Regulatory Flexibility Analysis

The proposed amendment is applicable to all New Jersey licensed clinical laboratories including hospital, independent, public health, school and physician group practice (that is, with five or more physicians) laboratories. As such, the amendment affects those defined as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, more than 80 percent of those in the small business category (over 600 labs) historically enroll in the CLIS program. The bigger impact will be felt by some hospitals and large independent laboratories (77 labs). These facilities in the past have enrolled exclusively in PT programs sponsored by national accrediting agencies, in lieu of CLIS, in accordance with former practices. Records, reports and compliance regarding PT performance for this group under the amendment must fulfill both State licensure requirements and those of any other agency they voluntarily enroll with for accreditation purposes.

For all laboratories, the amendment will require fees based on the cost to the Department to provide the service. The cost for the majority of surveys are comparable to those of other comprehensive PT providers and every attempt to lower or, at best, maintain fees will continue whenever possible. There can be no exemption from the rules or lesser requirements regarding recordkeeping, reporting or compliance for small business, because of the need to equitably monitor laboratory performance through proficiency testing for all licensed laboratories and to insure the public health of all citizens.

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

8:44-2.5 Tests performed

(a) (No change.)

(b) [All clinical laboratories must successfully participate in a proficiency testing program covering all clinical laboratory specialties and subspecialties as made available in which the laboratory is approved to perform test. Laboratories shall: receive and examine and/or analyze specimens delivered by mail or messenger at such times as designated by the proficiency testing service and maintain records of all proficiency testing results in programs in which it is a participant and make such records, including results and interpretations routinely available to the Department of Health. An exception to the requirements of this paragraph may be made provided the Department of Health determines that an appropriate proficiency testing program is not readily available.] **All clinical laboratories shall enroll in the New Jersey State Department of Health Proficiency Testing Program and shall participate in all surveys available from the Department for the evaluation of analytes, specialties and/or subspecialties for which they are approved to perform tests. Laboratories shall receive specimens from the Department of Health, by mail or messenger, and shall submit results of the examination or analysis of such specimens to the Department, within the timeframe specified by the Department for each specimen. Laboratories shall maintain records of all proficiency testing results in all surveys in which they participate and shall make such records, including results, interpretations and cumulative performance data, routinely available to the Department.**

(c) (No change.)

NOTES

RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Industrialized/Modular Buildings

Adopted Amendments: N.J.A.C. 5:23-1.1, 2.22, 3.11, 4.1, 4.18, 4.20, 4.24, 4.26 and 4A.1

Adopted Repeals: N.J.A.C. 5:23-4.22, 4.29, 4.31, 4.39, and 4A.13 through 4A.27

Adopted New Rules: N.J.A.C. 5:23-4B and 4C

Adopted Repeals and New Rules: N.J.A.C. 5:23-4A.2 through 4A.5, and 4A.7 through 4A.12

Proposed: December 6, 1993 at 25 N.J.R. 5388(a).

Adopted: January 25, 1994 by Stephanie R. Bush, Commissioner, Department of Community Affairs.

Filed: January 28, 1994 as R.1994 d.96, **with substantive and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: February 22, 1994.

Expiration Date: February 3, 1998.

Summary of Public Comments and Agency Responses:

Comments were received from Bruce K. Willis, EIT, Staff Plans Examiner/QA Inspector of Products Fabrication Service Corporation and from Patrick J. O'Keefe, Executive Vice President/CEO of the New Jersey Builders Association.

COMMENT: The CABO One and Two-Family Dwelling Code should be listed as an alternative, equivalent construction code in its entirety. As such, it is accepted as a standard for R-4 construction nationwide. The proposal would not allow use by a manufacturer of the plumbing chapters of CABO. Perhaps this was an oversight on the part of the Department.

RESPONSE: The Department did not list the CABO One and Two-Family Dwelling Code since it is adopted in New Jersey and, therefore, is covered by reference in N.J.A.C. 5:23-4A.5(a). However, based on this comment, the Department did realize that in adopting the CABO One and Two-Family Dwelling Code under the Uniform Construction Code, Part V Plumbing is deleted. Therefore, for consistency, the Department has revised N.J.A.C. 5:23-4A.5(b) to include Part V of the CABO One and Two-Family Dwelling Code. This addition allows a more broad use of the code and is less restrictive to the industry.

COMMENT: The proposal introduces a double standard into the Uniform Construction Code in that it recognizes a wide selection of model codes for the production of industrialized/modular buildings, but continues to limit builders of other buildings to the model codes adopted at N.J.A.C. 5:23-3. All builders should be allowed to build to these equivalent codes. If modular/industrialized builders are allowed to build to less costly code requirements, they will enjoy an undue advantage and a situation may result where minimal construction practices become the norm for competitive reasons.

RESPONSE: Since different codes are used for construction of industrialized buildings in different states that are, or may become, participants in the interstate compact that these rules are intended to implement, it is necessary that provision be made for the use in those states of codes that, to paraphrase section 6 of the State Uniform Construction Code Act (N.J.S.A. 52:27D-124), meet the same basic objectives as the model codes in effect in New Jersey, even though all standards are not identical. The issue is essentially one of providing code enforcement services in the most efficient manner. The Department understands it to be the intent of the Legislature, both in adopting the State Uniform Construction Code Act and in entering into the Industrialized Building Compact, that interstate commerce in industrialized/modular buildings not be unnecessarily impeded by differences in provisions of model codes in effect in different states. The need of a manufacturer with a multistate market to build to different codes that address the same basic objectives has imposed unnecessary costs on the industrialized building industry and has multiplied the number of inspections required. These are the problems that the interstate compact is intended to remedy.

No comparable problem exists for builders of site-built structures. On the contrary, if conventional builders were to be allowed to pick and choose among the model codes, the time required both for plan preparation by design professionals and for plan review and inspection by code officials would be substantially increased because of the need to consult code documents other than those with which they are already familiar, and the costs to builders and consumers would be increased accordingly. From the standpoint of total cost, it is most efficient to allow industrialized builders to build to any one set of codes, while requiring site builders to build to a uniform code; a multiplicity of codes meeting the same basic objectives is not desirable in either case.

Summary of Agency-Initiated Changes:

1. N.J.A.C. 5:23-1.1(b) has been amended to include reference to the new subchapters.
2. N.J.A.C. 5:23-3.11(a)7 has been amended to reference changes to the chapter.
3. N.J.A.C. 5:23-4.1(c) has been amended to reference the change to the chapter.
4. N.J.A.C. 5:23-4A.5(b) has been amended to reference the appropriate citations for the energy conservation and barrier-free provisions of the 1993 edition of the BOCA National Building Code.
5. The proposed N.J.A.C. 5:23-4A.9(a) has been deleted since this proposed change to the Model Rules and Regulations of the Industrialized Building Commission was not approved at the December 3, 1993 meeting of the Commission. A change in wording that was made by the Commission at that meeting is reflected in the amended text of N.J.A.C. 5:23-4A.5(c).
6. N.J.A.C. 5:23-3.11 has been amended to reflect the recodification of the former N.J.A.C. 5:23-3.10 as N.J.A.C. 5:23-4.3A and to retain the authority, set forth in the repealed N.J.A.C. 5:23-4.11, of local enforcing agencies to inspect site work for premanufactured systems if the construction is within a class for which the agency is qualified to do plan review.
7. References in N.J.A.C. 5:23-3.11(a)7 and 4.24(a)2iii to N.J.A.C. 5:23-4.29(a) and 4A.8 as the cite for approval by an inplant inspection agency have been updated to reference N.J.A.C. 5:23-4A.10.

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

5:23-1.1 Title; division into subchapters

(a) (No change.)

(b) The chapter consists of the following subchapters:

1.-5. (No change.)

6. "Manufactured Homes and Manufactured Home Add-On Units Not Subject to Federal Regulations" which may be cited throughout the regulations as N.J.A.C. 5:23-4B and when referred to in subchapter 4B may be cited as this subchapter.

7. "Enforcement of Federal Manufactured Home Standards" which may be cited throughout the regulations as N.J.A.C. 5:23-4C and when referred to in subchapter 4C may be cited as this subchapter.*

Recodify existing 6.-13. as 8.-15. (No change in text.)

5:23-2.22 Premanufactured construction

(a) Premanufactured construction certified in accordance with N.J.A.C. 5:23-4A or 4B, and carrying an appropriate label, shall be accepted as conforming to the requirements of the regulations to the extent provided for by the particular label for purposes of local construction inspection approval.

1. Prior to accepting the unit, the appropriate subcode official may require the performance of nondestructive tests.

2. In the case of visible signs of damage and/or any visible code violations, the construction official shall consider the seriousness of the nonconformance or damage and accordingly issue a Temporary Certificate of Occupancy or Certificate of Occupancy or deny such Certificate. If a Temporary Certificate is issued or a Certificate is denied, the construction official shall request that the label-issuing

agency reaffirm in writing that the assembly still conforms to the regulations and notify the Department in writing.

3. No inspection requiring disassembly, damage to, or destruction of certified premanufactured construction shall be conducted.

(b) (No change.)

5:23-3.11 Enforcement activities reserved to the Department

(a) The Department of Community Affairs shall be the sole plan review agency for the following structures:

1.-3. (No change.)

4. Class I and Class II structures *[were]* ***where*** required in accordance with N.J.A.C. 5:23-*[3.10]***4.3A*** and N.J.A.C. 5:23-4.24(a)2ii;

5.-6. (No change.)

7. All premanufactured systems for Class I and Class II structures***,*** other than those authorized to be approved by an inplant inspection agency licensed to perform Class I and Class II plan review as provided in *[N.J.A.C. 5:23-4.29(a) and]* N.J.A.C. *[5:23-4A.8]* ***5:23-4A.10,*** and all on-site installation of Class I and Class II premanufactured construction ***within the jurisdiction of a local enforcing agency that is not a Class I or Class II agency, as the case may be***.

(b)-(h) (No change.)

5:23-4.1 Title; scope; intent

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

(c) This subchapter and N.J.A.C. 5:23-4A***, 4B, 4C*** shall control matters related to: the structure, organization, and procedures of municipal, State, and interlocal enforcing agencies; their interrelationships; the structure, organization, and procedures of boards of appeal; the approval of premanufactured construction; private enforcing agencies; and the establishment of fees.

(d) (No change.)

5:23-4.18 Standards for municipal fees

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

(c) Basic construction fee: The basic construction fee shall be computed on the basis of the volume of the building, or in the case of alterations, the estimate construction cost, and the number and type of plumbing, electrical and fire protection fixtures or devices as herein provided.

1. Volume or cost: Fees for new construction or alterations shall be as follows:

i. Fees for renovations, alterations, reroofing, repairs, and site construction associated with premanufactured construction and the external utility connections for premanufactured construction, shall be based upon the estimated cost of the work. The fee shall be computed as a unit rate per $1,000 of estimated cost.

ii.-vii. (No change.)

2.-5. (No change.)

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

5:23-4.20 Department fees

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

(c) Departmental (enforcing agency) fees shall be as follows:

1. (No change.)

2. The basic construction fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and pieces of equipment, the number of electrical fixtures and devices and the number of sprinklers, standpipes and detectors (smoke and heat) at the unit rates provided herein plus any special fees. The minimum fee for a basic construction permit covering any or all of building, plumbing, electrical, or fire protection work shall be $46.00.

i. Building volume or cost: The fees for new construction or alteration are as follows:

(1) (No change.)

(2) Fees for renovations, alterations and repairs or site construction associated with premanufactured construction and the external utility connection for premanufactured construction shall be based upon the estimated cost of work. The fee shall be in the amount of $24.00 per $1,000. From $50,001 to and including $100,000, the additional fee shall be in the amount of $18.00 per $1,000 of estimated cost above $50,000. Above $100,000, the additional fee shall be in the amount of $15.00 per $1,000 of estimated cost above $100,000. For the purpose of determining estimated cost, the applicant shall submit to the Department such cost data as may be available produced by the architect or engineer of record, or by a recognized estimating firm, or by the contractor. A bona fide contractor's bid, if available, shall be submitted. The Department shall make the final decision regarding estimated cost.

(3)-(4) (No change.)

ii.-iv. (No change.)

3.-9. (No change.)

5:23-4.24 Plan review; Department of Community Affairs

(a) Rules concerning establishment are:

1. (No change.)

2. Plan review:

i.-ii. (No change.)

iii. Premanufactured construction: Department plan review and release shall be required for all modular construction other than those authorized to be approved by an inplant inspection agency as provided in N.J.A.C. *[5:23-4.29(a) and 5:23-4A.8]* ***5:23-4A.10***.

(b) (No change.)

5:23-4.26 Certification of building elements

(a) Building elements shall be certified in accordance with the following provisions:

1. Building elements, such as trusses, fire walls, fire separation walls, wall panels, pre-stressed/prefabricated floor or roof panels and pre-engineered structural frames, built in accordance with the New Jersey Uniform Construction Code, may be approved by any of the following options:

i. Approval for both design and construction by a nationally recognized laboratory or a product certification agency. The local municipal subcode official has the authority to accept such approvals based on the evidence, test and/or documentation presented to him or her.

ii. Approval for both design and construction by a professional engineer licensed either in the State of New Jersey or in the state of manufacture. The local municipal subcode official has the authority to accept such approvals based on the evidence, of test and/or documentation presented to him or her.

5:23-4A.1 Purpose

(a) The purpose of this subchapter is to implement P.L. 1991, c. 457, which made New Jersey a party to the Interstate Compact on Industrialized/Modular Buildings. The adoption of this subchapter, which is identical in content to implementing rules adopted by the other states participating in the compact, will result in uniformity in state compliance requirements, thereby promoting the use of new technologies, techniques, and materials and increasing the availability of safe, decent and affordable construction, both for housing and non-housing uses.

(b) (No change.)

5:23-4A.2 Findings; functions of the Commission

(a) The Department, as the administrative agency for the State of New Jersey under the Interstate Compact on Industrialized/Modular Buildings, finds that:

1. Industrialized/modular buildings are constructed in factories in various states and are a growing segment of the nation's affordable housing and commercial building stock.

2. The regulation of industrialized/modular buildings varies from state to state and from locality to locality. This creates confusion and burdens state and local building officials and the industrialized/modular buildings industry.

3. Regulation by multiple jurisdictions imposes additional costs, which are ultimately borne by the owners and users of industrialized/modular buildings and which restrict market access and discourage the development and incorporation of new technologies.

(b) The Industrialized Buildings Commission shall:

1. Provide the states regulating the design and construction of industrialized/modular buildings and building components with a

system for coordinating and uniformly administering their rules and regulations for such buildings, all in a manner that will assure mutual acceptance of industrialized/modular buildings and building components; and

2. Provide to Congress assurances that would preclude the need for a voluntary preemptive Federal regulatory system for industrialized/modular housing, as outlined in Section 572 of the Housing and Community Development Act of 1987, including development of model standards for industrialized/modular housing construction, such that design and performance will insure quality, durability and safety, will be in accordance with cost-effective energy conservation standards and will promote the lowest total construction and operating costs over the life of such housing.

5:23-4A.3 Scope

(a) This subchapter shall govern the design, manufacture, handling, storage, delivery, and installation of industrialized/modular buildings and building components intended for installation in this State. Industrialized/modular buildings or building components certified pursuant to this subchapter may be sold for, delivered to, or installed on, building sites located in the State. Industrialized/modular buildings that are not required to be labeled or comply with code approval under this chapter are exempt from the requirements of this subchapter.

(b) Industrialized/modular buildings or building components certified pursuant to this subchapter shall be deemed to comply with all requirements of this chapter.

(c) Except as otherwise specifically provided, this subchapter shall not apply to requirements concerning land use and zoning, building set-backs, side and rear yards, property lines and on-site development, construction and inspection; provided, however, that such requirements shall not be more stringent than those imposed on other types of buildings in the same zone or area.

5:23-4A.4 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 State Uniform Construction Code Act, P.L. 1975, c.217, as supplemented by P.L. 1991, c.457 and the Interstate Compact on Industrialized/Modular Buildings ratified thereby.

"Approved" means approved by the Industrialized Buildings Commission, a participating state or a designated evaluation/inspection agency.

"Building component" means any subsystem, sub-assembly or other system of closed construction that is designed for use in, or as part of, a structure. "Building component" may include structural, electrical, mechanical, plumbing and fire protection systems and other systems affecting health and safety.

"Building system" means a method of constructing a type of industrialized/modular building or building component that is described by plans, specifications and other documentation that together establish a set of limits meeting the requirements of this subchapter for that type of industrialized/modular building or building component. This may include structural, electrical, mechanical, plumbing and fire protection systems and other systems affecting health and safety.

"Certification" means the process whereby participating states and local building inspection agencies are assured that elements of closed construction that it is not practical to inspect at the building site conform to the applicable codes.

"Certification label" means an approved insignia or seal evidencing certification in accordance with the Uniform Administrative Procedures of the Industrialized Buildings Commission.

"Closed construction" means any building, building component, assembly or system manufactured in such a manner that concealed parts or processes of manufacture cannot be inspected at the building site without disassembly, damage or destruction. This definition shall not include products, such as structural, electrical and plumbing fixtures and equipment that are tested, listed, labeled and certified by a nationally recognized testing laboratory.

"Code" means the codes, standards, specifications and requirements adopted pursuant to N.J.A.C. 5:23-4A.5.

"Commission" means the Industrialized Buildings Commission.

"Compliance assurance documents" means approved building system documents, an approved compliance assurance manual and approved on-site installation instructions.

"Compliance assurance program" means the policies and procedures that assure that industrialized/modular buildings and building components, including their manufacture, storage, delivery, assembly, handling and installation, conform with this subchapter and with the Uniform Administrative Procedures.

"Designated" means selected by the Commission to perform one or more of the inspection and/or evaluation functions described under the Uniform Administrative Procedures.

"Evaluation agency" means a designated person or organization, private or public, determined by the Commission to be qualified by reason of facilities, personnel, experience and demonstrated reliability and independence of judgment, to investigate and evaluate industrialized/modular buildings, building components, building systems or compliance assurance programs.

"Independence of judgment" means not being affiliated with, or influenced or controlled by, building manufacturers or producers, suppliers or vendors of products or equipment used in industrialized/modular buildings and building components, in any manner that is likely to affect capacity to render reports and findings objectively and without bias.

"Industrialized/modular building" means any building of closed construction, including, but not limited to, modular housing that is factory-built single-family and multi-family housing (including closed wall panelized housing) and other modular, nonresidential buildings. "Industrialized/modular building" does not include any structure subject to the requirements of the National Manufactured Home Construction and Safety Standards Act of 1974.

"Inspection agency" means a designated person or organization, private or public, that is determined by the Commission to be qualified by reason of facilities, personnel, experience and demonstrated reliability and independence of judgment, to monitor compliance assurance programs.

"Installation" means the process of affixing, or assembling and affixing, industrialized/modular building or building components on the building site.

"Interim reciprocal agreement" means a formal reciprocity agreement as defined in P.L. 1991, c.457, the statute ratifying the Interstate Compact on Industrialized/Modular Buildings.

"Module" means a closed wall structure or substantial part of a closed wall structure incorporating one or more rooms used as habitable, occupiable or mechanical/equipment space.

"Nonconformance" means the failure to adhere to the requirements of an approved building system or, where the building system is not specific, to the code.

"Participating state" means any compacting state or any non-compacting state acting under an interim reciprocal agreement.

5:23-4A.5 Standards

(a) Building systems shall comply with all applicable provisions of the State Uniform Construction Code.

(b) The Commissioner has determined that industrialized buildings and building components built to the following codes are consistent with the basic purposes of the State Uniform Construction Code Act and this chapter and that these codes are therefore acceptable, in lieu of the comparable subcodes adopted pursuant to this chapter, for industrialized/modular construction:

1. Building codes:
i. Uniform Building Code, ICBO, Whittier, CA;
ii. Standard Building Code, SBCCI, Birmingham, AL.
2. Plumbing codes:
i. Uniform Plumbing Code, IAPMO, Los Angeles, CA;
ii. National Plumbing Code, BOCA;
iii. Standard Plumbing Code, SBCCI.
iv. One and Two Family Dwelling Code, CABO, Part V—Plumbing.

3. Mechanical codes:
i. Uniform Mechanical Code, ICBO;
ii. Standard Mechanical Code, SBCCI;
iii. Standard Gas Code, SBCCI.
4. Energy codes:
i. Model Energy Code, CABO;
ii. Regulations of any participating state.
iii. National Building Code, BOCA—Chapter 13.
5. Barrier-free codes:
i. Americans With Disabilities Act regulations;
ii. National Building Code, BOCA—*[Article 31]* ***Chapter 11***.

(c) *[Variations]* ***Alternates***: The provisions of this subchapter are not intended to prevent the use of any technologies, techniques or materials not specifically prescribed by the codes, standards, specifications and requirements, provided any such *[alternative]* ***alternate*** has been approved.

1. Applications for such *[variations]* ***alternates*** shall be filed in writing with the evaluation agency. The application shall contain the current requirements of the codes, standards or specifications from which *[a variation]* ***an alternate*** is sought and a statement of how the proposed *[alternative]* ***alternate*** would adequately protect the health, safety and welfare of both the occupants and the public.

2. The evaluation agency may approve any such *[alternative]* ***alternate***, provided that it determines that the proposed design is satisfactory and that the material, method or work offered is, for the purpose intended, consistent with the adopted codes and standards as to quality, strength, effectiveness, fire resistance, durability and safety. The evaluation agency shall require that sufficient evidence or proof be submitted to substantiate any claim that may be made regarding the use of any such *[alternative]* ***alternate***. The evaluation agency shall notify the applicant of the determination. If the application is denied, the notification shall state the reasons for the denial.

5:23-4A.7 Certification required

No person or agency shall deliver, sell, lease or install any industrialized/modular building or building component in the State unless such building or building component is certified in accordance with this subchapter.

5:23-4A.8 Product control and identification

(a) The following information shall be typewritten on a smudgeproof, permanent manufacturer's data plate located in the vicinity of the certification label:
1. The name and address of the manufacturer;
2. The serial (manufacturer's identification) number(s);
3. The manufacturer's plan approval designation (model number/name);
4. The certification label number(s);
5. The construction classification;
6. The occupancy classification (use group);
7. The seismic zone;
8. The wind velocity load;
9. The roof and floor live load;
10. The fire rating for exterior walls;
11. The thermal transmittance values;
12. The date of manufacture; and
13. The name and date of each code complied with.

(b) The manufacturer shall apply a serial number to each unit at the beginning of the production process. The serial number shall not be applied to a feature of the industrialized building or building component that is readily removable. The location of the serial number(s) shall be identified in the manufacturer's compliance assurance program.

5:23-4A.9 Compliance assurance documents

[(a) The manufacturer shall not start production of any industrialized/modular building or building component unless the building systems documents, compliance assurance program and on-site installation instructions for each such building or building component have been approved by an approved evaluation agency.]

[(b)] ***(a)*** The building systems documents shall consist of plans, specifications, calculations, test results and/or other documents that describe in detail the product and the manufacturing processes employed to produce industrialized/modular buildings or building components. The documents need only show details for equipment provided by the manufacturer. The documents shall be comprehensively indexed and shall treat the material listed below in detail. For the building systems to be evaluated, the following shall be provided:

1. General requirements:
i. All plans, specifications and other documentation shall be submitted in four copies.
ii. All documents submitted with the application shall be identified to indicate the manufacturer's name.
iii. A clear space shall be provided on all sheets of plans near the title box for the stamp(s) of approval.
iv. Manufacturers shall submit plans showing all elements relating to specific systems on properly identifiable sheets.
v. Structural connections and connections of systems, equipment and appliances to be performed on-site shall be identified, detailed and distinguished from work to be performed in the manufacturing facility.
vi. The method of interconnection between the industrialized/modular buildings or building components and the location of connections shall be indicated.
vii. Design calculations and/or test reports shall be submitted when required by the evaluation agency. The manufacturer shall cross-reference all designs to the appropriate calculations and/or test reports.
viii. Documents shall indicate the location of the certification label(s).
ix. Drawings shall be dated and identified and shall include an index that can be used to determine whether the package is complete.
x. Documents shall provide or show, as appropriate, occupancy or use, area, height and number of stories, type of construction and loads (wind, floor, snow and seismic).

2. Documents for industrialized/modular buildings or building components shall provide or show, as appropriate, the details listed in (b)2i through vi below. Only the minimum documentation necessary to demonstrate each alternative possible within the system shall be required.
i. General information as follows:
(1) Details and methods of installation of industrialized/modular buildings or building components on foundations and/or attachment to each other;
(2) Floor plan(s) and typical elevation(s);
(3) Cross-sections necessary to identify major building components;
(4) Details of flashing, such as at openings and at penetrations through roofs and subcomponent connections, including flashing material and gauge to be used;
(5) Attic access and attic ventilation, when required by the code;
(6) Exterior wall, roof and soffit material;
(7) Interior wall and ceiling material;
(8) Barrier-free provisions, if applicable;
(9) Sizes, locations and types of doors and windows;
(10) Suggested foundation plans, vents and underfloor access; and
(11) Details of any elevator or escalator system, including method of emergency operation, when provided.
ii. Fire safety details;
(1) Details of fire-rated assemblies, including reference listing or test report for all stairway enclosures, doors, walls, floors, ceiling partitions, columns, roofs and other enclosures;
(2) Means of egress, including details of aisles, exits, corridors, passageways and stairway enclosures;
(3) The flame spread and smoke-developed classification of interior materials;
(4) The location of required draftstops and firestops;
(5) Opening protectives in fire resistance-rated systems and assemblies; and

(6) Drawings of fire suppression systems, standpipe, fire alarms and detection systems, when required.

iii. Structural details, as follows:

(1) Calculations of structural members and/or test results, where appropriate, except where compliance can be demonstrated through code tables, accepted handbooks and listing documents;

(2) Details of structural elements, including framing details, spacing, size and connections;

(3) The grade, species and specifications of materials;

(4) Typical foundation plans, details and assumed design soil-bearing value;

(5) A schedule of roof, floor, wind and seismic loads upon which designing is based; and

(6) The column loads and column schedule.

iv. Mechanical details, as follows:

(1) The location of all equipment, appliances and baseboard radiation units;

(2) Energy conservation calculations;

(3) Input/output rating of all equipment and appliances, as appropriate;

(4) Duct and register locations, sizes and materials, as appropriate;

(5) The method of providing combustion air, if required;

(6) The method of providing ventilation air, if required;

(7) The method of providing make-up air, if required; and

(8) The location of flues, vents and chimneys and clearances from air intakes, combustible materials and other vents and flues.

v. Plumbing details as follows:

(1) A schematic drawing of the plumbing layout, including, but not limited to: size of piping, fittings, traps and vents, closeouts and valves and gas, water and drainage systems; and

(2) Plumbing materials and location of all equipment, appliances and safety controls to be used, including indication of the rating and capacity of equipment and appliances.

vi. Electrical details, as follows:

(1) Details of any service equipment provided by the manufacturer;

(2) The method of grounding service equipment;

(3) Load calculations for service and feeders;

(4) Sizes of branch circuit conductors;

(5) The size, rating and location of main disconnect and overcurrent protective devices;

(6) The location of outlets, junction boxes, fixtures and appliances; and

(7) A single line diagram of the entire electrical installation (not required for one and two family dwellings).

*[(c)]***(b)*** The compliance assurance program is a system employed by the manufacturer to assure conformance with the approved building systems documents. The compliance assurance manual shall be comprehensively indexed and shall treat the material listed below in detail. The program shall consist of the following:

1. Organizational requirements, as follows:

i. The manufacturer's name and corporate office address and the address of each manufacturing facility shall be indicated in the compliance assurance manual;

ii. The compliance assurance manual shall have a table of contents with the evaluation agency's dated stamp of approval on the cover sheet and any revised pages;

iii. An organizational mechanism for implementing and maintaining the compliance assurance program and its functional relationship to other elements of the organizational structure of the manufacturer shall be indicated. This mechanism shall not be a part of the production department. Employees in charge of the compliance assurance program must be identified and their training and qualifications specified;

iv. There shall be a uniform system of monitoring and evaluation to ensure program effectiveness;

v. There shall be a serial numbering system of monitoring and evaluation to ensure program effectiveness;

vi. There shall be requirements for issuance, possession of, attachment of and accounting for all certification labels to assure that certification labels are attached only to buildings or building components manufactured pursuant to an approved building system and inspected pursuant to an approved compliance assurance program; and

vii. There shall be a system to document production changes in accordance with other provisions of this subchapter.

2. Materials control, as follows:

i. There shall be procedures for inspection of materials, supplies and other items at the point of receipt;

ii. There shall be a method of protection of materials, supplies and other items at the point of receipt; and

iii. Provision shall be made for disposal of rejected materials, supplies and other items.

3. Production control, as follows:

i. There shall be procedures for timely remedial and preventive measures to assure product quality;

ii. There shall be procedures for provision, maintenance and use of testing and inspection equipment to assure compliance with the approved building system;

iii. There shall be procedures regarding frequency of sampling inspections;

iv. Provision shall be made to establish necessary authority to reject defective work and carry out compliance assurance functions, notwithstanding any conflict with production department goals and needs;

v. There shall be a description of the manufacturing process showing the inspection and check points for mandatory inspection characteristics;

vi. Inspection and test procedures, including accept and reject criteria and mandatory inspection characteristics, shall be indicated; and

vii. Provision shall be made for disposition of rejects.

4. Finished product control, as follows:

i. Procedures for handling and storing all finished industrialized/modular buildings or building components at the manufacturing plant or other storage point shall be indicated;

ii. Procedures for packing, packaging and shipping operations and related inspections shall be indicated.

*[(d)]***(c)*** The on-site installation instructions consist of specific installation procedures provided by the manufacturer that specify the materials and procedures required to install the building in conformance with the code and applicable standards. The specific installation procedure provided by the manufacturer shall include:

1. Connection details of industrialized/modular buildings or building components to the foundation;

2. Structural connections between industrialized/modular buildings and/or building components;

3. Connections required to complete the mechanical and/or utility systems;

4. Any special conditions affecting other structural elements.

5:23-4A.10 Uniform Administrative Procedures

(a) The Uniform Administrative Procedures of the Industrialized Building Commission, hereby incorporated by reference, shall constitute the procedures by which the Department shall assure itself and the Commission of the compliance of industrialized/modular building construction with the State Uniform Contruction Code, assess the adequacy of the building systems and verify and assure the competency and performance of evaluation and inspection agencies.

(b) Copies of the Uniform Administrative Procedures may be obtained from the Industrialized Building Commission, Suite 210, 505 Huntmar Park Drive, Herndon, VA 22070.

(c) The Department shall approve those evaluation or inspection agencies that the Commission designates as meeting the requirements of Part VI, Section 1 of the Uniform Administrative Procedures and that the Commission finds otherwise qualified to perform the functions delegated to it.

(d) The Department shall take such enforcement action against a manufacturer, inspection agency or evaluation agency as recommended by the Commission if, pursuant to the Uniform Administrative Procedures, the Commission determines that such manufac-

turer, inspection agency or evaluation agency has failed to fulfill its responsibilities under the Uniform Administrative Procedures.

(e) Any notice or order issued pursuant to this subchapter shall be in writing and shall be served upon the respondent party by certified mail, return receipt requested.

5:23-4A.11 Appeals

(a) Any person, firm or corporation acting on behalf of itself or a class adversely affected by any notice, order, ruling, decision or action of any evaluation and inspection agency or of the Commissioner may file an appeal.

(b) An application for a hearing must be filed within 20 business days of receipt by the applicant of the notice, order, decision or action complained of.

(c) The notice of appeal may be filed either in person or by mail and shall be addressed to the Hearing Coordinator, Division of Housing and Development, CN 802, Trenton, New Jersey 08625.

(d) The application shall be in writing and shall set forth the rule under which the appeal is being brought and the facts and circumstances of the case.

(e) The application shall include, where appropriate, the following information and documentation:

1. A copy of the notice, order, ruling, decision or action that is the subject of the appeal;

2. A copy of the building system, compliance assurance program or other document involved;

3. A description of the industrialized/modular building or building component affected;

4. A statement of the relief sought by the appellant; and

5. In the event of an appeal from an action or decision of an evaluation and inspection agency, the application shall contain a copy or, if that is unavailable, a written statement, of the prior decision or other action of the agency being appealed.

6. In the event of any appeal from an action or decision of the Commission where a hearing has already been conducted pursuant to the Uniform Administrative Procedures the application shall contain a copy of the prior decision or other action of the Commission on such appeal.

5:23-4A.12 Conduct of hearings

Hearings in contested cases shall be conducted by the Office of Administrative Law pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

SUBCHAPTER 4B. MANUFACTURED HOMES AND MANUFACTURED HOME ADD-ON UNITS NOT SUBJECT TO FEDERAL REGULATION

5:23-4B.1 Scope

(a) This subchapter shall govern the design, manufacture and installation of manufactured homes, and manufactured home add-on units, not subject to the Federal Manufactured Home Construction and Safety Standards, intended for installation in this State.

(b) Manufactured homes and manufactured home add-ons may be sold for, delivered to, or installed on building sites located in any jurisdiction of this State, if they have been approved and certified pursuant to this subchapter.

5:23-4B.2 Applicability

Approval of evaluation and inspection agencies, documents submission, review and approval, construction control, and inspection and certification of manufactured home add-on units shall, additionally be governed by the applicable requirements of the Federal Manufactured Home Construction and Safety Standards.

5:23-4B.3 Standards

(a) Manufactured (mobile) homes, as defined in N.J.A.C. 5:23-1.4, shall:

1. Comply with all the applicable provisions of the Federal Manufactured Home Construction and Safety Standards; and

2. Be approved or certified in accordance with the said Federal standards.

(b) Manufactured home add-on units shall:

1. Comply with the applicable provisions of N.J.A.C. 5:23; and

2. Be certified pursuant to N.J.A.C. 5:23-4B.7.

5:23-4B.4 Administration and enforcement

(a) The Department shall administer and enforce all provisions of this subchapter. The Department shall have responsibility for evaluating and approving building systems and for inspecting and certifying manufactured home add-on units for compliance with this subchapter. The Department shall allow the use in the State of New Jersey of manufactured home add-on units labeled and certified by approved evaluation and inspection agencies in accordance with this subchapter.

(b) The Department shall approve building systems for manufactured home add-on units and shall approve compliance assurance programs that comply with the requirements of this subchapter. The Department may delegate to approved evaluation agencies all or part of the evaluation of building systems and compliance assurance programs.

5:23-4B.5 Acceptability

(a) Manufactured (mobile) homes built in accordance with the Federal Manufactured Home Construction and Safety Standards and bearing a Federal label of certification shall be accepted as conforming to the requirements of this chapter for purposes of local construction inspection approval.

(b) Manufactured (mobile) home add-on units built in accordance with the new Jersey Uniform Construction Code and bearing a manufactured home add-on label of certification shall be accepted as conforming to the requirements of this chapter for the purpose of local construction inspection approval.

5:23-4B.6 Approvals of building systems and compliance assurance program

(a) Approved evaulation agencies shall be permitted to approve building systems and compliance assurance program for manufactured home add-on units.

(b) Building systems shall be evaluated and approved in accordance with this subchapter.

(c) Compliance assurance programs shall be evaluated and approved in accordance with this subchapter.

5:23-4B.7 Certification

(a) Manufactured home add-on units accepted by the Department or by an approved inspection agency as having been manufactured according to an approved building system and an approved compliance assurance program shall be certified by the Department as complying with the requirements of this chapter.

(b) The Department may delegate to evaluation and inspection agencies all or part of the inspection or the issuance or attachment of labels to manufactured home add-on units.

(c) A Department label of certification for each manufactured home add-on unit that is certified pursuant to this subchapter shall be permanently attached thereto in an accessible and visible location. The location of the label shall be indicated on the approved building system documentation.

1. An approved label for a manufactured home add-on unit shall bear the following information:

i. State of New Jersey—Department of Community Affairs—approved mobile home add-on unit—N.J.A.C. 5:23; and

ii. A label serial number.

5:23-4B.8 Labels; fees

(a) An approved evaluation and inspection agency requesting the Department to issue labels of certification for manufactured home add-on units shall pay a fee of $70.00 for each label.

(b) One manufactured home add-on unit label of certification shall be required for each manufactured home add-on unit.

5:23-4B.9 Requirements for submission of compliance assurance documents

(a) The manufacturer shall not start production of any manufactured home add-on unit unless the building systems documents, compliance assurance program and on-site installation instructions have been approved in accordance with this subchapter.

(b) The building systems documents consist of plans, specifications, calculations, test results and/or other documents that describe in detail the product and manufacturing processes employed to produce manufactured home add-on units. The documents need only show details for equipment provided by the manufacturer. The documents shall be comprehensively indexed and shall meet the requirements of this subchapter.

(c) The compliance assurance program is a system employed by the manufacturer to assure conformance with the approved building system documents. The compliance assurance manual shall be comprehensively indexed and shall meet the requirements of this subchapter.

(d) The on-site installation instructions shall consist of specific installation procedures provided by the manufacturer that specify the materials and procedures required to install the unit in conformance with the code and applicable standards. Specific installation procedures provided by the manufacturer shall include:

1. Details for connection of manufactured home add-on units to the foundation;
2. Structural connections as required;
3. Connections required to complete the mechanical and/or utility systems; and
4. Any special conditions affecting other structural elements.

5:23-4B.10 Appeals

(a) Any person, firm or corporation acting on behalf of itself or a class adversely affected by any notice, order, ruling, decision or action of any evaluation and inspection agency or of the Commissioner may file an appeal.

(b) An application for a hearing must be filed within 20 business days of receipt by the appellant of the notice, order, ruling, decision or action complained of.

(c) The notice of appeal may be filed either in person or by mail and shall be addressed to the Hearing Coordinator, Division of Housing and Development, CN 802, Trenton, New Jersey 08625.

(d) The application shall be in writing and shall set forth the rule under which the appeal is being brought and the facts and circumstances of the case.

(e) The application shall include, where appropriate, the following information and documentation:

1. A copy of the notice, order, ruling, decision or action that is the subject of the appeal;
2. A copy of the building system, compliance assurance program or other document involved;
3. A description of the industrialized/modular building or building component affected;
4. A statement of the relief sought by the appellant; and
5. In the event of an appeal from an action or decision of an evaluation and inspection agency, the application shall contain a copy or, if that is unavailable, a written statement, of the prior decision or other action of the agency being appealed.

5:23-4B.11 Conduct of hearings

Hearings in contested cases shall be conducted by the Office of Administrative Law pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

SUBCHAPTER 4C. ENFORCEMENT OF FEDERAL MANUFACTURED HOME STANDARDS

5:23-4C.1 Delegation of authority

The authority of the Department of Community Affairs as the State Administrative Agency to enforce Federal manufactured home construction and safety standards is hereby delegated to the Bureau of Code Services (the "Bureau"), CN 816, Trenton, New Jersey 08625.

5:23-4C.2 Relation to Federal law

(a) This subchapter incorporates the Federal regulations found at 24 C.F.R. Sections 3282.152, 3282.153, 3282.309 and 3282.401 et seq. (Subpart I), including all subsequent amendments and supplements to these sections. These sections are hereby incorporated by reference.

(b) Every manufacturer who produces manufactured homes in this State shall comply with all applicable requirements of 24 C.F.R. Section 3282.401 et seq. (Subpart I).

(c) The Bureau shall monitor manufacturer compliance with the requirements of 24 C.F.R. Section 3282.401 et seq. (Subpart I) primarily by checking records required to be kept by manufacturers in the State pursuant to 24 C.F.R. Section 3282.404(b) at least once annually.

(d) Nothing in this chapter shall be read to conflict with any provision of the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (P.L. 93-383) as amended or Federal regulations promulgated thereunder (42 U.S.C. Section 5401 et seq.). Whenever it shall appear that a provision of this chapter is in conflict with any Federal standard or requirement under the Federal Manufactured Housing Construction and Safety Standards Act, Federal law shall govern.

5:23-4C.3 Complaint procedure

(a) Complaints or other information concerning an imminent safety hazard or a failure to conform with applicable standards of any manufactured home manufactured, sold, leased, introduced, imported or delivered in this State may be made to the Bureau.

(b) When a consumer complaint or other information indicating the possible existence of an imminent safety hazard or a failure to conform to applicable standards is received by the Bureau, the Bureau shall forward the complaint or other information to the manufacturer of the manufactured home in question.

(c) When it appears from the complaint or other information that more than one manufactured home may be involved, the Bureau shall send a copy of the complaint or other information to the State Administrative Agency of the state where the manufactured home was manufactured or, if there is no such State Administrative Agency, to the Secretary of the United States Department of Housing and Urban Development (the "Secretary") and, when it appears that an imminent safety hazard or serious defect may be involved, simultaneously send a copy to the Secretary.

5:23-4C.4 Hearing and appeal procedures

(a) When the Bureau is the appropriate agency to hold a hearing for presentation of views as provided for at 24 C.F.R. Sections 3282.405 and 3282.407, the Bureau shall follow the procedures set forth in 24 C.F.R. Sections 3282.152 and 3282.153, with the Bureau acting as the Secretary would otherwise act under that section. Where 24 C.F.R. Section 3282.152 requires publication in the Federal Register, the Bureau shall provide equivalent notice throughout the State by publication in the New Jersey Register.

(b) Any person who is aggrieved by any determination issued by the Bureau pursuant to 24 C.F.R. Section 3282.407, or who is aggrieved by application of this subchapter, may request and shall be granted a hearing on the matter pursuant to the Administrative Procedure Act before the Office of Administrative Law.

1. Such person shall file a written petition requesting such hearing, which shall set forth a brief statement of the grounds therefor, with the Hearing Coordinator of the Division of Housing and Development, CN 802, Trenton, New Jersey 08625, within 15 days of receipt of the ruling, action, notice or order complained of.
2. The final decision in each such case shall be issued by the Commissioner.
3. Any determination of the Bureau that is not appealed to a hearing before the Office of Administrative Law shall be considered the final determination of the Bureau and of the Department of Community Affairs upon the expiration of the 15 day period for submission of a hearing request.
4. When a final determination by the Bureau and the Department of Community Affairs has become effective, or when notice has been given to a manufacturer of the final decision of the Commissioner, that a defect or noncompliance exists, the manufacturer may, within 10 days of the effective date of such final determination or receipt of notice of such final decision, appeal to the Secretary.

(c) Any party in a proceeding held pursuant to 24 C.F.R. Section 3282.407, including, specifically, owners of affected manufactured homes, states in which affected manufactured homes are located,

consumer groups representing owners, manufacturers and parties with similar substantial interest, may appeal to the Secretary in writing any final determination or final decision of the Bureau or of the Commissioner that is adverse to the interest of that party. This appeal shall be made within 30 days of the effective date of the final determination by the Bureau or of notice of the final decision of the Commissioner, as the case may be.

5:23-4C.5 Monitoring inspection fee

There is hereby established a monitoring inspection fee of $19.00 which is to be paid by manufacturers for each manufactured home manufactured in New Jersey.

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Lease-Purchase Program

Adopted New Rules: N.J.A.C. 5:80-24

Proposed: November 1, 1993 at 25 N.J.R. 4826(a).

Adopted: January 28, 1994 by the Board of Directors of the New Jersey Housing and Mortgage Finance Agency, Christiana Foglio, Executive Director/Secretary.

Filed: January 31, 1994 as R.1994 d.106 **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. 55:14K-5e and 5aa.

Effective Date: February 22, 1994.

Expiration Date: April 20, 1995.

Summary of Public Comments and Agency Responses:

The comment period expired with one comment being received from Leonard I. Solondz, President of Affordable Housing Developers, Inc. The commenter suggested that the rules be clarified in two areas.

1. COMMENT: The definition of eligible buyer requires the buyer to have an annual income sufficient to make the lease payments and qualify for a mortgage. The commenter suggested that the regulation specify what income would be sufficient.

RESPONSE: The Agency is adopting a revision to the definition of eligible buyer which should address this comment. The revision specifies that income sufficient to make the lease payments will be determined in accordance with industry standards for market rental housing. Income sufficient to qualify for a mortgage will be determined in accordance with standard underwriting criteria used in the lending industry.

2. COMMENT: The rules require a maximum sales price that does not exceed the greater of (a) 250 percent of the maximum income of an eligible buyer or (b) the median sales price of existing single family homes in the area. The commenter suggested that the rules specify the source for determining the median sales price for the area.

RESPONSE: The Agency is adopting a revision to N.J.A.C. 5:80-24.4(a) which should address this comment. The revision will indicate that the median sales price will be determined by the State of New Jersey, Department of Taxation figures for the most recent fiscal year.

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 24. LEASE-PURCHASE PROGRAM

5:80-24.1 Authority

The rules in this subchapter are issued under and pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983 constituting Chapter 530 of the Laws of 1983, N.J.S.A. 55:14K-1 et seq., including N.J.S.A. 55:14K-5e and 55:14K-5aa.

5:80-24.2 Purpose

These rules are established to assist the Agency to make available a base of housing stock of residential units in the State of New Jersey as contemplated by N.J.S.A. 55:14K-5e and 55:14K-5aa for families under the lease-purchase arrangement. It is intended that the residential units would become owner occupied after a maximum 36-month rental period during which a portion of the monthly fair market lease payments received by the Agency would be set aside by the Agency to enable it to make a grant towards the downpayment and/or closing costs of an eligible buyer who exercises the purchase option.

5:80-24.3 Definitions

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

"Act" means the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.

"Agency" means the New Jersey Housing and Mortgage Finance Agency.

"Developer" means any individual, corporation, general or limited partnership, joint venture or other entity.

"Eligible buyer" means one or more natural persons intending upon execution of a lease-purchase agreement to live together (together with any dependents), who execute a lease-purchase agreement, and who intend to exercise the option on the housing unit subject to such lease-purchase agreement and to purchase that unit in the name of the eligible buyer.

1. To be an eligible buyer, the one or more natural persons must together have an annual income:

i. Sufficient to pay the fair market rental required by the lease-purchase agreement and, in the reasonable estimation of the Agency, sufficient to qualify for any financing required to enable such person to exercise the option to purchase from the Agency the unit subject to the proposed lease-purchase agreement (taking into account the proposed grant)***. Income sufficient to pay the rent shall be determined in accordance with industry standards for market rate rental housing. Income sufficient to qualify for financing shall be determined in accordance with standard underwriting criteria used in the mortgage lending industry***; and

ii. Not exceeding 200 percent of the median income, adjusted for family size, in the county where the eligible development is located, as such percentage may be further adjusted by the Agency by amendment of this definition in its reasonable discretion from time to time, and from eligible development to eligible development, to reflect the cost of living and affordable housing prices in the county where the eligible development is located.

2. Notwithstanding 1ii above, admission to eligible developments shall be limited to families whose gross aggregate family income at the time of admission does not exceed six times the annual rental or carrying charges approved by the Agency except for families with three or more dependents whose incomes may be up to seven times the annual rental or carrying charge.

"Eligible development" means that portion of any partially or wholly completed development which is offered for sale to the Agency:

1. The purpose of which is to create one or more residential structures for owner occupancy whether in the form of detached units or attached units for separate occupancy (including, with limitation, condominiums, but excluding cooperative apartments) together with any land, utilities, sewers, structures, facilities or other improvements, appurtenant or ancillary thereto; and

2. Which is located entirely within the geographic boundaries of the State of New Jersey.

"Grant" means the amount designated in the lease-purchase agreement with respect to a unit which the Agency agrees to contribute at the closing on that unit to an eligible buyer who exercises an option to buy that unit, to enable that eligible buyer to meet downpayment and/or closing costs, subject to such recapture provisions on the occurrence of a resale of that unit as set forth in the lease-purchase agreement.

"Lease-purchase agreement" means a contract between the Agency, as lessor/seller, and an eligible buyer, as lessee/option holder, pursuant to which the eligible buyer agrees to rent a unit within an eligible development with an option to buy.

"Purchase agreement" means any purchase agreement entered into by the Agency pursuant to these rules in which the Agency agrees, subject to the terms and conditions set forth in such agreement, to purchase some or all of the housing units, land and other appurtenances related thereto constituting an eligible development.

"Purchase price" means the dollar amount, payable by the Agency to acquire an eligible development pursuant to and as adjusted by the terms of the relevant purchase agreement, as determined on the date of purchase.

"Sales price" means that fair market price set forth in the purchase option that the eligible buyer will pay upon exercise of that option to purchase a housing unit within an eligible development.

5:80-24.4 Authority to enter into purchase agreements

(a) The Agency may enter into a purchase agreement for any eligible development, provided that the maximum purchase price for a unit within the eligible development may not exceed the higher of 250 percent of the annual maximum income of an eligible buyer of that unit or the median sales price of existing single-family homes in the area where the eligible development is located. ***The median sales price shall be determined from the State of New Jersey, Department of Treasury figures for the then most recent fiscal year.***

(b) The Agency may prioritize requests for purchase agreements, taking into consideration the goals of this program, market conditions for the Agency's securities, together with the feasibility of the respective eligible development, the location of existing eligible developments and the location of the proposed eligible development, the readiness of the developer to proceed, the experience of the developer, and the marketability of the units in the eligible development.

5:80-24.5 Purchase agreement requirements

(a) Each purchase agreement shall contain the following conditions precedent to the Agency's obligation to purchase an eligible development:

1. At least 50 percent of all housing units in the partially or wholly completed development of which the eligible development is a portion, shall have been previously sold to buyers not participating in this lease-purchase program. This requirement shall not apply to eligible developments of 25 or fewer units;

2. At least 50 percent of all housing units comprising the eligible development shall be complete and in move-in condition, with certificates of occupancy issued and in effect for them, and with signed lease-purchase agreements with eligible buyers. The remaining housing units of the eligible development to be purchased by the Agency must be completed, with certificates of occupancy in effect, and with signed lease-purchase agreements with eligible buyers, within one year of the signing of the purchase agreement. The Agency must be the first user of each unit except that the Agency may agree to purchase a substantially rehabilitated unit. A unit shall be treated as substantially rehabilitated when rehabilitation expenditures equal or exceed 25 percent of the purchase price of the unit to the Agency;

3. A builder's warranty must be provided in a form and substance equivalent to the new homeowner's warranty required by N.J.S.A. 46:3B-1 et seq.; and

4. The Agency must have, prior to or simultaneously with such purchase, received proceeds from the sale of the Agency's securities in an amount equal to as much as 110 percent of the purchase price (the purpose of such excess being to provide a cash reserve of up to 10 percent for the payment of such securities, if required in order to market such securities and if such reserve is not established from other funds, allocated or credited to the lease-purchase program).

(b) Each purchase agreement shall contain the following requirements:

1. All documents relating to an eligible development shall be in form and substance satisfactory to the Agency;

2. The developer shall provide title insurance, casualty and liability insurance and builder's risk insurance, all by insurers and in such amounts sufficient to protect against the risk of loss associated with the development, purchase and financing of the eligible developments;

3. Real estate taxes, assessments or like payments relating to the eligible development accruing for the period ending on the last day of the calendar year during which the transactions contemplated by the purchase agreement are consummated shall be paid by the seller of the eligible development; and

4. At closing, the eligible development shall be subject to no encumbrances other than encumbrances acceptable to the Agency.

5:80-24.6 Application

(a) An application for a purchase agreement for an eligible development shall be made by the proposed developer in writing to the Agency, and shall contain the following information:

1. The amount of the requested purchase price, in total and by unit;

2. A description of the eligible development together with a recent appraisal of the eligible development by a New Jersey certified general real estate appraiser, a recent title report, a site plan, a survey by a licensed surveyor, the applicable zoning ordinances, a report on the status of utilities, roads, and the existing financing, if any, relating to the eligible development;

3. A description of the developer (for example, whether a corporation, limited or general partnership, joint venture or otherwise), including a list of all existing and proposed owners of equity in the developer; and

4. At the Agency's discretion, an environmental audit, which will be required if any of the information received in connection with the application indicates that there may be environmental concerns associated with the proposed eligible development.

(b) Prior to the signing of each lease-purchase agreement with an eligible buyer, the developer shall obtain the Agency's approval of that eligible buyer. To enable the Agency to determine whether to approve a proposed eligible buyer, the developer shall submit to the Agency the following information:

1. The name, annual income, and employment history of the proposed eligible buyer, together with the Federal and state income tax returns most recently filed by the individual or individuals constituting the eligible buyer; and

2. Such other information as shall be required by the Agency from time to time pertaining to a specific proposed eligible buyer.

5:80-24.7 Authority to enter into lease-purchase agreements

(a) The Agency may enter into a lease-purchase agreement with an eligible buyer, provided that such lease-purchase agreement contains as a condition precedent to the Agency's obligations thereunder that lease-purchase agreements for at least 50 percent of the housing units in the subject eligible development be or have been fully executed and delivered by all parties thereto prior to, or simultaneously with, the Agency's consummation of the transactions contemplated by the related purchase agreement.

(b) Each lease-purchase agreement with an eligible buyer shall contain the following terms and conditions, in addition to such other terms and conditions that the Agency may from time to time deem appropriate for a particular agreement:

1. The eligible buyer shall agree to rent at a fair market rental a housing unit in an eligible development for a fixed period as determined by the Agency, not to exceed 36 calendar months, and to pay the monthly rental promptly and fully. Failure to make such rental payments promptly and fully, or physical abuse of the unit, shall result in prompt eviction and the termination of the option described in (b)3 below;

2. The eligible buyer shall agree that such housing unit be used solely as a principal residence, and shall further agree that the unit shall not be used for seasonal use, as an investment property, or for business purposes;

3. The eligible buyer shall pay upon the execution of the lease-purchase agreement, a nonrefundable option fee of $1,000 for an option to purchase for cash the housing unit which is the subject of the lease-purchase agreement, on the expiration date of the lease period set forth therein. If the eligible buyer does not exercise the option, the lease will terminate at the expiration of the lease period, the eligible buyer will immediately vacate the unit, and the Agency will retain the option fee;

4. In return for the option fee, the Agency shall grant the eligible buyer an option to purchase the subject housing unit at a fixed price; each price being the unit's estimated fair market value at the end of the lease period, such estimate being set pursuant to an appraisal prior to the execution of the lease-purchase agreement;

5. The Agency shall accumulate in a segregated fund a percentage (calculated at the time of execution of the lease-purchase agreement) of the fair market monthly rent it will receive during the lease period set forth in the lease-purchase agreement at a rate calculated by the Agency to be sufficient, together with the option fee, and its projected profit on the sale of the unit, if the option is exercised, to enable it to make the grant. The grant will be applied towards closing costs and the downpayment on the sales price for such housing unit for which the eligible buyer has otherwise obtained or is expected to obtain his or her own financing. The amount of the grant to be made will be calculated by the Agency (at the time the lease-purchase agreement is executed) as the amount, given anticipated market conditions, to be necessary, taking into account the assets of the eligible buyer, to induce a mortgage lender to finance the balance of the sales price for the housing unit. Such calculation by the Agency shall not constitute a representation or warranty to the eligible buyer of the availability of mortgage financing and the eligible buyer shall have no recourse against the Agency in the event such eligible buyer fails to obtain mortgage financing or is otherwise unable to exercise the option to purchase the housing unit which is subject to the lease-purchase agreement. If, for any reason, the eligible buyer is unable to or chooses not to exercise the option to purchase, all monies so set aside shall be retained by the Agency.

i. Notwithstanding anything to the contrary contained in these rules, the percentage rent to be set aside by the Agency to fund a portion of the grant shall not reduce the unrestricted portion of the rent to an amount less than the amount sufficient to maintain and operate the rental housing and to meet debt service on the portion of the securities issued by the Agency to finance the purchase of such housing, and all monies set aside with respect to such downpayment and/or closing costs shall be subject to application to pay required debt service on such securities; and

6. The eligible buyer shall acknowledge that the Agency may give a mortgage and/or other security interests in the housing unit to secure repayment of the financing undertaken by the Agency to finance the purchase price for the eligible development.

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Housing Investment Sales

Adopted New Rules: N.J.A.C. 5:80-32

Proposed: November 1, 1993 at 25 N.J.R. 4828(a).

Adopted: January 28, 1994 by the Board of Directors of the New Jersey Housing and Mortgage Finance Agency, Christiana Foglio, Executive Director/Secretary.

Filed: January 31, 1994 as R.1994 d.105, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 55:14K-5g and N.J.S.A. 52:27D-321f.

Effective Date: February 22, 1994.

Expiration Date: April 20, 1995.

Summary of Public Comments and Agency Responses:

The Agency received comments from 10 companies and/or individuals.

Leonard P. Andler

James M. McGrath, President—New Jersey Housing Task Force

James J. McGovern, III, Esq.—Genova, Burns, Trimboli & Veronia

Marvin Katz

Martin P. Schwartz—Jack Parker Associates of New Jersey

David W. Curtis—Leon N. Weiner & Associates, Inc.

Thomas R. Hobbs, Senior Vice President—SCA Realty, Inc.

Robert S. Schwartz, Esq.—McCarter & English

David J. Wine, President—The Related Companies, L.P.

Stephen Salup, Vice President—Starrett Housing Corporation

Many of the commenters expressed similar opinions. The comments are summarized by subject matter.

35 Year Low/Moderate Income Requirement

COMMENT: The rules require a sale of the project to a sponsor who agrees to maintain the project as low/moderate income for 35 years following the end of the mortgage. Several commenters indicated that the requirement is not practical and that it should either be eliminated or modified.

Their concerns stem from the fact that the rental subsidies will end at the expiration of the mortgage term. They claim that continuance of low/moderate income requirements without rental subsidies will render the project financially infeasible. Some cite this requirement as one which would limit the ability to find buyers for the project.

Suggestions range from elimination of the requirement altogether to easing of the requirement. Those suggesting an easing of the requirement have offered the following:

a. Requiring the new owners to accept any available extension of Section 8 or other rent subsidies;

b. Waiving of the restriction in the event the project would not be financially feasible and able to operate with the low/moderate requirement or reducing the low/moderate income requirement as needed to make the project financially feasible; and

c. Having the Agency guarantee financial assistance to the extent necessary to make the project financially feasible.

RESPONSE: The Agency acknowledges that the loss of rental subsidies at the end of the mortgage term may affect the financial operations of the project during the subsequent 35-year period. However, there will also be a variety of other factors that will impact the project's financial operations. These factors include the elimination of debt service, then-existing project surplus and reserves, other rent subsidy programs that may be available, the mix of low/moderate income residents in the project and the economic conditions at that time. The Agency believes it would be impractical to formulate policies today to address uncertain events that won't occur for 10 to 20 years from now. If a project owner can demonstrate that the project's financial viability is in jeopardy at the expiration of the mortgage term, the owner can seek a modification of the low/moderate income requirement with the Agency in order to ensure the project's viability for the 35-year requirement. The Agency can then work with project owners on a case-by-case basis to fashion a modification as needed for the particular project.

50/50 Split of Residual Receipts

COMMENT: The rules require a 50/50 split between the seller and Agency of the residual receipts and supplemental financing. Several commenters indicated that this split was unfair and would result in eligible owners being unwilling to participate in the program. Their concerns stem from the tax consequences to the selling entity that arise if the project is sold (as a sale is required under the rules). The tax consequences arise in two contexts.

a. The residual receipts that have accrued over the years have been considered income to the project owners, for which they have paid income tax. These taxes have been paid from return on equity or out of pocket.

b. At the time of sale, "exit taxes" will be due from the selling entity. While no commenter explained the nature of the exit taxes, it is the Agency's understanding that it stems, in part at least, from the excess depreciation taken during the years of operation.

The commenters maintain that the Agency should give owners credit for such taxes prior to the split with the Agency. Alternatively, one commenter suggested that the Agency permit a tax free property exchange pursuant to Section 1031 of the Internal Revenue Code. This would require a buyer to purchase another property desired by the for-profit sponsor. The buyer would then exchange this property for the project owned by the for-profit sponsor. The commenter advised that this would result in a tax free exchange to the for-profit sponsor.

RESPONSE: Agency staff believe the 50/50 split is reasonable. In the Agency's review of similar programs in other states, 50/50 splits were found. Additionally, the Agency has been approached by several sponsors expressing a willingness to participate on the 50/50 basis. Finally, it should be noted that this is an optional program which provides sponsors with access to significantly more return on equity than they are currently able to receive. Each sponsor is free to evaluate the program and determine whether or not it is advantageous to participate or continue under the

current return on equity structure. Sponsors are under no obligation to participate in this program.

With regard to the comment on the tax free exchange pursuant to Section 1031 of the IRS Code, the Agency believes the rules would accommodate such a transaction. As long as the other aspects of the regulation can be satisfied, sponsors interested in such a transaction should apply to the Agency.

Sale of Project

COMMENT: The rules require the project to be sold to a new entity. Several commenters were opposed to this requirement. They suggested that the Agency permit the same program (50/50 split of the residual receipts and supplemental financing) but allow the sponsor to retain ownership. They maintain that there would be much greater participation as it would eliminate the "exit tax" concerns associated with a sale. They also maintain that some sponsors are simply not interested in selling (even if the tax consequences are acceptable) but would like to participate in the program if a sale was not required.

Besides eliminating the sales requirement altogether, two alternatives were suggested.

a. Permit a sale of a portion of the ownership interest in the partnership but allow the actual ownership entity to continue owning the project. The commenter advised that this may not trigger a taxable event.

b. Seek a statutory amendment to permit the split of the residual receipts and supplemental financing without the requirement of a sale.

RESPONSE: The Agency has received advice from the Attorney General's Office that the "sale" aspect of the program is a legal necessity due to statutory restrictions governing return on equity. The Agency does not have the authority to eliminate the sale requirement by regulation.

With regard to a sale which involves less than 100 percent of the ownership interest, the Attorney General's Office has indicated that it will review this issue. If they advise that anything less than a 100 percent sale is permissible, an amendment to the rules can be made.

With regard to a statutory amendment, the Agency will be pursuing a statutory amendment to permit access to residual receipts without the requirement of a sale. It should be noted, however, that such a change must come from the Legislature and the Agency is unable to predict if and when such an amendment will be effective.

Reservation of Agency's Share for Housing by the Sponsor

COMMENT: The rules dedicate the Agency's share of the proceeds to an account to be used for housing purposes. Several commenters have indicated that the for-profit sponsor should have some interest in those proceeds. That "interest" should give them a priority to use the funds for their development of another project.

RESPONSE: The Agency does not believe that the selling sponsor should have an automatic interest in the Agency's share of the residual receipts. If the sponsor wishes to develop another project, they should submit an application and development plan which includes the Agency's share of the residual receipts from the project they are selling. The Agency will consider the new project and the committing of its share of the residual receipts to it depending on its usual underwriting criteria for low/moderate income financing.

Agency Fees

COMMENT: The rules impose a servicing fee for the 35 year extended preservation period. This fee will not be less than the servicing fee being paid during the original mortgage term. One commenter objected. They maintain that the Agency's scope of services during the 35 years would be less than during the mortgage term and should correspondingly be reduced commensurate with the services performed.

The same commenter objected to the $5,000 deposit toward the Agency's processing fee. They suggest that the initial deposit be a nominal amount and the balance be due in stages.

RESPONSE: The fees imposed by the Agency are designed to reimburse it for its administrative expenses (for example, staff time) in reviewing and processing the request. Staff estimates $5,000 to be the minimum amount of expense to the Agency and, therefore, maintains that this deposit is a reasonable amount. The servicing fee for the 35-year extended period is also based on the Agency's administrative expenses in monitoring the ongoing controls.

Definition of Residual Receipts

COMMENT: The Agency's definition of residual receipts means the funds remaining after all expenses and debt service is paid, all escrow and reserve accounts are fully funded, and a reserve of three to six months of operating expenses is funded. Two commenters expressed concerns over issues related to this definition. One commenter suggested that an independent capital needs assessment be required. They recommended that this assessment be used for determining the amounts needed for reserves and the amount considered as residual receipts. Another commenter suggested that some of the existing Reserve for Repair and Replacement Accounts are currently overfunded and that the excess should be considered part of the residual receipts for distribution.

RESPONSE: The Agency does not believe an independent capital needs assessment is necessary. Staff has 30 years of experience in financing low/moderate income housing, has implemented a physical inspection and assessment system and a repair and replacement (R & R) program. The rules do not preclude sponsors from conducting their own assessment and discussing any variations between their assessment and the Agency's. If it is demonstrated that there should be an adjustment to the Agency's assessment or that the R & R account is overfunded, appropriate adjustments will be made. However, the Agency wishes to reserve the right to make the final determination.

Eligible Development

COMMENT: In order for a sponsor to be eligible to participate, the rules require the project to have had a positive cash flow for three years preceding the sale. One commenter indicated that this requirement was unnecessary as it precluded a project from restructuring its finances to achieve financial viability.

RESPONSE: Agency staff believes that a three year positive cash flow requirement is essential. This shows financial stability over a time period long enough to conclude that the project is financially solvent and is likely to continue as such. As this program will remove surplus funds from the project, it is critical to have a track record of financial stability before permitting a sponsor to be eligible to participate in order to help ensure the project's continued financial viability.

Sponsor's Split

COMMENT: The rules provide the for-profit sponsor with 50 percent of the residual receipts and secondary financing at the time of sale. One commenter suggested that the rules permit staged payments or long term notes payable to the sponsor rather than the lump sum distribution at closing.

RESPONSE: This comment involves a variation on the secondary financing aspect of the rules. The proposed rules permit secondary financing on the project, with the proceeds of the secondary financing to be split between the Agency and sponsor. It was contemplated that the secondary financing would be accomplished through the Agency's issuance bonds. The sponsor and the Agency would receive the secondary finance proceeds at the time of the sale, and the future residual receipts would be used to repay the secondary financing. As suggested by the commenter, it may also be workable to permit secondary financing from the selling sponsor, by allowing them to take back a secondary mortgage and note. This option would eliminate the need for a bond sale and enable the selling sponsor and Agency to obtain the future residual receipts on an annual basis after the sale. The Agency is adopting the rules as originally proposed and conducting further research on this alternative. If feasible, amendments will be proposed to incorporate this proposal.

Nonprofit Preference

COMMENT: The rules permit a sale of the project to either nonprofit or for-profit entities. One commenter suggested that the rules provide incentives for sponsors to sell to nonprofit entities by permitting a greater than 50/50 split for sales to nonprofits.

RESPONSE: The Agency does not believe it should provide any preference for nonprofit buyers over for-profit buyers. The Agency has financed projects which are owned by for-profit and nonprofit sponsors. Both classes of sponsors have demonstrated ability to own and operate projects. Difficulties with the operation of projects have also been experienced, on occasion, by both for-profit and nonprofit sponsors. Based on the foregoing, the Agency maintains that the classification as a for-profit or nonprofit alone, is not a factor which should give nonprofits preference over for-profits. Potential sponsors should be evaluated on a case-by-case basis. Their background and experience and purchasing proposal will be evaluated to ascertain if they constitute a qualified housing sponsor which is capable of purchasing the project.

Return on Equity

COMMENT: The rules would permit a return on equity for the new buyer based on the buyer's equity contribution at the time of purchase. However, if the sale involves only the residual receipts and supplemental financing (as is contemplated), the buyer would not be putting any cash equity into the project for Return on Equity purposes. One commenter suggested the necessity for recognizing an equity basis for the buyer (including nonprofits) even without any cash equity in the project. This would create incentives necessary to find willing buyers. Nonprofits would need a return to offset their risk of ownership and to cover other costs/ expenses of the nonprofit. They suggest an assumption or donation of the residual receipts to the buyer who will then use them as their equity when purchasing the project. Alternatively, the reserve accounts transferred or the secondary financing obligation undertaken by the buyer could be considered as equity.

RESPONSE: The Agency's longstanding policy on recognizing an owner's equity in a project is based upon the actual cash or cash equivalent contributed by the owner in acquiring and developing the project. The Agency recognizes that this program can result in a buyer acquiring a project without putting in any cash or cash equivalent. In such event, they would have no equity basis and therefore, not be eligible for a return on equity. For-profit buyers will have to evaluate whether their participation in such cases is beneficial for other reasons. Nonprofit buyers are ineligible for a return but would be able to cover any expenses incurred from their ownership of the project.

While the Agency does not believe that the foregoing results are unreasonable, it will examine the possibility of recognizing some equity basis for the for-profit buyer in this situation.

Debt Service Reserve

COMMENT: The secondary financing will be derived from the issuance of new bonds. This will necessitate a debt service reserve. One commenter indicated that this provided a unfair windfall to the buyer. They suggested extending the term of the secondary financing over the 35 year extension period. This would thereby result in a lower debt service reserve and more secondary financing proceeds available for distribution.

RESPONSE: The debt service reserve on any secondary financing will not provide any windfall to the buyer. It will be structured in a manner in which the final payment on the secondary financing debt will be made from the debt service reserve.

General Comments:

In addition to the foregoing, the following general comments were received:

COMMENT: One commenter stated that they believed that the proposed rules were unworkable but offered no specifics.

RESPONSE: The Agency is unable to respond without any specifics from the commenter.

COMMENT: One commenter indicated that the proposed rules would provide a windfall to the for-profit sponsor by permitting them access to funds that they currently cannot earn due to return on equity restrictions. They also note that the rules fail to provide any protection for the nonprofit general partner. They oppose the rules and believe the return on equity restrictions should remain in place.

RESPONSE: The sponsor's access to residual receipts under this program has been authorized pursuant to the Fair Housing Act. At N.J.S.A. 52:27D-321f, it permits the Agency to waive existing return on equity provisions if it promotes the provision or maintenance of low- and moderate-income housing. The Agency recognizes that this program will provide sponsors with access to funds they currently cannot earn. However, in exchange, the Agency will secure 35 years of additional housing preservation plus an additional source of funds for the Agency to apply to affordable housing development. The Agency believes that the consideration paid to sponsors to induce them to participate is warranted in light of the benefits derived from the program.

COMMENT: One commenter requested that the Agency wait 60 days before acting on the rules in order to permit dialogue between existing sponsors and the Agency.

RESPONSE: This comment comes from the Housing Management Task Force (comprised of project owners and managing agents). The Agency will not wait 60 days before acting on the rules. Staff has met with the Task Force on several occasions. They have been given advance copies of the proposed program. Their comments have been included and considered by the Agency as outlined above. The Agency will adopt the rules now and continue an ongoing dialogue with the Task Force. The Agency is agreeable to considering any new ideas or reconsideration of earlier issues. Amendments can be made, if needed or desirable, at a later date.

COMMENT: One commenter indicated that at N.J.A.C. 5:80-32.1(c)3 under the definition of "Maximum Additional Return" was vague but offered no specifics. The same commenter indicated that at N.J.A.C. 5:80-32.1(b)2 under the definition of "Housing Investment Sale" could be more clearly stated and suggested the following change—"The Eligible Buying LD Sponsor invests a cash amount equal to . . ."

RESPONSE: With regard to the "maximum additional return" (MAR) definition, the Agency is unable to respond without any specifics from the commenter. Notwithstanding, the Agency has reviewed the definition and believes it is clear as stated. With regard to the "housing investment sale" definition, the commenters suggested change is not consistent with the program. The MAR constitutes funds of the Eligible LD Sponsor, not the buyer. Therefore, the regulation correctly states that the Eligible LD Sponsor must invest 50 percent of the MAR into the MAR Revolving Account.

COMMENT: One commenter questioned whether or not an appraisal would be required to determine fair market value of the project when setting the purchase price.

RESPONSE: An appraisal will not be required for every sale. If an appraisal is needed to ascertain fair market value, one can be conducted. This will be determined on a case-by-case basis.

Summary of Agency-Initiated Change:

At N.J.A.C. 5:80-32.6(b)1, the word "nonprofit" is being deleted. The regulation deals with buyers of Agency-financed projects. Buyers can either be for-profit or nonprofit entities. The word "nonprofit" was erroneously included in the proposal and is now being deleted.

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]*):

SUBCHAPTER 32. HOUSING INVESTMENT SALES

5:80-32.1 Definitions

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

"Available cash" means all the cash available to an eligible LD sponsor upon the closing of a housing investment sale (after payment of all transaction costs), including, but not limited to:

1. The cash portion of the purchase price paid by the buyer; and
2. Any accumulated residual receipts, as defined in N.J.A.C. 5:80-30.1, that are not subject to recapture by the United States Department of Housing and Urban Development.

"Eligible LD sponsor" means a for-profit corporation or partnership organized under, and remaining subject to, the Limited Dividend Law, L. 1949, c.184, §1 et seq., as amended (N.J.S.A. 55:16-1 et seq.), that owns and operates an Agency-financed, multifamily, rental housing project that, in each of the three fiscal years preceding the housing investment sale, has:

1. Produced a positive cash flow from operations; and
2. Been current in all debt service and escrow payments required by the Agency.

"Housing investment sale" means a transaction that promotes the provision or maintenance of low and moderate income housing, as defined pursuant to the Fair Housing Act, through the sale by an eligible LD sponsor of an Agency-financed, multifamily, rental housing project to a qualified housing sponsor upon the following terms:

1. The buyer executes a deed restriction (and such other instruments reasonably required by the Agency) to ensure that the project will remain subject to Agency restrictions regarding tenant income eligibility, tenant selection, project reserves, return on equity and rent increases for 35 years after the expiration of the term of the project mortgage at the closing of the housing investment sale. The foregoing documents shall also provide for the payment of a servicing fee to the Agency for monitoring the restrictions that apply to the project. Such fee shall not be less than the servicing fee being paid by the eligible LD sponsor seller at the time of the housing investment sale; and
2. The eligible LD sponsor invests an amount equal to 50 percent of the maximum additional return in the MAR Revolving Account.

"MAR Revolving Account" means an account established under the Agency's administrative fund. Moneys on deposit in the account may be used, at the Agency's sole discretion, to provide loans or grants that will promote the provision or maintenance of low and moderate income housing as defined pursuant to the Fair Housing Act.

"Maximum additional return" means the additional return payable to the owners of an eligible LD sponsor under the Limited Dividend Law but not under the Housing and Mortgage Finance Agency (HMFA) Law, N.J.S.A. 55:14K-1 et seq., consisting of:

1. Cash invested by the owners in the eligible LD sponsor that has not previously been recognized by the Agency as investment in a housing project;

2. A cumulative annual return of eight percent on the investment described in 1 above;

3. If project revenues representing the return described in 2 above have been invested in the project's residual receipts account or otherwise, any income earned on said annual return;

4. Moneys realized through reduction or amortization of the principal owing on the eligible LD sponsor's mortgage loan from the Agency; and

5. Moneys representing an increase in the market value of the eligible LD sponsor's realty and tangible personalty during the period such assets were owned by the eligible LD sponsor, such increase to be determined by subtracting from the purchase price for those assets:

i. The eligible LD sponsor's investment in the project as determined by the Agency under the HMFA Law; and

ii. The original principal amount of the eligible LD sponsor's mortgage indebtedness to the Agency.

"Purchase price" means, in a housing investment sale, and must be comprised of cash and assumption of indebtedness equal, in the aggregate, to the fair market value of the realty and tangible personalty transferred to the buyer in the sale.

5:80-32.2 Realization of maximum additional return

Upon the approval of its members in the exercise of their authority under the Fair Housing Act, N.J.S.A. 52:27D-321f, the Agency shall waive any or all of the investment-return restrictions imposed under the HMFA Law, N.J.S.A. 55:14K-1 et seq., in order to permit an eligible LD sponsor to realize, from available cash upon the closing of a housing investment sale, a maximum additional return, as well as any return otherwise allowable under the HMFA Law. Sponsors who agree to comply with the requirements of this subchapter will meet the waiver criteria.

5:80-32.3 Application procedure

(a) The eligible LD sponsor proposing to sell its project in a housing investment sale must submit to the Executive Director of the Agency a written request for approval of the sale, containing a detailed description of the terms of the sale. The request must also include a detailed project report presenting the current physical, financial, management and tenant needs of the housing project. The Agency will review this report for completeness and accuracy, may require additional information and may conduct its own review of the housing project's condition and operation. Full and complete disclosure of all material facts relating to the proposed sale must be made to the Agency in the request for approval, and the seller and all other parties to the transaction shall be under a continuing obligation to disclose such material facts through the closing of the sale.

(b) In selecting the prospective buyer for the project, the seller may solicit as many proposals as it deems necessary. Bidding is not required. The seller may negotiate among prospective buyers to obtain the best offer.

(c) The housing investment sale shall include an assignment from the seller and an assumption by the buyer of all existing project indebtedness. If the sale includes any supplemental financing, the amount of such financing shall not exceed the debt that the project can reasonably sustain from project income through the remainder of the Housing Assistance Payments (HAP) contract or, if no HAP contract exists, through the remainder of the original mortgage term, without jeopardizing the viability of the project as a low-income project for the remainder of the original mortgage term. The Agency's approval of a sale requiring supplemental financing shall be subject to the receipt of an opinion by nationally recognized bond counsel, in form and substance satisfactory to the Agency and the Attorney General, that such financing does not adversely affect the Federal and State tax treatment of any outstanding bonds, notes or other obligations of the Agency. The cost of such opinion shall be borne by the seller.

(d) As a condition of approving the sale, the Agency will require that the housing project be restored to sound physical condition in accordance with the report submitted by the seller under (a) above and the independent review by the Agency. Deferred maintenance must be completed no later than the closing of the sale, unless otherwise agreed by the Agency. Necessary repairs and capital improvements must be completed within a time frame acceptable to the Agency.

(e) As a condition of approving the sale, the Agency will also require payment of debt service arrearage, current unpaid invoices, total operating expenses covering three months (for senior citizen projects) and six months (for family projects), full funding of all reserves and any other obligations of the project.

(f) Upon assignment and assumption of the Agency's mortgage, modifications shall be made to the mortgage clearly specifying the Agency's right to enforce these regulations.

5:80-32.4 Required documents

(a) To assist the Agency in its review of an eligible LD sponsor's request for approval of a housing investment sale, as described in N.J.A.C. 5:80-32.3(a), the seller shall supply the Agency with the following documents, in form and substance satisfactory to the Executive Director:

1. Administrative questionnaires for the buyer;

2. Copies of the buyer's organizational documents;

3. Any Previous Participation Certificates (form 2530) for the buyer;

4. The buyer's certified financial statement;

5. A physical inspection report approved by the Agency;

6. A financial report on project operations approved by the Agency; and

7. Any other documents or other information requested by the Agency that would reasonably assist it in reviewing the proposed housing investment sale.

5:80-32.5 Fee

The eligible LD sponsor seller shall pay a processing fee to the Agency in such amount, as determined by the Agency, as will reimburse the Agency for its administrative cost (that is, Agency staff time and actual expenses incurred) in reviewing and processing the seller's request to engage in a housing investment sale. With its initial request for approval of the sale, the seller shall submit a nonrefundable $5,000 deposit that shall be credited toward the processing fee. The seller will be billed for any balance due at the closing of the sale, and said balance shall be due and payable at that time.

5:80-32.6 Closing

(a) At the closing of any approved housing investment sale, the following documents, in form and substance satisfactory to the Agency, shall be delivered:

1. Legal opinions from the seller's and buyer's attorneys to the effect that the respective entities' participation in the housing investment sale is fully lawful; and

2. Any legal opinion of nationally recognized bond counsel reasonably required by the Agency relating to the proposed housing investment sale or its effect upon any outstanding obligations of the Agency.

(b) At the closing of any approved housing investment sale, the following shall occur:

1. The eligible LD sponsor shall transfer title to the realty and tangible personalty comprising its project, as well as any required project accounts, escrows and reserves, to the *[nonprofit]* buyer;

2. The buyer shall pay to the eligible LD sponsor the purchase price for the project by assuming the project indebtedness of the

eligible LD sponsor and paying the balance of the purchase price in cash; and

3. The Agency shall review and approve the following payments to be made from the available cash of the eligible LD sponsor:

i. To the eligible LD sponsor, an amount equal to its investment in the project, as determined under the HMFA Law;

ii. To the eligible LD sponsor, an amount equal to 50 percent of its maximum additional return;

iii. To the MAR revolving account, an amount equal to 50 percent of the maximum additional return of the eligible LD sponsor;

iv. To the State Treasurer, the balance of eligible LD sponsor's available cash, as required under the Limited Dividend Law.

APPENDIX
Example of Application of Subchapter Rules

(a) A group of individuals formed an eligible LD sponsor and invested $1,500,000 in it: $1,000,000 was invested in the physical assets of the project (that is, its realty and tangible personalty) and was recognized as investment in the project under the HMFA Law; $500,000 represented promoters' fees and was not recognized as investment in the project under the HMFA Law. The eligible LD sponsor received a non-recourse loan of $9,000,000 from the HMFA.

(b) If the Agency had recognized the entire $1,500,000 as investment in the project, which it was not required to do, the eligible LD sponsor would have been entitled to an additional return on its investment of $40,000 in each year of operation. For 15 years the project generated revenues sufficient to cover this additional $40,000. The $600,000 (15 years × $40,000) aggregate representing this additional return, along with other surpluses, was invested and earned a total of $200,000 in interest income over the 15 years.

(c) Fifteen years after the formation of the eligible LD sponsor, a qualified housing sponsor proposes to buy the physical assets of the eligible LD sponsor in a housing investment sale. At the time of the sale, the eligible LD sponsor has repaid $1,800,000 of the HMFA loan and has received the full annual return on investment permitted under the HMFA Law. At the closing of the housing investment sale, the project's residual receipts, as defined in N.J.A.C. 5:80-30.1 were $2,200,000. The purchase price paid by the buyer to the eligible LD sponsor is $10,900,000, paid by assuming the $7,200,000 mortgage loan still outstanding and paying $3,700,000 cash at closing.

(d) At the closing of the house investment sale, $200,000 of the purchase price is applied to transaction costs. Thus, the available cash of the eligible LD sponsor is $5,700,000, computed as follows: $3,500,000 (the cash portion of the Purchase Price, $3,700,000, less $200,000 in transaction costs), plus $2,200,000 (the residual receipts). (See N.J.A.C. 5:80-32.1, "available cash".)

(e) The maximum additional return is $4,000,000, computed as follows:

1. $500,000 cash invested by the owners of the eligible LD sponsor that was not recognized as investment in the project (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 1), plus

2. $600,000 representing cumulative annual return on the $500,000 described in (e)1 above (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 2), plus

3. $200,000 investment income earned on the $600,000 described in (e)2 above (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 3), plus

4. $1,800,000 representing amortization of principal on the Agency's mortgage loan (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 4), plus

5. $900,000 in market appreciation of realty and tangible personalty (that is, the purchase price of $10,900,000 less investment in the project of $1,000,000 and original mortgage loan of $9,000,000, as provided in N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 5).

(f) At closing, the following payments are made from the available cash:

1. To the eligible LD sponsor, $1,000,000, representing its investment in the project, as determined under the HMFA Law (see N.J.A.C. 5:80-32.6(b)3i);

2. To the eligible LD sponsor, $2,000,000, representing 50 percent of its maximum additional return (see N.J.A.C. 5:80-32.6(b)3ii);

3. To the MAR Revolving Account, $2,000,000 representing 50 percent of the maximum additional return (see N.J.A.C. 5:80-32.6(b)3iii); and

4. To the State Treasurer, $700,000, representing the balance of available cash (see N.J.A.C. 5:80-32.6(b)3iv).

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Higher Education Equipment Leasing Fund

Adopted New Rules: N.J.A.C. 9:17

Proposed: December 20, 1993 at 25 N.J.R. 5747(a).
Adopted: January 26, 1994 by Board of Higher Education, Edward D. Goldberg, Chancellor and Secretary.
Filed: January 27, 1994 as R.1994 d.94, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:72A-3 and 5 and P.L. 1993, c.136.

Effective Date: February 22, 1994.
Expiration Date: February 22, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

The Department, however, has made a minor wording correction due to a printing error in N.J.A.C. 9:17-1.4(d). When printing text within this subsection, the word "Authority" was mistakenly printed as "Department." The Department has made the correction back to the original text.

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 17
RULES AND PROCEDURES FOR IMPLEMENTATION OF THE HIGHER EDUCATION EQUIPMENT LEASING FUND ACT

SUBCHAPTER 1. GENERAL PROVISIONS

9:17-1.1 Purpose and authority

The rules in this chapter are established to implement the Higher Education Equipment Leasing Fund Act, P.L. 1993, c.136 (the "Amending Act"), an act supplementing the New Jersey Educational Facilities Authority Act, N.J.S.A. 18A:72-1 et seq. (collectively the "Act").

9:17-1.2 Definitions

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

"Act" means the New Jersey Educational Facilities Authority Act, N.J.S.A. 18A:72A-1 et seq.

"Amending Act" means the Higher Education Equipment Leasing Fund Act, P.L. 1993, c.136.

"Authority" means the New Jersey Educational Facilities Authority or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the Authority shall be given by law.

"Board" means State Board of Higher Education.

"Bond" or "bonds" means bonds or notes of the Authority issued pursuant to the authority granted by the Amending Act.

"Chancellor" means the Chancellor of Higher Education.

"Emerging needs program" means a degree program, function or activity at one or more public or private institutions of higher education directed to meeting new and advanced technology needs within an existing academic program, or to support new academic

programs in science and technology or to support new instructional technologies, as solely determined by the Board.

"Equipment" means any property consisting of, or relating to, scientific, engineering, technical, computer, communications or instructional equipment for use by institutions.

"Institution" means a public or private institution of higher education as defined in the Act.

"Lease agreement" means any lease agreement by and between the Authority and any participating institution relating to the Higher Education Equipment Leasing Fund.

9:17-1.3 Process for purchase of higher education equipment

(a) Upon approval by the governing board of an institution or an entity authorized to act on their behalf, participating institutions shall propose equipment purchases to the Board to be acquired with the proceeds of bonds. No proposal shall be for an amount less than 25 percent of the respective institution's total allocation pursuant to N.J.A.C. 9:17-1.5 or $1,000,000, whichever is less, unless it is for the final portion of its allocation. Proposals shall include information concerning:

1. A copy of the governing board or authorized entity resolution approving the institution's purchase and a brief description of the process used to generate the request;

2. How the proposed purchase relates to the current institutional mission and plans;

3. The program or function to be served by the equipment, including specific educational objectives to be met;

4. The equipment and number of units to be purchased and the estimated cost of the equipment to be purchased;

5. The useful life of the equipment determined either by reference to the Internal Revenue Service's Class Life Asset Depreciation Range System set forth in Revised Procedure 87-56, as amended, supplemented or superseded, or by appraisal of any independent engineering or accounting firm as appropriate;

6. The estimated timetable for the acquisition and installation of the equipment;

7. The source of revenue to pay the institution's annual share of principal and interest of bonds issued to acquire equipment for use by the institution; and

8. Other information as may be required by the Chancellor on a case by case basis and relating to a specific proposal.

(b) Proposals shall be submitted in a format provided by the Chancellor.

(c) Descriptions of the equipment submitted in the proposal may be illustrative, and the equipment to be purchased may be changed as a result of the bidding processes, advances in technology or for other reasons provided that the equipment is approved by the governing board of the affected institution and the Board.

(d) Equipment to be purchased must be approved at a public meeting of the Board.

(e) The total dollar amount of purchases approved for any institution shall not exceed the institution's allocation as approved by the Board.

(f) The Board shall forward to the Authority requests for equipment approved by Board resolution.

(g) Lease agreements with institutions for the lease-purchase of equipment approved by the Board shall require the respective institution to pay to the Authority 25 percent of the principal and interest on the bonds to be issued to finance the equipment purchase for the respective institution.

(h) The Authority shall not issue bonds to finance the equipment purchases with terms exceeding the useful life of the equipment to be purchased and in no case exceeding 10 years.

(i) No bonds shall be issued by the Authority without the prior written consent of the State Treasurer.

(j) Proceeds from the sale of bonds shall cover the cost of bond issuance and administrative costs of the program.

(k) Any purchase of equipment by an institution shall be in the name of the Authority. The Authority shall hold title to the equipment until the bonds issued to finance the purchases have been repaid whereupon title shall be transferred to the respective institutions at their cost.

9:17-1.4 Payment of principal and interest

(a) The State Treasurer shall contract with the Authority to pay to the Authority the amount necessary to pay the principal and interest on all bonds subject to annual appropriation.

(b) Each institution shall pay the Authority (or the bond trustee) 25 percent of the principal and interest on bonds deemed issued to acquire equipment for the institution and in accordance with its lease agreement.

(c) Upon receipt, the Authority (or the bond trustee) shall remit all such payments immediately to the State Treasurer.

(d) If an institution fails or is unable to pay to the Authority in full, when due, any such obligation of an institution to the Authority, an amount sufficient to satisfy the deficiency shall be retained by the State Treasurer from State aid or an appropriation payable to the institution. As used in this section, "obligation of an institution" means any amount payable by the institution under a lease agreement to meet principal and interest on the bonds issued to acquire equipment for the institution under this program. The *[Department]* ***Authority*** shall notify the State Treasurer of the amount to be retained to satisfy the obligation of each institution. A copy of such notification shall be submitted to the Chancellor.

9:17-1.5 Allocation of funds

(a) The money deposited into the fund created pursuant to section 5 of the Amending Act shall initially be allocated in the following manner:

1. $24,000,000 for the leasing of equipment to State colleges;

2. $19,440,000 for the leasing of equipment to Rutgers, the State University;

3. $10,080,000 for the leasing of equipment to the University of Medicine and Dentistry of New Jersey;

4. $6,480,000 for the leasing of equipment to the New Jersey Institute of Technology;

5. $22,000,000 for the leasing of equipment to the county colleges;

6. $10,500,000 for the leasing of equipment to private institutions; and

7. $7,500,000 for the leasing of equipment for the emerging needs programs at institutions.

(b) The Board shall, by resolution, allocate funds to individual State colleges, county colleges, and private institutions of higher education within the sector allocations above.

(c) The Board may reallocate to any institution or to the "emerging needs program" any balance in the amounts authorized if the amounts are not committed within 18 months of the effective date of the Amending Act (June 5, 1993) or within 18 months of subsequent allocations by the Board. Funds will be considered committed when a lease agreement has been entered into between an institution and the Authority.

(d) No reallocation shall be made pursuant to (c) above if:

1. The request for approval has been received by the Board within 15 months of June 5, 1993 or within 18 months with respect to any amounts that are reallocated or subsequently allocated by the Board;

2. The facility in which the equipment will be housed is under construction or renovation;

3. Delays are the result of Federal, State, or local governmental approvals or regulatory requirements not attributable to the institution; or

4. Other compelling and documentable reasons exist as determined by the Board.

(e) An institution's inability to secure the necessary funds to pay the 25 percent principal and interest payments of bonds issued to finance equipment to such institution shall not constitute good cause for not committing funds as required in (c) above.

(f) The Chancellor shall contact all institutions to which funds have been allocated 15 months following such allocation to determine what, if any, funds will become available for reallocation at 18 months.

(g) The Board shall determine the allocation of money available from the authorization of new bonds by the Treasurer as a result of the retirement of bonds previously issued by the Authority pursuant to the Amending Act.

(h) The Chancellor shall periodically establish and notify institutions of priority areas for the use of funds for emerging needs programs to meet new and advanced technology needs or support new academic programs in science and technology. Institutions may submit an application for funds for a program within the priority areas. The Chancellor shall review applications on a case by case basis and make recommendations for Board approval to fund emerging needs programs.

9:17-1.6 Reporting requirements

The Authority shall report its equipment purchases to the Board once in each year in which equipment purchases are made. The Board then shall report to the Governor and the Legislature on equipment purchases that have been approved by the Board and financed through this program.

HUMAN SERVICES

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Interim Assistance Procedures Manual

Adopted Amendments: N.J.A.C. 10:38-1.1, 1.4, 2.1, 2.2, 3.3, 3.4, 3.5, 3.6, 3.8, 4.3, 4.4, 5.2, 7.2, 7.4, 7.5, Appendices B, C, E, G, H and L

Adopted New Rule: N.J.A.C. 10:38 Appendix L

Adopted Repeal and New Rule: N.J.A.C. 10:38 Appendix F

Proposed: August 16, 1993 at 25 N.J.R. 3697(a).

Adopted: February 7, 1994 by William Waldman, Commissioner, Department of Human Services.

Filed: January 12, 1994, as R.1994 d.75, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4-27.19.

Effective Date: February 22, 1994.

Expiration Date: April 29, 1996.

Summary of Public Comments and Agency Responses:

The Division of Mental Health and Hospitals sent copies of the Interim Assistance Proposal to 10 potentially interested outside agencies. In addition, the secondary mailing included the five Division facilities with an Interim Assistance Program. The Division received comments from three parties: Ancora Psychiatric Hospital; Hagedorn Center for Geriatrics; and Division of Mental Health and Hospitals' Central Office staff, all of which are part of the Division of Mental Health and Hospitals. There were no comments from outside agencies. Comments which resulted in additional changes are as follows:

Subchapter 1. General Provisions

COMMENT: Any reimbursement to the hospital's Interim Assistance account should go into the revenue account, not the appropriation account. This is a requirement of the State accounting system and assures proper accounting of revenue as well as expenses.

RESPONSE: The Department agrees and has made the change at N.J.A.C. 10:38-1.1(a).

Subchapter 3. Interim Assistance Case Processing

COMMENT: Pre-print GR code 31999 on the MH-30 form. This will maximize the chance of the initial retroactive SSI check coming to the Division.

RESPONSE: The Department agrees and has made the change at N.J.A.C. 10:38-3.4(b)3 and on Appendix B.

COMMENT: The Office of Fiscal and Management Operations advises they want a copy of the completed State's Accountability Report (form SSA-8125). This requirement should be stated in the manual.

RESPONSE: The Department agrees with this request to modify Division procedure and has added the appropriate language at N.J.A.C. 10:38-3.5(a)4 and N.J.A.C. 10:38-3.6(a)14.

Subchapter 4. Interim Assistance Payment Procedures

COMMENT: The hospital should require the housing provider to execute a properly completed invoice in order to receive payment for room and board.

RESPONSE: The Department agrees. This requirement is part of the bill form which the Division uses. This has been added on adoption at N.J.A.C. 10:38-4.3(e)3.

COMMENT: The proposal should allow a client placed within his or her own family or home to receive room and board payments in advance, if required to make a rent or mortgage payment.

RESPONSE: The Department agrees and has added the appropriate language at N.J.A.C. 10:38-4.3(e)4.

COMMENT: The proposal should be clear on the effective termination date of Interim Assistance payments when a client leaves the home during the middle of the month.

RESPONSE: The Department agrees and will add appropriate language at N.J.A.C. 10:38-4.4(a), in a proposal in the near future.

Subchapter 5. Medicaid Coverage for Interim Assistance Clients

COMMENT: The Medicaid Validation of Eligibility (Form FD-34) is a key form. It should be included in the Interim Assistance Manual appendix.

RESPONSE: The Department agrees, has added the form as Appendix L, and has so indicated at N.J.A.C. 10:38-5.2(a)2.

COMMENT: The manual should make clear that besides medical care, the FD-34 can also be used for pharmaceuticals.

RESPONSE: The Department agrees and has made the addition, as a point of information, at N.J.A.C. 10:38-5.2(a)3.

Subchapter 7. Client Income and Resource Monitoring

COMMENT: When a client refuses to honor the Payee Agreement, the program requires that hospital staff visit him or her and review the Agreement within five days of discovering the non-compliance (See N.J.A.C. 10:38-7.6(a)2). However, the program allows 10 days when a third-party representative payee is in non-compliance. The two should be consistent.

RESPONSE: The Department agrees and has made the change at N.J.A.C. 10:38-7.7(a)2 to incorporate a five day timeframe.

APPENDIX

COMMENT: The contract for Interim Assistance (Appendix C) should reflect a daily and monthly rate. This coincides with the amendment proposed at 10:38-4.3(d).

RESPONSE: The Department agrees and has revised the form by providing space for both rates.

COMMENT: As a result of instituting a new State accounting system, there is a new invoice form. This should be included in the manual.

RESPONSE: The Department agrees and has replaced Appendix F with the most current form.

COMMENT: The Business Manager's Financial Inquiry (Appendix G) should indicate that room and board payments are contingent on the form's being signed by the housing provider and the client.

RESPONSE: The Department agrees and will add appropriate language to the form, in a future proposal.

COMMENT: The Business Manager's Statement to SSI Recipient (Appendix H) has lines in two different places for indicating hospital name. Only one is needed. Also, the client name and address field only has three lines. There should be four.

RESPONSE: The Department agrees and has made the changes on Appendix H.

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

10:38-1.1 Program description

(a) Interim Assistance (IA) is a payment procedure developed by the State of New Jersey and the Federal Department of Health and Human Services. It permits a client who has been released from a State psychiatric hospital and who has applied for Federal Supplemental Security Income (SSI) benefits to receive State funds while his or her SSI claim is being evaluated. Through this process, the client shall receive a Personal Needs Allowance and have his or her initial maintenance costs paid by the Division of Mental Health and Hospitals upon release from the hospital. The Division, in turn, may directly receive the client's retroactive SSI payment from the Social

Security Administration, may recoup Interim Assistance expenditures made and shall deposit this reimbursement in the hospital Interim Assistance *[appropriation]* ***revenue*** account.

10:38-1.4 Definitions

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

...

"Redetermination" means a process whereby the Social Security Administration annually reviews SSI recipients to evaluate continuing eligibility. The process may also involve recipients who are in an institution less than one year or who have been discharged from an institution in which they were hospitalized for less than one year.

...

10:38-2.1 Clients eligible for Interim Assistance

(a) To be determined eligible for Interim Assistance (IA), a client shall:

1.-2. (No change.)

3. Have been evaluated by the Interdisciplinary Treatment Team as ready for release to one of the following:

i. Residential health care facility;

ii. Boarding home;

iii. Residential drug or alcohol rehabilitation program;

iv. His or her own home, family or Division of Mental Health and Hospitals contract agency;

v. Rooming house; or

vi. Transitional residence; and

4. (No change.)

10:38-2.2 Clients ineligible for Interim Assistance

(a) A client in a State psychiatric hospital is not eligible for Interim Assistance when any of the following conditions exists:

1.-2. (No change.)

3. The client is under 18 years of age; or

4. The client is on the active SSI rolls (receiving a monthly Federal PNA stipend) and SSA has not commenced a Redetermination process.

10:38-3.3 The hospital social service staff or designee

(a) The Discharge Oriented Service Plan shall establish the client's need for assistance in financial planning and placement needs. If such a financial need is evident and the client appears to meet Interim Assistance eligibility criteria, the hospital social service staff or designee shall:

1.-5. (No change.)

6. Once notified by the Discharge or Financial Unit or equivalent that the retroactive SSI check is received and Interim Assistance has been terminated, ensure that the client's discharge is recorded properly on the hospital's daily population movement report and that all appropriate hospital staff are notified of discharge; and

7. (No change.)

10:38-3.4 Responsibilities of the Discharge and/or Financial Unit

(a) The Discharge or Financial Unit or equivalent shall play a major role in several areas, specifically:

1.-6. (No change.)

7. Assist clients in filing and processing appeals;

8. (No change.)

9. Notify the Social Security Administration of any change in the client's living arrangement, such as a return to the hospital or an elopement from the home; and

10. Notify the social services staff that the retroactive check is received and Interim Assistance has been terminated.

(b) The Discharge or Financial Unit or equivalent shall maintain a record of each referral received and processed. This record shall contain the dates when:

1.-2. (No change.)

3. Authorization for Reimbursement of Assistance from SSI Award, Community Placements, form MH-30 ***with GR code 31999*** is forwarded to the Social Security Administration District Office;

4.-5. (No change.)

6. The housing provider is given 30 days' notice of the State's intent to terminate the Contract for Interim Assistance. This requirement does not apply when the client is living with his or her parent at home, when issues of life/safety or client welfare are involved, or when the resident leaves the home of his or her own accord;

7.-9. (No change.)

(c) The Financial Entitlement Unit or equivalent shall, within five working days of receipt of a referral:

1. Submit an initial inquiry to the Social Security Administration to verify social security numbers and to determine if the client is already a recipient of SSI. (If clients are already on the active rolls of SSI and are not subject to the redetermination process they are not in need of the Interim Assistance Program);

2.-3. (No change.)

(d) The Financial Entitlement Unit or equivalent shall, for a client assessed as eligible for Interim Assistance:

1.-6. (No change.)

(e) The Discharge Unit or equivalent shall:

1. If the client is not returning to his or her own home or family, locate an available, affordable and suitable approved residential facility or drug or alcohol treatment program for the client. Such facility shall be licensed and/or under contract to either the Division of Mental Health and Hospitals, the Division of Developmental Disabilities, the Department of Community Affairs, or the Department of Health, as appropriate;

2. If the client is not returning to his or her own home or family, the placement social worker shall visit the selected site with the client and, if the client finds it acceptable;

i.-iii. (No change.)

(f) The Financial Coordinator or equivalent shall:

1.-4. (No change.)

5. Notify the client and the hospital business manager in writing when Interim Assistance payments are being terminated as soon as possible but in no case later than the effective date of termination; and

6. (No change.)

(g) For a client who has been found eligible for Interim Assistance and is subsequently denied SSI benefits, the Financial Entitlement Unit or equivalent shall:

1. If the client files an appeal with the Social Security Administration, continue Interim Assistance payments upon authorization by the Financial Coordinator or equivalent during the period of the SSI reconsideration and the hearing at the Administrative Law level;

2.-7. (No change.)

(h) The Financial Entitlement Unit or equivalent shall, for a client assessed as ineligible for Interim Assistance:

1.-4. (No change.)

10:38-3.5 The Office of Fiscal and Management Operations of the Division of Mental Health and Hospitals

(a) The role of the Office of Fiscal and Management Operations of the Division of Mental Health and Hospitals shall be to:

1.-3. (No change.)

4. Receive copies of form FS-9, Business Manager's Statement to SSI Recipient (Appendix H) ***and completed form SSA-8125, State's Accountability Report,*** from the hospital business managers, assure that SSI benefits were disbursed in accordance with Social Security Administration regulations and add this information to the record.

10:38-3.6 Responsibilities of the hospital business office

(a) The hospital business office shall be responsible for all fiscal matters relating to the Interim Assistance Program other than those described in previous and succeeding sections. Business office staff's specific responsibilities shall be to:

1.-5. (No change.)

6. If the client is placed with a housing provider other than his or her own family or home, obtain a completed monthly invoice (Appendix F) from the housing provider for maintenance costs;

7. If the client is placed with a housing provider other than his or her own family or home, make monthly payments to the housing

provider for validated billings in accordance with procedures described in N.J.A.C. 10:38-4.3;

8. Receive a client's initial retroactive SSI check from the Office of Fiscal and Management Operations, deposit it into the client's account and notify the Financial Entitlement Unit or equivalent that the check has been received;

9.-13. (No change.)

14. File SSI Notice of Interim Assistance Reimbursement Eligibility and Accountability Report, form SSA-8125 (Appendix J.). (This procedure requires, within 30 days of receipt, an individual accounting for each check received by the Division of Mental Health and Hospitals from the Social Security Administration. Completed form SSA-8125 must be forwarded directly to the Social Security Administration Regional Office, to the attention of State Relations Staff ***with a copy to the Division's Office of Fiscal and Management Operations***), and

15. (No change.)

10:38-3.8 Responsibilities of the congregate housing provider

(a) If the client is placed with a housing provider other than his or her own family or home, the congregate housing provider shall sign a contract for Interim Assistance agreeing to:

1.-8. (No change.)

10:38-4.3 Business office payment procedures

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

(d) The business manager, or his or her designee, shall mail Personal Needs Allowance checks at the per diem rate for no more than a 30-day calendar month, to the client at the community placement address no later than the first working day of each month.

(e) The client's Interim Assistance maintenance payment shall be calculated and disbursed as follows:

1. If the client is placed with a housing provider other than his or her own family or home, at the end of each month the business manager shall obtain a completed invoice, form AR 50/54, from the housing provider;

2. (No change.)

3. Validated payments to the housing provider from the Interim Assistance account shall be processed by the 10th calendar day of the following month at the established monthly SSI rate for maintenance, ***assuming receipt of a properly completed invoice***. This is a per diem rate based on the current SSI payment;

4. If the client is placed within his or her own family or home, payment shall be made***, in advance, if necessary to make a rent or mortgage payment,*** at the established monthly SSI rate for maintenance for a 30-day month; and

5. If the client has other Federal annuity income, the housing provider shall collect payments directly from the client. If so, this shall be noted on the invoice. The hospital shall reduce its payment to the provider accordingly.

10:38-4.4 Termination of payments

(a) Interim Assistance payments shall be terminated for an eligible client:

1. As of the day after the last day of the period covered by a retroactive SSI check received by the hospital business manager; *[or]*

2. When a client has been formally determined to be ineligible for SSI benefits by the Social Security Administration. This shall be interpreted to mean that Interim Assistance payments may continue through the SSI reconsideration and the hearing at the Administrative Law level if approved by the Financial Coordinator***; or**

3. As of the date that the hospital learns a client has voluntarily left his or her placement.*

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

10:38-5.2 Procedures

(a) To ensure continued institutional Medicaid coverage for an Interim Assistance client, the following procedures shall be followed:

1. (No change.)

2. Form FD-34, Medicaid validation ***(Appendix L)***, shall be completed by the designated hospital representative on the date of placement and on the first of each month thereafter. The representative shall forward the form to the client's residence or appropriate congregate facility; and

3. The client, family or housing provider may use the FD-34, Medicaid validation, to obtain medical care***, including pharmaceuticals,*** for the client.

10:38-7.2 Responsibilities of the hospital business manager

(a) The hospital business manager shall be responsible for recouping Interim Assistance payments made, first from the client's retroactive SSI check, then from the client's personal funds, when accessible, and finally from the client's other resources.

(b) (No change.)

10:38-7.4 Client or non-institutional agent as payee for available client income

(a) The Business Manager's Financial Inquiry form (Appendix G) shall be mailed to the client, the housing provider or outside payee at the end of each month that the client is eligible for and receives Interim Assistance payments. Unless the client is residing within his or her own family or home, invoice form AR 50/54 for next month's payment shall be attached to the Financial Inquiry form sent to the housing provider.

(b) When the Financial Inquiry form is returned to the hospital business manager showing additional Federal annuity income, the business manager shall direct the client and/or payee in writing to make payments from the additional income directly to the housing provider in accordance with the Payee Agreement. Should the client or payee refuse to pay the provider directly, the business manager shall calculate and disburse the proper maintenance payment in accordance with N.J.A.C. 10:38-4.3(e). The business manager shall further initiate the steps indicated in N.J.A.C. 10:38-7.6 and 7.7.

10:38-7.5 Client or non-institutional agent as payee for anticipated income

(a) When an Interim Assistance client or representative payee has not begun to receive anticipated other income payments, the Business Manager's Financial Inquiry form shall be mailed to the client or to the housing provider at the end of each month that the client is eligible for and receives Interim Assistance payments. Unless the client is residing within his or her own family or home, invoice form AR 50/54 for next month's payment shall be attached to the inquiry form sent to the housing provider.

(b) When the Financial Inquiry form indicating available income is returned to the business manager, he or she shall direct the client to make payments directly to the housing provider in accordance with the Payee Agreement.

10:38-7.7 Refusal to honor Payee Agreement—representative payee

(a) When a representative payee refuses to honor the Payee Agreement or questions any of its stipulations, the following procedures shall be followed:

1. (No change.)

2. The Financial Entitlement Unit shall within *[10]* ***five*** working days contact the representative payee, clarify the situation and encourage him or her to comply with the Payee Agreement;

3.-5. (No change.)

APPENDIX B

AUTHORIZATION FOR REIMBURSEMENT OF INITIAL SUPPLEMENTAL SECURITY INCOME (SSI) PAYMENT OR INITIAL SSI POSTELIGIBILITY PAYMENT (MH-30)—COMMUNITY PLACEMENTS

GR CODE ***31999***

(APPLICANT'S NAME)	(SOCIAL SECURITY NUMBER)
(MAILING ADDRESS)	(HOSPITAL)

I understand and authorize that:

For Interim Assistance to be granted to me, and upon the approval for Supplemental Security Income benefits, the Secretary of Health and

Human Services will forward to the New Jersey Division of Mental Health and Hospitals my (check one):

_____ initial SSI(payment.

_____ initial SSI posteligibility payment.

A check in the same amount will be sent to the Business Manager of the hospital specified above. I further authorize said Business Manager to deduct from my (check one):

_____ initial SSI payment as reimbursement an amount equal to the total amount of Interim Assistance which I received from this hospital (not including assistance payments financed wholly or partially with federal funds) from the date I filed an application for SSI and became eligible for benefits through the month in which my SSI benefits begin.

_____ initial posteligibility payment as reimbursement an amount equal to the total amount of Interim Assistance I received from this hospital (not including assistance payments financed wholly or partially with federal funds) from the date my SSI benefits are subsequently reinstated after a period of suspense or termination and ending with and including the month my SSI benefits resume.

However, if the hospital has prepared and cannot stop delivery of its last assistance payment when it receives my retroactive SSI benefit payment from the Social Security Administration, that payment is included as Interim Assistance to be reimbursed.

I understand that the payment to me and a written explanation showing how the balance was calculated will be made within five working days after the Business Manager receives the Supplemental Security Income check.

I further understand that if I disagree with the amount of the deduction made by the Business Manager, I have the right to an administrative review by the NJ Division of Mental Health and Hospitals. I must make the request for a review through the Department of Human Services, Division of Mental Health and Hospitals, CN-727, Trenton, NJ 08625.

I understand that this signed authorization is effective for (1) one year from the date it is received by the above Agency and it will cease to have effect at the end of one year unless:

- I file for SSI on or before that time, or my case is completely decided, or the above Agency and I mutually agree to terminate this authorization, or
- I appeal my suspension or termination on or before that time, or my SSI case is completely decided, or the above Agency and I mutually agree to terminate this authorization.

In addition, I understand that signing this authorization form means I want to file for SSI benefits. I also understand that I must file an SSI application with a social security office for the Social Security Administration to decide if I am eligible for SSI benefits. I understand that if I am found eligible for SSI benefits that my eligibility for SSI can begin as early as the date the Hospital receives this signed authorization, but only if I file the SSI application within 60 days from the date the above agency receives this signed authorization.

DATE _____ SIGNED _____

ADDRESS _____

_____

NEW JERSEY DEPARTMENT OF HUMAN SERVICES, DIVISION OF MENTAL HEALTH AND HOSPITALS

Form MH-30
(Reverse Side) ***(Revised January 1994)***

APPENDIX C

NEW JERSEY DEPARTMENT OF HUMAN SERVICES
Division of Mental Health and Hospitals

CONTRACT FOR INTERIM ASSISTANCE

THIS AGREEMENT made on this _____ day of _____ in the year _____ :

WITNESSETH, that I, _____ the undersigned, for and in consideration of payments to be made to me as provided herein, do hereby covenant and agree as follows:

1. I AGREE to accept into my home _____ from the _____ (Hospital Name) and agree to furnish said individual with food, lodging, and other usual and necessary incidentals for the proper maintenance of the said individual and his or her well being.

2. I AGREE to accept the sum of $ _____ *[(Rate)]* per day ***($ _____ per month)*** from the _____ (Hospital) at _____ (Location) as compensation for maintenance that I shall furnish the said individual. I further understand that the above agreed upon daily compensation rate is established at rates determined by the Social Security Administration in conjunction with the Commissioner of the Department of Human Services and is payable after the services have been provided. Individuals with other income shall make payments directly to the housing provider.

3. I AGREE to immediately contact the _____ (Designated Emergency Screening Service) by telephone in the event of need for emergency medical or psychiatric care, notifying them of the full details of the said individual's condition and to abide by such directions as shall be given. In the event of serious emergency medical or psychiatric care, I will contact the _____ (Designated Emergency Screening Service) immediately by telephone after care has been given notifying them of the full details.

4. I AGREE to give the _____ (Hospital) at _____ (Location) thirty (30) calendar days notice in writing of my intention to terminate this contract; otherwise it shall continue in full force and effect as long as the said individual is under my care, or is subject to termination notice if standards are not maintained.

IN WITNESS WHEREOF, I hereunto set my hand the year and day first written above.

_____
(Signature of Home Operator and/or Responsible Family Member)

Signed and delivered
in the presence of

_____
Witness

CERTIFICATION NOTE:

An Interim Assistance Payee is not entitled to receive dual payments for care provided. A sponsor must therefore: (1) notify the hospital upon learning that a resident received his or her first SSI or other payment and also provide the effective date of such payment; (2) refund the hospital the amount of Interim Assistance payments received after the first SSI or other payment is received if such payment represents duplicate compensation; (3) refund the hospital the amount of Interim Assistance funds from the retroactive SSI payment, which represents a duplicate payment to me for the time period from SSI application to receipt of funds; and (4) notify the hospital immediately should the client terminate residence at the home.

APPENDIX E

PAYEE AGREEMENT

I understand that I, as an Interim Assistance recipient, will have my community maintenance paid in full or part by the Division of Mental Health and Hospitals until a determination of my SSI claim is made. The Division will also supplement my personal needs expenses, when necessary.

I also understand that income available to me or my representative payee while I am an Interim Assistance recipient, up to the normal monthly room and board rate, must be turned over to _____ toward
(Housing Provider)
payment of room and board expenditures.

I therefore agree:

1. To notify the Business Manager, Psychiatric Hospital, when income or resources from any source becomes available to me or my representative payee; and
2. To turn over all income or resources received by me (but not exceeding my monthly room and board rate) to the _____ , until recurring SSI is available.
(Housing Provider)
3. That, if there are insufficient recoverable funds available from the initial SSI retroactive check for full reimbursement of Interim Assistance funds granted, the balance owing may be recovered by the hospital business office from other sources of funds available to me.

In the event that a representative payee selected by me fails to abide by the terms of this agreement, I will take the necessary steps to have a new representative payee appointed.

Witness: _____ Signature: _____

Address: _____

Date: _____

I, _____ , agree to the terms stated above and will send, when billed, all funds received by me on behalf of _____ (client) to the Business Manager, _____ Psychiatric Hospital.

I understand that these funds will be used as partial reimbursement for Interim Assistance granted to _____ (client). This agreement will remain in effect until such time as I am notified by the Business Manager, _____ Psychiatric Hospital, to redirect these payments.

Witness: _____ Signature: _____

Address: _____

Date: _____

Sample Form
Distribution:

Business Manager—original
Client
Representative Payee
Financial Coordinator

*APPENDIX F

STATE OF NEW JERSEY
PAYMENT VOUCHER
(VENDOR INVOICE)

PO # PV DATE

DOCUMENT TC	AGY	NUMBER	BATCH TC	AGY	NUMBER	ACTG PER.	FY

PP START MO	DY	YR	SCHED PAY MO	DY	YR	CHK CAT	OFF LIAB	F A	RF TY	CK FL	(A) VENDOR ID NUMBER

CONTRACT NO	AGENCY REF	BUYER	(B) TERMS	PAYEE: SEE INSTRUCTIONS FOR COMPLETING ITEMS (A) THROUGH (G)	(C) TOTAL AMOUNT

(D) PAYEE NAME AND ADDRESS

(E) SEND COMPLETED FORM TO:

(F) PAYEE DECLARATIONS

I CERTIFY THAT THE WITHIN PAYMENT VOUCHER IS CORRECT IN ALL ITS PARTICULARS, THAT THE DESCRIBED GOODS OR SERVICES HAVE BEEN FURNISHED OR RENDERED AND THAT NO BONUS HAS BEEN GIVEN OR RECEIVED ON ACCOUNT OF SAID DOCUMENT.

PAYEE SIGNATURE

PAYEE TITLE BILLING DATE

LINE NO	REFERENCE CD	AGY	NUMBER	LINE	(G) PAYEE REFERENCE
1					
2					
3					

	FUND	AGCY	ORG CODE	SUB-ORG	APPR UNIT	ACTIVITY CD	OBJECT CD	SUB-OBJ	REV SRCE	SUB-REV	PROJECT/JOB NO
1											
2											
3											

	RPT CT	BS ACT	DT	DESCRIPTION	QUANTITY	AMOUNT	ID	PF	TX
1									
2									
3									

ITEM NO.	COMMODITY CODE/DESCRIPTION OF ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
				TOTAL	

CERTIFICATION BY RECEIVING AGENCY: I certify that the above articles have been received or services rendered as stated herein.

Signature

Title Date

CERTIFICATION BY APPROVAL OFICER: I certify that this Payment Voucher is correct and just, and payment is approved.

Authorized Signature

Title Date

PV 3/93

WHITE - Original CANARY - Duplicate

PAYEE INSTRUCTIONS
ITEMS Ⓐ THROUGH Ⓖ ARE TO BE COMPLETED BY PAYEE

Ⓐ VENDOR IDENTIFICATION NUMBER

Complete the payee identification field with the federal employer identification number assigned to the business or the social security number if the payee is an individual.

Ⓑ TERMS

The terms of sale, such as "Net," "2% fifteen days," etc.

Ⓒ TOTAL AMOUNT

Enter the total amount of this payment voucher.

Ⓓ PAYEE NAME AND ADDRESS

The name of the individual or company to whose name the check shall be drawn and the complete address where the check shall be mailed.

Ⓔ SEND COMPLETED FORM TO:

The Department, Division, Bureau or Institution to whom the materials or services were furnished.

Ⓕ PAYEE DECLARATION

Payee must sign the declaration and date the payment voucher is prepared.

Ⓖ PAYEE REFERENCE NUMBER

Payee must show his **own** invoice or billing number or any other identification for reference purposes. **This information is recorded on the check stub and aids the payee to identify the invoices which have been paid.** Do not use more that **30** characters.

PAYEE IS TO COMPLETE THE SCHEDULE OF ITEMS OR SERVICES SHOWING QUANTITY, UNIT, DESCRIPTION, UNIT PRICE AND AMOUNT. IF THE NUMBER OF ITEMS EXCEEDS THE SPACE, ATTACH A SCHEDULE SHOWING THE REQUIRED INFORMATION.

TO INSURE PROMPT PAYMENT, SEND COMPLETED PAYMENT/VOUCHER TO THE DEPARTMENT/AGENCY SHOWN IN ITEM Ⓔ

VENDORS MAY BE ENTITLED TO INTEREST ON PAYMENT VOUCHERS IF PAYMENT IS NOT MADE WITHIN 60 DAYS OF THE DATE OF ACCEPTANCE OF A PROPERLY EXECUTED PAYMENT VOUCHER OR RECEIPT OF GOODS OR SERVICES, WHICHEVER IS LATER. **INQUIRIES SHOULD BE MADE DIRECTLY TO THE DEPARTMENT OR AGENCY SHOWN IN ITEM Ⓔ**

PV 3/93 *

APPENDIX G

BUSINESS MANAGER'S FINANCIAL INQUIRY

Re: _____
(Client)

Dear _____ :
(Housing Provider)

Please respond to the following questions and return to me within 5 days of receipt.

Has the above named client received:

	YES	NO
Supplemental Security Income Payment?	☐	☐
A Social Security benefit?	☐	☐
Any other type of payment *(specify)*	☐	☐

If your answer is "yes" to any of these questions, please provide the following information:

Date Payment was received _____

Type of Payment _____

Amount of Check(s) _____

Check(s) issued to (name) _____

_____
Business Manager

_____
Housing Provider

_____
Client

Sample Form
Distribution:

Housing Provider—Original
Client
Business Manager

APPENDIX H

BUSINESS MANAGER'S STATEMENT TO SSI RECIPIENT

_____ _____
(Client's Name) (Date)

_____ *[_____]*
(Hospital)

* _____ *

The Social Security Administration has sent us a check representing your retroactive and initial benefits from the SSI Program.

According to the authorization you gave us on Form MH-30 (Payee Agreement), we have applied to that check an amount equal to the amount of recoverable assistance we gave you while your application for SSI was being processed or your SSI payment was suspended or terminated, as follows:

1. Amount of Interim Assistance provided $ _____
2. Amount of SSI check $ _____
3. Patient Trust Fund balance $ _____
4. Total available resources (2 + 3) $ _____
5. Amount of assistance hospital can recover $ _____
6. Amount of assistance given to you by county/ local welfare agencies $ _____
7. Amount of assistance recovered from PTF balance $ _____
8. Net amount due you (4–5–6–7) (check enclosed) $ _____
9. Net amount due State Treasurer (1–5–7) (bill enclosed) $ _____

If you disagree with this computation, you have the right to come to this office to discuss the matter. If after such discussion you are not satisfied, you may contact the State Division of Mental Health and Hospitals to request an administrative review. You should make the request through the Department of Human Services, Division of Mental Health and Hospitals, CN 727, Trenton, New Jersey 08625-0727.

_____
(Hospital)

_____
(Name, Title)

Distribution:

Client—Original
Business Manager
Division Fiscal Officer
Social Service Director
Placement/Financial Coordinator

Form FS-9 (Revised—January, *[1991]* ***1994***)

***APPENDIX L**

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

VALIDATION OF ELIGIBILITY

Last Name	First Name	Mi	Health Services Program Case No.	Person Number

NOTICE TO PROVIDERS

This form identifies the person listed above as eligible for authorized services under the New Jersey Health Services Program (Medicaid).

This form also serves as a validation of eligibility for up to 31 days from date of issue. All policies and procedures specified in the appropriate New Jersey Health Services Program Provider Manual are to be followed by providers when rendering services to this person.

The signature, title and telephone number of an authorized representative of the State Institution listed below must be included to validate this form.

THIS FORM IS THE PROPERTY OF THE STATE OF NEW JERSEY AND MUST BE RETURNED WITH THE PATIENT.

_____ _____
Signature and Title of State Institution Representative **Date of Issue**

_____ _____
Name of State Institution **Telephone No.**

FD-34 (rev. 5/83)*

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Surplus Lines Insurer Eligibility

Adopted New Rules: N.J.A.C. 11:1-31

Proposed: May 3, 1993 at 25 N.J.R. 1819(a).
Adopted: January 28, 1994 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.
Filed: January 31, 1994 as R.1994 d.102, **with substantive and technical changes** not requiring additional public comment (N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 17:1-8; 17:1-8.1; 17:1C-6(e); and 17:22-6.40 et seq.
Effective Date: February 22, 1994.
Expiration Date: January 31, 1996.

Summary of Public Comments and Agency Responses:

The Department of Insurance ("Department") received four timely written comments from eligible surplus lines insurers, an insurer trade association, and a producer trade association as follows:

1. The Independent Insurance Agents of New Jersey;
2. The American Insurance Association;
3. LeBoeuf, Lamb, Leiby and MacRae (on behalf of Underwriters at Lloyd's, London); and
4. The Home Insurance Company of Illinois.

The Department notes that these rules were originally proposed on January 6, 1992 (see 24 N.J.R. 9(a)) on which the Department received substantial public comment. All public comment regarding the rules as originally proposed were addressed in the reproposal of these rules (see 25 N.J.R. 1819(a)).

COMMENT: One commenter noted that while it believed the reproposed rules "have improved" in several respects, the commenter generally objected to the filing and reporting requirements of these rules as too burdensome. In addition, the commenter specifically reiterated its objection to N.J.A.C. 11:1-31.4(a)8, which requires applicants to submit a summary of contracts of reinsurance. The commenter restated that the requirements of this provision are onerous and burdensome and requested that the Department reconsider its position.

RESPONSE: With respect to the first general comment, the Department incorporates by reference its response to a similar and more detailed comment set forth in the reproposal of these rules, 25 N.J.R. 1822. With respect to the second comment, the Department has determined not to change this provision for the reasons set forth in the response this same comment in the reproposal of these rules at 25 N.J.R. 1821. The Department has, however, revised this provision for other reasons. See Summary of Agency-Initiated Changes herein.

COMMENT: One commenter specifically supported the reproposed rules in that they addressed concerns raised regarding the requirement that all applicants for suplus lines eligibility make a "special deposit" of at least $500,000 or an amount equal to 25 percent of its outstanding losses in New Jersey. The commenter supported the reproposed rules which revised the "special deposit" requirement to specific circumstances when deemed necessary by the Commissioner in order to establish satisfactory evidence of the applicant's financial integrity.

RESPONSE: This change was made in response to comments on the prior proposal (see 25 N.J.R. 1820).

COMMENT: Several commenters objected to the requirements in N.J.A.C. 11:1-31.4(a)13iv, which requires a summary of the applicant's methodology for establishing rates as part of an application for eligibility. The commenters stated that given the nature or quality of risks involved in surplus lines placements, rates are often calculated on a case-by-case basis on informed underwriting judgment and other factors that are not conducive to statistical reporting and analysis. The commenters thus believe that it may be difficult to identify a specific methodology, other than in a very general way. The commenters believe that this information will not better enable the Department to ascertain the insurer's overall financial condition and that the Department should not require information which may not be readily available. One commenter additionally stated that it was "pleased" to note the Department's "acknowledgement" that it does not regulate rates of surplus lines insurers.

RESPONSE: Upon review of the commenter's concerns, the Department has determined not to change this provision. As noted in the reproposal of these rules (see 25 N.J.R. 1822), the Department believes it appropriate to require that an applicant submit a summary of its methods of establishing rates as part of the description of the applicant's business plans to ensure that the applicant has competent underwriting personnel and to ensure that the general method of operation of the applicant will not be hazardous to the public or policyholders. Moreover, the Department believes that this information should be available in that the insurer should have methodologies established—general or specific—by which risks are underwritten and rated. The Department believes that if an applicant does not have such methodologies established, risks could be underwritten and rated arbitrarily. The Department believes that this could raise concerns regarding the ability of such an insurer to operate in this State without being hazardous to the public or policyholders in this State. The Department also reiterates that pursuant to N.J.S.A. 17:22-6.43(b), rates for coverages exported to a surplus lines insurer may not be lower than the lowest rate filed by or on behalf of any authorized insurer. For these reasons, the Department believes that this codification of existing practice is both reasonable and appropriate. Finally, the Department otherwise reiterates and incorporates by reference the full response to a similar comment set forth in the reproposal at 25 N.J.R. 1822.

COMMENT: One commenter expressed concern with N.J.A.C. 11:1-31.4(a)15i(3), which requires that an insurer seeking surplus lines eligibility certify that it will comply with specified conditions of continued surplus lines eligibility. Specifically, the commenter expressed concern with the requirement that a surplus lines insurer maintain a net premiums to surplus ratio for all jurisdictions of three-to-one or lower and a gross premiums to surplus ratio for all jurisdictions of six-to-one or lower. The commenter believes that the proposed "six-to-one" ratio for all jurisdictions is inappropriate for insurers which cede 100 percent of their premiums to an intercompany reinsurance pool. The commenter stated that under such a pooling arrangement, the pool's surplus provides support for all the premiums written by the pool participants. The commenter thus believes the gross premiums to surplus ratio for the reinsurance pool is a better benchmark by which to evaluate the financial stability of the ceding insurer. The commenter therefore suggested the rule be amended to provide that for insurers which cede 100 percent of their premium to an intercompany reinsurance pool, the six-to-one gross premiums to surplus ratio requirement apply to the pool as a whole rather than to individual pool participants.

RESPONSE: The Department recognizes the arrangements exist whereby insurers cede 100 percent of their premiums to an intercompany reinsurance pool within the same holding company system. The Department notes that in evaluating the financial condition of insurers which participate in such pools, the Department may conduct its analysis and utilize the results on a pre-pooled or post-pooled basis, depending on the particular circumstances. In the case of surplus lines insurers, the Department similarly would take into account any intercompany reinsurance pool in which the insurer participates in determining whether it has failed to comply with the "six-to-one" gross premiums to surplus ratio requirement. However, to address the commenter's concerns and clarify the Department's intent, the rule has been revised upon adoption to provide that where the insurer cedes 100 percent of its premium to an intercompany reinsurance pool within the same holding company as the insurer, the gross premiums to surplus ratio requirement applies to the pool as a whole rather than the individual participating insurer.

The Department notes however that the individual insurer is ultimately responsible for payments to claimants regardless of the pooling mechanism utilized. Accordingly, while an insurer which cedes 100 percent of its premium to an intercompany reinsurance pool would not necessarily be deemed to violate the gross premiums to surplus ratio requirement if it failed to meet the "six-to-one" requirement (assuming that the pool satisfied the requirement), the rules as revised provide that the Department would nevertheless retain the authority to evaluate the results of the individual insurer to determine whether its methods of operation would be hazardous to the public or policyholders in this State. The Department believes that this procedure is reasonable, appropriate and reflects current Department practice to ensure that the surplus lines insurer's operations would not be hazardous to the public or policyholders in this State.

COMMENT: One commenter requested that the Department revise N.J.A.C. 11:1-31.3(b)4, which sets forth minimum capital and surplus requirements for applicants which are "Lloyd's or other similar unincor-

porated group of alien individual insurers." The commenter stated that Lloyd's has recently adopted a new business plan which will allow corporations to become members. Previously, the commenter stated that only unincorporated individuals were eligible to be underwriters in Lloyd's. Accordingly, the commenter suggested that N.J.A.C. 11:1-31.3(b)4 be revised as follows reflect this change in the membership structure of Lloyd's:

"In lieu of the capital and surplus requirements and trust fund requirements set forth in (b)2i and (b)2i(1) above, any Lloyd's or other similar group of alien insurers, which group includes unincorporated [group of alien] individual insurers shall . . ." (Language underlined is to be added, language in brackets is to be deleted.

RESPONSE: The rules as originally proposed and reproposed were consistent with the existing statutory language in N.J.S.A. 17:22-6.45. The Department notes that this statute was amended by P.L. 1993, c.243, effective August 9, 1993, to revise the statutory provision as noted by the commenter. Accordingly, N.J.A.C. 11:1-31.3(b)4 has been revised upon adoption to reflect the statutory language in N.J.S.A. 17:22-6.45 as amended.

Summary of Agency-Initiated Changes:

1. N.J.A.C. 11:1-31.4(a)8 is revised to recognize and reflect N.J.S.A. 17:51B-1 et seq., enacted August 9, 1993, and implementing rules, N.J.A.C. 11:2-28. This statute and rules govern the allowance of credit for reinsurance as either an asset or deduction from liability for reinsurance ceded by all domestic insurers, and other insurers, including certain surplus lines insurers.

2. The references in N.J.A.C. 11:1-31.3(b)4 to "(b)2i" and "(b)2i(1)" of that rule are revised to read "(b)3" and "(b)3i" to correct an error in citation.

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 31. SURPLUS LINES INSURER ELIGIBILITY

11:1-31.1 Purpose and scope

(a) This subchapter sets forth the filing requirements and procedures for unauthorized insurers which seek to become eligible surplus lines insurers in this State in accordance with the Surplus Lines Law, N.J.S.A. 17:22-6.40 et seq.

(b) This subchapter applies to unauthorized insurers which seek to become eligible surplus lines insurers in this State and currently eligible surplus lines insurers.

11:1-31.2 Definitions

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

"Alien applicant" means an applicant which is an unauthorized insurer formed under the laws of any country other than the United States, its states, districts, territories, commonwealths, possessions or the Panama Canal Zone.

"Applicant" means an unauthorized foreign or alien insurer applying for a certificate of eligibility in this State.

"Certificate of eligibility" means a certificate issued to an unauthorized insurer by the Commissioner pursuant to N.J.S.A. 17:22-6.45 evidencing that it is an eligible surplus lines insurer in this State.

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

"Department" means the New Jersey Department of Insurance.

"Eligible surplus lines insurer" or "surplus lines insurer" means an unauthorized foreign or alien insurer in which an insurance coverage is placed or may be placed pursuant to N.J.S.A. 17:22-6.40 et seq.

"Foreign applicant" means an applicant which is an unauthorized insurer formed under the laws of a jurisdiction of the United States other than this State.

"NAIC" means the National Association of Insurance Commissioners.

"Surplus lines agent" means a person licensed pursuant to N.J.S.A. 17:22A-1 et seq. and N.J.A.C. 11:17 with the authority to place insurance coverages on behalf of unauthorized insurers.

"Unauthorized insurer" means a foreign or alien insurer that is not duly authorized to transact business in this State by a current certificate of authority issued pursuant to the laws of this State.

11:1-31.3 General requirements

(a) No surplus lines agent shall place any coverage in this State with any unauthorized insurer which is not an eligible surplus lines insurer in this State, except for the placement of an insurance risk pursuant to N.J.S.A. 17:22-6.45(h), where insurance on a risk eligible for export is not procurable from eligible surplus lines insurers. No unauthorized insurer shall become an eligible surplus lines insurer unless made eligible by the Commissioner in accordance with N.J.S.A. 17:22-6.45 and this subchapter.

(b) No certificate of eligibility shall be issued to an applicant unless it demonstrates the following:

1. That it is either:

i. Currently authorized in its state or country of domicile as to the kind or kinds of insurance proposed to be so placed for not less than one year preceding the application for eligibility; or

ii. The subsidiary of an admitted insurer or eligible surplus lines insurer that has been admitted or eligible for not less one year preceding the application for eligibility;

2. Satisfactory evidence of financial integrity. Satisfactory evidence of financial integrity may be demonstrated if the applicant satisfies all of the requirements for the issuance of a certificate of eligibility pursuant to N.J.S.A. 17:22-6.40 et seq. and this subchapter, and after review of the information required to be submitted pursuant to this subchapter or from any other available source (for example, the NAIC, A.M. Best and Standard and Poor's), the Commissioner does not find:

i. That any factors exist from which he or she may determine that the applicant is in a hazardous financial condition as set forth in N.J.A.C. 11:2-27; or

ii. That the applicant's condition or methods of operation are such as would render its operation hazardous to the public or policyholders in this State;

3. That it has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, of not less than twice the amount of the minimum capital and surplus required by this State for like admitted insurers;

i. An alien applicant shall also maintain in the United States an irrevocable trust fund in a state or federally chartered bank in an amount not less than $2,500,000 for the protection of all of its policyholders in the United States. The trust fund shall conform to the requirements set forth in N.J.S.A. 17:22-6.45(d)(1);

4. In lieu of the capital and surplus requirements and trust fund requirements set forth in *[(b)2i]* ***(b)3*** and *[(b)2i(1)]* ***(b)3i*** above, any Lloyd's or other similar ***group of alien insurers, which group includes*** unincorporated *[group of alien]* individual insurers shall maintain a trust fund of not less than $50,000,000 as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group. The trust fund shall conform to the requirements set forth in N.J.S.A. 17:22-6.45(d)(1);

5. An insurance exchange created by laws of another state may be approved by the Commissioner as a eligible surplus lines insurer. Such an insurance exchange shall comply with the applicable financial requirements set forth in N.J.S.A. 17:22-6.45(d)(1) in addition to the requirements set forth in this subchapter;

6. That it has complied with all of the requirements of N.J.S.A. 17:22-6.45 and this subchapter to entitle it to transact business as an eligible surplus lines insurer in this State;

7. That its condition or methods of operations are not such as would render its operation hazardous to the public or policyholders in this State;

8. That it is of good reputation as to providing service to the policyholders and the payment of losses and claims; and

9. That its management is not incompetent or untrustworthy, or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance buying public; and that it is not affiliated directly or indirectly through ownership,

control, reinsurance transactions or other insurance or business relations, with any person or persons whose business operations are or have been detrimental to policyholders, stockholders, investors, creditors or to the public.

(c) All information submitted pursuant to this subchapter shall be sent to:

New Jersey Department of Insurance
Division of Financial Examinations
Attention: Surplus Lines Insurer Eligibility
CN-325
Trenton, New Jersey 08625-0325

11:1-31.4 Certificate of eligibility; filing requirements

(a) All applicants shall submit the following to the Commissioner:

1. A copy of the applicant's charter as currently in force, certified by the lawful custodian of the original document;

2. A copy of the applicant's bylaws as currently in force, certified by a senior officer of the applicant;

3. A certified copy of the applicant's current certificate of authority from the applicant's state or country of domicile;

4. A certified copy of a report of the most recent examination of the applicant's affairs by the department of insurance, or its equivalent, of the applicant's state or country of domicile;

5. An annual audited financial report conforming to the requirements of N.J.A.C. 11:2-26 or a certified copy of the applicant's most recent audited financial report required by the applicant's state or country of domicile which is substantially similar to the report required by N.J.A.C. 11:2-26;

6. Directors' and officers' biographical affidavits on a form provided by the Commissioner;

7. A statement of opinion by qualified actuary, relating to the applicant's loss and loss adjustment expense reserves for all lines of business written by the applicant, containing the information required by N.J.A.C. 11:1-21;

8. A summary of the applicant's assumed and ceded reinsurance business, indicating the treaty parties, retentions, maximum risks, types of contract (that is, prorata, facultative, etc.) and any other information which may be relevant to the applicant's reinsurance portfolio*, **including, but not limited to, such information necessary to demonstrate that any credit for reinsurance shown in the applicant's financial statements as either an asset or deduction from liability is allowed pursuant to N.J.S.A. 17:51B-1 et seq. and N.J.A.C. 11:2-28***;

i. The Department may require that the applicant file a copy of any specific reinsurance treaty or contract to address questions or concerns based upon the Department's review of the summary of assumed and ceded reinsurance business;

9. If the applicant is a member of a holding company system, a certified copy of the information filed pursuant to the holding company act of the state, district, territory, commonwealth, possessions or country of domicile, supplemented as necessary to meet the requirements of N.J.S.A. 17:27A-3 and applicable Securities and Exchange Commission requirements pursuant to 15 U.S.C. 77a et seq. and 15 U.S.C. 78a et seq., including the names of all shareholders of record who control, either directly or indirectly, five percent or more of the applicant's outstanding shares;

10. A listing of all jurisdictions in which the applicant has applied for authorization to transact the business of insurance as a licensed insurer or surplus lines insurer during the preceding 10 years, including the dates and results of such application;

11. A listing of all jurisdictions from which the applicant has withdrawn during the preceding 10 years, including the reasons for withdrawal;

12. A listing of all administrative, civil or criminal actions, orders, proceedings and determinations thereof to which the applicant, its affiliates, or any of its directors or officers have been subject, due to an alleged violation of any law governing insurance operations in any jurisdiction during the preceding 10 years. Where the alleged violation is a felony or its equivalent, such criminal actions, orders, proceedings and determinations shall also include violations unrelated to insurance operations. If a license has been refused, suspended or revoked by any jurisdiction, the applicant shall furnish an explanation and a copy of any orders, proceedings and determinations related thereto;

13. A description of the applicant's present business plan or plans for conducting an insurance business, including, but not limited to:

i. The geographical areas in which the applicant currently conducts business;

ii. The kinds of insurance the applicant currently writes;

iii. The applicant's current marketing methods;

iv. A summary of the applicant's current methods for establishing premium rates; and

v. A description of agency systems, including any managing general agency contracts;

14. A proposed plan for conducting insurance business in this State, including, but not limited to:

i. The geographical area in which the applicant intends to conduct business;

ii. The kinds of insurance the applicant intends to write;

iii. The applicant's proposed marketing methods;

iv. The applicant's proposed methods for the establishment of premium rates; and

v. A three year forecast of anticipated premiums in this State by line of business;

15. A certification signed by an officer of the applicant that it will comply with the following conditions for continued surplus lines eligibility upon being issued a certificate:

i. For all applicants:

(1) Annually file with the Department a statement of opinion by a qualified actuary relating to the applicant's loss and loss adjustment expense reserves for all lines of business written by the applicant which meets the requirements of N.J.A.C. 11:1-21, on or before June 30 (for foreign applicants) or on or before September 1 (for alien applicants) of each year;

(2) Except insurance exchanges, submit a nonrefundable, one time payment of $25,000 to the New Jersey Surplus Lines Insurance Guaranty Fund, pursuant to N.J.S.A. 17:22-6.75;

(3) Maintain a net premiums to surplus ratio for all jurisdictions of 3:1 or lower; and a gross premiums to surplus ratio for all jurisdictions of 6:1 or lower*. **Where the surplus lines insurer cedes 100 percent of its premium to an intercompany reinsurance pool within the same holding company as the insurer, the gross premiums to surplus ratio requirement set forth in this subchapter shall apply to the pool, provided that the Commissioner may evaluate the results of the individual participating insurer as necessary to determine whether its condition and methods of operation are such as would render its operation hazardous to the public or policyholders in this State***;

(4) Advise the Department within 30 days of any changes in the applicant's chief administrative officers, including the president, senior vice president, secretary or treasurer; methods of operation, including the information set forth in (a)13 and (a)14 above; or assumed or ceded reinsurance agreements; and

(5) Deposit securities, or increase the amount of any existing deposit required pursuant to N.J.A.C. 11:1-31.5, if the Commissioner finds that such deposit is necessary for the eligible surplus lines insurer to establish evidence of financial integrity, as required by N.J.S.A. 17:22-6.45(d), and to ensure that the condition or methods of operation of the insurer are not such as would render its operation hazardous to the public or its policyholders in this State. In determining whether a deposit, or increase in the amount of an existing deposit, is required, and the amount of such deposit or increase, the Commissioner shall consider:

(A) Any adverse change in the financial condition of the insurer as determined through a review of the information submitted pursuant to this subchapter;

(B) Any change in the amount of business written in this State;

(C) Any change in the lines of business written in this State;

(D) The extent to which the lines of business currently written by the insurer and amount thereof are covered under the Surplus Lines Insurance Guaranty Fund, pursuant to N.J.S.A. 17:22-6.70 et seq.; and

(E) Such other factors as the Commissioner deems relevant to determine whether a particular insurer has established satisfactory

evidence of financial integrity and that the insurer's condition and methods of operation are not such as would render its operation hazardous to the public or its policyholders in this State.

ii. For foreign applicants only:

(1) Annually file with the Department on or before March 1, a copy of its NAIC Annual Statement filed with its state of domicile for the year ended immediately preceding, and a copy of the report of any examination of the insurer during the year covered by the Annual Statement;

(2) File NAIC quarterly financial statements within 45 days after the end of each calendar quarter;

(3) Issue an insurance policy not later than 90 days after the effective date of the corresponding insurance placement; and

(4) Annually file with the Department on or before June 1 of each year, a copy of its annual audited financial report conforming to the requirements of N.J.A.C. 11:2-26 or a certified copy of the applicant's most recent audited financial report required by its domiciliary jurisdiction which is substantially similar to the report required by N.J.A.C. 11:2-26; and

iii. For alien applicants only:

(1) Annually file with the Department on or before September 1, a copy of its audited financial statement; a report of its independent auditor, if any; and the Standard NAIIO Financial Reporting Format filed with the NAIC Non-admitted Insurers Information Office for the year ended December 31 immediately preceding;

16. A written request, signed by a licensed surplus lines agent, that the Commissioner issue a Certificate of Eligibility to the applicant;

17. The nonrefundable application fee set forth in N.J.A.C. 11:1-32.7(a)1; and

18. Any additional information deemed necessary by the Commissioner to evaluate the applicant including, but not limited to, updated financial statements.

(b) Foreign applicants shall submit the following to the Commissioner in addition to the requirements in (a) above:

1. A certificate of compliance from its state of domicile;

2. Statements of the applicant's financial condition as of and for the two immediately preceding calendar years;

i. The annual statements shall be submitted on NAIC annual statement blanks, including fully completed and executed jurat pages subscribed and sworn to by the applicant's president, secretary and treasurer;

ii. The statement submitted for the most recent year shall be for a calendar year ending not more than nine months prior to the date of submission of the application; and

3. The applicant's quarterly financial statements for the current year in the NAIC format.

(c) Alien applicants shall submit the following to the Commissioner in addition to the requirements in (a) above:

1. Two duly authenticated copies of its current annual financial statement; one in the language and monetary value of its country of domicile and one in the English language with all monetary values expressed in United States dollars at the current exchange rate shown in the statement;

i. The statement shall be for a calendar year ending not more than nine months prior to the date the filing of such statement in the applicant's country of domicile is due.

2. If the applicant is registered with the NAIC Non-Admitted Insurers Information Office, a copy of the Standard Financial Reporting Format submitted to the NAIC Non-Admitted Insurers Information Office;

3. A description of the deposits and amounts thereof for the benefit of all United States policyholders for all United States jurisdictions in which the applicant is currently transacting business; and

4. A copy of a duly executed trust fund agreement for the benefit of the applicant's United States policyholders in the amount of not less than $2,500,000 or in the amount of $50,000,000, as applicable, as required by N.J.S.A. 17:22-6.45(d)(1).

(d) The Commissioner shall notify the applicant within 60 days whether the application is complete. If the application is incomplete, the notice shall specify the items or information necessary to cure the deficiency.

11:1-31.5 Certificate of eligibility; issuance

(a) If the applicant demonstrates that it fulfills the requirements for eligibility in N.J.S.A. 17:22-6.45 and this subchapter, the Commissioner shall issue a Certificate of Eligibility to the applicant.

1. The Commissioner may condition approval of an application for surplus lines eligibility on the applicant depositing securities, as that term is defined in N.J.S.A. 17:20-1 and N.J.A.C. 11:2-32, in an amount determined by the Commissioner, if the Commissioner finds that such deposit is necessary for the applicant to establish satisfactory evidence of financial integrity, as required by N.J.S.A. 17:22-6.45(d), and to ensure that the condition or methods of operation of the applicant are not such as would render its operation hazardous to the public or its policyholders in this State. In determining whether a deposit is required, and the amount of such deposit, the Commissioner shall consider:

i. The financial condition of the applicant as determined through a review of the information submitted pursuant to this subchapter;

ii. The amount of business to be written in this State;

iii. The lines of business to be written in this State;

iv. The extent to which the lines of business to be written by the applicant and the amount thereof are covered under the Surplus Lines Insurance Guaranty Fund, pursuant to N.J.S.A. 17:22-6.70 et seq.; and

v. Such other factors as the Commissioner deems relevant to determine whether the particular applicant has established satisfactory evidence of financial integrity and the applicant's condition or methods of operation are not such as would render its operation hazardous to the public or policyholders in this State.

(b) The Certificate of Eligibility shall remain continuously in effect unless the Commissioner withdraws eligibility as set forth in N.J.A.C. 11:1-31.6.

11:1-31.6 Withdrawal of eligibility

(a) The Commissioner may withdraw the eligibility of an insurer to insure surplus lines risks in this State if:

1. The insurer fails to file the data required or otherwise comply with the requirements for continued surplus lines eligibility as certified by the insurer in its application for eligibility pursuant to N.J.A.C. 11:1-31.4(a)15;

2. The Commissioner has reason to believe that the eligible surplus lines insurer is insolvent, in an unsound financial condition or no longer in compliance with N.J.S.A. 17:22-6.40 et seq. or this subchapter; or

3. The Commissioner finds, after a hearing thereon 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, of which notice was given to all licensed surplus lines agents, that an eligible surplus lines insurer has willfully violated the laws of this State or does not make reasonably prompt payment of just losses and claims in this State.

(b) The Commissioner shall notify all licensed surplus lines agents in this State of withdrawals of eligibility made pursuant to this section.

(c) Except as otherwise specified by the Commissioner, an insurer whose eligibility has been withdrawn pursuant to (a) above shall be prohibited from writing any new business or renewing existing business, but shall continue to service existing business through expiration of each policy.

11:1-31.7 Failure to comply with subchapter; denial of certificate of eligibility

Failure to submit the information required by this suchapter completely and accurately may result in the denial of a certificate of eligibility to transact business as an eligible surplus lines insurer in this State.

(a)

DIVISION OF FRAUD PREVENTION

Automobile Physical Damage Insurance Inspection Procedures

Adopted Amendment: N.J.A.C. 11:3-36.6

Proposed: December 20, 1993 at 25 N.J.R. 5756(a).
Adopted: January 28, 1994 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.
Filed: January 31, 1994 as R.1994 d.103, **without change.**

Authority: N.J.S.A. 17:1-8.1, 18:1C-6(c) and 17:33B-33.

Effective Date: February 22, 1994.
Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

Six public comments were received from insurance companies (Keystone Insurance Company, New Jersey Manufacturers, Penn National Insurance and State Farm Insurance Company) photo inspection facilities (Equifax and NAC/Auto Info).

COMMENT: Three commenters expressed their approval with the Department's proposed amendments.

RESPONSE: The Department appreciates the commenters' support and agreement with this amendment.

COMMENT: Two commenters objected to the Department's repeal of the requirements found in N.J.A.C. 11:3-36.6(f)6 through 9, which require insurers on or after April 1, 1994, to use digital imagery technology. These commenters believe that digital imagery is cost-effective. One commenter questioned the need to repeal these provisions almost three years after the Department enacted the rules originally and only months before these provisions are scheduled to go into effect.

RESPONSE: These rules were originally adopted on an emergency basis and concurrently reproposed on November 26, 1990. The concurrent new rules were adopted January 25, 1991. These rules have undergone several changes in order to improve their effectiveness. In the Department's continuing review of its insurance inspection procedures, the Department has determined that it is not cost effective at this time to require insurers to comply with the requirements of N.J.A.C. 11:3-36.6(f)6 through 9. Therefore, the Department believes that it is necessary to repeal these provisions. The Department notes that some insurers may find digital imagery useful and cost effective based on their individual systems and this amendment does not prevent them from using a digital imagery system.

COMMENT: Two commenters objected to the Department's reference in its proposal's summary that it is not the industry that is required to spend "large sums of money" to prepare for imaging but it is the service providers that have invested the money to build these capabilities. One commenter noted that it has spent over $800,000 building and implementing an imaging system to meet the requirements of these rules. Two commenters expressed concern with what they perceive to be the lack of fairness being provided to service providers. One commenter stated that these amendments have cost service providers millions of dollars in capital expenditures and as a result of this proposal they will not have an opportunity to make a return to their shareholders. Additionally, the commenter stated that the Department's amendments have allowed one firm that has not invested capital to meet the requirements of these rules to benefit from that inaction. The commenter stated that it seems unfair to penalize firms that proactively met the Department's rules requirements while rewarding firms that procrastinated. The commenter stated that its systems are in place to image photographs and provide retrieval, while the price of its automobile inspection services has actually dropped. The commenter recommended that the Department leave the current rules intact without change and then watch efficiencies transpire without additional cost.

RESPONSE: The Department believes that the current retrieval procedures are working satisfactorily and that there is no need at this time to require insurers to use digital imagery. Although these rules will no longer require insurers to commence use of a digital imagery system as of April 1, 1994, in eliminating the rules' mandate the Department notes that some insurers may find digital imagery useful and cost effective based on their individual systems, and as a result they are not prevented from using a digital imagery system.

11:3-36.6 Standards and procedures for inspection

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

(f) Insurers shall utilize authorized representatives and systems to implement the provisions of this subchapter which meet the following standards:

1.-3. (No change.)

4. Takes photographs as required in (e)2 through 3 above; and

5. Provides for the storage and retrieval of reports and photographs in a manner that facilitates their use as set forth in paragraph (j) below.

(g)-(l) (No change.)

(b)

DIVISION OF FINANCIAL EXAMINATIONS

Financial Examinations Monitoring System (FEMS) Data Submission Requirements for All Domestic Insurers—General Ledger Account Reconciliation (GLARS) System

Adopted Amendments: N.J.A.C. 11:19-2.2 and 2.3
Adopted New Rules: N.J.A.C. 11:19-2.5 and Appendix B

Proposed: July 6, 1993 at 25 N.J.R. 2820(b).
Adopted: January 28, 1994 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.
Filed: January 31, 1994 as R.1994 d.104, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:23-1 et seq. and 17B:21-1 et seq.

Effective Date: February 22, 1994.
Expiration Date: February 1, 1998.

Summary of Public Comments and Agency Responses:

Twelve public comments were received from insurance companies (Cigna Companies, Continental Insurance Company, Eagle Insurance Company, First Trenton Indemnity Company, Harleysville Insurance Companies, New Jersey Manufacturers Insurance Company, Mercer Mutual Insurance Company, Prudential Property and Casualty Insurance Company, Selective Insurance Company, and The Health Care Insurance Company) and insurance associations (Alliance of American Insurers, American Insurance Association and National Association of Independent Insurers).

COMMENT: One commenter expressed concern with the effective date of the Department's proposed rules. The commenter stated that these rules do not state whether they will be in place for a January 1994 filing. The commenter suggested that given the effort required to comply with these new reporting requirements, these rules if adopted should not go into effect until January 31, 1995.

RESPONSE: These rules have been amended and insurers are not required to file GLARS 1993 data by January 31, 1994, but insurers should file their GLARS 1993 data with the Department for the purposes of the 1993 data by April 1, 1994.

COMMENT: Several commenters objected to N.J.A.C. 11:19-2.3, which requires domestic insurers to file with the Department on an annual basis the information required by this subchapter for the prior calendar year ending December 31 by January 31, of the next year.

One commenter stated that the January 31 deadline only allows companies 31 days to prepare their trial balances. The commenter suggested that the Department's filing deadline date established by N.J.A.C. 11:19-2.3, should be extended to March 1. The commenter believes that this would permit companies to make their FEMS filings at the same time they file their annual statements. A second commenter suggested that the information be filed no later than April 1, after the filing date of the annual statement.

A third commenter stated that the January 31 deadline is inconsistent with the NAIC requirements. The commenter stated that the NAIC is currently trying, through its Financial Accreditation System, to make Uniform Financial Reporting Requirements. The commenter stated that

a minimum, the FEMS reporting deadline should be consistent with the NAIC requirements.

A fourth commenter stated that the Department appears to have failed to consider the fact that many insurers are part of reinsurance pools in which their non-domiciliary affiliates may also participate. The commenter stated that as a consequence of these pools the general ledger reflects only pre-pooled figures, adjustments for pooling are made outside the confines of the general ledger and are reflected in the annual statement. Therefore, the commenter stated that the filing of pre-pooled figures on January 31 will not assist an examiner in analyzing the pooled results reported on March 1.

RESPONSE: For the purposes of GLARS 1993 data insurers shall file this information with the Department by April 1, 1994. For subsequent years data, the Department has amended these rules to require insurers to submit the information required by this subchapter no later than March 1. The Department's amendments coincide with the insurer's Annual Statement filing, and will therefore benefit insurers who will be able to collect all the necessary data and submit the appropriate information to the Department by the new deadline date of March 1.

COMMENT: One commenter stated that N.J.A.C. 11:19-2.3 provides for a March 1, 1993 deadline for 1992 data. The commenter stated that he is confused by this timeframe and believes this provision needs clarification.

RESPONSE: This provision does not apply to these amendments; it is part of the existing rule which addresses the 1993 data filing requirements for IVS.

COMMENT: One commenter also objected to the Department's proposed rules because the provision for Federal Income Taxes must be calculated based on the final profit and loss figures. The commenter stated that to demand a January 31 deadline for all of these activities would result in companies taking "short-cuts" and thus impair the quality of the reported data.

RESPONSE: The Department has amended these rules by extending the filing deadline for GLARS data to March 1; therefore, insurers should have sufficient time to calculate the Federal Income Tax based on their final profit and loss figures.

COMMENT: One commenter stated that they book year-end adjustments into the general ledger so they are confused by N.J.A.C. 11:19-2.5(c), which mentions pre-closing general ledger account balances and year-end closing adjustment. The commenter suggested that the Department should clarify the definition of terms used in this section.

RESPONSE: Pre-closing general ledger account balances reflect the status of an insurer's book as of December 31, year-end prior to closing adjustments to reflect accruals, reclassifications and adjusting entries that an insurer makes as it finalizes its books for the year-end (post-closing) and prepares its Annual Statement.

COMMENT: One commenter's objections to N.J.A.C. 11:19-2.5(a), were based on the fact that they do not believe that the collection of "pre-closing general ledger account balances as well as year-end closing adjustments" will help New Jersey examine a company's financial condition. The commenter believes that the ledger data will likely be meaningless without the related Annual Statement data, which will not be available until March 1. The commenter further believes that once the Annual Statement data is available it will provide sufficient detail to the Department. Finally, the commenter stated that if it becomes necessary to examine a company's ledger accounts, that it should be done on targeted basis, rather than requiring indiscriminate data submissions from all companies.

RESPONSE: The Department has amended this rule to require a March 1 deadline submission date for the previous year's data. This amendment will correspond with an insurer's Annual Statement filing deadline. The Department requires pre-closing general ledger account balances and year-end closing adjustments in order to determine if this information supports the data supplied in an insurer's Annual Statement filing, it will also assist in the automation of the Department's examination process.

COMMENT: One commenter questioned what the Department meant (in the Appendix) to be classified as a sub-account and what should be classified as an account. The commenter suggested that the Department in the Appendix identify what is required. The commenter suggested that the Department should state whether the detail should be what appears on pages 3, 4 and 12 or should there be further detail, such as by line of business.

RESPONSE: Insurers report sub-accounts differently. The Department wants to ensure that an insurer properly identifies how the sub-account rolls up into the Annual Statement line if the sub-account is split then the insurer must provide the detail in order to cross reference this data to the Annual Statement.

COMMENT: One commenter questioned the need for Appendix B, the General Ledger Account Detail Record and the Adjusting Ledger Detail Record. The commenter stated that he assumed that this information is needed to show the development of page 12 of the annual statement, reflecting non-admitted assets. The commenter suggested that the Department clarify the definition of these terms so that there is no misunderstanding.

RESPONSE: The Department will use the General Ledger Account Detail Record and the Adjusting Ledger Detail Record information, to see if it justifies an insurer's development of page 12 of the insurer's Annual Statement filing.

COMMENT: One commenter stated that the proposed rules require each balance to be cross-referenced to the annual statement. The commenter stated that in some cases, their company carries balances in one account which are displayed in different areas of the annual statement. For example, bond interest is carried as one balance but is segregated into U.S. Government, tax-exempt and other taxable interest on the annual statement. The commenter suggested that the Department clarified this area.

RESPONSE: If an insurer's sub-account(s) go to one line in the insurer's Annual Statement, then all the insurer has to do is cross reference the sub-account to that one line, but if the sub-account goes to two, or three, etc. lines then the insurer must subrogate the sub-account.

COMMENT: One commenter stated that providing the data in the format requested by the Department requires insurers to undergo significant programming changes to their current systems. The commenter believes that these proposed rules will place significant financial burdens on domestic insurers, thereby placing them at a competitive disadvantage.

RESPONSE: The Department recognizes that some insurers may incur additional costs developing the system initially, in connection with assimilating, preparing and supplying the required information. These costs will vary from insurer to insurer depending on the nature of their existing system and the extent of programming changes that are necessitated to comply with these rules. Insurers presently pay for regular examinations and incur costs in submitting data. The Department believes that an insurer's incurred costs as a result of these rules will be offset or reduced by more efficient, automated systems. These rules will improve the Department's ability to better monitor the financial solvency of insurers which is beneficial to the public.

COMMENT: One commenter objected to the Department's proposed rules because they believe that these rules are inconsistent with the National Association of Insurance Commissioners ("NAIC") automation plans. The commenter stated that under the holding company structure that is common in the property-casualty insurance industry, insurers under common control (and with common accounting systems) are often domiciled in many different states. The commenter stated that unless accounting practices and procedures for data requirements among the states are uniform, insurers will be required to establish different accounting systems to satisfy regulatory requirements in the different states. The commenter believes that such duplicative efforts are counterproductive, and it is for this reason that the NAIC has established uniform accounting practices and procedures that insurers follow and uniform examination procedures that insurance departments follow.

The NAIC has also developed a uniform system of annual statement data collection by means of diskettes filed with and processed by the NAIC computer operation. All AIA member insurers doing business in New Jersey currently comply with the uniform requirement for filing diskettes with the NAIC and the New Jersey Department of Insurance has direct access to the NAIC data base information. Notwithstanding one of the objectives of this proposal to be consistent with the NAIC, the diskette filing that would be required by this proposal would include much of the same information required to be filed with the NAIC, but would utilize a different format. It will require duplicate effort on that part of insurers to file this information in New Jersey, and if other states impose their own unique format requirements, will undermine the state regulatory system.

The commenter recommended that this proposal be withdrawn because it is inconsistent with NAIC procedures. If the proposal is to go forward, we recommend that the diskette requirements be made consistent with the existing NAIC diskette requirements.

RESPONSE: The Department disagrees with the commenter. These rules are not inconsistent with the NAIC automation plans. The NAIC Data Format Standard states that "to simplify aspects of the data collection process, data and file formats will consist of common ASCII representation." The file requested in GLARS shall be a non-delineated ASCII test file (see N.J.A.C. 11:19-2.5(b)1), which meets the NAIC Data Format Standard.

Additionally, the Department is represented on the NAIC's Special Committee on Information Systems. New Jersey is one of the first states to begin GLARS, and will try to assist other states that may wish to require insurers to submit similar information, in the efforts to establish a system that will benefit all involved.

COMMENT: One commenter objected to the application of these rules to holding company systems that include insurers domiciled in other jurisdictions. The commenter stated that many insurers domiciled in New Jersey reinsure most or all of their business with their parents, and therefore, have little or no net underwriting activity and very little in the way of other account balances. The commenter stated that the expense of adopting their information into this proposed format cannot be justified when compared to the time that would be required by an examiner to obtain this information directly from their systems. The commenter suggested that these rules be amended to exempt insurers that have minimal net underwriting activity.

RESPONSE: The Department disagrees. The Department believes that in order to better monitor the financial solvency of a company all domestic property and casualty and life/health insurance companies shall provide the requested data to the Department.

Summary of Agency-Initiated Change:

At item 4 of Exhibits 2 and 4 in Appendix B, clarifying text was added to describe the page of the annual statement for which the number is required.

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

11:19-2.2 Definitions

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

...

"ASCII" means the American Standard Code for Information Interchange. It is a byte-oriented coding system based on an eight bit code and used primarily to format information for transfer in a data communications environment.

...

11:19-2.3 General data filing requirements for all domestic insurers

(a) All domestic insurers shall file with the Department on an annual basis the information required by this subchapter for the prior calendar year ending December 31 *[by January 31]* ***by March 1***, of the next year, in accordance with the Appendices to this subchapter incorporated herein by reference. *[Data for 1992 shall be filed by March 1, 1993.]*

(b) (No change.)

11:19-2.5 GLARS subsystem filing requirements

(a) All domestic property and casualty and life/health insurance companies shall provide the Department with a report on their pre-closing general ledger account balances and year-end closing adjustments for this State on a personal computer diskette in accordance with (b) and (c) below.

(b) A personal computer diskette shall be formatted so that it can be read by an IBM or compatible personal computer. The diskette must be a high density, double-sided, 1.44 megabyte (3.5 inch) or 1.2 megabyte (5.25 inch) diskette (3.5 inch diskettes are preferred).

1. The file shall be a non-delimited ASCII text file with a carriage return and line feed as the last character of each record. The data shall not be in compressed format.

2. The file shall be named using the company type (P for property and casualty, L for life/health), year (92, 93 etc.), the company NAIC number, and an ASC extension (for ASCII). For example, the 1992 file for a property and casualty company with an NAIC number of 12345 would be named P9212345.ASC.

(c) All reports on pre-closing general ledger account balances and year-end closing adjustments filed by domestic property and casualty and life/health insurance companies with the Department shall include the information and be submitted in the format set forth in the record layouts in Appendix B to this subchapter which is incorporated in this rule by reference. The report shall include the following information:

1. An external label shall be affixed to diskette(s) and include the following information:

i. The company's name and NAIC number, type (P&C for property and casualty or L/H for life/health), and year of the data (for example, 1992);

ii. The date when the diskette was mailed;

iii. The volume sequence number of the diskette (for example, "1 of 1" or "2 of 4");

iv. The volume serial number of the diskette (this can be determined by executing the DOS "VOL" command); and

v. The information shall be displayed as follows:

NAME: (for example, ABC Life Ins. Co.)
NAIC NO: NNNNN
TYPE: (for example, L/H)
YEAR OF DATA: YY
DATE MAILED: MM/DD/YY
DISK: 1 of 1
VSN: (for example, 2364-07E1);

2. A cover letter that provides the same information as on the external labels;

3. A signed affidavit by the insurer which shall accompany all transmissions attesting to the accuracy of the diskette(s); and

4. The diskette(s) may be delivered or mailed but shall be received by the Department by *[January 31]* ***March 1*** at the following address:

New Jersey Department of Insurance
FEMS—General Ledger System Project
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

APPENDIX B
Exhibit 1
General Ledger Account Detail Record Layout

Field Number	Field Name	Start Pos	Field Type and Length	Comments
1	General Ledger Account Number	1	X(12)	General Ledger account number including sub-accounts.
2	Adjustment Number	13	9(5)	Must be "0", right justified.
3	Account Description	18	X(45)	Description of the account.
4	Annual Statement Page Number	63	X(2)	The page number of the annual statement where the account is reported.
5	Annual Statement Line Number	65	X(6)	The line number on the page where the account is reported.
6	Annual Statement Page Number	71	X(1)	The column number on the page where the account is reported.
7	Amount	72	9(16)	The amount of the year-end, preclosing account balance.
			87	

Note:
X = denotes alphanumeric
9 = denotes numeric

APPENDIX B
Exhibit 2
General Ledger Account Detail Record Layout Description

Field Number	Field Name	Comments
1	General Ledger Account Number	General ledger account number (alphanumeric, left justified, up to 12 positions). Sub-accounts are to be combined with account number, up to 12 positions.
2	Adjustment Number	A zero for the adjustment number (numeric, right justified) indicates this is an account and not an adjustment.
3	Account Description	Description of the account (the first 45 positions, left justified).
4	Annual Statement Page Number	The page number of the annual statement ***for P/C companies which corresponds to Liabilities Surplus and Other Funds, Underwriting and Investment Exhibit—Statement of Income and Exhibit 1—Analysis of Assets. The page number of the Annual Statement for L/H companies which corresponds to Liabilities Surplus and Other Funds, Summary of Operations and Exhibit 13—Assets.*** *[where the account is reported]* (***for 1993 data this*** must be 03, 04, or 12 for P&C companies or 03, 04, or *[18]* ***20*** for L/H companies).
5	Annual Statement Line Number	The line number on the page where the account is reported (left justified, with a leading zero for numbers less than 10, that is, 02.2).
6	Annual Statement Column Number	The column number on the page where the account is reported (1 for pages 03 and 04; 1, 2, or 3 for page 12 or page *[18]* ***20***).
7	Amount	The amount field will be the year-end pre-closing account balance (positive for debit balance and negative for credit balance). The decimal point is to be contained in the field. A leading minus ("-"), placed directly before the first number, is used to indicate negative numbers. Leading zeros are not to be used, but trailing zeros are to be used for the decimal places. The total field width (16) includes all numbers, the minus sign and the decimal point. For example, a negative $304,020 and 20 cents would appear as _____-304020.20, where the underscore represents spaces.

APPENDIX B
Exhibit 3
Adjusting Ledger Detail Record Layout

Field Number	Field Name	Start Pos	Field Type and Length	Comments
1	General Ledger Account Number	1	X(12)	General ledger account number to be adjusted.
2	Adjustment Number	13	9(5)	The adjustment number.
3	Adjustment Description	18	X(45)	Description of the adjustment.
4	Annual Statement Page Number	63	X(2)	The page number of the annual statement where the adjustment is reported.
5	Annual Statement Line Number	65	X(6)	The line number on the page where the adjustment is reported.
6	Annual Statement Column Number	71	X(1)	The column number on the page where the adjustment is reported.
7	Amount	72	9(16)	The year-end closing adjustment amount.
			87	

Note:
X = denotes alphanumeric
9 = denotes numeric

APPENDIX B
Exhibit 4
Adjusting Entry Detail Record Layout Description

Field Number	Field Name	Comments
1	General Ledger Account Number	General ledger account number to be adjusted (alphanumeric, left justified, up to 12 positions). If there is no account number for Surplus (page 03, line 25B for P&C companies and page 03, line 34 for L/H companies), account number 999 is to be used.
2	Adjustment Number	The same adjustment number should be used for all off-setting entries. All adjustment numbers shall be less than 90,000.
3	Adjustment Description	Description of the adjustment (The first 45 positions, left justified).
4	Annual Statement Page Number	The page number of the annual statement ***for P/C companies which corresponds to Liabilities Surplus and Other Funds, Underwriting and Investment Exhibit—Statement of Income and Exhibit 1—Analysis of Assets. The page number of the Annual Statement for L/H companies which corresponds to Liabilities Surplus and Other Funds, Summary of Operations and Exhibit 13—Assets.*** *[where the adjustment is reported]* (***for 1993 data this*** must be 03, 04, or 12 for P&C companies or 03, 04, or *[18]* ***20*** for L/H companies).
5	Annual Statement Line Number	The line number on the page where the adjustment is reported (left justified, with a leading zero for numbers less than 10, that is, 02.2).
6	Annual Statement Column Number	The column number on the page where the adjustment is reported (1 for pages 03 and 04; 1, 2 or 3 for page 12 or page *[18]* ***20***).
7	Amount	The amount field will be the year-end closing adjustment amount (positive for debit balance and negative for credit balance). The decimal point is to be contained in the field. A leading minus ("–"), placed directly before the first number, is used to indicate negative numbers. Leading zeros are not to be used, but trailing zeros are to be used for the decimal places. The total field width (16) includes all numbers, the minus sign and the decimal point. For example, a negative $304,020 and 20 cents would appear as _____–304020.20, where the underscore represents spaces.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

Hair Replacement Techniques

Adopted New Rule: N.J.A.C. 13:35-6.21

Proposed: December 6, 1993 at 25 N.J.R. 5444(a).
Adopted: January 12, 1994 by the Board of Medical Examiners, Fred M. Jacobs, M.D., J.D., President.
Filed: January 26, 1994 as R.1994 d.86, **without change.**

Authority: N.J.S.A. 45:9-2.

Effective Date: February 22, 1994.
Expiration Date: September 21, 1994.

Summary of Public Comments and Agency Responses:

Twenty-three supporting comments were received and the Board appreciates these endorsements of the new rule. The commenters were as follows:

Stanley Nichols
Michael T. McCulley
Frank J. Marini
Troy Thompson
Robin Tagliente
Carmen S. Imbiorgio, Jr.
David DeBarri
Fred T. Biel
Doug McMillan
Robert J. Schneider
Timothy S. Kelly
William H. McKinney
Dave Taube
Tommy Thornton

Philip H. Rush
Renee L. Borstad, Director, Burlington County Board of Freeholders
Kenny Blake
Rick Chiazza
John Labb
Jim Maroball
Michael L. DiMarti
Anthony Speranza
Keith A. Zipper

Full text of the adoption follows:

13:35-6.21 Hair replacement techniques

(a) As used within this section, the following terms have the following meanings unless the content indicates otherwise:

1. "Cosmetic suturing retaining process" means a method of attaching a unit of hair to the scalp via a suturing (retaining) process.

2. "Implanted prolene loop procedure" means a surgical insertion of continuous prolene sutures in and out of the scalp in concentric circles to which a hair weave is attached.

3. "Licensee" means a physician subject to regulation by the New Jersey Board of Medical Examiners.

(b) No licensee shall perform or assist in the performance of a hair replacement technique using the implanted prolene loop procedure or any other cosmetic suturing retaining process involving the use of suture material in the scalp.

(c) Nothing in this section shall preclude licensees from performing medically recognized hair transplantation techniques.

(d) Licensees shall complete and maintain patient medical records pursuant to N.J.A.C. 13:35-6.5 which accurately reflect the transplantation technique utilized in any hair replacement procedure, a brief history pertinent to the procedure, any complications which ensued, any medications prescribed and follow-up directed.

(e) Licensees shall assure that prior to the initiation of a permitted hair transplantation technique, the risks and benefits have been discussed with the patient and informed consent has been obtained.

(f) Licensees shall, by means of a telephone number by which they shall be available, provide appropriate medical coverage on a 24-hour basis to all patients undergoing a hair transplantation technique and shall maintain a log for the sole purpose of recording all complications. This log shall be available for inspection by the Board upon request.

(g) Violation of any of (b) through (f) above may be deemed to constitute one or more of the following:

1. Gross malpractice, gross neglect, or gross incompetence in the practice of the licensed profession pursuant to N.J.S.A. 45:1-21(c);

2. Professional misconduct in the practice of the licensed profession, pursuant to N.J.S.A. 45:1-21(e);

3. A failure to comply with the provisions of an act or regulation administered by the Board, pursuant to N.J.S.A. 45:1-21(h); or

4. Unprofessional conduct which would present an imminent danger to the individual patient or to the public health, safety or welfare, within the meaning of N.J.S.A. 45:9-19.5.

(h) Licensees who are in possession of information which reasonably indicates that another licensee has engaged in a prohibited hair replacement technique shall be obligated to report such information to the Board pursuant to N.J.S.A. 45:9-19.5.

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF PHYSICAL THERAPY

Examination Standards for Physical Therapists and Physical Therapist Assistants
Recognition of Scores—Standardized Examination
Adopted Amendments: N.J.A.C. 13:39A-5.2, 5.4 and 5.6

Proposed: December 6, 1993 at 25 N.J.R. 5447(a).
Adopted: January 11, 1994 by the Board of Physical Therapy, Thomas P. Nolan, Jr., Acting Chair.
Filed: January 26, 1994 as R.1994 d.87, **without change.**

Authority: N.J.S.A. 45:1-3.2 and 45:9-37.18(f).
Effective Date: February 22, 1994.
Expiration Date: June 21, 1996.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows:

13:39A-5.2 Examination standards for applicants for licensure as physical therapists

Applicants for licensure as physical therapists submitting satisfactory proof of educational attainment as set forth in N.J.A.C. 13:39A-5.1 shall be admitted to take the written examination administered by the Board or such standardized examination as the Board may select pursuant to N.J.S.A. 45:9-37.25. Upon satisfactory passage of such examination, an applicant shall be deemed eligible for licensure. Satisfactory passage of the examination shall be attained upon receipt of a score of at least 600 based on a scale of 200 to 800. Applicants must pass every portion of the examination at the same sitting and will not be permitted to take only those portions of the examination which previously have been failed.

13:39A-5.4 Examination standards for applicants for licensure as physical therapist assistants

Applicants for licensure as physical therapist assistants submitting satisfactory proof of educational attainment as set forth in N.J.A.C. 13:39A-5.3 shall be admitted to take the written examination administered by the Board or such standardized examination as the Board may select pursuant to N.J.S.A. 45:9-37.25. Upon satisfactory passage of such examination, an applicant shall be deemed eligible for licensure. Satisfactory passage of the examination shall be attained upon receipt of a score of at least 600 based on a scale of 200 to 800. Applicants must pass every portion of the examination at the same sitting and will not be permitted to take only those portions of the examination which previously have been failed.

13:39A-5.6 Recognition of scores on standardized examinations administered in other states

The Board will recognize standardized examination scores obtained as a result of an examination administered in another state or jurisdiction in satisfaction of its examination requirement provided that the applicant has obtained a score of at least 600 on a scale of 200 to 800 and has passed all portions of the examination at the same sitting.

(b)

DIVISION OF CONSUMER AFFAIRS
BOARD OF PHYSICAL THERAPY

Fees and Charges
Adopted Amendment: N.J.A.C. 13:39A-1.4

Proposed: December 6, 1993 at 25 N.J.R. 5446(a).
Adopted: January 11, 1994 by the Board of Physical Therapy, Thomas P. Nolan, Jr., Acting Chair.
Filed: January 28, 1994 as R.1994 d.101, **without change.**

Authority: N.J.S.A. 45:1-3.2 and 45:9-37.18(f).
Effective Date: February 22, 1994.
Expiration Date: June 21, 1996.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows:

13:39A-1.4 Fees and charges

(a) The following fees shall be charged by the New Jersey State Board of Physical Therapy:

1. Application fee for Physical Therapist and Physical Therapist Assistant	$125.00
2. Temporary license for Physical Therapist and Physical Therapist Assistant	$ 75.00

3. Initial licensure fee, Physical Therapist:
If paid during first year of biennial renewal period: $110.00
If paid during second year of biennial renewal period: ..... $ 55.00
Initial licensure fee, Physical Therapist Assistant:
If paid during first year of biennial renewal period: $100.00
If paid during second year of biennial renewal period: ..... $ 50.00
4. Biennial renewal fee:
Physical Therapist $110.00
Physical Therapist Assistant $100.00
5. Late renewal fee: $100.00
6. Reinstatement fee $150.00
7. Temporary visiting license pursuant to N.J.S.A. 45:9-37.29(b) to practice on a temporary basis to assist in a medical emergency or to engage in a special project or teaching assignment $100.00
8. Duplicate license ..... $ 25.00
9. Duplicate wall certificate ..... $ 40.00
10. Certification of eligibility for examination (for persons not yet seeking the issuance of a temporary license) ..... $ 25.00
11. Certification of licensure status ..... $ 40.00

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF REAL ESTATE APPRAISERS

Fees; Temporary Licenses

Adopted Repeal: N.J.A.C. 13:40A-3.5
Adopted Amendment: N.J.A.C. 13:40A-6.1

Proposed: November 1, 1993 at 25 N.J.R. 4863(a).
Adopted: January 11, 1994 by the Board of Real Estate Appraisers, Carmen D. Mistichelli, President.
Filed: January 26, 1994 as R.1994 d.88, **without change.**

Authority: N.J.S.A. 45:14F-8(n).

Effective Date: February 22, 1994.
Expiration Date: December 16, 1996.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows:

13:40A-3.5 (Reserved)

13:40A-6.1 Fee schedule
(a) Charges for credentialing, certification, licensure and other services are as follows:
1.-9. (No change.)
10. Temporary visiting registration fee: $50.00
11. Reciprocity Application fee: $75.00
12. Reinstatement fee: $150.00
13. Duplicate wall certificate fee: $40.00
14. Duplicate registration certificate fee: $25.00
15. Change of name or address fee: $25.00
16. Verification of certification/licensure: $40.00
17. Verification of continuing education credits: $40.00
18. Federal surcharge, biennial: $50.00
19. Apprentice permit fee; annual: $60.00

(b)

DIVISION OF CONSUMER AFFAIRS AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY ADVISORY COMMITTEE

Fees and Charges

Adopted Amendment: N.J.A.C. 13:44C-2.2

Proposed: December 6, 1993 at 25 N.J.R. 5448(a).
Adopted: January 14, 1994 by Emma N. Byrne, Director, Division of Consumer Affairs.
Filed: January 26, 1994 as R.1994 d.89, **without change.**

Authority: N.J.S.A. 45:3B-20 and 45:3B-24.

Effective Date: February 22, 1994.
Expiration Date: July 8, 1998.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows:

13:44C-2.2 Fees and charges
(a) The following fees shall be charged by the Advisory Committee:
1. Application fee $75.00
2. Initial license fee
i. If paid during the first year of a biennial license renewal period $100.00
ii. If paid during the second year of a biennial license renewal period $50.00
3. License renewal fee, biennial $100.00
4. Temporary license (one year) $50.00
5. Late renewal fee (up to 30 days) $50.00
6. Reinstatement fee (after 30 days) $50.00
7. Certification of licensure to other states $50.00
8. Duplicate license fee $10.00
9. Duplicate wall certificate $25.00

(c)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Superfecta

Adopted New Rule: N.J.A.C. 13:70-29.61

Proposed: December 6, 1993 at 25 N.J.R. 5450(a).
Adopted: January 20, 1994 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: January 26, 1994 as R.1994 d.92, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: February 22, 1994.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows:

13:70-29.61 Superfecta
(a) The superfecta (or other approved name) is a form of parimutuel wagering where each bettor selects, in order, the first, second, third and fourth placed horses in the designated superfecta race. The superfecta pool shall be held entirely separate from all other pools, and is not part of a daily double, exacta or other wagering pool.
(b) Superfecta tickets shall be sold in not less than $1.00 denominations.
(c) Races in which superfecta pools shall be conducted shall be approved by the Commission and shall be clearly designated in the program.
(d) If a horse is scratched or declared a non-starter, no further superfecta tickets may be issued designating such horse and all

superfecta tickets previously issued designating such horse shall be refunded and the money deducted from the gross pool.

(e) Where a field in a superfecta race is less than seven at wagering time, said race shall not be run as a superfecta. A late scratch after wagering starts will not affect the superfecta.

(f) The net superfecta pool shall be distributed to winning wagers in the following precedence, based on the official order of finish:

1. As a single price pool to those whose combination finished in correct sequence as the first four different betting interests; but if there are no such wagers, then:

2. As a single pool to those whose combination included, in correct sequence the first three different betting interests; but if there are no such wagers, then:

3. As a single price pool to those whose combination included, in correct sequence, the first two different betting interests; but if there are no such wagers, then:

4. As a single price pool to those whose combination correctly selected the first place betting interest only: but if there are no such wagers, then:

5. The entire pool of superfecta wagers shall be refunded for that contest.

(g) If less than four different betting interests finish the race and the contest is declared official, payoffs will be made based upon the order of finish of those betting interests completing the race. The balance of any selection beyond the number of different betting interests completing the race shall be ignored.

(h) If there is a dead heat for first involving:

1. Contestants representing four or more different betting interests, all of the wagering combinations selecting the four betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split.

2. Contestants representing three different betting interests, all of the wagering combinations selecting the three dead-heated different betting interests, irrespective of order, along with the fourth place different interest shall share in a profit split.

3. Contestants representing two different betting interests, both of the wagering combinations selecting the two dead-heated different betting interests, irrespective of order, along with the third place and fourth place different betting interest shall share in a profit split.

(i) If there is a dead heat for second involving:

1. Contestants representing three or more different betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three different betting interests involved in the dead heat for second shall share in a profit split.

2. Contestants representing two different betting interests, all of the wagering combinations correctly selecting the winner, the two dead-heated different betting interests, irrespective of order, and the fourth place betting interest shall share in a profit split.

(j) If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence, along with any two of the different betting interests involved in the dead heat for third share in a profit split.

(k) If there is a dead heat for fourth, all wagering combinations correctly selecting the first three different finishers, in correct sequence, along with any of the different betting interests involved in the dead heat for fourth shall share in a profit split.

(a)

NEW JERSEY RACING COMMISSION

Harness Rule

Daily Triple

Adopted Amendment: N.J.A.C. 13:71-27.54

Proposed: November 15, 1993 at 25 N.J.R. 5109(a).
Adopted: January 20, 1994 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: January 26, 1994 as R.1994 d.90, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: February 22, 1994.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:71-27.54 Daily Triple

(a)-(l) (No change.)

(m) If any of the daily triple races result in a dead heat, the payoff will be figured the same as a place pool, that is: first the regulation commission is deducted, then the total amount wagered on the winning combination is deducted, leaving the profit which is divided equally between the holders of the winning combinations.

(n) (No change.)

(b)

NEW JERSEY RACING COMMISSION

Harness Rule

Superfecta

Adopted New Rule: N.J.A.C. 13:71-27.59

Proposed: December 6, 1993 at 25 N.J.R. 5451(a).
Adopted: January 20, 1994 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: January 26, 1994 as R.1994 d.91, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: February 22, 1994.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:71-27.59 Superfecta

(a) The superfecta (or other approved name) is a form of parimutuel wagering where each bettor selects, in order, the first, second, third and fourth placed horses in the designated superfecta race. The superfecta pool shall be held entirely separate from all other pools, and is not part of a daily double, exacta or other wagering pool.

(b) Superfecta tickets shall be sold in not less than $1.00 denominations.

(c) Races in which superfecta pools shall be conducted shall be approved by the Commission and shall be clearly designated in the program.

(d) If a horse is scratched or declared a non-starter, no further superfecta tickets may be issued designating such horse and all superfecta tickets previously issued designating such horse shall be refunded and the money deducted from the gross pool.

(e) Where a field in a superfecta race is less than seven at wagering time, said race shall not be run as a superfecta. A late scratch after wagering starts will not affect the superfecta.

(f) The net superfecta pool shall be distributed to winning wagers in the following precedence, based on the official order of finish:

1. As a single price pool to those whose combination finished in correct sequence as the first four different betting interests; but if there are no such wagers, then:

2. As a single pool to those whose combination included, in correct sequence the first three different betting interests; but if there are no such wagers, then:

3. As a single price pool to those whose combination included, in correct sequence, the first two different betting interests; but if there are no such wagers, then:

4. As a single price pool to those whose combination correctly selected the first place betting interest only: but if there are no such wagers, then:

5. The entire pool of superfecta wagers shall be refunded for that contest.

(g) If less than four different betting interests finish the race and the contest is declared official, payoffs will be made based upon the order of finish of those betting interests completing the race. Balance of any selection beyond the number of different betting interests completing the race shall be ignored.

(h) If there is a dead heat for first involving:

1. Contestants representing four or more different betting interests, all of the wagering combinations selecting the four betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split.

2. Contestants representing three different betting interests, all of the wagering combinations selecting the three dead-heated different betting interests, irrespective of order, along with the fourth place different interest shall share in a profit split.

3. Contestants representing two different betting interests, both of the wagering combinations selecting the two dead-heated different betting interests, irrespective of order, along with the third place and fourth place different betting interest shall share in profit split.

(i) If there is a dead heat for second involving:

1. Contestants representing three or more different betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three different betting interests involved in the dead heat for second shall share in a profit split.

2. Contestants representing two different betting interests, all of the wagering combinations correctly selecting the winner, the two dead-heated different betting interests, irrespective of order, and the fourth place betting interest shall share in a profit split.

(j) If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence, along with any two of the different betting interests involved in the dead heat for third shall share in a profit split.

(k) If there is a dead heat for fourth, all wagering combinations correctly selecting the first three different finishers, in correct sequence, along with any of the different betting interests involved in the dead heat for fourth shall share in a profit split.

(a)

NEW JERSEY RACING COMMISSION

Casino Simulcasting

Adopted Amendments: N.J.A.C. 13:72-1.1, 2.9, 4.3, 4.4. 4.10, 6.2, 7.1 and 8.1

Proposed: November 15, 1993 at 25 N.J.R. 5110(a).
Adopted: January 20, 1994 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: January 26, 1994 as R.1994 d.93, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Effective Date: February 22, 1994.
Expiration Date: January 25, 1995.

On November 15, 1993 at 25 N.J.R. 5110(a), the Racing Commission published for public comment proposed amendments to N.J.A.C. 13:72-1.1, 2.9, 4.3, 4.10, 6.2, 7.1 and 8.1. As noted below, comments were received from the New Jersey Division of Gaming Enforcement and Resorts International Hotel, Inc. The Commission, on January 19, 1993, voted to adopt the proposals as advertised and, as explained below, to amend 13:72-4.4 as an agency-initiated change.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement indicated, by letter dated November 16, 1993, that it reviewed the proposed amendments and has no objection to them.

RESPONSE: Accepted.

COMMENT: Resorts International Hotel, Inc., by letter dated October 15, 1993, indicated that it supports the adoption of the proposed amendments.

RESPONSE: Accepted.

Summary of Agency-Initiated Changes:

During the comment period, it became evident to the Commission staff, in consultation with the staff of the Casino Control Commission, that an additional clarifying amendment should be made with respect to the location of the required facsimile machine and direct dial-up telephone line within the casino simulcasting facility. In this regard, N.J.A.C. 13:72-4.4 has been amended to clarify that the facsimile machine and direct dial-up line must be located within the simulcast counter of the casino simulcasting facility. This agency-initiated change merely conforms the regulation to existing requirements and will not therefore have any independent effect on the operations of casino simulcasting operators or impact on the public. Accordingly, it does not require additional public notice or comment.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

13:72-1.1 Definitions

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

...

"Casino pari-mutuel cashier" means a casino employee who sells pari-mutuel tickets representing simulcast wagers, sells credit vouchers for simulcast wagers, pays cash for credit vouchers, and makes simulcast payouts in a casino simulcasting facility.

...

"Credit voucher" means a ticket issued by:

1. A pari-mutuel cashier in exchange for cash, gaming chips, slot tokens or coupons;

2. A credit voucher machine in exchange for cash; or

3. A self-service pari-mutuel machine as a simulcast payout or as the balance returnable after a simulcast wager has been placed.

"Credit voucher machine" means a mechanical, electrical or other device connected to a totalisator which, upon the insertion of cash, automatically issues a credit voucher of an equal value.

...

13:72-2.9 Wagering limited to simulcasting facility

Wagering on simulcast horses within the premises of a casino licensee shall be conducted only in a casino simulcasting facility. However, pictures and sound of simulcast horse races may be shown in such other areas of the establishment as approved by the Commission.

13:72-4.3 Transmission data line

A transmission data line shall be a dedicated line. There shall be a minimum of one backup line, which may be a dial-up line. In addition, each out-of-State sending track shall maintain a cellular phone in its totalisator room. The dedicated line requirement may be waived for good cause shown with the prior written approval of the Commission and Racing Commission.

13:72-4.4 Facsimile machines and telephone lines

A *[casino simulcasting facility]* ***simulcast counter***, hub facility and the totalisator room at a sending track shall each contain a facsimile machine and a direct dial-up telephone line, the numbers of which shall be provided to the Commission, Division and Racing Commission.

13:72-4.10 Cancellation of tickets

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

(c) Except for pari-mutuel tickets which may be cancelled pursuant to (b) above, no pari-mutuel ticket purchased at a self-service pari-mutuel machine on a current race shall be cancelled.

(d)-(e) (No change.)

(f) A casino pari-mutuel cashier may cancel any pari-mutuel tickets which a patron requests, but does not pay for, provided the tickets are cancelled prior to sale of any ticket to a subsequent patron.

13:72-6.2 Simulcast wagering equipment

All manufacturers, suppliers and repairers of simulcast wagering equipment, including totalisators, pari-mutuel machines, self-service pari-mutuel machines and credit voucher machines, to casino licensees or hub facilities shall be licensed in accordance with the provisions of N.J.S.A. 5:12-92a.

13:72-7.1 Reconciliation with sending tracks

Each casino licensee which conducts casino simulcasting shall, in conformance with information provided by the hub facility, reconcile all simulcast wagers with sending tracks on at least a weekly basis unless the casino licensee and a sending track agree to a different term of payment, which shall be set forth in the agreement between the casino licensee and sending track.

13:72-8.1 Race information availability

A casino licensee which conducts casino simulcasting shall make available to patrons of its casino simulcasting facility the following information for each simulcast race: the names of entrants, their sires, dams and maternal grandsires, their wagering numbers, post positions, jockeys or drivers, assigned weight, morning line odds, owners and owners' colors or drivers' colors, trainers, sex color, year of birth; the distance and number of the race; amount of purse; and conditions and claiming price, if any. For harness races, the performance lines for at least the last six races of each entrant shall also be available. The availability of such information, and the procedures for obtaining same, shall prominently be displayed in the casino simulcasting facility. Nothing in this chapter shall preclude a casino licensee from charging patrons a fee for providing such information.

PUBLIC UTILITIES

(a)

BOARD OF REGULATORY COMMISSIONERS

Demand Side Management Resource Plan

Adopted Amendment: N.J.A.C. 14:12-2.1

Proposed: November 15, 1993 at 25 N.J.R. 5111(a).
Adopted: January 19, 1994 by the Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman and Jeremiah F. O'Connor and Carmen J. Armenti, Commissioners.
Filed: January 26, 1994 as R.1994 d.82, **without change.**

Authority: N.J.S.A. 48:2-13, 52:27F-11(g) and (q) and 52:27F-18.
BRC Docket Number: EX93040117.

Effective Date: February 22, 1994.
Expiration Date: November 4, 1996.

Summary of Public Comments and Agency Responses:

Written comments pertaining to the proposed rule amendments were submitted by Gerald W. Conway, Esq., Berlack, Israels & Liberman, on behalf of Jersey Central Power & Light Company (JCP&L), David A. Kindlick, Vice President, South Jersey Gas Company (SJG), and Shawn P. Leyden, Esq., Public Service Electric and Gas Company (PSE&G).

COMMENT: SJG states that it has no objection to the proposed amendments while JCP&L indicates its support for the staggering of DSM filings and the provision of a two year period in which experience may be gained.

RESPONSE: The Board appreciates these supportive comments and believes the proposed modifications to the rules will be advantageous to all interested parties.

COMMENT: JCP&L and PSE&G support providing the Board with that flexibility needed to accelerate or postpone the scheduled filing date of a DSM Plan. In addition, JCP&L would like the rule to explicitly invite recommendations from utilities regarding the timing of the filing.

RESPONSE: The Board notes that a decision on its part to either extend or abbreviate the time that a utility has to submit its DSM filing cannot be made in a vacuum. That is, such a decision can only be made based upon an analysis of information requested from and supplied by the affected utility. Accordingly, the Board believes that the ability of a utility to provide recommendations along with any required information is implicit in the rule as written and needs no further clarification.

COMMENT: PSE&G suggests that in order to avoid the needless development of a new DSM Plan, the proposed amendment should be revised to make it clear that the four month prior notice by the Board to extend the filing date of a DSM Plan is keyed to the date the Plan would have been due absent the extension.

RESPONSE: The Board believes that the only reasonable interpretation that can be attributed to the rule is that the prior notice required to be given by the Board, for either extending the date of filing (four months) or abbreviating the time for filing (six months), is that the respective notice periods are keyed to the date that the Plan would have originally been due. Therefore, the Board is of the opinion that no further modification is necessary.

COMMENT: PSE&G suggests that the proposed amendment be revised to require the filing date of the DSM Plan to be two years from the date of the implementation of the previous Plan rather than two years from the approval of the Plan.

RESPONSE: PSE&G notes that its Plan was not implemented until five months subsequent to the approval date. It is the opinion of the Board, however, that this problem arose because the measurement and verification protocol had not yet been put into place, and, further, because the incentive-based Plan represented a new and heretofore untried approach. Now that the protocol and incentive Plans are in place and operational, this problem should not reoccur.

Full text of the adoption follows:

14:12-2.1 Filing

Every utility shall file within two years of the Board's approval date of its last approved DSM Plan pursuant to N.J.A.C. 14:12, a DSM Plan for review and approval by the Board. The Board, however, for good cause, may alter the time for filing. The Board, for reasons such as current DSM Plan success or the need for additional evaluation time, may extend the time for filing, on not less than four months notice. Should the Board direct a utility to file its DSM Plan prior to the end of the two year period, it shall be done only upon a six month notice to the affected utility.

TRANSPORTATION

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Lane Usage

Route I-80 in Morris County

Adopted New Rule: N.J.A.C. 16:30-3.9

Proposed: December 20, 1993 at 25 N.J.R. 5761(a).
Adopted: January 21, 1994 by Kathy A. Stanwick, Acting Commissioner, Department of Transportation.
Filed: January 27, 1994 as R.1994 d.95, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-44, 27:21, 39:4-6, 39:4-81 and 39:4-88.

Effective Date: February 22, 1994.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:30-3.9 Route I-80

(a) The certain parts of State highway Route I-80 described in this subsection are designated as special reserved lanes for High Occupancy Vehicles (HOVs) along the eastbound and westbound lanes. Such lanes may only be used by passenger vehicles with two persons minimum, or by buses or motorcycles regardless of occupancy.

1. In Rockaway Township, Denville Township, Parsippany-Troy Hills Township, Wharton Borough, and Rockaway Borough, Morris County, the left travel lane:

i. Eastbound—from 6:00 A.M. to 9:00 A.M., Monday through Friday from approximate milepost 34.3 (vicinity of Route N.J. 15) to milepost 44.9 (vicinity of Baldwin Road).

ii. Westbound—from 3:00 P.M. to 7:00 P.M., Monday through Friday, from approximate milepost 45.0 (vicinity of Beverwyck Road) to milepost 34.8 (vicinity of Route N.J. 15). In the Dual-Dual Section, the HOV lane is in the Express Lane Section only.

(b) The requirements of this rule shall become operative upon installation of appropriate signage of the HOV lane designation along I-80 by the New Jersey Department of Transportation.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Local Property Tax; Assessors

Adopted Amendments: N.J.A.C. 18:12-4.5 and 18:12A-1.18

Proposed: October 4, 1993 at 25 N.J.R. 4591(a).
Adopted: January 24, 1994 by Leslie A. Thompson, Director, Division of Taxation.
Filed: January 25, 1994 as R.1994 d.81, **without change.**

Authority: N.J.S.A. 54:1-35.1 et seq.; 54:4-26; and 54:50-1 et seq.

Effective Date: February 22, 1994.
Expiration Date: October 4, 1998.

Summary of Public Comment and Agency Response:

COMMENT: The Division received one comment. The law firm of Rosenblum, Rosenblum and Zipp objected to the amendment because it would allow an assessor to have an interest in a revaluation firm doing business with the assessor's own district.

RESPONSE: The Division disagrees with this objection as a possible consequence. Local government officials and employees are subject to the provisions of the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq. Assessors are local government employees. Under N.J.S.A. 40A:9-22.5, local government employees are prohibited from engaging in certain activities which conflict with the proper discharge of their duties in the public interest. The following statutory prohibitions prevent an assessor from having such an interest:

1. No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest (N.J.S.A. 40A:9-22.5a.)

2. No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others. (N.J.S.A. 40A:9-22.5c.)

3. No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment. (N.J.S.A. 40A:9-22.5d.)

4. No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties. (N.J.S.A. 40A:9-22.5e.)

Full text of the adoption follows:

18:12-4.5 Conflict of interest

(a) A contract submitted to the Director shall include the following provisions with respect to officers, stockholders and employees of the firm:

1. No commissioner or employee of a county board of taxation within the county shall have any interest whatsoever, directly or indirectly, as an officer, stockholder, or employee or in any other capacity in the firm.

2. (No change.)

18:12A-1.18 Conflict of interest

No commissioner or employee of a county board of taxation shall have any interest whatsoever, directly or indirectly, as an officer, stockholder, or employee, or in any other capacity, in a revaluation firm engaged in revaluing properties in any taxing district within that county.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Removal of Slot Drop Buckets, Slot Drop Boxes, and Slot Cash Storage Boxes; Unsecured Currency; Meter Readings

Adopted Amendment: N.J.A.C. 19:45-1.42

Proposed: November 1, 1993 at 25 N.J.R. 4873(a).
Adopted: January 19, 1994 by Casino Control Commission, Steven P. Perskie, Chairman.
Filed: January 21, 1994 as R.1994 d.79, **with substantive and technical changes** not requiring additional public notice and comment, see N.J.A.C. 1:30-4.3, **and Alternative B not being adopted.**

Authority: N.J.S.A. 5:12-63(c) and 70(l).

Effective Date: February 22, 1994.
Expiration Date: August 15, 1994.

Summary of Public Comments and Agency Responses:

Greate Bay Hotel and Casino, Inc. (Sands), Trump Taj Mahal Associates (Trump Taj Mahal), Caesars Atlantic City (Caesars), and the Division of Gaming Enforcement (Division) filed comments in response to this proposal.

COMMENT: All four commenters support the adoption of Alternative A.

RESPONSE: Accepted.

COMMENT: The Division supports the proposed amendments but recommends clarification be added to the procedures to be followed when unsecured currency is found during the collection of slot cash storage boxes. Specifically, the Division recommends that it be clarified that separate envelopes or containers are required for the unsecured currency found at each bill changer during the collection of the slot cash storage boxes.

RESPONSE: Accepted. This was the intent of the proposal, and the incorporation of the Division's recommendation in subsection (e) will clarify this.

COMMENT: Caesars commented that casinos should be given the flexibility to use a sealed envelope, rather than a container, to transport the unsecured currency to the cashiers' cage and that it be clarified that the recordation of the required information on the front of the envelope satisfies the requirement of the information required by N.J.A.C. 19:45-1.42(e). Further, Caesars commented that the unsecured currency should be permitted to be maintained in the main bank and subsequently picked up by the count room supervisor to be counted with the contents removed from the corresponding slot cash storage box. Additionally, Caesars commented that the reference to "a casino accounting supervisor" transporting unsecured currency found during the slot cash storage box pickup should be changed to "a count team member" since a casino accounting supervisor is not a member of the slot drop box collection team.

RESPONSE: Accepted. A sealed envelope is a form of container and it is consistent with the proposal to clarify that an envelope may be used. Therefore, subsections (e), (f) and (n) have been modified to specifically permit the use of an envelope as a form of container and the front of the envelope as the form. Similarly, clarifying that a casino may record the required information on the envelope does not substantively alter the proposal. The comment that the unsecured currency should be permitted to be maintained in the main bank and be picked up subsequently by a count room supervisor with the contents removed from the corresponding slot cash storage box has been incorporated by the changes in subsection (k), specifically (k)2. Finally, changing "a casino accounting supervisor" to "a count room member" is a minor substantive change which the Commission agrees should be made. Accordingly, subsection (n) has been modified in this regard.

COMMENT: Caesars and Sands recommended that the Commission eliminate the requirement that the three-part form required by N.J.A.C. 19:45-1.42(h) be inserted into a locked dispenser.

RESPONSE: Rejected. Since unsecured currency is gross revenue, the controls should be consistent with other procedures governing gross revenue transactions. More specifically, transactions involving gross revenue funds require that there be a controlled accounting copy which is not susceptible to change and which can be subsequently compared to the other copies.

COMMENT: Sands commented that the proposal be clarified to differentiate the two circumstances under which unsecured currency may be detected.

RESPONSE: Partially accepted. Sands correctly notes that unsecured currency may either be discovered by a slot attendant during servicing of the bill changer or by the drop team during the slot cash storage box pickup. Subsections (e) through (m) of the proposed amendments presently address the procedures to be followed when unsecured currency is discovered by a slot attendant, while subsection (n) is intended to address the procedures to be followed when the unsecured currency is detected during the slot cash storage box pickup. Minor changes have been made to subsection (n) to clarify the procedures for unsecured currency found during the collection of the slot cash storage boxes.

COMMENT: Sands commented that the slot attendant should be permitted to return the unsecured currency to a patron in the event the slot attendant can ascertain the patron did not receive credit for the unsecured currency.

RESPONSE: Rejected. There is no way to determine with certainty, in all circumstances, whether a patron received credit for the unsecured currency.

COMMENT: Sands commented that the proposal should provide that the casino licensee shall record, as appropriate, either the slot cash storage box number which corresponds to the bill changer or the slot cash storage box number assigned pursuant to N.J.A.C. 19:45-1.16(b) on the Unsecured Bill Changer Currency Report rather than the asset number of the bill changer.

RESPONSE: Accepted. Sands is correct in that bill changers themselves are not required to have asset numbers. Accordingly, subsections (e) and (j)2 have been modified in this regard.

COMMENT: Sands cited the inconsistency regarding the reference to "shift" in subsections (f) and (k) and not subsection (e) and the incorrect reference to "Slot Win Report" in subsection (n) which should be to "Slot Cash Storage Box Report."

RESPONSE: Accepted. The clarification suggested by Sands is required to make the procedures consistent with the current regulation.

COMMENT: Trump Taj Mahal responded to the proposal by supporting the changes recommended by Sands.

RESPONSE: Accepted or rejected for the reasons noted above.

None of the changes made in response to the comments substantively alters the intent or content of the proposal and, accordingly, no additional public notice or comment is required prior to adoption.

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

19:45-1.42 Removal of slot drop buckets and slot cash storage boxes; unsecured currency; meter readings

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

[ALTERNATIVE A]

(e) Whenever currency is found inside a bill changer but outside the slot cash storage box ("unsecured currency"), *[the unsecured currency shall be placed into a lockable container by]* a slot supervisor or casino accounting supervisor *[who]* shall *[then]* complete a form which includes the asset number ***or, pursuant to N.J.A.C. 19:45-1.16(b), other unique identification number*** of the ***slot cash storage box in the*** bill changer *[from]* ***in*** which the unsecured currency was *[removed]* ***found***, the date the unsecured currency was found and the total dollar amount of the unsecured currency. The slot supervisor or casino accounting supervisor and a member of the casino security department shall then sign the form as evidence of the total dollar amount being transported*[, lock the form]* ***; place the form*** and the unsecured currency *[in the]* ***into an envelope or*** container***, unless the form is printed on the front of the envelope in which the currency is being placed; seal the envelope or container using a method approved by the Commission, which method shall provide evidence of any tampering;*** and transport the ***envelope or*** container directly to the cashiers' cage.

(f) Upon receipt of the *[locked]* ***sealed envelope or*** container from the slot *[shift]* supervisor or casino accounting supervisor, a cage supervisor shall immediately prepare an Unsecured Bill Changer Currency Report.

(g) Unsecured Bill Changer Currency Reports shall be serially prenumbered forms. Each series of Unsecured Bill Changer Currency Reports shall be used in sequential order and shall be accounted for by employees independent of the cashiers' cage and slot department. All original and duplicate void Unsecured Bill Changer Currency Reports shall be marked "VOID" and shall require the signature of the preparer. All copies of void Unsecured Bill Changer Currency Reports shall be forwarded to the accounting department at the end of the gaming day.

(h) For establishments in which Unsecured Bill Changer Currency Reports are manually prepared, the following procedures and requirements shall be observed:

1. Each series of Unsecured Bill Changer Currency Reports shall be a three-part form, at a minimum, and shall be inserted into a locked dispenser that will permit an individual slip in the series and its copies to be written upon simultaneously while still locked in the dispenser, and that will discharge the original and duplicate while the triplicate remains in a continuous, unbroken form in the dispenser; and

2. Access to the triplicates shall be maintained and controlled at all times by employees responsible for controlling and accounting for the unused supply of Unsecured Bill Changer Currency Reports, placing Unsecured Bill Changer Currency Reports in the dispensers, and removing from the dispensers the triplicates remaining therein.

(i) For establishments in which Unsecured Bill Changer Currency Reports are computer prepared, each series of Unsecured Bill Changer Currency Reports shall be a two-part form, at a minimum, and shall be generated by a computer system that will: simultaneously print an original and duplicate and store, in machine-readable form, all information printed on the original and duplicate; and discharge the original and duplicate. The stored data shall not be susceptible to change or removal by any personnel after preparation of the Unsecured Bill Changer Currency Report.

(j) On the original, duplicate and triplicate or, if applicable, in stored data, the cage supervisor shall record, at a minimum, the following information:

1. The date and time of preparation;

2. The asset number ***or, pursuant to N.J.A.C. 19:45-1.16(b), other unique identification number of the slot cash storage box in the*** *[of the]* bill changer from which the unsecured currency was removed;

3. The denomination(s) of unsecured currency;

4. The total dollar amount of the unsecured currency; and

5. The signature or, if computer prepared, identification code of the preparer.

(k) The original and duplicate copies of the Unsecured Bill Changer Currency Report shall be presented to the slot *[shift]* supervisor or casino accounting supervisor and the casino security representative for signature. Upon meeting the signature requirements, the cage supervisor shall transport the unsecured currency along with the original and duplicate copies of the Unsecured Bill Changer Currency Report to the main bank. The main bank cashier shall sign the original and duplicate copies of the Unsecured Bill Changer Currency Report and retain the original and the unsecured currency. *[The total dollar value of the unsecured currency shall be added to the main bank's accountability.]* The duplicate ***Unsecured Bill Changer Currency Report*** shall be returned to the cage supervisor who shall attach the form *[references]* ***referenced*** in (e) above to the duplicate and expeditiously deposit the duplicate with the attached form into the locked accounting box located in the cashiers' cage. ***The main bank cashier shall either:***

1. Add the value of the unsecured currency to the main bank's accountability and retain the original of the Unsecured Bill Changer Currency Report until the end of the gaming day; or

2. Maintain the unsecured currency and the original Unsecured Bill Changer Currency Report until both are collected by a count room supervisor and immediately transported to the count room where:

i. The currency shall be counted with the contents removed from the corresponding slot cash storage box and recorded on the Slot Cash Storage Box Report; and

ii. The original Unsecured Bill Changer Currency Report shall be forwarded to the accounting department in accordance with N.J.A.C. 19:45-1.33(i).*

(l) At the end of the gaming day, at a minimum, the original and duplicate copy of the Unsecured Bill Changer Currency Report shall be forwarded as follows:

1. *[The]* ***If, pursuant to (k)1 above, the*** main bank cashier ***has retained possession of the original, the cashier*** shall forward the original directly to the accounting department for agreement with the triplicate or stored data; and

2. The duplicate with the attached form shall be forwarded directly to the accounting department for recording on the Slot Cash Storage Box Report and Slot Win Sheet, and agreement with the triplicate or stored data***; provided, however, that no additional recording of the unsecured currency shall be required if the currency has been transported to the count room, counted and recorded pursuant to (k)2 above***.

(m) The duplicate copy of the Unsecured Bill Changer Currency Report shall be attached to the Slot Cash Storage Box Report as supporting documentation. A notation shall be made on the duplicate Unsecured Bill Changer Currency Report indicating *[that]* ***whether*** the dollar amount of the unsecured currency has been added to the Slot Cash Storage Box Report and Slot Win Sheet ***in accordance with (k)2 above or (l)2 above***.

(n) Notwithstanding the requirements of (e) through (m) above, ***when unsecured currency is found during the collection of slot cash storage boxes,*** a casino licensee *[may]* ***shall*** transport ***the*** unsecured currency directly to the soft count room. *[If the unsecured currency is to be transported directly to the soft count room, the procedures]* ***The completion of the form*** required by (e) above shall be performed by a *[casino accounting supervisor]* ***count team member*** and a member of the casino security department. The *[locked]* ***envelope or*** container shall be transported *[directly to and secured inside the]* ***with the slot cash storage boxes to the*** count room ***pursuant to N.J.A.C. 19:45-1.17(c)***. The unsecured currency shall be counted and recorded with the contents removed from the corresponding slot cash storage box. The form prepared pursuant to (e) above shall be forwarded to the accounting department with the *[Slot Win Report]* ***Slot Cash Storage Box Report pursuant to N.J.A.C. 19:45-1.33(i)***.

Recodify existing (e)-(g) as (o)-(q) (No change in text.)

*[ALTERNATIVE B

(e) Whenever currency is found inside a bill changer but outside the slot cash storage box ("unsecured currency"), the unsecured currency shall be placed into a lockable container by a slot supervisor or casino accounting supervisor who shall then complete a two part form which includes the asset number of the bill changer from which the unsecured currency was removed, the date the unsecured currency was found and the total dollar amount of the unsecured currency. The slot supervisor or casino accounting supervisor and a member of the casino security department shall then sign the original and duplicate form as evidence of the total dollar amount being transported, lock the original form and the unsecured currency in the container and transport the container directly to the cashiers' cage. The security department member shall maintain and control the duplicate and forward the duplicate to the accounting department for agreement with the original.

(f) Upon receipt of the locked container from the slot shift supervisor or casino accounting supervisor, a cage supervisor shall immediately prepare an Unsecured Bill Changer Currency Report.

(g) Unsecured Bill Changer Currency Reports shall be serially prenumbered forms. Each series of Unsecured Bill Changer Currency Reports shall be used in sequential order and shall be accounted for by employees independent of the cashiers' cage and slot department. All original and duplicate void Unsecured Bill Changer Currency Reports shall be marked "VOID" and shall require the signature of the preparer. All copies of void Unsecured Bill Changer Currency Reports shall be forwarded to the accounting department at the end of the gaming day.

(h) For establishments in which Unsecured Bill Changer Currency Reports are manually prepared, the following procedures and requirements shall be observed:

1. Each series of Unsecured Bill Changer Currency Reports shall be a three-part form, at a minimum, and shall be inserted into a locked dispenser that will permit an individual slip in the series and its copies to be written upon simultaneously while still locked in the dispenser, and that will discharge the original and duplicate while the triplicate remains in a continuous, unbroken form in the dispenser; and

2. Access to the triplicates shall be maintained and controlled at all times by employees responsible for controlling and accounting for the unused supply of Unsecured Bill Changer Currency Reports, placing Unsecured Bill Changer Currency Reports in the dispensers, and removing from the dispensers the triplicates remaining therein.

(i) For establishments in which Unsecured Bill Changer Currency Reports are computer prepared, each series of Unsecured Bill Changer Currency Reports shall be a two-part form, at a minimum, and shall be generated by a computer system that will: simultaneously print an original and duplicate and store, in machine-readable form, all information printed on the original and duplicate; and discharge the original and duplicate. The stored data shall not be susceptible to change or removal by any personnel after preparation of the Unsecured Bill Changer Currency Report.

(j) On the original, duplicate and triplicate or, if applicable, in stored data, the cage supervisor shall record, at a minimum, the following information:

1. The date and time of preparation;
2. The asset number of the bill changer from which the unsecured currency was removed;
3. The denomination(s) of unsecured currency;
4. The total dollar amount of the unsecured currency; and
5. The signature or, if computer prepared, identification code of the preparer.

(k) The original and duplicate copies of the Unsecured Bill Changer Currency Report shall be presented to the slot shift supervisor or casino accounting supervisor and the casino security representative for signature. Upon meeting the signature requirements, the cage supervisor shall transport the unsecured currency along with the original and duplicate copies of the Unsecured Bill Changer Currency Report to the main bank. The main bank cashier shall sign the original and duplicate copies of the Unsecured Bill Changer Currency Report and retain the original and the unsecured currency. The total dollar value of the unsecured currency shall be added to the main bank's accountability. The duplicate shall be returned to the cage supervisor who shall attach the original form referenced in (e) above to the duplicate and expeditiously deposit the duplicate with the attached form into the locked accounting box located in the cashiers' cage.

(l) At the end of the gaming day, at a minimum, the original and duplicate copy of the Unsecured Bill Changer Currency Report shall be forwarded as follows:

1. The main bank cashier shall forward the original directly to the accounting department for agreement with the triplicate or stored data; and

2. The duplicate with the form attached pursuant to (k) above shall be forwarded directly to the accounting department for recording on the Slot Cash Storage Box Report and Slot Win Sheet, and agreement with the triplicate or stored data.

(m) The duplicate copy of the Unsecured Bill Changer Currency Report shall be attached to the Slot Cash Storage Box Report as supporting documentation. A notation shall be made on the duplicate Unsecured Bill Changer Currency Report indicating that the dollar amount of the unsecured currency has been added to the Slot Cash Storage Box Report and Slot Win Sheet.

(n) Notwithstanding the requirements of (e) through (m) above, a casino licensee may transport unsecured currency directly to the soft count room. If the unsecured currency is to be transported directly to the soft count room, the procedures required by (e) above shall be performed by a casino accounting supervisor and a member of the casino security department. The locked container shall be transported directly to and secured inside the count room. The unsecured currency shall be counted and recorded with the contents removed from the corresponding slot cash storage box. The original form prepared pursuant to (e) above shall be forwarded to the accounting department with the Slot Win Report.]*

(a)

CASINO CONTROL COMMISSION

Gaming Equipment
Rules of the Games
Blackjack Table; Card Reader Device; Physical Characteristics; Inspections
Cards; Number of Decks; Value of Cards
Permissible Additional Wagers
Adopted Amendments: N.J.A.C. 19:46-1.10; 19:47-2.2 and 2.17

Proposed: December 6, 1993 at 25 N.J.R. 5454(b).
Adopted: January 19, 1994 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: January 21, 1994 as R.1994 d.80, **without change.**

Authority: N.J.S.A. 5:12-69(c), 70(f) and 100(e).

Effective Date: February 22, 1994.
Expiration Date: April 15, 1998, N.J.A.C. 19:46;
April 15, 1996, N.J.A.C. 19:47.

Summary of Public Comment and Agency Response:
COMMENT: TropWorld Casino and Entertainment Resort and the Division of Gaming Enforcement support the adoption of the proposed amendments.
RESPONSE: Accepted.

Full text of the adoption follows:

19:46-1.10 Blackjack table; card reader device; physical characteristics; inspections

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

(f) If a casino licensee offers one of the additional wagers authorized by N.J.A.C. 19:47-2.17, the cloth covering the blackjack table shall be approved by the Commission and shall have designated areas for the placement of the additional wager. If a casino licensee offers the additional wager authorized by N.J.A.C. 19:47-2.17(a)1, the layout shall also have the payout odds for the additional wager imprinted thereon.

(g)-(h) (No change.)

19:47-2.2 Cards; number of decks; value of cards

(a) (No change.)

(b) The value of the cards contained in each deck shall be as follows:

1.-2. (No change.)

3. An ace shall have a value of:

i. (No change.)

ii. One, if the ace is one of the initial two cards dealt to a player in determination of the additional wager authorized by N.J.A.C. 19:47-2.17(a)1; provided, however, that the value of such ace for all other purposes under this subchapter shall be governed by (b)3i above.

(c) (No change.)

19:47-2.17 Permissible additional wagers

(a) A casino licensee may, in its discretion, offer to all players at a blackjack table the option to make one of the following additional wagers provided that the casino licensee complies with the notice requirements set forth in N.J.A.C. 19:47-8.3 prior to withdrawing the offer of this option:

1. A wager on whether the player's initial two cards shall have a point total either greater than or less than 13; or

2. A wager on whether the player's initial two cars shall be of the same suit.

(b) Prior to the first card being dealt for each round of play, each player shall make a wager against the dealer as required by N.J.A.C. 19:47-2.3(a) and (d) and, if given an option to make an additional wager, shall also indicate whether he or she wishes to wager, as applicable, that:

1. The point total of the player's initial two cards shall exceed 13, which wager shall win if the point total does exceed 13;

2. The point total of the player's initial two cards shall be less than 13, which wager shall win if the point total is less than 13; or

3. The player's initial two cards shall be the same suit which wager shall win if the initial two cards are of the same suit.

(c) An additional wager pursuant to (a)1 above shall be lost when the point total of the player's initial two cards equals 13.

(d) (No change.)

(e) All winning additional wagers shall be paid immediately after the second card is dealt to each player and prior to any additional cards being dealt to any player at the table. All winning additional wagers shall be paid at the following odds:

1. For wagers made pursuant to (a)1 above, one to one; or

2. For wagers made pursuant to (a)2 above, depending on the number of decks in use at the table and the cards received by the player, in accordance with one of the following options as selected by the casino licensee; provided, however, that notice of the payout option selected by the casino licensee or any change thereto shall be provided in accordance with the requirements of N.J.A.C. 19:47-8.3; and provided further, however, that the same payout option shall be used by a casino licensee at all blackjack tables which use the same number of decks of cards:

i. Single Deck Blackjack Tables:
Initial Two Cards

	Option 1	Option 2	Option 3	Option 4
King and queen	50 to 1	10 to 1	5 to 1	25 to 1
Any two cards	2.5 to 1	3 to 1	3 to 1	2.5 to 1

ii. Two Deck Blackjack Tables:
Initial Two Cards

	Option 1	Option 2	Option 3	Option 4
King and queen	10 to 1	5 to 1	25 to 1	20 to 1
Any two cards	3 to 1	3 to 1	2.5 to 1	2.5 to 1

iii. Four Deck Blackjack Tables:
Initial Two Cards

	Option 1	Option 2	Option 3	Option 4
King and queen	5 to 1	25 to 1	20 to 1	50 to 1
Any two cards	3 to 1	2.5 to 1	2.5 to 1	2 to 1

iv. Six Deck Blackjack Tables:
Initial Two Cards

	Option 1	Option 2	Option 3	Option 4
King and queen	5 to 1	25 to 1	20 to 1	15 to 1
Any two cards	3 to 1	2.5 to 1	2.5 to 1	2.5 to 1

v. Eight Deck Blackjack Tables:
Initial Two Cards

	Option 1	Option 2	Option 3
King and queen	5 to 1	25 to 1	50 to 1
Any two cards	3 to 1	2.5 to 1	2 to 1

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

ENVIRONMENTAL PROTECTION AND ENERGY
(a)

ENVIRONMENTAL CLAIMS ADMINISTRATION

Processing of Damage Claims Pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act

Adopted New Rules: N.J.A.C. 7:1I

Proposed: November 15, 1993 at 25 N.J.R. 5116(a).
Adopted: January 13, 1994, by Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.
Filed: January 26, 1994 as R.1994 d.83, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 13:1B-3, 13:1D-9 and 13:1E-100 et seq., particularly 13:1E-106 and 13:1E-114.
DEPE Docket Number: 55-93-10/330.
Effective Date: February 22, 1994.
Expiration Date: February 22, 1999.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection and Energy ("Department") is adopting new rules, and repealing existing rules, governing the processing of damage claims against the Sanitary Landfill Facility Contingency Fund ("Fund") under the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et seq. ("Act").

The proposed repeal and new rules were published in the New Jersey Register on November 15, 1993. The Department published notice of the proposal in the Blairstown Press Publication, Courier Post, Gloucester County Times, Journal Newspapers, Star Ledger, and the Trenton Times. The Department held a public hearing in Trenton, New Jersey on December 9, 1993, at which no one testified. The public comment period closed on December 15, 1993. The Department received written comments from the following:

Name—Affiliation

Terrie-Anne Duda, Esq. of Levin & Hluchan, P.C. as counsel to Voorhees Township.

Subchapter 1. General Provisions

COMMENT 1: The commenter stated that the term "improper closure" is unclear and does not appear in the Sanitary Landfill Facility Closure and Contingency Fund Act. The Environmental Claims Administration should clarify at what point in time a sanitary landfill facility was required to comply with the Department's regulatory closure requirements.

RESPONSE: The purpose of the Sanitary Landfill Facility Closure and Contingency Fund is to provide compensation to persons damaged as a proximate result of the improper operations or improper closure of a sanitary landfill facility. The Legislative statement at N.J.S.A. 13:1E-101 states that, "The Legislature finds and declares that the proper closure of sanitary landfills is essential to the public health, safety and welfare; that closure activities can require capital expenditures at a time when revenues collected by sanitary landfill facilities are minimal or nonexistent; and that it is necessary to guarantee that adequate funds are reserved to insure such closure.

The Legislature further finds and declares that the **improper** operation or closure of sanitary landfill facilities can result in the contamination of surface and groundwaters, including potable water supplies; that the migration of methane gas from sanitary landfill facilities poses a significant threat to life and property; that compensation for the damage resulting from **improper** operation or closure is, at best, inadequate; and that it is necessary to provide a mechanism for the prompt and adequate compensation for these damages." (Emphasis added)

In addition to the above, on February 19, 1993 in the Office of Administrative Law case of *Frank and Rose Rizzi v. DEPE*, the Administrative Law Judge ("ALJ") concluded that the Sanitary Landfill Facility Contingency Fund is not available to pay damages for dimunition of value of properties by virtue of their location adjacent to a properly operated landfill. The Commissioner of the Department upheld the ALJ decision on April 8, 1993.

In addition to the above, sanitary landfill facilities have always had a duty to comply with the applicable regulations which were in effect at the time of the landfill's operation, closure or post-closure. See New Jersey State Sanitary Code, Chapter VIII, effective July 1, 1958; New Jersey State Sanitary Code, Chapter VIII, Refuse Disposal, effective July 1, 1970; N.J.A.C. 7:26B-2.9.4, effective July 1, 1974; and N.J.A.C. 7:26B-1.1, effective July 2, 1984 and still in effect today.

COMMENT 2: The commenter stated that the definition of owner should be limited to owners who owned the land during the active landfilling process.

The commenter also stated that at the very least, the Department should draw a distinction between those owners of record of any interest in land whereon a sanitary landfill is or has been located who took title subsequent to January 1, 1982 and those who took title prior to January 1, 1982.

Commenter suggests that the definition of owner inappropriately places liability for damages upon owners who purchased property which had been formerly used as a landfill but prior to the effective date of the closure act.

RESPONSE: The Department disagrees with the commenter. The Department believes that it was the Legislature's intent to include as owner ("owner") of a sanitary landfill facility those who currently own land upon which a sanitary landfill is located, has been located, had been located or at anytime was located. The commenter's reading of the Act and the regulations would encourage speculation by allowing a party to purchase a sanitary landfill for $1.00 only to have the Fund finance all costs of closure in order to allow the purchaser to turn around and sell the property at a profit or to use it in a manner to generate a stream of income. The Department does not believe that the Legislature's purpose in enacting the Act was to encourage speculative real estate transactions.

Subchapter 2. Claims Generally

COMMENT 3: Commenter, referring to N.J.A.C. 7:1I-2.3(b), states that there is no statutory basis for the Department to place itself after compensation received from other sources. The statute provides that "any person" is entitled to compensation—it does not modify in anyway the persons who are not entitled to 100 percent of damages incurred. In addition, the Department should clarify what it will consider best efforts to obtain compensation from any other source. The Department should clarify that this section of the rules must be applied fairly and equitably on a case by case basis.

RESPONSE: The Fund is strictly liable for all eligible damages incurred proximately resulting from the improper operation or improper closure of a sanitary landfill facility. However, if a person asserting a claim against the Fund has the right to receive compensation from another source, or has already received compensation, that compensation would reduce or eliminate any damages that the claimant incurred. Accordingly, to the extent that costs listed in N.J.A.C. 13:1E-106(a) are or can be reimbursed from sources other than the Fund, they would not be "damages" compensable from the Fund.

In addition, pursuant to N.J.S.A. 13:1E-115 "... The remedies provided in this supplementary act are in addition to those provided by existing statutory or common law, but no person who receives compensation for damages pursuant to any other State or Federal law shall be permitted to receive compensation for the same damages or cleanup costs under this supplementary act." If a claimant received compensation from another source, the claimant is not entitled to receive compensation from the Fund for the same damages caused by the improper operation or improper closure of a sanitary landfill facility.

The Department did not define "best efforts" because it would not be helpful and because what constitutes "best efforts" will vary greatly. In most cases "best efforts" includes discussion, negotiations, filing of appropriate claim forms with agencies or insurance companies, and notification of responsible parties. It is also conceivable that "best efforts" in a particular claim would include litigation; for example, if the facts of the claim are undisputed, the extent of damages is certain, a person is almost certainly liable for those damages, and the likely cost of litigating the matter is far outweighed by the likely recovery, it would be reasonable to require "best efforts" to include litigation. This type of circumstance will arise only rarely, but the Department does not believe that "best efforts" should be defined to rule it out. The Department agrees that this section of the rules must be applied fairly and

equitably on a case-by-case basis, but does not believe that this section of the rules needs clarification.

COMMENT 4: The commenter, referring to N.J.A.C. 7:1I-2.6(a), states that the subsection prohibits any responsible party from recovering from the Fund. There is no authority in the Act for this regulation. Section 103 and 111 of the Act authorize the Environmental Claims Administration to recover costs from owners and/or operators for damages paid to claimants by the Fund. The statute, however, does not bar users of a landfill from making a claim.

RESPONSE: The Department disagrees with the commenter. A responsible party who contributed to the condition or occurrence upon which his or her claim is based caused his or her own damages and should not be entitled to be reimbursed from the Fund. The Department does not believe that the Legislature intended that responsible parties be compensated for the very damages which they were instrumental in creating. The Fund has limited resources and exists to compensate innocent victims who are damaged by the improper operation or improper closure of a sanitary landfill facility.

It is the Department's position that a person who causes his or her own injury is not an innocent victim of the damages which result from his or her own conduct.

COMMENT 5: Commenter refers to N.J.A.C. 7:1I-2.6(d)1 stating that the paragraph should distinguish between purchasers who acquired title after January 1, 1982 and prior to January 1, 1982. For instance, a party who purchased a piece of property prior to the effective date of the Act may never have known of the existence of the landfill since the disclosure provision of section 116 of the Act did not yet exist.

RESPONSE: The Department disagrees. Prior to the effective date of the Act, owners and operators of sanitary landfill facilities had similar disclosure requirements as those found at Section 116 of the Act. See N.J.A.C. 7:26-2.9.3, effective July 1, 1974. See also 6 N.J.R. 305(c).

Subchapter 6. Conditions of Payment

COMMENT 6: Commenter states that section 111 of the Act authorizes the Department only to acquire, by subrogation, all rights of the claimant to recovery of the damages from any owner or operator of a sanitary landfill facility. Thus, the Department cannot require a claimant to surrender its subrogation rights against any other responsible party. Commenter states that this language should be stricken from the regulation.

RESPONSE: The Department recognizes the merit of the commenter's comment. Accordingly, the provisions in N.J.A.C. 7:1I-6.2(a) have been changed.

General Comment

COMMENT 7: Commenter states that if a scenario develops which was not specifically contemplated by the regulations, the ECA's evaluation of the claim most likely will result in stilted application of the regulations and unjust results. Accordingly, a waiver provision is necessary so that worthy claims presenting unusual or unique scenarios will not be painted with a broad regulatory brush and unfairly denied.

RESPONSE: The Department believes that the rules already address the commenter's concern. Pursuant to N.J.A.C. 7:1I-2.8, the Department may relax any of the procedural requirements if the Department determines that strict adherence to such requirements would result in unfairness or injustice. If in fact a unique claim is received which is not contemplated by the regulations, the Department will determine if the claim is eligible pursuant to the Act. The Department processes each claim on a case by case basis. As stated previously in response to Comment 3, the Department agrees with the commenter that the rules must be applied equitably on a case by case basis.

Summary of Agency-Initiated Changes:

1. The specific reference to the Department needing to acquire subrogation rights of responsible parties was deleted at N.J.A.C. 7:1I-6.2(a).

2. The provision that the claimant needs to include in the agreement of sale of his or her property a covenant stating that the claimant has negotiated with the Department for specific enumerated damages and that these damages have been satisfied has been deleted at N.J.A.C. 7:1I-6.2(c), because as a practical matter, it is not possible for the claimant to comply with the requirement.

Summary of Hearing Officer Recommendations and Agency Response:

Susan B. Boyle, Administrator of the Environmental Claims Adminstration, served as the hearing officer at the public hearing held on December 9, 1993. Administrator Boyle recommended that the Department adopt the rules with the changes described in the responses to specific comments above and, in the above Summary of the agency-initiated changes. The hearing record may be reviewed by contacting Janis E. Hoagland, Esq., Department of Environmental Protection and Energy, Office of Legal Affairs, CN-402, Trenton, NJ 08625.

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 1I
PROCESSING OF DAMAGE CLAIMS PURSUANT TO THE SANITARY LANDFILL FACILITY CLOSURE AND CONTINGENCY FUND ACT

SUBCHAPTER 1. GENERAL PROVISIONS

7:1I-1.1 Purpose and scope

(a) This chapter constitutes the rules of the Department concerning the processing of all claims under the Sanitary Landfill Facility Closure and Contingency Fund Act N.J.S.A. 13:1E-100 et seq. (the "Act"), for damages proximately resulting from the improper operation or improper closure of a sanitary landfill facility, pursuant to the Act, including Department procedures for review and decision making regarding such claims.

(b) This chapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et seq.;

2. To establish rules for administration of the Sanitary Landfill Facility Contingency Fund, established pursuant to the Act, for the purpose of providing prompt and adequate compensation for damages as defined herein; and

3. To protect and insure that the taxes credited to the Fund are spent in a proper manner and for the intended purposes.

7:1I-1.2 Construction and applicability

(a) This chapter shall be liberally construed to allow the Department to fulfill the purposes of the Act concerning claims for compensation for damages proximately resulting from the improper operation or improper closure of a sanitary landfill facility. This chapter shall be construed in conformity with, and not in derogation of, the Act.

(b) This chapter shall apply to the processing of all claims which have not been paid, settled, denied or the subject of a final decision by the Commissioner of the Department on or before *[the operative date of this chapter]* ***February 22, 1994***, notwithstanding the date upon which any such claim was filed with the Department.

7:1I-1.3 Severability

If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this chapter or the application thereof.

7:1I-1.4 Delegation

The Department may delegate administrative, supervisory, or investigatory authority to members of the Department's staff. The Department may enter into contracts on behalf of the Fund or the Department for the performance of services ancillary to the powers and duties of the Department under the Act, including, but not limited to, the performance of claims adjustment services.

7:1I-1.5 Definitions

The following words and terms, when used in this chapter, shall have the following meanings. Where words and terms are used which are not defined herein, the definitions of those words and terms will be the same as the definitions found at N.J.A.C. 7:26-1.4.

"Act" means the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et seq.

"Claim" means the claim for damages filed with the Department for recovery from the Fund. The claim includes all documents submitted under this chapter in support of the claim, including without limitation any amendments thereto under N.J.A.C. 7:1I-3.4.

"Claimant" means the person filing a claim.

"Closure" means all activities and costs associated with the design, purchase, construction or maintenance of all measures required by the Department, pursuant to law, in order to prevent, minimize or monitor pollution or health hazards resulting from sanitary landfill facilities subsequent to the termination of operations at any portion thereof, including, but not necessarily limited to, the costs of the placement of earthen or vegetative cover, the installation of methane gas vents or monitors and leachate monitoring wells or collection systems at the site of any sanitary landfill facility, and the cost of general liability insurance, including environmental impairment liability insurance, or an amount sufficient to create a self-insurance fund as may be determined by the Board of Regulatory Commissioners pursuant to section 10 of P.L. 1981, c.306 (N.J.S.A. 13:1E-109), to fund potential claims against the owner or operator of the sanitary landfill facility during the closure and post-closure period.

"Commissioner" means the Commissioner of Environmental Protection and Energy in the State Department of Environmental Protection and Energy.

"Damages" means and includes, but is not limited to, the following:

1. The cost of restoring, repairing or replacing any real or personal property damaged or destroyed;

2. The diminution in fair market value of any real property where such diminution can be shown by a preponderance of the evidence to have solely resulted from the improper operation or improper closure of a sanitary landfill facility. Any property valuation calculations made for the purpose of this chapter shall expressly take into consideration any and all other factors which directly or indirectly affect the fair market value of the property;

3. The cost of any personal injuries, including any medical expenses incurred and income lost as a result thereof; and

4. The costs of the design, construction, installation, operation and maintenance of any device or action deemed necessary by the Department to clean up, remedy, mitigate, monitor or analyze any threat to the environment and public health, safety or welfare of the citizens of this State, including the installation and maintenance of methane gas monitors and vents and leachate monitoring wells and collection systems, and the sampling and analysis of any public or private potable water supply.

5. Damages do not include legal fees incurred in filing claims or for participation in an administrative hearing or any legal action against the Fund and costs normally associated with the listing, sale and transfer of property which is the subject of a claim. Additionally, damages do not include interest on any monetary award assessed against the Fund.

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

"Discovery" means the time at which the claimant discovers, or by the exercise of reasonable diligence and intelligence should have discovered, that he or she has incurred damages.

"Disposal" or "disposed" means the use of the term which is expressly discussed and defined at N.J.S.A. 13:1E-3.

"Fund" means the Sanitary Landfill Facility Contingency Fund established pursuant to the Act.

"Government entity" means a governing body, department, agency, authority or any other unit of any Federal, State, county or local government or governments, including without limitation a municipal utilities authority.

"Improper operation" or "improper closure" of a sanitary landfill facility means the operation or closure of a sanitary landfill facility that results in a substantial deviation from applicable operation and closure requirements. A de minimis deviation from such applicable operation and closure requirements shall not constitute grounds for a determination that a sanitary landfill facility is being improperly operated or has at any time been improperly closed. A finding of improper operation or improper closure shall only be made upon the basis of a preponderance of the evidence being introduced by the claimant.

"Notice of Intent," or "NOI," means a notice issued by the Department to a claimant pursuant to N.J.A.C. 7:1I-5.4, informing the claimant that the Department intends to pay or deny his or her claim.

"Owner or operator" means and includes, in addition to the usual meanings thereof, every owner of record of any interest in land whereon a sanitary landfill facility is located, has been located, had been located or at any time was located, and any person or corporation which owns a majority interest in any other corporation which is the owner or operator of any sanitary landfill facility and every person who operates or operated a sanitary landfill facility at any point in time and every agent or representative of such operator.

"Person" means any individual or entity, including without limitation, a public or private corporation, company, association, society, firm, partnership, joint stock company, foreign individual or entity and its agents, interstate agency or authority, the United States or any of its political subdivisions or agents, the State of New Jersey and its agents or any of the political subdivisions of or found within the State of New Jersey and their agents, or any of the other meanings which apply to the common understanding of the term.

"Physical intrusion" means the existence of methane gas, leachate or other material emanating from the sanitary landfill facility on or under a claimant's real property.

"Potable water" means drinking water, water for other personal uses, and water for purposes requiring a supply of water which the Department determines is suitable for human consumption pursuant to the Safe Drinking Water regulations set forth at N.J.A.C. 7:10. "Potable water" does not include water for use in fire fighting or for agricultural purposes.

"Responsible party" means any person who directly or indirectly contributed at any point in time to the occurrence, event, action or damages upon which any person's claim or other claims are based.

"Sanitary landfill facility" means a governmentally approved solid waste facility at which solid waste is deposited on or in the land as fill for the purpose of permanent disposal or storage for a period exceeding six months, except that it shall not include any waste facility approved for disposal of hazardous waste.

"Solid waste" means the use of the term which is expressly discussed and defined at N.J.S.A. 13:1E-3(a).

7:1I-1.6 Liabilities for damages

(a) Every owner or operator of a sanitary landfill facility shall be jointly and severally liable for the proper operation and closure of the sanitary landfill facility, as required by law, and for any damages, no matter by whom sustained, proximately resulting from the operation or closure of the sanitary landfill facility.

(b) The Fund shall be strictly liable for all direct and indirect damages proximately resulting from the improper operation or improper closure of any sanitary landfill facility. The Fund shall not be liable for any damages resulting from the proper operation or proper closure of any sanitary landfill facility.

7:1I-1.7 Signatures; certifications

(a) All claims, and all affidavits required under this chapter, shall be signed by the claimant and notarized, as follows:

1. If the claimant or affiant is a corporation, the claim or affidavit shall be signed by a person authorized by a resolution of the claimant's board of directors to sign the document in question. The claimant or affiant shall submit with the document a copy of the resolution of the claimant's board of directors authorizing the person to sign the document. The copy of the resolution shall be certified as a true copy by the secretary of the corporation.

2. If the claimant or affiant is a partnership, the claim or affidavit shall be signed by a general partner of the partnership.

3. If the claimant or affiant is a sole proprietorship, the claim or affidavit shall be signed by the proprietor of the proprietorship.

4. If the claimant or affiant is a municipality, local unit, State, Federal or other public agency, the claim or affidavit shall be signed by a principal executive officer of such entity, the ranking elected official of such entity, or the designee of such principal executive officer or ranking elected official. If the claim or affidavit is signed

by a designee, the claimant shall submit with the claim or affidavit a copy of the document authorizing the designee to sign the claim or affidavit.

5. If the claimant or affiant is a natural person, the claim or affidavit shall be signed by the claimant or affiant, provided however, that if the claimant or affiant is a minor, is incompetent as defined under New Jersey law, or is deceased, the claim or affidavit shall be signed by the claimant's parent, guardian, executor, or court appointed representative, as applicable.

(b) All claims, and all affidavits required by this section shall contain the following certification, signed by the person required to sign the claim or affidavit:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that to the best of my knowledge, after diligent investigation including inquiry of those individuals immediately responsible for obtaining the information, the information contained in this claim is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including fines and/or imprisonment, for submitting false information."

7:1I-1.8 Notices and other communications

(a) All claims, notices, requests, and other communications required or permitted under this chapter shall be given in writing and sent by certified mail, return receipt requested or by other means which provides a receipt showing the date of mailing and the date of delivery. All such communications sent to the Department by certified mail shall be sent to the following address:

Department of Environmental Protection and Energy
Environmental Claims Administration
CN 028
Trenton, New Jersey 08625-0028

(b) All such communications sent to the Department by means for which a street address is required by the carrier shall be sent to the following address:

Department of Environmental Protection and Energy
Environmental Claims Administration
506 East State Street
Trenton, New Jersey 08609

(c) All such communications to the claimant shall be sent to the mailing address set forth in the claim under N.J.A.C. 7:1I-3.3(a)3 unless the claimant directs otherwise under N.J.A.C. 7:1I-3.6.

7:1I-1.9 Computation of time

(a) In computing any period of time fixed by or under this chapter, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor legal holiday.

(b) In computing any period of time fixed by or under any provision of this chapter, "days" shall mean calendar days, unless the provision specifies working days.

SUBCHAPTER 2. CLAIMS GENERALLY

7:1I-2.1 Persons who may submit a claim

Any person claiming to have incurred damages proximately resulting from the improper operation or improper closure of a sanitary landfill facility may submit to the Department a claim for such damages. No subrogee or assignee of a person who has incurred damages may submit a claim. No claim by a subrogee or assignee of a person who has incurred damages shall be eligible for compensation from the Fund.

7:1I-2.2 Burden of proof

(a) No claim shall be eligible for compensation from the Fund unless the claimant shows by a preponderance of the evidence that the claim satisfies all requirements for eligibility under the Act and this chapter, and that the amount of the claim correctly reflects and is reasonable in relation to the damages which the claimant has sustained. No claimant shall be entitled to payment from the Fund unless the claimant shows by a preponderance of the evidence that the damages sustained are a proximate result of the improper operation or improper closure of a sanitary landfill facility.

(b) A claimant shall affirmatively rebut any and all reasons for denial as stated in a Notice of Intent (NOI) to deny pursuant to N.J.A.C. 7:1I-5.4 or a Denial pursuant to N.J.A.C. 7:1I-5.5.

7:1I-2.3 Damages actually incurred; mitigation

(a) A claim shall be ineligible for compensation from the Fund unless the claimant has actually incurred the damages which are the subject of the claim. A claim shall be ineligible for compensation from the Fund to the extent that the damages which are the subject of the claim are contingent or speculative.

(b) A claim shall be ineligible for compensation from the Fund to the extent that the claimant has received compensation from any other source for damages which are the subject of the claim. The claimant shall exercise best efforts to obtain compensation from any other source from which compensation is reasonably likely to be available. The Department may suspend processing of any claim pending the completion of the claimant's efforts to obtain compensation from such other sources. In determining the amount of an award, the Department shall reduce the award by the amount of any prior compensation for the claimed damages received by the claimant, including without limitation, compensation received from insurance policies, court awards, contractual rights, and any other remedies provided under statutory or common law.

(c) Claimants must fully disclose an award or settlement received or sought from any other source within 10 days of receiving compensation or within 10 days of seeking compensation from any other source. Failure to disclose such action shall result in denial of the claim.

(d) A claim involving the purchase and subsequent sale of property near a sanitary landfill facility shall be ineligible for compensation if the claimant knew or reasonably should have known of the potential that damages could result by virtue of purchasing property near the particular sanitary landfill facility in question.

(e) The claimant shall exercise reasonable diligence and ordinary care and take affirmative measures to mitigate or prevent the damages incurred by the claimant from occurring in the first instance or from increasing or being aggravated.

(f) Any costs incurred by the claimant prior to filing of a claim or during the pendency of a claim shall not prejudice the rights of the Department to evaluate the reasonableness of said costs prior to the granting of an award.

7:1I-2.4 Overlapping claims

(a) A claim shall be ineligible for compensation from the Fund to the extent that the Fund has already paid or settled another claim for the same damages.

(b) If two or more claims include an assertion of the same damages, the Department shall apportion payment for such damages among the claimants or exclude certain of the claims from payment. The Department shall base the apportionment or exclusion upon the Department's determination of which claimants have actually incurred the damages in question.

7:1I-2.5 Waiver of damages not set forth in claim

The claimant shall be deemed to have waived any damages which are not set forth in the claim or in any response to the Department's request for information under N.J.A.C. 7:1I-3.3, or in any amendment to such claim or response under N.J.A.C. 7:1I-3.4.

7:1I-2.6 Claims by responsible parties or by owners or operators of a sanitary landfill facility

(a) No responsible party for a particular sanitary landfill facility shall receive compensation from the Fund for damages proximately resulting from the very sanitary landfill facility for which they are a responsible party.

(b) No owner or operator for a particular sanitary landfill facility shall receive compensation from the Fund for damages proximately resulting from the very sanitary landfill facility for which they are an owner or operator.

(c) No person who at any time deposited, disposed or otherwise discarded solid waste on or into any land at a particular sanitary

landfill facility shall receive compensation from the Fund for damages proximately resulting from the very sanitary landfill facility at which they, at any time, deposited, disposed or otherwise discarded solid waste. This express prohibition shall particularly apply to any person who at any time hauled or carted solid waste to the sanitary landfill facility in question.

(d) Notwithstanding (b) above, an owner or operator may be eligible for damages if such owner or operator can establish to the satisfaction of the Department that the claim satisfies either of the following requirements:

1. Despite exercising reasonable diligence and intelligence before purchasing or otherwise acquiring or obtaining title to the land, the claimant did not discover until after purchasing or otherwise acquiring or obtaining title to the land, that a sanitary landfill facility is located, has been located, had been located or at any time was located on the subject property, and before purchasing or otherwise acquiring or obtaining title to the land, the claimant conducted a diligent and thorough inquiry into previous ownership and uses of the property. In order for a person to satisfy the requirement to engage in a diligent and thorough inquiry into previous ownership and uses of the property, a person must perform a preliminary assessment and site investigation in accordance with N.J.S.A. 58:10-23.11g(d)(2)(d) and N.J.A.C. 7:26E-3; or

2. The claimant is a government entity and acquired the property by escheat or other involuntary transfer or by operation of law, and not by an affirmative act such as exercise of the power of eminent domain. If the government entity acquired or obtained title to the property by an affirmative or voluntary act, the standard set forth in (d)1 above shall govern eligibilty of the government entity's claim.

7:1I-2.7 Administrative closure of claims

(a) The Department may, in its discretion, administratively close any claim for which the claimant has:

1. Failed to take actions required by this chapter within 60 days after the claimant was required to take such action; or

2. Failed to respond to a request for information by the Department within the time period set forth in the request.

(b) Administrative closure of a claim is without prejudice. The claimant may reactivate the claim by rectifying the failure under (a)1 or 2 above and making a written request to the Department for reactivation.

(c) Before closing a claim under (a) above, the Department shall send the claimant written notice of the Department's intent to administratively close the claim. The Department shall state in the written notice the reason for the administrative closure, and the procedure to avoid administrative closure under (d) below.

(d) The Department shall administratively close the claim unless:

1. Within 30 days after the claimant's receipt of the notice described in (c) above, the claimant has submitted to the Department an affidavit explaining why the claim should not be administratively closed (which affidavit may include an explanation of why the time allotted to take such action or provide information was insufficient); and

2. The Department determines that the affidavit provides an adequate explanation of why the claim should not be administratively closed.

7:1I-2.8 Relaxation of procedural requirements

(a) Except as provided by (b) below, the Department may relax any of the procedural requirements of this chapter if the Department determines that strict adherence to such requirements would result in unfairness or injustice.

(b) Notwithstanding (a) above, the Department shall not relax procedural requirements of this chapter if such requirements are imposed by the Act, by other applicable State or Federal statutes, or by applicable decision, order or decree of a court of competent jurisdiction.

7:1I-2.9 Imminent hazard

Priority review of claims may occur in cases where the claimant has demonstrated to the Department's satisfaction that extreme hardship or extreme existing or imminent hazard will proximately result from the improper operation or improper closure of the sanitary landfill facility.

SUBCHAPTER 3. CLAIMS PROCEDURE

7:1I-3.1 Time for filing of claims

Claimants shall submit any claims to the Department not later than one year after the date of discovery of damages. With regard to property value diminution claims, damages, if any, are incurred when the property is sold. Claims for property value diminution, therefore, must be filed within one year of sale of the property. If a claimant fails to submit any claim to the Department within such one-year period, the claimant shall be deemed to have waived such claim. Such waiver is with prejudice and shall bar all recourse by the claimant against the Fund for any damages arising out of or related to the improper operation or improper closure of the sanitary landfill facility.

7:1I-3.2 Submission of claim

(a) For the purposes of determining whether a claim has been timely filed pursuant to N.J.A.C. 7:1I-3.1, the following shall apply:

1. If the claimant submits the claim by United States mail, the claim will be deemed filed as of the date of mailing by the claimant. Claims submitted by mail must be sent in accordance with N.J.A.C. 7:1I-1.8; or

2. If the claimant submits the claim via another means of delivery, the claim will be deemed filed as of the date of receipt by the Department.

7:1I-3.3 Contents of claim

(a) Claims shall be typewritten or written legibly in ink, and shall contain the following information:

1. The name of the claimant;

2. The street address of the claimant;

3. The mailing address of the claimant;

4. The telephone number of the claimant during normal daytime business hours;

5. The name, mailing address, telephone number, and relationship to the claimant of any person designated to receive communications from the Department pursuant to N.J.A.C. 7:1I-3.6;

6. Whether the claimant is an individual, general partnership, limited partnership, corporation, local government entity, Federal government entity, or state government entity;

7. A statement that the claimant has actually incurred damages, as such term is defined in N.J.A.C. 7:1I-1.5, that the claimant has not received compensation from any other source for such damages, and that the claimant is not an owner or operator or responsible party in relation to the claim. Such statement need not be specific about the amount or nature of such damages;

8. If the claim is for property value diminution, a statement that the claimant is attempting to sell the subject property. The Department shall deny, without prejudice, a claim for property value diminution which is filed after the effective date of these rules which does not contain this statement. The claimant may again file the claim upon commencing efforts to sell the subject property;

9. In accordance with N.J.A.C. 7:1I-2.3(d), a statement that the claimant did not know of the existence of the sanitary landfill facility and did not know, nor reasonably could have known, of the potential that property value diminution could result by virtue of purchasing property near the particular sanitary landfill facility in question; and

10. If the claim is for property value diminution and is made pursuant to N.J.A.C. 7:1I-4.8, all documents required by N.J.A.C. 7:1I-4.8 are to be submitted with the claim, including a statement that the claimant has contracted to sell or has sold the subject property and that the claimant will allow the Department or its agents access to the property if claimant still maintains title to the property. If the property has not been sold, claimant must submit within 10 days of the signing of a binding agreement of sale a copy of the contract of sale to allow adequate time for the Department to schedule an appraisal.

(b) The claimant shall submit to the Department the following types of information requested by the Department:

1. The location of the sanitary landfill facility which the claimant believes to be the proximate cause of the damages incurred, including the name of the site, the street address, the municipality, and the county, including without limitation the following:

i. Whether any person, or owner or operator of the sanitary landfill facility has admitted responsibility for the damages claimed or for the condition from which the claim arose, or liability for the amount of damages for which the claim is being made;

ii. If any such person has admitted responsibility or liability pursuant to (b)1i above, the names of such persons and the nature of such statements or admissions; and

iii. Whether the claimant filed a claim against the sanitary landfill facility's Environmental Impairment Liability Fund established pursuant to N.J.S.A. 13:1E-109;

2. A description of any damage to real property located thereon, including without limitation the following:

i. The date on which the damage occurred;

ii. The precise location of the damaged real property, including the street address, the tax lot and block, the municipality, and the county;

iii. A description of the predominant use of the damaged real property;

iv. A detailed description of the damage to the real property;

v. An estimate for the cost to remedy the damage, and the name, address and qualifications of the person making the estimate; and

vi. A description of the claimant's interest in the damaged real property, and documents evidencing such interest. Documents evidencing fee title to the damaged real property shall include an affidavit of title executed by the claimant, together with either a copy of the recorded deed conveying title to the claimant, or an owner's title insurance policy insuring the claimant's interest in the property. Documents evidencing a leasehold interest in the property shall include a copy of the lease for the property, together with an affidavit of the claimant stating that the lease is in full force and effect;

3. A description of any damage to personal property located thereon, including without limitation:

i. The date or dates on which the damage occurred;

ii. The location of the personal property at the time the damaged occurred;

iii. A description of the personal property which was damaged;

iv. A description of the damage;

v. The original cost paid by the claimant for the damaged personal property;

vi. The date the claimant acquired the damaged personal property;

vii. Evidence of the claimant's ownership of the damaged personal property;

viii. An estimate of the cost of repairing the damage to the personal property, and an estimate of the value of the damaged personal property as of the time of the damage;

ix. The name, address and qualifications of any persons who prepared the estimates required by (b)2viii above; and

x. The location at which the Department's designee can inspect the damaged personal property;

4. A detailed description of the facts known to the claimant which support the claim, such as the facts which lead the claimant to believe that the improper operation or improper closure of the sanitary landfill facility cause the damages suffered by the claimant;

5. The names and addresses of any witnesses known to the claimant who may have knowledge concerning the improper operation or improper closure, threatened damage, or damage caused by the sanitary landfill facility;

6. The names of any public agencies (including without limitation any local or state police or any other local, county, state, interstate or Federal agencies) who have investigated the improper operation or improper closure activities and, if known to the claimant, the names of the persons who conducted the investigations on behalf of such agencies;

7. If any of the damaged real or personal property or any of the asserted lost income may be covered by any insurance policy or policies, or other financial agreement or instrument under which compensation is reasonably likely to be available, claimant shall exercise best efforts to obtain compensation from such sources for the damages sustained in accordance with N.J.A.C. 7:1I-2.3(b), and shall provide as proof of such action the following information:

i. The name and address of the insurance carrier which issued the policy, or issuer of the other financial agreement or instrument;

ii. The policy number or other applicable reference number;

iii. A copy of the certificate of insurance or other financial agreement or instrument; and

iv. Copies of any correspondence between the insurance carrier or issuer of the other financial agreement or instrument and the claimant or claimant's representatives concerning the damages claimed;

8. The names and addresses of any persons other than the Fund (including without limitation insurance companies) against whom the claimant has asserted a claim;

9. Whether the claimant has received or agreed to receive any compensation from any person in connection with the damages claimed, and the details of any such compensation or agreement to receive compensation;

10. A description of any action taken to repair, restore or replace damaged real or personal property, including without limitation the following:

i. The name and address of the person who has taken such action; and

ii. The cost of such action;

11. If the claimant asserts any personal injury damages including medical expenses incurred and income lost as a result thereof, the claim shall include the following information:

i. The total amount of the claimed loss of income;

ii. The period of time during which the claimant asserts that the loss of income has occurred;

iii. If the claimant asserts that the loss of income has occurred over a period exceeding 12 months, a breakdown of the loss of income by three-month periods, with the first such period commencing on the date of discovery;

iv. A detailed description of the method employed by the claimant in calculating the claimed loss of income;

v. A statement of whether all income, sales and other accounting and financial information supporting the claim is available for inspection, copying and audit by the Department;

vi. If any of the information described in (b)11v above is not available for inspection, copying and audit, an explanation of why such information is unavailable for such purposes;

vii. With respect to any of the information described in (b)11v above, which is available for inspection, copying and audit, a description of where and when the Department can obtain access to such information;

viii. If any of the information described in (b)11i through vii above has been audited, certified or reviewed by a certified public accountant, the name, address, and telephone number of such accountant, and the date of such audit, certification or review. If such information has been audited, the claimant shall attach copies of all audited statements and the auditor's reports;

ix. A specific statement as to the nature of the health injuries and how the health injuries are related to the improper operation or improper closure of the sanitary landfill facility in question; and

x. Detailed records substantiating the personal injuries; effects or damages suffered by the claimant including any medical records, prognosis statements, and documentation indicating the monetary value of medical attention;

12. If the claimant is a limited partnership, the names and addresses of all general partners;

13. If the claimant is a general partnership, the names and addresses of all partners;

14. If the claimant is a corporation, the names and addresses of all directors and of all officers;

15. Any other information which the claimant believes to be relevant to the claim; and

16. Any other information which the Department deems necessary to process the claim.

(c) Any documents supporting the claimant's assertion of costs incurred in ameliorating the damage resulting from the improper operation or improper closure of a sanitary landfill facility shall be presented as follows:

1. The claimant shall submit a compilation of all such costs, stating the aggregate amount of the costs incurred; and

2. The claimant shall submit a breakdown of the aggregate costs incurred, stating which portion of the aggregate cost is attributable to ameliorating damage resulting from the improper operation or improper closure of the sanitary landfill facility, and which portion is not.

(d) The claimant shall submit all bills, invoices, receipts and other documentation in an orderly fashion, accompanied by an index and/or a summary if the Department determines that an index or summary would assist in the organized and expeditious processing of the claim.

(e) The Department may administratively close the claim pursuant to N.J.A.C. 7:1I-2.7 for failure to provide information under this section.

7:1I-3.4 Amendment of claim

(a) A claimant may amend a claim, or a response to the Department's request for information, with respect to the nature or extent of the damages, the cause of the damages, the amount of the claim, or any other information relevant to the claim, until the occurrence of the earliest of the following:

1. The approval of the claim by the Department;

2. The denial of the claim by the Department; or

3. The agreement to a settlement among a claimant and one or more owners or operators or other persons in connection with the sanitary landfill facility which is the subject of the claim.

7:1I-3.5 Consent to inspection; investigation

(a) Submission of a claim shall constitute consent by the claimant to allow the Department, and other persons designated by the Department:

1. To inspect all documents and property relating to his or her claim for damages including, but not limited to:

i. Financial, medical, employment and property records;

ii. Insurance policies; and

iii. Damaged real and personal property;

2. For all information submitted pursuant to N.J.A.C. 7:1I-3.3, to copy and audit the information; and

3. To enter onto any property to which the claimant has the right to grant access, or to which the claimant has the right to compel another person to grant access. Any cost which the claimant incurs in compelling such access shall be borne solely by the claimant and shall not constitute a compensable damage payable by the Fund.

(b) In investigating claims for personal injuries, the Department may direct a medical examination of the claimant by an independent physician selected by the Department. The claimant shall present himself or herself to the physician selected at the time and place designated by the physician.

1. A written report of such examination shall be filed by the examining physician with the Department and a copy mailed by the Department to the claimant; and

2. If the Department has directed a medical examination by a physician selected by the Department, such physician's fee shall be paid by the Department from the Fund.

7:1I-3.6 Communication with claimant or representative

The Department will direct all communications in connection with the claim to the person who signed the claim, unless the claimant submits to the Department a written statement, signed by the person required to sign the claim, designating a representative to receive communications from the Department.

7:1I-3.7 Notice to owner or operator

When, in the opinion of the Department, the claim is complete for payment pursuant to N.J.A.C. 7:1I-2.2 and 3.3, the Department shall notify the owner or operator of the sanitary landfill facility by mailing a notice of the claim by certified mail, return receipt requested, to such owner or operator. In the case of multiple, related claims (series claims), the Department will notify the owner or operator of the sanitary landfill facility of the first claim of the series only. This notification will include an estimate of the approximate number of claims expected in that series if known, and will give notice that copies of all further claims must be requested in writing.

SUBCHAPTER 4. PROPERTY VALUE DIMINUTION CLAIMS

7:1I-4.1 Extent of eligibility

Claims for diminution of property value shall be eligible for compensation from the Fund only to the extent that the subject property has been sold and such diminution proximately results from the improper operation or improper closure of a sanitary landfill facility. A diminution of property value may be deemed attributable to the improper operation or improper closure of a sanitary landfill facility notwithstanding the lack of any physical intrusion resulting from the sanitary landfill facility onto the subject property.

7:1I-4.2 Requirements for eligibility

(a) Except for claims settled under N.J.A.C. 7:1I-4.6 or 4.7, claims for diminution of property value are not eligible for compensation by the Fund unless the claimant has sold the subject property and the Department determines that the claimant's sale of the subject property was in good faith, based upon the appraisals made pursuant to N.J.A.C. 7:1I-4.3 and the information submitted pursuant to N.J.A.C. 7:1I-4.5.

(b) Within 30 days after filing the claim, the claimant shall list the subject property for sale with one or more licensed real estate brokers who are members of a multiple listing service (or its commercial equivalent, for nonresidential property). The claimant shall so list the subject property for sale continuously, until entering into an agreement for the sale of the subject property; provided however, that discontinuances made necessary by the claimant's good faith choice to list the subject property with another broker shall not be deemed to violate this requirement. One discontinuity of less than 14 days shall be presumed to be in good faith.

7:1I-4.3 Appraisal of subject property

(a) After the claimant has elected under N.J.A.C. 7:1I-4.9(a)1 to pursue the claim, or in the case of a new claim filed after *[the operative date of this chapter]* ***February 22, 1994***, the Department shall obtain appraisals of the value of the subject property. The claimant shall notify the Department of the sale, in writing, within 10 days of signing a binding agreement of sale in order to allow the Department sufficient time to have an appraisal completed before settlement. The appraisals shall be as of the time of the sale of the subject property (or, for claims under N.J.A.C. 7:1I-4.6 or 4.7, as of the date the Department issues an NOI to pay). One such appraisal shall state the value of the subject property as affected by the sanitary landfill facility (unless the Department elects not to obtain such appraisal, pursuant to N.J.A.C. 7:1I-4.3(b)), and one appraisal shall state the value of the subject property absent the effect of the sanitary landfill facility. The appraisals may, in the Department's discretion, be based upon one or more of the following factors:

1. Sales of comparable properties in the immediate area;

2. Income generated by the subject property;

3. Replacement cost of the subject property; and/or

4. Such other factors as are ordinarily considered by real estate appraisers who are members of the Appraisal Institute or who are licensed or certified to perform real estate appraisals in New Jersey.

(b) The Department may elect not to obtain an appraisal of the subject property as affected by the sanitary landfill facility if the Department determines in its discretion that there is insufficient information to obtain a meaningful appraisal of the subject property reflecting the effect of the sanitary landfill facility. Without limiting the discretion of the Department under this subsection, the Department may determine that there is insufficient information if fewer than three comparable properties which have been affected by the sanitary landfill facility have been sold as of the date on which the claim is filed.

7:1I-4.4 Valuation of a claim

(a) If the Department has obtained appraisals pursuant to N.J.A.C. 7:1I-4.3(a), the amount of the claim eligible for compensation from the Fund shall be equal to the difference between (a)1 and (a)2 below, adjusted in accordance with (c) below:

1. The appraised value of the subject property determined pursuant to N.J.A.C. 7:1I-4.3(a), excluding the effect of the sanitary landfill facility on such value; and

2. The greater of:

i. The appraised value of the subject property determined pursuant to N.J.A.C. 7:1I-4.3(a), reflecting the effect of the sanitary landfill facility on such value; or

ii. The price actually obtained by the claimant upon the sale of the subject property, without closing adjustments.

(b) If, pursuant to N.J.A.C. 7:1I-4.3(b), the Department has elected not to obtain an appraisal of the subject property as affected by the sanitary landfill facility, the amount of the claim eligible for compensation from the Fund shall be equal to the difference between (b)1 and (b)2 below, adjusted in accordance with (c) below:

1. The appraised value of the subject property determined pursuant to N.J.A.C. 7:1I-4.3(a), excluding the effect of the sanitary landfill facility on such value; and

2. The price actually obtained by the claimant upon the sale of the subject property, without closing adjustments.

(c) The Department may, in its discretion, adjust the amount determined pursuant to (a) or (b) above by considering other information available to the Department which supports a conclusion that the amount determined pursuant to (a) or (b) above does not accurately reflect the diminution in the value of the subject property resulting from the improper operation or improper closure of the sanitary landfill facility. Such information may include, but is not limited to, any of the following:

1. Information concerning sales of comparable properties considered in establishing an appraisal pursuant to N.J.A.C. 7:1I-4.3(a), indicating that factors other than the sanitary landfill facility affected the sale prices of such properties. Such information may include, without limitation, the prices of comparable properties within and outside the area in which the sanitary landfill facility may have affected real property values; general market conditions; the time elapsed between listing for sale and execution of an agreement of sale for comparable properties within and outside the area in which the sanitary landfill facility may have affected real property values; and specific terms of the agreements of sale (such as financing terms, personal property included in the sale, and apportionments of closing costs);

2. Information concerning sales of comparable properties considered in establishing an appraisal pursuant to N.J.A.C. 7:1I-4.3(a), indicating that such properties have characteristics which distinguish them from the subject property, and which affect the values of such properties;

3. Information concerning the sale of the subject property, indicating that the difference between the sale price and the appraised value of the property reflected factors other than the sanitary landfill facility. Such information may include, but is not limited to, the time elapsed between listing of the subject property for sale and execution of an agreement of sale; the length of time the subject property was offered for sale, the nature and number of any offers to purchase the subject property; the difference between the initial listing price and the sale price; the number and extent of intermediate reductions in the listing price; specific terms of the agreement of sale for the subject property (such as financing terms, personal property included in the sale and apportionments of closing costs); data concerning the real estate market generally at the time of the sale of the subject property; and other evidence of the good faith nature of the sale required to be submitted under N.J.A.C. 7:1I-4.5; and

4. The effect of the completion of the construction phase of the sanitary landfill facility remediation or of other amelioration of the damages resulting from the improper operation or improper closure of the sanitary landfill facility.

7:1I-4.5 Evidence of good faith sale

(a) Except as provided in N.J.A.C. 7:1I-4.7 and 4.8, within 10 days after the signing of a binding agreement of sale and the closing of the sale for the subject property, the claimant shall submit the following documents to the Department:

1. Copies of all listing agreements for the sale of the subject property;

2. Copies of all written offers to purchase the subject property;

3. A copy of the contract of sale of the subject property;

4. Copies of all settlement statements, including, without limitation the Settlement sheet(s) required by the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C.A. 2601 et seq. and the HUD-1 Uniform Settlement Statement form if required by 24 CFR 3500.8;

5. A copy of the deed conveying the subject property together with a copy of the transmittal letter forwarding the deed to the county clerk or register of deeds and mortgages for recording;

6. An affidavit by the claimant, signed by the person required to sign the claim and certified in accordance with N.J.A.C. 7:1I-1.7, stating the following:

i. The sale price of the subject property without closing adjustments;

ii. That neither the claimant nor any person not listed on the settlement statements has received any money or other compensation from any person in connection with the subject property, except as set forth on the settlement statements; and

iii. That the documents submitted pursuant to (a)1 through 5 above are delivered in connection with the sale of the subject property; and

7. An affidavit by the claimant's realtor, stating the following:

i. That the realtor is a member of a multiple listing service, and listed the property for sale with a multiple listing service (or its commercial equivalent, for claims involving commercial property or other properties not normally offered for sale through a multiple listing service);

ii. The period of time the subject property was offered for sale, and the period of time the property was listed for sale with the multiple listing service;

iii. The initial listing price;

iv. All changes in the listing price, and the dates of such changes;

v. A record of all inquiries received from potential purchasers regarding the subject property, and of all showings or open houses held in the course of offering the subject property for sale, including the names and addresses of all persons who inquired about the subject property, were shown the subject property, or attended open houses at the subject property, and a description of the responses of these persons to the subject property; and

vi. A record of the amount and date of each offer made for the purchase of the subject property.

(b) A determination by the Department that the claimant arrived at the sale price in good faith shall not preclude the Department from determining that any other aspect of the sale of the subject property was not in good faith.

(c) The Department may deny the claim or adjust the amount eligible for compensation, if based upon the evidence required under (a) above, the Department determines that any aspect of the sale of the subject property was not in good faith.

7:1I-4.6 Settlement based upon legal inability to sell the subject property

(a) If, solely as a result of the improper operation or improper closure of a sanitary landfill facility, the claimant is legally unable to sell the subject property (for example, if a certificate of occupancy cannot be issued for the subject property as a result of the sanitary landfill facility, and the subject property is located in a municipality in which a certificate of occupancy is required for the sale), the Department may, in its discretion, offer to settle the claimant's claim against the Fund in accordance with this section.

(b) If the Department elects to settle a claim pursuant to this section, the Department shall determine the amount of the claim eligible for compensation pursuant to N.J.A.C. 7:1I-4.4. An offer by the Department to settle the claim shall be in such amount.

(c) The making, acceptance or rejection of such settlement offer pursuant to (b) above shall be in accordance with N.J.A.C. 7:1I-5.4.

(d) As a condition of the settlement of the claim pursuant to this section, the claimant shall cause all persons having an ownership interest in the subject property (including without limitation any dower or courtesy interest preserved pursuant to N.J.S.A. 3B:28-1) to execute, acknowledge and deliver to the Department a document, in recordable form, granting to the Fund a lien on the subject property securing repayment of the full amount of the settlement. The Department shall forward such document to the county clerk or register of deeds and mortgages of the county in which the subject property is located. Such document shall be prepared and recorded at the claimant's expense. This lien shall serve as a basis for reimbursement to the Fund of any excess payments made in settlement.

(e) The Department shall execute, acknowledge and deliver to the claimant a discharge of the lien upon payment of the following amount (provided, however, that if the payment amount calculated below is less than zero, the Department shall execute, acknowledge and deliver the discharge of the lien upon the claimant's written request, without the payment of any money; and provided further, that if the payment amount calculated below exceeds the amount of the settlement, the Department shall execute, acknowledge and deliver the discharge of the lien upon repayment of the settlment amount by the claimant, plus interest at the rate for post-judgment interest established in the Rules Governing the Courts of the State of New Jersey, as such rate is in effect as of the date of the settlement):

$$\text{Payment amount} = SP - (AV - S)$$

where:

1. SP equals the sale price of the subject property, as adjusted pursuant to the criteria listed in N.J.A.C. 7:1I-4.4(c), if the Department determines that the actual sale price does not accurately reflect the diminution in the value of the subject property proximately resulting from the improper operation or improper closure of the sanitary landfill facility;
2. AV equals the appraised value of the subject property, absent the effects of the improper operation or improper closure of the sanitary landfill facility, as adjusted under N.J.A.C. 7:1I-4.4(c); and
3. S equals the amount of the settlement made pursuant to this section.

7:1I-4.7 Settlement when emergency relocation is necessary

If the Department determines, in its discretion, that environmental conditions at the subject property which result from the improper operation or improper closure of a sanitary landfill facility create a substantial risk of an imminent health or safety hazard to the occupants of the subject property, the Department may suspend any or all of the requirements of N.J.A.C. 7:1I-4.2, 4.3, 4.4 and 4.5 and may immediately award compensation to enable the occupants of the property to relocate temporarily or permanently.

7:1I-4.8 Contract for sale of property entered into before filing of claim

(a) If a claimant has entered into a contract for the sale of property before filing a property value diminution claim with respect to such property, the Department may, in its discretion, settle such a claim in accordance with this section.

(b) Claims made pursuant to this section shall be eligible for compensation only to the extent provided in N.J.A.C. 7:1I-4.1, and only if the subject property satisfies the eligibility requirements set forth in N.J.A.C. 7:1I-4.2.

(c) Subject to the limitation in N.J.A.C. 7:1I-4.1, the Department shall determine the amount of the settlement offer pursuant to N.J.A.C. 7:1I-4.4.

(d) Together with the claim (or, if the claim is made before closing of the sale of the subject property, within 10 days after closing), the claimant shall submit to the Department all documents required pursuant to N.J.A.C. 7:1I-4.5; provided, however, that the Department may in its discretion, refrain from requiring submission of the documents normally required under N.J.A.C. 7:1I-4.5(a)1 and (a)7.

7:1I-4.9 Suspension of claims

(a) The Department shall send notice of the requirements of this chapter to each claimant who filed a property value diminution claim before *[the effective date of this chapter]* ***February 22, 1994***. Within 60 days after receipt of such notice, each claimant shall notify the Department of his or her election to:

1. Pursue the claim;
2. Suspend the claim for the period provided in (c) below; or
3. Withdraw the claim.

(b) If a claimant fails to notify the Department of his or her election under (a) above, the claimant shall be deemed to have suspended the claim for the period provided in (c) below.

(c) All claims suspended pursuant to (a) or (b) above will remain in suspension until one of the following occurs:

1. The Department receives written notice from the claimant, stating that the claimant desires to reinstate the claim; or
2. The claimant receives notice from the Department, stating that the remediation or proper closure of the sanitary landfill facility has been completed to the satisfaction of the Department, and that the Department is therefore denying the claim; provided, however, that if the Department has required as a condition of its satisfaction that a restriction running with the subject property be recorded with the applicable county clerk or register of deeds, the claimant may make a claim for diminution resulting from such restriction in accordance with the requirements of this chapter.

(d) At any time during the period of suspension under (c) above, a claimant may request reinstatement of the claim by written notice to the Department.

(e) At the end of the suspension period provided in (c) above, the claim will be automatically reactivated, unless the claimant has previously withdrawn the claim.

(f) The Department may, in its discretion, reactivate a claim suspended under N.J.A.C. 7:1I-2.3(b) upon the conclusion of litigation or negotiations between the claimant and any owner or operator or any other responsible party, which litigation or negotiations concerns such damages. For the purpose of this subsection, litigation or negotiations shall be deemed to have concluded upon the occurrence of any of the following: a complete settlement of the ligitation or matter; or the entry of a settlement, judgment or order completely resolving the litigation or matter, followed by the expiration of time allotted to appeal or otherwise challenge such settlement, judgment or order.

(g) Upon reactivation of a suspended claim:

1. The Department shall confirm the reactivation by written notice to the claimant;
2. The claim will be processed in accordance with this chapter; and
3. Within 30 days after receiving notice of the reactivation, the claimant shall list the subject property for sale with one or more licensed brokers who are members of a multiple listing service (or its commercial equivalent, for claims involving commercial property or other properties not normally offered for sale through a mulitple listing service).

(h) Upon the claimant's second suspension of the claim, the Department shall dismiss the claim, without prejudice. If the claimant subsequently files a new claim for the same damages contained in the original dismissed claim, the new claim will be deemed to have been filed as of the date of filing of the original dismissed claim.

SUBCHAPTER 5. SETTLEMENT AND DETERMINATION OF CLAIM

7:1I-5.1 Settlement of claim with owner, operator or other person

(a) At least two weeks prior to any private settlement with any owner or operator or other person, the claimant shall notify the Department by certified mail of the terms of the settlement.

(b) If the claimant privately settles with any owner or operator or other person in connection with the sanitary landfill facility in question, any payment the claimant receives as a result of that settlement shall be deducted from the amount of compensation awarded by the Department regarding the claimant's damages;

provided, however, that if the settlement terms release any owner or operator from further liability, the settlement shall be an absolute bar to any claim for damages from the Fund.

7:1I-5.2 Actual real or personal property damage

If the claimant submits all evidence required by N.J.A.C. 7:1I-3.3, and if, after verification of the reasonableness of all estimates and receipts submitted, the Department is satisfied with the evidence submitted, the Department shall issue a Notice of Intent pursuant to N.J.A.C. 7:1I-5.4.

7:1I-5.3 Personal injuries

If the claimant submits all evidence required by N.J.A.C. 7:1I-3.3, and if, after verification of the reasonableness of receipts and opinions supplied, the Department is satisfied with the evidence submitted, the Department shall issue a Notice of Intent pursuant to N.J.A.C. 7:1I-5.4.

7:1I-5.4 Notices of Intent

(a) The Department shall issue a Notice of Intent (NOI) to deny with respect to any claim which, on its face, does not contain information sufficient to support a determination that the claim is eligible for compensation from the Fund. The Department shall issue a Notice of Intent (NOI) to pay with respect to any claim which contains sufficient information to support a determination that the claim is eligible for compensation from the Fund. The Department shall send the claimant the NOI by certified mail, return receipt requested.

(b) The claimant shall either accept the NOI or may contest the NOI by submitting to the Department additional evidence in support of the claim, and evidence that any material fact set forth in the NOI is incorrect. Legal arguments will not be accepted. The claimant shall submit such evidence within 30 days after the date on which the claimant received the NOI; provided however, that if the claimant has refused delivery of the NOI, the claimant shall submit such evidence 30 days after the date the Department mailed the NOI.

(c) In the case of an NOI to deny, if after reviewing the evidence submitted pursuant to (b) above, the Department determines that the claim does not clearly fail to satisfy the requirements for eligibility for compensation from the Fund, then the Department shall withdraw the NOI and reconsider the claim. However, if after reviewing the evidence submitted pursuant to (b) above, the Department determines that the claim does clearly fail to satisfy the requirements for eligibility for compensation from the Fund, then the Department will process the claim in accordance with N.J.A.C. 7:1I-5.5. The claimant may contest the Department's final decision by proceeding in accordance with N.J.A.C. 7:1I-5.6.

(d) In the case of a NOI to pay, if after reviewing the evidence submitted pursuant to (b) above, the Department determines that the claimant has clearly demonstrated its entitlement to a payment greater than the amount contained in the NOI to pay, then the Department shall make a new offer of payment with regard to the claim. However, if after receiving the evidence submitted under (b) above, the Department determines that the claimant has not clearly demonstrated its entitlement to a payment greater than the amount contained in the NOI to pay, then the Department shall issue a final decision on the claim. If the claimant wishes to contest the Department's final decision, the claimant shall proceed in accordance with N.J.A.C. 7:1I-5.6.

7:1I-5.5 Denials

(a) The Department shall deny the claim after the expiration of the 30-day period allotted under N.J.A.C. 7:1I-5.4(b), if the claimant fails to submit any evidence to the Department within the 30-day period.

(b) The Department shall deny any claim if, after reviewing the evidence submitted pursuant to N.J.A.C. 7:1I-5.4(b), the Department determines that the claim clearly fails to satisfy the requirements for eligibility for compensation from the Fund.

(c) If the Department denies the claim pursuant to this section, the Department shall prepare a written statement setting forth the denial and the reasons therefor. The Department shall send the claimant a copy of the final decision by certified mail, return receipt requested.

7:1I-5.6 Adjudicatory hearings

(a) A claimant may contest a final claim decision by requesting a hearing before the Office of Administrative Law. The claimant shall make the request in writing within 30 days after receiving the Department's written statement under N.J.A.C. 7:1I-5.5(c); provided, however, that if the claimant has refused delivery of the Department's final decision, the claimant shall make the request for a hearing within 30 days after the date of mailing of the final decision. Failure to request a hearing before the expiration of such 30-day period shall operate as a waiver of any right to have the claim submitted to a hearing.

(b) A request for a hearing under (a) above shall contain the following information:

1. A denial of each fact disputed by the claimant which the Department has asserted in the final claim decision. The claimant's denial shall fairly meet the substance of the disputed facts, and shall contain assertions of the facts as the claimant believes them to be;
2. If the claimant asserts that, based upon the facts asserted in the Department's final claim decision, the Department's decision is improper as a matter of law, a specific explanation of the legal basis for that assertion;
3. Copies of written documents which the claimant is relying upon to support the request, provided, however, that if the claimant has previously submitted such documents to the Department, a specific reference to such documents will be sufficient;
4. An estimate of the time required for the hearing; and
5. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(c) If the claimant does not submit the information required under (b) above within the time allotted under (a) above, the Department, after proper notice to the claimant, may deny the request.

(d) The Department may require that the claimant submit additional information beyond that required under (b) above, if the Department determines that such information is necessary to provide the Department with adequate notice of the specific factual or legal bases for the claimant's objections to the final claim decision.

(e) A request for an adjudicatory hearing shall be filed with the Department at the following address:

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

All such communications regarding adjudicatory hearings for which a street address is required shall be sent to the following address:

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
401 East State Street
Trenton, New Jersey 08609

(f) If the Department grants the hearing request, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge 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.

SUBCHAPTER 6. CONDITIONS OF PAYMENT

7:1I-6.1 Payment of claim

(a) Except as provided in (b) below, the Department shall make claim payments in a single lump sum payment.

(b) The Department may bifurcate multiple damages filed in a single claim and make payments separately thereon.

(c) In the event that the total amount of claims awarded exceeds the current balance of the Fund, each award shall be paid, without interest, on a prorated basis over time until the awards are paid in full. Claims initially paid on a prorated basis will be satisfied in full before any payments are made on new claims.

7:1I-6.2 Conditions of payment

(a) No payment of any damages from the Fund shall be made unless the Department acquires, by subrogation, all rights of the claimant to recovery of such damages from an owner or operator *[or any other responsible party concerning the damages resulting from the improper operation or improper closure]* of a sanitary landfill facility.

1. The claimant shall not prejudice such subrogation rights in any manner;

2. The claimant shall cooperate fully with the Department in the preparation of a case for trial, should the Department commence a civil action to recover any amount awarded; and

3. The claimant shall allow the Department to join his or her claim with as many claims as the Department may have against any person in any civil action commenced to recover any amounts awarded.

(b) No payment of any damages from the Fund shall be made unless the claimant executes a written release of all damages occurring prior to execution of the release except those damages which could not reasonably have been discovered prior to signing the release. The release shall satisfy all conditions precedent to payment of the claim required by this chapter.

[(c) In all claims concerning property damage where the Department has settled or intends to settle the claims, the claimant shall include in the agreement of sale and in the deed, a covenant which shall run with the land indicating that the claimant has negotiated with the Department for specific enumerated damages and that these damages have been satisfied. In the case of property value diminution claims, such covenant shall state that further payment from the Fund for similar damage is barred.]

(a)

ENVIRONMENTAL REGULATION

Surface Water Quality Standards

Adopted Amendments: N.J.A.C. 7:9B-1.5 and 1.15

Proposed: February 1, 1993 at 25 N.J.R. 405(a).

Adopted: January 13, 1994 by Jeanne M. Fox, Acting Commissioner Department of Environmental Protection and Energy.

Filed: January 26, 1994 as R.1994 d.84, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-1 et seq., 58:10A-1 et seq., and 58:11A-1 et seq.

DEPE Docket Number: 63-92-12.

Effective Date: February 22, 1994.

Expiration Date: January 18, 1996.

The New Jersey Department of Environmental Protection and Energy (DEPE) is adopting amendments to the State's Surface Water Quality Standards (SWQS) at N.J.A.C. 7:9B-1.5(c) and 1.15(g). The amendments were proposed on February 1, 1993, at 25 N.J.R. 405(a). The proposed amendments included provisions regarding: surface water reclassifications and changes in antidegradation designations; prohibition of mixing zones for bacterial indicators; and thermal criteria for saline estuarine (SE) bays and trout production (FW2-TP) waters. A public hearing was held on the proposed amendments at the DEPE's main offices in Trenton on March 4, 1993. The public comment period on the amendments closed March 12, 1993.

Summary of Hearing Officer's Recommendations and Agency Responses:

Martin Bierbaum, Administrator of the Office of Land and Water Planning, served as the hearing officer at the public hearing. As a result of the public hearing, Administrator Bierbaum recommended that the DEPE adopt the proposed amendments with the changes discussed below in the Summary of Public Comments and Agency Responses. The DEPE agrees with the recommendation. Interested persons may inspect the public hearing record, or obtain a copy upon payment of the DEPE's usual copying charges, by contacting:

Janis E. Hoagland, Esq.
Administrative Practice Officer
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

Summary of Public Comments and Agency Responses

On July 26, 1993, the DEPE adopted the noncontroversial amendments contained in the February 1, 1993, proposal. See 25 N.J.R. 3755(a). The following amendments were adopted: (1) surface water classifications in N.J.A.C. 7:9B-1.15(c)-(h) based on trout fisheries data, (the only exception being the mainstem Wallkill River from the outlet of Franklin Pond to the Route 23 bridge); (2) Category One (C1) antidegradation designation of the stretch of the Rockaway River from Washington Pond outlet downstream to Route 46 bridge; (3) provisions at N.J.A.C. 7:9B-1.14(c)12 and 7:9B-1.15(b)5 to reflect that lakes, ponds, and reservoirs can potentially be classified as FW2-TP and that thermal criteria and heat dissipation areas apply to such waterbodies; (4) thermal criteria for SE bays at N.J.A.C. 7:9B-1.14(c)12; and (5) reclassification to less restrictive uses portions of Assunpink Creek and Posts Brook based on recalculation of the Incidence of Occurrence table confirmed by new fisheries data, at N.J.A.C. 7:9B-1.15. In the notice of adoption, the DEPE stated that it would consider the comments received regarding the remaining proposed amendments and, at a later date, adopt those amendments it deemed appropriate.

After giving due consideration to the comments received on the remaining proposed amendments, the DEPE is adopting the following amendments at this time: (1) FW2-NT (nontrout) classification of the stretch of the Wallkill River from the outlet of Franklin Pond to the State line, at N.J.A.C. 7:9B-1.15(g); and (2) prohibition of mixing zones for bacterial indicators, at N.J.A.C. 7:9B-1.5(c). The DEPE has decided not to adopt the amendment providing C1 antidegradation designation to the portion of the Wallkill River within the boundaries of the Wallkill River National Wildlife Refuge (NWR), at N.J.A.C. 7:9B-1.15(g).

The DEPE received several comments from environmental groups in opposition to the proposed reclassification of the stretch of the Wallkill River from the outlet of Franklin Pond to the Route 23 bridge from FW2-TM to FW2-NT. These comments suggested that such a reclassification is inconsistent with the proposed antidegradation designation of the waters of the Wallkill River NWR. The Sussex County Municipal Utilities Authority (SCMUA) commented in support of the change in classification. The fish survey data collected in this stretch of the river by the Bureau of Freshwater Fisheries, Division of Fish, Game and Wildlife, in the DEPE indicate that it is not capable of supporting trout species. Accordingly, the DEPE has decided to adopt the FW2-NT classification of this stretch of the Wallkill River as recommended by the Bureau of Freshwater Fisheries. Because the DEPE is not designating the Wallkill River within the NWR as C1, at this time, the classification listing will now indicate that the Wallkill River from the outlet of Franklin Pond to the State line is FW2-NT.

The DEPE received many comments from municipal utilities authorities sharply critical of the proposal to prohibit mixing zones for bacterial indicators. The commenters almost exclusively concerned the application of enterococci criteria without mixing zones. Most of these comments either questioned the validity of the enterococci criteria, or indicated that compliance costs associated with trying to achieve the enterococci criteria at the end of the pipe would be extremely high. Examination of available enterococci data in New Jersey showed that well operated treatment facilities utilizing appropriate disinfection practices were experiencing unexplained enterococci "spikes." After evaluating the comments submitted, the DEPE has decided that the following course of action is most appropriate at this time: (1) adopt the proposed amendment to prohibit mixing zone for bacterial indicators; (2) continue to include NJPDES permit limitations for fecal coliform with no mixing zones; (3) include permit conditions that require enterococci as a "monitor only" parameter in all Discharge to Surface Water (DSW) permits for facilities statewide; and (4) either stay enterococci limits in accordance with N.J.A.C. 7:14A-8.10, or modify all permits containing enterococci limits to make enterococci a "monitor only" parameter. Draft permit modifications for 26 municipal utilities were issued by the DEPE on November 19, 1993. This mass modification proposed changing enterococci limits to "monitor only" on a monthly basis, and either reinstated or retained fecal coliform limits to be met at the end of the pipe.

Current Departmental policy is, and has been, to prohibit mixing zones for fecal coliform. Because thèhDEPE has concluded that this is an appropriate practice, it is affirming this policy by adopting this amendment. Although the DEPE has decided that enterococci should not be used as an enforceable permit limitation at this time, it will continue to gather data regarding permittees' ability or inability to comply with the enterococci criteria at the end of the pipe using currently accepted disinfection practices. The information will be analyzed to determine whether a relationship exists between the fecal coliforms and the enterococci, and to try to determine why treatment plants with well operated disinfection facilities occasionally experience enterococci "spikes." Finally, collection of additional enterococci data will enable the DEPE to evaluate potential impacts to facilities if the use of enterococci as an enforceable permit limitation is resumed.

The DEPE received comments in support of the proposed C1 designation of the waters of the Wallkill River within the boundaries of the NWR from private citizens, environmental groups, and the United States Department of the Interior. The Sussex County Municipal Utility Authority (SCMUA) expressed serious concerns during the comment period about future impacts of the proposed C1 antidegradation designation on the currently permitted discharge and future expansion of the Upper Wallkill River Sewage Treatment Plant (STP). The DEPE anticipates no impact to SCMUA's Upper Wallkill River STP permit at existing or newly permitted flows up to 3.0 MGD, with the caveat that a biological monitoring program, currently being undertaken by SCMUA, shows no adverse impacts to the aquatic biota of the Wallkill River NWR and that the pollutant loadings at 3.0 MGD do not exceed the permitted loadings at 2.5 MGD. Any biological impairment caused by SCMUA's discharge would require that steps be taken to improve water quality. Such steps could include modification of SCMUA's permit or implementation of mitigation techniques to remove the biological impact.

SCMUA also suggested that the DEPE had not allowed adequate opportunity for public dialogue regarding the potential social and economic impacts of the proposed C1 designation. In response, the DEPE held a public meeting on September 1, 1993, in Trenton to allow for additional discussion of the issue. All persons who submitted comments on the proposed change in antidegradation designation during the public comment period were invited, in writing, to attend the meeting.

At the meeting, an SCMUA representative suggested that the DEPE put in "abeyance" the proposed C1 antidegradation designation and instead allow for the development and implementation of a watershed management plan for the Wallkill River that might achieve water quality results equivalent to imposition of a C1 designation. This recommendation was based on the representation that much of the concern related to water quality in the Wallkill River was the result of nonpoint sources of pollution rather than point sources of pollution, of which there are relatively few. The DEPE responded to this suggestion in a letter from Assistant Commissioner John Weingart to SCMUA Chairman Theda Zaretsky dated November 5, 1993, requesting that SCMUA provide additional details concerning its alternative by December 1, 1993. The SCMUA submitted an outline of a watershed management proposal by the date requested. The DEPE requested further refinement of the SCMUA plan alternative and the SCMUA has agreed to refine its proposal and resubmit it.

Although the SCMUA and the DEPE have not yet reached agreement on the details of the watershed management plan the SCMUA will sponsor, the DEPE has had to make a decision on the change in the antidegradation designation of the Wallkill River now because the rule proposal expired on February 1, 1994. Because the SCMUA first volunteered to undertake development of a regional plan and then responded promptly to the separate request for a written commitment, and more importantly, because the DEPE believes that a watershed management approach could bring equivalent or better protection of the waters within the Wallkill NWR than simply designating them C1, the DEPE has decided to not adopt the C1 antidegradation designation with respect to the segment of the Wallkill River within the NWR.

The DEPE is opting not to adopt this change in antidegradation designation at this time for the express purpose of encouraging continued productive discussions with the SCMUA regarding the development and implementation of a comprehensive and effective watershed management plan and planning process. If these discussions do not result in significant progress within the next six months, the DEPE will consider reproposing and adopting the C1 antidegradation designation at that time.

Although the SCMUA probably will not reach its permitted flow capacity for at least ten years, there are seven other direct dischargers to the Wallkill River. Without the change in antidegradation designation and/or the development and implementation of an effective watershed management plan providing equivalent or better protection than the C1 designation, the other dischargers might seek changes to their NJPDES permit limitations that could detrimentally affect water quality in the Wallkill River within the NWR. To protect the Wallkill River, the DEPE believes it is within its authority and within its statutory responsibility to see that either the waterbody receive the C1 antidegradation designation or an effective watershed management plan is developed and implemented within a reasonable period of time.

The following persons submitted either oral or written comments during the comment period with respect to those amendments discussed herein:

1. Marie Bennett
2. Clifford G. Day, Fish and Wildlife Service, United States Department of the Interior
3. Abigail Fair, Association of New Jersey Environmental Commissions
4. Erwin G. Goovaerts, Kovach, Fitzgibbons & Goovaerts, P.A., on behalf of SCMUA
5. Ellen Gulbinski, Executive Director, Association of Environmental Authorities (AEA)
6. Carol Gunn, Vernon Township Environmental Commission
7. John Hall, Kilpatrick and Cody, on behalf of Cape May County MUA, Northeast Monmouth County Regional Sewerage Authority (RSA) and the City of Millville
8. John Hall, Kilpatrick and Cody, on behalf of SCMUA
9. Richard P. Kane, Director of Conservation, New Jersey Audubon Society
10. Anne Leahy
11. Charles Lenchtz, Rockaway Township Environmental Commission
12. Michael J. Lyons, Executive Director, Northeast Monmouth County RSA
13. Russell Nerlick, Executive Director and Chief Engineer, Western Monmouth Utilities Authority
14. Charles Norkis, Chief Engineer, Cape May County MUA
15. Richard Patterson
16. Sylvia Pelizza, Refuge Manager, Wallkill River NWR
17. Louisa C. Spencer, Environmental Defense Fund
18. John D. Van Dorpe, Maser Sosinski & Associates, on behalf of Long Branch Sewerage Authority
19. Howard H. Woolley, Jr., Executive Director, Long Branch Sewerage Authority

A summary of the comments timely received and the DEPE's responses follow. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

General

1. COMMENT: The DEPE should appoint an impartial committee of scientists to review the current surface water classification system. There are definite indications that the system can be improved to offer greater protection against water contamination. (11)

RESPONSE: The DEPE is interested in any suggestions that may be submitted by outside groups along with a more detailed explanation of why the existing classification needs to be changed. After reviewing what is submitted, the DEPE will be able to more appropriately determine whether the current classification system needs to be changed and how to develop the appropriate changes (for example, through roundtable discussions, existing advisory groups or an impartial committee of scientists). All suggestions should be submitted to: Surface Water Quality Standards Program, New Jersey Department of Environmental Protection and Energy, 401 East State Street, CN-423, Trenton, NJ 08625.

2. COMMENT: It is incorrect for the DEPE to assume that it must use total recoverable metals in water quality criteria for metals. The DEPE should provide for the use of water-effect ratios in the determination of surface water quality criteria and/or provide for the use of water-effect ratios in the determination of permitted effluent criteria. It is suggested that the DEPE utilize a water-effect ratio of five which would result in levels in the receiving stream that would protect the uses and still be achieved by most treatment plants. (13)

RESPONSE: This comment is outside of the scope of this proposal. The DEPE notes that this issue was addressed in the DEPE's responses to comments on its November 22, 1992, SWQS "toxics" proposal, the

adoption of which was published in the December 6, 1993, New Jersey Register (see 25 N.J.R. 5569(a)).

3. COMMENT: The proposed SWQS would require that all fresh waters of the State be maintained as if they were potable water supplies. Because of this, municipal utility authorities would be required to spend millions of dollars to update facilities to produce potable water. (13)

RESPONSE: This comment is outside the scope of this proposal. The February 1, 1993 SWQS proposal did not contain any change in the designation of fresh waters in New Jersey for drinking water supply. Nor does the proposal require municipal utility authorities to produce potable water from their effluent. Rather, the SWQS require that dischargers not impair the potential for potable use of fresh waters of the State. The DEPE notes that this issue was addressed in the DEPE's responses to comments on its November 22, 1992, SWQS "toxics" proposal, the adoption of which was published in the December 6, 1993, New Jersey Register (see 25 N.J.R. 5569(a)).

4. COMMENT: The commenter expressed general opposition to the adoption of the changes to the SWQS as currently proposed by the DEPE. (19)

RESPONSE: The DEPE acknowledges this objection. All objections raised during the comment period were evaluated before the DEPE decided which proposed changes to adopt.

5. COMMENT: The DEPE should incorporate into the water quality criteria the safety factors utilized in the determination of the criteria. (13)

RESPONSE: This comment is outside the scope of this proposal. However, the DEPE notes that when it does develop its own water quality criteria, the safety factors utilized in the calculation of the criteria are specifically discussed in the Basis and Background document supporting the criteria at the time of proposal. When the DEPE utilizes criteria developed by other sources, the DEPE cites the other sources in the Basis and Background document supporting the criteria. In this way, the documents in which the safety factors can be found are referenced.

Wallkill River

6. COMMENT: Many individuals commented in support of the DEPE's proposal to change the antidegradation status of the Wallkill River within the boundaries of the Wallkill River NWR from Category Two (C2) to Category One (C1) as a means of preserving the waterway, because it is a major bird stop-over area and part of international migration flyway, because it will maintain high quality waters of an environmentally sensitive area of the State, and because future expansions of SCMUA treatment facilities will lead to more development in the watershed and increased risk of pollution. (1, 2, 3, 6, 10, 15, 16, 17)

7. COMMENT: SCMUA supports protecting the Wallkill River NWR and providing whatever level of water quality is necessary to fully achieve and protect the uses of that area, but suggests that the Wallkill River within the NWR not be designated as C1. (8)

RESPONSE: The DEPE acknowledges the support expressed for protecting the waters of the NWR. The DEPE has decided not to designate these waters as C1 at this time. The DEPE is involved in ongoing discussions with the SCMUA concerning development and implementation of a watershed management approach within the Wallkill River watershed that would provide a level of protection that is equal to or better than that which would be provided by the C1 designation.

8. COMMENT: SCMUA supports the DEPE's proposal to reclassify the segment of the Wallkill River below its facility as FW2-NT (non-trout), consistent with fish and wildlife surveys of that area. (8)

RESPONSE: The DEPE acknowledges the support and has adopted the change in classification at N.J.A.C 7:9B-1.15(g).

9. COMMENT: The reclassification to less restrictive uses of the stretch of the Wallkill River from Route 23 bridge to, but not including, Franklin Pond, is inconsistent with the proposed C1 antidegradation status for the waters within the Wallkill River NWR because it will allow additional degradation of the water quality within the NWR. The DEPE is urged to reconsider and refrain from reclassifying this stretch to less restrictive uses. (2, 17)

RESPONSE: The surface water classification of a waterbody (for example, FW2-TP, FW2-NT, SE1) reflects the designated uses of that waterbody and establishes the minimum water quality criteria that must be achieved in that waterbody to maintain those designated uses. A surface water classification is not intended to protect existing water quality from certain levels of degradation; that is the function of the antidegradation category (for example, C1, C2) designation of that waterbody. The reclassification from FW2-TM to FW2-NT of the indicated stretch of the Wallkill River is being made to reflect the existing uses, which do not include trout maintenance, of the waterway in that area. This stretch has been designated, and continues to be designated, as C2 for purposes of implementing New Jersey's antidegradation policy. The water quality criteria which differ between waters classified as FW2-TM and FW2-NT are dissolved oxygen, total suspended solids, ammonia, and temperature. The downstream waters contained within the boundaries of the Wallkill River NWR have not been changed through this adoption notice and are therefore still designated as C2 waters. Therefore, the reclassification to less restrictive uses of the Wallkill River from Route 23 bridge to, but not including Franklin Pond, is not inconsistent with the antidegradation designation of the waters within the NWR.

10. COMMENT: Lands for the Wallkill River NWR might not be acquired if water quality contamination is found to be a problem. This could result if the portion of the Wallkill River upstream of the refuge is reclassified to less restrictive uses. (9)

RESPONSE: The United States Department of the Interior, Fish and Wildlife Service has already purchased some lands in fee title from willing sellers within the identified NWR acquisition boundaries, and intends to purchase other properties within the acquisition boundaries from willing sellers, regardless of water quality. However, it is the DEPE's understanding that the initial delineation of lands for acquisition was based on a number of factors including water quality. Additionally, the DEPE, SCMUA and the Fish and Wildlife Service are working together to ensure that the waters within the NWR are protected.

11. COMMENT: Changing the antidegradation status of the Wallkill River NWR waters is not mandatory, it is discretionary (N.J.A.C. 7:9B-1.4). In exercising such discretion, the DEPE is legally obligated to consider all factors, including the environmental consequences and the social and economic impacts on the affected region. Given the potential long term impact of the proposed change in antidegradation status, lack of sufficient public dialogue and thorough exploration of the environmental, social and economic consequences, the proposed change lacks sufficient factual and legal basis. (4)

RESPONSE: The DEPE received a request dated October 15, 1990, from the United States Department of the Interior, Fish and Wildlife Service, as part of comments received on SCMUA's draft NJPDES permit, to designate the waters of the Wallkill River NWR as an Outstanding National Resource Water (ONRW). The United States Department of the Interior, Fish and Wildlife Service, stated, "We recommend that NJDEP undertake appropriate administrative procedures to designate the waters of the Wallkill River bottomland as 'outstanding National resource waters' and afford them the protection of 40 CFR 131.12(a)(3) of the federal antidegradation policy." The DEPE evaluated the request and determined that the Wallkill River, within the confines of the NWR, should not be classified as an ONRW because of the presence of the SCMUA treatment plant a short distance upstream of the NWR boundary. The DEPE decided that the waters of the NWR would be more appropriately protected, under existing regulations and water quality management practices, through designation of the waters within the NWR as C1. This would also be consistent with past practice for all other refuges within the State. Because of the SCMUA's suggestion that a watershed management approach could provide the same or a higher level of protection for the waters within the NWR, and the DEPE's belief that this approach could provide increased protection of the waters within the NWR, designation of the Wallkill River within the NWR as C1 is being held in abeyance. If progress in developing a watershed management approach slows down unacceptably, the DEPE will repropose and adopt designation of these waters as C1 in order to protect the NWR.

In the Economic Impact and Social Impact sections of the February 1, 1993 proposal, the DEPE stated the expected social and economic impacts of the proposed amendments in accordance with N.J.A.C. 1:30, Rules for Agency Rulemaking. Additionally, the DEPE allowed interested persons the opportunity for public dialogue concerning the potential social and economic impacts of a C1 designation through both the public hearing and comment period and the subsequent September 1, 1993 meeting. The DEPE believes these efforts to analyze the amendment's potential impacts and to solicit public comment do adequately address the commenter's concern regarding the factual and legal basis for proposing the change in antidegradation status. However, as stated above, the DEPE is not adopting the C1 designation at this time.

12. COMMENT: The DEPE, for the guidance of the regulated community, should reaffirm that only changes to water quality adversely impacting on the uses made of the waters of the Wallkill River NWR shall, in accordance with existing regulations, be considered "measurable

changes" for purposes of implementing antidegradation policies for C1 waters. (4)

RESPONSE: Waters designated as C1, for purposes of implementing New Jersey's current antidegradation policy, must be protected from any measurable changes (including calculable or predicted changes) to the existing water quality. (See N.J.A.C. 7:9B-1.5(d)6iii.) Measurable changes are defined at N.J.A.C. 7:9B-1.4 as changes measured or determined by a biological, chemical, or physical analytical method, conducted in accordance with USEPA approved methods as identified in 40 C.F.R. 136 or other analytical methods (for example, mathematical models, ecological indices) approved by the DEPE, that might adversely impact a water use (including, but not limited to aesthetics). Calculable changes are defined at N.J.A.C. 7:9B-1.4 as changes to water quality characteristics as demonstrated by any acceptable mathematical, predictive method. The change in water quality need not adversely impact a use to be considered a calculable change in water quality.

13. COMMENT: If C1 is applied in the most narrow reading, it would preclude any changes to the composition of the affected waters. Implementation of such a policy and interpretation coupled with the designation of the Wallkill River NWR waters to C1 status, in addition to being improper and contrary to the long established regulatory definition, would have substantial negative consequences on the ability of the Upper Wallkill treatment plant to expand in the future to meet the environmental and growth needs of the region it serves. (4, 8)

RESPONSE: At this time, the DEPE cannot predict whether or not the designation of the waters as C1 will affect the ability of the SCMUA to expand its plant in the future. Deciding factors, based on New Jersey's current antidegradation policy, may include, but would not be limited to, requested increased flow or loadings, types of pollutants discharged, treatment capability of the plant, and whether or not the expansion would result in measurable or calculable changes in the downstream quality of the waters within the Wallkill River NWR. It is also dependent on whether other sources of pollution, both point and nonpoint, are controlled. The DEPE is in the process of redrafting the antidegradation policies and cannot predict what the final policy with regard to C1 waters will be before the public participation process has been completed. Furthermore, it would be highly inappropriate for the DEPE to guarantee to any discharger that it would be able to expand its facilities at some time in the future without knowing what adverse impacts such an expansion might have on the environment or human health, whether affecting C1 waters or not. However, as discussed in the responses to Comments 7 and 11, above, the DEPE is not adopting the C1 designation of the Wallkill River within the NWR at this time.

The antidegradation policies applicable to C1 waters are not intended to be applied in accordance with the "most narrow" reading, which would mean that any increase in the amount of a substance in the water is unacceptable. Instead, they are intended to require certain demonstrations (for example, that the lowering in water quality is necessary to accommodate important social or economic development) and processes (for example, satisfaction of the public participation requirements of the continuing planning process) before allowing more than a negligible change in water quality. Because of the questions that continue to arise concerning the antidegradation provisions of the SWQS, the DEPE is currently working on significant revisions to them.

14. COMMENT: The DEPE proposed additional flexibility in the language for implementation of the C1 antidegradation designation. If so, how will the additional flexibility work so that planning can be changed and any adverse environmental impacts from a C1 designation can be avoided? (8)

RESPONSE: The commenter appears to be referring to the draft antidegradation implementation document on which the DEPE has been working. This document was not a proposal. It is premature to discuss how the additional flexibility would work in conjunction with existing or future planning efforts. The DEPE is not aware of any adverse environmental impacts associated with a C1 designation and cannot comment further on this part of the commenter's question.

15. COMMENT: The DEPE should extend C1 antidegradation status to other portions of the Wallkill River outside of the NWR. (9, 17)

RESPONSE: If the commenters believe it is appropriate to designate the waters of the Wallkill River upstream of the Wallkill River NWR as C1, a formal request to amend N.J.A.C. 7:9B-1.15 should be submitted to the Surface Water Quality Standards Program, Office of Land and Water Planning, Department of Environmental Protection and Energy, CN-423, Trenton, NJ 08625. This submission should indicate the reasons that the upstream portions of the Wallkill River should be designated as C1 along with all appropriate data or documentation. It may be more appropriate for the commenters to participate in ongoing efforts to protect the water quality in the Wallkill River through a watershed management approach.

16. COMMENT: Arbitrarily limiting C1 protection to the artifical boundary of the Wallkill River NWR has no scientific basis and would be ineffectual in maintaining the intended integrity of the Refuge's water quality and associated natural resources. (2)

RESPONSE: The proposal to provide C1 antidegradation protection to a defined portion of the Wallkill was not intended to be scientifically based. It was intended to delineate the boundaries of the waters that the State, on behalf of the public and in accordance with the request from the U.S. Fish and Wildlife Service, is designating to be protected from any measurable or calculable changes in water quality. The DEPE is currently working with the SCMUA in an effort to utilize a watershed management approach to protect the waters within the NWR, instead of simply designating them C1. This approach will protect the waters within the NWR by managing all of the waters draining to the refuge. This would appear to be consistent with what the commenter is requesting and the commenter will be invited to participate in the development and implementation of this watershed management approach to protecting the water quality within the refuge.

17. COMMENT: The DEPE should be sure before designating the waters as a C1 whether or not water quality is really critical at all to achieving the Wallkill River NWR purpose and fully protecting the uses for which it was established. (8)

RESPONSE: The purposes for which the Wallkill River NWR was established are summarized in "Basis and Background Document for Proposed Revisions to New Jersey's Surface Water Quality Standards (N.J.A.C. 7:9-4)—Trout Water Reclassifications, Prohibition of Mixing Zones for Bacterial Indicators, Thermal Criteria" (December 1992) which supplemented the DEPE's February 1, 1993, proposal. These reasons are reiterated below:

to preserve and enhance lands and waters so that the natural diversity of fish, wildlife, plants, and their habitats will be conserved for present and future generations;

to conserve and enhance specific NWR populations of fish, wildlife and plants, including populations of Black ducks and other migratory waterfowl, raptors, passerines (songbirds) and marsh and water birds;

to protect and enhance the water quality of aquatic habitats within the NWR;

to fulfill international treaty obligations of the United States with respect to fish and wildlife and their habitats; and

to provide opportunities for compatible scientific research, environmental education, and fish and wildlife-oriented recreation.

The protection of water quality is specifically mentioned as a reason for establishing the NWR. The DEPE therefore believes that the C1 designation, or a watershed management approach providing equivalent or better protection, is highly appropriate for protecting the existing water quality and any other natural resources dependent on the integrity of the aquatic environment.

18. COMMENT: C1 designation of the waters of the Wallkill River NWR will potentially result in limitation of the economic growth in the region while minimal changes in the composition/quality of the waters will have no negative impact upon the uses of the Wallkill River as it flows through the Wallkill River NWR. (4)

RESPONSE: As New Jersey's antidegradation policy is currently written, the C1 designation has the potential to affect any action causing measurable or calculable changes in the water quality of the waters of the NWR. However, it should be recognized that not all forms of economic growth in the region would result in measurable/calculable changes in water quality within the NWR and would not therefore be affected by a C1 designation. In addition, the DEPE is not adopting the proposed C1 designation and is engaged in an effort to develop and implement a watershed management approach. Finally, there currently is no proof that "minimal" changes in water quality have no adverse impacts, especially on rare or endangered species found in the NWR.

19. COMMENT: Depending on how the C1 designation is implemented, it would affect what people need to do with regard to additional land use protections and stormwater runoff controls in the area, and allowable community growth at the sewage treatment plant. If it would drive people toward using septic systems because they could not put the waste at the treatment plant and wind up causing ground water contamination in lieu of any increase in pollutants into a C1 area, it should be weighed and considered when structuring C1. (8)

RESPONSE: The DEPE is not adopting the C1 designation of the Wallkill River within the NWR at this time to allow the development and implementation of a watershed approach to support comprehensive water quality management within the Wallkill River basin. Such a watershed approach will have to address both point and nonpoint sources of pollution and ground and surface water impacts. In addition, if certain areas are determined to be most appropriately served by onsite systems, such systems would have to be installed and operated in a manner that did not result in ground water contamination.

20. COMMENT: SCMUA supports the concept of the Wallkill River NWR and the goal of preserving and fostering the uses made of the waters therein by the waterfowl and other wildlife which inhabit the region. It believes, however, that the current proposal is premature and ought be rescinded because the social and economic consequences to the Wallkill River basin region of the proposed reclassification were not properly considered or analyzed. The DEPE should not reclassify the refuge waters as C1 until it has completed a thorough and sufficient study of the environmental, social and economic consequences, both short and long term, which such a change will have upon the upper Wallkill River basin region and the affected dischargers. (4)

RESPONSE: The DEPE prepared social and economic impact statements as part of its February 1, 1993, proposal in accordance with N.J.A.C. 1:30, Rules for Agency Rulemaking. In addition, the DEPE invited those individuals who commented on the proposed change in antidegradation designation during the public comment period to participate in a September 1, 1993, meeting that allowed for additional dialogue. If a commenter feels that he or she has additional information the DEPE should consider regarding the impact of a proposed regulation on an individual facility, that commenter should provide the DEPE with the appropriate detailed social or economic data during the public comment period. However, the DEPE has decided not to adopt the C1 designation at this time in order to promote a watershed approach to water quality management in the Wallkill River watershed which would provide equivalent or better protection than the C1 designation.

21. COMMENT: The DEPE should hold a series of public meetings and workshops on the overall environmental, social and economic impacts of such a reclassification. SCMUA further suggests that a task force should be formed to examine these issues. (4)

RESPONSE: As described in the response to Comment 20, the DEPE provided impact statements as part of the proposal notice. Opportunities for comment were provided at the public hearing held on March 4, 1993, and at an additional public meeting on September 1, 1993. Additionally, comments could be submitted to the DEPE during the public comment period. The DEPE does not feel that it is necessary to form a separate task force to further examine these issues at this time. However, the DEPE expects that the public participation process associated with the development of the watershed management plan will result in more discussion of such issues.

22. COMMENT: In a July 27, 1990 memo from then Acting Deputy Director Cattaneo to then Assistant Commissioner Keith regarding the SCMUA NJPDES/Discharge to Surface Water permit, Acting Deputy Director Cattaneo stated that, should reclassification of the Wallkill River be considered, a "dialogue between representatives of the Division, the Petitioners, and the affected area would be initiated concerning the environmental and social and economic aspects of such a reclassification." No dialogue took place prior to the publication of the proposal to reclassify the Wallkill River NWR waters now pending. (4)

23. COMMENT: In a July 27, 1990 memo from then Acting Deputy Director Cattaneo to then Assistant Commissioner Keith regarding the SCMUA NJPDES/Discharge to Surface Water permit, Acting Deputy Director Cattaneo informed Assistant Commissioner Keith of the DEPE's responses to NJ Audubon Society's comments on the draft permit, in particular, whether or not the DEPE took into account the Wallkill NWR when drafting permit limits. The DEPE responded that if a petition to reclassify the Wallkill River were received, "a dialogue between representatives of the division, petitioners, and the affected area, would be initiated concerning environmental and socioeconomic aspects of a reclassification. If they determined a reclassification would be appropriate, the division would propose modification of the provisions and impacts of the reclassification." SCMUA does not feel that the current information and discussions so far have fully analyzed what the overall impacts of C1 would be. SCMUA is not, in essence, opposed to C1, but believes a fuller discussion is needed. (8)

RESPONSE: The DEPE believes that the public hearings held as part of the permit application process and as part of the public comment period on the proposed amendment to give C1 status to the waters of the Wallkill River within the confines of the Wallkill River NWR, did provide adequate opportunity for dialogue concerning the impacts of the change in antidegradation status. However, because SCMUA felt that the dialogue which took place prior to the close of the comment period on the rule amendment was insufficient, the DEPE met, on September 1, 1993, with persons who commented on the proposed change in antidegradation designation during the public comment period at the DEPE's main offices in Trenton to provide an additional opportunity for clarification of issues raised during the public comment period. The public comment period closed on March 12, 1993, and no request was received to extend or reopen it. Therefore, only questions and comments raised at the September 1, 1993 meeting that were also submitted during the comment period are addressed in these responses to comments. The DEPE believes there has been a full discussion of the impacts of the C1 designation both in the responses to comments and through the meeting held on September 1, 1993.

24. COMMENT: How will the C1 status of Wallkill River NWR waters affect the proposed expansion of the Upper Wallkill treatment plant to accept the waste loads from Sussex Borough (and the simultaneous termination of the present Sussex Borough treatment plant's discharge) and future growth in the region? (4)

25. COMMENT: The presently authorized discharges and wasteloads of the Borough of Sussex and the proposed connection of the borough to the Authority's Upper Wallkill plant should not be affected by the designation of the Wallkill River NWR waters to C1. (4)

26. COMMENT: The proximity of the discharge point to the Wallkill River NWR's boundaries and the provisions of N.J.A.C. 7:9B-1.5(d)(7) necessitate clarification with respect to the C1 designation's impact upon the SCMUA facility. (4)

27. COMMENT: How will the C1 status of Wallkill River NWR waters affect flows and loads recently authorized in SCMUA's final Upper Wallkill NJPDES permit modification issued January 28, 1993? (4)

28. COMMENT: Permitted discharges and wasteloads for the Upper Wallkill plant should not be affected by C1 designation of the Wallkill River NWR waters. The NJPDES permit modification (issued on January 28, 1993) sets appropriate water quality based effluent limits for the plant. The final permit's response to comments makes clear that issuance of the permit reflects a determination by the DEPE that the limits protect the uses of the Wallkill River. In Comment 6, the DEPE found that "designation of the Wildlife Refuge is not relevant because the resulting water quality from the permit, as proposed, protects that use" and that "Departmental approved water quality studies confirm this fact." Likewise, the DEPE's response to Comment 7 in the final permit notes that "the downstream uses of the Wallkill River will be fully protected under the proposed modification" while the response to Comment 3 in the final permit affirms that "the draft permit effluent limitations assure attainment of the applicable water quality standards of the Wallkill River." (4)

RESPONSE: Based upon existing regulations and based upon findings from the ongoing biological monitoring program (required by the final Discharge Allocation Certificate effective November 1, 1993) of no adverse impacts to the stream biota, the flows and loadings allowed in SCMUA's final Discharge Allocation Certificate will be honored by the DEPE.

29. COMMENT: Since the DEPE has determined that the waste loads and discharge volumes authorized by the Upper Wallkill River treatment plant's January 28, 1993, final permit modification will not adversely impact the uses of the Wallkill River within the Wallkill River NWR, future increases in the volume of waste water treated by the facility up to its permitted 2.5 MGD flow will result in no "measurable changes" to the NWR waters for antidegradation purposes even if the proposed designation to C1 is adopted. An affirmative statement so indicating, and providing that the designation of the NWR waters will not prevent the Upper Wallkill treatment plant from increasing its flow up to its 2.5 MGD design capacity or require changes to the discharge effluent limitations contained in its recent permit modification, should be added to the final draft of the rule change in the event the proposed designation of the NWR waters to C1 is adopted. (4)

RESPONSE: The Upper Wallkill River treatment plant's January 28, 1993 final permit modification effluent limitations were not calculated to protect the waters of the Wallkill River NWR as C1 (that is, no measurable or calculable change in water quality). Therefore, the DEPE cannot state that future increases in wastewater discharged up to 2.5

MGD would result in "no measurable change" to the water quality within the boundaries of the Wallkill NWR. In addition, the data needed to demonstrate "no measurable change" in water quality may be substantially different from those required to show no adverse impact on the uses of the waters of the NWR and the two statements may not be equated. However, as indicated in the response to Comment 23, based upon existing regulations and based upon findings from the biological monitoring program (required by the final Discharge Allocation Certificate) of no adverse impacts to the stream biota, the flows and loadings allowed in SCMUA's final Discharge Allocation Certificate will be honored by the DEPE.

30. COMMENT: Approval for construction of a new 0.9 MGD sewage treatment plant by the DEPE constituted a determination that the increased volume of treated effluent (from the 2.5 MGD capacity of SCMUA's existing plant) and waste loadings resulting therefrom would not adversely impact the uses of the receiving streams including the Upper Wallkill River within the NWR and, consequently, that such loadings would not result in a "measurable change" to the NWR wastes for antidegradation purposes even if they are designated C1; N.J.A.C. 7:9B-1.5(d)6iii(3) and N.J.A.C. 7:9B-1.4. The waste loadings accepted by the DEPE should be combined with the permissible waste loadings contained in SCMUA's modified NJPDES permit for purposes of the pending Discharge Allocation Certificate application. (4)

RESPONSE: The SCMUA received approval to build treatment capacity for increased flow from 2.5 to 3.0 MGD (a net increase in capacity of 0.5 MGD), not 0.9 MGD as stated by the commenter. Approval of this increased flow was based upon the fact that there would be no increase in loadings resulting from the increased flow. No examination or determination relative to the 2.5 MGD flow incorporated into previous permits was made as part of the review of the request for an increase from 2.5 to 3.0 MGD. Instead, the DEPE based its decision on the fact that there would be no increase in loadings as a result of the increase in flow. Based upon existing regulations and findings from the biological monitoring program (required by the final Discharge Allocation Certificate) of no adverse impacts to the stream biota, the flows and loadings allowed in SCMUA's final Discharge Allocation Certificate will be honored by the DEPE.

31. COMMENT: Given the use classification of the Wallkill River NWR (FW2-NT), and the uses, expansion to five MGD of the Upper Wallkill River plant can occur without an adverse impact on those waters within the regulatory definition and intention even though there might be some insignificant changes in composition or quality. (4)

RESPONSE: The DEPE cannot determine whether or not expansion to five MGD of the Upper Wallkill River plant can occur without any adverse impact on the Wallkill River within the NWR as sufficient data were not provided by the commenter for evaluation.

Mixing Zones

32. COMMENT: The State should not commit itself to enterococci criteria until it can prove that the criteria are better than the fecal coliform criteria that they are to replace, and that the criteria are not overly conservative (that is, overly costly to the residents of the State). (13)

33. COMMENT: The DEPE has provided no evidence in the Basis and Background documents that the enterococci criteria are necessary for the protection of the residents of New Jersey. (7, 13)

34. COMMENT: Further reserch is necessary to justify the reasonableness and appropriateness of the enterococci criteria. (7, 19)

RESPONSE: Enterococci criteria were adopted by the DEPE in August of 1989 and comments on the basis for their adoption are outside of the scope of this proposal. The Basis and Background document supporting the 1989 rule proposal referenced USEPA's 304(a) criteria document "Ambient Water Quality Criteria for Bacteria—1986," which served as the basis for the August 1989 adoption of the enterococci criteria. However, after evaluating the many comments submitted in opposition to the DEPE's proposal to prohibit mixing zones for bacterial indicators, the DEPE has decided that the following course of action is most appropriate at this time: (1) adopt the proposed amendment to prohibit mixing zones for bacterial indicators at N.J.A.C. 7:9B-1.5; (2) continue to include NJPDES permit limitations for fecal coliform with no mixing zones; (3) include permit conditions that require enterococci as a "monitor only" parameter in all Discharge to Surface Water (DSW) permits for facilities statewide; and (4) either stay enterococci limits in accordance with N.J.A.C. 7:14A-8.10, or modify all permits containing enterococci limits to make enterococci a "monitor only" parameter. Draft permit modifications for 26 municipal utilities were issued by the DEPE on November 19, 1993. This mass modification proposed changing enterococci limits to "monitor only" on a monthly basis, and either reinstated or retained fecal coliform limits to be met at the end of the pipe. As additional data are generated the DEPE will evaluate them to see if the course of action described above should be adjusted.

Although the DEPE has decided not to include enterococci as a permit limitation at this time, it will continue to gather data showing permittees' ability or inability to comply with the enterococci criteria at the end of the pipe with current levels of disinfection. The information may also explain why treatment plants with well operated disinfection facilities occasionally experience enterococci "spikes." Finally, collection of additional enterococci data will enable the DEPE to evaluate potential impacts to facilities if the use of enterococci as an enforceable permit limitation is resumed.

35. COMMENT: If the USEPA wanted to adopt the enterococci criteria on a national basis, it could do so. The fact that it has not means that the criteria are not justified. (13)

RESPONSE: USEPA does not generally promulgate criteria. It is up to individual states to adopt the human health and aquatic life protection criteria developed by USEPA or develop and adopt criteria to reflect environmental or human health concerns of the state. However, USEPA may promulgate criteria for individual states if the states have failed to adopt appropriate criteria for the protection of human health or aquatic life.

36. COMMENT: Has the USEPA directed the State to adopt enterococci criteria? (13)

RESPONSE: As discussed in the response to Comment 35, USEPA develops criteria and expects states to either adopt them or to develop and adopt criteria to reflect environmental or human health concerns of the State. The enterococci criteria were adopted by New Jersey in 1989. The DEPE's February 1, 1993, proposal did not contain a proposed change in the enterococci criteria. The DEPE proposed an amendment at N.J.A.C. 7:9B-1.5(c)4viii to codify a long standing Departmental policy not to allow mixing zones for bacterial indicators.

37. COMMENT: How many states have enacted similar enterococci criteria and having mixing zones been allowed? (13)

RESPONSE: The DEPE is aware of four other states and one interstate agency that have adopted similar enterococci criteria: Connecticut, Delaware, Hawaii, Maine, and the Delaware River Basin Commission. Connecticut, Delaware, and Maine currently do not include enterococci as a limitation in NPDES permits. Enterococci criteria are merely used as a measure of ambient water quality and to determine beach closures. Hawaii requires dischargers to near-coastal waters to meet the enterococci criteria at the end of pipe while deep ocean outfalls are granted mixing zones for enterococci. The Delaware River Basin Commission does not specify whether or not mixing zones are permitted for bacterial indicators and leaves that to the discretion of the states implementing its criteria. Virginia, Oregon, and California are currently either initiating enterococci studies or are currently debating implementation of the enterococci criteria.

38. COMMENT: A public notice was issued by the state of Georgia on February 15, 1993, because it was deciding whether or not to use the Federal enterococci criteria. The notice stated "The USEPA staff have also commented that E. coli and enterococci may be no better than the fecal coliform standard." So why is New Jersey going ahead with a new bacterial indicator that might not be better than the current bacterial indicator (fecal coliform) and may require the reclassification of many streams and rivers as not swimmable? (7)

RESPONSE: As part of its February 1, 1993 proposal, the DEPE did not propose enterococci as a new bacterial indicator. It proposed to prohibit mixing zones for bacterial indicators. Enterococci criteria are not currently used by local or the State departments of health as the bacterial indicator used for beach closure decisions. As indicated throughout the responses to comments, the DEPE will be including enterococci as a "monitor only" parameter in permits until it can further evaluate permittees' ability to meet enterococci limitations using current disinfection practices.

39. COMMENT: The DEPE should recognize that the enterococci data, as they relate to gastroenteritis probability, which has been presented by the USEPA, are confusing and inconclusive. The case studies cited do not clearly show a direct relationship between enterococci counts and probability of gastroenteritis occurring in the individual swimmer. (7, 14)

RESPONSE: The enterococci water quality criteria, recommended by USEPA in its 304(a) criteria document and subsequently adopted by New

Jersey, are based on an estimate of bacterial indicator counts and gastrointestinal illness rates that are currently being accepted by the states. When USEPA examined the data used to develop the enterococci criteria, it used a statistical analysis to determine the rate of illnesses associated with swimming. USEPA did not analyze the data to determine the probability of an individual swimmer becoming ill. The statistical method of analysis chosen by USEPA does not invalidate the criteria.

40. COMMENT: Local health departments do not use enterococci for determining whether or not a swimming area should be opened or closed for swimming. It must also be pointed out that neither the DEPE's Shellfisheries Program nor the FDA National program uses enterococci to determine whether or not shellfishery areas should be opened or closed or whether the quality of the shellfish taken from those areas is acceptable. (13)

RESPONSE: The commenter is correct in stating that local health departments in New Jersey currently do not use enterococci for determining whether or not to close public bathing areas and that shellfish harvesting areas in New Jersey are not closed based on enterococci counts.

However, as part of the National Indicator Study, authorized by Congress under H.R. 2130-17, Section 306, October 1992, the Interstate Shellfish Sanitation Conference, under a memorandum of understanding with the National Marine Fisheries Service/National Oceanic and Atmospheric Administration, has initiated studies to improve the current water quality based classification system used to determine the acceptability of shellfish harvest waters. The current system used to determine the suitability of shellfish harvest waters has a history of problems. One of these problems is that the current biological indicator organisms used, total and fecal coliform groups, are unreliable and the risk of human illnesses associated with consuming shellfish from these waters has not been correlated scientifically. Therefore, the National Indicator Study is searching for more appropriate indicators of human and nonhuman fecal pollution. Enterococci is one of the bacterial candidates being examined.

41. COMMENT: There has been no evidence to date that current methods of wastewater disinfection have caused the closing of, or have threatened to cause the closing of, shellfish harvesting beds on the New Jersey coast beyond the defined closure limits specified by DEPE rule. (5)

RESPONSE: As a member of the National Shellfish Sanitation Program (NSSP), the State is required to establish a permanently closed safety zone (prohibited area) surrounding all wastewater discharges into shellfish growing waters. The degree of reliability of treatment received at the wastewater facility is essential in determining the safety zone's size. Factors such as alarm systems, backup equipment, volume of effluent flow, type of treatment, emergency holding capacities and the DEPE's ability to close surrounding open (approved) shellfish harvesting waters before any inadequately treated effluent would reach them, are also factors in this determination. These factors are reexamined every three years, or sooner should conditions warrant, and the size (boundary) of the closed safety zone is adjusted accordingly. These surveys are conducted in accordance with applicable State and Federal Food and Drug Administration guidelines and regulations as described in the NSSP Manual of Operations (Part I—Sanitation of Growing Areas). Therefore the boundaries of a safety zone may be expanded if current methods of disinfection at the adjacent wastewater discharge point have proved unreliable in the past. Likewise, the size of a closure area could be reduced if a wastewater treatment plant upgrades its treatment capabilities and reliability.

42. COMMENT: The DEPE knows that the discharge of unchlorinated waste water by ocean outfalls has no measurable effect upon the surface water quality. The DEPE has run tests in Long Branch or other Authorities' beach areas in which the disinfection facilities were shut off and samples taken in the surf. No bacterial violations were found and these studies should be released. Therefore, the DEPE's statement that higher ambient concetrations for enterococci and fecal coliform would lead to more frequent beach closings is unfounded, as are the contamination and closings of shellfishery beds and the need for additional treatment for potable water sources. (13)

RESPONSE: Preliminary work for the New Jersey Department of Health's 1988 Ocean Health Study included a study of the Long Branch Sewerage Authority ocean discharge in October 1987. The study included monitoring of the ocean water in the area of the discharge during five days that the authority chlorinated the effluent and three days that the authority discontinued chlorination. The New Jersey Department of Health concluded, "At no time, including a period when chlorination was discontinued, did the effluent reach the shoreline to produce enterococci or fecal coliform levels of even the slightest health concern. The (indicator) phage, which parallels the environmental behavior of intestinal viruses, did reach the beach in measurable but very low levels when chlorination was discontinued and on one additional day." This study was limited to a specific ocean discharge under a limited set of wind and ocean conditions. The conclusions from a study of one ocean outfall under a limited set of oceanographic conditions can not be extrapolated to other ocean outfalls under all oceanographic conditions.

Further, the study also tracked the bacteria concentrations in the effluent plume at offshore locations under both chlorination and nonchlorination conditions. During the period of discontinued chlorination, the highest recorded fecal coliform, E. coli, and enterococci concentrations exceeded 666 colony forming units (cfu) per 100 mL. The highest concentrations recorded in the offshore effluent plume during chlorination were 50, 26.6, and 5.5 cfu per 100 mL for fecal coliform, E. coli, and enterococci, respectively. These results indicate a measurable water quality impact from the discharge of unchlorinated, treated wastewater.

43. COMMENT: There have been no known beach closings along the New Jersey coast due to ocean outfalls. All the beach closings have been found to be caused by nonpoint source pollution from storm drains and from other discrete dumping. (12)

RESPONSE: In 1988, the Asbury Park sewage treatment plant failed to remove significant quantities of grease from its wastewater during the treatment process. Ultimately, the grease interfered with the disinfection process and was discharged into the ocean. From July 13 through August 1, 1988, excessive bacteria concentrations and grease-covered feces caused recreational bathing restrictions from Allenhurst south through Spring Lake. Daily during this period, local health departments restricted bathing in from one to all of the recreational areas in the affected municipalities.

Additionally, local health departments restricted bathing at ocean beaches because of breaks in the ocean outfalls from the Neptune Township and Ocean Township sewage treatment plants in 1989 and 1993, respectively. These restrictions were precautionary and not based on monitoring data.

44. COMMENT: The likelihood of direct contact with undiluted sewage from an ocean discharger through recreational contact is extremely remote because of the distance from shore and depth of the outfall diffusers. The vast majority of vacationers and residents utilize only the beach area for full body contact with the ocean waters. The area a mile offshore directly over the ocean outfall diffusers, can logically only be considered as infrequently used for full body contact. Therefore, mixing zones should be applied for use with enterococci criteria. (5, 7, 12, 19)

45. COMMENT: If the DEPE intends to keep the enterococci criteria, they should be applied properly. This proposal directly conflicts with enterococci criteria promulgated by the USEPA which states that the standard should only be applied at bathing beaches. The DEPE should reclassify waterbodies to reflect the degree of full-body contact bathing and truly recognize what are bathing beach areas and what are not. Where bathing is infrequent, higher bacterial levels are acceptable and will fully protect public health. Enterococci criteria and effluent limitations should be restricted to waters where full body immersion is prevalent (recreational areas) and should not apply to the remaining waters of the State where such uses are not prevalent. Because the DEPE is misapplying the enterococci standards by imposing them in a manner not consistent with how the criteria were developed, the enterococci criteria should be withdrawn. (7)

RESPONSE: Primary contact recreation is a designated use of waters classified as FW2, SE1 and saline coastal (SC) in the New Jersey SWQS (N.J.A.C. 7:9B-1). Enterococci criteria apply to these waters. Waters classified as SE2 and SE3 do not include primary contact recreation among the designated uses and the enterococci criteria do not apply to these waters. Waters in New Jersey are not classified by the degree of primary contact recreation anticipated.

As discussed in the Basis and Background document supporting the DEPE's proposal, there are several forms of primary contact recreation that may bring people into the vicinity of ocean outfalls. Even though not as many individuals come in contact with these ocean outfalls as use near shore areas, these waters are classified as SC waters with a designated use of primary contact recreation and must be protected for this use. The proposition that individuals swimming in areas which are less frequently utilized for swimming should be subject to higher risks is unacceptable to the DEPE. The DEPE has therefore adopted the

proposed amendment to prohibit mixing zones for bacterial indicators. However, at this time the DEPE has decided to temporarily suspend the use of enterococci as a permit limitation and will include it as a monitor only parameter in permits.

46. COMMENT: The reasons for the instream exceedences of enterococci and fecal coliform presented by the DEPE in the Basis and Background document supporting the proposal must be fully explored before a highly restrictive disinfection requirement is imposed on all dischargers to primary contact recreation waters. Since mixing zones are currently allowed to be considered on a case-by-case basis, as determined by the DEPE, the marine dischargers into SC water deserve to be separated from other areas where these instream exceedences have occurred. (14)

47. COMMENT: The DEPE has limited data, collected over the past three years, which indicated that there were instream exceedences of both fecal coliform and enterococci criteria. These background data are very limited and indicate that this pollution is most likely from nonpoint sources and should not be used to justify tighter constrol of point sources. (12)

RESPONSE: The data collected by the DEPE only indicate that instream exceedences of both fecal coliform and enterococci criteria occur statewide. Sufficient information was not gathered to determine whether these exceedences were caused by point or nonpoint sources. These data were not the sole reason that the DEPE decided to put into regulation a policy that has been and is being utilized in the development of permit limitations for bacterial indicators.

48. COMMENT: Existing fecal coliform limitations fully protect public health from pathogens in municipal sewage and the regulatory support document accompanying the proposed rule states that there is no demonstrated public health need for this standard. (7)

49. COMMENT: The DEPE's own supporting Basis and Background document indicates that current methods for controlling bacteria are sufficient, so how can potential health implications outweigh economic considerations? (12)

50. COMMENT: The Basis and Background document accompanying this rule proposal admits that the current regulatory program has been fully protective of human health and the environment. The DEPE's policies should reflect this finding by maintaining current levels of protection, provided by the fecal coliform standard, and deleting any more stringent enterococci requirements from the water quality standards in future and existing permits. (5)

RESPONSE: The Basis and Background document accompanying this rule proposal does not state that the current regulatory program has been fully protective of human health and the environment. It states, "The Department's existing policy of applying criteria for bacterial indicators as effluent standards (to be met at the end of the pipe without allowing a mixing zone) has not been accompanied by any significant outbreaks in waterborne diseases to date." The DEPE was referring to diseases such as typhoid, cholera, or hepatitis A. The DEPE is unaware of any studies conducted along the New Jersey shore specifically designed to correlate ambient bacterial concentrations, primary contact recreation, and adverse human health effects such as gastroenteritis, or eye, ear, or respiratory infections. However, the DEPE has decided to include enterococci provisions in NJPDES permits as "monitor only" and continue to gather data showing permittees' ability or inability to comply with the enterococci criteria at the end of the pipe using current levels of disinfection.

51. COMMENT: One commenter objected to the DEPE's "arbitrary departure from USEPA recommended implementation guidance" and requested that the DEPE furnish the administrative record supporting its determination that the existing fecal coliform criteria do not sufficiently protect commercial or recreational uses of New Jersey's waters and that human health protection may only be achieved by applying enterococci standards as end-of-pipe limitations. (7)

RESPONSE: There are no Federal regulations requiring allowance of mixing zones. In its 304(a) "Ambient Water Quality Criteria for Bacteria—1986" document, USEPA does not state, nor imply, that enterococci criteria are to be applied with mixing zones. The DEPE therefore does not concur with the allegation that it has arbitrarily departed from USEPA recommended guidance. In addition, USEPA specifically gives states discretion whether or not to apply to apply mixing zones in "Technical Support Document for Water Quality-based Toxics Control" March 1991, EPA/505/2-90-001.

52. COMMENT: An engineering estimate figured that it would cost Northeast Monmouth County RSA approximately $3 million to comply with the proposal. (12)

53. COMMENT: The money for capital expense in order to meet the enterococci limit could be better spent upgrading treatment plants along the New Jersey shore. (12)

54. COMMENT: The DEPE's proposal not to allow any dilution for bacterial standards seems based upon concerns and uncertainties. It is improper for the DEPE to make decisions that will cost the residents of the State millions of dollars based upon the DEPE's unfounded concerns and the DEPE's inexcusable uncertainties. (13)

55. COMMENT: In the Social Impact section of the rule proposal, the DEPE states, "The segment of the population that will be most directly affected by the proposal will be those responsible for discharges as defined in the New Jersey Water Pollution Control Act." It is not those responsible for the discharges, but those who must pay the user charges—the public of New Jersey—who will be directly affected. (13)

56. COMMENT: Despite the lack of evidence supporting that current disinfection policies are ineffective as to enterococci or that the fecal coliform criteria are inadequately protective of the health of residents of the state, the DEPE has concluded that there is a public health concern for which more stringent bacteria requirements are necessary at a cost of millions of dollars with only questionable corresponding benefits to human health and the environment. (5, 7, 13, 14, 18)

57. COMMENT: It is generally accepted in the waste water treatment community that higher levels of chlorination are required to comply with the enterococci standard the DEPE is proposing. In order to avoid excursions from permit limits, the extra chlorination and then resultant dechlorination facilities required to comply with the proposed surface water quality standards has been estimated to cost approximately $10 million in capital improvements for Cape May County MUA's four wastewater treatment plants. (14)

58. COMMENT: The DEPE does not adequately consider the social and economic costs to the regulated community and, ultimately, the taxpayers of New Jersey of prohibiting mixing zones for bacterial indicators. (7)

59. COMMENT: Imposing USEPA water quality standards as end-of-pipe is overly conservative and will provide unnecessary levels of protection at dramatically increased costs and at increased exposure to fines and penalties for the regulated community. (7)

60. COMMENT: Ocean dischargers are critically concerned about enterococci limits being applied at the end of the pipe because they have been required to build long outfalls into deep water to gain substantial dilution and avoid public exposure. Many of them did not build separate chlorination tanks and have been using their outfalls as chlorination tanks, getting many hours more detention time than land-based chlorination facilities. Many facilities have no room to install chlorination facilities. Cape May County MUA has estimated that it would cost $10-13 million to chlorinate and make sure the chlorination is high enough and long enough to meet enterococci criteria. (7)

RESPONSE: Because of unexplained exceedences of enterococci limits at well operated wastewater treatment facilities practicing proper disinfection and meeting fecal coliform limitations, the DEPE has decided to temporarily suspend the application of enterococci criteria as effluent limitations in NJPDES permits and include them as a monitoring only parameter while it evaluates enterococci further. Draft permit modifications for 26 municipal utilities were issued by the DEPE on November 19, 1993. This mass modification proposed changing enterococci limits to "monitor only" on a monthly basis, and either reinstated or retained fecal coliform limits to be met at the end of the pipe.

If the DEPE decides to reinstate the enterococci criteria at a later date, all dischargers with sanitary components in their effluent and those dischargers with the potential to violate the enterococci criteria will be required to meet the criteria at the end of the pipe. Any discharger unable to meet these permit limitations would be able to apply for a variance from the final permit limitation through either N.J.A.C. 7:9B-1.8, Procedures for modifying water quality based effluent limitations for individual dischargers to Category One waters, or N.J.A.C. 7:9B-1.9, Procedures for modifying water quality based effluent limitations for individual dischargers to Category Two waters.

61. COMMENT: One commenter opposes the inclusion of enterococci as a water quality criterion because it will require higher levels of disinfection. (14)

RESPONSE: The DEPE, in its February 1, 1993, proposal did not propose enterococci for inclusion as a new surface water quality criterion; it proposed to prohibit mixing zones for bacterial indicators. Enterococci was adopted as a surface water quality criterion in August of 1989.

62. COMMENT: The DEPE proposes to greatly increase disinfection requirements by applying enterococci standards to virtually all waters, regardless of their use, and without allowing any mixing zone. (7)

63. COMMENT: The DEPE should evaluate the extensive ocean studies undertaken by the Cape May County MUA as part of the preliminary engineering required by the DEPE under the implementation of the 201 plan in the late 1970s. These studies indicate that prevailing water currents do not carry effluent toward the beaches in Cape May County. In addition, Cape May County MUA, in conjunction with the Cape May County Department of Health, has been conducting a sampling and analytical monitoring program in the ocean waters directly over the outfalls. A review of the bacteria density data from this program indicates that current levels of chlorination have been consistently adequate to protect the marine waters and have always been of a quality acceptable for primary contact recreation. Therefore, there is no need to require higher levels of disinfection. (14)

64. COMMENT: Fecal coliform should remain the bacterial indicator so that people do not decrease their disinfection. The regulated community is not suggesting that disinfection units should be turned off if mixing zones are granted. It is trying to avoid higher than necessary disinfection levels. (7, 14)

RESPONSE: The DEPE will continue to gather enterococci data in order to confirm the representations that requiring permittees to meet enterococci at the end of the pipe will require greatly increased disinfection requirements at the cost of millions of dollars. Therefore, the DEPE will begin to include permit conditions that require enterococci as a "monitor only" parameter in all Discharge to Surface Water (DSW) permits for facilities statewide, as stated in the response to Comment 34.

65. COMMENT: The DEPE should include in the record files of discussions with state health officials as to whether or not these officials felt going to enterococci criteria from fecal coliform criteria was reasonable and appropriate. It is understood that those officials stated that they were not comfortable using the new criteria and they wanted to stay with fecal coliform. (7)

RESPONSE: The DEPE held a meeting in May 1992 regarding enterococci criteria and the implementation of mixing zones. A representative of the New Jersey Department of Health attended. The New Jersey Department of Health representative stated that the Department of Health would prefer to retain the fecal coliform criteria, instead of using the enterococci criteria because the citizens of New Jersey, in general, are more comfortable with the fecal coliform criteria. These criteria have been used for years and people are familiar with them.

66. COMMENT: The DEPE cannot simply say that because sanitary wastewater dischargers have been required to and are able to meet fecal coliform limitations without a mixing zone that a similar policy for enterococci is also appropriate. Enterococci limitations are not reliably achieved through the same treatment processes and the criteria are not "equal" for purposes of mixing zone evaluations. (5, 7, 12)

67. COMMENT: Mixing zones should be applied for enterococci because facilities cannot meet the enterococci limitation at the end of the pipe. (Data exist which show that nine of 14 plants in Oregon had significant daily maximum violations, meaning that approximately ten to 20 percent of the time they could not meet enterococci at the end of the pipe.) (7)

RESPONSE: The DEPE's reason for prohibiting mixing zones for bacterial indicators is to protect human health. Because facilities cannot meet enterococci limits at the end of the pipe (they are not reliably achieved through the same treatment processes as fecal coliform criteria) is not a valid reason in and of itself to allow mixing zones. In addition, the commenter's own data indicate that nine of 14 sewage treatment plants in Oregon could **not** meet the enterococci limits at the end of the pipe only ten to 20 percent of the time.

68. COMMENT: The DEPE proposed SWQS on November 2, 1992, that included bacteriological limits for fecal coliform and enterococci that were "end of pipe limits." (12)

RESPONSE: The DEPE's November 2, 1992, SWQS proposal did not include new fecal coliform or enterococci criteria. The fecal coliform criteria were first included in the SWQS in 1971; enterococci criteria were adopted in August 1989. The 1992 proposal and adoption notices did not state that the criteria were to be applied at the end of the pipe or with a mixing zone. The issue of point of application of the criteria was not addressed.

69. COMMENT: Some individuals and organizations support the comments made by AEA and John Hall which appear throughout this document. (12, 14, 18, 19)

RESPONSE: The DEPE acknowledges the commenters' support of the comments submitted and has addressed those comments in the responses above.

Summary of Agency-Initiated Changes:

The DEPE recodified N.J.A.C. 7:9-4 to N.J.A.C. 7:9B-1 when the DEPE adopted and published in the December 6, 1993, New Jersey Register, amendments to the SWQS that placed the SWQS in a separate chapter of the New Jersey Administrative Code. See 25 N.J.R. 5569(a). As a technical change on adoption, the amendments adopted herein have been recodified to reflect the placement of the SWQS in N.J.A.C. 7:9B.

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

7:9B-1.5 Statements of policy

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

(c) General technical policies are as follows:

1.-3. (No change.)

4. Mixing zone policies are as follows:

i.-vii. (No change.)

viii. No mixing zones shall be permitted for indicators of bacterial quality including, but not limited to, fecal coliforms and enterococci.

5. (No change.)

(d)-(g) (No change.)

7:9B-1.15 Surface water classifications for the waters of the State of New Jersey

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

(g) The surface water classifications in Table 5 are for waters of the Wallkill River Basin:

TABLE 5

Waterbody	Classification
...	
WALLKILL RIVER	
(Sparta)—Source to confluence with Sparta Glen Brook	FW2-NT
(Franklin)—Sparta Glen Brook to, but not including, Franklin Pond	FW2-TM
(Wantage)—Outlet of Franklin Pond to *[boundary of Wallkill River National Wildlife Refuge]* ***State line***	FW2-NT
[(Wallkill River National Wildlife Refuge)—River and tributaries within boundaries of Wallkill River National Widlife Refuge, including all future acquisitions]	*[FW2-NT(C1)]*

(a)

DIVISION OF RESPONSIBLE PARTY SITE REMEDIATION

Underground Storage Tanks Fees

Adopted Amendments: N.J.A.C. 7:14B-1.6, 2.2, 2.6, 2.7, 2.8, 3.1, 3.2, 3.4 and 3.5

Adopted New Rules: N.J.A.C. 7:14B-3.6, 3.7 and 3.8

Adopted Repeal and New Rule: N.J.A.C. 7:14B-3.3

Proposed: April 5, 1993 at 25 N.J.R. 1363(a).

Adopted: January 14, 1994 by Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.

Filed: January 28, 1994 as R.1994 d.98, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-9, 58:10A-1 et seq. and 58:10A-21 et seq.

DEPE Docket Number: 17-93-03.

Effective Date: February 22, 1994.

Operative Date: February 22, 1994, provided, however, that N.J.A.C. 7:14B-2.2, and 3.2 shall become operative on January 1, 1995.

Expiration Date: November 18, 1997.

Summary of Hearing Officers Recommendations and Agency Response:

On April 5, 1993, the Department of Environmental Protection and Energy (Department) proposed amendments to the Underground Storage of Hazardous Substances Act rules at N.J.A.C. 7:14B-1.6, 2.2, 2.6, 2.7, 2.8, 3.1, 3.2, 3.4 and 3.5, new rules N.J.A.C. 7:14B-3.6, 3.7 and 3.8 and the repeal and new rule N.J.A.C. 7:14B-3.3. The Department held a public hearing on the proposed rule amendments and new rule on April 30, 1993 in Trenton, New Jersey. The Department accepted written comments through May 5, 1993.

Kenneth T. Hart, former Assistant Director of the Industrial Site Evaluation Element, served as hearing officer for the Underground Storage of Hazardous Substances Act fee rule proposal at the April 30, 1993 public hearing. Three persons testified regarding the proposed Underground Storage of Hazardous Substances Act fee rule proposal.

The Department is in the process of completing the computer and technical modifications necessary to convert the underground storage tank registration cycle from an annual cycle to a three-year cycle as described in the April 5, 1993 proposal at 25 N.J.R. 1363(a). The Department anticipates that the conversion will be completed by Fall 1994 and the Facility Certification Questionnaires for the three-year registration cycle will be sent to regulated underground storage tank owners and operators on or about October 1994. Therefore, the adopted amendments: N.J.A.C. 7:14B-2.2 and 3.2 will be effective upon promulgation, but will not be operative until January 1, 1995.

Former Assistant Director Hart and current Assistant Director Wayne C. Howitz recommended that the Department adopt the rule as proposed including the underground storage tank registration provisions which will not become operative until January 1, 1995. The Department agrees with the recommendations.

Summary of Public Comments and Agency Responses:

The following persons submitted written comments or testified at the public hearing on the April 5, 1993, rule proposal.

Name—Affiliation

Frederick M. Anderson, New Jersey Petroleum Council
B.F. Aurelius, Shell Oil Company
Warren Brecht, Butler International, Inc.
Joseph Cerchiaro, New Jersey Health Products Council
Thomas Detweiler, Chemical Industry Council of New Jersey
Bill Dressler, New Jersey Gasoline Retailers Association
Jerry M. Ferrara, New Jersey Gasoline Retailers Association
David Hergert, Mays Landing Sand and Gravel Co., Inc.
D.M. Lucas, Chevron, U.S.A. Inc.
Curt Macysyn, Fuel Merchants Association of New Jersey
Ann Miller, Jersey Central Power and Light
L.M. Polocheck, Shell Oil Company
William Vehrs, Mobil Oil Corporation
Michael Wallace, Sandoz Pharmaceutical Corporation

The written and oral comments are summarized and responded to below:

N.J.A.C. 7:14B General Comments

COMMENT 1: The Fuel Merchants Association of New Jersey stated that the fees outlined in the proposal are excessive and out of touch with a leaner more efficient state government.

RESPONSE: The Site Remediation Program does not receive any appropriation from the General Treasury Fund, but relies on fees, Federal government grants and reimbursement for Department oversight costs from responsible parties for its entire budget. The Department has devised a time accounting system that provides for an hour for hour accounting of staff work performed on a specific project which can be further broken down into an hour for hour accounting of work performed on a specific aspect of a specific project. This system not only accounts for time spent on a specific project but eliminates multiple reimbursement to the Department for the same task. The direct billing formula is designed to recover all costs incurred by the Department for its oversight of a site remediation. In addition, this system supports the Department's efforts to be more efficient and responsive to the regulated community while maintaining its strategy of protecting human health and the environment. The Department is only looking to maintain a level of staffing necessary to address the number of cases needing Department oversight. The Department's efforts to be more cost-effective and efficient is evinced by the decrease in the indirect cost rate from Fiscal Year 1993 to Fiscal Year 1994 as explained in the Department's response to Comments 40 and 41 below.

COMMENT 2: The Fuel Merchants Association of New Jersey, New Jersey Petroleum Council, New Jersey Health Products Council, and Sandoz Pharmaceutical Corporation stated that the Deprtment does not have an enabling statute which allows the Department to assess fees. In addition, Sandoz Pharmaceutical Corporation and New Jersey Health Products Council do not believe that the "direct billing" approach to collecting fees by the Department is consistent with the intent of the statutes.

RESPONSE: The Department proposed the fee rule amendments pursuant to its authority under the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and the Department's general enabling authority at N.J.S.A. 13:1D-1 et seq. The Department believes that it is fully authorized to assess fees necessary to carry out the provisions of the Underground Storage of Hazardous Substances Act pursuant to these statutes. For example, N.J.S.A. 58:10A-31 expressly provides that the "commissioner may adopt, pursuant to the Administrative Procedure Act, any rules and regulations in addition to those required pursuant to this act, necessary to carry out the provisions of this act, including rules and regulations imposing fees for the processing of initial registrations pursuant to section 3 of this act and for any renewal thereof, and for processing permits required pursuant to section 4 of this act." In addition to the Department's authority to impose fees pursuant to N.J.S.A. 58:10A-31, the Department is authorized to impose fees in the Underground Storage Tank program pursuant to the Water Pollution Control Act, 58:10A-1 et seq.

As explained in the proposal at 25 N.J.R. 1363, prior to proposing these new fee rules, the Department reevaluated the costs associated with administering the Underground Storage Tank program and determined that it was necessary to modify certain Underground Storage Tank fees and to establish new fees to cover the Department's costs in implementing the Underground Storage of Hazardous Substances Act. By recovering the Department's actual costs, the "direct billing" approach is carrying out the intent behind the statutes as accurately as possible.

COMMENT 3: The Fuel Merchants Association of New Jersey suggested that an extension to the tank upgrade deadlines would be more appropriate than the hiring of additional staff to handle the number of cases requiring DEPE oversight.

RESPONSE: When the Legislature originally passed the Underground Storage of Hazardous Substances Act (P.L. 1986, c.102 codified as N.J.S.A. 58:10A-21 et seq.), the deadline set for upgrading all underground storage tanks with secondary containment or monitoring systems and corrosion protection was September 3, 1991. The Legislature recognized that many tank owners and operators would be unable to meet this requirement since the regulations describing the types of acceptable methods were promulgated only one year prior to that date. After careful consideration, the Legislature chose to extend the deadline for all underground storage tanks, except those used to contain heating oil for on-site consumptive use, until December 22, 1993. The Legislature chose that date because it gave owners and operators an additional two years to upgrade and meet its obligations and it also corresponded to the final date that the Federal government set for all Federally regulated tanks to fulfill interim leak detection requirements (40 CFR Part 280).

The deadline of December 22, 1993 for upgrading all regulated underground storage tanks other than those underground storage tanks containing heating oil for on-site consumption, is legislatively mandated. During the past legislative session, the Legislature passed Assembly Bill No. 1535 which would further extend the deadline for all underground ground storage tanks. Former Governor Florio conditionally vetoed Assembly Bill No. 1535. and the Legislature did not override the Governor's veto. Thus, the Department does not have the authority to promulgate regulations which differ from this date.

COMMENT 4: Sandoz Pharmaceutical and Butler International, Inc. stated that the fee system provides no incentive for the Department to manage cases efficiently and that cases may never close.

RESPONSE: The incentive for the Department to be efficient and make cost-effective decisions lies in the policy of the Department to remediate as many sites as possible as quickly as possible. For the Department to encourage employees to spend more time than necessary overseeing a project because reimbursement is available, as the commenters imply, would be counter-productive to the Department's cleanup goals. The more efficiently the Department operates, the more quickly

the Department will accomplish its goals. Unlike a private business entity, profit is not the goal of the Department. The Department benefits from operating efficiently because the fewer hours spent per site allows the Department to oversee more remediations, doing so lessens the likelihood that costs will be challenged and increases the likelihood that a responsible party will pay promptly. Furthermore, the more site remediations that can be accomplished voluntarily by a responsible party, the fewer site remediations that will have to be performed by the Department using tax dollars.

COMMENT 5: The Chemical Industry Council stated that promulgation of this direct-billing fee rule will result in business leaving the State of New Jersey thereby reducing the tax base and ultimately a reduction in generated fees to New Jersey. The Chemical Industry Council of New Jersey also suggested that all costs other than direct labor costs should be allocated to all citizens and not just imposed as an additional tax on business in New Jersey. The Chemical Industry Council of New Jersey stated that many states do not impose fees on businesses and work with the regulated community in assisting businesses to comply rather than penalizing for inadvertent noncompliance.

RESPONSE: Pursuant to N.J.S.A. 13:1D-1 et seq., the Department is charged with the implementation and enforcement of environmental laws, rules and regulations, including the oversight of remediation of contaminated sites. The Legislature decided not to fund the Site Remediation Program from the General Treasury; therefore, the Department must charge fees to administer the Underground Storage Tank program.

As described in the proposal summary at 25 N.J.R. 1363, the Department reevaluated the Department's oversight activities and the costs associated with overseeing the remediation of a discharge from an underground storage tank. Previously, the Department did not impose fees for the review of remediation reports or overseeing other remediation activities at an underground storage tank facility. The Underground Storage Tank program transferred cases where contamination was detected to the New Jersey Pollution Discharge Elimination System (NJPDES) program where site remediation activities would proceed pursuant to a New Jersey Pollution Discharge Elimination System—Discharge to Groundwater Permit (NJPDES-DGW) or retained the case within the Underground Storage Tank program. This effected an inconsistent result. A person remediating an underground storage tank facility would pay all appropriate NJPDES fees pursuant to N.J.A.C. 7:14A-1.8 upon issuance of the NJPDES-DGW permit, while a person conducting a similar remediation of an underground storage tank facility under the Underground Storage Tank program did not pay any fees.

The Department instituted a fee schedule and the direct billing approach to ensure that the Department can efficiently and effectively administer the Underground Storage Tank program which protects human health and the environment, satisfies statutory mandates and provides a timely response to the needs of the regulated community.

The Department does not believe that the direct billing fees will result in businesses leaving New Jersey due to these amendments. These amendments will ensure that a person pays similar reasonable fees for the Department's review and approval of similar documents or activities, regardless of the regulatory program which oversees the remediation. These amendments establish a more equitable means of calculating fees among all owners and operators of underground storage tank facilities, so that each person pays the Department's actual costs to oversee the remediation of their site.

The Department would be forced to increase its indirect cost rate for the entire Site Remediation Program to recover those costs incurred for Department oversight activities under the Underground Storage Tank program for cases in which fees were not imposed. The burden of paying the Department's oversight costs for overseeing the implementation of a remedial action would be shifted from the responsible parties to other members of the regulated community. As a result, all persons within the regulated community would be required to subsidize the Department's costs for overseeing the relatively more complex remediations. The Department is trying to be fair and avoid this inequity by having everyone pay their own costs.

COMMENT 6: Mays Landing Sand and Gravel Company, Inc. stated that New Jersey should develop a reimbursement program to reimburse underground storage tank owners for money spent on various phases of soil and ground water remediation.

COMMENT 7: The Shell Oil Company stated that they would like to see United States Environmental Protection Agency grants, if they are received by the Department, used to help alleviate the financial burden on the regulated community.

RESPONSE TO COMMENTS 6 AND 7: The Legislature has established the Hazardous Discharge Site Remediation Fund, as provided in P.L. 1993, c.139, which was signed by former Governor Florio on June 16, 1993. The Hazardous Discharge Site Remediation Fund was created for the purpose of issuing financial assistance and grants to investigate and remediate contaminated sites. This fund is being administered by the New Jersey Economic Development Authority. In addition, there is an Underground Storage Tank Improvement Fund loan program which is available to assist persons with complying with the underground storage tank upgrade deadlines. However, at this time, the Department still must recover its costs of overseeing the remediation of contaminated sites, including those sites which may be contaminated by leaking underground storage tanks.

The Department allocates funds received through Federal grants, to fund specific programs as required by the grants and to fund "priority" remediations of discharges where the responsible parties have not performed the necessary remedial actions and to reduce the costs that constitute the indirect cost rate as described in N.J.A.C. 7:14B-3.5(d)(3).

COMMENT 8: The Shell Oil Company, Mobil Oil Corporation and the New Jersey Petroleum Council stated that the fee rules should be re-proposed after the adoption of the proposed Procedures for Department Oversight of the Remediation of Contaminated Sites (Oversight Rules) and the Technical Requirements for Site Remediation (Technical Rules) due to the inter-relationship with the proposed fee rules.

RESPONSE: The Procedures for Department Oversight of the Remediation of Contaminated Sites (N.J.A.C. 7:26C) (Oversight Rules) was adopted effective May 17, 1993. In addition, the Technical Requirements for Site Remediation (N.J.A.C. 7:26E) (Technical Rules) was adopted effective June 7, 1993. The Department recognized the inter-relationship between the Technical Rules, Oversight Rules and the Underground Storage of Hazardous Substances Act rules, and by proposing modifications to terminology in the Underground Storage of Hazardous Substances Act rules, anticipated the adoption of the Oversight Rules and the Technical Rules. The Oversight Rules and the Technical Rules do not substantially impact the substantive requirements of the Underground Storage of Hazardous Substances Act fee amendments. Furthermore, the Department does not believe that the inter-relationship between these rules or the difference in their respective adoption schedules have negatively impacted on the regulated community's ability to comment on this fee rule proposal. Therefore, the adoption of these amendments and rules is appropriate.

COMMENT 9: The New Jersey Petroleum Council stated that due to the overlapping requirements of the Technical Rules, the requirement of a Site Assessment Summary and a DICAR should be deleted from the Underground Storage Tank Rules.

RESPONSE: The Department is currently in the process of reviewing the rules implementing the New Jersey Underground Storage of Hazardous Substances Act, N.J.A.C. 7:14B. The Department anticipates proposing further amendments to the Underground Storage of Hazardous Substances Act rules during Spring 1994 which will eliminate any overlapping or duplicative regulatory provisions between the New Jersey Underground Storage of Hazardous Substances Act rules and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

COMMENT 10: Sandoz Pharmaceutical Corporation and the New Jersey Health Products Council stated that the proposed fee system is inconsistent with a State agency's purpose which is to serve the people and would, in effect, create a monopoly of environmental compliance/remedial response in which the State has no competition.

RESPONSE: Pursuant to N.J.S.A. 13:1D-1 et seq., the Department is charged with the implementation and enforcement of environmental laws, rules and regulations. In carrying out its statutory responsibilities, the Department has the authority to determine compliance with environmental laws, such as the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. The regulated community is entitled to challenge individual Department decisions made pursuant to law and regulation in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the New Jersey Court Rules. The rulemaking process, whereby the Department provides public notice of rules proposed, allows persons, such as the Sandoz Pharmaceutical Corporation, to comment on the rule proposal and allows for public input in the development of regulations by the people the Department serves. The Department believes that a fee schedule developed pursuant to these procedures is consistent with the Department's mandate as expressed at N.J.S.A. 13:1D-1 et seq.

COMMENT 11: New Jersey Petroleum Council inquired about what benefits would be derived by the public, the environment and the regulated community by the proposed fee structure.

RESPONSE: The Department refers the commenter to the Social, Economic and Environmental Impact analysis in the proposal at 25 N.J.R. 1366-67. In addition, the use of the proposed fee structure benefits the citizens and other taxpayers of New Jersey as their tax dollars are not used to remediate contaminated sites where a responsible party is available to pay for the costs of a remediation.

As previously stated in the Department's response to Comment 10 above, the Commissioner is charged with the implementation and enforcement of environmental laws, rules and regulations pursuant to N.J.S.A. 13:1D-1 et seq. The Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. provide that either the Department may remediate a contaminated site or may allow other persons to remediate a contaminated site. However, the Department bears the ultimate responsibility for ensuring that contaminated sites are remediated in a manner that is protective of human health and the environment.

For the Department to comply with its statutory mandate to ensure that remediation at contaminated sites is performed satisfactorily (that is, in compliance with all applicable statutes, rules and regulations) and completely, the Department must necessarily perform "oversight functions." Thus, the Department proposed the new fee structure in the Underground Storage Tank Program. This fee schedule will assure that the Department will be reimbursed for time spent, ensuring that remediation is performed in a manner that is protective of human health and the environment.

The cost of oversight is the responsibility of the person remediating the site as the need for Department oversight is the direct result of the person's action. The requirement to reimburse the Department for money spent on the investigation of a contaminated site is consistent with legislative policy. The new fee structure should be a benefit to the regulated community in that the Department will bill only for actual time spent on a case.

COMMENT 12: The Fuel Merchants Association of New Jersey stated that the fee proposed at N.J.A.C. 7:14B-3.5(c)4 for the review of the Discharge Investigation and Corrective Action Report is excessive and that this report could be reviewed for less than the proposed $1,000. In addition, the Department stands to make a "windfall" from this structure.

RESPONSE: The Department refers the commenter to the economic impact analysis provided in the proposal at 25 N.J.R. 1366-67 for an explanation of the remedial investigation report fee. Based on the Department's experience in administering cases under the Underground Storage Tank program, a per document fee schedule for the Department's review of a remedial investigation report can be established due to a reasonably consistent level of oversight required by the Department. Therefore, the established fee for the remedial investigation report is appropriate. The Department regularly evaluates the components which formulate the fixed fee schedules for programs administered by the Site Remediation Program and will make any future modifications, if necessary, through the rulemaking process.

COMMENT 13: The Fuel Merchants Association of New Jersey stated that by the implementation of the proposed fee structure, the Department is discouraging the reporting of minor discharges.

RESPONSE: The Underground Storage of Hazardous Substances Act at N.J.S.A. 58:10A-25(a)(5) and the rules promulgated pursuant thereto, as well as the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 (Spill Act), require the reporting of spills or discharges to the Department. The characterization of a discharge as minor or major is irrelevant to a person's legal obligation to report a discharge. The fee structure has no effect on the reporting obligations as imposed by law. The fee structure compensates the Department for its time reviewing the required documentation to demonstrate that such spills and discharges are remediated and that the methods used are protective of human health and the environment. If the discharge is minor, then the Department's associated time and cost should be comparable.

COMMENT 14: The Fuel Merchants Association of New Jersey would like the Department to respond to the following discrepancy: the Department's average base salary and fringes is stated as $38,000 when a Fuel Merchants Association survey shows an average salary of $21,964 in the industry.

RESPONSE: The Department cannot comment on any salary rate found in the private business community except that in many instances, a flat hourly rate is charged for an employee's time (that is, an attorney, engineer or other consultant) with neither a breakdown of that hourly rate, nor how the hourly rate was calculated. As to the example given by the Fuel Merchants Association of New Jersey, without more information, the Department cannot respond to the comment made in that regard.

COMMENT 15: Jersey Central Power and Light stated N.J.A.C. 7:14B-2.7(b) which gives owners and operators the opportunity to mail registration certificates to a single address will improve their recordkeeping and administrative costs. Jersey Central Power and Light also stated that the implementation of a three year registration cycle will lower their administrative costs by approximately $2,500 per year for the two intermediate years.

COMMENT 16: The Shell Oil Company stated the proposed amendments at N.J.A.C. 7:14B-2.2(c), 2.7(b) and 3.5 will result in reduced administrative costs to the Department and reduced direct and indirect costs to the regulated community.

RESPONSE TO COMMENTS 15 AND 16: The Department has taken steps to reduce the administrative costs to the regulated community where possible. It should be noted that this, in turn, reduces those same associated costs for the Department. The Department acknowledges that this change in the registration cycle will benefit both the Department and registrant by lowering the administrative costs associated with this activity.

COMMENT 17: The Shell Oil Company stated that the Department's proposal to increase its revenue from the 1992 figure of $3,600,000 to a projected 1993 figure of $7,310,000 will place a heavy burden on the regulated community.

COMMENT 18: The New Jersey Gasoline Retailer's Association stated that there is no justification for increasing fees which will double the Underground Storage Tank 1993 fiscal year budget over the Underground Storage Tank 1992 fiscal year budget.

RESPONSE TO COMMENTS 17 AND 18: The justification for increasing fees is the dramatically increasing caseloads and the need to recover all the costs associated with the review and oversight of workplans and reports and associated remedial activities. The additional revenue will also counter anticipated decreasing Federal grants by the United States Environmental Protection Agency.

The Department is only implementing the direct billing approach for costs associated with the review and oversight of a responsible parties' compliance efforts in conducting remedial activities. The increase in revenue is the direct result of the following factors: a dramatic increase in the number of cases in the Underground Storage Tank program requiring Department oversight, the administration by the Underground Storage Tank program of cases that were previously administered under the New Jersey Pollution Discharge Elimination System program and the increased number of contaminated sites being discovered due to the underground storage tank upgrade requirements mandated by the Legislature. Thus, the increase in revenue does not necessarily increase the burden on the regulated community, rather it more equitably distributes that financial burden among an expanding community.

COMMENT 19: The Shell Oil Company questioned the Department's statement in the "Economic Impact" statement that remedial oversight activities are taking more full time employees (FTE's) than in previous years.

RESPONSE: As previously stated in the Department's response to Comment 10 above, the Commissioner is charged with the implementation and enforcement of environmental laws, rules and regulations pursuant to N.J.S.A. 13:1D-1 et seq. For the Department to comply with its statutory mandate to ensure that remediation at contaminated site is performed satisfactorily (that is, in compliance with all applicable statutes, rules and regulations) and completely, the Department must necessarily perform "oversight functions." Therefore, the projected increase in FTE's is to ensure the continued performance improvements in the Underground Storage Tank program's administrative and remedial oversight activities. This increase is a direct response to the number of current and anticipated cases that require Department oversight for leaking underground storage tank remediations. This increase in FTE's allows the Department to attain its stated goals of improving responsiveness, efficiency and cost-effectiveness in the Site Remediation Program. If the number of cases decreases, the fees established in this rule will generate lower revenues and personnel will be reduced proportionally. If the increase in cases fails to develop, new FTE's will not be warranted.

COMMENT 20: Mays Landing Sand and Gravel Company, Inc. is against the fee increases and suggested that the limited benefit of the three year registration is offset by those fee increases.

RESPONSE: The implementation of a three year registration cycle was not designed to "offset" the costs incurred by the Department in overseeing remediations of contaminated sites due to discharges from underground storage tank facilities. The Legislature mandated that the Department establish fees for the registration of underground storage tanks to recover the Department's administrative costs in administering this program. Based on the Department's experience administering the registration program, the Department found that it could implement a three year registration cycle and ease the administrative burden of registration on the regulated community.

COMMENT 21: Mays Landing Sand and Gravel Company, Inc. suggested that the section in the Economic Impact statement that states "... the amount of the fee is not large compared to the cost of performing the activity" is not an accurate statement. In addition, Mays Landing Sand and Gravel Company, Inc. stated the proposed fees double the cost of an underground tank removal.

RESPONSE: The statement that "the amount of the fee is not large compared to the cost of performing the activity" is accurate. A remediation involving only soil contamination may cost approximately $25,000, but the fee for the Department's oversight of that remediation may be only $1,000. The Department is assessing fees to cover the Department's actual costs associated with administering the Underground Storage Tank program and overseeing the associated remedial activities conducted on contaminated sites. Based on the Department's experience, the costs of the Department's oversight is proportional to the complexity of the remediation and the quality of the workplans and reports submitted by the person responsible for remediating the site. The Department has not received any information that would confirm Mays Landing Sand and Gravel Company, Inc.'s statement that the increased fees would double the cost of removing an underground storage tank and thus cannot respond to that comment.

COMMENT 22: The New Jersey Health Products Council and the New Jersey Petroleum Council stated that the proposed fees will make it difficult for the regulated community to predict before the actual bill is received what the fees will be after the Department's work is complete.

RESPONSE: Individual case type, duration and complexity preclude the Department from providing a reliable or predictable budget for how much oversight will be needed for a particular site. The complexity of the environmental contamination at a site and the quality of the workplans and reports submitted to the Department will dictate the oversight costs to the regulated community. The Department cannot estimate its own oversight costs due to the dynamic nature and ever changing scope of a remediation of a contaminated site. However, the Department will continue to develop and publicize cost ranges for the various levels of remediation which the regulated community will be able to use as a guide.

The Department encourages responsible parties to use the New Jersey Underground Storage of Hazardous Substances Act Rules (N.J.A.C. 7:14B), Technical Requirements for Site Remediation (N.J.A.C. 7:26E) and Procedures for Department Oversight of the Remediation of Contaminated Sites (N.J.A.C. 7:26C) as well as any other Departmental guidance documents to assist in their remediation activities on sites and thereby reducing the amount of Department involvement and oversight.

COMMENT 23: The New Jersey Petroleum Council questioned whether the Department intends to take any enforcement action against "non-payers" of outstanding direct billing fees? The New Jersey Petroleum Council further questioned whether the Department has considered the competitive economic advantages that a "non-payer" will have over those persons who comply with the law and these rules and pay the direct billing fees?

RESPONSE: The Department refers the commenter to N.J.A.C. 7:14B-3.5(e) and the rule Summary at 25 N.J.R. 1365. The Department will not issue a "no further action" letter for the facility or may discontinue oversight activities at the facility and take appropriate enforcement action if the owner or operator has not paid all previously billed fees. The Department believes that the above responses to a "non-payer" adequately protects the Department and those persons who pay their fees timely, and would remove any economic advantages that a person may temporarily realize from non-payment of fees for their facility.

COMMENT 24: The New Jersey Gasoline Retailers Association stated that the direct billing approach at N.J.A.C. 7:14B-3.5(d) does not consider the limited resources available to small businesses.

RESPONSE: The Department refers the commenter to the regulatory flexibility analysis at 25 N.J.R. 1367-8. The Department balanced the need to protect human health and the environment against the economic impact of these rules and determined that to minimize the impact of the rules based on the size of the business would unacceptably endanger human health and the environment. Thus, the Department did not establish different fee schedules that take into account resources available to small businesses.

The Legislature has established the Hazardous Discharge Site Remediation Fund, as provided in P.L. 1993, c. 139, which was signed by then Governor Florio on June 16, 1993. The Hazardous Discharge Site Remediation Fund was created for the purpose of issuing financial assistance and grants to investigate and remediate contaminated sites. This fund is being administered by the New Jersey Economic Development Authority. In addition, there is an Underground Storage Tank Improvement Fund loan program which is available to assist persons with complying with the underground storage tank upgrade deadlines. Despite these funds, the Department still must recover all its costs of overseeing the remediation of contaminated sites, including those facilities owned or operated by a small business, which may be contaminated by leaking underground storage tanks.

COMMENT 25: The New Jersey Gasoline Retailers Association questioned how the proposed fee structure at N.J.A.C. 7:14B-3.5 will be applied?

RESPONSE: The Department believes that the rule Summary at 25 N.J.R. 1363 provided sufficient detail on the application of the proposed fee structure, as evidenced by the detailed comments received on these factors. The Department defined the key factors and mechanisms which will dictate the use of fixed fees pursuant to N.J.A.C. 7:14B-3.5(c) or fees calculated pursuant to the direct billing fee formula at N.J.A.C. 7:14B-3.5(d)3. The responses to comments contained in this adoption provide additional information and clarification of the application of the proposed fee structure. The commenters did not specify what additional information was needed in order to clarify the application of these rules. Therefore, the Department cannot respond to this comment in more detail.

COMMENT 26: The New Jersey Gasoline Retailers Association questioned whether the Department will conduct site inspections after a site investigation or remedial investigation report has been submitted?

RESPONSE: The Department may conduct site inspections after a site investigation report or remedial investigation report has been submitted. The Department will approve the remediation based on the report if the report has been prepared in accordance with N.J.A.C. 7:26E and the site conditions do not require further action. The Department intends to approve the remediation based on the certifications included in a report, which would obviate the need for a site inspection. However, the Department reserves its right to perform a site inspection and field activities at a site if the Department deems such activities to be necessary to ensure the protection of human health and the environment. The Department encourages the regulated community to follow the procedures outlined in the Technical Requirements for Site Remediation, (N.J.A.C. 7:26E), the Procedures for Department Oversight of the Remediation of Contaminated Sites, (N.J.A.C. 7:26C), as well as other Departmental guidance documents to assist persons in the completion of remediation activities and applicable reports. The Department's role is directly related to the complexity of the environmental contamination at a site and the quality of the workplans and reports submitted to the Department.

COMMENT 27: The New Jersey Gasoline Retailers Association requested a clarification on whether the Department would charge duplicate fees for the Department's review of the same activity or report under different programs within the Site Remediation Program.

RESPONSE: The Department does not charge duplicate fees for the Department's review of the same report or activity submitted under different programs for the same purpose. As explained in the rule Summary at 25 N.J.R. 1363, the Department has made changes to the Site Remediation Program to consolidate and eliminate duplicative and overlapping regulatory requirements. The Department is continuing to reevaluate the Site Remediation Program and intends to propose further changes in Spring 1994. Furthermore, if the person believes a bill represents duplicative fees, that person may file an objection to the fee pursuant to N.J.A.C. 7:14B-3.8(a)3.

COMMENT 28: The New Jersey Gasoline Retailers Association questioned whether the Department was going to establish criteria as to the number of employees and time as well as the level of expertise needed for a specific oversight activity.

COMMENT 29: The New Jersey Gasoline Retailers Association questioned whether the Department will establish criteria for when Department staff will be performing field activities at a site?

RESPONSE TO COMMENTS 28 AND 29: The number of employees assigned, the time allocated, the scope of oversight activity and the appropriate level of expertise needed to perform a particular oversight activity are components of management decisions made by the Department. As discussed in the Department's response to Comments 46 to 49 below, management decisions such as the staff to assign to a specific case are discretionary decisions of the Department. As a regulatory agency, the Department must apply its expertise to allocate resources to a specific case in a manner consistent with technical complexities, the public interest and relevant priorities at a given time, in order to protect public health and the environment.

COMMENT 30: The New Jersey Gasoline Retailers Association questioned when the Department intends to implement the fee rule amendments.

RESPONSE: These rules will be effective upon publication in the New Jersey Register, except that N.J.A.C. 7:14B-2.2 and 3.2 will become operative on January 1, 1995.

N.J.A.C. 7:14B-3.2 Fees

COMMENT 31: The Chemical Industry Council of New Jersey stated that the current owner or operator should not be subject to registration fees pursuant to N.J.A.C. 7:14B-3.2(c) for the discovery of tanks which were previously unknown to the current owner or operator.

RESPONSE: The owner or operator of an underground storage tank system is responsible for ensuring the underground storage tank system is in compliance with the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. (Act) and the regulations promulgated thereto, N.J.A.C. 7:14B. The purpose of the registration requirement is to ensure that the Department is notified of all underground storage tank systems containing hazardous substances or hazardous wastes to provide for the immediate detection of leaks and/or discharges and to minimize any potential degradation to potable water supplies.

The registration requirements for an underground storage tank system are based on the years the tank system was in use and is not owner or operator-dependent. The resolution of factual issues concerning the apportionment of liability for compliance with the New Jersey Underground Storage of Hazardous Substances Act between private parties (that is, a transferor and transferee of an unknown underground storage tank system) does not preclude the registration of the underground storage tank system.

N.J.A.C. 7:14B-3.5 Permit and approval fees

COMMENT 32: The Chemical Industry Council of New Jersey stated that the Department should permit one resubmittal of a deficient application or report to rectify a technical deficiency noted by the Department.

COMMENT 33: The Shell Oil Company and the New Jersey Petroleum Council stated that it is unreasonable to pay a separate fee pursuant to N.J.A.C. 7:14B-3.5(a)1 for resubmission of applications or reports that were rejected due to technical deficiencies in the initial submittal. In addition they further state that the Department should include in the proposal the criteria that is going to be used to determine the deficiency.

COMMENT 34: The New Jersey Retailers Association questioned the criteria that the Department will use to determine whether a deficient submittal would require an additional fee.

RESPONSE TO COMMENTS 32 TO 34: The Department is assessing fees to cover the Department's actual costs associated with administering the Underground Storage Tank program and overseeing the associated remedial activities conducted at a contaminated site. Based on the Department's experience, the costs of the Department's oversight is proportional to the complexity of the remediation and the quality of the workplans and reports submitted by the person responsible for remediating the site.

The Department encourages the regulated community to review the Technical Requirements for Site Remediation, (N.J.A.C. 7:26E), the New Jersey Underground Storage of Hazardous Substances rules, (N.J.A.C. 7:14B), as well as other Departmental guidance documents to assist persons in the completion of permits or reports to avoid the need for resubmission of applications to address deficiencies and to contact the Department with any questions. This allows the Department to process required documents in a timely and efficient manner. The complexity of the environmental contamination at a site and the quality of the workplans and reports submitted to the Department will dictate the oversight costs to the regulated community.

The Department will be reasonable in assessing fees for resubmittals of deficient applications, workplans or reports if the issues are minor in nature. The Department refers the commenter to the Economic Impact analysis at 25 N.J.R. 1367. A new fee will be required when the original report was returned to major technical deficiencies. The Department will not require a new fee when a minor clarification or minimal additional information is required to approve the report.

COMMENT 35: The Chemical Industry Council of New Jersey stated that the Department is unreasonable if it expects to receive separate fees pursuant to N.J.A.C. 7:14B-3.5(a)3 for each underground storage tank or underground storage tank system proposed to be excavated at the same time.

RESPONSE: The Department refers the commenter to N.J.A.C. 7:14B-3.5(a)3 which outlines the requirements for the submission of permit fees. This section requires that a person submit a separate fee for each facility where an activity occurs. It is the Department's position that a fee be associated with the submission of each application or report from a facility which requires a permit or approval.

COMMENT 36: The Chemical Industry Council of New Jersey and the New Jersey Health Products Council stated that the flat fees for various activities at N.J.A.C. 7:14B-3.5(c) should not contain overhead or other indirect costs and that since the State as a whole would be benefitting, the costs should be allocated to all citizens.

RESPONSE: The fixed fees are based upon average costs, including those costs that are components of the overhead, additive and indirect costs as well as the amount of staff time required to review the associated documents. If the Department is to recover all associated costs, then the overhead, additive and indirect costs must be factored in to the calculation of oversight costs and fixed fees.

The Department would be forced to increase its indirect cost rate to recover any budgetary shortfalls if overhead and indirect costs were not considered in fixed fees. This would necessitate increases to all fees in the Site Remediation Program. The Department believes this would be an inequitable result and that it is more appropriate to have everyone pay their own costs. While the State benefits every time a site is remediated, the owners and operators of that site, who were liable for the contamination and responsible for compliance with State environmental laws, benefit most directly. Moreover, it is the Legislature's policy that the taxpayers of the State of New Jersey should not have to bear the costs of remediating contaminated sites.

COMMENT 37: Shell Oil Company, Chevron U.S.A. Inc., the New Jersey Petroleum Council and the New Jersey Gasoline Retailers Association recommended the fee schedule proposed at N.J.A.C. 7:14B-3.5(c) be left in place with the fees shown representing a not-to-exceed maximum or "fee cap" and that the formula in N.J.A.C. 7:14B-3.5(d)3 be used to employ consistency for each individual activity and only charging the regulated community for actual work performed. In addition, the New Jersey Gasoline Retailer's Association felt that such a "cap" would benefit small businesses. Shell Oil Company also recommended that a "fee cap" be employed on all oversight fees assessed pursuant to N.J.A.C. 7:14B-3.5(d) as well.

RESPONSE: Based on the Department's experience, a "fee cap" would not ensure that all oversight costs incurred by the Department would be recovered, thus creating a potential budgetary problem as explained in the Department's response to comment 36 above. The Department has determined that the direct billing approach is more equitable since everyone will pay their own cost rather than shift the burden to other members of the regulated community. Thus, a "fee cap" would not be appropriate.

COMMENT 38: The Chemical Industry Council of New Jersey stated that the Department should specify in regulations the "regular interval" that owners and operators will be billed.

RESPONSE: Individual case type, duration and complexity preclude the Department from establishing a single billing schedule that will be applicable to all cases. Therefore, it is the Department's position to maintain the flexibility of regular intervals of billing on a case-by-case basis.

COMMENT 39: The Chemical Industry Council of New Jersey questioned the Department's use of a salary additive to compensate the Department for employee's "down time." This time includes vacation time, administrative leave, sick leave, holiday time and other approved "absent with pay" allowances.

RESPONSE: The hourly rate is calculated by dividing an employee's salary by the total number of hours to be worked in a calendar year.

(For example, an employee whose salary is $30,000, and whose work week consists of 40 hours per week (and hence 2,080 hours in a year) would cost the Department an hourly rate of $14.42.) An average of the Department's reimbursable salary leave was calculated at 22.0 percent. Therefore, an employee whose work week is 40 hours per week, or 2,080 hours per year, is entitled to 22.0 percent of 2,080 hours as reimbursable salary that won't actually be worked by the employee and therefore unavailable to be billed to a specific case. This employee then can only directly bill 1,622 hours, while using 458 hours in non-billable leave time (that is, down time). However, the Department must still pay for the employee's leave of 458 hours, and therefore, incorporates this cost as part of the salary additive rate.

The Legislature decided that it would not fund the Department's costs of implementing the programs administered by the Site Remediation Program, rather the Department should adopt fees to cover these costs. It is unclear from the Chemical Industry Council's comment, where the Department would obtain the funds to pay for an employee's vacation and sick time. Certainly, the individual members of the Council pay for their employee's vacation and sick time. The Department's calculation and use of the salary additive rate is consistent with the Legislature's direction to the Department and comparable practices in private industry.

COMMENT 40: The New Jersey Health Products Council and Sandoz Pharmaceuticals Corporation stated that the Department's proposed multiplier of 3.7 to retrieve administrative costs pursuant to N.J.A.C. 7:14B-3.5(d) is too high and exceeds the multiplier used in the public sector. The commenters noted that the multipliers used by consulting firms range between 2.5 and 3.0, which includes a profit margin.

COMMENT 41: Chevron U.S.A., Inc. noted that although the Department's multiplier of 3.7 was within range of multipliers used by the private sector, the private sector multiplier includes a profit margin which the Department's formula should not factor. Chevron U.S.A., Inc. noted that in a survey conducted in the Summer of 1992, nine of its environmental consultants utilized a base salary multiplier ranging from 2.35 to 3.5.

RESPONSE TO COMMENTS 40 AND 41: After the Department proposed these rule amendments to the Underground Storage of Hazardous Substances Act fees, the Department revised the indirect rate used in the direct billing formula at N.J.A.C. 7:14B-3.5(d). As a result of more staff time being allocated to specific cases during Fiscal Year 1993, the Department's Site Remediation Program reduced its indirect rate for Fiscal Year 1994 from 134.24 percent to 95.48 percent. The Department provided public notice of this revised rate in the August 2, 1993 New Jersey Register at 25 N.J.R. 3561(b). When the Fiscal Year 1994 indirect rate was incorporated into the direct billing formula, the total multiplier to be used in calculating oversight fees pursuant to N.J.A.C. 7:26B-1.10(f) was reduced from 3.697 to 3.085. Thus, the total multiplier to be used in calculating these direct billing fees has been reduced since these rule amendments were proposed. The Department's total multiplier for Fiscal Year 1994 of 3.085 is reasonable as compared to private sector firms. For example, Chevron's survey of nine of their environmental consultants showed a multiplier range up to 3.5.

Although the private sector incurs costs that the Department does not incur, and includes a profit margin that the Department does not have, the Department has costs that the private sector does not have. As a government regulatory agency, the Department is required to spend substantial effort on public communications (for example, hearings, response to requests for information), rule development, adjudications and costs inherent to serving and being responsive to the Executive and Legislative branches of government as well as the citizens of this State. The Department is committed to performing its duties in as efficient and effective manner as possible and periodically reviews its internal operations for opportunities to increase its specific time accounting, reduce the time required to perform specific tasks and identify tasks which can be privatized to reduce Department involvement.

COMMENT 42: The Chemical Industry Council of New Jersey stated that due to the Department's billing at an employee's hourly rate, the public should have an understanding of the Department's working hours.

RESPONSE: The Department refers the commenter to the summary provided in the proposal at 25 N.J.R. 1363-1368 for a description of the Department's working hours. The hourly rate is calculated by dividing an employee's salary by the total number of hours to be worked in a calendar year. (For example, an employee whose work week consists of 40 hours would have an hourly rate of his salary divided by 2,080 hours (40 hours per week times 52 week in year). The hourly rate used in the fee formula is the actual hourly rate for individuals involved in a specific case and is not a "blended rate."

COMMENT 43: The Chemical Industry Council of New Jersey stated that it is inappropriate to include the proportionate share of costs associated with the Offices of the Commissioner, Assistant Commissioner for Site Remediation, Division Directors and Assistant Directors, the Division of Financial Management and General Services, Division of Personnel and the Department of Law and Public Safety. These offices operate for the benefit of all of New Jersey. In addition, the New Jersey Health Products Council states that the "costs to run State government" should not be included in the multiplier.

RESPONSE: One of the roles of each of the above mentioned offices is to provide services to the Site Remediation Program. The Department is only seeking to recover those administrative costs of each of these units that are directed toward the remediation of contaminated sites. The Department's management is part of this process and their time must be included in our cost recovery. Therefore, the Department seeks reimbursement for the total costs incurred for a common purpose.

Additionally, the Department deleted the Department of Public Law and Safety from the indirect cost rate multiplier upon adoption of these rule amendments. The costs incurred by the Department for the Department of Law and Public Safety's activities on a specific-case may be billed directly to that case and included in the direct billing formula.

COMMENT 44: The Chemical Industry Council of New Jersey stated that it is unreasonable to require owners or operators conducting a remediation to fund the Department's cost associated with the development of a cleanup standard. It was further stated that since the cleanup standard would benefit all persons in the State, the costs should be shared and not borne exclusively by the party subject to remediation requirements.

RESPONSE: The Department has reevaluated N.J.A.C. 7:14B-3.5(e) and has decided to delete this provision because it would unnecessarily duplicate the direct billing provisions at N.J.A.C. 7:14B-3.5(d). The direct billing formula, N.J.A.C. 7:14B-3.5(d)3, incorporates the Department's oversight activities in reviewing workplans and reports, and overseeing site remediations. The above oversight activities would include, if necessary, the cost for developing either a site-specific cleanup level for a contaminant that does not have an applicable cleanup level or a proposal involving site-specific conditions that may permit a deviation from an established cleanup level. The Department would calculate fees for the development or review of site-specific cleanup level data pursuant to the direct billing formula as this information would be a component of the workplans and reports submitted by an owner or operator. Therefore, proposed N.J.A.C. 7:14B-3.5(e) is unnecessary and has been deleted. The Department notes, however, that a site-specific cleanup standard will not necessarily benefit all persons in the State since a site-specific cleanup standard is developed based on the particular conditions at a site and may not be applicable at another site remediation.

N.J.A.C. 7:14B-3.8 Fee review

COMMENT 45: Chevron U.S.A. Inc. stated that the Department should include a paragraph 5 under N.J.A.C. 7:14B-3.8(a) with the following language: "The direct oversight activities by staff personnel are unnecessary in whole or in part, or the amount of time spent by such personnel is unreasonable."

RESPONSE: The Department does not believe that the addition of the suggested provisions is appropriate. The Department has a statutory obligation to ensure the proper remediation of contaminated sites. To carry out this statutory obligation, the Department must be able to determine how much oversight a particular case should receive. As discussed below, challenges to the Department's management decisions regarding the need for particular costs will substantially hinder the goal of an effective and efficient site remediation program.

COMMENT 46: Shell Oil Co. suggested that a new N.J.A.C. 7:14B-3.8(a)5 be added as follows: "The oversight was unwarranted, exorbitant (excessive), not conducted efficiently and/or cost effectively."

COMMENT 47: The New Jersey Petroleum Council commented that the word "factual" should be deleted at N.J.A.C. 7:14B-3.8(a)1 so a party can contest the question of excessive fees or excessive hours.

COMMENT 48: The Chemical Industry Council of New Jersey and New Jersey Petroleum Council stated that N.J.A.C. 7:14B-3.8(b) inappropriately limits the ability of a person to contest a fee and should be deleted.

COMMENT 49: Chevron U.S.A. Inc. and Shell Oil Company recommended the deletion of N.J.A.C. 7:14B-3.8(b)3 due to the fact it does not allow an objection to contest management decisions made by the Department. Sandoz Pharmaceutical Corporation and New Jersey Health

Products Council state that the regulated community is limited in its right to appeal by only allowing objection to clerical error.

RESPONSE TO COMMENTS 46 TO 49: Based on consultation with the Attorney General's office, the Department has concluded that a challenge based on any of these three issues would not constitute a "contested case" under the Administrative Procedure Act. A challenge based on management decisions as described by this provision would not raise factual issues that could be resolved in an adjudicatory hearing in the Office of Administrative Law. Accordingly, the Department has listed these types of issues in the rule in order to provide guidance to owners or operators seeking an adjudicatory hearing to contest a fee. Based on this guidance, an owner or operator can avoid going through the exercise of requesting a hearing that is certain to be denied.

An adjudicatory hearing to debate the wisdom of the Department's management decisions will consume substantial resources of the objector and the Department, but almost certainly will result in no change in the fee. Management decisions such as the staff to assign to a specific case are discretionary decisions of the Department. As a regulatory agency, the Department must apply its expertise to allocate resources to a specific case in a manner consistent with technical complexities, the public interest and relevant priorities at a given time, in order to protect public health and the environment. In light of the great deference that the law gives these decisions regarding deployment of resources, and the extreme difficulty of attempting to evaluate those decisions after the fact, the Department does not believe that an adjudicatory hearing on this issue could produce a meaningful review. See, for example, *State Farm Mut. Auto. v. Public Advocate,* 118 *N.J.* 336, 358 (1990).

The Department recognizes that if an owner or operator is legally entitled to a hearing under the Administrative Procedure Act, the right could not be limited in a rule. A person who believes that the hearing rights under N.J.A.C. 7:14B-3.8(b) are more limited than those required under the Administrative Procedure Act could certainly contest the rule in the Appellate Division. However, as noted above, based on consultation with the Attorney General's office, the Department believes that the hearing rights under N.J.A.C. 7:14B-3.8(b) are consistent with the Administrative Procedure Act.

The Department is also concerned that if every management decision could potentially be the subject of an adjudicatory hearing, there would be a substantial risk that efficient and effective site remediation would be compromised in an effort to protect against potential litigation. Furthermore, litigation over the wisdom of management decisions would divert scarce Department resources away from the remediation of contaminated sites and delay remediation as a result.

The scarcity of resources available to the Department is already a substantial incentive to make management decisions that control costs and avoid using excess resources for any specific case. Adding a threat of litigation is therefore unnecessary and is likely to produce the undesirable side effects discussed above.

COMMENT 50: Shell Oil stated that N.J.A.C. 7:14B-3.8(e) should be revised to allow an objector to cure any deficiency in its documentation submitted in support of its request for a fee review and promptly resubmit its request.

RESPONSE: The Department does not believe the modifications suggested by Shell are necessary. The fee review process already provides guidance for the review of relevant documentation and maintains flexibility in allowing an objector to cure deficiencies in documentation on a case-by-case basis. The Department notes, however, that the information required to file an objection pursuant to N.J.A.C. 7:26B-3.8 is easily obtained and does not place an undue administrative burden on an objector.

COMMENT 51: Shell Oil Company suggested that the regulations clarify at N.J.A.C. 7:14B-3.8(f) that the objector has the right to an informal conference with the Department upon request during a fee dispute.

RESPONSE: It is the Department's position to resolve fee objections in a timely manner. The fee review process, N.J.A.C. 7:26C-3.8, codifies the Department's attempt to resolve disputed factual issues prior to the matter being transferred to the Office of Administrative Law. The Department, in its discretion, may extend to the objector an informal conference prior to transferring the matter to the office of Administrative Law upon a written request outlining the issues in dispute and following the procedure outlined in N.J.A.C. 7:14B-3.8.

COMMENT 52: Shell Oil Company suggested that the Department reword N.J.A.C. 7:14B-3.8(g) and (h) to allow an objector to a fee assessment the right to an adjudicatory hearing unless that request is frivolous.

RESPONSE: The Department believes that the detailed procedures set forth at N.J.A.C. 7:14B-3.8 will provide owners and operators with a meaningful opportunity to challenge and review a fee assessment. The Department further believes that an owner's or operator's due process rights will be adequately protected by this review process. Therefore, the revision requested by the commenter is not warranted. For further discussion of this issue, the Department refers the commenter to the Department's response to Comments 46 to 49 above.

COMMENT 53: Chevron USA Inc. suggested revising N.J.A.C. 7:14B-3.8(i) to extend the filing period for the review from 30 days to 90 days, since the filing requirements at N.J.A.C. 7:14B-3.8(d) require significant time to complete.

RESPONSE: It is the Department's position to try to resolve issues in a timely manner. The information required to file an objection pursuant to N.J.A.C. 7:14B-3.8(d) is easily obtained and does not place an undue administrative burden on an objector. Thus, the Department has determined that a 30-day filing period is adequate and appropriate.

Summary of Agency-Initiated Changes on Adoption:

1. In N.J.A.C. 7:14B-2.2(b), the Department modified the address which persons will submit registration and certification forms in order to provide consistency with similar provisions in other rules administered by the Site Remediation Program.

2. In N.J.A.C. 7:14B-3.5(d)3v, the Department has deleted the phrase "Division of Law and Public Safety" from the list of governmental offices included in the indirect cost rate. The costs incurred by the Department for the Department of Law and Public Safety's activities on a specific-case may be billed directly to that case and included in the direct billing formula.

3. The Department deleted N.J.A.C. 7:14B-3.5(e) because it duplicated the direct billing provisions at N.J.A.C. 7:14B-3.5(d). The direct billing formula, N.J.A.C. 7:14B-3.5(d)3, incorporates the Department's oversight activities in reviewing workplans and reports, and overseeing site remediations. The Department will calculate fees for the development or review of site-specific cleanup level data pursuant to the direct billing formula as this information would be a component of the workplans and reports submitted by an owner or operator. Therefore, proposed N.J.A.C. 7:14B-3.5(e) is unnecessary and has been deleted.

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

7:14B-1.6 Definitions

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

...

"Department" means the Department of Environmental Protection and Energy.

...

"Facility certification" means the periodic renewal of the registration of a facility with the Department pursuant to this chapter.

...

"Periodic" means the time period for renewal of a facility certification; the period may be one, two, or three years.

...

"Remedial investigation" means remedial investigation as defined in N.J.A.C. 7:26E-1.8.

...

"Site investigation" means site investigation as defined in N.J.A.C. 7:26E-1.8.

...

"Tank capacity" means the manufacturer's nominal tank size, when referring to a single tank. When referring to multiple tanks storing hazardous substances at the same site, within one of the following three categories: motor fuel, heating oil for residential use, heating oil for non-residential use, the aggregate of the nominal tank sizes will be used to determine capacity.

...

SUBCHAPTER 2. REGISTRATION REQUIREMENTS AND PROCEDURES

7:14B-2.2 Registration and certification procedures

(a) Any person that owns or operates a facility shall file registration and certification information on the New Jersey Underground

Storage Tank Registration Questionnaire and the New Jersey Underground Storage Tank Facility Certification Questionnaire respectively.

(b) All registration and certification forms shall be obtained from and accurately completed, signed, dated and returned to the address below:

[New Jersey Department of Environmental Protection and Energy]
Industrial Site Evaluation Element
Division of Responsible Party Site Remediation
CN-028
401 E. State St.
Trenton, NJ 08625-0028
Attn: UST Registration/Certification

(c) The owner or operator of a facility shall complete the New Jersey Underground Storage Tank Facility Certification Questionnaire prior to expiration of the facility's Registration Certificate. The Department may issue a Registration Certificate to the registrant following submission of the complete Facility Certification Questionnaire, The Department will issue the Registration Certificate for a maximum period of three years. The expiration date of the Facility Certification will be specified on the Registration Certificate.

(d) (No change.)

(e) The owner or operator of a facility shall, at a minimum, supply the following information on the New Jersey Underground Storage Tank Facility Certification Questionnaire:

1.-3. (No change.)

(f) (No change.)

7:14B-2.6 Public access to registration information

(a) All completed New Jersey Underground Storage Tank Registration Questionnaires and New Jersey Underground Storage Tank Facility Certification Questionnaires, as well as documented information pertaining to the registration, shall be considered public records pursuant to N.J.S.A. 47:1A-1 et seq.

(b) (No change.)

7:14B-2.7 Registration Certificate

(a) The owner or operator of an underground storage tank system shall prominently display a valid Registration Certificate at the facility or shall make the Registration Certificate available for inspection by any authorized local, State or Federal representative.

(b) The owner or operator of more than 25 separate facilities may request, in writing to the Director at the address set forth at N.J.A.C. 7:14B-2.2(b), that the Department mail the Registration Certificates of the multiple facilities to a single address. The owner or operator shall be responsible for ensuring that the Registration Certificates are then sent to the proper facilities.

7:14B-2.8 Denial or revocation of registration

(a) The Department may, in its discretion, deny the issuance of a Registration Certificate upon a determination of the following:

1. (No change.)

2. The owner or operator fails to enclose the accurate Registration Fee with the New Jersey Underground Storage Tank Registration Questionnaire pursuant to N.J.A.C. 7:14B-3.1; or

3. (No change.)

(b) The Department may revoke the registration of a facility upon a determination of the following:

1. (No change.)

2. The owner or operator has failed to submit a Facility Certification Questionnaire pursuant to N.J.A.C. 7:14B-2.2;

3. The owner or operator has failed to pay the Facility Certification fee pursuant to N.J.A.C. 7:14B-3.2;

4.-5. (No change.)

(c)-(f) (No change.)

SUBCHAPTER 3. FEES

7:14B-3.1 Registration fee

The owner or operator of an underground storage tank system shall submit a $100.00 Registration Fee for each facility upon registration of the facility with the Department. The Department may only issue a Registration Certificate following the submission of the Registration Fee. The facility certification fee that may be imposed upon the owner or operator of a facility which comprises only two or more tanks used to store heating oil for on-site consumption in a residential building, where no individual tank has a capacity of more than 2,000 gallons, may not exceed $100.00 upon registration.

7:14B-3.2 Facility Certification fee

(a) The owner or operator of an underground storage tank system shall submit a Facility Certification fee for each facility upon the periodic renewal of the Facility Certification with the Department. The Facility Certification fee that may be imposed upon the owner or operator of a facility which comprises only two or more tanks used to store heating oil for on-site consumption in a residential building, where no individual tank has a capacity of more than 2,000 gallons, may not exceed $100.00 for that facility for periodic renewal.

(b) The owner or operator shall pay the Facility Certification fee of $100.00 per facility for the three year facility certification cycle and after receiving an invoice from the Department within the time frame set forth in the invoice. The Department may renew the Registration Certificate following the submission of the Facility Certification Fee.

(c) The owner or operator of an underground storage tank system who failed to register the system and pay the necessary fees when initially required in 1988 or when the tank system was installed, whichever is later, shall be responsible for paying all Facility Certification fees for the years the tank system was being used. Payment of these fees by the owner or operator does not restrict the Department from taking enforcement action against the owner or operator pursuant to N.J.A.C. 7:14B-12.

7:14B-3.3 Duplicate Registration Certificate charges

The Fee for duplicate Registration Certificates will be $25.00 per document.

7:14B-3.4 Exemption from fees

(a) The Department will not assess a Registration or Facility Certification fee for underground storage tank systems which have been abandoned in place in accordance with procedures equivalent to N.J.A.C. 7:14B-9.1(d) prior to September 4, 1990.

7:14B-3.5 Permit and approval fees

(a) The owner or operator of an existing, former or proposed underground storage tank system shall:

1. Submit a separate fee for each activity at a facility which requires a permit or approval at the time the application, or report is submitted. The owner or operator shall pay a separate fee for resubmissions of the same application or report when the application or report is disapproved due to technical deficiencies in the initial submittal. The fees required by this section are not one time fees but rather the fees required to perform the review of the specific submittals to the Department;

2. Submit a separate fee for each application, or report which is contained within a single document; and

3. Submit a separate fee for each facility where an activity occurs.

(b) The Department will not approve any application or report unless all fee requirements of this subchapter are met.

(c) The fee schedule is as follows:

Activity	Fee
1. Permit for the installation or substantial modification of an underground storage tank system	$300.00
2. Review of the closure plan for an underground storage tank system	$300.00
3. Review of Site Assessment Summary or site investigation report	$500.00
4. Review of Discharge Investigation and Corrective Action Report or remedial investigation report	$1,000

(d) The owner or operator shall submit the remedial action oversight fees to the Department within 30 calendar days after receipt from the Department of a summary of the Department's oversight costs for the period being charged, subsequent to the review of the DICAR. The Department shall include the following information

in the summary: description of work performed, staff member(s) performing work, number of hours performed by the staff member(s), and the staff member(s) hourly rate. The fee schedule shall be as follows:

1. The Department will bill the owner or operator at regular intervals throughout the duration of the remedial action based on the formula in (d)3 below to recover its costs;

2. The Department shall develop on an annual basis and publish notice of the salary additive rate, fringe benefit rate and the indirect cost rate to be used by the Site Remediation Program for the fiscal year in the New Jersey Register; and

3. Direct Billing Fees are based on time that staff works on activities for that industrial establishment. This fee is based upon the formula:

Administrative Costs = A + B

where A = (Number of hours) × (Hourly Salary Rate) × (Salary Additive Rate) × (Fringe Benefit Rate) × (Indirect Cost Rate) and B = (Sampling costs) + (Costs for Contractor Assistance).

i. Number of coded hours represents the sum of hours each employee has coded to the site-specific project activity code (PAC) for the case. Actual hours for all state employees including without limitation case managers, geologists, technical coordinators, samplers, inspectors, supervisors, section chiefs, Deputy Attorneys General, using the specific Project Activity Code, will be included in the formula calculations.

ii. The hourly salary rate is each employee's annual salary divided by the number of working hours in a year.

iii. The salary additive rate represents the prorated percentage of charges attributable to NJDEPE employees' reimbursable "down time." This time includes vacation time, administrative leave, sick leave, holiday time, and other approved "absent with pay" allowances. The calculation for the salary additive is the sum of the reimbursable leave salary divided by the net Department regular salary for a given fiscal year. The direct salary charges (number of coded hours × hourly salary rate) are multiplied by the calculated percentage and the result is added to the direct salaries to determine the total reimbursable salary costs for a particular case.

iv. The fringe benefit represents the Department's charges for the following benefits: pension, health benefits, including prescription drug and dental care program, workers compensation, temporary disability insurance, unused sick leave and FICA. The fringe benefit rate is developed by the Department of the Treasury's Office of Management and Budget (OMB). OMB negotiates the rate with the United States Department of Health and Human Services on an annual basis. The rate is used by all State agencies for estimating and computing actual charges for fringe benefit costs related to Federal, dedicated and non-State funded programs.

v. The indirect cost rate represents the rate which has been developed for the recovery of indirect costs in the Site Remediation Program. This indirect rate is developed by the Department on an annual basis in accordance with the New Jersey Department of Treasury OMB Circular Letter 86-17 and the Federal OMB Circular A-87, "Cost Principles for State and Local Governments." Indirect costs are defined as those costs which are incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved.

(1) The components of the indirect cost rate include operating and overhead expenses that cannot be coded as direct salary charges for a particular case, such as the salary and non-salary costs incurred by the Division of Publicly Funded Site Remediation and the Division of Responsible Party Site Remediation. In addition, the indirect rate includes the Site Remediation Program's proportionate share of the costs associated with the Offices of the Commissioner, Assistant Commissioner for Site Remediation, Division Directors and Assistant Directors, the Division of Financial Management and General Services*[,]* ***and*** the Division of Personnel *[and Department of Law and Public Safety]*.

(2) The indirect rate also includes operating costs such as office and data processing equipment, and telephones as well as building rent and the Department's share of statewide costs as determined by the Department of Treasury in the Statewide Cost Allocation Plan. The Statewide Cost Allocation Plan pertains to central services costs which are approved on a fixed basis and included as part of the costs of the State Department during a given fiscal year ending June 30.

(3) The total of these indirect costs is divided by the total direct costs of the Site Remediation Program to determine the indirect cost rate.

vi. Direct costs represent any non-salary direct, site-specific costs including but not limited to laboratory analysis or contractor expenses. These costs will be billed directly as a formula add on.

[(e) The owner or operator conducting a remedial action at a facility with contamination caused by a contaminant which does not have a Cleanup Standard established pursuant to a rule adopted by the Department shall pay the Department's costs to develop a cleanup standard in accordance with (d) above.]

*[(f)]***(e)*** The owner or operator shall not receive a "no further action" letter from the Department unless all fees for work previously billed by the Department to the facility are paid. The Department may discontinue review or oversight of a submittal from the owner or operator of the facility unless all fees for work previously billed are paid. In addition, the Department may consider the failure to pay a fee to be a violation of the Act.

7:14B-3.6 Payment for Department services

(a) All fees submitted in compliance with N.J.A.C. 7:14B-3.2 shall be made by check or money order, payable to "Treasurer, State of New Jersey," and submitted to:

Bureau of Revenue
New Jersey Department of Environmental Protection and Energy
CN-417
Trenton, NJ 08625

All other fee payments shall be made by check or money order, payable to "Treasurer, State of New Jersey" and submitted to the address at N.J.A.C. 7:14B-2.2(b).

(b) No UST fees or charges are pro-rated.

7:14B-3.7 Confidentiality claims

Any confidentiality claim submitted in accordance with N.J.A.C. 7:14B-15 shall be accompanied by a fee of $350.00.

7:14B-3.8 Fee review

(a) To contest a fee imposed pursuant to N.J.A.C. 7:14B-3.5(d), the objector shall, within 30 days after the objector's receipt of the bill for the fee from the Department, submit to the Department a written request for a fee review pursuant to (d) below. An objector may contest the fee based on the following:

1. The Department has no factual basis to sustain the charges assessed in the fee;

2. The activities for which the fee was imposed did not occur;

3. The charges are false or duplicative; or

4. The charges were not properly incurred because they were not associated with the Department's oversight or remediation of the case.

(b) An objector may not contest a fee if the challenge is based on the following:

1. An employee's hourly salary rate;

2. The Department's salary additive rate, indirect rate, or fringe benefit rate; or

3. Management decisions of the Department, including decisions regarding who to assign to a case, how to oversee the case or how to allocate resources for case review.

(c) The objector shall submit a fee review request to the Department at the following address:

Office of Legal Affairs
Attention: Fee Review Requests
DEPE
CN 402
Trenton, NJ 08625-0402

(d) An objector shall include the following in a request for a fee review:

1. A copy of the bill;
2. Payment of all uncontested charges, if not previously paid;
3. A list of the specific fee charges contested;
4. The factual questions at issue in each of the contested charges;
5. The name, mailing address and telephone number of the person making the request;
6. Information supporting the request or other written documents relied upon to support the request;
7. An estimate of the amount of time required for an informal meeting with Department representatives or an adjudicatory hearing before the Office of Administrative Law; and
8. A request, if necessary, for a barrier free hearing location for physically disabled persons;

(e) If the objector fails to include any information or the payment required by (d) above, the Department may deny a request for a fee review or an adjudicatory hearing on the fee.

(f) Upon the Department's receipt of a request for a fee review, the Department shall attempt to resolve any of the factual issues in dispute. If the Department determines that a fee imposed as incorrect, the Department shall adjust the fee and issue a new bill which shall be due and payable within 30 days after receipt.

(g) The Department may, if it determines that the factual issues involving a fee dispute cannot be resolved informally determine the matter to be a contested case and transfer it to the Office of Administrative Law for an adjudicatory hearing. An adjudicatory hearing shall be conducted pursuant to N.J.S.A. 52:14B-1 et seq.

(h) The Department, if it denies a hearing request, shall briefly state the reasons for such denial. Such denial shall be considered final agency action.

(i) If the objector does not file a request for a fee review within 30 days after the objector's receipt of the bill for the fee from the Department*,* the full amount of the fee shall be due and owing. If the bill is not paid, the Department may take any action in accordance with N.J.A.C. 7:26B-3.5*[(f)]***(e)*** above.

(a)

DIVISION OF RESPONSIBLE PARTY SITE REMEDIATION

Industrial Site Recovery Act
Fees

Adopted Amendments: N.J.A.C. 7:26B-1.3, 1.10 and 1.11
Adopted New Rule: 7:26B-1.14

Proposed: April 5, 1993 at 25 N.J.R. 1375(a).
Adopted: January 13, 1994 by Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.
Filed: January 28, 1994 as R.1994 d.99, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-1 et seq., 13:1K-6 et seq., particularly N.J.S.A. 13:1K-10 and N.J.S.A. 58:10-23.11 et seq.
DEPE Docket Number: 17-93-03.

Effective Date: February 22, 1994.
Expiration Date: November 18, 1997.

Summary of Hearing Officer Recommendations and Agency Response:

On April 5, 1993, the Department of Environmental Protection and Energy ("Department") proposed amendments to the Environmental Cleanup Responsibility Act ("ECRA") fee rules at N.J.A.C. 7:26B-1.3, 1.10, 1.11 and a new rule N.J.A.C. 7:26B-1.12. The Department held a public hearing on the proposed rule amendments and new rule on April 30, 1993 in Trenton, New Jersey. The Department accepted written comments through May 5, 1993.

Kenneth T. Hart, former Assistant Director of the Industrial Site Evaluation Element, served as hearing officer for the ECRA fee rule proposal at the April 30, 1993 public hearing. No persons testified regarding the proposed ECRA fee rule amendments and new rule.

On June 16, 1993, then Governor James Florio signed Senate Bill No. 1070, P.L. 1993, c.139 which in part amended and supplemented the Environmental Cleanup Responsibility Act, P.L. 1983, c.330, N.J.S.A. 13:1K-6 et seq., and renamed the act, the Industrial Site Recovery Act.

As provided in N.J.S.A. 13:1K-7, the Industrial Site Recovery Act was enacted to further the policy of this State to protect human health and the environment, to promote efficient and timely cleanups, and to eliminate any unnecessary financial burdens which may result from the remediation of contaminated sites. In P.L. 1993, c.139, the Legislature streamlined the regulatory process by establishing summary administrative procedures for industrial establishments that have previously undergone an environmental review, and by reducing oversight of those industrial establishments where less extensive regulatory review will ensure the same degree of protection to human health and the environment.

The Department intends to propose major changes to N.J.A.C. 7:26B to incorporate changes to the regulatory program required by the Industrial Site Recovery Act.

Former Assistant Director Hart and current Assistant Director Wayne C. Howitz recommended that the Department adopt the rules as proposed, except for those portions of the fee rule proposal that would require extensive revision due to the enactment of P.L. 1993, c.139. Specifically, modifications to the categorical fee schedule for applicability determinations, de minimus quantity exemptions and administrative consent order amendments proposed at N.J.A.C. 7:26B-1.10(c) will not be adopted at this time. The Department intends to propose a fee schedule during Spring 1994 which will reflect the major program changes required by P.L. 1993, c.139. The Department agrees with the recommendations. The hearing record may be reviewed by contacting Janis E. Hoagland, Esq., Department of Environmental Protection and Energy, Office of Legal Affairs, CN 402, Trenton, NJ 08625.

Summary of Public Comments and Agency Responses:

The following persons submitted written comments on the April 5, 1993, rule proposal.

Name—Affiliation

Warren Brecht, Butler International, Inc.
Joseph Cerchiaro, New Jersey Health Products Council
Thomas Detweiler, Chemical Industry Council of New Jersey
D.M. Lucas, Chevron, U.S.A. Inc.
Michael Wallace, Sandoz Pharmaceuticals Corporation

N.J.A.C. 7:26B General Comments

COMMENT 1: The Chemical Industry Council of New Jersey stated that many states do not impose fees on businesses and work with the regulated community in assisting businesses to comply rather than penalizing for inadvertent noncompliance. The Chemical Industry Council further stated that promulgation of this direct-billing fee rule will result in business leaving the State of New Jersey thereby reducing the tax base and ultimately a reduction in generated fees to New Jersey. The Chemical Industry Council of New Jersey also suggested that all costs other than direct labor costs should be allocated to all citizens and not just imposed as an additional tax on business in New Jersey.

COMMENT 2: The New Jersey Health Products Council and Sandoz Pharmaceuticals Corporation stated that the Department has taken "liberties" with the reading of the Environmental Cleanup Responsibility Act and does not believe that the "direct billing" mechanism is consistent with the intent of the statute.

RESPONSE TO COMMENTS 1 AND 2: The decision to fund the total cost of the Industrial Site Recovery Act program with fees rather than from the General Treasury is the decision of the New Jersey Legislature. N.J.S.A. 13:1K-10(a) states "[t]he department shall, pursuant to the "Administrative Procedure Act, P.L. 1968, c.410 (N.J.S.A. 52:14B-1 et seq.), adopt rules and regulations establishing ... (2) a fee schedule, as necessary, reflecting the actual costs associated with the review of plans for or results of negative declarations, preliminary assessments, site investigations, remedial investigations and remedial actions, and review of the implementation thereof and for any other review or approval required by the department ..." This provision authorizes the State to recover any and all costs the Department incurs in providing oversight of a remediation performed by a private party. The legislative process takes issues such as the impact on business into account when enacting legislation.

By recovering the Department's actual costs, the "direct billing" approach is carrying out the intent behind the statute as accurately as possible. Though a flat fee that only approximated the Department's actual costs would also be consistent with the statutory intent (and is preferable when the costs of performing the fee-funded service are essentially the same in each case), the Department believes that the most precise way to carry out that intent is to implement a direct billing approach when a flat fee schedule is impracticable.

These amendments to N.J.A.C. 7:26B-1.10 do not necessarily impose higher fees on businesses in New Jersey in comparison to the previous fee schedules, but merely establish a more equitable method for calculating fees among those New Jersey businesses which may be required to remediate a contaminated site in accordance with the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and consistent with the methodology used by the Department in overseeing all site remediations pursuant to the Procedures for Department Oversight of the Remediation of Contaminated Sites (N.J.A.C. 7:26C). Thus, the Department does not believe that this rule will result in a loss of businesses to New Jersey.

Fees calculated pursuant to the direct billing formula for the review of complex workplans and reports are inherently more equitable to the regulated community because the fees represent actual costs rather than a fixed fee established on a "worst case" scenario. In some cases, a fixed fee may exceed the Department's oversight costs, unfairly burdening the person responsible for remediating the site. The Department decided to establish direct billing fees for the review of complex workplans and reports and overseeing site remediations due to the variable scope of oversight which may be required by the Department. A fixed fee structure for the review of complex workplans and reports would not ensure that all oversight costs incurred by the Department would be recovered, thus creating a potential budgetary problem. The Department would be forced to increase its indirect cost rate to recover this shortfall and would necessitate increases to existing fixed fee schedules established for simpler submissions. The burden of paying the Department's oversight costs for complex remediations would be shifted from the responsible parties to other members of the regulated community who require less Department oversight. The Department is trying to be fair and avoid the above inequity by having everyone pay their own costs.

COMMENT 3: The New Jersey Health Products Council, Butler International Inc. and Sandoz Pharmaceuticals Corporation stated that the proposed fee system will increase the Department's role in oversight of cases administered under the Industrial Site Recovery Act program. This is inconsistent with the changes to the ECRA regulations specifically those addressed in S-1070. The Chemical Industry Council, Sandoz Pharmaceuticals Corporation, Chevron, U.S.A., Inc. and Butler International Inc. further stated that there would be no economic incentive for the Department to manage those cases efficiently based upon the direct billing system.

RESPONSE: The Department disagrees that the direct billing fee system will increase the Department's role in the oversight of cases administered under the Industrial Site Recovery Act program. Pursuant to the Industrial Site Recovery Act, the Legislature directed the Department to review site remediations to ensure that sites are remediated in a manner that is protective of human health and the environment. This fee rule does not impact how the Department will oversee site remediations; it merely ensures that the Department will have adequate funds to administer the Industrial Site Recovery Act program.

The incentive for the Department to be efficient and make cost-effective decisions lies in the policy of the Department to remediate as many sites as possible as quickly as possible. For the Department to encourage employees to spend more time than necessary overseeing a project because reimbursement is available, as the commenters imply, would be counter-productive to the Department's cleanup goals. The more efficiently the Department operates, the more quickly the Department will accomplish its goals. Unlike a private business entity, profit is not the goal of the Department. The Department benefits from operating efficiently because the fewer hours spent per site allows the Department to oversee more remediations, doing so lessens the likelihood that costs will be challenged and increases the likelihood that a responsible party will pay promptly and the more cleanups that can be accomplished voluntarily by a responsible party, the fewer cleanups that will have to be performed by the Department using tax dollars. To show that the Department is looking to operate in a cost effective manner as possible, the total number of employees in the ISRA program has been reduced from 125 to 92. This trend will continue as the program reduces its active case load and streamlines the process.

COMMENT 4: Sandoz Pharmaceuticals Corporation and New Jersey Health Products Council stated that the proposed fee system is inconsistent with a State agency's purpose, which is to serve the people of New Jersey. The commenters further stated that this system could, in effect, create a monopoly of environmental compliance/remedial response in which the State has no competitor to challenge its methods or approach.

RESPONSE: Pursuant to N.J.S.A. 13:1D-1 et seq., the Department is charged with the implementation and enforcement of environmental laws, rules and regulations. In carrying out its statutory responsibilities, the Department has the authority to determine compliance with environmental laws, such as the Industrial Site Recovery Act. In this sense, the Department is the only entity that can establish requirements for environmental compliance/remedial response and does not have any "competitors" for review and approval of compliance with regulatory requirements. However, the regulated community is entitled to challenge individual Department decisions made pursuant to law and regulation in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the New Jersey Court Rules. The rulemaking process, whereby the Department provides public notice of rules proposed, allows persons, such as the Sandoz Pharmaceuticals Corporation, to comment on the rule proposal and allows for public input in the development of regulations by the people the Department serves. The Department disagrees that the fee system does not serve the people of this State. A fee schedule developed pursuant to these procedures, which more closely reflects how business is conducted in the private sector (that is, each person paying their direct share of services received), and which also ensures that the Department has adequate funds to carry out its statutory responsibilities, is in the best interest of the citizens of this State.

N.J.A.C. 7:26B-1.10 Fee schedule

COMMENT 5: The Chemical Industry Council of New Jersey suggested that the regular intervals of billing throughout the duration of the remediation references at N.J.A.C. 7:26B-1.10(e)7i (recodified at N.J.A.C. 7:26B-1.10(f)1) be specified in regulations.

RESPONSE: Individual case type, duration and complexity preclude the Department from establishing a single billing schedule that will be applicable to all cases. Therefore, the Department needs the flexibility of billing in regular intervals on a case-by-case basis.

COMMENT 6: The New Jersey Health Products Council stated that the proposed direct billing fees at N.J.A.C. 7:26B-1.10(e)7 (recodified at N.J.A.C. 7:26B-1.10(f)) will make it difficult for the regulated community to predict before the actual bill is received what the total amount of fees will be when the Department's oversight is complete.

RESPONSE: The Department cannot accurately predict how much oversight will be needed for a particular site and therefore it would be difficult to assess the fees until the remedial work is completed. However, the Department encourages responsible parties to use the Technical Requirements for Site Remediation (N.J.A.C. 7:26E) and Procedures for Department Oversight of the Remediation of Contaminated Sites (N.J.A.C. 7:26C) as well as any other Departmental guidance documents to assist in their remediation activities on sites and thereby reducing the amount of Department involvement and oversight. The complexity of the environmental contamination at a site and the quality of the workplans and reports submitted to the Department will dictate the oversight costs to the regulated community. The Department intends to develop and publicize cost ranges for the various levels of remediation which the regulated community will be able to use as a guide.

COMMENT 7: The Chemical Industry Council of New Jersey stated that it is unreasonable to require owners or operators conducting site remediation to fund the Department's cost associated with the development of a cleanup standard pursuant to N.J.A.C. 7:26B-1.10(e)2. It was further stated that since the cleanup standard would benefit all persons in the State, the costs should be shared and not borne exclusively by the party subject to remediation requirements.

RESPONSE: The Department has reevaluated N.J.A.C. 7:26B-1.10(e)2 and has decided to delete this provision because it would unnecessarily duplicate the direct billing provisions at N.J.A.C. 7:26B-1.10(f). The direct billing formula, N.J.A.C. 7:26B-1.10(f)2, incorporates the Department's oversight activities in reviewing workplans and reports, and overseeing site remediations. The above oversight activities would include, if necessary, the cost for developing either a site-specific cleanup level for a contaminant that does not have an applicable cleanup level or a proposal involving site-specific conditions that may permit a deviation from an established cleanup level. The

Department would calculate fees for the development or review of site-specific cleanup level data pursuant to the direct billing formula as this information would be a component of the workplans and reports submitted by an owner or operator. Therefore, proposed N.J.A.C. 7:26B-1.10(e)2 is unnecessary and has been deleted. The Department notes, however, that a site-specific cleanup standard will not necessarily benefit all persons in the state since a site-specific cleanup standard is developed based on the particular conditions at a site and may not be applicable at another site remediation.

COMMENT 8: The New Jersey Health Products Council and Sandoz Pharmaceuticals Corporation stated that the Department's proposed multiplier of 3.7 to retrieve administrative costs pursuant to N.J.A.C. 7:26B-1.10(e)7 (recodified at N.J.A.C. 7:26B-1.10(f)) is too high and exceeds the multiplier used in the public sector. The commenters noted that the multipliers used by consulting firms range between 2.5 and 3.0, which includes a profit margin.

COMMENT 9: Chevron U.S.A., Inc. noted that although the Department's multiplier of 3.7 was within range of multipliers used by the private sector, the private sector multiplier includes a profit margin which the Department's formula should not factor. Chevron U.S.A., Inc. noted that in a survey it conducted in the Summer of 1992, nine of its environmental consultants utilized a base salary multiplier ranging from 2.35 to 3.5.

RESPONSE TO COMMENTS 8 AND 9: After the Department proposed these rule amendments to the Industrial Site Recovery Act fees, the Department revised the indirect rate used in the direct billing formula at N.J.A.C. 7:26B-1.10(e)7 (recodified at N.J.A.C. 7:26B-1.10(f)). As a result of more staff time being allocated to specific cases during Fiscal Year 1993, the Department's Site Remediation Program reduced its indirect rate for Fiscal Year 1994 from 134.24 percent to 95.48 percent. The Department provided public notice of this revised rate in the August 2, 1993 New Jersey Register at 25 N.J.R. 3561(b). When the Fiscal Year 1994 indirect rate was incorporated into the direct billing formula, the total multiplier to be used in calculating oversight fees pursuant to N.J.A.C. 7:26B-1.10(f) was reduced from 3.697 to 3.085. Thus, the total multiplier to be used in calculating these direct billing fees has been reduced since these rule amendments were proposed. The Department's total multiplier for Fiscal Year 1994 of 3.085 is reasonable as compared to private sector firms. For example, Chevron's survey of nine of their environmental consultants showed a multiplier range up to 3.5.

Although the private sector incurs costs that the Department does not incur, and includes a profit margin that the Department does not have, the Department has costs that the private sector does not have. As a government regulatory agency, the Department is required to spend substantial effort on public communications (for example, hearings, response to requests for information), rule development, adjudications and costs inherent to serving and being responsive to the Executive and Legislative branches of government as well as the citizens of this State. The Department is committed to performing its duties in as efficient and effective manner as possible and periodically reviews its internal operations for opportunities to increase its specific time accounting, reduce the time required to perform specific tasks and identify tasks which can be privatized to reduce Department involvement.

COMMENT 10: Chevron U.S.A., Inc. stated that the proposed amendments should be revised to include a schedule of fees as opposed to oversight cost reimbursement for responsible party actions.

RESPONSE: As previously explained in the Department response to Comments 1 and 2, the Department determined that an hour-for-hour reimbursement is appropriate to ensure that the State of New Jersey is reimbursed fully for the resources expended in the oversight of the remediation of a contaminated site without having the reimbursement exceed the actual cost in any particular case. The amount of resources the Department expends is directly proportional to the complexity of the environmental contamination at a site and the quality of the workplans and reports submitted by the person responsible for remediating the site. The direct billing formula will provide an incentive to the responsible party to submit high quality, complete documents requiring the least review time possible.

The complexity of environmental contamination at an industrial establishment and the quality of the workplans and reports submitted by an owner or operator will vary from case to case. Based on the Department's experience in administering cases under the Industrial Site Recovery Act program, a per document fee schedule can result in costs for individual documents that are disproportionate to the actual cost to the Department to review that document. Therefore, a fixed or flat fee structure for complex workplans and reports would not ensure that all oversight costs incurred by the Department would be recovered. This would result in higher indirect cost rates which are applicable to all members of the regulated community.

The Department agrees, however, that where an oversight activity requires a reasonably consistent level of effort from the Department, a fixed fee is appropriate. Thus, the Department has maintained a categorical fee schedule at N.J.A.C. 7:26B-1.10(c) which establishes fixed fees for summary and expedited administrative procedures required by the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. The Department intends to propose a new categorical fee schedule in Spring 1994 to reflect the program changes due to the Industrial Site Recovery Act.

COMMENT 11: The Chemical Industry Council of New Jersey suggested that it is inappropriate for overhead and indirect costs to be calculated into the flat fees for the Initial Notice Review, Negative Declaration Review, Administrative Consent Orders (ACO), ACO Amendments, De Minimus Quantity Exemptions, Limited Conveyance Reviews, Applicability Determinations and Confidentiality Claims at N.J.A.C. 7:26B-1.10(c). The Chemical Industry Council of New Jersey further suggested that the Initial Notice fee of $1,000 is inflated since it should not take the Department 16 hours to review an Initial Notice submission.

RESPONSE: As previously stated in the Department's response to Comments 1 and 2 above, it was the Legislature's determination the Department's costs in performing oversight functions on remedial projects in response to remediations conducted by a private party pursuant to N.J.S.A. 13:1K-6 et seq., should be borne by the person responsible for conducting the remediation and not the taxpayers of the State of New Jersey. Overhead and indirect costs are actual costs incurred by the Department in carrying out its statutory functions under the Industrial Site Recovery Act. The proposed amendments to the flat fees at N.J.A.C. 7:26B-1.10(c), therefore, are consistent with the legislative intent as set forth at N.J.S.A. 13:1K-10. However, the proposed modifications to the Administrative Consent Orders amendments, De Minimus Quantity Exemptions and Applicability Determinations will not be adopted at this time because of the significant programmatic changes required by the Industrial Site Recovery Act. The Department intends to propose a new fee schedule to reflect the program changes necessitated by the Industrial Site Recovery Act.

The fee for the Department's review of an Initial Notice submission is appropriate because this fee covers the review of the General Information Submission and a Preliminary Assessment Report as well as the data entry time required to maintain historical records of cases administered by the Industrial Site Recovery Act program. Experience has shown that an average of 16 hours is required to perform these duties.

COMMENT 12: The Chemical Industry Council of New Jersey stated it was unreasonable to compensate the Department for employee's "down time" by use of the salary additive rate at N.J.A.C. 7:26B-1.10(e)7ii3 (recodified at N.J.A.C. 7:26B-1.10(f)2iii).

RESPONSE: The hourly rate is calculated by dividing an employee's salary by the total number of hours to be worked in a calendar year. (For example, an employee whose salary is $30,000, and whose work week consists of 40 hours per week, (and hence 2,080 hours per year), would have an hourly rate of $14.42. An average of the Department's reimbursable salary leave was calculated at 22.0 percent. Therefore, an employee whose work week is 40 hours per week, or 2,080 hours per year, is entitled to 22.0 percent of 2,080 hours as reimbursable salary that won't actually be worked by the employee and therefore unavailable to be billed to a specific case. This employee then can only directly bill 1,622 hours, while using 458 hours in non-billable leave time (that is, down time). However, the Department must still pay for the employee's leave of 458 hours, and therefore, incorporates this cost as part of the salary additive rate. Paid leave includes vacation, sick, holidays, administrative leave, mandatory health and safety training and any training necessary to make employees more proficient at their duties as well as time for evaluation of progress and performance through staff meetings. This is appropriate and reasonable because these are actual costs the Department incurs in administering the Industrial Site Recovery Act program.

The Legislature decided that it would not fund the Department's costs of implementing the Industrial Site Recovery Act, rather the Department should adopt fees to cover these costs. It is unclear from the Chemical Industry Council's comment where the Department would obtain the funds to pay for an employee's down time. Certainly, the individual members of the Council pay for their employees' vacation and sick time

as well as for training. The Department's calculation and use of the salary additive rate is consistent with the Legislature's direction to the Department and comparable practices in private industry.

COMMENT 13: The Chemical Industry Council of New Jersey stated that it is unreasonable for owners and operators to pay for the Department's employees' fringe benefits when it is difficult at this time for many private employers to afford health care benefits such as prescription drug and dental care programs for their own employees.

RESPONSE: The Industrial Site Recovery Act at N.J.S.A. 13:1K-10, allows the Department to promulgate a fee schedule reflecting the actual costs associated with administering the Industrial Site Recovery Act program. The direct billing formula at N.J.A.C. 7:26B-1.10(f)2 appropriately includes the Department's costs for an employee's fringe benefits, as this cost is incurred by the Department in administering the program.

COMMENT 14: The Chemical Industry Council of New Jersey stated that owners or operators which have previously paid a cleanup plan oversight fee should not be subject to a revised hourly billing pursuant to N.J.A.C. 7:26B-1.10(e)9 (recodified at N.J.A.C. 7:26B-1.10(g)). The new billing arrangement, as suggested, should apply to new cases only.

RESPONSE: As previously stated in the Department's response to Comments 1, and 2 above, the Legislature determined that costs incurred by the Department in performing oversight functions on remedial projects performed by a private party pursuant to N.J.S.A. 13:1K-6 et seq., should be borne by the person responsible for conducting the remediation and not the taxpayers of the State of New Jersey. In some instances, the original cleanup oversight fee has not covered the Department's costs for oversight functions. For example, the Department may have spent 100 hours per year for five years overseeing a remediation worth more than one million dollars. The $12,000 Cleanup Plan Implementation fee previously assessed would not have covered the Department's oversights costs in this instance.

If the Department implemented the commenter's suggestion and applied the direct billing approach to new cases only, the Department would be forced to absorb the costs it incurred in overseeing these complex cases through an increase in the indirect rate for the Site Remediation Program. This increase in the indirect rate would increase direct billing fees and would also necessitate increases to existing fixed fee schedules established for administrative submissions. The burden of paying the Department's oversight costs for overseeing the implementation of a remedial action would be shifted from the responsible parties to other members of the regulated community. As a result, all owners and operators would be required to subsidize the Department's costs for overseeing the most complex remediations. The Department is trying to be fair and avoid this inequity by having everyone pay their own costs.

N.J.A.C. 7:26B-1.10(g) will only apply to a limited number of cases. The direct billing formula will be utilized only after a cost run shows that the original fee has been expended at a site. At this point, the person conducting the remediation will be billed on an hourly basis as provided at N.J.A.C. 7:26B-1.10(f)2. The Department believes this modification to the billing structure is appropriate since the need for the Department's oversight is the direct result of the person's actions. The requirement that the person conducting the remediation of a site, rather than the citizens of this state, reimburse the Department for resources spent on the investigation of a contaminated site is consistent with legislative policy as expressed by N.J.S.A. 13:1K-10(a).

COMMENT 15: The Chemical Industry Council of New Jersey stated the number of working hours in a year should be defined at N.J.A.C. 7:26B-1.10(e)7ii(2) (recodified at N.J.A.C. 7:26B-1.10(f)2ii).

RESPONSE: The Department refers the commenter to the summary provided in the proposal at 25 N.J.R. 1375-1379 for a description of the Department's working hours. The hourly rate is calculated by dividing an employee's salary by the total number of hours to be worked in a calendar year. (For example, an employee whose work week consists of 40 hours would have an hourly rate of his salary divided by 2,080 hours (40 hours per week times 52 weeks in year).) The hourly rate used in the fee formula is the actual hourly rate for individuals involved in a specific case and is not a "blended rate."

COMMENT 16: The Chemical Industry Council of New Jersey stated that it is inappropriate to include the proportionate share of costs associated with the Offices of the Commissioner, Assistant Commissioner for Site Remediation, Division Directors and Assistant Directors, the Division of Financial Management and General Services, Division of Personnel and the Department of Law and Public Safety in the indirect cost rate. These offices operate for the benefit of all of New Jersey. In addition, the New Jersey Health Products Council stated that the "costs to run State government" should not be included in the multiplier.

RESPONSE: One of the roles of each of the above mentioned offices is to provide services to the Site Remediation Program. The Department is only seeking to recover those administrative costs of each of these units that are directed toward the remediation of contaminated sites. The Department's management is part of this process, and the management's time must be included in any calculation of actual costs incurred in administering the Industrial Site Recovery Act program. Therefore, the Department seeks reimbursement for the total costs incurred for a common purpose.

The direct billing formula reflects the total costs actually incurred by the Site Remediation Program, recognizing of course that the cost to the Site Remediation Program for every employee includes not only base salary, but also the added expense of fringe benefits, compensable down time and indirect costs such as the Department's overhead costs which are incurred for a common purpose. Therefore, the Department seeks reimbursement for the total costs expended on a project. Even though many of the activities covered in the indirect rate operate, at least in part, for the benefit of the entire State, all are necessary for the ultimate administration of the Industrial Site Recovery Act program.

Additionally, the Department deleted the Department of Public Law and Safety from the indirect cost rate multiplier upon adoption of these rule amendments. The costs incurred by the Department for the Department of Law and Public Safety's activities on a specific-case may be billed directly to that case and included in the direct billing formula.

COMMENT 17: The Chemical Industry Council of New Jersey requested clarification of the definition of "indirect costs" provided in the proposed rules.

RESPONSE: The Department believes that the proposal summary at 25 N.J.R. 1375 provided sufficient detail for persons to effectively comment on the factors used in the direct billing formula at N.J.A.C. 7:26B-1.10(f), as evidenced by the detailed comments received on these factors. The Department defined key factors in the direct billing fee formula and provided a detailed example of how it derived the rates including the indirect costs rate. The responses to comments contained in this adoption provide additional information and clarification of the factors used in the fee formula. The commenters did not specify what additional information was needed in order to formulate a better informed opinion of the merits of the direct billing formula. Therefore, the Department cannot respond to this comment in more detail.

N.J.A.C. 7:26B-1.14 Fee review

COMMENT 18: Chevron, U.S.A. Inc. suggested an addition to N.J.A.C. 7:26B-1.12(a) (recodified at N.J.A.C. 7:26B-1.14(a)) to allow an objector to contest a fee based on unwarranted or unnecessary oversight costs.

RESPONSE: The Department does not believe that the addition of this new provision as suggested by Chevron, U.S.A. Inc. is appropriate. The Department has a statutory obligation to ensure the proper remediation of contaminated sites. To carry out this statutory obligation, the Department must be able to determine how much oversight a particular case should receive. As is further discussed in the Department's response to Comment 19 below, challenges to the Department's management decisions regarding the need for particular oversight will substantially hinder the goal of an effective and efficient site remediation.

COMMENT 19: Chevron, U.S.A. Inc. suggested the deletion of proposed N.J.A.C. 7:26B-1.12(b)3 (recodified as N.J.A.C. 7:26B-1.14(b)3) due to the fact it does not allow an objector to contest management decisions made by the Department.

COMMENT 20: The New Jersey Health Products Council, the Chemical Industry Council of New Jersey and Sandoz Pharmaceutical Corporation stated that the proposed N.J.A.C. 7:26B-1.12 (recodified as N.J.A.C. 7:26B-1.14) inappropriately limits the ability of the regulated community to appeal the process of direct billing or contest a fee.

RESPONSE TO COMMENTS 19 and 20: Based on consultation with the Attorney General's office, the Department has concluded that a challenge based on any of the issues enumerated at proposed N.J.A.C. 7:26B-1.12(b) (recodified at N.J.A.C. 7:26B-1.14(b)), specifically, N.J.A.C. 7:26B-1.14(b)3 "Management decisions of the Department, including decisions regarding who to assign to a case, how to oversee the case or how to allocate resources for case review.", would not constitute a "contested case" under the Administrative Procedure Act. A challenge based on management decisions as described by this provision would not raise factual issues that could be resolved in an

adjudicatory hearing in the Office of Administrative Law. Accordingly, the Department has listed these types of issues in the rule in order to provide guidance to owners or operators seeking an adjudicatory hearing to contest a fee. Based on this guidance, a person can avoid going through the exercise of requesting a hearing that is certain to be denied.

An adjudicatory hearing to debate the wisdom of the Department's management decisions would consume substantial resources of the objector and the Department, but almost certainly would result in no change in the fee. Management decisions such as the staff to assign to a specific case are discretionary decisions of the Department. As a regulatory agency, the Department must apply its expertise to allocate resources to a specific case in a manner consistent with technical complexities, the public interest and relevant priorities at a given time, in order to protect human health and the environment. In light of the great deference that the law gives these decisions regarding deployment of resources, and the extreme difficulty of attempting to evaluate those decisions after the fact, the Department does not believe that an adjudicatory hearing on this issue could produce a meaningful review. See, for example, *State Farm Mut. Auto v. Public Advocate,* 118 *N.J.* 336, 358 (1990).

The Department recognizes that if an owner or operator is legally entitled to a hearing under the Administrative Procedure Act, that right could not be limited in a rule. A person who believes that the hearing rights under N.J.A.C. 7:26B-1.14(b) are more limited than those required under the Administrative Procedure Act could certainly contest the rule in the Appellate Division. However, as noted above, based on consultation with the Attorney General's office, the Department believes that the hearing rights under N.J.A.C. 7:26B-1.14(b) are consistent with the Administrative Procedure Act.

The Department is also concerned that if every management decision could potentially be the subject of an adjudicatory hearing, there would be a substantial risk that efficient and effective site remediation would be compromised in an effort to protect against potential litigation. Furthermore, litigation over the wisdom of management decisions would divert scarce Department resources away from the remediation of contaminated sites and delay remediation as a result.

The scarcity of resources available to the Department is already a substantial incentive to make management decisions that control costs and avoid using excess resources for any specific case. Adding a threat of litigation is therefore unnecessary and is likely to produce the undesirable side effects discussed above.

COMMENT 21: Chevron, U.S.A. Inc. suggested a revision of 7:26B-1.12(i) (recodified as N.J.A.C. 7:26B-1.14(i)) to extend the filing period for fee review from 30 to 90 days to allow objectors sufficient time to obtain the necessary information for requesting a fee review.

RESPONSE: It is the Department's position to try to resolve issues in a timely manner. The information required to file an objection pursuant to N.J.A.C. 7:26B-1.10(d) is easily obtained and does not place an undue administrative burden on an objector. Thus, it was determined that a 30-day filing period was appropriate.

COMMENT 22: The Chemical Industry Council of New Jersey commented that a party should be able to contest a fee whenever the Department has acted in an arbitrary and capricious manner.

RESPONSE: If the Department determines in a particular matter that the fee challenge does not constitute a contested case, the objector may challenge the alleged "arbitrary and capricious" Department action as final agency action before the Appellate Division of the Superior Court. It is in the Appellate Division that the standard of review of the Department's action is whether the final agency action was arbitrary or capricious.

The Department believes that the detailed procedures set forth at N.J.A.C. 7:26B-1.14 will provide owners and operators with a meaningful opportunity to challenge and review a fee assessment. The Department further believes that an owner's or operator's due process rights will be adequately protected by this review process. Therefore, the revision requested by the commenter is not warranted.

Summary of Agency-Initiated Changes:

1. The Department has decided not to adopt the proposed amendments to N.J.A.C. 7:26B-1.10(c)4, 5 and 8 because the enactment of P.L. 1993, c.139 has made fundamental changes to the Industrial Site Recovery Act program. These changes affected the way the Department conducts its reviews for applicability determinations, de minimus quantity exemptions and administrative consent order amendments. The Department will continue to assess fees pursuant to N.J.A.C. 7:26B-1.10(c), as applicable.

2. The Department deleted N.J.A.C. 7:26B-1.10(e)2 as this provision was duplicative.

3. The Department recodified N.J.A.C. 7:26B-1.10(e)7 as N.J.A.C. 7:26B-1.10(f) for clarity and to provide consistency with the other subchapters in the rule.

4. The Department deleted the phrase "Department of Law and Public Safety" from the list of governmental offices included in the indirect cost rate at N.J.A.C. 7:26B-1.10(f)2v(1). The costs incurred by the Department for the Department of Law and Public Safety's activities on a specific case will be included in the direct billing formula.

5. The Department has recodified proposed new rule N.J.A.C. 7:26B-1.12 at N.J.A.C. 7:26B-1.14 to correct a codification error in the proposal.

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

7:26B-1.3 Definitions

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

. . .

"Remedial action" means remedial action as defined in N.J.A.C. 7:26E-1.8.

"Remedial investigation" means remedial investigation as defined in N.J.A.C. 7:26E-1.8.

. . .

"Site investigation" means site investigation as defined in N.J.A.C. 7:26E-1.8.

7:26B-1.10 Fee schedule

(a) The owner or operator shall pay all applicable fees required by this section upon submittal to the Department of each submission for negative declaration, negative declaration amendment, applicability determination, de minimus quantity exemption, Certificate of Limited Conveyance, ACO, ACO Amendment, confidentiality claim or Initial Notice, except as provided at *[(e)3]* ***(e)2*** below. The applicable fee required by this section shall be submitted with each and every submittal made to the Department. The fees required by this section are not one time fees but rather the fees required to perform the review of the specific submittals to the Department.

(b) The owner or operator shall pay all fees required by this section by certified check, attorney check, money order, or by personal check if received 60 days prior to the issuance of any document specified in (a) above. Checks and money orders shall be made payable to "Treasurer, State of New Jersey." All fees shall be mailed to the address specified at N.J.A.C. 7:26B-1.11.

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

	Standard	Small Business
1. Initial Notice Review	$ 1,000	$ 750.00
2. Negative Declaration Review	500.00	250.00
3. Negative Declaration Amendment	100.00	100.00
4. Applicability Determination	*[100.00	100.00]*
	200.00	***200.00****
5. De Minimus Quantity Exemption	*[500.00	500.00]*
	300.00	***300.00****
6. Limited Conveyance Review	500.00	500.00
7. Administrative Consent Order	2,000	2,000
8. ACO Amendment	*[1,000	1,000]*
	500.00	***500.00****
9. Confidentiality Claim	350.00	350.00

(d) (No change.)

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

1. The initial notice review fee shall be submitted with the GIS.

[2. The owner or operator conducting a remediation at an industrial establishment with contaminaton caused by a contaminant which does not have a Cleanup Standard established pursuant to a rule adopted by the Department shall pay the Department's costs to develop a Cleanup Standard in accordance with (e)7 below.]

*[3.]***2.*** The Department may require that the owner or operator submit a fee with the negative declaration or negative declaration amendment submission pursuant to (c)3 or 4 above or may charge the owner or operator for the costs to review the negative declaration or negative declaration amendment pursuant to *[(e)7]* ***(f)*** below. The Department shall base this decision on the anticipated complexity of the initial notice, remedial investigation workplan, or remedial action workplan submissions by the owner or operator. The fee for simpler submissions will be imposed pursuant to (c)3 or 4 above and the fees for more complex submissions will be imposed pursuant to *[(e)7]* ***(f)*** below.

Recodify existing 6. to 8. *[4. to 6.]* ***3.-5.*** (No change in text.)

*[7.]***(f)*** The owner or operator shall submit the remediation oversight fee to the Department within 30 calendar days after receipt from the Department of a summary of the Department's oversight costs for the period being charged for all oversight activities including and subsequent to the review of the sampling plan. The Department shall include the following information in the summary: description of work performed, staff member(s) performing work, number of hours performed by the staff member(s) and staff member's hourly salary rate. The remediation oversight fee schedule shall be as follows:

*[i.]***1.*** The Department will bill the owner or operator at regular intervals throughout the duration of the remediation based on the formula in *[(e)7ii]* ***(f)2*** below to recover its costs.

*[ii.]***2.*** Direct billing fees are based on the Department's costs of working on activities for an industrial establishment. This fee is based upon the following formula:

Administrative Costs = A + B

where A = (Number of coded hours) × (Hourly Salary Rate) × (Salary Additive Rate) × (Fringe Benefit Rate) × (Indirect Cost Rate) and B = (Sampling costs) + (Costs for contractor Assistance).

*[(1)]***i.*** Number of coded hours represents the sum of hours each employee has coded to the site-specific project activity code (PAC) for the case. Actual hours for all State employees including, without limitation, case managers, geologists, technical coordinators, samplers, inspectors, supervisors, section chiefs, using the specific PAC, will be included in the formula calculations.

*[(2)]***ii.*** The hourly salary rate is each employee's annual salary divided by the number of working hours in a year.

*[(3)]***iii.*** The salary additive rate represents the prorated percentage of charges attributable to NJDEPE employees' reimbursable "down time." This time includes vacation time, administrative leave, sick leave, holiday time, and other approved "absent with pay" allowances. The calculation for the salary additive is the sum of the reimbursable leave salary divided by the net Department regular salary for a given fiscal year. The direct salary charges (number of coded hours × hourly salary rate) are multiplied by the calculated percentage and the result is added to the direct salaries to determine the total reimbursable salary costs for a particular case.

*[(4)]***iv.*** The fringe benefit represents the Department's charges for the following benefits: pension, health benefits including prescription drug and dental care program, workers compensation, temporary disability insurance, unused sick leave and FICA. The fringe benefit rate is developed by the Department of the Treasury's Office of Management and Budget (OMB). OMB negotiates the rate with the United States Department of Health and Human Services on an annual basis. The rate is used by all state agencies for estimating and computing actual charges for fringe benefit costs related to Federal, dedicated and Non-State funded programs.

*[(5)]***v.*** The indirect cost rate represents the rate which has been developed for the recovery of indirect costs in the Site Remediation Program. This indirect rate is developed by the Department on an annual basis in accordance with the New Jersey Department of Treasury OMB Circular Letter 86-17 and the Federal OMB Circular A-87, "Cost Principles for State and Local Governments." Indirect costs are defined as those costs which are incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved.

*[(A)]***(1)*** The components of the indirect cost rate include operating and overhead expenses that cannot be coded as direct salary charges for a particular case, such as the salary and non-salary costs incurred by the Division of Publicly Funded Site Remediation and the Division of Responsible Party Site Remediation. In addition, the indirect rate includes the Site Remediation Program's proportionate share of the costs associated with the Offices of the Commissioner, Assistant Commissioner for Site Remediation, Division Directors and Assistant Directors, the Division of Financial Management and General Services*[,]* ***and*** the Division of Personnel *[and Department of Law and Public Safety]*.

*[(B)]***(2)*** The indirect rate also includes operating costs such as office and data processing equipment, and telephones as well as building rent and the Department's share of Statewide costs as determined by the Department of Treasury in the Statewide Cost Allocation Plan. The Statewide Cost Allocation Plan pertains to central services costs which are approved on a fixed basis and included as part of the costs of the State Department during a given fiscal year ending June 30.

*[(C)]***(3)*** The total of these indirect costs is divided by the total direct costs of the Site Remediation Program to determine the indirect cost rate.

*[(6)]***vi.*** Direct costs represent any non-salary direct, site-specific costs including, but not limited to, laboratory analysis or contractor expenses. These costs will be billed directly as a formula add on.

*[8.]***vii.*** The Department shall develop on an annual basis and publish notice of the salary additive rate, fringe benefit rate and the indirect cost rate to be used by the Site Remediation Program for the fiscal year in the New Jersey Register.

*[9.]***(g)*** The Department shall impose fees pursuant to *[(e)7]* ***(f)*** above on the owner or operator of an industrial establishment that paid an Oversight of Cleanup Plan Implementation fee if the Department's cost associated with that case exceed the previously paid fee.

*[10.]***(h)*** Any request for an ACO or ACO amendment shall be accompanied by the appropriate fee.

*[11.]***(i)*** The owner or operator shall not receive a full compliance or negative declaration letter from the Department unless all fees for work previously billed by the Department to the industrial establishment are paid. The Department may discontinue review or oversight of a submittal from the owner or operator of the industrial establishment unless all fees for work previously billed are paid. In addition, the Department may consider the failure to pay a fee to be a violation of the Act.

7:26B-1.11 Forms

Any forms, fees or other information required to be submitted by this chapter shall be obtained from and returned to the New Jersey Department of Environmental Protection and Energy, Industrial Site Evaluation Element, CN 028, Trenton, New Jersey, 08625-0028. Courier and hand deliveries may be made to 401 East State Street, 5th Floor East, Trenton, New Jersey 08625.

7:26B-*[1.12]***1.14*** Fee review

(a) To contest a fee imposed pursuant to N.J.A.C. 7:26B-1.10*[(e)7]***(f)***, the objector shall, within 30 days after the objector's receipt of the bill for the fee from the Department, submit to the Department a written request for a fee review pursuant to (d) below. An objector may contest the fee based on the following:

1. The Department has no factual basis to sustain the charges assessed in the fee;
2. The activities for which the fee was imposed did not occur;
3. The charges are false or duplicative; or
4. The charges were not properly incurred because they were not associated with the Department's oversight or remediation of the case.

(b) An objector may not contest a fee if the challenge is based on the following:

1. An employee's hourly salary rate;
2. The Department's salary additive rate, indirect rate, or fringe benefit rate; or
3. Management decisions of the Department, including decisions regarding who to assign to a case, how to oversee the case or how to allocate resources for case review.

(c) The objector shall submit a fee review request to the Department at the following address:

Office of Legal Affairs
Attention: Fee Review Requests
DEPE
CN 402
Trenton, NJ 08625-0402

(d) An objector shall include the following in a request for a fee review:

1. A copy of the bill;
2. Payment of all uncontested charges, if not previously paid;
3. A list of the specific fee charges contested;
4. The factual questions at issue in each of the contested charges;
5. The name, mailing address and telephone number of the person making the request;
6. Information supporting the request or other written documents relied upon to support the request;
7. An estimate of the amount of time required for an informal meeting with Department representatives or an adjudicatory hearing before the Office of Administrative Law; and
8. A request, if necessary, for a barrier free hearing location for physically disabled persons.

(e) If the objector fails to include any information or the payment required by (d) above, the Department may deny a request for a fee review or an adjudicatory hearing on the fee.

(f) Upon the Department's receipt of a request for a fee review, the Department shall attempt to resolve any of the factual issues in dispute. If the Department determines that a fee imposed was incorrect, the Department shall adjust the fee and issue a new bill which shall be due and payable within 30 days after receipt.

(g) The Department may, if it determines that the factual issues involving a fee dispute cannot be resolved informally, determine the matter to be a contested case, transfer it to the Office of Administrative Law for an adjudicatory hearing. An adjudicatory hearing shall be conducted pursuant to N.J.S.A. 52:14B-1 et seq.

(h) The Department, if it denies a hearing request, shall briefly state the reasons for such denial. Such denial shall be considered final agency action.

(i) If the objector does not file a request for a fee review within 30 days after the objector's receipt of the bill for the fee from the Department, the full amount of the fee shall be due and owing. If the bill is not paid, the Department may take any action in accordance with N.J.A.C. 7:26B-1.10*[(e)11]***(i)***.

(a)

OFFICE OF AIR QUALITY MANAGEMENT

Control and Prohibition of Air Pollution by Vehicular Fuels (Oxygenated Fuel)

Adopted Amendments: N.J.A.C. 7:27-25.3, 25.4, 25.10, 25.11, and N.J.A.C. 7:27A-3.10

Adopted Repeal: N.J.A.C. 7:27-25.9

Proposed: September 7, 1993 at 25 N.J.R. 4039(a).
Adopted: January 13, 1994 by Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.
Filed: January 26, 1994 as R.1994 d.85 **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with the following portions not adopted at this time: N.J.A.C. 7:27-25.1, 25.3(c)1 and 25.3(f)1i.**

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

DEPE Docket Number: 44-93-08/200.

Effective Date: February 22, 1994.
Operative Date: March 14, 1994.
Expiration Dates: Exempt, N.J.A.C. 7:27; December 4, 1994, N.J.A.C. 7:27A.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection and Energy (the Department) is adopting certain proposed amendments to N.J.A.C. 7:27-25, Control and Prohibition of Air Pollution by Vehicular Fuels, and hereinafter referred to as "subchapter 25," and is also adopting a repeal of N.J.A.C. 7:27-25.9, Variance for Contemporaneous Averaging.

The adopted amendments to N.J.A.C. 7:27-25.4 revise the recordkeeping and reporting requirements to which refiners, importers, blenders, distributors, wholesale purchaser-consumers and retailers who provide gasoline for use in New Jersey are subject. The adopted amendments require that refiners, importers, blenders and distributors document and report to distributors, wholesale purchaser-consumers, or retailers the category, not the specific type of oxygenate present in gasoline. The adopted amendments add the requirement that these refiners, importers, blenders, and distributors certify to the subsequent retail outlet or wholesale purchaser-consumer facility as to the category of oxygenate present in the gasoline being transferred. The adopted amendments also add the Grabner Method to those test methods currently approved by the Department for use in determining the Reid Vapor Pressure (RVP) of gasoline. Also, the Department has repealed N.J.A.C. 7:27-25.9, known as the variance for contemporaneous averaging provisions; therefore, the adopted amendments no longer provide for wholesale purchaser-consumers and retailers to comply with the oxygen content standards of gasoline through the averaging of grades of gasoline.

At this time, the Department has determined to defer final action on the proposed amendments to N.J.A.C. 7:27-25.1, 25.3(c)1, and 25.3(f)1i pending a decision by the United States Environmental Protection Agency (EPA) regarding the Department's request that the EPA reduce the oxygen program control period for the Northern oxygen program control area from seven months to four months. The Northern oxygen program control area includes the counties of Bergan, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren. As explained in the rule amendment proposal at 25 N.J.R. 4039-4040, until the EPA authorizes a four-month control period, the Department would be prohibited by the provisions of the Clean Air Act at Section 211(m)2, (42 U.S.C. 7545(m)(2)), from proceeding to promulgate amendments establishing a four-month oxygen program control period in the Northern oxygen program control area.

In accordance with the Rules for Agency Rulemaking set forth at N.J.A.C. 1:30-4.2(c), these pending proposed amendments must be adopted within one year from the date of publication of their proposal in the New Jersey Register on September 7, 1993, or the proposal of these amendments will expire.

Once the EPA issues its final decision concerning the Department's request to reduce the Northern oxygen program control period to four months, the Department will act on the proposed amendments to N.J.A.C. 7:27-25.1, 25.3(c)1 and 25.3(f)1i in either of two ways: 1) if the EPA establishes a four-month oxygen program control period for the Northern oxygen program control area, the Department will forthwith adopt the proposed amendments at N.J.A.C. 7:27-25.1, 25.3(c)1 and 25.3(f)1i by subsequent adoption notice in the New Jersey Register; or 2) if the EPA denies the Department's request, the Department shall publish a notice in the New Jersey Register of the denial and shall allow the proposed amendments to expire. Unless and until the Department adopts the proposed amendments and these amendments are operative, the Northern oxygen program control period shall remain October 1 through April 30.

All adopted sections of the proposal shall be operative March 14, 1994.

A public hearing was held on September 24, 1993, to provide interested parties opportunity to present testimony on the proposed amendments and repeal. The comment period closed October 7, 1993. The Department received written testimony from 10 persons and oral comments from six persons. The commenters were as follows:

1. Fred M. Anderson, Exxon Company, on behalf of the New Jersey Petroleum Council
2. W.E. Copenhaver, Colonial Pipeline Company
3. Clarence M. Ditlow, Center for Auto Safety

4. Barry Dorfman, citizen
5. William Dressler, New Jersey Gasoline Retailers Association
6. Dennis P. Feist, Shell Oil Company
7. Jerry Ferrara, New Jersey Gasoline Retailers Association
8. Edward Hazzouri, Sun Company, Inc.
9. Marilyn Herman, Herman & Associates
10. Donald L. Hoven, Hackensack Water Company
11. Diane A. Irrgang, New Jersey Rural Letter Carrier Association
12. Mary Lamielle, National Center for Environmental Health Strategies
13. Curt Macysyn, Fuel Merchants Association
14. Alfred Oppenheimer, citizen
15. Patricia O'Such, citizen
16. Conrad Simon, United States Environmental Protection Agency

The number(s) in parentheses after each comment corresponds to the commenter numbers above to indicate the person(s) who submitted the comment.

N.J.A.C. 7:27-25 General Comments

1. COMMENT: A number of commenters expressed concerns regarding the use of methyl tertiary butyl ether (MTBE), an oxygenate used to meet the oxygenated fuels requirements, because the use of MTBE in gasoline has been reported to cause chemically sensitive individuals to have adverse health reactions. Some commenters suggested that the Department prohibit its use in New Jersey. (4)(7)(11)(12)(14)(15)

RESPONSE: Pursuant to its authority set forth at Section 211(a) of the Clean Air Act, the EPA has approved the use of MTBE as a gasoline additive. So long as the quantity used meets the applicable oxygen content standards, the Departmental rules allow use of this oxygenate.

However, since a number of individuals have reported that they experience adverse health reactions when exposed to oxygenated fuels containing the additive MTBE, the Department has sponsored health studies that were conducted by the Environmental and Occupational Health Sciences Institute (EOHSI) located in Piscataway, New Jersey, to investigate this. The Department expects that the EOHSI health studies will be finalized shortly, and it will study their findings at that time to evaluate whether action should be taken to restrict or prohibit the use of any oxygenate species.

Regardless of any action the Department may take concerning the use of MTBE in the future, at this time motorists in New Jersey can limit or avoid their exposure to gasoline containing MTBE, which is an ether-based oxygenate, by electing to purchase gasoline that is blended with an alcohol-based oxygenate, such as ethanol. Pursuant to N.J.A.C. 7:27-25.3(g), a gasoline retailer in New Jersey is required to inform a customer who requests the information whether the gasoline being sold contains an alcohol or an ether as its oxygenate. In this way, motorists who so choose can avoid direct exposure to gasoline blended with MTBE or other ethers. Some gasoline marketers have indicated that they will be selling gasoline blended with ethanol during the current oxygenated fuels season.

2. COMMENT: The use of oxygenated gasoline significantly impacts fuel economy. The commenters question the benefits gained by using oxygenated gasoline to reduce carbon monoxide (CO) emissions from motor vehicle tailpipes since, presumably, a loss in fuel economy would result in an increase in fuel consumption and thus increased CO emissions. (7)(11)

RESPONSE: The Department concurs that the use of oxygenated fuels impacts fuel economy. The Auto/Oil Air Quality Improvement Research Program, a cooperative research program initiated by the three major domestic automobile-manufacturing companies and four petroleum companies, has tested vehicles using oxygenated fuels. The report entitled *Fuel Composition Effects on Automotive Fuel Economy-Auto/Oil Quality Improvement Research Program,* which was presented at the International Congress and Exposition held in Detroit, Michigan (March 1-5, 1993), indicated a decrease, on the average, of one to three percent in fuel economy directly attributable to the use of oxygenated fuels. The Department is conducting further studies during this program season, 1993-1994, to confirm the extent of the impact on fuel economy using oxygenated fuels.

Nonetheless, use of oxygenated fuels has proven effective in reducing public exposures to CO. The effect of any loss in fuel economy is more than compensated by the extent of the decrease in CO emissions from oxygenated gasoline. During the past winter months, November through February of 1992, the Department's air monitoring system, with sites located throughout New Jersey, recorded, on the average, an approximately 15 percent reduction in CO emissions.

3. COMMENT: Under the Department's existing regulations, retail gasoline stations in the Northern program oxygen control area program in New Jersey must comply with the oxygen content standard until April 30 and comply with the Reid vapor pressure (RVP) standard beginning May 1. To facilitate and ensure compliance with these regulations, the Department should provide the regulated community time for transition between the end of the oxygenated gasoline requirements and the onset of the RVP requirements. (7)(13)

RESPONSE: The Department realizes that the timing of the end of the oxygen program control period and the onset of the RVP control period poses a potential logistical problem to fuel suppliers and gasoline retailers in the northern counties of the State. This is one of the factors that has lead the Department to submit a request to the EPA asking for a reduction of the oxygen program control period for the Northern oxygen program control area to four months, November 1 through February 28.

Should the EPA grant the Department's request, the regulated community would have adequate time between February 28 and May 1 to make the transition from fuels meeting the wintertime oxygen content requirements to fuels meeting the summertime RVP requirements. The Department cannot, however, shorten the oxygen program control period unless and until the EPA approves the establishment of the shorter control period. The Department also cannot reduce the length of the RVP control period. When the RVP provisions were adopted in 1989, May 1 was established as the beginning of the RVP control period because the Department found, upon a review of historical ambient air data, that such a start date was needed to ensure that the control period fully encompassed the portion of the year when ambient ozone concentrations in excess of the applicable National Ambient Air Quality Standard (NAAQS) occur. When the 1990 amendments to the Federal Clean Air Act were enacted, they included a provision at Section 193 known as the General Savings Clause. This savings clause mandates that no requirement in force prior to the enactment of the amendments may be modified after the enactment, unless such modification insures equivalent or greater emission reductions. Shortening the control period would lessen the reductions realized through the RVP program and is therefore prohibited.

4. COMMENT: When the Department cites a particular entity, such as a gasoline retailer with a Notice of Civil Administrative Penalty for dispensing non-complying fuel, it should process its paperwork expeditiously and in a manner that would allow that entity to fully respond to the Department's citations. By doing so, the Department would also preserve its opportunity to investigate the supplier of the non-complying product, if indeed the cited entity were not the party responsible for the fuel being out of compliance. (13)

RESPONSE: The Department agrees that the paperwork for enforcement citations should be processed in a timely manner and in accordance with procedures which would enable the particular entity cited to be able to respond fully to the citations. The Department recognizes that in some cases delays occur while processing the paperwork. The Department strives to minimize such delays. However, the lapse of time between the Department's sampling of gasoline at a station and the issuance of a citation is often unavoidable or inherent in the process. The processing of enforcement citations entails such tasks as departmental review of documentation, laboratory processing, and analysis of samples.

While the Department is continuing to work to reduce the interval between sampling and citation, this will not solve the problem raised by the commenter. After a lapse of time of only a few days, it may already no longer be possible to confirm or contest the analysis of the sample, as the stock at the sample source may have already changed. A delay of a week may be as serious as one of several months in handicapping the facility in its attempts to confirm the Department's findings and/or try to determine the source upstream of the problem.

The Department takes three samples at the site, one of which is provided to the facility from which the sample is taken. If a facility wants to ensure its ability to contest an analysis, the Department recommends that the facility obtain an independent analysis of the duplicate sample at the same time as the Department's samples are analyzed. Essentially, nothing short of simultaneous duplicate sample analyses can insure the validity of the analytical results.

5. COMMENT: Under the current regulations at N.J.A.C. 7:27-25.8, wholesale purchaser-consumers are required to post a label on their gasoline pumps with information concerning the content of oxygenated fuels which they are dispensing for sale. The Department should not require wholesale purchaser-consumers to label their fuel pumps since,

unlike retailers, they are not selling this fuel to an end consumer. Such a labeling requirement change would make New Jersey's requirements consistent with those of New York State's. (10)

RESPONSE: The Department recognizes the merit of this recommendation. Further, the Department is supportive of regulatory consistency where possible with its neighboring states, including the New York Department of Environmental Conservation, in its oxygenated fuels regulations. When these rules are next amended, the Department intends to include proposing elimination of this labeling requirement. (See notice of proposed amendment to N.J.A.C. 7:27-25.8 published elsewhere in this issue of the New Jersey Register.)

N.J.A.C. 7:27-25.3 General provisions

6. COMMENT: The New Jersey Gasoline Retailers Association and the New Jersey Rural Letter Carriers Association support the Department's efforts to reduce the northern oxygen program control period from seven months to four months. (7)(11)

RESPONSE: The Department appreciates the support of the New Jersey Gasoline Retailers Association and the New Jersey Rural Letter Carriers Association for the Department's effort seeking reduction by EPA of the duration of the oxygen program control period for the counties in the Northern oxygen program control area.

N.J.A.C. 7:27-25.4 Recordkeeping and compliance determinations

7. COMMENT: The EPA supports the Department's simplification of its oxygenated fuels recordkeeping requirements whereby refiners, importers, blenders, and distributors would no longer be required to identify and report the type(s) of oxygenate(s) but only the category of oxygenate, either alcohol or ether blends, being used in the gasoline. (16)

RESPONSE: The Department appreciates the EPA's support of the modifications to the recordkeeping requirements concerning the identification and reporting of the oxygenate being used in the gasoline.

8. COMMENT: The amended provisions at N.J.A.C. 7:27-25.4(a)3 and (b) concerning recordkeeping for oxygenated gasoline no longer require the identification and reporting of the type, but only the category, of oxygenate (i.e. either alcohol or ethel blend). The phrase "and percent by volume" of the oxygenate should be deleted from N.J.A.C. 7:27-25.4(a)3 and (b) in order to keep the recordkeeping revisions consistent with the Department's intent in proposing these changes. (1)(6)

RESPONSE: The Department agrees that the phrase "and percent by volume" should be deleted to maintain consistency with the requirement that only the category of oxygenate, either alcohol or ether blends, be identified and maintained on the bills of lading or other such transfer document. Accordingly, N.J.A.C. 7:27-25.4(a)3 and (b) have been revised to reflect this change upon adoption.

9. COMMENT: The Department should adopt certification language in addition to the current certification requirements as set forth at N.J.A.C. 7:27-25.4(a)2. The commenter recommends that the Department adopt the following specific certification statement to be used on the invoice, bill of lading or other such transfer document: "the oxygen content is 2.7-2.9 percent by weight with ethers," or "the oxygen content is 2.7-3.5 percent by weight with alcohols." Such a statement should be allowed in place of the existing certification requirements as set forth at N.J.A.C. 7:27-25.4(a)2 for gasoline that has been previously tested and certified as meeting New Jersey's oxygen content standards and is now only being transferred through the distribution system for final sale at the retail level. The commenter feels that the Department has concurred in this way by the letter dated February 8, 1993, from Donald Patterson, Assistant Director of Air and Environmental Quality to James Penton, Director of the New Jersey Petroleum Council. (6)

RESPONSE: Stating either that "the oxygen content is 2.7-2.9 percent by weight with ethers" or that "the oxygen content is 2.7-3.5 percent by weight with alcohols" would satisfy the certification requirements at N.J.A.C. 7:27-25.4(a)2 pertaining to the category of oxygenate and conformance with the oxygen content requirements of subchapter 25. However, to require all refiners, importers, blenders and distributors to use these specific certification statements would eliminate the flexibility which the adopted oxygenate certification provisions now offer to the regulated community in choosing certification language that best satisfies both the Department's requirements and the individual marketer's needs.

The Department's intent in the letter of February 8, 1993, was to indicate that the certification language proposed by the New Jersey Petroleum Council would constitute adequate certification that the gasoline met the oxygen content requirements of N.J.A.C. 7:27-25.4(a)2. However, the Department did not intend to suggest by this that such language would also serve to satisfy the remaining certification requirements of N.J.A.C. 7:27-25.4(a)2, that is, that the requisite tests had been performed in accordance with N.J.A.C. 7:27-25.4(a)1 and that the gasoline was in compliance with all applicable State and federal regulations. Separate certification language would be required to that effect in addition to this proposed certification language, unless the marketer chooses to certify under N.J.A.C. 7:27-25.4(a)2i by means of an attached test report.

10. COMMENT: The Department should adopt provisions which would allow the use of alternative methods for certifying fuel in conformance with the certification requirements set forth at N.J.A.C. 7:27-25.4(a)2. Specifically, the method suggested would use a product code on the delivery ticket to indicate the category of oxygenate being used and that the gasoline conforms with the oxygen content requirements of N.J.A.C. 7:27-25.4(a)2. (2)

RESPONSE: The use of a product code as recommended by this commenter would not provide the person(s) to whom the gasoline is delivered the assurances required under N.J.A.C. 7:27-25.4(a)2. The assurances contained in these certification requirements have been determined by the Department as minimum guarantees that recipients of gasoline would need to have confidence that the product is lawful for sale or exchange in New Jersey. As the recipient would be legally liable, he or she has need for the information required to be included on the bill of lading, loading ticket or such transfer documents. Therefore, the Department has not accepted this recommendation.

11. COMMENT: The Department should retain its current recordkeeping requirements for oxygenated fuels, which require identification on the bills of lading, invoice delivery tickets and loading tickets of the type and percent by volume of each oxygenate. The current recordkeeping requirements are consistent with the National Conference on Weights and Measures recommendation that the specific type of oxygenate be identified on invoices, bills of lading, shipping papers or other documentation when present in concentrations of at least one percent by volume.

Distributors and blenders of gasoline need to know the type of oxygenate contained in the fuel they have received in order to comply with oxygenate blending requirements established by the EPA. The EPA allows up to 10 percent by volume ethanol to be blended with gasoline, and up to five percent methanol with cosolvents to be blended with gasoline. ETBE may be blended in concentrations of up to 17 percent by volume, while MTBE can be blended only up to 15 percent by volume. Therefore, in order for distributors and gasoline marketers to blend in compliance with EPA requirements, they need to know the type of oxygenate present in the gasoline.

Further, consumers have a right to know what oxygenate is present in the gasoline they are purchasing in order to address concerns raised by various citizen action groups in New Jersey and other states about adverse health effects from gasoline containing MTBE. Under the proposed rule amendment, consumers can only learn whether the oxygenate is an ether or an alcohol, which will not enable the consumer to select the specific type of oxygenate desired. (9)

Also consumers need the type of oxygenate to be identified, because without this information, they cannot make informed gasoline purchasing decisions in accordance with their automobile owners' manuals. Currently, automobile manufacturers specify recommended levels for types of oxygenate. Owner's manuals for both domestic and foreign automobiles distinguish between the types of alcohols permitted as oxygenates, and set different limits for the ethers MTBE and ETBE. For example, while ethanol is permitted at levels of up to 10 percent by all automobile manufacturers, methanol, a different type of alcohol, is only recommended at levels of up to five percent by volume, or is prohibited altogether. Thus, without the information concerning the specific type and volume or each oxygenate contained in the gasoline, consumers cannot comply with automobile manufacturers' recommendations. (3)(9)

RESPONSE: The Department acknowledges that there are certain advantages to retaining the existing requirement that the type of oxygenate be identified on bills of lading, loading tickets and other such transfer documents. However, the Department eliminated this requirement in response to concerns raised by the New Jersey Petroleum Council that the existing requirements were unduly burdensome and costly to comply with.

Also, the EPA has recommended that states not require terminal operators to document on their transfer documents the specific type of oxygenate or the oxygen content by volume as previously required, but rather document only the category of the oxygenate and the oxygen

content percent by weight. The Department's proposed amendments are consistent with the EPA's recommendation.

The Department recognizes that blenders need information concerning the type and oxygen content of the blend stock they purchase. However, the certification requirements of this subchapter do not apply to blend stocks, and it is not the function of this rule to ensure the provision of this type of information to blenders. Rather, the Department suggests that blenders make specification on the composition of the blend stock a condition of any purchase agreement.

The Department appreciates, however, that motorists may need information about the oxygenated gasoline for sale at their retail station. Accordingly, the Department continues to require identification of the category of oxygenate used, and requires retailers to make this information available to motorists upon request. This provides motorists who wish to avoid purchasing gasoline oxygenated with MTBE sufficient information to do so. Such motorists in New Jersey can elect to purchase gasoline that is blended with alcohols and not with ethers.

In most cases, gasoline that conforms with the oxygen content standards of this subchapter also conforms with the automobile manufacturers' fuel recommendation in their owners' manuals. That is, the recommended blending levels for oxygenates in gasoline as stated in the owners' manuals are not exceeded for any type of oxygenate when the oxygen content percent limits are met. A limited exception exists in the case of methanol. According to the commenter, some automobile manufacturers, including Mitsubishi, Hyundai, Chrysler Corp., Mazda, Porsche and Rolls Royce, have recommended that the use of methanol be avoided entirely. In such case, a motorist wishing to avoid the use of oxygenated gasoline containing methanol can simply avoid gasoline blended with oxygenates in the alcohol category. According to an EPA survey, most of the gasoline for sale in the Philadelphia-Wilmington-Trenton and the New York-Northern New Jersey-Long Island Consolidated Metropolitan Statistical Areas is being blended with MTBE, an ether-based product while the rest of the gasoline is being blended with ethanol, an alcohol based product. Therefore, it should not be difficult to avoid the purchase of gasoline blended with methanol.

12. COMMENT: Exxon Company and the EPA support the Department's adoption of the Grabner Method as an acceptable method for measuring RVP in gasoline. (1)(16)

RESPONSE: The Department appreciates Exxon's and the EPA's support of the Department's adoption of provisions allowing the use of the Grabner Method.

Variance for contemporaneous averaging

13. COMMENT: The Fuel Merchants Association and the New Jersey Gasoline Retailers Association support the Department's repeal of the variance for contemporaneous averaging provisions which were set forth at N.J.A.C. 7:27-25.9. (5)(13)

RESPONSE: The Department appreciates the support of the Fuel Merchants Association and the New Jersey Gasoline Retailers Association of the repeal of the variance for contemporaneous averaging.

14. COMMENT: The EPA's final guidance on the implementation of an oxygenated fuels program does not require a state to offer an averaging option as part of the state's program. Therefore, the EPA has no objection to the Department's repeal of the variance for contemporaneous averaging provisions. (16)

RESPONSE: The Department acknowledges that the EPA has no objection to the repeal of the variance for contemporaneous averaging provisions.

15. COMMENT: The Department should not repeal the variance for contemporaneous averaging section. This option would provide flexibility by allowing a manufacturer of oxygenated gasoline to meet the oxygen content in gasoline standard through averaging, as encouraged by the Clean Air Act Amendments of 1990 (CAAA). (8)

RESPONSE: The Department originally proposed the variance for contemporaneous averaging provisions to allow wholesale purchaser-consumers and retailers an alternative option to comply with the oxygenated fuels requirements through a market-based approach. However, since sufficient concerns about these provisions were raised at the public hearing on the proposal held on August 5, 1992, the Department deferred the operative date of these provisions to allow time to further evaluate them. (For further discussion of the concerns raised during the public comment period when these provisions were adopted, refer to September 7, 1993, New Jersey Register, 25 N.J.R. 4040-4041). In its adoption notice published in the New Jersey Register at 24 N.J.R. 3539(a), the Department invited additional comment on the contemporaneous averaging provisions. Only one company, Mobil Oil Corporation responded in writing to the Department's invitation to comment on these provisions. In their comments, Mobil recommended that the Department repeal these provisions.

In addition, since the Department's adoption of these provisions, no gasoline retailer or wholesale-purchaser consumer has applied for, or indicated interest in applying for, a variance under this section. Therefore, the Department has made the determination to repeal the variance for contemporaneous averaging provisions.

Summary of hearing Officer's Recommendations and Agency Responses:

Richard V. Sinding, Assistant Commissioner for the Department's Office of Policy and Planning, served as the hearing officer at the September 24, 1993, public hearing held at the Department of Environmental Protection and Energy Building in Trenton, New Jersey. After reviewing the oral testimony presented at the public hearing, Assistant Commissioner Sinding has recommended that the Department adopt the proposed amendments and proposed repeal to Subchapter 25 with the following change as explained below:

N.J.A.C. 7:27-25.4(a)3 and (b) should be modified to require that recordkeeping, as it pertains to the oxygenated gasoline requirements, need contain only the category, and not the type of oxygenate, being used in the gasoline. Any reference to a requirement to document and maintain records as to the specific type of oxygenate being used in the gasoline should be deleted.

The Department has modified the rules accordingly upon adoption. The Assistant Commissioner's recommendations are set forth in more detail in the hearing officer's report. A copy of the record of public hearing, which includes the hearing officer's report, is available upon payment of the Department's normal charges for copying ($0.75 per page for the first 10 pages, $0.50 per page for the following 10 pages, and $0.25 per page for additional pages). The record of the public hearing is 56 pages. The Department will charge $21.50 for one copy. Persons requesting copies should contact:

Janis Hoagland, Esq.
Department of Environmental Protection
and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

Summary of Agency-Initiated Changes:

Additional changes have been made on adoption as follows:

At N.J.A.C. 7:27-25.4(a)3 and (b), the punctuation has been modified to clarify the items in a complex series.

At N.J.A.C. 7:27A-3.10(e)25, as the footnote originally numbered 1 has been deleted, the footnote number 2 has been renumbered to be footnote "1" in these adopted rules.

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

7:27-25.3 General provisions

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

(c) Except as provided for at N.J.A.C. 7:27-25.9, no refiner, importer, blender, distributor, wholesale purchaser-consumer, or retailer shall provide, store, offer for sale, sell, transport, import, or exchange in trade gasoline for use in New Jersey, unless:

1.-2. (No change.)

(d)-(f) (No change.)

(g) Upon the request of any consumer, a retailer shall inform the consumer as to the category of oxygenate, either alcohol or ether blends, being dispensed from any of the gasoline dispensing devices at the facility.

7:27-25.4 Recordkeeping and compliance determinations

(a) Each refiner, importer, blender or distributor shall:

1. (No change.)

2. Certify to the distributor, retailer or wholesale purchaser-consumer to whom gasoline is delivered that the gasoline has been tested in accordance with this section; that, during the RVP control period, the gasoline has an RVP of 9.0 pounds per square inch or less; that, during any applicable oxygen content control period, the gasoline conforms with the oxygen content requirements of this

subchapter; the category of oxygenate, either alcohol or ether blends, being used in the gasoline; and that the gasoline is in compliance with all applicable State and Federal regulations, by providing:

i.-ii. (No change.)

3. Maintain records on all gasoline leaving the refinery, import facility, blending facility, or distribution facility, which document the RVP and the oxygen content of gasoline*[,]**;* the category *[and percent by volume]* of the oxygenate, either alcohol or ether blends, in the gasoline*[,]**;* shipment quantity*[,]**;* shipment date*[,]* *;* and other such information as the Department may prescribe. Documentation may include, but is not limited to, bills of lading, invoice delivery tickets, and loading tickets.

(b) Each retailer or wholesale purchaser-consumer shall maintain records on each delivery of gasoline, including RVP*[,]* ***and the*** oxygen content ***of gasoline***, ***the*** category *[and percent by volume]* of the oxygenate, either alcohol or ether blends, in the gasoline*[,]**;* delivery quantity*[,]**;* date of delivery*[,]**;* and other such information as the Department may require. Documentation may include, but is not limited to, bills of lading and other transfer documents, invoice delivery tickets and loading tickets, and invoices and test reports certified pursuant to (a)2 above.

(c) (No change.)

(d) All testing for RVP required pursuant to the provisions of this subchapter shall be conducted using one of the following methods:

1. (No change.)

2. "Method 2—Herzog Semi-Automatic Method" promulgated at 40 CFR 80, Appendix E;

3. "Method 3—Grabner Method" promulgated at 40 CFR 80, Appendix E; or

4. Any other equivalent test method approved in advance in writing by the Department and EPA.

(e)-(h) (No change.)

7:27-25.9 Variance for shortage of supply

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

(d) Any application for a variance submitted to the Department pursuant to this subchapter shall include a service fee in accordance with N.J.A.C. 7:27-25.11(c) and shall be certified in accordance with N.J.A.C. 7:27-8.24.

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

7:27-25.10 (No change in text.)

7:27-25.11 Service fees

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

(c) Any person who applies for a variance pursuant to N.J.A.C. 7:27-25.9 shall submit with the application a non-refundable service fee of $500.00. No application shall be deemed complete without the required fee.

(d) Any person to whom the Department has issued a variance pursuant to N.J.A.C. 7:27-25.9 shall remit to the Department within 60 days after receipt of an invoice, a compliance inspection fee of $200.00. Such person is subject to a compliance inspection fee only if the Department conducts at the facility one or more compliance inspections pursuant to the variance during any year, or part thereof, that the variance is in effect. The Department shall not charge such person a compliance inspection fee more frequently than once per year.

7:27A-3.10 Civil Administrative Penalties for Violations of Rules Adopted Pursuant to the Act

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

(e) The Department shall determine the amount of civil administrative penalty for offenses described in this section on the basis of the provision violated and the frequency of the violation. Footnotes 3, 4, and 8 set forth in this subsection and (f) below are intended solely to put violators on notice that in addition to any civil administrative penalty assessed the Department may also revoke the violator's operating certificate or variance. These footnotes are not intended to limit the Department's discretion in determining whether or not to revoke an operating certificate or variance, but merely indicate the situations in which the Department is most likely to seek revocation. The number of the following subsections corresponds to the number of the corresponding subchapter in N.J.A.C. 7:27.

1.-24. (No change.)

25. The violations of N.J.A.C. 7:27-25, Control and Prohibition of Air Pollution by Vehicular Fuels, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
. . .					
N.J.A.C. 7:27-25.9(i)	(No change.)				
N.J.A.C. 7:27-25.9(k)2	(No change.)				
N.J.A.C. 7:27-25.9(l)1	(No change.)				
N.J.A.C. 7:27-25.9(l)2	(No change.)				
N.J.A.C. 7:27-25.9(l)3	Non-conforming gasoline and economic benefit	$.05 per gallon*[2]**1**			
N.J.A.C. 7:27-25.9(l)4	(No change.)				
N.J.A.C. 7:27-25.9(l)5	(No change.)				

*[2]**1** (No change.)

(a)

DELAWARE AND RARITAN CANAL COMMISSION

Delaware and Raritan Canal State Park Review Zone

Readoption with Amendments: N.J.A.C. 7:45

Proposed: November 1, 1993 at 25 N.J.R. 4836(b).
Adopted: January 26, 1994 by the Delaware and Raritan Canal Commission, Benjamin B. Kirkland, Chairman.
Filed: January 28, 1994 as R.1994 d.100, **with substantive and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:13A-12, 13, and 14.

DEPE Docket Number: 53-93-10/66.
Effective Date: January 28, 1994, Readoption;
February 22, 1994, Amendments.
Expiration Date: January 28, 1999.

The rules at N.J.A.C. 7:45 were proposed for readoption with amendments by publication in the New Jersey Register on November 1, 1993 at 25 N.J.R. 4836(b). Announcement of the opportunity to respond was also published as a public notice in The Star Ledger and The Trenton Times. During the comment period which closed on December 1, 1993, comments were submitted by the following entities:

1. Association of New Jersey Environmental Commissions;
2. Washington Crossing Audubon Society;
3. Stony Brook Millstone Watershed Association;
4. Watershed Association of the Delaware River;
5. Canal Society of New Jersey; and
6. New Jersey Builders' Association.

Summary of Public Comments and Agency Responses:

The first five of the above-listed commenters wrote in support of the Commission's proposed rules. They noted the importance of the Canal Park as a public resource, praised the Commission's prior record of protecting the park through its Review Zone Regulations, and recommended adoption of the new rules. The Commission appreciates their support. The following comments were raised by the New Jersey Builders' Association (NJBA) (each followed by the Commission response):

N.J.A.C. 7:45-1.2 Definitions

COMMENT 1: The NJBA requests the Commission to explain what changes are being proposed to the definition of a major project. The current proposed language is confusing since it is identical to the language already found in subsection (b) of the definition. It would appear that a mistake has been made.

The proposed definition for stream corridor is also somewhat confusing as it appears to contain two typographical errors. In the first case, reference is made to N.J.A.C. 7:45-6.2(a); this would read N.J.A.C. 7:45-6.1(a) since N.J.A.C. 7:45-6.2(a) deals with submission requirements. Also, the definition contains the phrase "up to the point at which the stream drains less than 50 acres." The Commission needs to clarify that stream corridors do not include those portions of streams having a drainage area of less than 50 acres.

RESPONSE: There is no change in the definition of a major project, only an alteration in the order in which the parts of the definition are presented. However, the published proposal omitted the brackets around subsection (b) indicating deletion; this has been rectified upon adoption.

The reference to N.J.A.C. 7:45-6.2(a) is in error. The citation should be N.J.A.C. 7:45-7.1(a). The Commission is satisfied that the definition is otherwise adequately clear.

N.J.A.C. 7:45-2.6 Review of private projects

COMMENT 2: The Commission proposes to modify the rules such that they will no longer notify the applicant by certified mail of any items that are missing or as to the completeness of an application. The rules also have been revised to reflect that the staff is making the decisions and not the Commission. What is the rationale for these changes?

RESPONSE: The rationale for notifying applicants by first class mail rather than by certified mail is that the circumstances of the Commission's office makes first class mail faster and more efficient. Certified mail would have to be routed through the Trenton office of the Department. First class mail can be mailed directly from the Commission's local post office. There is no change in who determines and notifies an applicant about the completeness of an application. In the 1989 rules, N.J.A.C. 7:45-2.6 states that the Commission staff makes this decision and notification. No change is proposed.

N.J.A.C. 7:45-2.7 Review of general development plan approvals

COMMENT 3: What criteria does the Commission use to determine whether an application is complete? Does a checklist exist and when is it made available to the applicant?

Also, in N.J.A.C. 7:45-2.7(c), the Commission states that a certificate of approval issued for a general development plan shall remain valid for a period determined by the Commission but not less than three years nor more than 10 years. The NJBA requests that this length of validity never be less than the period of time for which a municipal permit or approval is issued.

RESPONSE: The Commission staff determines completeness based upon the submission requirements published in the rules. No checklist is used because it would be redundant.

The Commission agrees that N.J.A.C. 7:45-2.7(c) should be changed to be clearer and more consistent with municipal approvals. The Commission does not, however, wish to allow municipalities to determine the length of validity for its permits since the interests of municipalities and those of the Commission may be different. Instead, the Commission chooses to select a 10 year period of validity since that would correspond to two cycles of the "Sunset Law," or two mandatory reviews of the Commission's rules. N.J.A.C. 7:45-2.7(c) will be changed to read:

(c) A Certificate of Approval issued for a general development plan shall lapse if:

1. A complete application for a Certificate of Approval for the first phase of development is not received by the Commission within 10 years of the date that the general development plan was approved;
2. There is a 10 year period during which no complete applications for Certificates of Approval for phases of the general development plan are received by the Commission; or
3. The municipal permits or approvals expire, lapse, or are revoked.

N.J.A.C. 7:45-3.1 Certificate of approval

COMMENT 4: The NJBA objects to the proposed change whereby a certificate of approval shall not be issued until the wording of the easement has been approved by the Commission. These approvals should be issued conditioned on the applicant's satisfying the easement requirements including the recording of such easement in the appropriate office (for example, county clerk, registrar of deeds).

RESPONSE: The Commission's experience has shown that if Certificates of Approval are issued prior to the recordation of a properly worded easement, those easements often never get recorded. To ensure that these easements are proper in form and are properly recorded it is necessary to await proof before Certificates are issued.

N.J.A.C. 7:45-4.1 Request for an adjudicatory hearing

COMMENT 5: In N.J.A.C. 7:45-4.1(c)2, the Commission has somewhat relaxed the information that needs to be submitted by an interested party who is requesting a hearing on an application. What was the rationale for changing this requirement from a "clear and concise factual statement of the nature and scope of the interest of the requester" to a "demonstration of the particular interest of the requester"? We believe that any attempt by the Commission to facilitate third parties' efforts to delay otherwise sound projects and cause further uncertainty and increased costs to permit applicants is ill-advised. The NJBA strongly suggests that this proposed change be deleted.

RESPONSE: It is not the Commission's intent to relax the information that must be submitted in requesting a hearing and the Commission does not believe that it has done so. The change in N.J.A.C. 7:45-4.1(c)2 is proposed because N.J.A.C. 7:45-4.2(d) provides that the Commission will grant requests for hearings if the requesting party meets the requirements of N.J.A.C. 7:45-4.1(c). The Commission, therefore, wanted to be sure that any such request come from someone who could "demonstrate" a particular interest, not from someone who could simply state his interest.

N.J.A.C. 7:45-4.2 Action on request for hearing

COMMENT 6: The Commission states that in situations involving a contested case, the hearing shall be conducted pursuant to the Administrative Procedures Act and the Uniform Administrative Procedure Rules. How does this differ from the current situation when a case is contested?

RESPONSE: No change has been made from present procedures governing the conduct of hearings. The addition of N.J.A.C. 7:45-4.2(b)

is intended to make it explicit that hearings must be conducted according to the requirements of the Administrative Procedure Act and the Uniform Administrative Procedure Rules. This requirement was implicit in the previous regulations and is made more clear by being stated.

N.J.A.C. 7:45-5.2 Submission requirements

COMMENT 7: The rules state that a detention facility (reviewed or prepared by a New Jersey licensed engineer) is required for all major projects. Please clarify as to whether this means "a detention basin in all cases"? If this is the case, the NJBA believes that such a requirement is unnecessary and onerous. Does this rule mean that a licensed engineer is also to review or prepare best management practices or other stormwater control measures? Please explain.

RESPONSE: A detention basin is not required if other measures designed and certified by a licensed engineer can be demonstrated to meet the Commission's performance standards.

N.J.A.C. 7:45-5.4 Specific storm drainage and water quality standards

COMMENT 8: This section refers to Stormwater and Water Quality Standards to control runoff from development sites. The Commission should be aware that the Uniform Site Improvement Act, enacted on January 29, 1993, mandates the development of uniform Statewide site improvement standards for residential development for a number of improvements including those dealing with stormwater/drainage. As such, the Commission should coordinate these rules with those being promulgated by the New Jersey Site Improvement Advisory Board which is administered by the New Jersey Department of Community Affairs. The State, and especially the development community, cannot afford to have further inconsistencies among stormwater standards since the current plethora of standards is unacceptable.

RESPONSE: The Uniform Site Improvement Act amends the Municipal Land Use Law and applies only to municipal land use regulatory programs. That law does not apply to State programs. The Canal Commission staff has, however, periodically met with representatives from the Department to review their Statewide stormwater management standards. Such a review occurred prior to publication of these rules and it was determined that no conflicts exist between the Commission and the Department standards.

N.J.A.C. 7:45-7.4 Prohibited uses within stream corridors of designated streams

COMMENT 9: The proposed amendment to N.J.A.C. 7:45-7.4 prohibits the removal of native vegetation or actions which result in the death of native vegetation. The Commission should recognize that there are instances where such activities are necessary and are unavoidable. What is the Commission's rationale for this prohibition and please explain why non-native vegetation would be unacceptable? The NJBA also requests the Commission to modify N.J.A.C. 7:45-7.4(a)7 to allow the removal/death of native vegetation where it is associated with a permitted or conditional use within stream corridors of designated streams.

RESPONSE: The reasons for the Commission's stream corridor preservation requirements include the fulfillment of a goal to preserve these areas for wildlife habitat. Wildlife in central New Jersey is more likely to find the foods and shelter it needs for survival in native habitats containing native vegetation than in exotic or hybrid habitats. The Commission agrees that when it permits uses of stream corridors there could be occasions that require the removal or death of native vegetation. N.J.A.C. 7:45-7.4(a)7 will be modified to reflect this exception to the general prohibition on the removal of native vegetation.

N.J.A.C. 7:45-7.6 Preservation of stream corridor

COMMENT 10: The proposed rule requires applicants to take whatever measures are necessary to ensure that areas designated as stream corridors will be preserved. The NJBA refers the Commission to its comments dated June 2, 1989; submitted to the New Jersey Department of Environmental Protection regarding amendments to N.J.A.C. 7:45 proposed at that time.

RESPONSE: The NJBA's comments dated June 2, 1989 discuss many aspects of the then-proposed Stream Corridor Impact rule but do not comment upon the subject of the presently proposed rule change. The Commission responded to the NJBA's comments of June 2, 1989 and to the comments of almost 200 other respondents in 1989. See 22 N.J.R. 383(b). Repeating those comments and responses at this time is unnecessary.

N.J.A.C. 7:45-8.4 Design standards for review of visual and natural quality impact

COMMENT 11: The proposed rules require that, wherever possible, natural terrains, soils and "stones" should be preserved. Please explain which stones are native and whether such native stones are readily and commercially available for landscaping purposes.

RESPONSE: Many types of rock and stones are native to central New Jersey, including sandstone, limestone, and granite. These are all available commercially.

N.J.A.C. 7:45-9.1 Review of major projects for traffic impact

COMMENT 12: The NJBA believes that this change to allow the applicant to use off-site planning techniques to direct additional traffic away from the park is beneficial since it reflects the reality that applicants cannot always utilize on-site techniques.

RESPONSE: The Commission appreciates the support of NJBA on this issue.

N.J.A.C. 7:45-9.2 Review of road construction, road improvements and new traffic loads

COMMENT 13: N.J.A.C. 7:45-9.2(b)1 requires that "recreational use" of the park not be impeded. What criteria will the Commission use to make this determination?

RESPONSE: The Delaware and Raritan Canal State Park staff have made extensive observations and conducted surveys on the types of recreational uses in the Canal Park. That expertise will be utilized. The issue which is most likely to be of concern with regard to road projects impeding recreational use of the Canal Park is the continuity of the tow path. New roads, bridges, or their appurtenances could be constructed in a way which either blocks access to the tow path or interrupts its continuity. That kind of impact would impede recreational use of the Canal Park.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:45.

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

SUBCHAPTER 1. REVIEW ZONE OF THE DELAWARE AND RARITAN CANAL STATE PARK

7:45-1.2 Definitions

As used in this chapter, the following words and terms shall have the following meanings:

. . .

"Department" means the Department of Environmental Protection and Energy.

. . .

"Major project" means:

1. If no part of the project site falls within Zone A, but some of it falls within Zone B, the project is "major" if it:

i. Will cover one acre of land with impervious surfaces; or

ii. Involves any of the land uses itemized in 2iii below.

2. If any part of a project site falls within Zone A, the entire project is "major" if it:

i. Involves construction, development, or redevelopment of four or more dwelling units; or

ii. Involves no dwelling units, but will cover with impervious surfaces 10,000 square feet or more of previously uncovered land; or

iii. Involves any of the following uses:

(1) Livestock pens, corrals, or feed lots;

(2) Pipelines, storage or distribution systems for petroleum products or chemicals;

(3) Liquid waste, storage, distribution or treatment facilities (excluding home septic systems);

(4) Solid waste storage, disposition, incineration, or landfill;

(5) Hazardous waste treatment, storage or disposal;

(6) Quarries, mines or borrow pits; or

(7) Land application of sludge or effluents.

*[(b) If no part of the project site falls within Zone A, but some of it falls within Zone B, the project is "major" if it:

1. Will cover one acre of land with impervious surfaces; or
2. Involves any of the land uses itemized in (a)3 above.]*

"Master Plan" means the Delaware and Raritan Canal State Park Master Plan consisting of the following five planning documents adopted by the Commission as the Master Plan including any modification, revision or amendment thereof subsequently adopted by the Commission pursuant to N.J.S.A. 13:13A-13:

1. Master Plan (May, 1989)

2.-5. (No change.)

"Minor projects" means:

1. Regarding Zone A, a project which is not a major project.
2. Regarding Zone B, projects other than major projects are not subject to review in Zone B.

"Municipal approving agency" means any body or instrumentality of the municipality responsible for the approval of private projects or the issuance of permits, which shall include, but not be limited to, building permits, zoning variances, and excavation permits. "Municipal approving agency" shall include, but not be limited to, governing bodies, planning and zoning boards, construction officials, building inspectors, and municipal engineers.

. . .

"Review Zone" means that region designated by the Commission appertaining to and including the Park in which proposed projects may cause an adverse drainage, aesthetic or other ecological impact on the Park. The Review Zone and its subzones designated as Zone A (being the area within one thousand feet on either side of the center line of the Canal) and Zone B (being the balance of the review zone) are delineated on maps available for review at the Commission's office in Stockton, New Jersey. The following counties and municipalities are included in the Review Zone:

In Hunterdon County: Delaware, East Amwell, Franklin, Kingwood, Lambertville, Raritan, Stockton, West Amwell.

In Mercer County: East Windsor, Ewing, Hamilton, Hightstown, Hopewell Borough, Hopewell Township, Lawrence, Pennington, Princeton Borough, Princeton Township, Trenton, Washington, West Windsor.

In Middlesex County: Cranbury, Monroe, New Brunswick, North Brunswick, Plainsboro, South Brunswick.

In Monmouth County: Millstone.

In Somerset County: Franklin, Hillsborough, Manville, Millstone, Montgomery, Rocky Hill, South Bound Brook.

"Stream corridor" includes a stream that is designated in N.J.A.C. 7:45-*[6.2]***7.1***(a) from the point where the stream feeds into the Canal Park up to the point at which the stream drains less than 50 acres. "Stream corridor" also includes any tributary to a stream designated in N.J.A.C. 7:45-*[6.2]***7.1***(a) from the point at which it feeds into the designated stream up to the point at which the tributary drains less than 50 acres. "Stream corridor" further includes all of the land within the 100 year flood line on either side of that portion of the designated stream or tributary that is in the stream corridor and all of the land within a 100 foot wide buffer around the 100 year flood line on either side of that portion of the designated stream or tributary that is in the stream corridor.

7:45-1.3 Scope of review

(a) (No change.)

(b) In each case, the scope and depth of review will depend upon the size and location of the land-use activity.

1. In Zone A:

i. (No change.)

ii. Minor projects are reviewed for storm drainage and water quality impact, and visual and natural quality impact. Submission requirements and stormwater management measures are significantly less rigorous for minor projects than for major projects. They are, however, expected to comply with the general standards in N.J.A.C. 7:45-5 for water quality impact review and N.J.A.C. 7:45-8 for visual and natural quality impact.

2. (No change.)

7:45-1.4 Master Plan of the Delaware and Raritan Canal State Park

(a) The objectives of the Master Plan of the Delaware and Raritan Canal State Park are as follows:

1. The Delaware and Raritan Canal is a water supply system.

i. (No change.)

ii. The quality of the water than enters the Canal—whether from a point source, overland flow of storm water runoff, or from groundwater exchange—must be suitable for a source of drinking water.

iii. (No change.)

2.-5. (No change.)

SUBCHAPTER 2. APPLICATION FOR PROJECT REVIEW AND REVIEW PROCEDURES

7:45-2.2 Application for review of a private project

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

(c) The applicant or the municipal approving agency shall submit applications to the Commission after the municipal approving agency has approved the project, unless an application for the proposed project has been previously made to the Commission.

(d) No application shall be reviewed by the Commission until it has been determined by the staff to be a complete application which, in addition to the pertinent submission requirements in this chapter, shall include a resolution of approval of the proposed project by the appropriate municipal approving agency.

7:45-2.3 Application for review of governmental projects

State departments or agencies, counties, municipalities and any other governmental entity shall submit plans for reviewable projects prior to undertaking them and are encouraged to discuss proposed projects with the Commission staff at the earliest planning stages.

7:45-2.4 Review of private projects

(a) At any time before applying for Commission approval, an applicant may submit preliminary planning documents or may request a pre-application conference to discuss the project with the Commission staff. The purpose of this submission or conference is to enable the applicant to plan economically for conformity with the Master Plan and its policies and standards, and those of this chapter. No requirements are imposed by this chapter as to plans, documents, or data to be submitted or presented for discussion at a pre-application conference. However, this chapter contains a list of materials and data required as part of any application for review of each specific impact. It would be advisable that the applicant provide the Commission with as much of this information as practicable for the pre-application conference.

(b) A report on the preliminary submission or pre-application conference shall be prepared by the Commission staff and may include:

1. A summary of the strengths and weaknesses of the project as related to the policies and standards of the Master Plan and this chapter.

2. A recommendation to the applicant and the reviewing municipal agency or official.

(c) The Commission's staff report shall, upon completion, be mailed to the applicant, the county planning board, and the municipal approving agency.

(d) Comments, findings, conclusions, and recommendations of the Commission's staff report are for guidance only and shall not be binding upon the applicant or the Commission.

7:45-2.6 Project review and decision

(a) Within 20 days after the date that an application for project review is received in the Commission's office, the Commission staff shall review the application to determine if all the items required for a complete application have been submitted and take one of the following actions:

1. Notify the applicant in writing of any missing items required for a complete application; or

2. Notify the applicant in writing that the application is complete and notify the appropriate municipal approving agency.

(b) If no action is taken by the Commission staff within a period of 20 days from the date that an application for project review is received in the Commission's office, the application shall be deemed to be complete.

(c) Within 45 days from the date when an application has been declared complete, the Commission shall take one of the following actions:

1. Approve the application and advise the appropriate municipal approving agency that the project can proceed as proposed, subject to conditions in N.J.A.C. 7:45-3;

2. Reject the application and so advise the appropriate municipal approving agency and the governing body of the municipality; or

3. Approve the application subject to conditions and notify the appropriate municipal approving agency which shall be responsible for assuring that the conditions are satisfied before issuing a permit.

(d) (No change.)

7:45-2.7 Review of general development plan approvals

(a) The Commission shall review and approve, reject, or modify any general development plan upon receipt of a complete application.

(b) All submission requirements and review procedures shall be the same for general development plan applications as for other private project applications.

(c) A Certificate of Approval issued for a general development plan shall *[remain valid for a period determined by the Commission but not less than three years nor more than 10 years]* ***lapse if:***

i. A complete application for a Certificate of Approval for the first phase of development is not received by the Commission within 10 years of the date that the general development plan was approved;

2. There is a 10 year period during which no complete applications for Certificates of Approval for phases of the general development plan are received by the Commission; or

3. The municipal permits or approvals expire, lapse, or are revoked.*

(d) In the event that a complete application cannot be made because details of the project that are necessary for the Commission's review have not been approved by the municipal reviewing agency, the Commission shall deny review of the application.

(e) The Commission's review procedure and criteria for review of general development plan applications shall be the same as described in this chapter for other private projects.

(f) If the Commission has granted a Certificate of Approval for a general development plan, the applicant or his successors shall be responsible for submitting to the Commission all plans and calculations on phases of the project as these phases receive municipal site plan approval. In reviewing these phases of a project, the Commission shall be guided by the conformity of each phase to the approved general development plan.

(g) When the Commission has granted a Certificate of Approval to the first phase of a general development plan, but has not approved the full general development plan, the Commission is not committed to approving any other phases of that plan.

7:45-2.8 Review of governmental projects

(a) The Commission shall review any project in the Review Zone proposed by a governmental agency, including, but not limited to, agencies of the State, county, municipality, school boards, and sewer authorities to insure that these actions conform as nearly as possible to the Commission's Master Plan and relevant local plans or initiatives. The Commission shall take action as follows:

1. For projects sponsored by State agencies in the Review Zone, but not in the Canal Park, the Commission shall approve the project upon being satisfied that it conforms as nearly as possible to the Commission's Master Plan and relevant local plans or initiatives.

2. For any governmental project in the Canal Park, the Commission shall review and either approve, reject or conditionally approve the project.

3. For any project in the Review Zone sponsored by a governmental agency other than a State agency, the Commission shall review and either approve, reject or conditionally approve the project.

4. For State permits or other actions in the Review Zone, but not in the Canal Park, the Commission shall approve the action upon being satisfied that it conforms as nearly as possible to the Commission's Master Plan and relevant local plans or initiatives.

(b) Any governmental agency planning to undertake a project in the Review Zone:

1.-2. (No change.)

3. Shall submit its plans to the Commission for its review and approval not less than 60 days before advertising for bids for the construction of a project or execution of a contract for a project, whichever is sooner.

7:45-2.9 Notice of decision

(a) (No change.)

(b) For all private projects, the Commission shall notify the following in writing of its final decision: the applicant, the appropriate municipal and county approving agencies, and all affected persons who specifically requested notice.

(c) (No change.)

7:45-2.10 (No change in text.)

7:45-2.11 Private projects exempt from project review

Any private project which has received preliminary site plan or preliminary subdivision approval from the appropriate municipal approving agency prior to February 5, 1990 shall be exempt from review by the Commission under N.J.A.C. 7:45-7 and 9.

SUBCHAPTER 3. CERTIFICATE OF APPROVAL

7:45-3.1 Certificate of approval

(a) Construction shall not begin on any project prior to issuance of the Commission's Certificate of Approval which shall be issued within 10 days of the decision granting approval or conditional approval and receipt of the proof of filing set forth in (g) below.

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

(g) When the Commission's Notice of Decision requires a Conservation and Maintenance Easement affecting some or all of the property in question, a Certificate of Approval shall not be issued until the wording of the Easement has been approved by the Commission or its delegate and until proof is submitted to the Commission or its delegate of the recording of such Easement in the Office of the appropriate County Clerk or Registrar of Deeds.

(h) The holder of the Certificate of Approval shall notify the Commission at least 10 days prior to start of construction.

SUBCHAPTER 4. ADJUDICATORY HEARINGS

7:45-4.1 Request for an adjudicatory hearings

(a) When the Commission denies or approves with conditions a project, it shall notify the applicant, municipality, municipal reviewing agency and those affected parties who specifically requested notice of the Commission's decision of the decision. This notice shall include information on the right to request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq. The notice shall include the following:

1.-3. (No change.)

(b) Within 30 calendar days following the service of the notice of decision under N.J.A.C. 7:45-2.8 or N.J.A.C. 7:45-10.2(c), the applicant, municipality, municipal approving agency or affected party may submit a request to the Commission for an adjudicatory hearing to contest the denial or approval with conditions of a project under N.J.A.C. 7:45-2.8 or a waiver request under N.J.A.C. 7:45-10.

(c) The hearing request shall contain:

1. (No change.)

2. Demonstration of the particular interest of the requester;

3.-7. (No change.)

7:45-4.2 Action on request for hearing

(a) The Commission shall determine whether a request for a contested case hearing should be granted. In making such determination, the Commission shall evaluate the request to determine whether the matter constitutes a contested case, as defined by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(b) If the Commission determines that the matter constitutes a contested case, the hearing 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.

(c) If the Commission grants a request for an adjudicatory hearing, the Commission shall identify those contested conditions for which an adjudicatory hearing has been granted. The Commission shall set forth these conditions in writing and serve notice in accordance with N.J.A.C. 7:45-4.3. Conditions which are not contested or for which the Commission has denied the hearing request shall not be considered at the hearing.

(d) If the Commission grants a request for a hearing, in whole or in part, in regard to a notice of decision, then any other request for a hearing in regard to the notice shall be treated as a request to be a party and the Commission shall grant any such request which meets the requirements of N.J.A.C. 7:45-4.1(c).

(e) If a request for a hearing is denied in whole or in part, the Commission shall briefly state the reasons. Such denial shall constitute the final action of the Commission.

(f) The Commission may, upon request and for good cause shown, stay the issuance of the Certificate of Approval under N.J.A.C. 7:45-3 pending a final decision on the appeal.

SUBCHAPTER 5. STORM DRAINAGE AND WATER QUALITY IMPACT REVIEW

7:45-5.1 Purpose and scope of review

The Commission shall review projects that produce stormwater runoff that will drain into the Park, either directly or indirectly through a stream. All projects within Zone A and Zone B of the Review Zone, except those projects expressly exempted by this chapter or waived by the Commission, shall be subject to review for their drainage impact on the Park.

7:45-5.2 Submission requirements

(a) For all major projects the applicant shall submit to the Commission a topographic base map of the site prior to improvement at a scale of one inch = 200 feet or greater, showing two feet contour intervals for slopes of 10 percent or less, and five foot contour intervals for slopes greater than 10 percent. Where such information is not available, the applicant may request Commission approval of some other contour interval. The map shall indicate at least the following:

1.-8. (No change.)

(b) For all major and minor projects the applicant shall submit a map at a scale of one inch = 400 feet or greater to reflect current conditions, showing the relationship of the proposed development to significant features in the general surroundings. The map shall indicate the following:

1.-10. (No change.)

(c) For all major projects the applicant shall submit a written and graphic description of the natural and man-made features of the project site and its environs. This description shall include a discussion of soil conditions, slopes, wetlands, and vegetation on the site. Particular attention shall be given to unique, unusual, or environmentally sensitive features and to those that provide particular opportunities or constraints for development.

(d) For all major projects the applicant shall submit a project description and site plan map (or maps) at the scale of the topographic base map showing changes proposed and written description of the site plan with a justification of proposed changes in natural conditions. The map shall include:

1.-6. (No change.)

(e) For major projects that will include facilities for stormwater detention, the following information, including a map or maps of a suitable scale, shall be provided:

1.-4. (No change.)

5. Maximum discharge and total volume of runoff which would occur from each of the storms described at (e)4i and ii above after complete construction of the proposed improvement and the proposed detention provisions; and

6. (No change.)

(f) For all major projects the applicant shall submit a statement from a licensed engineer of the State of New Jersey that he has reviewed or prepared the plans for the detention facility and the proposed provisions are satisfactory from a dam safety viewpoint and in accordance with any criteria or rules established by the State.

(g) For all major projects the applicant shall submit any other information expressly requested by the Commission which may show the extent to which the project is in accord with the standards of review established in this chapter.

(h) Applicants for minor projects shall submit details of the proposed plan to control and dispose of surface water runoff.

7:45-5.4 Specific storm drainage and water quality standards

(a) Each project subject to this chapter shall include facilities for detention of storm runoff through any feasible combination of basins, impoundments, rooftop storage, swales, dry wells, or any other reliable engineering approaches satisfactory to the Commission.

(b) The detention facilities shall provide retention of site runoff for any storm up to and including the two, 10 and 100 year storm. Runoff greater than that for a 100 year storm shall be passed over an emergency spillway. The construction sequence shall show the detention pond constructed in advance of any other soil disturbance. The pond shall act as a sedimentation basin during construction. Sediment shall be removed from the pond after construction of the project is complete.

(c) The outlet from the detention facility shall require the runoff from 1.25 inches of rainfall, falling in two hours, to be retained so that no more than 90 percent will be evacuated in less than 36 hours. The following exceptions to this subsection will be acceptable:

1.-4. (No change.)

(d)-(h) (No change.)

(i) The stormwater runoff retained as required by this chapter will result in the accumulation in the detention basin of considerable amounts of sediment, including particulate polluting substances and debris. Provisions shall be made for periodic removal and disposal of accumulated solid materials in accordance with law. Computations for storage capacity shall include estimates for one year's accumulation of solid materials.

(j)-(l) (No change.)

7:45-5.6 Applicability of storm drainage and water quality standards

(a) The storm drainage and water quality standards do not apply in the following instances:

1. General Standards: Zone B minor projects;

2. Standards for stormwater retention: Minor projects in both Zones A and B; and

3. Alternative standards for certain watersheds: Minor projects in both Zones A and B.

Agency Note: N.J.A.C. 7:45-6 is recodified as N.J.A.C. 7:45-7.

SUBCHAPTER 6. DETENTION FACILITIES IN FLOOD HAZARD AREAS

Recodify existing N.J.A.C. 7:45-7.1 and 7.2 as 6.1 and 6.2 (No change in text.)

SUBCHAPTER 7. STREAM CORRIDOR IMPACT

7:45-7.1 Scope of review

(a) Except for specific projects expressly waived by the Commission pursuant to N.J.A.C. 7:45-10, all major projects within Zone A or Zone B, or both, of the Review Zone shall be subject to review by the Commission for stream corridor preservation if the project includes a portion of any of the stream corridors of the following designated streams within the Review Zone:

1. Lockatong Creek;
2. Wickecheoke Creek;
3. Alexauken Creek;
4. Swan Creek;
5. Moore's Creek;
6. Fiddler's Creek;
7. Jacob's Creek;
8. Shabakunk Creek;
9. Little Shabakunk Creek;
10. Shipetauken Creek;
11. Duck Pond Run;
12. Stony Brook;
13. Millstone River;
14. Heathcote Brook;
15. Beden's Brook;
16. Simonson Creek;
17. Six Mile Run;
18. Ten Mile Run;

7:45-7.2 Submission requirements

(a) For all major projects within Zones A, or Zone B, or both, of the Review Zone and which include a portion of the stream

corridor of any designated stream under N.J.A.C. 7:45-7.1(a), the applicant shall submit to the Commission a map of the project site delineating the stream corridor at a scale of one inch equals 200 feet and containing the following:

1.-3. (No change.)

7:45-7.3 Permitted uses within designated stream corridors

(a) In addition to preserving land in its natural state and only to the extent not prohibited by N.J.A.C. 7:45-7.4(a), only the following uses shall be permitted within the stream corridor of a stream designated in N.J.A.C. 7:45-7.1(a):

1.-3. (No change.)

7:45-7.4 Prohibited uses within stream corridors of designated streams

(a) The following uses shall be prohibited within a stream corridor of a stream designated in N.J.A.C. 7:45-7.1(a) if a permit from or determination by a municipal agency is required*[;]**:*

1.-4. (No change.)

5. Barns, stables, feedlots, barnyards, poultry buildings, and farm waste disposal facilities;

6. Parking facilities and roads that are parallel with the stream; and

7. Removal of native vegetation or actions which result in the death of native vegetation ***except as necessary in connection with activities in the stream corridor permitted by the Commission***.

7:45-7.5 Conditional uses within stream corridors of designated streams

(a) The following uses shall be permitted within a stream corridor of a stream designated in N.J.A.C. 7:45-7.1(a) if the applicant demonstrates to the satisfaction of the Commission that the proposed use complies with the Master Plan and this chapter:

1.-4. (No change.)

5. Dams, culverts, bridges and roads that cross the corridor as directly as practical, and that have received approval from the appropriate municipal, county and State agencies having such authority;

6.-8. (No change.)

9. Structures comprising part of a regional flood retention project; and

10. (No change.)

7:45-7.6 Preservation of stream corridor

The applicant shall take whatever measures are necessary to assure that areas designated as stream corridors will be preserved and to prevent additional encroachments in the stream corridor likely to occur as a result of the approval granted. Such measures may include easements, deed restrictions, or other measures satisfactory to the Commission.

7:45-7.7 (No change in text.)

SUBCHAPTER 8. VISUAL AND NATURAL QUALITY IMPACT

7:45-8.2 General standards of review for visual and natural quality impact

(a) The Commission shall review all projects in Zone A to determine if the project is in accord with the goals for the Park as defined in the Park's Master Plan. The visual and natural quality impact review is intended to assure that development within Zone A is not harmful to the character of the environmental types identified in the Master Plan as comprising the Park. The environmental types are:

1.-4. (No change.)

5. Transportation: Park squeezed between roads, railroads, and river or stream.

6. Special Node: Small areas with unique characteristics.

7:45-8.3 Review of visual and natural quality impact of major projects within Zone A

(a) (No change.)

(b) In those cases where the far banks of the Raritan River and Lake Carnegie are closer than 1000 feet to the center line of the Canal, those banks shall be the limit of Zone A.

7:45-8.4 Design standards for review of visual and natural quality impact

(a) Except as provided in N.J.A.C. 7:45-8.3, major and minor projects in Zone A shall be set back from the Park sufficiently far so that the visual and natural quality of the Park is not adversely affected. The following setbacks, all of which are from the nearest boundary of the Canal Park, are required unless the Commission approves an alternative:

1.-3. (No change.)

4. In any area where existing vegetation does not provide adequate screening, the project shall include landscaping, or a greater setback, or both, to protect the Park's visual environment.

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

(d) For major and minor projects in Zone A, other visual and natural quality impact standards are as follows:

1. (No change.)

2. Exposed storage areas, out-buildings, exposed machinery service areas, parking lots, loading areas, utility buildings, and similar ancillary areas and structures shall either be completely concealed from view from the Park or designed according to the standards in this chapter that are applied to other structures.

3. All commercial signs and outdoor advertising structures in excess of two square feet surface area shall comply with the following standards:

i. (No change.)

ii. In natural or rural environments, no sign shall be visible from the Park;

iii. (No change.)

iv. No free standing sign or other advertising device or part thereof visible from the Park shall be more than 200 feet above ground level.

4. Wherever possible, natural terrains, soils, stones, and vegetation should be preserved. New vegetation, stones, and soils should be native to the environment in which they are placed.

5. (No change.)

SUBCHAPTER 9. TRAFFIC IMPACT

7:45-9.1 Review of major projects for traffic impact

The Commission shall review major projects in Zone A of the Review Zone, or major projects in Zone B of the Review Zone that are within one mile of any portion of the Park and have direct access to a road which enters Zone A, for their traffic impact on roads that enter the Park or any part of Zone A. The applicant shall submit a traffic impact study which shows the amount of additional traffic generated by the project and the directions in which this traffic will move. If the Commission determines that the additional traffic will have an adverse impact on the Park, the applicant shall use any feasible planning techniques that will direct any additional traffic away from the Park. If the Commission is satisfied that there are no feasible planning techniques other than as set forth in the project proposal that can direct any additional traffic away from the Park, the project shall be approved for traffic impact review.

7:45-9.2 Review of road construction, road improvements, and new traffic loads

(a) The Commission shall not approve projects that include new vehicular crossings of the Canal unless the applicant demonstrates to the satisfaction of the Commission that the project conforms with the following goals:

1. (No change.)

2. Any new local vehicular crossing shall be accompanied by the elimination of an existing local vehicular crossing;

3.-6. (No change.)

(b) Proposals for new or improved roads in Zone A and Zone B of the Review Zone that are within one mile of any portion of the Park that will substantially increase vehicular traffic to roads adjacent to the Canal will not be approved unless the applicant can demonstrate to the satisfaction of the Commission that:

1. Recreational access to the Park and recreational use of the Park are not impeded;
2.-4. (No change.)

SUBCHAPTER 10. WAIVER OF GOVERNMENTAL AND PRIVATE PROJECTS REVIEW

7:45-10.1 (No change in text.)

7:45-10.2 Procedure

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

(c) The notice of decision shall advise the applicant and municipal reviewing agency and those affected parties who specifically requested notice of the Commission's decision of the right to request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The request for a hearing shall be submitted and acted on pursuant to N.J.A.C. 7:45-4.

7:45-10.3 Waiver of governmental and private project review due to extreme economic project hardship or compelling public need

(a) The Commission may waive review or waive any requirement of this chapter, upon a clear and convincing demonstration by the applicant that strict adherence to the review procedure, or to a specific requirement of this chapter, would result in extreme economic hardship or extraordinary and unjustified expense, or would conflict with a compelling public need, and that the project will not impair the intent and purpose of the Master Plan or this chapter.

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

7:45-10.4 (No change in text.)

7:45-10.5 Waiver of traffic review for private and governmental projects

Private and governmental projects otherwise subject to review by the Commission for traffic impact will be waived from such review if the applicant establishes to the satisfaction of the Commission that the project will not have a direct traffic impact on the Park.

7:45-10.6 (No change in text.)

7:45-10.7 Waiver of visual and natural quality impact review for governmental and private projects

(a) Governmental and private projects otherwise subject to review by the Commission for visual and natural quality impact may be waived from such review if the applicant establishes to the satisfaction of the Commission that visual screening will continue to exist in the future, and:

1. Wherever possible, natural terrains, soils and vegetation are to be preserved, and new vegetation and soils are to be native to the environment in which they are placed; and
2. The topography of the land screens the entire project; or
3. Existing structures screen the entire project; or
4. Vegetation screens the entire project during the winter season.

7:45-10.8 Waiver of reconstruction or minor alteration review for governmental and private projects

(a) Governmental and private projects otherwise subject to review by the Commission for reconstruction or minor alterations may be waived from such review if the applicant establishes to the satisfaction of the Commission that:

1. The project consists solely of the reconstruction of a previously existing structure which was partially destroyed by fire, flood, or other natural disaster, and that the reconstruction will not increase the use or the exterior dimensions of the structure. Structures which are totally destroyed by such natural disasters are not eligible for waiver and remain subject for review; or
2. The project consists solely of alterations to an existing structure and will not increase the use or the exterior dimensions of the structure.

7:45-10.9 (No change in text.)

SUBCHAPTER 11. SEVERABILITY

7:45-11.1 (No change in text.)

(a)

OFFICE OF ENERGY

Certificate of Need for Electric Facilities

Readoption: N.J.A.C. 14A:14

Proposed: December 20, 1993 at 25 N.J.R. 5745(a).
Adopted: January 27, 1994 by Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.
Filed: January 28, 1994 as R.1994 d.97, **without change.**

Authority: N.J.S.A. 48:7-16 through 25 and Reorganization Plan No. 002-1991, paragraph 2, as set out under N.J.S.A. 13:1D-1.
DEPE Docket Number: 61-93-11/287.

Effective Date: January 28, 1994.
Expiration Date: January 28, 1999.

Summary of Public Comments and Agency Responses:

On December 20, 1993 the New Jersey Department of Environmental Protection and Energy ("Department") proposed to readopt without amendments its rules governing the issuance of Certificate of Need for Electric Facilities, N.J.A.C. 14A:14. Notice was also published on December 3, 1993 in the Asbury Park Press; December 7, 1993 in the Trenton Times; and on December 8, 1993 in the Newark Star Ledger.

One person, Meredith Harlacher, Senior Vice President, Atlantic City Electric Company, submitted written comments. The comment and the Department's response are summarized below.

1. COMMENT: Atlantic City Electric Company has historically stated that the current Electric Facility Need Assessment Act places onerous requirements on electric utilities. The Advisory Council on Electricity Planning and Procurement in its report entitled "Recommndations for an Enhanced Electric Utility Planning and Procurement Process" recommended that the Electric Facility Need Assessment Act be replaced with a different process which accomplishes the same overall state policy goals. The report calls for Integrated Resource Planning and Supply Side Procurement processes to ultimately take the place of the Certificate of Need process. As such, it would be counter-productive to extend the Certificate of Need rules at this time. The rules should be allowed to expire on January 30, 1994.

RESPONSE: The Department agrees that the Council on Electricity Planning and Procurement report does include recommendations for changes to the Electric Facility Need Act. However, the report emphasizes that changes to the certificate of need process should not be made until the replacement processes, Integrated Resource Planning and Supply Side Procurement, have been implemented. The report also stresses that the recommendations do not contemplate eliminating the public policy objectives of the certificate of need but are intended to ensure that these objectives are met more efficiently.

Action toward developing the processes which may ultimately replace the certificate of need process has begun. The Board of Regulatory Commissioners has drafted proposed Integrated Resource Planning regulations. These proposed regulations are being reviewed and discussed by a working group which is made up of interested members of the original Advisory Council on Electricity Planning and Procurement and includes representatives from Atlantic City Electric Company. These rules will also go through a public comment period before they are finalized.

Allowing the Certificate of Need regulations to expire before replacement processes are in place will leave the State without a means of reviewing any plans for construction of new public utility capacity. This would clearly not meet the public policy objectives of the original Electric Facility Need Assessment Act.

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

PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Advance Notice of the State Board of Education's Consideration of a List of Demonstrably Effective Improvement Strategies and Programs

Take notice that the New Jersey State Board of Education will consider, at their March 2, 1994 meeting, the following listing of demonstrably effective improvement strategies and programs to guide district and school level educational improvement planning in the special needs districts:

Effective Improvement Strategies

1. Increasing collaboration in learning;
2. Providing instruction based on individual student needs, strengths and interests;
3. Involving parents/families in their children's education;
4. Developing school/community/business partnerships;
5. Developing school/college partnerships;
6. Implementing school-based management/shared decision making;
7. Implementing alternative school designs to meet instructional and developmental needs/interests of students;
8. Developing meaningful and challenging curricula for all students;
9. Aligning instruction and assessment with performance-based outcomes;
10. Implementing early childhood programs;
11. Increasing school time for meaningful learning;
12. Reducing class size;
13. Raising staff expectations for student learning;
14. Integrating technology into instruction; and
15. Providing integrated human services to support student success.

Comprehensive Improvement Programs

1. Accelerated Schools;
2. Coalition of Essential Schools;
3. Comer School Development Program; and
4. Success for ALL.

A more detailed description of the listed progams and strategies may be obtained by writing to:

Division of Urban and Field Services
New Jersey State Department of Education
CN 500
Trenton, NJ 08625-0500

Please Note: This public notice is in accordance with N.J.A.C. 6:8-9.8 which requires ... "Advanced notice(s) of the State Board Meeting at which the recommended list of demonstrably effective improvement strategies and programs will be considered shall be published."

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

NEW JERSEY CLEAN AIR COUNCIL

Air Pollution Prevention in New Jersey Funding Source: State Appropriation vs. Fees Notice of Public Hearing

Take notice that the New Jersey Clean Air Council, pursuant to the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., will hold a public hearing entitled "Air Pollution Prevention in New Jersey—Funding: State Appropriation vs. Fees." The **public hearing** will be held on:

Monday, March 21, 1994 at 9:00 A.M.
DEPE Headquarters
401 E. State Street
Public Hearing Room
Trenton, N.J.

The objectives of the Council are to assess the existing funding source for the DEPE air program and to address alternative funding sources. Should there be an annual State appropriation? Would it foster more accountability? How appropriate is the current fee structure? These and many other issues will be discussed.

Persons wishing to make oral presentations are asked to reserve a 15 minute time period by telephoning or writing to:

Ms. Lorraine Sedlak
NJ DEPE
Policy and Planning
CN 418
Trenton, NJ 08625
609-777-1758

Presenters should bring 15 copies of their remarks to the hearing for use by the Council members, the hearing transcriber, and the press. The hearing record will be open for 15 days following the date of the public hearing so that additional written testimony can be received. Submit written comments to:

Ms. Lorraine Sedlak
NJ DEPE
Policy and Planning
CN 418
Trenton, NJ 08625

(c)

OFFICE OF AIR QUALITY MANAGEMENT

Notice of Public Hearing on CO Nonattainment Areas Redesignation Request

Take notice that the New Jersey Department of Environmental Protection and Energy (the Department) will hold a **public hearing** on its recent request to the United States Environmental Protection Agency (USEPA) for redesignation of certain areas to attainment for carbon monoxide (CO).

The hearing will be a joint public hearing, regarding both the CO redesignation request and the proposed amendments to N.J.A.C. 7:27-25, regarding Oxygenated Fuels, published elsewhere in this issue of the New Jersey Register. The hearing will be held:

Friday, March 25, 1994 at 10:00 A.M. at
DEPE Public Hearing Room
401 E. State Street
Trenton, New Jersey

The redesignation request is based on the fact that current monitoring data show that all of the State of New Jersey is now meeting the primary National Ambient Air Quality Standard (NAAQS) and the New Jersey Ambient Air Quality Standard (NJAAQS) for carbon monoxide (CO). The redesignation request contains a maintenance plan to ensure that the standards continue to be met.

The primary NAAQS is a health-based standard designed to protect the public from injury. The primary NAAQS for CO is nine parts per million (ppm) averaged over an eight hour period and 35 ppm averaged over a one hour period. Air quality levels in New Jersey have not exceeded the one hour standard since the late 1970's and monitoring data show that air quality levels throughout the State are now below the eight hour standard and have been for two years.

Carbon monoxide is a common waste gas emitted from all combustion sources due to incomplete combustion. When inhaled, CO reduces the ability of blood to bring oxygen to body cells and tissues. At high concentrations, in enclosed areas, carbon monoxide can be lethal. In the environment, carbon monoxide is particularly hazardous to individuals who have heart, circulatory, or respiratory problems. The toxic effects of carbon monoxide occur close to its source. In New Jersey, the primary source of CO is motor vehicles.

Currently, 11 areas of New Jersey are formally designated as in nonattainment of the NAAQS for CO by the United States Environmental Protection Agency (USEPA). One of these areas is Camden County. Another area includes the northeastern corner of New Jersey, and is a portion of a larger nonattainment area. The larger nonattainment area also includes New York City, Long Island, and Connecticut. The New Jersey portion of this regional nonattainment area includes part of Passaic County, and all of Bergen, Essex, Hudson, and Union counties. These two nonattainment areas are classified as moderate nonattainment. There are also nine areas in the State which are designated nonattainment but are not classified with regard to the severity of the CO nonattainment because the air monitoring data indicate the areas met the NAAQS in 1988 and 1989.

Ambient air quality data collected during the past two years show that the Camden County CO nonattainment area is meeting the NAAQS. Data from the past 10 years demonstrate that the nine not classified areas are also meeting the NAAQS. Therefore, a request for a formal redesignation of Camden County and the nine not classified areas to attainment status was made to the USEPA in November, 1993. A request that USEPA redesignate the northeastern New Jersey CO nonattainment area (the New Jersey portion of the New York/New Jersey/Long Island CO nonattainment area) to attainment status will be forthcoming from the Department shortly. A separate hearing will be held on that request.

The redesignation request submitted in November 1993 includes a maintenance plan to assure continued attainment of the CO NAAQS through 2005. The maintenance plan includes the benefits from the Federal motor vehicle emissions control program currently in effect in New Jersey; continuation of the Federally mandated oxygenated fuel program through December 31, 1994; the implementation of the Federal reformulated fuel requirements, which will take effect on January 1, 1995; and implementation of an enhanced motor vehicle inspection and maintenance program, which will take effect beginning January 1, 1995. The maintenance plan also contains contingency measures requiring that, upon any exceedance of the CO NAAQS after December 31, 1994, the oxygenated fuel program will be reinstated.

A copy of the request for redesignation is available for inspection at the Department's public information center at DEPE offices in Trenton. A copy may also be obtained from the Office of Air Quality Management at (609) 292-6722, fax: (609) 633-6198.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Notice of Receipt of Petition For Rulemaking Amendments to the Crab Management Rules

N.J.A.C. 7:25-14

Petitioner: Lance Naylor

Take notice that on January 3, 1994 the Department of Environmental Protection and Energy (Department) received a petition for rulemaking requesting amendments to the Crab Management Rules, N.J.A.C. 7:25-14.

Petitioner, Lance Naylor is a commercial fisherman in New Jersey.

Petitioner requests a licensing procedure that is open to all New Jersey residents and that allows New Jersey fishermen the latitude to change fisheries as natural and economic conditions dictate. Petitioner also objected to various provisions of the Crab Management Rules proposed in 25 N.J.R. 4831(a) but not yet adopted. These obligations will be considered as comments to the rule proposal and responded to as part of the rulemaking process.

(b)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that on January 12, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment identifies a discharge to ground water treatment facility proposed to serve an 81,668 square foot commercial supermarket/retail building known as Petticoat Junction located at Block 13.01, Lots 1, 1.01, and 1.02 in Clinton Township, Hunterdon County. This proposal would amend the Clinton Township Wastewater Management Plan (WMP). The site is presently identified in the WMP as being part of the service area of the proposed Township of Clinton West Sewage Treatment Plant (STP). The proposed Petticoat Junction facility will be abandoned and flows conveyed to the Clinton West STP when service is available.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This amendment proposal was noticed in the New Jersey Register on January 19, 1993. A comment on this amendment was received during the public comment period and is summarized below with the DEPE's response.

COMMENT: An attorney for the Township of Clinton opposed the proposed amendment because of Township concerns regarding the suitability of the site selected for the ground water disposal system. The Township was concerned that permeability testing was done through an unapproved methodology.

RESPONSE: The Department has noted Clinton Township's objection; however, the site specific location of a ground water disposal system and level of treatment required to minimize site impacts are issues addressed by the permitting units of the Department. The Township of Clinton will have the opportunity to comment on the NJPDES—Discharge to Ground Water permit and Treatment Works Approval, which will require legally appropriate ground water testing to determine site suitability.

(c)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that on January 20, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment will modify the Clinton Township Wastewater Management Plan on behalf of the Mountainview Youth Correctional Facility. The amendment allows a new sewage treatment plant (STP), on Block 46, Lot 32, to be built replacing the existing Department of Correction Mountainview Youth Correctional Facility STP. The current Department of Correction Mountainview Youth Correctional Facility STP has a permitted flow of 170,000 gallons per day (GPD) and discharges to Beaver Brook [NJPDES #NJ0028487]. The new Department of Correction Mountainview Youth Correctional Facility STP will have a design capacity of 360,000 GPD of which 260,000 GPD will be discharged to surface water (Beaver Brook) and 100,000 GPD will be discharged to ground water via subsurface sewage disposal systems located at Block 13, Lot 38. The STP expansion will serve 2,245 persons (inmates plus staff). The water quality of the discharge flows must meet requirements of the New Jersey Pollutant Discharge Elimination System (N.J.A.C. 7:14A) to ensure compliance with the existing New Jersey Surface Water Quality Standards in N.J.A.C. 7:9-4 and the Ground Water Quality Standards in N.J.A.C. 7:9-6.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and develop-

ment in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

(a)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Lower Raritan/Middlesex County and Monmouth County Water Quality Management Plans

Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Lower Raritan/Middlesex County and Monmouth County Water Quality Management (WQM) Plans. This amendment proposal was submitted by C & Z Construction. This amendment proposes to expand the Bayshore Regional Sewerage Authority's sewer service area to include three single family residential lots located on Biandi Street in Old Bridge Township, (Block 2000.19, Lots 14.01, 18.01, 22.01). The site is presently within the sewer service area of the Middlesex County Utilities Authority. The proposal would amend the Bayshore Regional Sewerage Authority Wastewater Management Plan.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been proposed for the Lower Raritan/Middlesex County and Monmouth County WQM Plans. All information related to the WQM Plan and the proposed amendment is located at the Middlesex County Planning Board, 40 Livingston Avenue, New Brunswick, New Jersey 08901, and the NJDEPE, Office of Land and Water Planning, CN423, 401 East State Street, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Middlesex County Planning Board at (908) 745-3016 or the Office of Land and Water Planning at (609) 633-1179.

Middlesex County will hold a **public hearing** on the proposed WQM Plan amendment. The public hearing will be on Thursday, April 7, 1994 at 7:00 P.M., in the Freeholders' Meeting Room, 11th Floor, of the Middlesex County Administration Building located on John F. Kennedy Square, New Brunswick, New Jersey. **Interested persons** may submit written comments on the amendment to Mr. William J. Kruse of the Middlesex County Planning Board at the County Planning Board address cited above. A copy of the comments should be sent to Dr. Daniel J. Van Abs at the NJDEPE address cited above. All comments must be submitted within 15 days following the public hearing. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the County Board of Chosen Freeholders with respect to this amendment request. In addition, if the amendment is adopted by Middlesex County, the NJDEPE must review the amendment prior to final adoption. The comments received in reply to this notice and to the public hearing will also be considered by the NJDEPE during its review. Middlesex County and the NJDEPE thereafter may approve and adopt this amendment without further notice.

HEALTH

(b)

THE COMMISSIONER

Notice of Invitation for Certificate of Need Applications

Transfer of Ownership of Entire Acute Care Hospital; Closure of Acute Care Hospital

Take notice that in accordance with the provisions of N.J.A.C. 8:33-4.1(a), Leonard Fishman, Acting Commissioner, New Jersey Department of Health, is inviting certificate of need applications for the following types of health care activities:

1. The transfer of ownership of an entire acute care hospital, as referenced at N.J.A.C. 8:33-3.3 and N.J.A.C. 8:33A-1.17.

2. The closure of an acute care hospital, as referenced at N.J.A.C. 8:33-3.2(c).

Such certificate of need applications will be received in the Department of Health on the first day of any month in 1994 and will be processed in accordance with full review procedures as set forth in N.J.A.C. 8:33.

Geographic area to be served: Applications will be received from anywhere in the State of New Jersey.

Date application is due: Applications are to be received in the offices of the New Jersey Department of Health's Certificate of Need Program, Room 603, CN 360, Trenton, New Jersey 08625 on the first day of the month in 1994.

Date completeness review decision issued: Upon receipt of all information and documentation requested during completeness review.

Date local advisory boards will review the applications and submit recommendations to the Commissioner and the State Health Planning Board: In accordance with the time-frames set forth in Subchapter 4 of N.J.A.C. 8:33.

Date State Health Planning Board will review applications and submit recommendations to the Commissioner: In accordance with the time-frames set forth in Subchapter 4 of N.J.A.C. 8:33.

Applications may be requested from and must be filed with:

Certificate of Need Program
New Jersey State Department of Health
CN 360
Trenton, New Jersey 08625-0360
Telephone: 609-292-6552

Applications must also be filed with: Local advisory board(s) serving the region of the subject health planning service or facility.

CORRECTIONS

(c)

THE COMMISSIONER

Notice of Action on Petition for Rulemaking Evidence Required

N.J.A.C. 10A:4-9.15

Petitioner: George R. Jacques, New Jersey State Prison.

Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 10A:1-1.2.

Take notice that on October 7, 1993, the Department of Corrections received a petition for rulemaking from George R. Jacques, an inmate at New Jersey State Prison (see 25 N.J.R. 5365(b)). The petition sought an amendment to N.J.A.C. 10A:4-9.15 regarding Inmate Discipline—Evidence Required.

The October 7, 1993 proposed petition represents the second petition for rulemaking at N.J.A.C. 10A:4-9.15 from George R. Jacques. In regard to prior petition, reference is made to 25 N.J.R. 4517(b), 25 N.J.R. 4675(b) and 25 N.J.R. 4796(a). The October 7, 1993 petition for rulemaking, as did the first petition, is a request that the Department of Corrections amend N.J.A.C. 10A:4-9.15 by adding a subsection (c) which states that the Disciplinary Hearing Officer shall require a report from any treating physician/psychologist/psychiatrist when in the event an inmate is charged with a disciplinary infraction, and at the time of the alleged misconduct the inmate is exhibiting any of the following, and

as a result, is placed in an observation cell prior to any disciplinary hearing:

1. Hallucinations (visual or auditory);
2. Delusions motivating or commanding the prisoner to harm himself or others or to perform dangerous behavior;
3. Acute psychotic episodes or acute exacerbation of psychotic symptoms from previous diagnosed psychosis (recent onset within 10 days);
4. Bizarre behavior, agitation, psychomotor retardation or depression markedly interfering with daily function, which causes severe subjective distress or is grossly unacceptable;
5. Total body rigidity or immobility (catatonia);
6. Severe and disabling anxiety; or
7. Severely disabling thought disorder.

The petitioner suggests that the report from any treating physician/psychologist/psychiatrist shall consist of:

1. Whether the inmate's current mental status precludes participation in the disciplinary process;
2. Whether the inmate's mental status contributed to the alleged disciplinary offense; and/or
3. Whether the inmate's mental status contraindicates any particular form of punishment.

The petitioner further suggests that if the Disciplinary Hearing Officer finds that any of the above three mental conditions exist, the Disciplinary Hearing Officer shall dismiss the misconduct report and refer the inmate to the appropriate institutional psychiatrist/psychologist for treatment, or possible commitment to the Forensic Psychiatric Hospital if the treating physician finds one or more of the following:

1. A suicide attempt within the past seven days;
2. Persistent suicide ideation;
3. Assaultive/harmful behavior;
4. Verbal threats to harm others;
5. Arson;
6. Self-mutilative behavior or threats;
7. Hallucinations (visual or auditory);
8. Delusions motivating or commanding the prisoner to harm self or others or to perform dangerous behavior; and/or
9. Paranoid hallucinations/delusions, so severe that the prisoner is unable to perform basic care needs, such as eating, drinking and/or personal hygiene.

Pursuant to N.J.A.C. 10A:4-9.8, due to exceptional circumstances, such as those presented in this petition, the Disciplinary Hearing Officer/Adjudication Committee has the authority to postpone the disciplinary adjudication of an inmate who has been placed in observation status. The Disciplinary Hearing Officer/Adjudication Committee would then have access to any professional reports which are generated as a result of the inmate's placement in observation status. Additionally, the Adjustment Committee/Disciplinary Hearing Officer has the authority and flexibility to seek professional input on cases where mental illness may be a determining factor pursuant to N.J.A.C. 10A:16-4 and 13. Furthermore, N.J.A.C. 10A:4-9.5 requires an investigation of the infraction and the Superintendent of the correctional facility has the authority to appoint one or more investigating supervisory level employees who have not been involved in the particular incident. At N.J.A.C. 10A:4-9.6, the Disciplinary Hearing Officer/Adjustment Committee may direct a further investigation in any case where he or she is of the opinion that the facts and circumstances are not sufficient to set forth a basic understanding of the incident.

The ability to suspend a sanction exists at N.J.A.C. 10A:4-9.18, which states that the Adjustment Committee/Disciplinary Hearing officer may suspend sanction(s) imposed upon an inmate for a violation of a prohibited act when, in their opinion, such action is warranted by the particular circumstances of the case. Pursuant to, N.J.A.C. 10A:4-9.17, disciplinary action must be individualized and the underlying reasons for noncompliance considered.

Pursuant to N.J.A.C. 10A:4-5.1, a recommendation for transfer can be made by the Adjustment Committee/Disciplinary Hearing Officer for an inmate to be assigned to a treatment program such as one suggested by the petitioner.

The Department of Corrections finds it inappropriate to develop the proposed rules and the petition for formal rulemaking is accordingly being denied.

INSURANCE

(a)

NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Notice of Carrier Election to the New Jersey Individual Health Coverage Program Board

Members of the New Jersey Individual Health Coverage ("IHC") Program should **take notice** that the one-year term of Blue Cross and Blue Shield of New Jersey as a director on the IHC Program Board expires on January 27, 1994. Pursuant to N.J.S.A. 17B:27A-10 and the IHC Program Board's Temporary Plan of Operation, N.J.A.C. 11:20-2.5, a representative of a health service corporation shall be elected to the IHC Program Board. The Temporary Plan of Operation provides that an election to fill vacancies on the IHC Program Board shall take place at an annual meeting of members of the IHC Program called for that purpose. The procedure also calls for notice of the election to all members, the taking of nominations, and a second notice to members providing an absentee ballot, a list of the candidates, and the date, time, and place of the meeting at which the election is to take place.

Since the only vacancy on the IHC Board must be filled by a health service corporation, and Blue Cross and Blue Shield of New Jersey is the only health service corporation authorized to do business in New Jersey, the IHC Program Board does not intend to spend resources conducting an election with only one possible result. Therefore, members of the IHC Program are hereby notified that Blue Cross and Blue Shield of New Jersey will be deemed elected to serve on the IHC Program Board for another one-year term, until the next election must take place, unless a member of the IHC Program raises an objection presenting reasonable grounds that an election should take place to fill the vacancy. Objections should be sent, in writing, to the Interim Administrator before March 1, 1994, at the following address:

Interim Administrator
New Jersey Individual Health Coverage Program
c/o The Prudential Insurance Company of America
P.O. Box 4080
Iselin, New Jersey 08830

PUBLIC UTILITIES

(b)

BOARD OF REGULATORY COMMISSIONERS

Unbundling of Natural Gas Services

Notice of Guidelines for the Further Unbundling of New Jersey's Natural Gas Services

Take notice that at an open public meeting held on November 10, 1993, the Board of Regulatory Commissioners (Board) established guidelines for the further unbundling of natural gas services by the State's four local distribution companies (LDCs). The Board's action was memorialized in a written order issued on December 20, 1993.

The guidelines set out by the Board are intended to encourage and promote unrestricted access to natural gas and natural gas related services for all in-State customer classes except, at this time, residential end users. The services and service options identified and listed by the Board are meant to be a guideline for developing a more competitive natural gas industry in New Jersey. This list is neither intended to be all-inclusive or to foreclose LDCs from proposing other unbundled services, nor to require the elimination of a bundled sales option for those customers who desire such service. The issuance of guidelines is appropriate given the need for certain base information (see N.J.S.A. 48:2-36.1) from which case-by-case discussion can be held and determinations made. If appropriate, formal rulemaking may result from this process.

To provide as much notice of this matter to the public as is possible, the Board has determined that its December 20, 1993 order should be published in its entirety in the New Jersey Register. The text of said order follows:

Guidelines For Further Unbundling Of New Jersey's Natural Gas Services	GAS ORDER BRC DOCKET NO. GX 93110516

BY THE BOARD:

In April 1992, the Federal Energy Regulatory Commission (FERC) issued Order 636, which among other things was intended to effectuate the unbundling of interstate pipeline services and which effectively eliminated the pipeline merchant function. Where Local Distribution Companies (LDCs) used to contract for gas supplies deliverable to the city gate directly from the pipelines, the LDCs now bear the risk and responsibility of determining how much storage, gathering, upstream capacity, back-up supplies, etc. they need, as well as the responsibility of acquiring the required supplies to serve their customers. The FERC anticipated that all interstate pipelines would be operating in compliance with Order 636 by November 1, 1993. Although some operating details still remain to be ironed out, the interstate pipelines serving New Jersey will largely be operating unbundled "open-access" systems this winter.

Order 636 is not an unexpected change, but merely the latest, and most dramatic, step in the deregulatory process for pipelines. Deregulation evolved out of the gas shortages of the 1970's. During the 1980's, LDCs and other end-users began purchasing their own gas supplies, thereby bypassing high cost pipeline gas. Over the years, the four New Jersey LDCs have steadily moved away from reliance on the interstate pipeline as a gas supplier.

As a result of the unbundled services available due to Order 636 restructuring, BRC Staff recognized that the natural gas business on the state level would also be evolving. To prepare for the evolving changes and to facilitate measures to bring the potential benefits of Order 636 restructuring to the State, Staff recommended to the Board that open discussions among all interested parties in this State would be appropriate and useful. Accordingly, on January 27, 1993, Commissioner Carmen J. Armenti reconvened the Gas Policy Group to discuss the implications of FERC Order 636 on the natural gas industry in New Jersey. The Gas Policy Group is an informal body of entities interested in natural gas issues that had convened over the years to discuss natural gas issues of interest to the State. Attendance at the Gas Policy Group meetings has historically consisted of the four LDCs, marketers, large industrials customers, electric utilities, cogeneration customers, the Department of the Public Advocate, Division of Rate Counsel, and Board Staff. However there is no formal membership requirement and anyone with an interest in the natural gas industry has been welcome to participate.

The Gas Policy Group met on several occasions over an eight month period during 1993 to discuss such FERC 636 related issues as capacity release, transition costs, reliability, obligation to serve, electronic metering, minimum requirements, electronic bulletin boards and unbundling in general. In these meetings the participants set forth their opinions concerning the creation of a more responsive and competitive natural gas industry in New Jersey. Following each session, the parties were invited to submit and circulate written comments on their respective positions.

In general, marketers, large industrials, cogenerators and electric utilities were interested in seeing similar increased competition on the State level to that which Order 636 had signaled on the interstate level. Staff was of the general opinion that fewer restrictions and more customer options could be healthy for the business community, the general economic interests of the State and, eventually, for all ratepayers. Rate Counsel's support for expanding competition was conditioned upon, among other factors, proper allocation of stranded costs. In time it became clear that the LDCs and the parties were aware that unbundling of services, in some degree, was inevitable. Consequently, under the guidance of Commissioner Armenti, Staff prepared a set of "Guidelines" which it believes could be used as a blueprint for the further unbundling of in-State natural gas services. These "Guidelines" were forwarded to the Gas Policy Group service list on September 3, 1993. The Group was asked to provide comments by September 21, 1993. This deadline was eventually extended to October 5, 1993. Twelve parties took the opportunity to respond with what were largely encouraging remarks.

The proposed "Guidelines" provide (1) for the LDCs' sales service to be "unbundled" into its basic components with each component offered and priced separately and (2) for practically all restrictions to be removed from tariffs pertaining to the transportation of natural gas.

The proposed "Guidelines" are intended to remove barriers and to encourage and promote unrestricted access to natural gas and natural gas related services in New Jersey for all customer classes except, at this time, the residential end user. It would seem to be counter productive for FERC to have opened up access to the interstate pipeline system only to discover that New Jersey customers cannot make use of the unbundled services due to limitations within the State. As a result of unbundled interstate services available under Order 636 restructuring, large gas customers will inevitably pursue cheaper supply options. The proposed "Guidelines" are intended to provide similar opportunities to smaller consumers within the State.

The proposed "Guidelines" are, by design, very general. Customer demographics, geography, and operating philosophies are sufficiently different among the LDCs that a generic proceeding would not be appropriate at this point. The Board believes that each LDC must make its own business judgments as to how its unique system can and should be operated. Therefore, the Board believes that each LDC's proposal should be evaluated on a case by case basis. The proposed "Guidelines" contemplate a separate compliance filing for each LDC. Once these compliance filings have been made, a schedule for individually addressing each proposal will be determined. The proposal also provides that, absent a base rate case proceeding, the resultant tariff structure would be revenue neutral to the individual LDC.

Currently included in the LDC's sales price of gas is the utility's charges for interstate capacity, storage, balancing and standby service as well as in-state transportation expenses and the basic gas commodity costs. The proposed "Guidelines" would have the LDC maintain its current sales services while offering a parallel set of unbundled services for those commercial and industrial customers who have the ability to obtain their own gas supplies and perhaps do not require each component service. The proposal would basically allow customers to pick and choose which services they require and only pay for the services they choose.

Natural gas, as an abundant, environmentally preferred fuel is often the fuel of choice for many commercial and industrial customers. Because of environmental limitations, it is also the most common choice of cogeneration developers and for new and rebuilt electric generation facilities. At the present time, all four LDCs either have approved or proposed tariffs for transportation service. However, because of qualifying limitations, both explicit and implied, service has generally been restricted to large end-use customers. This restricts the supply choices available to commercial and smaller industrial end users. It places these smaller customers in the same "take it or leave it" relationship with the LDCs that the LDCs had with the pipelines prior to federal deregulation.

The "Guidelines" would remove volumetric restrictions, remove alternate fuel requirements and permit customer aggregation. Volumetric restrictions on transportation have long had the effect of limiting transportation to large volume customers and have few remaining proponents, even among the LDCs. Removal of the alternate fuel requirement is based upon the assumption that fuel supply choices are a business decision and that commercial and industrial customers are sophisticated enough to understand and fully assume the risks and rewards associated with these decisions. Customer aggregation would permit a company with several locations or a number of companies located in the same geographic area and with similar or complementary load characteristics to pool resources and requirements and potentially reduce fuel costs.

The "Guidelines" are not intended to be all-inclusive or to foreclose LDCs from proposing other unbundled services. Nothing contained therein is intended to require elimination of a bundled sales option for those customers who desire such a service. The foregoing are intended as a framework for a modified rate and tariff structure. Utilities may find that one or more aspects of these "Guidelines" are not appropriate or practical for various reasons. Where this is the case the utilities may request an exemption from complying with that part of the "Guidelines". In such cases the utility should provide substantial documentation to support the request for an exemption.

The proposed "Guidelines" would not be applicable to residential customers at this time. While, in theory, transportation service could be offered to residential customers, and some marketers have argued that it should be, the administrative burden imposed by this action would be too demanding on both the LDCs and Staff at this time. Once unbundled services, as proposed by the "Guidelines", have been approved and implemented, the Board will monitor each LDC's experience in terms of costs, reliability and customer satisfaction. The Board may then make a decision regarding a competitive residential gas market based on this actual experience.

After reviewing the recommendations of the Gas Division Staff, the comments from the Gas Policy Group participants and in the belief that competition is healthy for the ratepayers, for the gas industry and for New Jersey, the Board is convinced that the "Guidelines", as proposed, represent a reasonable next step in the continuing process of providing competitively priced natural gas services in New Jersey. The Board HEREBY ADOPTS the aforementioned "Guidelines", dated September 3, 1993, which are attached to and made a part hereof. Furthermore, the Board ORDERS Elizabethtown Gas Company, New Jersey Natural Gas Company, Public Service Electric & Gas Company and South Jersey Gas Company to file proposed tariffs for consideration by the Board in compliance with the outline contained therein. Staff had recommended that these filings be made by Feb. 1, 1994. The Board, however, believes that additional time may be necessary in order for each LDC to restructure its tariff offerings. Therefore, the BOARD ORDERS that these compliance filings be made no later than April 1, 1994. Once these filings are made a schedule for addressing each proposal will be determined. It is anticipated that some LDCs could have unbundled tariffs implemented by the summer of 1994.

DATED: December 20, 1993

BOARD OF REGULATORY COMMISSIONERS
BY:
DR. EDWARD H. SALMON
CHAIRMAN
JEREMIAH F. O'CONNOR
COMMISSIONER
CARMEN J. ARMENTI
COMMISSIONER

ATTEST: IRENE JOHNSON
SECRETARY

NEW JERSEY BOARD OF REGULATORY COMMISSIONERS
GAS POLICY GROUP

GUIDELINES FOR COMPETITIVE NATURAL GAS SERVICE
SEPTEMBER 3, 1993

POLICY STATEMENT

PURPOSE

The following guidelines are intended to encourage and promote unrestricted access to natural gas and natural gas related services in New Jersey for all customer classes except, at this time, the residential end user. At the same time, LDCs should contemplate the degree of flexibility necessary to maximize contributions to the system, both economically and operationally, while maintaining reliable service.

Services and service options listed below are meant as a guideline for developing a more competitive natural gas industry in New Jersey. This list is not intended to be all-inclusive or to foreclose LDCs from proposing other unbundled services. Nothing contained herein is intended to require elimination of a bundled sales option for those customers who desire such a service.

SERVICES

1. Transportation—Provide firm and interruptible transportation to all end users on a non-discriminatory basis. In this regard, except for just cause, the transportation proposal should:

a. Eliminate minimum volume restrictions.

b. Remove alternate fuel requirements.

c. Permit aggregation, where operationally and administratively feasible, for the purpose of making small consumer transportation viable.

d. Specify under what conditions "returning" customers will be accepted and how they will be charged.

2. Storage/Balancing—Provide a separately priced service for customers interested in using storage and/or balancing services. This may include options keyed to varying conditions and/or time periods, each separately priced.

3. Standby—Provide a separately priced service for transportation customers who have had interstate capacity/commodity curtailed.

METERING

LDCs should clearly define if, when and how additional metering is required to provide additional services. The LDC should be ready to demonstrate that the proposed metering requirements are not discriminatory and are truly necessary for operational reasons.

CAPACITY RELEASE

The LDCs should propose a mechanism for notifying in-state customers of available interstate capacity. The proposal should include credit worthiness standards, bidding criteria and recall rights. The aim of the capacity release program should be to provide the greatest contribution to the system's fixed capacity costs, while maintaining reliability for the firm sales customers.

CURTAILMENTS

Curtailment plans should be updated in light of Order 636. Transportation customers should not be arbitrarily interrupted. LDCs should consider the operational condition requiring an interruption of load and consider ways of interrupting only customers in those constrained areas. A pro-rata cutback arrangement would also appear to be a means of relieving capacity constraints. LDCs may find it economical to arrange for the emergency/peak period use of customer owned gas under prearranged conditions and for a prescribed rate of compensation.

RATES

Rate schedules should reflect the appropriate costs to provide each of the above services. Rate structures should be supported by workpapers and a description of the methodology employed.

EXCEPTIONS

The foregoing are intended as guidelines for a competitive rate and tariff structure. Utilities may find that one or more aspects of these guidelines are not practical for various reasons. Where this is the case the utilities may request an exemption from complying with that part of the guidelines. In such cases the utility should provide substantial documentation to support an exemption.

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Notice of Public Hearing

Public Financing of Primary and General Elections for the Office of Governor: N.J.A.C. 19:25-15 and 19:25-16

Take notice that the New Jersey Election Law Enforcement Commission will hold a **public hearing** to seek public comment upon the operation and effect of the 1993 primary and general election Gubernatorial Public Financing Program.

The public hearing will be held on Wednesday, March 16, 1994 at 10:00 A.M. at the Maplewood Municipal Building, 574 Valley Street, Maplewood, New Jersey. **Please note:** This hearing has been rescheduled from March 15, 1994 (see 26 N.J.R. 505(c)).

Persons wishing to make oral presentations are asked to limit their comments to a 10 minute time period. Presenters should bring a copy of their comments to the hearing for use by the Commission. The hearing record will be kept open for a period of seven days following the date of the public hearing so that additional written comments can be received.

To reserve time to speak, telephone the Commission offices at (609) 292-8700 by Wednesday, March 9, 1994.

Interested persons may submit written comments until March 23, 1994 to:

Nedda Gold Massar, Esq.
Election Law Enforcement Commission
CN-185
Trenton, New Jersey 08625-0185

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 January 3, 1994 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1993 d.1 means the first rule filed for 1993.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT DECEMBER 20, 1993

NEXT UPDATE: SUPPLEMENT JANUARY 18, 1994

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
25 N.J.R. 619 and 736	February 16, 1993
25 N.J.R. 737 and 1030	March 1, 1993
25 N.J.R. 1031 and 1308	March 15, 1993
25 N.J.R. 1309 and 1620	April 5, 1993
25 N.J.R. 1621 and 1796	April 19, 1993
25 N.J.R. 1797 and 1912	May 3, 1993
25 N.J.R. 1913 and 2150	May 17, 1993
25 N.J.R. 2151 and 2620	June 7, 1993
25 N.J.R. 2621 and 2794	June 21, 1993
25 N.J.R. 2795 and 3050	July 6, 1993
25 N.J.R. 3051 and 3276	July 19, 1993
25 N.J.R. 3277 and 3582	August 2, 1993
25 N.J.R. 3583 and 3884	August 16, 1993
25 N.J.R. 3885 and 4360	September 7, 1993
25 N.J.R. 4361 and 4540	September 20, 1993
25 N.J.R. 4541 and 4694	October 4, 1993
25 N.J.R. 4695 and 4812	October 18, 1993
25 N.J.R. 4813 and 4980	November 1, 1993
25 N.J.R. 4981 and 5382	November 15, 1993
25 N.J.R. 5383 and 5728	December 6, 1993
25 N.J.R. 5729 and 6084	December 20, 1993
26 N.J.R. 1 and 280	January 3, 1994
26 N.J.R. 281 and 520	January 18, 1994
26 N.J.R. 521 and 878	February 7, 1994
26 N.J.R. 879 and 1178	February 22, 1994

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-9.4	Accelerated proceedings	26 N.J.R. 284(a)		
1:10-1.1, 9.1, 9.2, 14.1, 14.2, 14.3, 18.1	Family Development hearings	25 N.J.R. 3888(a)		
1:13A	Lemon law hearings	25 N.J.R. 5387(a)		
1:14-10	BRC ratemaking hearings: discovery	26 N.J.R. 3(a)		
	Most recent update to Title 1: TRANSMITTAL 1993-2 (supplement September 20, 1993)			
AGRICULTURE—TITLE 2				
2:2	Animal Disease Control Program	25 N.J.R. 5387(b)		
2:6	Animal health: biologics for diagnostic or therapeutic purposes	25 N.J.R. 4985(a)		
2:33	Agricultural fairs	26 N.J.R. 285(a)		
2:76-6.11	Farmland Preservation Program: acquisition of development easements	25 N.J.R. 3890(a)	R.1994 d.43	26 N.J.R. 350(a)
2:76-6.11	Farmland Preservation Program: correction to proposal and extension of comment period regarding acquisition of development easements	25 N.J.R. 4697(a)		
	Most recent update to Title 2: TRANSMITTAL 1993-7 (supplement December 20, 1993)			
BANKING—TITLE 3				
3:1-2.25, 2.26	Charter conversions	26 N.J.R. 286(a)		
3:3-2.2, 2.3	Release of bank examination reports to independent auditors	25 N.J.R. 4819(a)	R.1994 d.49	26 N.J.R. 351(a)
3:4-3	Banking institutions: sale of alternative investments	25 N.J.R. 5733(a)		
3:6-8.2, 8.3, 17	Charter conversions	26 N.J.R. 286(a)		
3:6-15.2	Disqualification of savings bank directors	25 N.J.R. 3586(b)		
3:11-7.11	Disqualification of bank directors	25 N.J.R. 3586(b)		
3:14	Bank service corporations	26 N.J.R. 3(b)		
3:38-1.1, 1.10, 5.1	Mortgage banker non-servicing	25 N.J.R. 1035(a)		
3:38-5.3	Mortgage referrals by real estate agents	26 N.J.R. 6(a)		
3:41-5.1	Cemetery Board: cemetery company price lists	25 N.J.R. 4819(b)	R.1994 d.19	26 N.J.R. 197(a)
3:41-12	Cemetery Board: service contractors and service contracts	26 N.J.R. 6(b)		
	Most recent update to Title 3: TRANSMITTAL 1993-9 (supplement December 20, 1993)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)			
PERSONNEL—TITLE 4A				
4A:1-2.3	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:1-5.3, 5.4	Coordinator address: administrative change	———	———	26 N.J.R. 197(b)
4A:2-2.11	Bankruptcy interest: administrative correction	———	———	26 N.J.R. 198(a)
4A:2-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-4.10	State service: demotional pay adjustments	25 N.J.R. 4821(a)	R.1994 d.71	26 N.J.R. 794(a)
4A:4-2.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:4-2.2, 2.14	Equal employment opportunity	25 N.J.R. 4821(b)	R.1994 d.72	26 N.J.R. 794(b)

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4A:4-7.8	Voluntary demotions	25 N.J.R. 4823(b)	R.1994 d.74	26 N.J.R. 795(a)
4A:6-1.2, 1.6, 1.11, 1.12, 1.13	Leaves of absence	25 N.J.R. 4824(a)	R.1994 d.73	26 N.J.R. 795(b)
4A:6-1.3	Equal employment opportunity	25 N.J.R. 4821(b)	R.1994 d.72	26 N.J.R. 794(b)
4A:6-4.2	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:7-1.1, 2.1, 2.2, 2.3, 3.1	Equal employment opportunity	25 N.J.R. 4821(b)	R.1994 d.72	26 N.J.R. 794(b)
	Most recent update to Title 4A: TRANSMITTAL 1993-8 (supplement December 20, 1993)			
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5:11	Relocation assistance and eviction	26 N.J.R. 289(a)		
5:18-3.2, 3.3, 3.13, 3.19, App. 3A	Fire Prevention Code: junk yards, recycling centers, and other exterior storage sites	25 N.J.R. 1315(b)		
5:18-4.3, 4.7	Fire Safety Code: fire suppression systems in hospitals and nursing homes	25 N.J.R. 1316(a)		
5:23-2.18A, 3.11, 4.20	UCC: utility load management device permits; mausoleum plan review; Department fees	25 N.J.R. 4546(b)	R.1994 d.28	26 N.J.R. 352(a)
5:23-2.22, 4.18, 4.20, 4.22, 4.26, 4.29, 4.31, 4.39, 4A.1-4A.5, 4A.7-4A.2, 4B, 4C	Uniform Construction Code: industrialized/modular buildings	25 N.J.R. 5388(a)	R.1994 d.96	26 N.J.R. 1073(a)
5:23-4.4, 4.5, 4.5A, 4.12, 4.14, 4.18, 4.20	Uniform Construction Code: private on-site inspection agencies	25 N.J.R. 2162(a)		
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5:25-5.5	New home warranties and builder registration: claims procedure	25 N.J.R. 4986(a)	R.1994 d.50	26 N.J.R. 796(b)
5:80-8	Housing and Mortgage Finance Agency: occupancy income requirements	26 N.J.R. 8(a)		
5:80-23.7, 23.9	Housing Incentive Note Purchase Program: fees; subordinate financing	26 N.J.R. 9(a)		
5:80-23.9	Housing and Mortgage Finance Agency: Housing Incentive Note Purchase Program fees	25 N.J.R. 3053(a)		
5:80-24	Housing and Mortgage Finance Agency: Lease-Purchase Program	25 N.J.R. 4826(a)	R.1994 d.106	26 N.J.R. 1080(a)
5:80-29	Housing and Mortgage Finance Agency: investment of housing project funds	25 N.J.R. 4830(a)		
5:80-32	Housing and Mortgage Finance Agency: housing investment sales	25 NJ.R. 4828(a)	R.1994 d.105	26 N.J.R. 1082(a)
5:91-1.3	Counseling on Affordable Housing: substantive rules	25 N.J.R. 5763(a)		
5:92-1.1, 13.1	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)		
5:93	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)		
	Most recent update to Title 5: TRANSMITTAL 1993-12 (supplement December 20, 1993)			
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	Most recent update to Title 5A: TRANSMITTAL 1993-1 (supplement December 20, 1993)			
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6:28	Special education	25 N.J.R. 5734(a)		
6:29-1.7	Eye protection in public schools	26 N.J.R. 537(a)		
6:29-9.1, 9.2	Reporting of allegations of child abuse	26 N.J.R. 538(a)		
	Most recent update to Title 6: TRANSMITTAL 1993-8 (supplement November 15, 1993)			
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7:0	Green glass marketing and recycling: request for public input on feasibility study	25 N.J.R. 1654(a)		
7:0	Regulated Medical Waste Management Plan: public hearing and opportunity for comment	25 N.J.R. 1654(b)		
7:0	Site Remediation Program: analysis of strict, joint and several liability under the New Jersey Spill Compensation Act	25 N.J.R. 3694(a)		
7:1C-1.1, 1.2, 1.5	Ninety-day construction permits: fees	26 N.J.R. 787(a)		
7:1E	Discharges of petroleum and other hazardous substances: request for public comment on draft amendments	25 N.J.R. 2636(a)		
7:1G	Worker and Community Right to Know	26 N.J.R. 123(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:1G-1–5, 7	Worker and Community Right to Know	25 N.J.R. 1631(a)	R.1994 d.3	26 N.J.R. 200(a)
7:1I	Sanitary Landfill Facility Closure and Contingency Fund: processing of damage claims	25 N.J.R. 5116(a)	R.1994 d.83	26 N.J.R. 1114(a)
7:1K-1.5, 3.1, 3.4, 3.9-3.11, 4.3, 4.5, 4.7, 5.1, 5.2, 6.1, 6.2, 7.2, 7.3, 9.2-9.5, 9.7, 12.6-12.9	Pollution Prevention Program requirements	25 N.J.R. 1849(a)	R.1994 d.51	26 N.J.R. 842(a)
7:9-1.1	Treatment works approval, sewer bans and sewer ban exemptions	25 N.J.R. 3282(a)		
7:9B-1.5, 1.15	Surface water quality standards: Wallkill River	25 N.J.R. 3755(a)	R.1994 d.84	26 N.J.R. 1124(a)
7:11-2.1-2.4, 2.9, 2.10, 2.13	Delaware and Raritan Canal—Spruce Run/Round Valley Reservoirs System: sale of water	25 N.J.R. 5742(a)		
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: sale of water	25 N.J.R. 5744(a)		
7:12-1.2, 2.1, 2.2, 3.2, 4.1, 9.1	Shellfish growing water classifications	26 N.J.R. 789(a)		
7:13-7.1	Delaware River, Pohatcong Township: flood plain redelineation	25 N.J.R. 4370(a)	R.1994 d.10	26 N.J.R. 212(a)
7:13-7.1	Overpeck Creek, Englewood: flood plain redelineation	25 N.J.R. 4371(a)	R.1994 d.11	26 N.J.R. 212(b)
7:13-7.1	Poplar Brook, Deal: flood plain redelineation	25 N.J.R. 4372(a)	R.1994 d.9	26 N.J.R. 211(a)
7:14-8.3	Clean Water Enforcement Act: financial assurance for penalty payment schedules	25 N.J.R. 5395(a)		
7:14A	NJPDES Program: extension of comment period for interested party review of permitting system	25 N.J.R. 1863(a)		
7:14A-1.9, 12, 22, 23	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		
7:14A-2.15, 6.14, 6.17, 12.4	Contaminated site remediation: NJPDES permit program	26 N.J.R. 158(a)		
7:14B-1.6, 2.2, 2.6, 2.7, 2.8, 3.1–3.8	Underground Storage Tanks Program fees	25 N.J.R. 1363(a)	R.1994 d.98	26 N.J.R. 1132(a)
7:15	Statewide Water Quality Management Planning Rules: public meetings and opportunity for comment on draft amendments	26 N.J.R. 792(a)		
7:15-5.18	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		
7:20A	Water usage certifications for agricultural or horticultural purposes	25 N.J.R. 3956(a)	R.1994 d.12	26 N.J.R. 212(c)
7:25-7.13, 14.1, 14.2, 14.4–14.8, 14.10–14.13	Crab management	25 N.J.R. 4831(a)		
7:25-18.1, 18.2	Marine fisheries: size and possession limits; pound nets	26 N.J.R. 291(a)		
7:25-18.1, 18.14	Summer flounder permit conditions	25 N.J.R. 2167(a)	R.1994 d.44	26 N.J.R. 353(a)
7:25-18.5, 18.6, 18.12	Delaware Bay gill net permits	25 N.J.R. 5397(a)		
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	25 N.J.R. 754(a)		
7:26-1.4	Hazardous waste transportation: informal meeting on draft "10-day in-transit holding rule"	26 N.J.R. 294(a)		
7:26-1.4, 9.3	Hazardous waste management: satellite accumulation areas	25 N.J.R. 1864(a)		
7:26-6.6	Procedure for modification of waste flows	25 N.J.R. 991(a)		
7:26-8.8, 8.12, 8.19	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)		
7:26B-1.3, 1.10, 1.11, 1.12	Environmental Cleanup Responsibility Act Program fees	25 N.J.R. 1375(a)	R.1994 d.99	26 N.J.R. 1142(a)
7:26C	Site Remediation Program: opportunity for comment on draft remedial priority system	25 N.J.R. 4551(c)		
7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)		
7:27-1, 8, 18, 21, 22	Air pollution control: extension of comment period regarding facility operating permits, emission statements, and penalties	25 N.J.R. 4836(a)		
7:27-1, 8, 18, 22	Air Operating Permits and Reconstruction Permits: public roundtable on proposed new rules and amendments	26 N.J.R. 793(a)		
7:27-15.1, 15.2, 15.4-15.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27-15.1, 15.4	Enhanced Inspection and Maintenance (I/M) program	25 N.J.R. 5400(a)		
7:27-15.4	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27-21.1–21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)		
7:27-25.1, 25.3, 25.4, 25.9, 25.10, 25.11, 25.12	Oxygenated fuels program	25 N.J.R. 4039(a)	R.1994 d.85	26 N.J.R. 1148(a)
7:27-26	Low Emissions Vehicle Program	25 N.J.R. 1381(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)		
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)		
7:27A-3.10	Oxygenated fuels program penalties	25 N.J.R. 4039(a)	R.1994 d.85	26 N.J.R. 1148(a)
7:27A-3.10	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27A-3.10	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27B-4.1, 4.5–4.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27B-4.1, 4.5, 4.6, 4.9	Enhanced I/M program	25 N.J.R. 5400(a)		
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7:28-48	Non-ionizing radiation producing sources: registration fees	25 N.J.R. 5422(a)		
7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
7:45	Delaware and Raritan Canal State Park Review Zone	25 N.J.R. 4836(b)	R.1994 d.100	26 N.J.R. 1153(a)
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8:31B-2.1, 2.3, 2.4, 2.5	Hospital reporting of uniform bill—patient summaries (inpatient)	26 N.J.R. 10(a)		
8:31B-3.3, 3.70	Health care financing: monitoring and reporting	26 N.J.R. 12(a)		
8:31B-4.37	Charity care audit functions	26 N.J.R. 13(a)		
8:41-4.1, 10.5-10.13, 11	Mobile intensive care programs: standing orders; paramedic clinical training objectives	25 N.J.R. 2665(a)	R.1994 d.35	26 N.J.R. 355(a)
8:44-2.1, 2.14	Clinical laboratory licensure: HIV testing	25 N.J.R. 2184(a)		
8:44-2.11	Clinical laboratories: reporting by supervisors	25 N.J.R. 3751(a)	R.1994 d.36	26 N.J.R. 362(a)
8:44-2.11	Clinical laboratories: reporting of blood lead levels	26 N.J.R. 294(b)		
8:59-5.6	Worker and Community Right to Know: exclusions from labeling requirements	25 N.J.R. 3441(a)	R.1994 d.21	26 N.J.R. 217(a)
8:59-App. A, B	Worker and Community Right to Know Act: preproposal concerning Hazardous Substance List and Special Health Hazard Substance List	25 N.J.R. 792(a)		
8:59-App. A, B	Worker and Community Right to Know Hazardous Substance List	26 N.J.R. 540(a)		
8:71	Interchangeable drug products (see 24 N.J.R. 2557(b), 3173(a), 4260(b); 25 N.J.R. 582(a))	24 N.J.R. 1674(a)	R.1993 d.226	25 N.J.R. 1970(b)
8:71	Interchangeable drug products (see 24 N.J.R. 3174(c), 3728(a), 4262(a); 25 N.J.R. 583(a))	24 N.J.R. 2414(b)	R.1993 d.338	25 N.J.R. 2882(b)
8:71	Interchangeable drug products (see 24 N.J.R. 4261(a); 25 N.J.R. 582(b))	24 N.J.R. 2997(a)	R.1993 d.225	25 N.J.R. 1970(a)
8:71	Interchangeable drug products (see 25 N.J.R. 580(b), 2883(a))	24 N.J.R. 4009(a)	R.1993 d.468	25 N.J.R. 4497(a)
8:71	Interchangeable drug products (see 25 N.J.R. 1221(a), 1969(c), 2882(a), 4496(b), 6061(b))	25 N.J.R. 55(a)	R.1994 d.38	26 N.J.R. 363(a)
8:71	Interchangeable drug products (see 25 N.J.R. 1970(c), 2881(b), 4497(b))	25 N.J.R. 875(a)	R.1993 d.673	25 N.J.R. 6060(b)
8:71	Interchangeable drug products (see 25 N.J.R. 2881(a), 4496(a))	25 N.J.R. 1814(b)	R.1993 d.676	25 N.J.R. 6061(a)
8:71	Interchangeable drug products	25 N.J.R. 1815(a)	R.1993 d.334	25 N.J.R. 2879(c)
8:71	Interchangeable drug products (see 25 N.J.R. 4495(b), 6062(a))	25 N.J.R. 2802(b)	R.1994 d.40	26 N.J.R. 364(b)
8:71	Interchangeable drug products (see 25 N.J.R. 6060(c))	25 N.J.R. 3906(a)	R.1994 d.39	26 N.J.R. 364(a)
8:71	Interchangeable drug products	25 N.J.R. 4844(a)	R.1994 d.37	26 N.J.R. 362(b)
8:71	List of Interchangeable Drug Products	26 N.J.R. 13(b)		
8:71	List of Interchangeable Drug Products	26 N.J.R. 14(a)		
8:71	List of Interchangeable Drug Products	26 N.J.R. 69(a)		
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9:2-2	Minority Undergraduate Fellowship Program	26 N.J.R. 80(a)		
9:2-11	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(a)		
9:5-2.1, 2.2, 2.3, 2.5, 2.7	Job training program: unemployed persons tuition waiver	25 N.J.R. 3593(a)		
9:7-9	Paul Douglas Teacher Scholarship Program	25 N.J.R. 3594(a)	R.1994 d.13	26 N.J.R. 219(a)
9:11	Educational Opportunity Fund program: procedures and policies	26 N.J.R. 711(a)		

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9:11-1.4	Educational Opportunity Fund Program: financial eligibility for undergraduate grants	25 N.J.R. 4886(a)	R.1994 d.23	26 N.J.R. 221(a)
9:12	Educational Opportunity Fund program support	26 N.J.R. 711(a)		
9:17	Implementing the Higher Education Equipment Leasing Fund	25 N.J.R. 5747(a)	R.1994 d.94	26 N.J.R. 1086(a)
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10:8	Patient advance directives; DNR orders; declaration of death	25 N.J.R. 2669(a)	R.1994 d.14	26 N.J.R. 221(a)
10:15A-1.2	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)		
10:15C-1.1	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)		
10:37-5.37–5.43	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
10:37A	Community residences for mentally ill adults	25 N.J.R. 2672(a)		
10:37B	Psychiatric community residences for youth	25 N.J.R. 2197(a)		
10:37C	Community mental health clinical case management	25 N.J.R. 4845(a)		
10:38-1.4, 2.1, 2.2, 3.3, 3.4, 3.6, 3.8, 4.3, 5.2, 7.2, 7.4, 7.5, App. C, E, G	Interim Assistance Program for discharged State psychiatric hospital clients	25 N.J.R. 3697(a)	R.1994 d.75	26 N.J.R. 1088(a)
10:39	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
10:41	Division of Developmental Disabilities: administration	26 N.J.R. 81(a)		
10:41	Division of Developmental Disabilities: extension of comment period regarding records confidentiality and human rights committees	26 N.J.R. 725(a)		
10:49-19.1, 19.4, 19.7, 19.11	State-defined HMOs	25 N.J.R. 4793(a)	R.1994 d.4	26 N.J.R. 224(a)
10:52-1.23	Inpatient hospital services: adjustments to Medicaid payer factors	24 N.J.R. 4478(a)		
10:53-1.1	Reimbursement methodology for special hospitals	24 N.J.R. 4477(a)		
10:60-1.1–1.17, 2.2, 2.4, 2.5, 2.8, 2.9, 2.10, 2.12, 2.14, 2.15, 2.16, 3.2, 3.3, 3.6, 4.2, 6, App. A, H	Home Care Services Manual	25 N.J.R. 5167(a)	R.1994 d.41	26 N.J.R. 364(c)
10:62	Vision care services	25 N.J.R. 3907(a)	R.1994 d.6	26 N.J.R. 225(a)
10:66-6.1, 6.4	Independent Clinic Services: administrative corrections regarding HCPCS	_____	_____	26 N.J.R. 797(a)
10:66-6.5	Independent clinic services; HealthStart; administrative correction	_____	26 N.J.R. 235(a)	
10:69A-1.2, 6.2	PAAD eligibility: exclusion of reparation payments as countable income	25 N.J.R. 5750(a)		
10:73-2.1, 2.4, 2.7	Medical Assistance and Health Services: administrative changes regarding Case Management Services Manual	_____	_____	26 N.J.R. 797(b)
10:81-2.2, 2.3, 5.1, 7.40-7.47, 15	Fraudulent receipt of AFDC assistance; disqualification penalties	25 N.J.R. 3408(a)		
10:81-2.6, 3.4, 11.2, 11.3	Public Assistance Manual: client Social Security numbers	26 N.J.R. 324(a)		
10:81-11.7, 11.9	Automated Child Support Enforcement System	26 N.J.R. 84(a)		
10:81-14.18A	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)		
10:82-5.3	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)		
10:83-1.11	New Jersey Supplemental Security Income payment levels: administrative change	_____	_____	26 N.J.R. 235(b)
10:84-1	Administration of public assistance programs	24 N.J.R. 4480(b)	R.1993 d.611	26 N.J.R. 374(a)
10:86-10.2, 10.6	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)		
10:87	Food Stamp Program	25 N.J.R. 4697(b)	R.1994 d.42	26 N.J.R. 377(a)
10:89-2.3, 3.1, 3.2, 3.3	Home Energy Assistance: income eligibility guidelines	Emergency (expires 2-7-94)	R.1994 d.20	26 N.J.R. 256(a)
10:97	Commission for the Blind and Visually Impaired: Business Enterprise Program	26 N.J.R. 725(b)		
10:97-1.3, 3.1	Commission for the Blind and Visually Impaired: licensing procedure for Business Enterprise Program	25 N.J.R. 4551(d)	R.1994 d.27	26 N.J.R. 378(a)
10:122	Manual of Requirements for Child Care Centers	25 N.J.R. 4987(a)		
10:127-6.5	Residential child care facilities: money and allowance	25 N.J.R. 5751(a)		
10:133H-3	Review of children in out-of-home placement	25 N.J.R. 5752(a)		

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10:140	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(a)		
10A:33	Manual of Standards for Juvenile Detention Commitment Programs	25 N.J.R. 5749(a)		
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10A:1-10	Research projects	26 N.J.R. 726(a)		
10A:2-2.2	Inmate accounts: transaction fees	25 N.J.R. 4849(a)	R.1994 d.8	26 N.J.R. 235(a)
10A:4-1.2, 1.3	Adult county correctional facilities: disciplinary procedures and sanctions	26 N.J.R. 727(a)		
10A:9-4.6	Gang minimum and full minimum custody status: criteria for consideration	26 N.J.R. 728(a)		
10A:16-8.1, 8.2, 8.3	Medical clemency	26 N.J.R. 326(a)		
10A:22	Inmate and parolee records	25 N.J.R. 5754(a)		
10A:31-1.3, 16.1, 16.2, 21.4	Adult county correctional facilities: disciplinary procedures and sanctions	26 N.J.R. 727(a)		
10A:33	Manual of Standards for Juvenile Detention Commitment Programs	25 N.J.R. 5749(a)		
10A:71-3.21	State Parole Board: future parole eligibility terms	25 N.J.R. 4703(a)		
10A:71-3.47	State Parole Board: victim input	25 N.J.R. 4705(a)		
10A:71-7.16	State Parole Board: general conditions of parole and future eligibility upon revocation	25 N.J.R. 3597(a)	R.1994 d.18	26 N.J.R. 236(a)
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11:1-31	Surplus lines insurer eligibility	25 N.J.R. 1819(a)	R.1994 d.102	26 N.J.R. 1096(a)
11:1-34	Surplus lines: exportable list procedures	24 N.J.R. 4331(a)	R.1994 d.7	26 N.J.R. 236(b)
11:1-37	Public adjusters' licensing	25 N.J.R. 5432(a)		
11:1-37	Public adjusters' licensing: public hearing and extension of comment period	26 N.J.R. 327(a)		
11:3-3	Limited assignment distribution servicing carriers	25 N.J.R. 1327(b)		
11:3-15.7	Automobile insurance Coverage Selection Form	26 N.J.R. 85(a)		
11:3-16.10	Private passenger automobile insurance: rate filing requirements	25 N.J.R. 4436(a)	R.1994 d.46	26 N.J.R. 378(b)
11:3-20.5, 20A.1	Automobile insurers: reporting apportioned share of MTF losses in excess profits reports; ratio limiting the effect of negative excess investment income	25 N.J.R. 1829(a)	R.1994 d.24	26 N.J.R. 241(a)
11:3-29.2, 37.10	Automobile insurance PIP coverage: application of medical fee schedules to acute care hospitals and other facilities	25 N.J.R. 4706(a)		
11:3-29.6	Personal auto injury fee schedule: physician's services	25 N.J.R. 4554(a)		
11:3-36.6	Automobile physical damage insurance inspection procedures	25 N.J.R. 5756(a)	R.1994 d.103	26 N.J.R. 1100(a)
11:3-42.2, 42.9	Producer Assignment Program: request for exemption	25 N.J.R. 2215(a)		
11:4-37	Selective contracting arrangements of insurers	25 N.J.R. 4554(b)	R.1994 d.45	26 N.J.R. 381(a)
11:5-1.3	Real Estate Commission: broker pre-licensure requirements	25 N.J.R. 4849(b)	R.1994 d.56	26 N.J.R. 798(a)
11:5-1.3, 1.10, 1.27, 1.28, 1.31	Real Estate Commission: extension of comment periods on various licensure and prelicensure proposals	25 N.J.R. 5099(a)		
11:5-1.10	Real Estate Commission: compensation and licensure requirement	25 N.J.R. 4851(a)	R.1994 d.57	26 N.J.R. 799(a)
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11:5-1.27	Real Estate Commission: educational requirements for broker and salesperson licensure	25 N.J.R. 4852(a)	R.1994 d.58	26 N.J.R. 799(b)
11:5-1.28	Real Estate Commission: licensure requirements for schools and instructors	25 N.J.R. 4855(a)	R.1994 d.59	26 N.J.R. 801(a)
11:5-1.28	Real Estate Commission: requirements for prelicensure schools and instructors	26 N.J.R. 730(a)		
11:5-1.31	Real Estate Commission: license transfer procedure	25 N.J.R. 4858(a)	R.1994 d.60	26 N.J.R. 803(a)
11:5-1.43	Real Estate Commission: licensee provision of Agency Information Statement	25 N.J.R. 1948(a)		
11:5-1.43	Real Estate Commission: extension of comment period regarding licensee provision of Agency Information Statement	25 N.J.R. 2645(a)		
11:5-1.44	Real Estate Commission: collection of licensee Social Security numbers	26 N.J.R. 735(a)		
11:5-2.5	Real Estate Commission: access to commission records	26 N.J.R. 736(a)		
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11:13-7.4, 7.5	Commercial lines: exclusions from coverage; refiling policy forms	25 N.J.R. 1053(a)		
11:17C-2.6	Insurance producers: record maintenance	26 N.J.R. 328(a)		
11:19-2.2, 2.3, 2.5, App. B	Data submission requirements for all domestic insurers	25 N.J.R. 2820(b)	R.1994 d.104	26 N.J.R. 1100(b)
11:20-1.2, 12	Eligibility for standard health benefits plans	26 N.J.R. 87(a)	R.1994 d.54	26 N.J.R. 804(a)
11:20-17, App. Exh. L	Standard health benefits plan: enrollment status reports	26 N.J.R. 90(a)	R.1994 d.53	26 N.J.R. 806(a)
11:21-1.2, 4.1, App. Exhibits	Small Employer Health Benefits Program	25 N.J.R. 5017(a)	R.1994 d.47	26 N.J.R. 400(a)
11:21-2	Small Employer Health Benefits Program: Plan of Operation	25 N.J.R. 4563(a)	R.1994 d.48	26 N.J.R. 391(a)
11:21-2	Small Employer Health Benefits Program: public hearing on Plan of Operation	25 N.J.R. 4678(a)		
11:21-4.2, 4.3, 17.3, App. Exh. BB	Small Employer Health Benefits Program: certification of utilization compliance	26 N.J.R. 741(a)		
11:21-9	Small Employer Health Benefits Program: informational rate filings	25 N.J.R. 5757(a)	R.1994 d.25	26 N.J.R. 245(a)
11:21-14.4, 14.5, App. Exh. U	Small Employer Health Benefits Program: carrier status	26 N.J.R. 328(b)	R.1994 d.55	26 N.J.R. 809(a)
11:21-16	Small Employer Health Benefits Program: withdrawal of carriers from plans market	25 N.J.R. 4859(a)	R.1994 d.26	26 N.J.R. 247(a)
11:21–App. Exh. E	Small Employer Health Benefits Program: correction to proposed Appendix Exhibit E and extension of comment period	25 N.J.R. 4458(a)		

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12:23	Workforce Development Partnership Program: application and review process for customized training services	25 N.J.R. 449(a)	Expired	
12:23-3	Workforce Development Partnership Program: application and review process for individual training grants	25 N.J.R. 884(a)		
12:23-4	Workforce Development Partnership Program: application and review process for approved training	25 N.J.R. 886(a)		
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12:23-6	Workforce Development Partnership Program: application and review process for employment and training grants for services to disadvantaged workers	25 N.J.R. 1054(a)		
12:41	Job Training Partnership Act: grievance, hearing, and review procedures	25 N.J.R. 5456(a)	R.1994 d.78	26 N.J.R. 810(a)
12:45	Vocational Rehabilitation Services: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 2216(b)		
12:45	Division of Vocational Rehabilitation Services	25 N.J.R. 5130(b)	R.1994 d.52	26 N.J.R. 813(a)
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12A:10-1	Goods and services contracts for small businesses, minority businesses, and female businesses	25 N.J.R. 4889(a)		
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12A:11-1.2, 1.3, 1.4, 1.7	Certification of women-owned and minority-owned businesses	25 N.J.R. 2484(a)		
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13:20-39.1, 39.2, 39.3, 39.5, 39.9	Special automobile registration plates for non-profit organizations	26 N.J.R. 331(a)		

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13:27-8.13	Landscape architects: advertisements and listings	25 N.J.R. 5440(a)		
13:30-1.1	Board of Dentistry: qualifications of applicants for licensure to practice	25 N.J.R. 2216(d)		
13:35-2A.9, 2A.11, 6.13	Certified midwife practice: prescriptive authority	25 N.J.R. 4583(a)		
13:35-2B, 6.14	Board of Medical Examiners: physician assistants	25 N.J.R. 5099(b)		
13:35-6.5	Board of Medical Examiners: permissible charges for copies of patient records	25 N.J.R. 4862(a)		
13:35-6.10	Board of Medical Examiners: request for comment regarding advertising of specialty certification	25 N.J.R. 2824(a)		
13:35-6.17	Board of Medical Examiners: professional fees and investments	25 N.J.R. 5441(a)		
13:35-6.21	Board of Medical Examiners: hair replacement techniques	25 N.J.R. 5444(a)	R.1994 d.86	26 N.J.R. 1104(a)
13:35-10	Athletic trainers: administrative correction to adoption notice	_____	_____	26 N.J.R. 483(a)
13:35-11	Board of Medical Examiners: Alternative Resolution Program	25 N.J.R. 2824(b)		
13:37	Board of Nursing rules	25 N.J.R. 455(b)	Expired	
13:37-7	Certification of nurse practitioners/clinical nurse specialists	25 N.J.R. 2829(a)		
13:37-12.1, 14	Board of Nursing: certification of homemaker-home health aides	25 N.J.R. 1950(a)		
13:37-14	Homemaker-home health aide competency evaluation: public hearing	25 N.J.R. 3704(b)		
13:39-5.2	Board of Pharmacy: information on prescription labels	25 N.J.R. 1667(a)		
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13:39A-5.2, 5.4, 5.6	Board of Physical Therapy: examination standards for therapists and assistants	25 N.J.R. 5447(a)	R.1994 d.87	26 N.J.R. 1105(a)
13:40-5.1	Board of Professional Engineers and Land Surveyors: subdivision plats	25 N.J.R. 5447(b)	R.1994 d.77	26 N.J.R. 822(a)
13:40A-3.5, 6.1	Board of Real Estate Appraisers: fees; temporary licenses	25 N.J.R. 4863(a)	R.1994 d.88	26 N.J.R. 1106(a)
13:42-1.2	Board of Psychological Examiners: written examination fee	25 N.J.R. 3929(a)	R.1994 d.22	26 N.J.R. 249(a)
13:42-1.2, 1.3	Board of Psychological Examiners rules	25 N.J.R. 4937(a)		
13:44C-2.2	Audiology and Speech-Language Pathology Advisory Committee: fees and charges	25 N.J.R. 5448(a)	R.1994 d.89	26 N.J.R. 1106(b)
13:44D-4.1, 4.2	Advisory Board of Public Movers and Warehousemen: bill of lading and insurance legal liability	25 N.J.R. 5449(a)		
13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	25 N.J.R. 3931(b)		
13:44E-2.1	Board of Chiropractic Examiners: licensee advertising	25 N.J.R. 3932(a)		
13:44E-2.6	Board of Chiropractic Examiners: practice identification educational requirements	25 N.J.R. 3934(a)		
13:44E-2.8	Board of Chiropractic Examiners: duties of unlicensed assistants	25 N.J.R. 3935(a)		
13:44E-2.9	Board of Chiropractic Examiners: notification of change of address; service of process	25 N.J.R. 3936(a)		
13:44E-2.10, 2.11	Board of Chiropractic Examiners: display of license; right to licensure hearing	25 N.J.R. 3936(b)		
13:44E-2.13	Board of Chiropractic Examiners: overutilization of services; excessive fees	25 N.J.R. 3937(a)		
13:44G-1–5, 7, 8	Board of Social Work Examiners rules	25 N.J.R. 3081(a)		
13:45A-21, 22	Kosher Enforcement Bureau: sale of food represented as kosher	25 N.J.R. 3086(a)		
13:45A-26	Automotive dispute resolution	25 N.J.R. 3939(a)		
13:46-2	Athletic Control Board: participant health and safety in boxing and combative sports events	25 N.J.R. 4717(a)		
13:47B	Weights and measures	25 N.J.R. 5102(a)		
13:49	State Medical Examiner: standards for procedures and investigations	25 N.J.R. 5104(a)	R.1994 d.30	26 N.J.R. 484(a)
13:70-12.4	Thoroughbred racing: claimed horse	25 N.J.R. 1059(a)		
13:70-14A.1	Thoroughbred racing: intent of medication rules	25 N.J.R. 3099(a)		
13:70-14A.9	Thoroughbred racing: administering medication to respiratory bleeders	25 N.J.R. 3100(a)		
13:70-19.44	Thoroughbred racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5107(a)		
13:70-20.11	Thoroughbred racing: limitations on entering or starting	25 N.J.R. 3101(a)		
13:70-20.13	Thoroughbred racing: trainer fees	25 N.J.R. 5107(b)		
13:70-21.4	Thoroughbred racing: medication	25 N.J.R. 3102(a)		
13:70-29.61	Thoroughbred racing: Superfecta	25 N.J.R. 5450(a)	R.1994 d.92	26 N.J.R. 1106(c)

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13:71-23.1	Harness racing: intent of medication rules	25 N.J.R. 3104(a)		
13:71-23.8	Harness racing: administering medication to respiratory bleeders	25 N.J.R. 3105(a)		
13:71-27.54	Harness racing: Daily Triple	25 N.J.R. 5109(a)	R.1994 d.90	26 N.J.R. 1107(a)
13:71-27.59	Harness racing: Superfecta	25 N.J.R. 5451(a)	R.1994 d.91	26 N.J.R. 1107(b)
13:71-29	Harness racing: sulky	26 N.J.R. 95(a)		
13:72-1.1, 2.9, 4.3, 4.10, 6.2, 7.1, 8.1	Casino simulcasting of horse races	25 N.J.R. 5110(a)	R.1994 d.93	26 N.J.R. 1108(a)
13:82	Boating rules	26 N.J.R. 744(a)		

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14:0	IntraLATA competition for telecommunications services: preproposal	25 N.J.R. 3682(b)		
14:0	Intrastate dial-around compensation: preproposal	25 N.J.R. 4586(a)		
14:3-3.6	Discontinuance of service to multi-family dwellings	25 N.J.R. 1346(a)		
14:12-2.1	Filing of Demand Side Management Resource Plans	25 N.J.R. 5111(a)	R.1994 d.82	26 N.J.R. 1109(a)
14:17	Office of Cable Television: practice and procedure	26 N.J.R. 96(a)		
14:18-3.24	Cable television: late fees and charges	26 N.J.R. 105(a)		
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19:51-1.1	Match play coupons	25 N.J.R. 5902(a)		
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