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NEW JERSEY REGISTER

IN THIS ISSUE
"INDEX OF PROPOSED RULES"

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The New Jersey Register supplements the New Jersey Administrative Code. To complete your research of the latest State Agency rule changes, see the Rule Adoptions in This Issue, the Rule Adoptions in the May 7 issue, and the Index of Adopted Rules begining on Page 1107 of that issue.

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RULE PROPOSALS

CIVIL SERVICE

(a)

CIVIL SERVICE COMMISSION

Authority and Purpose
Purpose and Application

Proposed New Rule: N.J.A.C. 4:1-1.1
Proposed Amendments: N.J.A.C. 4:1-1.7, 1.8, and 1.9
Proposed Repeal: N.J.A.C. 4:1-1.1 through 1.6 and 4:1-1.10

Authorized By: Civil Service Commission, Peter J. Calderone, Assistant Commissioner, Department of Civil Service.
Authority: N.J.S.A. 11:1-7a, 11:5-1a.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 20, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

The Civil Service Commission thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-278.

The agency proposal follows:

Summary

As part of this Department's ongoing recodification project, Subchapter 1 of Title 4 has been reviewed and revisions are being proposed. The proposed repeals are either unnecessary reiterations of the provisions of Title 11, New Jersey Statutes, or are provisions that are clearly covered by N.J.S.A. 52:14, the Administrative Procedure Act. The sections that are being retained have been clarified and rewritten into plain English in accordance with this Department's policy on rule writing. Specific details of the proposals follows:

N.J.A.C. 4:1-1.1 has been repealed as inappropriate since the authority to promulgate rules is included in the headnote for Subchapter 1. N.J.A.C. 4:1-1.2 has been rewritten for clarity and recodified as proposed N.J.A.C. 4:1-1.1. N.J.A.C. 4:1-1.3 through 6 and 4:1-1.10 are proposed for repeal. N.J.A.C. 4:1-1.3 was based on N.J.S.A. 11:5-1(a) which required that a public hearing be held prior to adopting, amending or repealing any rule. Since the Administrative Procedure Act (APA) provides the public with notice of proposed rules and a comment period, the necessity for holding public hearings on all proposed rules has been obviated. Consequently, N.J.A.C. 4:1-1.3 is being repealed. Sections 4, 5 and 10 are also covered by the APA and therefore unnecessary.

In N.J.A.C. 4:1-1.6, Application of rules, is being proposed for repeal; however, subsection (a) has been rewritten for clarity and is included in proposed N.J.A.C. 4:1-1.1. Subsection (b) is proposed for repeal since it refers to the general use of the masculine singular as being applicable to females and several people. The current supplement of Title 4 includes both masculine and feminine genders and plurals when appropriate. N.J.A.C. 4:1-1.7, 8, and 9, Compliance with rules, Records and information, and Severability have been recodified and rewritten for clarity.

Social Impact

This proposal will have a positive impact on all users of Civil Service rules, affording them readily understandable rules.

Economic Impact

The review and repeal of unnecessary rules will have a negligible but positive impact on printing costs.

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

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SUBCHAPTER 1. [AUTHORITY AND] PURPOSE **AND APPLICATION**

[4:1-1.1 Rules prescribed

Pursuant to the authority vested in the Civil Service Commission by Article VII of the New Jersey State Constitution and Title 11, Civil Service, of the Revised Statutes, the Commission does prescribe and adopt those rules, which shall have the force and effect of law.

4:1-1.2 Purpose

These rules are prescribed for the purpose of implementing the statutory provisions to assure the continuance of the merit system and to provide a modern personnel system thereby promoting efficiency in the conduct of public business and assuring fair and impartial treatment for all applicants for employment and all employees in the classified service.

4:1-1.3 Amendments

The Commission may prescribe, amend or rescind any rule at any time after holding a public hearing thereon. Public notice of the place and time of said hearing shall be published by the commission at least five business days prior to the date of said hearing.

4:1-1.4 Effective date

All rules and amendments thereto shall become effective immediately upon adoption or on such date as the commission may specify.

4:1-1.5 Repeal of prior rules

The Civil Service Rules as prescribed under the date of November 1, 1962, are hereby repealed. All rules and regulations and parts of such rules and regulations, in effect as of the adoption of these revised Civil Service rules, which are inconsistent with the provisions of these revised rules are to the extent of such inconsistency hereby repealed, but such repeal shall not affect pending procedures.

4:1-1.6 Application of rules

(a) Except as otherwise specified in any particular rules, these rules shall apply to positions and employment in the classified service.

(b) Whenever any particular rule, in describing or referring to any person, party, matter or thing, any word importing the singular number or masculine gender is used, the same shall be understood to include and to apply to several persons or parties as well as to one person or party and to females as well as males, and to bodies corporate as well as individuals, and to several matters and things as well as one matter or thing.]

4:1-1.1 Purpose

The purpose of these regulations is to prescribe the rules and procedures to provide a modern, efficient personnel system based on merit and fitness and to ensure that applicants and employees in the classified service are treated fairly and impartially. This Title shall apply only to the classified service unless specified otherwise.

[4:1-1.7] **4:1-1.2** Compliance [with rules]

All [officers] **appointing authorities and employees** [of the State and counties, municipalites, school districts and other public bodies] **subject to or** operating under the provisions of Title 11, Civil Service, New Jersey Statutes [Annotated], shall comply with [and aid in all proper ways in carrying into] the provisions of [these rules] **this Title**.

[4:1-1.8] **4:1-1.3** Records and information

[The members of the Commission, the Chief Examiner and Secretary and any employee of the Commission designated by him or it, shall be granted free access to premise and records of State agencies and local agencies under Civil Service and any] **Appointing authorities shall provide duly designated Civil Service representatives with free access to their premises and to all records and** information necessary to carry out the functions prescribed by these rules.

[4:1-1.9] **4:1-1.4** Severability

If a[ny] rule or part [thereof] **of a rule** is declared invalid for any reason, the validity of the remainder of the rules shall not be affected by such determination. [The Commission declares that it would have prescribed and adopted these rules and each part of them regardless of the fact that any rule or part thereof be declared invalid].

[4:1-1.10] **4:1-1.5** Petition for promulgating, amending or repealing rules and regulations

(a) Any interested person may petition the Civil Service Commission to promulgate, amend or repeal a rule or regulation. Such petition must state clearly and concisely:

1. The substance or nature of the rule request;
2. The petitioner's interest in the request;
3. The petitioner's reasons for the request; and
4. References to the Commission's authority to take the requested action.

(b) The proposed rule, amendment or repeal must conform to all the requirements of the Administrative Procedure Act. For example, the copy must be typewritten in a style conforming with the Administrative Code editorial specification including identification of the appropriate rule number, section heading and subsection. The Director, Division of Administrative Practices and Labor Relations, may refuse to accept any petition or rule which does not substantially comply with procedural and editorial requirements.

(c) A petition for a new rule must be designated as such, explain the reason or need for the new rule and indicate in what subchapter it properly belongs.

(d) A petition for an amended rule must include the full existing test of the rule. Material to be deleted should be bracketed and material to be added should be underlined.

(e) A petition for repealing a rule must indicate the reason why the rule is no longer useful or needed.

(f) The petition and a copy of the proposed rule or amendment or repeal should be submitted to the Director, Division of Administrative Practices and Labor Relations, who shall:

1. File a notice of the petition with the Office of Administrative Law stating the name of the petitioner, the nature of the request and the problem or purpose which is the subject of the request;
2. Send notice of the petition to the President of the Civil Service Commission who, within 30 days, shall either deny the petition stating the reasons for the denial or approve the petition for processing through the established rule-making procedures of the Department of Civil Service;
3. File notice of the action taken on the petition with the Office of Administrative Law.

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(a)

CIVIL SERVICE COMMISSION

Provisional and Temporary Appointments Interim Appointments Return of Probationary, Interim, and Provisional Employees to Their Permanent Titles

Proposed New Rule: N.J.A.C. 4:1-14.6 Proposed Amendment: N.J.A.C. 4:2-14.1 and 4:3-14.2

Authorized By: Civil Service Commission, Peter J. Calderone, Assistant Commissioner, Department of Civil Service.
Authority: N.J.S.A. 11:1-7a, 11:4-2; 11:5-1, 11:21-1.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 20, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

The Civil Service Commission thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-277.

The agency proposal follows:

Summary

New rule N.J.A.C. 4:1-14.6 reflects a Civil Service Commission decision that was upheld by the Superior Court, In The Matter of Joseph S. Viviani, A-2778-81-T2 (App. Div. June 7, 1982). In this case, an employee who had been granted an extended leave of absence requested reinstatement to the title he had held at the time of his leave. However, while he was on his leave of absence, another employee was appointed to fill the vacated position and was subsequently granted permanent status. Other employees had also been moved up accordingly. The request for return to active status precipitated a dispute concerning who had rights to the title, the original incumbent or the interim incumbent. It was decided that the intent to return to employment is inherent in a request for a leave of absence; therefore, the original incumbent was returned to his title. The interim incumbent's permanent appointment was deemed conditional and he was returned to his last permanent title. Each person promoted and granted permanent status as a result of the leave of absence was also considered to have held that position conditionally and was returned to his or her last permanent title.

The Commission, in its decision, acknowledged that it had an obligation to prepare clear regulations on this matter. Therefore proposed N.J.A.C. 4:1-14.6 was published for comment in the New Jersey Register on December 5, 1983, at 15 N.J.R. 1975. Comments were submitted by the Departments of Health, Labor and Transportation indicating that the rule needed clarification and strengthening. As a result of these comments, subsections (c) and (d) have been added to the proposed rule and the rule is being republished for comment.

Proposed (c) states that a position (title) must be reserved for the incumbent on leave of absence. This position (title) may be filled but on an interim basis only.

Proposed (d) provides that interim appointment must be made from an eligible list whenever possible. Because the interim appointment does not infer permanent status, the employee's name is retained on the list assuring his or her availability for regular appointment.

The balance of the rule has some minor language revisions but is substantively the same as when originally published.

N.J.A.C. 4:2-14.1 and 4:3-14.2 are as originally published.

Social Impact

The proposed new rule and amendments insure an employee on leave of absence that he or she may at any time return to active status in his or her permanent title. It also notifies an employee who has been appointed to a new title as a result of a leave of absence that the appointment does not guarantee rights to that title but is for the interim period pending the return of the original incumbent.

Economic Impact

This rule has no economic impact since it neither creates nor eliminates any cost.

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

4:1-14.6 Interim appointments

(a) In State service, an interim appointment applies to a specific position. In local service, an interim appointment applies to a specific title.

(b) Any appointment to a specific position (title) which is currently held by a permanent employee who is on an approved leave of absence shall be considered an interim appointment. The interim appointment shall remain in effect only during the period of time the permanent employee is on leave of absence. At the end of the leave period, the interim appointee shall have rights to return to his or her permanent title.

(c) When a permanent employee is on an approved leave of absence, the appointing authority shall reserve a position (title) as being held by the employee. The appointing authority may, at its discretion, leave the position (title) vacant or fill it by interim appointment.

(d) If an interim appointment has been made or is to be made and a complete eligible list exists or is promulgated for that title, appointment shall be made from the list. The appointment shall not cause the appointee's name to be removed from the eligible list. See N.J.A.C. 4:1-12.11.

(e) The interim appointee shall continue to accrue seniority in his or her permanent title. See N.J.A.C. 4:1-8.4.

(f) In case of layoff, the interim appointee's layoff rights shall be determined from his or her permanent title.

(g) A person who does not possess the minimum qualifications may not receive an interim appointment.

(h) Appointing authorities shall advise interim appointees of their rights under an interim appointment.

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4:2-14.1 Return of probationary, **interim,** and, provision-al[ly appointed] employees to their permanent titles

(a) This section describes the procedure for returning displaced employees, probationary, **interim,** or provisional, to their permanent titles.

(b) When an employee with [a] permanent status in a [lower] title **at the same or lower class level** fails the working test period in [a higher] **another** title, is displaced by a certification, **is displaced from his/her interim appointment,** or has his/her **interim or** provisional appointment terminated by the appointing authority, s/he will be returned to a position in the [lower] **former** permanent title in the same organizational unit. The organizational unit is the department or legally constituted authority, office or commission, as appropriate.

(c) The appointing authority and affected employee shall resolve the situation, if possible, through the Level 1 procedures before proceeding to Level 2.

1. Level 1: Ordinary procedure for returning displaced employees:

i. The operating agency shall:

(1) Reassign the displaced employee to a vacant position in his/her permanent title; or

(2) Terminate a provisional employee with no permanent status serving in the displaced employee's permanent title and assign the displaced employee to the vacated position; or

(3) Return an employee serving provisionally [pending open competitive exam who has permanent status in a title lower than that of the displaced employee,] **in the permanent title of the displaced employee** to his/her permanent title and assign the displaced employee to the vacated position.

Example:

X is serving as a probationer or provisionally in a Supervising Research Analyst title and has permanent status in the lower title of Principal Research Analyst.

Y is serving provisionally as Principal Research Analyst and has permanent status in the lower title of Senior Research Analyst.

Z is serving provisionally as a Senior Research Analyst. Z has no permanent status.

X is displaced.

Z is terminated since s/he has not permanent status.

Y is returned to his/her permanent status title as Senior Research Analyst as vacated by 2., leaving a position as Principal Research Analyst free.

X, the originally displaced employee, is then assigned to the vacant position as Principal Research Analyst.

2. Level 2: Optional procedures for returning displaced employees.

i. The operating agency may offer the employee other positions for which s/he qualifies in addition to Level 1 positions. This may be in the same or different title or series.

ii. The displaced employee may voluntarily accept appointment to a position in the same or another title for which s/he qualifies in the same or another organizational unit. The status and salary of an employee who exercises this option shall be determined in accordance with Department of Civil Service rules and policy.

(d) Enforcement of level 1 and level 2 procedures:

1. If the operating agency offers other options, in addition to level 1 procedures, the employee may accept the level 1 or level 2 choices. If the operating agency offers level 1 procedures and no level 2 options, the employee must accept the level 1 procedures.

(e) Level 3: Layoff procedures:

1. If the appointing authority and employee cannot utilize any of the above options, the employee must be apprised of his/her layoff, demotional and reemployment rights pursuant to N.J.A.C. 4:1-16.5 and layoff procedures will be instituted. Layoff (reduction-in-force) procedures are to be followed as described in N.J.A.C. 4:2-16.2.

2. If it is necessary to follow reduction-in-force procedures and a certification is outstanding, the operating agency shall request, in writing, that the [Chief Examiner and Secretary] **Department of Civil Service** extend the disposition of the certification for 45 days or longer to allow for the required 45 day notice of layoff.

4:3-14.2 Return of probationary, **interim,** and, provision-al[ly appointed] employees to their permanent titles

(a) This [rule] **section** describes the procedure for returning displaced employees, probationary, **interim,** or provisional, to their permanent titles.

(b) When an employee with [a] permanent status in a [lower] title **at the same or lower class level** fails the working test period in [a higher] **another** title, is displaced by a certification, **is displaced from his/her interim appointment,** or has his/her **interim or** provisional appointment terminated by the appointing authority, s/he will be returned to a position in the [lower] **former** permanent title in the same organizational unit. The organizational unit is the department or legally constituted authority, office or commission, as appropriate.

(c) The appointing authority and affected employee shall resolve the situation, if possible, through the level 1 procedures before proceeding to level 2.

1. Level 1: Ordinary procedure for returning displaced employees. The operating agency shall:

i. Reassign the displaced employee to a vacant position in his/her permanent title; or

ii. Terminate a provisional employee with no permanent status serving in the displaced employee's permanent title and assign the displaced employee to the vacated position; or

iii. Return an employee serving provisionally [pending open competitive exam who has permanent status in a title lower than that of the displaced employee] **in the permanent title of the displaced employee** to his/her permanent title and assign the displaced employee to the vacated position.

iv. Example: X is serving as a probationer or provisionally in a supervising research analyst title and has permanent status in the lower title of principal research analyst.

Y is serving provisionally as principal research analyst and has permanent status in the lower title of senior research analyst.

Z is serving provisionally as a senior research analyst. Z has no permanent status.

(1) X is displaced.

(2) Z is terminated since s/he has no permanent status.

(3) Y is returned to his/her permanent status title as senior research analyst as vacated by (2) above, leaving a position as principal research analyst free.

(4) X, the originally displaced employee, is then assigned to the vacant position as principal research analyst.

2. Level 2: Optional procedures for returning displaced employees.

i. The operating agency may offer to the employee other positions for which s/he qualifies in addition to level 1 positions. This may be in the same or different title or series.

ii. The displaced employee may voluntarily accept appointment to a position in the same or another title for which s/he

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qualifies in the same or another organizational unit. The status and salary of an employee who exercises this option shall be determined in accordance with Civil Service rules and policy.

(d) If the operating agency offers other options, in addition to level 1 procedures, the employee may accept the level 1 or level 2 choices. If the operating agency offers level 1 procedures and no level 2 options the employee must accept the level 1 procedures.

(e) Level 3: Layoff procedures:

1. If the appointing authority and employee cannot utilize any of the above options, the employee must be apprised of his/her layoff,[.D] **d**emotional and reemployment rights pursuant to N.J.A.C. 4:1-16.5 and layoff procedures will be instituted. Layoff (reduction-in-force) procedures are to be followed as described in N.J.A.C. 4:3-16.2.

2. If it is necessary to follow reduction-in-force procedures and a certification is outstanding, the operating agency shall request, in writing, that the [Chief Examiner and Secretary] **Department of Civil Service** extend the disposition of the certification for 45 days or longer to allow for the required 45 day notice of layoff.

(a)

CIVIL SERVICE COMMISSION

Position Classification and Reclassification Special Police Officers

Proposed Repeal: N.J.A.C. 4:3-6.5

Authorized By: Civil Service Commission, Peter J. Calderone, Assistant Commissioner, Department of Civil Service.

Authority: N.J.S.A. 11:1-7a, 11:5-1a.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 20, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

The Civil Service Commission thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-276.

The agency proposal follows:

Summary

The current rule provides guidelines for converting positions from Special Police Officer to Police Officer. The New Jersey Supreme Court, in Belmar Policemen's Benevolent Ass'n v. Belmar, set forth a set of guidelines which render the current rule obsolete. Therefore the rule is proposed for repeal.

Social Impact

Since Supreme Court decisions form the basis by which all municipalities must abide, the continued existence of the rule, which is contrary to the above decision, would be improper. Therefore the proposal will eliminate confusion and have a positive social impact. Further social impact would have to be determined by the Court and affected agencies since the decisions supercede Civil Service rules.

Economic Impact

There is no expected economic impact as a result of the proposed repeal. Any economic impact would have to be determined by the affected parties since these guidelines are no longer under the aegis of the Department of Civil Service.

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

[4:3-6.5 Policy regarding determination of position as classified police officer or as unclassified special police officers] **(Reserved)**

[(a) This section sets forth the policy of the Department of Civil Service regarding the determination of whether a position is that of a classified full or part-time police officer, or that of an unclassified special police officer.

(b) Policy:

1. Where an individual is appointed by a municipality to perform the regular responsibilities of a municipal police department on a continuous basis or on full or part time basis, that officer shall be considered to be a police officer and in the classified service, even where the appointment was initially stated to be that of a special police officer in the unclassified service. Such regular responsibilities of a municipal police department include, but are not limited to, general police work, police dispatching and routine traffic control.

2. Special police officers may not be used to perform on a full or part-time basis the usual and ordinary responsibilities of a regular member of a municipal police department. The use of special police officers as dispatchers or school traffic guards, or for regular spectator and traffic control or other police related activities on a regular basis is impermissable unless emergency or exceptionally unusual circumstances exist. An unusual condition is defined to include unpredictable events such as major fire, riot or natural disaster. In addition, certain predictable situations are also covered, such as seasonal influx of visitors in a resort community, and crowd and traffic control at regularly scheduled sporting events, rock concerts and parades. Therefore, special police officers may be used only in individual cases for intermittent or unusual crowd or traffic control, or to provide extra security supplementing the regular police force.

(c) This policy is based upon Formal Opinion No. 22-1977 of the Attorney General, dated December 1, 1977, and the statute and cases cited therein.]

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(a)

CIVIL SERVICE COMMISSION

Position Classification and Reclassification Unclassified Appointment By Assignment Judges

Proposal Repeal: N.J.A.C. 4:3-6.8

Authorized By: Civil Service Commission, Peter J. Calderone, Assistant Commissioner, Department of Civil Service.
Authority: N.J.S.A. 11:1-7a, 11:5-1a.

Interested persons may submit in writing, data, views of arguments relevant to the proposal on or before June 20, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

The Civil Service Commission thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-275.

The agency proposal follows:

Summary

The proposed repeal states the policy and guidelines in accordance with the provisions of the Rule of the Court R.1:33-3(b) concerning the unclassified appointment of individuals to assist Assignment Judges. The proposed repeal reflects the New Jersey Supreme Court's recently revised rule, R.1:33-3(b), the central provisions of which are now contained in R.1:33-4. Additionally, the Court through the Administrative Office of the Courts, has instituted a number of procedural guidelines and modifications that will provide for the monitoring, review and approval of all such appointments.

Social Impact

The proposal will have no social impact the Administrative Office of the Courts has instituted guidelines and monitoring procedures for appointing people to unclassified titles in order to assist Assignment Judges.

Economic Impact

The proposal is expected to have no economic impact. However, any economic impact that may occur would have to be determined by the Administrative Office of the Courts.

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

[4:3-6.8 Guidelines on designations by Assignment Judges (Including Sheriff's Office employees)] **(Reserved)**

[(a) This section is issued to establish guidelines to comply with the New Jersey Rules of the Court (R.1:33-3(b) where an Assignment Judge designates Assignment Clerks and other assistants.

(b) The Assignment Judge of any county may designate, to assist him/her and to serve at his/her pleasure, from among the court clerks and other employees of the courts in the county, such Assignment Clerks and other assistants as s/he may deem necessary or desirable. Authority to make such designations is vested in the Judge pursuant to R.1:33-3(b) of the New Jersey Rules of Court.

(c) To comply with the Rules of Court within the parameters set forth by the Attorney Generals Office, the following must be adhered to:

1. Appointments pursuant to R.1:33-3(b) can be made:

i. To positions which would ordinarily be placed in the classified service; and

ii. Without limitation in number of such appointments.

2. Appointments pursuant to R.1:33-3(b) may be made from among employees of the various sheriff's officers to the position of sergeant-at-arms.

3. Appointments shall be made only to positions which work directly with the Judges and perform duties which are essential to the Judge's own responsibilities.

(d) Limitations:

1. To date the Court Rule has been limited to appointments, as prescribed in (c) above, from among employees of the court. Sheriff's office employees have been considered to be employees of the court.

2. In the event appointments are attempted from any other department within the county, the Civil Service Commission must determine whether such appointment falls within the purview of R.1:33-3(b). To initiate such a determination, all pertinent information must be forwarded to the Director, Division of Administrative Practices and Labor Relations, Department of Civil Service.]

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Retirement Community Full Disclosure Requirements
Readoption

Proposed Readoption: N.J.A.C. 5:17
Proposed Amendments: N.J.A.C. 5;17-1.9, 3.10, 6.3 and 6.4
Proposed Repeal: N.J.A.C. 5:17-1.1 through 1.7, 2.1 through 2.13, 2.15, 2.17 through 2.21, 3.1 through 3.5, 4.8 though 4.16, 6.5 through 6.10 and Appendix

Authorized By: William M. Connolly, Director, Division of Housing and Development, Department of Community Affairs.

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Authority: N.J.S.A. 45:22A-11.
Public Hearing: May 30, 1984.

Interested persons may submit, in writing, data, view or arguments relevant to the proposal on or before June 20, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Division of Housing and Development
CN 804
Trenton, N.J. 08625

A **public hearing** on this proposal will be held on May 30, 1984 at 2:00 P.M. at the offices of the Bureau of Construction Code Enforcement, 3131 Princeton Pike, Lawrenceville, N.J. Persons wishing to speak at this hearing are requested to give prior notice of their desire to testify to the Administrative Practice Officer at the address given above.

At the close of the period for comments, the Department of Community Affairs may adopt this proposal, with minor changes not in violation of the rulemaking procedure at N.J.A.C. 1:30-3.5. Pursuant to Executive Order 66(1978), these rules would otherwise expire on July 1, 1984. The readoption of these rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of their readoption. The amendments to the readoption become effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-279.

The agency proposal follows:

Summary

The Department of Community Affairs proposes to readopt those sections of the Retirement Community Full Disclosure Requirements (N.J.A.C. 5:17) which the Department finds to still be necessary for the protection of persons purchasing property in retirement communities and subdivisions subject to the Retirement Community Full Disclosure Act (P.L. 1969, c.215; N.J.S.A. 45:22A-1 et seq.).

As of November 22, 1978, the Retirement Community Full Disclosure Act was superseded by the Planned Real Estate Development Full Disclosure Act (P.L. 1977, c.419; N.J.S.A. 45:22A-21 et seq.). However, section 21 of the Planned Real Estate Development Full Disclosure Act (N.J.S.A. 45:22A-41) expressly provides that any portion of a retirement community or subdivision registered with the Division of Housing and Urban Renewal (now known as the Division of Housing and Development) prior to the effective date of the Act is to remain under the jurisdiction of the Retirement Community Full Disclosure Act.

Investigation by the Planned Real Estate Section of the Bureau of Construction Code Enforcement, the unit responsible for enforcing both of the full disclosure Acts, indicates that there remain comparatively few properties in the State subject to the Retirement Community Full Disclosure Act. Some of these are model homes which are still being used to sell homes which are themselves in subdivisions subject to the Planned Real Estate Development Full Disclosure Act. However, as long as even one of these houses continues to be subject to the Retirement Community Full Disclosure Act, those rules in N.J.A.C. 5:17 that do not relate to new filings for registration will have to stay in effect.

In reviewing N.J.A.C. 5:17, the Division has considered the necessity of each section. Those sections that have to do with registration procedures or requirements are proposed for repeal because no new registration has been possible since November 22, 1978. Provisions dealing with definitions, responsibility for administration, revocation of provisional registration, amendment of the statement of the record, public inspection and copies of the statement of the record, public offering statement delivery and contract requirements, advertising and administrative remedies and procedures continue to be relevant to the needs of any potential purchaser. Where necessary, addresses and designation of the responsible administrative unit have been changed. Rules concerning administrative hearings have been changed to conform to the requirements of the Office of Administrative Law.

Social Impact

Failure to readopt N.J.A.C. 5:17 would not affect the enforceability of the Retirement Community Full Disclosure Act. It would, however, leave developers, potential purchasers and the Division without the benefit of the specific procedural rules that the regulations provide. It is in the interest of all parties that requirements be clearly stated in detail and it is for this reason that the regulations of continued applicability remain necessary.

The regulations in the past have provided clear standards to implement the Act and have proved useful in avoiding unnecessary problems and confusion and have provided full and fair disclosure of general promotional plans.

Economic Impact

By continuing the existing requirements, the Division will save developers the legal and administrative expenses that would result if new and different requirements were to be imposed, or if the chapter were to expire and there were to be uncertainty as to what was or was not required.

The chapter's economic cost in the past can not be readily quantified but it is a reasonable assumption that the proposal resultant benefits outweigh the costs incurred in the implementation of the Act.

Full text of the rules to be readopted and to be repealed appear in the New Jersey Administrative Code at N.J.A.C. 5:17.

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

5:17-1.9 Administration

The Act shall be administered by the Division of Housing and [Urban Renewal]. **Development through the Bureau of Construction Code Enforcement.** All correspondence and inquiries may be addressed to the [Director, Division of Housing and Urban Renewal] **Bureau of Construction Code Enforcement,** Department of Community Affairs, [P.O. Box 2768] **CN 805**, Trenton, New Jersey 08625.

5:17-3.10 Public inspection of Statement of Record

(a) (No change.)

(b) Every such Statement of Record shall be available for inspection by any person during ordinary business hours at the **offices of the** [Division of Housing and Urban Renewal, 28 West State Street, Trenton] **Bureau of Construction Code**

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Enforcement, 3131 Princeton Pike, Lawrenceville, New Jersey.

(c) (No change.)

5:17-6.3 Rights to hearing

Any person aggrieved by such order as may be issued under [Section 6.2 (Administrative orders on complaint) of this Chapter] **N.J.A.C. 5:17-6.2** shall be entitled to a hearing before [a hearing officer designated by the Director] **the Office of Administrative Law**.

5:17-6.4 Request for a hearing

[(a)] An application for a hearing must be filed with the Director within 15 business days of the receipt by the applicant of the notice or order complained of. [Such application must be accompanied by a statement of issues of law and of fact which the applicant asserts are germane to the application. All other interested parties must file with the Director similar statements of issues at least five days prior to a hearing. Copies of all such statements shall be provided to all parties of interest.]

(b)-(c) (Delete.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Subcodes

Proposed Amendments: N.J.A.C. 5:23-3.14, 3.15, 3.16, 3.17
Proposed New Rule: N.J.A.C. 5:23-1, 3.20

Authorized By: John P. Renna, Commissioner, Department of Community Affairs.
Authority: N.J.S.A.52:27D-123, and -124.
Public Hearing: May 30, 1984.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 20, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Division of Housing and Development
CN 804
Trenton, New Jersey 08625

A **public hearing** on the proposed adoption of the Mechanical Subcode will be held on May 30, 1984 at 10:00 A.M. at the offices of the Bureau of Construction Code Enforcement, 3131 Princeton Pike, Lawrenceville, N.J. Persons wishing to testify are requested to give advance notice to the Administrative Practice Officer, at the address listed above, so that they may be placed on the schedule of witnesses.

The Department of Community Affairs thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-280.

The agency proposal follows:

Summary

The proposal amends N.J.A.C. 5:23-3.14, 3.15, 3.16 and 3.17 to bring them into conformity with the latest editions of the respective adopted subcodes. These are the BOCA/National Building Code/1984, the National Standard Plumbing Code/1983 and the National Electrical Code/1984. In addition, the BOCA Basic/National Mechanical Code/1984, including all subsequent revisions and amendments thereto, is adopted as the mechanical subcode.

Social Impact

N.J.S.A. 52:27D-123 provides that "the initial adoption of a model code or standard as a subcode shall constitute adoption of any subsequent revisions or amendments thereto." The changes in the administrative regulations are necessary to avoid confusion in the use of the revised subcode texts. The mechancial subcode proposed for adoption is to be enforced by the existing subcode officials and not by any new mechanical subcode official.

Economic Impact

The proposed amendments will have no apparent economic impact.

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

5:23-3.14 Building subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c. 217, the commissioner hereby adopts the model code of the Building Officials and Code Administrators International, Inc., known as the "BOCA Basic/**National** Building Code/[1981] **1984**," including all subsequent revisions and amendments thereto. This code is hereby adopted by reference as the building subcode for New Jersey subject to the modifications stated in subsection (b) of this section.

i. Copies of this code may be obtained from the sponsor at: BOCA, International, [17926 South Halsted Street, Homewood, Illinois 60430] **4051 W. Flossmoor Road, Country Club Hills, Illinois 60477**.

ii. "The BOCA **Basic/National** Building Code/[1981] **1984**," including all subsequent revisions and amendments thereto, may be known and cited as the "building subcode."

[2. The 1983 Accumulative Supplement to the BOCA Basic Building Code/1981 is adopted by reference with modifications as cited in (c) below as part of the building subcode for New Jersey.]

(b) The following articles or sections of the building subcode are modified as follows:

1. (No change.)

2. The following amendments are made to article 2 of the building subcode, entitled "Definitions," section 201.0-general definitions

i. (No change.)

ii. The definition of the term "approved agency" is amended to add the phrase "or other authority having jurisdiction in accordance with the regulations" after the word "official" on line 3;

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iii. The term and definition of "approved material, equipment and methods" is deleted;

[ii.] **iv.** The term and the definition of "approved rules" is deleted;

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

[iv.] **vi.** The definition of the term "building official" is deleted and is redefined herein and throughout the subcode as the "building subcode official" as defined in N.J.A.C. 5:23-1.4 **unless indicated otherwise**; [Also term "fire official" employed throughout the subcode is delete and substituted in lieu thereof, the term "fire protection subcode official;"]

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

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

[vii.] **ix.** The definition of the term "child day care center" is amended to add the phrase "and DCA Interpretation No. 5A" after the term "Section [302.5] **304.0**" on line 4.

[viii. The definition of the term "controlled construction" is deleted. See subchapter 2 of this subchapter.]

[ix. The definition of the term "controlled materials procedure is deleted. See subchapter 2 of this chapter.]

x. (No change in text.)

xi. The definition of the term "dwellings-boarding house" is deleted, and substitutute in lieu thereof, the definition of the term "boarding house" found in N.J.S.A. 55:13B-3;

[xi.] **xii.** (No change in text.)

[xii. The definition of the term "five limits" is amended to delete the words "this code" and in lieu thereof, substitute "the regulations";

xiii. (No change.)

xiv. The term "mobile unit" is deleted and in lieu thereof, substitute the term "mobile home." Further, the definition is deleted, and substitute in lieu thereof, the definition found in N.J.A.C. 5:23-1.4 **for manufactured home;**

xv.-xviii. (No change.)

3. The following amendments are made to article 3 of the building subcode entitled "Use Group Classification;"

i. **(Delete)**

[ii.] **i.** Section [308.5] **309.5** is deleted in its entirety.

4. The following amendments are made to Article 4 of the building subcode entitled "Types of Construction Classification";

i. Section 401.4.3 is amended to delete the phrase "and plumbing codes listed in Appendix A" and substitute in lieu thereof, the phrase "code listed in Appendix A and the plumbing subcode";

ii. Section 401.4.4 is amended to delete the phrase "NFiPA 70 listed in Appendix A" and substitute in lieu thereof, the phrase "the electrical subcode".

[4.] **5.** The following amendments are made to article 5 of the building subcode entitled "General Building Limitations"

i. [Section 501.1 is amended to delete the term "building official" on line 2, and substitute in lieu thereof, "municipality" and delete the word "may" on line 2 and substitute in lieu thereof, "shall."] **Section 505.1 is amended to delete the phrase "Sections 103.0 and 505.2" and substitute in lieu thereof, N.J.A.C. 5:23-2".**

ii. [Section 501.2 is amended to delete the phrase "are described as bounded by (to be specified)," and insert in lieu thereof, the phrase "shall be as estallished by the municipality by ordinance pursuant to N.J.A.C. 5:23-4."] **Section 505.2 is amended to delete the phrase "this code" on line 5 and substitute in lieu thereof, "the regulations";**

iii. [Section 504.1 is amended to delete the term "Section 103.0," and substitute in lieu thereof, the phrase "N.J.A.C. 5:23-2."] **Section 510.1 is amended to delete the phrase "building official" on line 1 and substitute in lieu thereof, "construction official";**

iv. Section [514.1] **511.1** is amended to read as follows: "The construction official may issue a permit for temporary construction. Such permits shall be limited as to time of service, but such temporary construction shall not be permitted for more than one year."

v. Section [514.3] **511.3** is amended to delete the phrase "or as directed by a decision of the board of appeals" after the word "discretion";

vi. Sections [515.0] **512.0** comprised of sections [515.1] **512.1** through [515.11] **512.4.1** is deleted in its entirety [with the exception of section 515.4.4 (Doorway grading) which shall remain intact.];

vii. Section [516.1] **513.1** is amended to delete the phrase "subject to the approval of the board of appeals" on line 5.

[5.] **6.** The following amendments are made to Article 6 of the building subcode entitled "Special Use and Occupancy Requirements:"

i.-xxv. **(Deleted)**

i. Section 607.2 is amended to delete the term "NFiPA 70" and substitute in lieu thereof, "the Electrical Subcode".

ii. Section 609.2.5 is amended to delete the phrase plumbing code listed in Appendix A" and substitute in lieu thereof, "the Plumbing Subcode".

iii. Section 612.1 is amended to delete the phrase "the approved rules" on line 2;

iv. Section 612.4 is amended to delete the phrase "section 107.4 of this code" and substitute in lieu thereof, "N.J.A.C. 5:23-2".

v. Section 613.0 is amended to delete the word "units" and in lieu thereof, substitute the words "dwelling parks".

vi. Sections 613.1 and 613.2 are deleted in their entirety.

vii. Sections 613.3 and 613.3.1 are amended to delete the words "unit" and "units" wherever they appear and substitute in lieu thereof, the words "home" and "homes".

viii. Section 614.5 is amended to add the phrase "to comply with the requirements of the Electrical Subcode" after the word "grounded" on line 1.

ix. Sections 616.6 and 616.6.2 are amended to add the phrase "in accordance with the plumbing subcode" after the words "equipment" and "property" respectively.

x. Section 616.6.1 is deleted.

xi. Section 616.9 is amended to delete the words "governing body" on line 11 and substitute in lieu thereof, "construction official".

xii. Sections 618.9.1 and 620.1.4 are amended to delete the phrase "Section 2007.0" and substitute in lieu thereof, "the Electrical Subcode".

[6.] **7.** The following amendments are made to article 7 of the building subcode entitled ["Light, Ventilation and Sound Transmission Control;"] **"Interior Environmental Requirements".**

i.-x. **(Deleted)**

i. Section 702.1 is deleted.

ii. Section 702.2 is amended to add the phrase "in accordance with N.J.A.C. 5:23-2.3" after the words "Sections 703.0 and 708.0" on line 5.

iii. Section 710.7 is amended to delete the phrase "code listed in Appendix A" and in lieu thereof, substitute "subcode".

iv. Section 711.1 is amended to delete the phrase "of the minimum dimensions herein prescribed", and to delete sections 711.1.1 and 711.2.

v. Section 713.1.1 is amended to delete the phrase "in accordance with the approved rules".

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vi. Section 713.3.3 is amended to delete the phrase "and the approved rules".

[7.] **8.** The following amendments are made to Article 8 of the building subcode entitled "Means of Egress":

i.-v. (No change.)

vi. Section 815.3 is amended to [add the phrase "Ramps for barrier-free accessibility shall be in accordance with the Barrier-Free Subcode" after the number "815" on line 2.] **delete lines 3 through 7 and substitute in lieu thereof, "Ramp landings for barrier-free accessibility shall be in accordance with the Barrier-Free Design Regulations."**

[vii.] **x.** (No change in text.)

vii. Section 815.4 is amended to delete the third sentence and substitute in lieu thereof, "Ramp landings for barrier-free accessibility shall be in accordance with the Barrier-Free Design Regulations."

viii. Section 815.5 is amended to delete the third sentence and substitute in lieu thereof, "Ramp guards and handrails for barrier-free accessibility shall be in accordance with the Barrier-Free Design Regulations".

ix. Section 818.7.7 is amended to delete the words "Sections 2007.0 and 618.9.1" and substitute in lieu thereof, "the Electrical Subcode and Section 618.9.1."

xi. Sections 823.4 and 824.4 are amended to delete the words "Section 2006.0" and substitute in lieu thereof, "this subcode".

[viii.] **xii.** Section 825.6 is amended to delete the term "Section [515.0] **512.0"** and substitute in lieu thereof, the "Barrier-Free [Subcode] **Design Regulations**".

[8.] **9.** The following amendments are made to Article 9 of the building subcode, entitled "Structural Loads and Stresses":

[i.] **ii.** (No change in text.)

i. Section 901.3 is amended to delete the phrase "the approved rules" on lines 2 and 3 and substitute in lieu thereof, "this code."

[ii.] **iii.** Section 905.4 is amended to delete the words "sections 103.3" and substitute in lieu thereof, "N.J.A.C. 5:23-[2.4] **2.3**".

iv. Section 919.1 is amended to delete the phrase "the approved rules" on line 5 and substitute in lieu thereof, "this code."

[9.] **10.** The following amendments are made to Article 11 of the building subcode, entitled "Materials and Tests":

i.-ii. **(Deleted)**

i. Section 1101.1 is amended to delete the words "Section 110.0" and substitute in lieu thereof, "the regulations."

ii. Section 1102.6 is amended to delete the words "Section 2002.0" on line 6, the phrase "and plumbing codes listed in Appendix A" on lines 8 and 9 and the phrase "the approved rules" on line 10 and substitute in lieu thereof, "the electrical subcode", "code listed in Appendix A and the plumbing subcode" and "the regulations" respectively.

[10.] **11.** The following amendments are made to Article 13 **of the building subcode**, entitled "Building Enclosures, Walls and Wall Thickness":

i. (No change.)

ii. Section [1315.4.1] **1312.4.1** is amended to delete the phrase "at or below the area to be protected . . . in Appendix A" and substitute in lieu thereof, "in accordance with the plumbing subcode."

iii. Section [1317.4] **1315.4** is deleted.

[11.] **12.** The following amendments are made to Article 14 of the building subcode, entitled "Fire-resistive Construction Requirements":

i. (No change.)

ii. Section 1405.8.1 is amended to delete the phrase "NFiPA 70 listed in Appendix A" and substitute in lieu thereof, "the electrical subcode".

[ii.] **iii.** Section 1427.2 is amended to delete the reference to "section 103.0" and substitute in lieu thereof, "N.J.A.C. 5:23-[2.4] **2.3**".

12. **(Deleted)**

13. The following amendments are made to Article 16 of the building subcode entitled "Mechanical Equipment and Systems":

i. Section 1603.0 **and comprising section 1603.1** is deleted in its entirety.

ii. Section 1604.0 **and comprising section 1604.1** is deleted in its entirety.

14. The following amendments are made to Article 17 of the building subcode entitled "Fire Protection Systems":

i. Section 1700.3 is amended to [delete the words "fire department on lines 5 and 8, and in lieu thereof, substitute "fire protection subcode official."] **add the phrase "and fire protection subcode official" after the words "fire department" on lines 5 and 8.**

ii. (No change.)

iii. Section 1701.1 is amended to delete the word "department" on line 2 and in lieu thereof, substitute "fire protection subcode official"; and to delete the word "since" on line 3; **and in lieu thereof, substitute the word "If".** [and to delete the words "fire department" on line 3 and in lieu thereof, substitute "fire protection subcode official;" and further to delete all wording occurring after the word "buildings" on line 4.]

iv.-ix. (No change.)

x. Section [1716.1] **1716.7** is amended to delete the term "department" on line 3 and in lieu thereof, substitute "fire protection subcode official".

xi. Section 1716.8 is amended to delete the words "Section 2006.0" on line 2 and substitute in lieu thereof, "the electrical subcode".

[xi.] **xii.** (No change in text).

[xii.] **xiv.** (No change in text.)

xiii. [Section 1718.2 is amended to delete the words "fire department" on lines 3 and 4 and in lieu thereof, substitute "fire protection subcode official."] **Section 1717.6 is amended to delete the words "Section 2006.0" on line 2 and substitute in lieu thereof, "the electrical subcode".**

15. The following amendments are made to Article 18 of the building subcode, entitled "Precautions During Building Operations":

i.-iv. (No change.)

v. Section 1808.2 is amended to delete the words "the approved rules" and in lieu thereof, substitute "N.J.A.C. 5:23-[2.17] **2.14**";

vi.-viii. (No change.)

16. The following amendments are made to Article 19 of the building subcode entitled "Signs":

i.-iii. (No change.)

iv. Section 1907.3 is amended to delete the term "[NFPA] **NFiPA** 70 listed in Appendix A" and substitute in lieu thereof, the term "**the** electrical subcode";

v. Section 1914.1 is amended to delete the term "[NFPA] **NFiPA** 70 listed in Appendix A" and substitute in lieu thereof, the term "**the** electrical subcode".

17. The following amendments are made to Article 20 of the building subcode entitled "Electrical Wiring, [and] Equipment **and Systems**":

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i. Article 20 comprising sections 2000.1 through [2005.3] **2007.3** of the building subcode is deleted in its entirety.

18. The following amendments are made to Article 21 of the building subcode entitled "Elevator, Dumbwaiter and Conveyor Equipment, Installation and Maintenance":

i.-iii. (No change.)

iv. Sections **2101.1, 2101. 2, 2101.3,** 2103.1, 2103.2, [and] 2103.3, **2104.4, 2104.5 and 2104.6** are amended to delete the term "building official" and substitute in lieu thereof, "construction official";

v.-vi. (No change.)

vii. (Delete)

19. (No change.)

20. (Delete)

[21.] **20.** The following amendments are made to Article [25] **24** of the building subcode entitled "Energy Conservation":

i. Article [25] **24** comprising sections [2500.1] **2400.1** through [2506.2] **2406.2** is deleted in its entirety.

[22.] **21.** The following amendments are made to Appendix A of the building subcode entitled "Reference Standards":

i. (No change.)

ii. Under the subheading "BOCA," delete the following titles:

(1) [Basic Fire Prevention Code] **Basic/National Plumbing Code**

(2) [Basic Plumbing Code] **Basic/National Existing Structures Code**

[(3) One and Two Family Dwelling Code;]

[(4) Energy Conservation in New Building Construction for...]

[iii.] **iv.** (No change in text.)

iii. Under the subheading "CABO," delete the following titles:

(1) One and Two-Family Dwelling Code

(2) Model Energy Code.

(c) (Delete)

5:23-3.15 Plumbing subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c. 217, the commissioner hereby adopts the Model Code of the National Association of Plumbing-Heating-Cooling Contractors, known as "The National Standard Plumbing Code[;1980]/**1983**", including all subsequent revisions and amendments thereto, as the plumbing subcode [of] **for** New Jersey.

i. (No change.)

2. "The National Standard Plumbing Code[;1980]/**1983**", including all subsequent revisions and amendments thereto, may be known and cited as "the plumbing subcode."

3. **(Delete)**

(b) The following pages, chapters, [or] sections **or appendices** of the plumbing subcode are amended as follows:

[1.] **(Delete)**

[2.] **1.** (No change in text.)

[3.] **2.** Chapter 1 of the plumbing subcode, entitled "Definitions," is amended as follows:

i. (No change.)

ii. The definition of the term "approved" is amended to add after the word "authority" on line 3, the words "as defined in N.J.A.C. 5:23-3.7."

iii.-viii. (No change.)

[4.] **3.** Chapter 2 of the plumbing subcode, entitled "General Regulations," is amended as follows:

i.-iii. (No change.)

iv.-v. Redesignated as **v.-vi.** (No change in text.)

iv. The definition of the term "building classification" is amended to delete the term "administrative authority" and substitute in lieu thereof, the term "building subcode official."

[vi.] **vii.** Section 2.16 is amended to insert the number "Forty-two" in the blank space under item (a), and to insert the number "Twenty-four" in **the** blank space under item (b). **Under item (c), delete the words "section 3.12.1" and substitute in lieu thereof, the words "N.J.A.C. 5:23-2.9."**

vii.-viii. Redesignated as viii.-ix. (No change in text.)

[5.] **4.** Chapter 3 of the plumbing subcode, entitled "Materials," is amended as follows:

i. Section 3.1.1 is amended in the heading to delete the word "minimum" **and under items (a) and (b) to delete the words "Section 3.12.2" at the end and substitute in lieu thereof, the words "N.J.A.C. 5:23-3.7."**

ii. **(Delete)**

[iii.] **ii.** Section 3.1.2 is amended to delete the words "at least" on line 2. **Also delete the words "section 3.12" at the end and substitute in lieu thereof, the words "N.J.A.C. 5:23-3.7."**

[iv.] **iii.** Section 3.1.3 is amended to delete the words "Section 3.12.2 on line 4 and in lieu thereof, substitute the words "N.J.A.C. 5:23-3.7."

v. **(Delete)**

vi.-viii. Redesignated as **iv.-vi.** (No change in text.)

[ix.] **vii.** Sections 3.12.2, 3.12.3, 3.12.4, and 3.12.5 are deleted **in their entirety**.

[6.] **5.** Chapter 4 of the plumbing subcode entitled "Joints and Connections" is amended as follows:

i. (No change.)

ii. Section 4.3.2[a] is amended to delete the word "acceptable" on line 3 and in lieu thereof, substitute "approved".

iii. Section 4.3.8**a** is amended to delete the word "acceptable" on line 2 and in lieu thereof, substitute "approved".

[7.] **6.** Chapter 5 of the plumbing subcode entitled "Traps and Cleanouts" is amended as follows:

i. Section 5.3.2 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "administrative authority" on line 3.

ii. Section 5.3.4 is amended to add [after] the phrase **"in accordance with N.J.A.C. 5:23-3.3" after the words "administrative authority" on line 2.** ["except where required by the administrative authority," the phrase "in accordance with N.J.A.C. 5:23-3."]

[8.] **7.** Chapter 6 of the plumbing subcode, entitled "Interceptors," is amended as follows:

i. Section 6.1.1 is amended to delete the phrase "in the opinion of the administrative authority" **on line 2** and to add after line 5 the sentence "The determination of necessity shall be made by the administrative authority in accordance with N.J.A.C. 5:23-3.3."

ii. Section 6.3.2b is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the word "required" on line 5.

iii. Section 6.4.4 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the word "approval" on line 3.

[9.] **8.** Chapter 7 of the plumbing subcode, entitled "Plumbing Fixtures," is amended as follows:

i. Section 7.16.1 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.7" after the words "administrative authority" on line 6.

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ii. Section 7.23.2 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.**3**" after the words "administrative authority" on line 2.

[iii.] **iv.** Table 7.24.1 **Note #1** is amended to delete [notes 1 and 2] **the words "for handicap requirements see local, state, and national ordinances" in third sentence**.

[iv.] **iii.** Section 7.25 is amended to delete **the words** "local Administrative Authority" **on line 2** and **in lieu thereof,** substitute ["Barrier Free Subcode" on line 2] **the words "Barrier Free Design Regulations"**.

[10.] **9.** Chapter 9 of the plumbing subcode, entitled "Indirect Waste Piping and Special Waste," is amended as follows:

i. Section 9.1.6 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.**3**" after the words "administrative authority" on line 4.

ii. Section 9.3.2 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.**3**" after the words "administrative authority" on line 4.

iii. Section 9.7.2 is amended to delete the phrase "submitted to, and accepted by," **on line 2** and in lieu thereof, substitute the phrase "approved in accordance with N.J.A.C. 5:23-3.**3**."

iv. **(Delete)**

[11.] **10.** Chapter 10 of the plumbing subcode, entitled "Water Supply and Distribution," is amended as follows:

i. Section [10.5.3E] **10.4.2** is amended to [insert "using a toxic heat transfer fluid" after the word systems on line 2] **delete the words "administrative authority" and in lieu thereof, substitute "authority having jurisdiction".**

ii. Section [10.5.4] **10.4.4** is amended to delete the words "administrative authority" and in lieu thereof, substitute "authority having jurisdiction".

iii. Section [10.5.5A(d)] **10.4.9** is amended to [add the phrase "when approved by the] **delete the words "administrative authority" and in** lieu thereof, substitute "authority having jurisdiction" [after the word "serve" on line 3].

iv. Section [10.5.9] **10.5.4** is amended to delete [the phrase "if and when approved by] the **words** "administrative authority" **and in lieu thereof, substitute "authority having jurisdiction".** [on lines 4 and 5 and to delete the last sentence "The administrative authority shall give approval on the materials used in the installation of lawn sprinkler systems."]

v. Section [10.6.1] **10.5.6b** is amended to delete the phrase ["approval is given by the administrative authority and;"] **"by the local administrative authority" and in lieu thereof, insert "in N.J.A.C. 5:23-2.23".**

vi. (No change.)

vii. [Table 10.14.3 is amended to add a note at the bottom as follows:

NOTE: Flow rate for plumbing fixtures, which are considered water savers, refer to Appendix D.] **Section 10.12.9 is amended to add the words "valves to be accessible" as the title of the section.**

viii. Section 10.16.2 is amended to delete the phrase "when required by the administrative authority" **on line 2.**

[12.] **11.** Chapter 11 of the plumbing subcode, entitled "Sanitary Drainage Systems," is amended as follows:

i. Section 11.3.1 is amended to delete the words "administrative authority" and substitute in lieu thereof, the words "authority having jurisdiction" on line 5.

[i.] **ii.** Section 11.4.3 is amended at the end to add the sentence "Diversity factors shall be established in accordance with N.J.A.C. 5:23-3.**3**."

iii. Section 11.7.1a is amended to delete the words "administrative authority" on line 4 and in lieu thereof, substitute the words "authority having jurisdiction".

[13.] **12.** Chapter 12 of the plumbing subcode, entitled "Vents and Venting," is amended as follows:

i. Section 12.2.2 is amended to [add the phrase "in accordance with N.J.A.C. 5:23-3" after the words,] **delete the words** "administrative authority" **and in lieu thereof, substitute the words "authority having jurisdiction" on line 3**.

ii.-iii. (No change.)

[14.] **13.** Chapter 13 of the plumbing subcode, entitled "Storm Drains," is amended as follows:

i. Section 13.1.5 is amended [as follows: On] **to delete the words on** lines 1 and 2 "around the perimeter of all buildings having basements, cellars or crawl spaces or floors below grade" and in lieu thereof, substitute **the words** "in accordance with Section [1315.4.1] **1312.4.1** of the building subcode/**1984**".

ii. Section [13.9.3 is deleted] **13.9.1 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the word "authority" on line 6.**

[15.] **14.** Chapter 14 of the plumbing subcode, entitled "Medical Care Facility Plumbing Equipment" is amended as follows:

i. Section 14.25.2 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.**3**" after the words "administrative authority" **on line 5.**

[16.] **15.** (No change in text.)

[17.] **16.** (No change in text.)

[18.] **17.** Chapter 18 of the plumbing subcode, entitled "Mobile Home and Trailer Park Plumbing Standards," is amended as follows:

i.-iv. (No change.)

v. Section 18.1.2(d) is amended to delete the last phrase, beginning "and shall, in addition, **conform to all other pertinent local ordinances and state regulations.**"

vi. **(Delete)**

vii.-xi. Redesignated as **vi.-x.** (No change in text.)

[19.] **18.** Appendix D, entitled "Water Conservation," is amended as follows:

i. [In Sections D.1, D.3 and D.4 delete "*" and insert in lieu thereof "3.5."] **Item D.4 is amended to add a note after line 4 to read "Note: See Energy subcode for public lavatories flow rate value."**

ii. **(Delete)**

19. Appendix E of the plumbing subcode, entitled "Special Design Plumbing Systems", is amended as follows:

i. Section E.2.1 is amended to delete the words "local administrative authority" on line 2 and in lieu thereof, substitute "authority having jurisdiction".

(c) **(Delete)**

5:23-3.16 Electrical subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c. 217, the commissioner hereby adopts the Model Code of the National Fire Protection Association[,] known as "The National Electrical Code/[1981] **1984**," including all subsequent revisions and amendments thereto, as the electrical subcode for New Jersey.

i. Copies of this code may be obtained from the sponsors at NFPA, [470 Atlantic Avenue, Boston, Massachusetts 02210] **Batterymarch Park, Quincy, Massachusetts 02269**.

2. The National Electrical Code; [1981] **1984**, including all subsequent revisions and amendments thereto, may be known and cited as "the electrical subcode."

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(b) The following chapters or articles of the electrical subcode are amended as follows:

1. Article 90 of the electrical subcode, entitled "Introduction," is amended as follows:

i. Section 90-4, Enforcement, is amended to delete in the first paragraph the phrase, "authority having jurisdiction of enforcement of the code" and substitute in lieu thereof, the term "electrical subcode official." And [as] **add** a new last sentence in the first paragraph: "Approval shall be in accordance with N.J.A.C. 5:23-2.9." Delete in the second paragraph the phrase "authority having jurisdiction" and substitute in lieu thereof the term "electrical subcode official" and add after "effective safety" the phrase "as provided in N.J.A.C. 5:23-2.9." **Delete in the third paragraph the phrase "authority having jurisdiction" and substitute in lieu thereof the term "electrical subcode official" and delete the phrase "by the jurisdiction" after the word "adopted."**

2. (No change.)

3. Chapter 3 of the electrical subcode, entitled "Wiring Methods and Materials," is amended as follows:

i. Section 300-4 is amended to delete all wording from ["at the approximate center. . . ,"] **"so that the edge. . ."** on line 3 [and 4] through [". . .might penetrate the installed cable" on line 9] ". . . **cover the area of the wiring," on line 8** and in lieu thereof substitute "as required by the building subcode."

4. (No change.)

5:23-3.17 Fire protection subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c. 217, as amended, the commissioner hereby adopts the following portions of the building and electrical subcodes to the extent delineated in N.J.A.C. 5:23-3.4, as the Fire Protection Subcode for New Jersey.

i. BOCA Basic/**National** Building Code [1981] **1984** of the Building Officials and Code Administrators International, Inc. (N.J.A.C. 5:23-3.14):

(1) Section [501.0] **513.0** of article 5 - General Building Limitations;

(2) (No change.)

(3) Section [716.0] **713.0** of Article 7 - [Light, Ventilation and Sound Transmission Control] **Interior Environmental Requirements;**

(4) (No change.)

(5) Sections [1318.0 and 1319.0] **1316.0 and 1317.0** of Article 13 - Building Enclosures, Walls and Wall Thickness;

(6) (No change.)

(7) Article 15 - [Chimneys, Flues and Vent Pipes] **Masonry Fireplaces;**

(8)-(10) (No change.)

(11) Sections 2108.0, 2111.0, 2112.0, 2116.0 and 2117.0 of Article 21 - Elevator, Dumbwaiter and Conveyor Equipment, Installation and Maintenance.

ii. National Electrical Code/[1981] **1984** of the National Fire Protection Association **(N.J.A.C. 5:23-3.16)** [(section 16 of this subchapter)].

(1) (No change.)

(2)-(3) Redesignated as **(3)-(4)**. No change in text.)

[(4)] **(2)** Article 450, Part C - Transformer Vaults **of Chapter 4 - Equipment for General Use;**

2. (No change.)

(b) (No change.)

5:23-3.20 Mechanical subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c. 217, the commissioner hereby adopts the model code of the Building Officials and Code Administators International, Inc. known as the "BOCA Basic/National Mechanical Code/1984," including all subsequent revisions and amendments thereto. This code is hereby adopted by reference as the Mechanical Subcode for New Jersey subject to the modifications stated in subsection (b) of this section.

i. Copies of this code may be obtained from the sponsor at: BOCA International, 4051 Flossmoor Road, Country Club Hills, Illinois 60477;

ii. The "BOCA Basic/National Mechanical Code/1984," including all subsequent revisions and amendments thereto, may be known and cited as the "mechanical subcode."

(b) The following articles, sections or pages of the BOCA Basic/National Mechanical Code/1984 are amended as follows:

1. Article 1 of the mechanical subcode, entitled "Administration and Enforcement," is deleted in its entirety.

2. Article 2 of the mechanical subcode, entitled "Definitions," is amended as follows:

i. Section M-200.3 is amended to delete the words "codes listed in Appendix A" on line 2, and in lieu thereof, substitute "subcodes."

ii. The definition of the term "administrative authority" is deleted in its entirety, and substitute in lieu thereof, the following language: "For the purpose of the mechanical subcode, the term "administrative authority" shall mean the appropriate subcode official designated in N.J.A.C. 5:23-3.4."

iii. The definition of the term "approved" is amended to delete the words "mechanical official or other."

iv. The term and definition of "code" is deleted in its entirety.

v. The term and definition of "department" is deleted in its entirety.

vi. The term and definition of "department having jurisdiction" is deleted in its entirety.

vii. The definition of the term "hazardous location" is amended to delete the words "building code" in line 3, and in lieu thereof, substitute "building subcode."

viii. The term and definition of "mechanical official" is deleted in its entirety.

ix. The term and definition of "nuisance" is deleted in its entirety.

3. Article 3 of the mechanical subcode, entitled "Air Distribution Systems," is amended as follows:

i. Section M-301.1 under "Exception," is amended to delete "building code listed in Appendix A" on line 4, and in lieu thereof, substitute "building subcode." Also delete "NFiPA 70 listed in Appendix A" on line 12, and in lieu thereof, substitute "the electrical subcode."

ii. Section M-305.1 is amended to delete the words "building code listed in Appendix A" on line 4, and in lieu thereof, substitute the term "building subcode."

iii. Section M-307.5.1 is amended to delete the words "building code, listed in Appendix A" on line 1, and in lieu thereof, substitute the term "building subcode."

iv. Section M-309.2.1 is amended to delete the words "building code listed in Appendix A" on line 2, and in lieu thereof, substitute the term "building subcode."

v. Section M-309.3 is amended to delete the words "building code listed in Appendix A" on line 2, and in lieu thereof, substitute the term "building subcode."

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vi. Section M-311.2 is amended to delete the words "building code listed in Appendix A" on line 2, and in lieu thereof, substitute the term "building subcode."

4. Article 4 of the mechanical subcode, entitled "Mechanical Equipment," is amended as follows:

i. Section 401.1 is amended to delete "Section M-108" on line 3, and in lieu thereof, substitute "N.J.A.C. 5:23-3.7."

ii. Section M-406.2 is amended to delete the words "building code listed in Appendix A" on line 2, and in lieu thereof, substitute the term "the electrical subcode."

iii. Section M-407.1 is amended to delete the words "NFiPA 70 listed in Appendix A" on line 2, and in lieu thereof, substitute the term "the electrical subcode."

5. Article 5 of the mechanical subcode, entitled "Kitchen Exhaust Equipment," is amended as follows:

i. Section M-505.4 is amended to delete the words "building code listed in Appendix A" on line 3, and in lieu thereof, substitute the term "building subcode."

ii. Section M-505.7.2 is amended to delete the words "building code listed in Appendix A" on line 3, and in lieu thereof, substitute the term "building subcode."

iii. Section M-507.1 is amended to delete the words "building code listed in Appendix A" on line 3, and in lieu thereof, substitute the term "building subcode."

iv. Section M-508, "Maintenance and Test," is deleted in its entirety.

6. Article 6 of the mechanical subcode, entitled "Boilers and Water Heaters," is amended as follows:

i. Section M-601.1 is amended to delete the words "plumbing code listed in Appendix A" on line 2 and in lieu thereof, substitute the term "plumbing subcode."

ii. Section M-602.2 is amended to delete the words "plumbing code listed in Appendix A" on line 2 and in lieu thereof, substitute the term "plumbing subcode."

iii. Section M-603.5 is amended to delete the words "plumbing code listed in Appendix A" in the last sentence and in lieu thereof, substitute the term "plumbing subcode."

iv. Section M-606.2 is amended to delete the words "plumbing code listed in Appendix A" in the last sentence and in lieu thereof, substitute the term "plumbing subcode."

v. Section M-607.3 is amended to delete the words "plumbing code listed in Appendix A" on line 6 and in lieu thereof, substitute the term "plumbing subcode."

7. Article 7 of the mechanical subcode, entitled "Hydronic Piping," is amended as follows:

i. Section M-700.1 is amended to delete the words "plumbing code listed in Appendix A" on line 4 and in lieu thereof, substitute the term "plumbing subcode."

ii. Section M-701.1 is amended to delete the words "Section M-108.0" on line 4 and substitute in lieu thereof, the words "N.J.A.C. 5:23-3.7."

iii. Section M-705.2 is amended to delete the words "plumbing code listed in Appendix A" on line 4 and substitute in lieu thereof, the words "plumbing subcode."

iv. Section M-705.3 is amended to delete the words "plumbing code listed in Appendix A" on line 2 and substitute in lieu thereof, the words "plumbing subcode."

v. Section M-705.4 is amended to delete the words "building code listed in Appendix A" on line 4 and in lieu thereof, substitute the words "building subcode."

vi. Section M-706.2.1 is amended to delete the words "building code listed in Appendix A" on line 2 and in lieu thereof, substitute the words "building subcode."

8. Article 8 of the mechanical subcode, entitled "Gas Piping Systems," is amended as follows:

i. Section M-801.1 is amended to delete the words "Section M-108.0" on line 5 and substitute in lieu thereof, "N.J.A.C. 5:23-3.7."

9. Article 9 of the mechanical subcode, entitled "Fuel Oil Piping," is amended as follows:

i. Section M-900.2 is amended to delete the phrase "prevention codes listed in Appendix A" on line 2, and substitute in lieu thereof, "protection subcode."

ii. Section M-901.1 is amended to delete the phrase "Section M-108.0" on line 2 and substitute in lieu thereof, "N.J.A.C. 5:23-3.7."

10. Article 12 of the mechanical subcode, entitled "Chimneys and Vents," is amended as follows:

i. Section M-1202.0 is deleted in its entirety.

ii. Section M-1203.3.2 is amended to delete the phrase "building code listed in Appendix A" on line 4 and substitute in lieu thereof, "building subcode."

iii. Section M-1203.2.2 is amended to delete the phrase "building code listed in Appendix A" on line 4 and substitute in lieu thereof the words "building subcode."

iv. Section M-1206.4.1 is amended to delete the phrase "building code listed in Appendix A" on line 2 and substitute in lieu thereof, "building subcode."

v. Section M-1210-3.1 is amended to delete the phrase "building code listed in Appendix A" on line 2 and substitute in lieu thereof, "building subcode."

vi. Section M-1211.4.1 is amended to delete the phrase "building code listed in Appendix A" on line 2 and substitute in lieu thereof, "building subcode."

11. Article 13 of the mechanical subcode, entitled "Mechanical Refrigeration," is amended as follows:

i. Section M-1302 is amended to delete the phrase "Section M-108.0" on line 4 and substitute in lieu thereof, the words "N.J.A.C. 5:23-3.7."

12. Article 14 of the mechanical subcode, entitled "Solid Fuel Burning Appliances," is amended as follows:

i. Section M-1403.3 is amended to delete the phrase "building code listed in Appendix A" on line 3 and substitute in lieu thereof, "building subcode."

ii. Section M-1404.2 is amended to delete the phrase "building code listed in Appendix A" on line 2 and substitute in lieu thereof, "building subcode."

13. Article 15 of the mechanical subcode, entitled "Incinerators and Crematories," is amended as follows:

i. Section M-1500.2 is deleted in its entirety.

ii. Section M-1500.5 is deleted in its entirety.

iii. Section M-1502.1.3 is amended to delete the phrase "building code listed in Appendix A" on line 3 and substitute in lieu thereof, the term "building subcode."

iv. Section M-1502.1.6 is amended to delete the phrase "mechanical official" on line 2 and substitute in lieu thereof, the term "administrative authority."

v. Section M-1502.1.7 is amended to delete the phrase "mechanical official" on line 3 and substitute in lieu thereof, the term "administrative authority."

vi. Section M-1502.2.5.2 is amended to delete the phrase "mechanical official" on line 2 and substitute in lieu thereof, the term "administrative authority."

vii. Section M-1502.7.6.1 is amended to delete the phrase "mechanical official" on line 3 and in lieu thereof, substitute the term "administrative authority."

viii. Section M-1502.8 is amended to delete the phrase "mechanical official" on line 9 and in lieu thereof, substitute the term "administrative authority."

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14. Article 16 of the mechanical subcode, entitled "Ventilation Air," is amended as follows:

i. Section M-1601.4 is amended to delete the phrase "building code listed in Appendix A" on line 3 and substitute in lieu thereof, the term "building subcode."

ii. Section M-1602.1 is amended to delete the phrase "building code listed in Appendix A" on line 4 and substitute in lieu thereof, the term "building subcode."

iii. Section M-1605.1 is amended to delete the phrase "building code listed in Appendix A" on line 2 and substitute in lieu thereof, the term "building subcode."

15. Article 17 of the mechanical subcode, entitled "Air Quality" and comprising Sections M-1700.0 through M-1704.0, is deleted in its entirety.

16. Article 18 of the mechanical subcode, entitled "Solar Heating and Cooling Systems," is amended as follows:

i. Section M-1801.2.2 is amended to delete the phrase "building code listed in Appendix A" on line 3 and substitute in lieu thereof, the term "building subcode."

ii. Section M-1801.3.1 is amended to delete the phrase "building code listed in Appendix A" on line 3 and substitute in lieu thereof, the term "building subcode."

iii. Section M-1801.3.2 is amended to delete the phrase "building code listed in Appendix A" on line 3 and on line 2 of the exception and substitute in lieu thereof, the term "building subcode."

iv. Section M-1801.3.3 is amended to delete the phrase "building code listed in Appendix A" on line 2 of the exception and substitute in lieu thereof, the term "building subcode."

17. Article 19 of the mechanical subcode, entitled "Energy Conservation" and comprising sections M-1900.0 through M-1903.5, is deleted in its entirety.

18. Article 20 of the mechanical subcode, entitled "Boilers and Pressure Vessels, Maintenance and Inspection" and comprising sections M-2000.0 through M-2002.1 is deleted in its entirety.

19. The following amendments are made to Appendix A of the mechanical subcode, entitled "Reference Standards":

i. Under the subheading "ASHRAE," delete the following title:

(1) Energy Conservation in New Building Design

ii. Under the subheading "BOCA," delete the following title:

(1) Basic/National Plumbing Code

iii. Under the subheading "NFiPA," delete the following title:

(1) National Electrical Code.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES FLOOD HAZARD AREA DELINEATIONS

Delineated Floodways for the Nomahegan Brook, West Brook, Blue Brook and Branch No. 22, and Robinson's Branch

Proposed Amendment: N.J.A.C. 7:13-1.11

Authorized By: Robert E. Hughey, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et seq.

DEP Docket No. 026-84-04.

A **public hearing** concerning this proposal will be held on June 14 at 1 P.M. at

Municipal Building
430 Park Avenue
Union County
Scotch Plains Township

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 20, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Clark Gilman
Bureau of Flood Plain Delineation
Division of Water Resources
CN 029
Trenton, NJ 08625

The Department of Environmental Protection thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-286.

The agency proposal follows:

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Summary

The proposed amendment provides for the application of rules concerning the development and use of land in designated floodways to portions of the Nomahegan Brook, West Brook, Blue Brook, Branch Number 22 and Robinson's Brook. Rules of delineated flood hazard areas are designed to preserve flood carrying capacity and to minimize the threat to the public safety, health and general welfare.

Social Impact

The proposed delineation applies added flood protection to Mountainside Borough, Roselle Borough, Scotch Plains Township, Berkley Heights Township and Clark Township within Union County.

Economic Impact

The proposed amendment will have only a minor economic impact. The delineation would more clearly define the flood hazard area, thus resulting in less requirements for flood insurance, and minor reductions in property value could result by restricting future development in the floodway and requiring elevated construction designs in flood fringe areas. However, minor property value diminution would be offset by the savings to governmental bodies and private homeowners due to little or no future rehabilitation and rescue expenditures from flood damage in the delineated area.

Full text of the proposal follows (additions indicated in boldface **thus**). See the Index of Adopted Rules for previous amendments to N.J.A.C. 7:13-1.11(d).

7:13-1.11 Delineated floodways

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

(d) A list of streams in the Passaic Hackensack Basin and a list of delineated streams in the Raritan Basin follow:

1.-48. (No change.)

49. Nomahegan Brook from the upstream limit of Echo Lake; approximately 600 feet downstream of Mountain Avenue, upstream to Lawrence Avenue, within Mountainside Borough and West Brook from St. Georges Avenue upstream to the downstream face of the Conrail Railroad Bridge, approximately 100 feet upstream of 1st Street within Roselle Borough and Blue Brook from its confluence with Green Brook near Diamond Hill Road upstream to the Scotch Plains Township - Mountainside Borough municipal boundaries, approximately 365 feet upstream of a foot bridge crossing and along the Scotch Plains Township and Berkley Heights Township municipal boundaries and Winding Brook from its confluence with Robinsons Branch upstream to the downstream face of Elizabeth Avenue within Scotch Plains Township and Branch 22 from its confluence with Robinsons Branch upstream to the Scotch Plains Township - City of Plainfield municipal boundaries, approximately 1550 feet upstream of the Sleepy Hollow Lane Bridge and revising the floodway and flood hazard area of Robinsons Branch from its confluence with the Middlesex Reservoir upstream to the Middlesex County - Union County boundary, approximately 2800 feet upstream of the confluence of Branch 22 along Robinsons Branch within Scotch Plains and Clark Townships.

(e)-(g) (No change)

(a)

DIVISION OF WATER RESOURCES WATER POLLUTION CONTROL

Construction of Wastewater Treatment Facilities

Proposed New Rules: N.J.A.C. 7:14-2.13, 2.14 and 2.15

Authorized By: Robert E. Hughey, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 58:10A-4, 58:10A-5(d), and 58:25-8.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 20, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Anthony Ricigliano, P.E.
Division of Water Resources
New Jersey Department of Environmental Protection
CN 029
Trenton, New Jersey 08625
609-292-0950

The Department of Environmental Protection thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-271.

The agency proposal follows:

Summary

The Division of Water Resources has prepared these proposed new rules with the advice and cooperation of local governments and professional and trade associations. The proposed rule standardize certain procedures in the wastewater treatment facilities construction process.

The proposed new rules specify which excavation materials are unacceptable or conditionally acceptable for reuse as trench backfill; specify that construction equipment costs are compensable; and details the standards for substantial and final completion of pipe projects and the contractor's guarantees thereon.

The Department has previously proposed and adopted rules concerning construction of wastewater treatment facilities on January 18, 1982. (See N.J.A.C. 7:14-2.1 through 2.12 at 14 N.J.R.75(a), 14 N.J.R. 1155(b).

Social Impact

The proposed new rules will affect local governments, sewerage and utilities authorities, engineering consultants, and construction contractors. These interests will have uniform procedures to follow to comply with regulatory or grant requirements.

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Economic Impact

In general, the proposed new rules may decrease cost to governmental agencies, owners, grantees, consultants, and contractors due to standardization of procedures. Unnecessary and redundant work will in many cases be eliminated. No other economic impact is anticipated.

Environmental Impact

Standardized procedures prescribing proper construction practices will be a benefit to the environment. Not only will spoil material be properly disposed of, but acceptable backfill will be required, ensuring that sewer pipes are protected from damage.

Full text of the proposed new rules follows.

7:14-2.13 Excavation material unacceptable or conditionally acceptable for reuse as trench backfill

(a) The following trench excavation materials are unacceptable as trench backfill:

1. Any excavation materials that will cause damage to the piping systems;

2. Any excavation material that cannot be compacted or consolidated to yield the desired density as specified in the contract specifications;

3. Trees, stumps and foreign material.

(b) The following excavation materials are conditionally acceptable as trench backfill only if provided for in the contract specifications and the trench is located in a right-of-way, an easement, a roadway or an unimproved area:

1. Clay, organics and silt determined to be suitable in accordance with soil tests required by the owner/engineer.

2. Hard materials, such as blacktop, concrete, stone and rock.

i. The hard materials shall only be placed in the midzone of the trench beginning two feet above the top of the pipe, after compaction of the pipe envelope, to a point two feet below the final road or ground surface.

ii. Placement of the hard materials shall not create a potential hazard to the pipe or create voids that will cause adverse settlement.

iii. The maximum overall size of any piece of hard material shall be 12 inches.

(c) The Department may require that all trench backfill material not conforming to this subsection and contract specifications be removed and spoiled to a spoil site approved by the Department in accordance with the requirements of N.J.A.C. 7:26-1, for solid or hazardous wastes.

7:14-2.14 Construction equipment costs compensation for extra work

(a) The contractor is entitled to all identifiable direct job equipment costs associated with extra work. The compensable cost for construction equipment shall be based upon the most current costs established in "Rental Rates for Construction Equipment" and "Rental Rates for Older Construction Equipment" (Blue Book), Dataquest Incorporated, A.C. Nielsen Company, San Jose, CA, 1983.

(b) Overhead and profits factors allowed in N.J.A.C. 7:14-2.7, shall only be applied to the rates charged for rental equipment used by the contractor for extra work.

7:14-2.15 Substantial and final completion of pipe projects; contractor's guarantees

(a) The contractor shall notify the owner/engineer in writing when the contract work is substantially complete as defined by N.J.A.C. 7:14-2.8(d). Within a reasonable time, the owner/engineer shall inspect the work.

(b) If the owner/engineer considers the work to be substantially complete, and before the Certificate of Substantial Completion is issued, the contractor shall:

1. Submit a construction schedule for the remaining work to be completed, and

2. Warrant and guarantee, for a period of one year or for a period as otherwise specified, from the date of Substantial Completion, that the completed work is free from defects due to faulty materials, equipment or workmanship. The Performance Bond shall remain in effect through the guarantee period.

(c) If the owner/engineer does not consider the work to be substantially complete, the engineer shall notify the contractor in writing, listing the items to be completed or corrected.

1. The contractor shall correct or complete items identified in writing within a reasonable time as specified in the contract documents, including repairs of any damage resulting from such defects to other work completed under the contract.

2. If the contractor fails to make such corrections within a reasonable time as specified in the contract documents, the owner may do so and charge the costs incurred, including direct and indirect costs, to the contractor.

(e) Before the Contractor has received notification of substantial completion, the owner/engineer may submit a request to the contractor to use a functional portion of the work if:

1. Such use does not significantly interfere with construction on any portion of remaining work to be completed, and

2. The conditions of such use shall be identified in the Certificate of Substantial Completion when issued by the owner/engineer.

(f) Final completion shall be that point at which the contract is completed, defective work corrected and clean up work accomplished. Unless a Certificate of Substantial Completion has been issued, the guarantee period shall begin upon certification of final completion by the engineer.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Disposal and Possession of Dead Deer

Proposed Amendment: N.J.A.C. 7:25-17.1 through -17.4

Authorized By: Robert E. Hughey, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 13:1B-3 and 23:4-43.
DEP Docket No. 024-84-04.

Interested persons may submit, in writing, data, views or arguments relevant to the proposed amendment on or before June 20, 1984. These submissions or inquiries about submissions and responses should be addressed to:

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Russell A. Cookingham, Director
Division of Fish, Game and Wildlife
CN 400
Trenton, NJ 08625

The Department of Environmental Protection thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-270.

The agency proposal follows.

Summary

The proposed amendments provide for an extension and liberalization of the regulations that authorize the disposal of accidentally killed deer and deer killed under permits issued by the Division of Fish, Game and Wildlife to farmers suffering crop damage caused by deer.

Specifically, the proposed amendments include permitting the Division of Fish, Game and Wildlife to direct the owner or lessee of cultivated lands on the method of disposal of any deer killed under such permits issued by the Division of Fish, Game and Wildlife.

The proposed amendments also allow State or municipal police officers to authorize the possession of accidentally killed deer by residents of New Jersey for consumption under specified conditions. The conditions for recovering and possessing the deer include obtaining a written permit from a New Jersey police agency.

Social Impact

The proposed amendments will serve to improve the aesthetic quality and safety of our roads and highways by providing for a prompt removal of a significant number of accidentally killed deer.

Economic Impact

The proposed amendments will lessen the costs of dead deer recovery and disposal for all of the State's municipalities that have a population of wild whitetail deer. At the present time, all police agencies may designate persons to dispose of the dead deer only by burial at sites approved by the Division of Waste Management in the Department of Environmental Protection.

The proposed amendments will give authority to the police agencies to allow persons to recover and possess accidentally killed deer throughout the State of New Jersey with permission of the police agency wherein the deer were accidentally killed.

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

SUBCHAPTER 17. DISPOSAL AND POSSESSION OF DEAD DEER

7:25-17.1 Authorized persons and [places of] disposal **or possession**

Deer found dead on or along any **New Jersey** public highway [may] **shall** be disposed of by **New Jersey State** or municipal **police** officers or [personnel] **persons** authorized by them [only] at a sanitary landfill [registered with the Solid Waste Administration] **or other site approved by the Division of Waste Management** of the Department of Environmental Protection **or the police agency may authorize possession, as conditioned in N.J.A.C. 7:25-17.3(a) below, by a New Jersey resident.**

7:25-17.2 Dead deer on private property

Deer found dead on any private property[,] shall be disposed of by **State** or municipal **police** officers, or personnel authorized by them, upon request of the property owner in the manner prescribed above. **The owner or lessee of cultivated lands who kills deer under permit of the Division of Fish, Game and Wildlife on such property shall dispose of the dead deer as directed by the Division of Fish, Game and Wildlife.**

7:25-17.3 Possession of dead deer

(a) New Jersey State or municipal police officers may [not] authorize the possession of [dead] **accidentally** killed deer by [anyone for any purpose other than the disposal of deer at a registered sanitary landfill in the manner prescribed above.] **a New Jersey resident under the following conditions:**

1. The deer was killed by an accidental collision with a motor vehicle and reported to the New Jersey State or municipal police as soon as possible; and

2. A written permit on forms provided by the Division of Fish, Game and Wildlife shall be issued by the police agency to the resident of New Jersey to possess the accidentally killed deer for consumption of or transfer of the deer carcass to another person for consumption.

(b) The permit described in (a) above shall be valid for three months from date of issue.

(c) A deer that has been so severely injured by a collision with a motor vehicle so that it must be killed shall be considered as accidentally killed for the purposes of this subchapter.

7:25-17.4 Information required

(a) Any **state** or municipal police officer disposing of or authorizing the disposal **or possession** of [dead] **accidentally killed** deer shall [inform] **notify** the **New Jersey** Division of Fish, Game and Wildlife **on a quarterly basis** of the following **information on forms provided by the Division of Fish, Game and Wildlife**:

1. The location where the deer was [recovered] **killed;**
2. The sex of the deer;
3. [The site where the deer was disposed of] **The date of the accidental deer kill; and**
4. [The date of disposal.] **The name and address of permittee.**

(a)

DIVISION OF WASTE MANAGEMENT BOARD OF PUBLIC UTILITIES

Interdistrict and Intradistrict Solid Waste Flow

Joint Proposed Amendment: N.J.A.C. 7:26-6.5

Authorized By: Robert E. Hughey, Commissioner, Department of Environmental Protection and Board of Public Utilities, Barbara A. Curran, President.

Authority: N.J.S.A. 13-1B-3, 13:1E-6, 13:1E-23 and 48:13A-l et seq.

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A **public hearing** concerning this proposal will be held on June 11, 1984 at 7:30 P.M. at:

The Municipal Building
Municipal Drive
Bordentown Township, New Jersey 08505

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 20, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Barbara M. Greer
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, N.J. 08625

The Department of Environmental Protection and the Board of Public Utilities thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption:

This proposal is known as PRN 1984-285.

The agency proposal follows:

Summary

The Department of Environmental Protection (DEP) and the Board of Public Utilities (BPU) are proposing to amend the "waste flow rules" N.J.A.C. 7:26-6 to reflect changes in the Burlington County Solid Waste Management Plan adopted by the Burlington County Board of Chosen Freeholders on March 28, 1984. This proposal will provide the public with an opportunity to comment on the redirected waste flow. Until public comment is received and reviewed, the DEP and the BPU reserve judgment on the proposal.

Specifically, the DEP and the BPU propose to amend: (1) the Interim Waste Flow Program for solid waste generated within Burlington County, Section 82-2.4 of the Plan, by (i) providing a reallocation of waste flows generated within the county which has become necessary because of the expiration, in accordance with the previously approved plan, of both the Mercer County and the Camden County Interdistrict Waste Flow Agreements and discontinuance of waste flows by the City of Philadelphia and certain private Pennsylvania solid waste collection/hauling companies with whom the county has executed waste flow agreements, and (ii) reflecting the closure of certain landfills and the projected closure of other landfills within the county during 1984; and, (2) the Waste Flow Program for solid waste generated outside Burlington County, Section 82-2.5 of the Plan, by updating this section to reflect the current status of waste flow agreements.

In addition to the proposed amendments summarized above, the DEP and BPU are proposing a technical correction to the waste flow rules for the municipalities of Collinswood and Haddonfield in order to conform the rules with the adopted district solid waste management plans.

Social Impact

For many years, Burlington County has been a receiving solid waste district accepting waste from Mercer County, Camden County, Pennsylvania collector/haulers, and the City of Philadelphia. Waste from these out-of-district generators has accelerated the rate at which the Landfill and Development Company (L and D) and Parklands Reclamation Project (Parklands) landfills are reaching design capacity. By terminating interdistrict waste flow agreements and redistributing the in-county generated waste, the life expectancy of the L and D and Parklands facilities will be extended, thereby providing disposal capacity for Burlington County until the district's regional landfill is operational. In addition, the overall reduction in waste loadings to Parklands landfill and potential ameloriation of odor problems there should produce educational benefits by reducing the adverse effects which that facility has had upon the adjacent regional high school. Therefore, a positive social impact should result from redistributing the sold waste generated within Burlington County.

Economic Impact

The proposed waste flow change assigns to the L and D and Parklands landfills approximately equal waste loading amounts. Since L and D lies closer to the waste centroid than does Parklands, the half of the County closest to Parklands has been directed to that facility. For those municipalities utilizing the L and D landfill now being redirected to Parklands for disposal, the proposed waste flow change may have an adverse economic impact for two reasons: (1) increased tipping fees; as of January 24, 1984, L and D's tipping fee was $6.04 per ton whereas Parklands' fee is $7.63 ton; and (2) increased waste haulage distance and therefore, cost. However, L and D landfill has before the BPU a petition for a rate increase to finance DEP mandated environmental improvements. If approved, tipping fees at L and D will then exceed those at Parklands, thereby offsetting some of the adverse impact of the redirection. Moreover, without the proposed waste flow change, L and D landfill would reach capacity much sooner than Parklands landfill, and, at that time, require redirection of all Burlington County waste to Parklands landfill. Such a redirection would have a much more severe adverse economic impact than the proposed redirection. Other measures instituted to mitigate adverse economic impacts for the redirection are: (1) disruption of existing municipal contracts has been minimized by not altering the waste flows of any municipalities already utilizing Parklands and redirecting larger municipalities to minimize the number of contracts affected; and (2) transportation routes have been considered such that municipalities with ready access to major transportation routes leading directly to Parklands have been redirected there.

Environmental Impact

A positive environmental impact should result from redirecting solid waste from disposal at the L and D landfill to Parklands Landfill. The L and facility, which is overburdened with excessive waste flows, has been marked by numerous environmental operational violations that may have been caused by the excessive loadings. By reducing the loading at the L and D landfill, the serious environmental conditions present at this facility may be ameliorated.

The Parklands landfill has also been marked by numerous operational violations, including severe odor problems, which may be due to overloading at that facility. Reduction in waste flows at the Parklands facility will occur because of the expiration of the Burlington/Mercer County Waste Flow Agreement, which is an approved portion of the respective county plans and waste flow rules. The overall reduction in waste loadings which will be experienced at the Parklands landfill can be expected to ameliorate conditions there.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]). The **current text** of N.J.A.C. 7:26-6, Interdistrict and Intradistrict

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Solid Waste Flow, appears at 15 N.J.R. 900, 16 N.J.R. 134 and 16 N.J.R. 367.

7:26-6.5 District waste flow planning requirements and disposal facility designations

Due to the lack of adequate disposal capacity within certain solid waste districts, and pursuant to a finding by the BPU that the public interest will be best served by designating specific disposal facilities as the ultimate destination of specific waste streams, it is necessary to direct waste flows, as described in this section.

(a) Waste flows within, into and out of the Burlington County District:

1.-12. (No change.)

13. All waste types 10, 13, 23, 25 and 27 generated from within the Cape May County municipality of Ocean City shall be disposed of at the Lee's Gravel Pit landfill, facility number 0108B, located in Egg Harbor Township, Atlantic County until the Cape May County regional landfill becomes operational. This due to a lack of landfill capacity currently available in Cape May County.

[ii. Upon closure of the Bass River Township Sanitary Landfill, facility number 0301A, located in Bass River Township, Burlington County, New Jersey, all waste types 10, 13, 23, 25, and 27 generated from within the Burlington County municipality of Bass River shall be disposed of at the Lee's Gravel Pit landfill, facility number 0108B, located in Egg Harbor Township, Atlantic County, New Jersey due to the transportation difficulties associated with bridge weight limitations in hauling wastes to Burlington County solid waste facilities.]

[iii.] **i.** All waste types 10, 13, 23, 25, and 27 generated from within the Burlington County municipalit[y]**ies** of **Bass River and** Washington shall be disposed of at the Lee's Gravel Pit landfill, facility number 0108B, located in Egg Harbor Township, Atlantic County, New Jersey due to the transportation difficulties associated with bridge weight limitations in hauling wastes to Burlington County solid waste facilities.

(b) (No change.)

(c) Waste flows within, into, and out of the Burlington County District:

1. All waste types 10, 13, [and] 23, **25, and 27** generated from within the Burlington County municipalit[y]**ies** of Bass River **and Washington** shall be disposed of at the [Bass River Township Sanitary Landfill, facility number 0301A, located in Bass River Township, Burlington County, New Jersey] **Lee's Gravel Pit landfill, facility number 0108B, located in Egg Harbor Township, Atlantic County, New Jersey, due to the transportation difficulties associated with the bridge weight limitations in hauling the wastes to Burlington County solid waste facilities.**

[i. All type 25 wastes generated from within Bass River Township shall be disposed of at the Parklands Reclamation Project, facility number 0304A, located in Bordentown Township, Burlington, County, New Jersey.

ii. All type 27 wastes generated from within Bass River Township shall be disposed of at the Landfill and Development Company landfill, facility number 0323A.

iii. Upon closure of the Bass River Township Sanitary Landfill, facility number 0301A, wastes going to this facility shall be disposed of at the Lee's Gravel Pit landfill, facility number 0108B, located in Egg Harbor Township, New Jersey due to the transportation difficulties associated with bridge weight limitations in hauling wastes to Burlington County solid waste facilities.]

i. If a county landfill is not operational and the Lee's Gravel Pit landfill should become unavailable, Burlington County wastes directed to Lee's Gravel Pit shall be disposed of at the Landfill and Development Company landfill, facility number 0323A until such time that a county landfill becomes available.

2. All waste types 20, 13, 23, 25, and 27 generated from within the Burlington County municipalities of **Beverly City,** Bordentown City, Bordentown Township, **Burlington Township,** Chesterfield, Delanco, Edgewater Park, Fieldsboro, Florence, **Mansfield, New Hanover,** North Hanover, **Pemberton Township, Pemberton Borough, Springfield, Willingboro,** and Wrightstown shall be disposed of at the Parklands Reclamation Project landfill facility number 0304A, located in Bordentown Township, Burlington County, New Jersey.

i. If a county landfill is not operational and Parklands Reclamation Project landfill should become unavailable, the wastes directed to the Parklands Reclamation Project landfill pursuant to (c)2 above shall be disposed of at the Landfill and Development Company landfill, facility number 0323A until such time that a county landfill becomes available.

3. All waste types 10, [and] **13, 23, and 27,** generated from within the Burlington County municipality of Burlington City shall be disposed of at the Burlington City Landfill, facility number 0305A, located in Burlington City, Burlington County, New Jersey.

i. All waste type[s 13,] 25[, 27] generated from within Burlington City shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A.

ii. Upon closure of the Burlington City Landfill, wastes going to this facility shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A.

iii. If a county landfill is not operational and Parklands Reclamation Project landfill should becomes unavailable, wastes directed to the Parklands Reclamation Project landfill from Burlington City shall be disposed of at the Landfill and Development Company landfill, facility number 0323A until such time that a county landfill becomes available.

4. All waste type 10 generated from within the Burlington County municipality of Evesham Township shall be disposed of at the Evesham Township Landfill, facility number 0313A, located in Evesham Township, Burlington County, New Jersey **until April 18, 1984. If a consent agreement is signed with the department by that date, type 10 waste may continue to be disposed of at that facility; if not, type 10 waste after April 18, 1984 shall be disposed of at the Landfill and Development Company landfill, facility number 0323A.**

i. All waste types 13, 23, and 27 generated from within Evesham Township shall be disposed of at the Landfill and Development Company landfill, facility number 0323A.

ii. All waste type 25 generated from within Evesham Township shall be disposed of at the Parklands Reclamation Project landfill, facility numbver 0304A.

[iii. Upon closure of the Evesham Township Landfill, facility number 0313A, wastes going to this facility shall be disposed of at the Landfill and Development Company landfill, facility number 0323A.]

iii. If a county landfill is not operational and the Landfill and Development Company landfill should become unavailable, wastes directed to the Landfill and Development Company landfill pursuant to (c)4 i. above shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A until such time that a county landfill becomes available.

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5. All waste types 10, 13, 23, and 27 generated from within the Burlington County municipalities of Lumberton and Hainsesport shall be disposed of at the Lumberton Township Sanitary Landfill, facility number 0317A, located in Lumberton Township, Burlington County, New Jersey.

i. All waste type 25 generated from within Lumberton Township and Hainesport Township shall be disposed of at the Parklands Reclamation Project Landfill, facility number 0304A.

ii. Upon closure of the Lumberton Township Sanitary Landfill, facility number 0317A, wastes going to this facility shall be disposed of at the Landfill and Development Company Landfill, facility number 0323A.

iii. If a county landfill is not operational and the Landfill and Development Company landfill should become unavailable, wastes directed to the Landfill and Development Company landfill pursuant to (c)5 ii. above shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A, until such time that a county landfill becomes available.

6. All waste types 10, 13, 23, and 27 generated from within the Burlington County municipalities of [Beverly City, Burlington Township, Delanco,] Eastampton, [Edgewater Park, Mansfield,] Maple Shade, Medford, Medford Lakes, Mount Holly, Mount Laurel, [New Hanover, Pemberton Borough, Pemberton Township,] Shamong, Southampton, [Springfield,] Westampton, [Willingboro,] and **Woodland** shall be disposed of at the Landfill and Development Company landfill, facility number 0323A, **located in Mount Holly Township, Burlington County, New Jersey**.

i. All type 25 wastes generated from within the Burlington County municipalities of [Beverly City, Burlington Township, Delanco,] Eastampton, [Edgewater Park, Mansfield,] Maple Shade, Medford, Medford Lakes, Mount Holly, Mount Laurel, [New Hanover, Pemberton Borough, Pemberton Township,] Shamong, Southampton, [Springfield,] Westampton, [Willingboro,] and **Woodland** shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A.

ii. If a county landfill is not operational and the Landfill and Development Company landfill should become unavailable, wastes directed pursuant to (c)6. above shall be disposed of at the Parklands Reclamation Project landfill facility number 03034A, until such time that a county landfill becomes available.

7. All waste types 10, 13, and 23 generated from within the Burlington County municipality of Tabernacle shall be disposed of at the Tabernacle Sanitary Landfill, facility number 0335A, located in Tabernacle Township, Burlington County, New Jersey.

i. Type 25 wastes generated from within Tabernacle Township shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A.

ii. Type 27 wastes generated from within Tabernacle shall be disposed of at the Landfill and Development Company landfill, facility number 0323A.

iii. Upon closure of the Tabernacle Sanitary Landfill, facility number 0335A, wastes going to this facility shall be disposed of at the Landfill and Development Company landfill, facility number 0323A.

iv. If a county landfill is not operational and the Landfill and Development Company landfill should become unavailable, wastes directed to the Landfill and Development Company landfill from Tabernacle Township shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A, until such time that a county landfill becomes available.

[8. All waste types 10, 13, and 23 generated from within the Burlington County municipality of Woodland shall be disposed of at the Woodland Township Sanitary Landfill, facility number 0339A, located in Woodland Township, Burlington County, New Jersey.

i. Type 25 wastes generated from within Woodland Township shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A, located in Bordentown Township, Burlington County, New Jersey.

ii. Type 27 wastes generated from within Woodland Township shall be disposed of at the Landfill and Development Company landfill, facility number 0323A, located in Mount Holly Township, Burlington County, New Jersey.,

iii. Upon closure of the Woodland Township Sanitary Landfill, facility number 0339A, wastes going to this facility shall be disposed of at the Landfill and Development Company landfill, facility number 0323A, located in Mount Holly Township, Burlington county, New Jersey.

9. All waste types 10, 13, 23, 25 and 27 generated from within the Burlington County municipality of Washington shall be disposed of at the Lee's Gravel Pit Landfill, facility number 0108B, located in Egg Harbor Township, Atlantic County, New Jersey, due to the transportation difficulties associated with bridge weight limitations in hauling the wastes to Burlington County solid waste facilities.]

[10.] **8.** All waste types 10, 13, 23 and 27 generated from within the Burlington County municipalities of Cinnaminson, Delran, Moorestown, Palmyra, Riverside and Riverton shall be disposed of at the Pennsauken Township landfill, facility number 0427D, located in Pennsauken Township, Camden County, New Jersey until [April 28, 1984]. **May 7, 1984** as provided for in the Interdistrict Waste Flow agreement between Burlington and Camden Counties subject to the terms and conditions set forth therein. **Thereafter, all waste types 10, 13, 23, and 27 shall be disposed of at the Landfill and Development Company Landfill, facility number 0323A.**

i. Waste type 25 generated from within the Burlington County municipalities of Cinnaminson, Delran, Moorestown, Palmyra, Riverside and Riverton shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A, located in Bordentown Township, Burlington County, New Jersey.

ii. If a county landfill is not operational and the Landfill and Development Company landfill should become unavailable, wastes directed to the Landfill and Development Company landfill pursuant to (c)8 above shall be disposed of at the Parklands Reclamation Project landfill until such time that a county landfill becomes available.

[11.] **9.** All waste types 10, 13, 23 and 27 generated from within the Camden County municipalities [and] **of** Audubon, Lindenwold, Voorhees and that portion of Cherry Hill Township which is collected east of Kings Highway to the municipal line of Mt. Laurel and the Borough of Haddonfield, estimated to be a portion of 20,500 tons per year, shall be disposed of at the Landfill and Development Company landfill, facility number 0323A, located in Mount Holly Township, Burlington County, New Jersey until **May 7, 1984** [April 28, 1984] as provided for in the Interdistrict Waste Flow agreement between Burlington and Camden Counties and subject to the terms and conditions set forth therein.

[i. All waste type 25 generated from within the Camden County municipalities of Audubon, Lindenwold, Voorhees and that portion of Cherry Hill Township which is collected

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east of Kings Highway to the municipal line of Mt. Laurel and the Borough of Haddonfield, estimated to be a portion of the 20,500 tons per year, shall be disposed of at the Kinsley's Landfill, Inc. landfill, facility number 0802B, located in Deptford Township, Gloucester County, New Jersey].

[12.] **10.** All waste type 13 generated from within the Camden County municipality of Camden City shall be disposed of at the Landfill and Development Company landfill, facility number 0323A, located in Mount Holly Township, Burlington County, New Jersey, until [April 28, 1984] **May 7, 1984** as provided for in the Interdistrict Agreement between Burlington and Camden Counties and subject to the terms and conditions set forth therein.

[i. All waste types 10, 23, 25, and 27 generated from within the Camden County municipality of Camden City shall be disposed of at the Kinsley's Landfill, Inc. landfill, facility number 0802B, located in Deptford Township, Gloucester County, New Jersey.]

[13.] **11.** (see related proposal in the May 7, 1984 Register.)

[14.] **12.** Burlington County shall accept certain wastes from [the City of Philadelphia and 12] Pennsylvania hauling companies pursuant to agreements between Burlington County and these [respective parties] **companies**, subject to the terms and conditions set forth therein.

(d) Waste flows within, into and out of the Camden County District:

1. All waste types 10, 13, 23, 25, and 27 generated from within the Camden County municipalities of Audubon Park, Barrington, Bellmawr, Berlin Borough, Berlin Township, Brooklawn, Clementon, **Collingswood,** Gibbsboro, Gloucester City, Gloucester Township, Haddon Heights, Hi-Nella, Laurel Springs, Lawnside, Magnolia, Mount Ephraim, Oaklyn, Pine Hill, Pine Valley, Runnemeade, Somerdale, Stratford, and Woodlynne shall be disposed of at Kinsley's Landfill, Inc., facility number 0802B, located in Deptford Township, Gloucester County, New Jersey.

2. (No change.)

3. All waste types 10, 13, 23, and 27 generated from within the Camden County municipalities of Audubon, Lindenwold, and Voorhees Township shall be disposed of at the Landfill and Development Company landfill, facility number 0323A, located in Mount Holly Township, Burlington County, New Jersey until [April 28, 1984] **May 7, 1984** as is provided for in the interdistrict waste flow agreement between Burlington and Camden Counties and subject to the terms and conditions set forth therein.

i. All waste type 25 generated from within the Camden County municipalities of Audubon, Lindenwold, and Voorhees Township shall be disposed of at the Kinsleys Landfill, Inc., facility number 0802B, located in Deptford Township, Glouscester County, New Jersey.

4. All waste types 10, 13, 23, and 27 generated from within the Camden County municipality of Cherry Hill Township, with the exception of that portion which is collected east of Kings Highway to the municipal line of Mt. Laurel[,] and the Borough of Haddonfield (estimated to be a portion of 20,500 tons per year) shall be disposed of at the Pennsauken Township Sanitary Landfill, facility number 0427D, located in Pennsauken Township, Camden County, New Jersey.

i. The 20,500 tons per year of waste types 10, 13, 23, and 27 generated and collected from the service area described above shall be disposed of at the Landifll and Development Company landfill, facility number 0323A, located in Mount Holly Township, Burlington County, New Jersey until [April 28, 1984] **May 7, 1984** as provided for in the interdistrict waste flow agreement between Burlington and Camden Counties and subject to the terms and conditions set forth therein.

ii. All waste type 25 generated from within the Camden County municipality of Cherry Hill Township shall be disposed of at the Kinsley's Landifll, Inc., facility number 0802B, located in Deptford Township, Gloucester County, New Jersey.

5. All waste types 10, 23, 25, and 27 generated from within the Camden County municipality of Camden City shall be disposed of at the Kinsley's Landfill, Inc. facility number 0802B, located in Deptford Township, Gloucester County, New Jersey.

i. All waste type 13 generated from within the Camden County municipality of Camden City shall be disposed of at the Landfill and Development Company landfill, facility number 0323A, located in Mount Holly Township, Burlington County, New Jersey, until [April 28, 1984] **May 7, 1984** as provided for in the interdistrict waste flow agreement between Burlington and Camden Counties and subject to the terms and conditions set forth therein.

6. All waste types 10, 13, 23, and 27 generated from within the Camden County municipalities of [Collingswood] **Haddonfield,** Haddon Township, Merchantville Township, Pennsauken, and Tavistock shall be disposed of at the Pennsauken Township Sanitary Landfill, facility number 0427D, located in Pennsauken Township, Camden County, **New Jersey**.

i. All waste type 25 generated from within the Camden County municipalities of [Collingwood] **Haddonfield,** Haddon Township, Merchantville Township, Pennsauken, and Tavistock shall be disposed of at the Kinsley's Landfill, Inc., facility number 0802B, Deptford Township, Gloucester County, New Jersey.

7. All waste types 10, 13, 23, and 27 generated from within the Burlington County municipalities of Cinnaminson, Delran, Moorestown, Palmyra, Riverside, and Riverton shall be disposed of at the Pennsauken Township Sanitary Landfill, facility number 0427D, located in Pennsauken Township, Camden County, New Jersey until [April 28, 1984] **May 7, 1984** as provided for in the interdistrict waste flow agreement between Burlington and Camden Counties and subject to the conditions set forth therein.

[i. All waste type 25 generated from within the Burlington County municipalities of Cinnaminson, Delran, Moorestown, Palmyra, Riverside, and Riverton shall be disposed of at the Parklands Reclamation Project Landfill, facility numbr 03044A, located in Bordentown Township, Burlington County, New Jersey.]

8. (No change.)

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

(h) Waste flows within, into and out of the Gloucester County District:

1.-4. (No change.)

5. All waste types 10, 13, 23, 25, and 27 generated from within the Camden County municipalities of Audubon Park, Barrington, Bellmawr, Berlin Boro, Berlin Township, Brooklawn Township, Clementon, **Collingswood,** Gibbsboro, Gloucester City, Gloucester Township, Haddon Heights, Hi-Nella, Laurel Springs, Lawnside, Magnolia, Mt. Ephraim, Oaklyn, Pine Hill, Pine Valley, Runnemeade, Somerdale, Stratford, and Woodlynne shall be disposed of at the Kinsley's Landfill, Inc., facility number 0802B, located in Deptford Township, Gloucester County, New Jersey as directed by Section D.2a and c of the approved Gloucester

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County District Solid Waste Management Plan and Section C.1 of the approved Camden County District Solid Waste Management Plan.

i. (No change.)

ii. All waste type 25 generated from within the Camden County municipalities of Audubon, Cherry Hill Township, [Collingswood,] Haddonfield, Haddon Township, Lindenwold, Merchantville Township, Pennsauken, Tavestock and Voorhees Township shall be disposed of at the Kinsley's Landfill, Inc. facility number 0802B, located in Deptford Township, Gloucester County, New Jersey.

6.-7. (No change.)

(i)-(v) (No change.)

HEALTH

(a)

THE COMMISSIONER

Certificate of Need: Cardiac Facilities Cardiac Diagnostic Facilities

Proposed Readoption with Amendments: N.J.A.C. 8:33E-1

Authorized by: J. Richard Goldstein, M.D., Commissioner of the Department of Health, (with approval of Health Care Administration Board).

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

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 20, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

John A. Calabria, Coordinator
New Jersey Department of Health
Health Planning Services
Room 403, CN 360
Trenton, New Jersey 08625

The Department of Health thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Purchasant to Executive Order No. 66(1978), this rule would otherwise expire on July 19, 1984. The readoption of the rule becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of readoption. The concurrent amendments to the existing rule become effective upon publication in the Register of a notice of adoption.

This proposal is known as: PRN 1984-274.

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Department of Health proposes to readopt N.J.A.C. 8:33E-1 with amendments. These rules have been in effect since May 23, 1977 and were readopted in 1979 and 1982.

These rules apply to the provision of cardiac diagnostic services in settings where cardiac surgery is not also offered. A companion subchapter, identified at N.J.A.C. 8:33E-2, establishes rules for the provision of cardiac services in cardiac centers, which, by definition, offer both cardiac diagnostic and surgical services.

The current rules require periodic updating based upon the review and recommendations of the commissioner's cardiac advisory committee (CCAC). The full text of the rule including the proposed amendments were reviewed and approved by the statewide health coordinating council (SHCC) in the Department of Health.

This proposal recommends the retention of Department of Health policy, standards and criteria, as reflected in the existing rules, with the following proposed changes:

1. Amendments to N.J.A.C. 8:33E-1.12 which propose to permit the processing of certificate of need applications for new invasive cardiac diagnostic facilities under conditions specified at N.J.A.C. 8:33E-1.12(a)-(d).

2. The addition of a paragraph, hereby referenced as N.J.A.C. 8:33E-1.5(e), which would allow the commissioner's cardiac advisory committee to review certificate of need applications for cardiac diagnostic facilities and to make recommendations to both the statewide health coordinating council and Commissioner of Health regarding them.

Social Impact

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

The New Jersey State Health Plan recognizes the underutilization of inpatient beds, specialty services, and expensive equipment as important factors contributing to the rapidly escalating costs of health care. Regionalization of specialty services and equipment is viewed as an important mechanism for promoting health by improving the capabilities of services and quality of care offered and for achieving cost efficiencies in the delivery of expensive and highly sophisticated health care services.

The regionalization of cardiac diagnostic services is essential in generating caseloads of sufficient volume to maintain professional skills, thereby reducing unnecessary risks to patients and promoting the efficient and effective delivery of this specialized service.

A review of utilization patterns at existing cardiac diagnostic facilities statewide demonstrates that a significant percentage of these facilities are not operating at capacity. Historically, overall statewide utilization has increased approximately 15 percent each year from 1979 through 1983, resulting in an increase in the number of invasive cardiac diagnostic facilities that satisfy minimal utilization levels referenced at N.J.A.C. 8:33E-1.2. Nevertheless, during 1982, four of the thirteen invasive cardiac diagnostic facilities in this state still did not satisfy these minimal utilization criteria.

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Given both the increasing utilization of the State's existing cardiac diagnostic inventory and recent developments in the provision of interventional techniques, the Department of Health proposes to process certificate of need applications for a limited number of new diagnostic facilities.

These rules are important for quality and cost reasons. They promote sufficient utilization to maintain professional skills, thereby protecting patients from unnecessary risks. In addition, they inhibit the unrestricted growth in this service statewide, thereby promoting appropriate utilization levels and insuring that the service is provided in a cost-efficient manner.

Economic Impact

The proposed rules will introduce on a limited basis additional competition in the provision of this service. It proposes to do so, however, only in health service areas where all existing cardiac diagnostic services satisfy optimal levels of utilization as specified at N.J.A.C. 8:33E-1.2(c) and whose new invasive interventional procedures are in demand. The introduction of these new facilities will occur in a manner which does not offend existing utilization patterns. Once a new facility has been approved in an area that qualifies for such additions, subsequent approvals will not be considered until both existing and newly approved facilities satisfy optimal levels of utilization as identified in this subchapter.

This approach is important, since the cost of providing invasive cardiac diagnostic services is largely determined by the spreading of fixed costs over the number of cases performed. An invasive cardiac diagnostic facility lacking sufficient volumes represents a less than efficient use of a costly resource.

In the absence of these rules, the growth of new services would be unrestricted. To allow this to occur would be to encourage a reduction in the utilization of existing facilities, offending quality of care considerations, and promoting significant cost inefficiencies in the provision of this important service.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:33E-1.

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

8:33E-1.1 [Introduction] **Scope**

(a) (No change.)

(b) In the cardiac diagnostic facility the primary diagnostic services are provided by cardiac catheterization, coronary angiographic and non-invasive laboratories. The cardiac catheterization and coronary angiographic laboratories are devoted to achieving optimal quality physiological and angiographic studies. The non-invasive laboratory includes at a minimum ECG and VCG instruments, exercise stress testing, phono/pulse tracing/[ECHO] **echo** equipment and Holter type monitoring **and nuclear cardiology (often in a separate department)** facilities.

(c) The existing inventory of cardiac services located within the State includes [14] **12** "free standing" diagnostic facilities which perform cardiac catheterizations but do not offer cardiac surgery and an additional 10 facilities which perform both diagnostic and surgical functions. The total of [24] **22** sites offering invasive cardiac diagnostic services are distributed throughout the State and serve each of the five health systems agencies.

[(d) Given the more than ample supply of existing diagnostic services within the State and given the fact that many of the existing facilities are not meeting the minimum requirements for efficient, quality operation outlined herein, it is the position of the department that there is no need for any additional "free standing" cardiac diagnostic services in the State and that future certificates of need for this type of facility shall be denied. Any further proliferation of these facilities in New Jersey will result in lowering the quality of care at existing facilities and raising the cost of delivering the service to the health consuming public.]

(d) Given the increase in utilization levels experienced by New Jersey's invasive cardiac diagnostic facilities and the statewide reduction in the number of providers of this service, the Department of Health will process certificate of need applications for a limited number of new cardiac diagnostic facilities in accordance with N.J.A.C. 8:33E-1.12.

(e) The diagnostic cardiac facility must be regionally based in an effort to achieve improved quality at manageable costs. Data indicate that the larger the volume of diagnostic procedures, the lower the risk factor. Of the [24] **22** existing **invasive** cardiac diagnostic programs in the State for which the department has comparable data [11] **4 or 31 percent** currently are operating below minimum State utilization requirements. [Any additional facilities in the State will in all probability lead to a lowering of the volume at each of the existing facilities.]

(f) (No change.)

(g) The standards and criteria defined herein **(N.J.A.C. 8:33E-1.1 et seq.)** shall apply to the efficient delivery of quality diagnostic services within the setting of the "free standing" cardiac catheterization laboratory. In addition to meeting these minimal requirements, the diagnostic facility is expected to operate a well established non-invasive cardiac diagnostic laboratory. Additional policy has been proposed for the more comprehensive cardiac **surgery** center and is identified within [the proposed regulation entitled "Proposed Standards and General Criteria for the Planning and Application for Designation of Regional Cardiac Centers".] **N.J.A.C. 8:33E-2.1 et seq.**

8:33E-1.2 Utilization **of invasive cardiac diagnostic facilities**

(a) (No change.)

(b) Volume of patients diagnosed is not the only determinant or indicator of quality. However, some minimum volume is required to maintain the skills of the diagnostic team and to minimize costs per patient. The minimum acceptable number of adult cardiac catheterization patients per laboratory which is shared with other specialized radiographic procedures is [200] **250** per year while the minimum number for a fully dedicated adult cardiac catheterization laboratory is [400] **500** per year in order to maintain the efficiency and the skills of the catheterization team. Of [this number] **the 250**, 150 must be coronary arteriographic patients[.] **in a shared laboratory.**

1. (No change.)

(c) [While 200 is offered as the minimal acceptable adult patient load in a shared laboratory and 400 in a dedicated one by the State, they are not optimal levels.] The optimal utilization level for a laboratory dedicated to cardiac catheterization/coronary angiographic examinations is 500 adult patients per year, including 400 coronary arteriographic patients, in order to maximize quality of care and minimize unit cost per examination **(250 adult patients per year is considered optimal utilization for a shared laboratory)**. All diagnostic facilities

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will be evaluated in light of this optimal level by the commissioner's cardiac advisory committee.

(d) Each cardiac diagnostic facility should establish a minimum number of procedures for each physician with laboratory privileges in order to maintain a consistent level of proficiency within the laboratory. The cardiac advisory committee recommends that each physician should perform a minimum of 50 cases each year or be under the supervision of a physician who has performed this minimum number of cases. **(This minimum case load may be accomplished at more than one laboratory.)**

(e) Acutely ill (cardiac) infants[, except in emergencies,] should be [definitely] **definitively** examined only in centers with active pediatric cardiac surgical programs.

8:33E-1.3 **Facility** personnel; **requirements and responsibilities**

(a) (No change.)

(b) While the following functions shall be performed within each facility, more than one function may be executed by a single individual appropriately cross-trained to perform the required functions:

1.-4. (No change.)

5. Monitoring and recording technician: Responsible for constant monitoring of physiologic data, including the electrocardiogram and recording this information. This [job] **function** can best be handled by a second cardiac catheterization technician or radiologic technician.

6.-7. (No change.)

(c) (No change.)

8:33E-1.4 Peer review

(a) Quality control is essential for the consistent high quality level of performance required of any medical service. As one means of quality control, appropriate mechanisms for peer review shall be described in each application for designation as a cardiac diagnostic facility. **Such mechanisms should include, but not be limited to, the delineation of criteria for the evaluation of:**

1. Overall case selection for study (e.g., rate of normal studies, rate of surgical referral)

2. Laboratory and physician performance (e.g., case volume, mortality and complication rates per physician)

3. Quality of studies (e.g., number of incomplete studies, diagnostic adequacy of films, number of restudies performed elsewhere)

In all cases, criteria selection should be based on sound medical practice and consistency with the literature.

(b) (No change.)

8:33E-1.5 Commissioner's cardiac advisory committee

(a) A cardiac advisory committee [will be] **has been** established under the authority of the Commissioner of Health to review on a regular basis the performance of all cardiac institutions **in the state** to insure high quality patient care.

(b) In addition to practicing specialists, the cardiac advisory committee will [have] **be comprised of** representatives from third party payors, **a consumer member who is involved in the New Jersey health planning process,** and the administration of institutions providing the service.

(c) Mortality rate, utilization **of facilities** and medical practices of each cardiac diagnostic facility will be reviewed regularly by the commissioner's cardiac advisory committee to insure quality control and accurate data reporting.

(d) To the greatest degree possible, other inspection programs of cardiac services will be integrated with those of the advisory committee, to minimize the number of official visits to these services.

(e) The Commissioner's Cardiac Advisory Committee will review certificate of need applications for new invasive cardiac diagnostic facilities and make recommendations to the Statewide Health Coordinating Council and Commissioner of Health.

8:33E-1.6 Association with cardiac surgical services

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

8:33E-1.7 Long-range planning

(No change.)

8:33E-1.8 Documentation of purchase and operational cost

The applicant will provide full written documentation of the projected implementation and operational costs of the proposed program. This documentation will include direct and indirect costs, [i.e.,] **that is,** construction, equipment, supplies, personnel, maintenance, overhead costs, as well as projected costs of remodeling or renovation necessary to accommodate the [center] **program**. Projections of anticipated revenues must be supplied for at least the first three years.

8:33E-1.9 Statistical data required

The facility will maintain and provide basic statistical data on the operation of the program and report that data to the Department of Health on a quarterly basis and on a standardized form prepared by the department. Copies of the full text of the required quarterly reporting forms may be obtained upon written request to the New Jersey State Department of Health, Health Data Services, [Room 501, P.O. Box 1540,] **Room 405, CN 360,** Trenton, New Jersey 08625.

8:33E-1.10 Certification of nondiscriminatory practices

(No change.)

8:33E-1.11 Compliance

Facilities, which on the [date of passage of this regulation] **effective date of this subchapter** are providing cardiac diagnostic services without cardiac surgery, [have one year, from the date of passage of this regulation to] **must** meet the minimal criteria and standards outlined herein [and submit an application for designation] or be subject to disallowance for the service under the State's rate setting program.

8:33E-1.12 New facilities

[Given the current availability and volume of cardiac diagnostic services within the State, the Department sees no need for any new "free standing" cardiac diagnostic facilities. Therefore, no certificate of need applications for new cardiac diagnostic facilities will be processed.]

(a) The Department of Health will process certificate of need applications for new invasive cardiac diagnostic facilities only from health service areas, designated pursuant to P.L. 93-641 and amendments thereto, where all existing invasive cardiac diagnostic facilities meet optimal levels of utilization as specified in N.J.A.C. 8:33E-1.2(c).

(b) No more than one new invasive cardiac diagnostic facility may be approved in each health service area, designated pursuant to P.L. 93-641 and amendments thereto, where all existing invasive cardiac diagnostic facilities are operating at

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optimal levels of utilization as specified in N.J.A.C. 8:33E-1.2(c). Additional new facilities, beyond the first approved pursuant to this subchapter, will be considered only when both existing and approved facilities in a given health service area are operating at optimal levels of utilization as specified at N.J.A.C. 8:33E-1.2(c).

(c) Competing applications for new invasive cardiac diagnostic facilities in a health service area will be evaluated on the basis of their ability to meet the standards established in this subchapter. In addition, such factors as the applicant's case-mix, physician staffing, and the utilization of its non-invasive cardiac services will be considered in the review process.

(d) All certificate of need applications for new invasive cardiac diagnostic facilities must document the ability of the applicant to meet the minimum standards and criteria contained in this subchapter within three years from the initiation of the service.

8:33E-1.13 [Regulation] **Subchapter** review

This [regulation] **subchapter** will be reviewed and evaluated [within] **at least every** three years by the Commissioner's cardiac advisory committee.

(a)

THE COMMISSIONER

Certificate of Need: Computerized Tomography (CT) Services

Proposed Readoption with Amendments: N.J.A.C. 8:33G-1

Authorized by: J. Richard Goldstein, M.D., Commissioner of the Department of Health (with approval of the Health Care Administration Board).
Authority: N.J.S.A. 26:2H-1 et seq.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 20, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

John A. Calabria, Coordinator
New Jersey Department of Health
Health Planning Services
Room 403, CN 360
Trenton, NJ 08625

The Department of Health thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), this rule would otherwise expire on August 15, 1984. The readoption of the rule becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of readoption. The concurrent amendments to the existing rule become effective upon publication in the Register of a notice of adoption.

This proposal is known as: PRN 1984-273.

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Department of Health proposes to readopt N.J.A.C. 8:33G-1. The proposed readoption recommends the retention without substantive change of current Department of Health policy, standards, and criteria for the planning and certification of need of computerized tomography (CT) services. In proposing readoption, the current rules were reviewed in their entirety by the Statewide Health Coordinating Council.

The Department of Health initially established rules for CT services in 1977 and amended these rules in 1979, 1981 and 1983. The current rules, approved by the Health Care Administration Board as recently as February, 1983 included liberalized standards and criteria which facilitated the introduction of CT services throughout the state. The minimum utilization, personnel standards, and general criteria contained in this subchapter are designed to assure that each CT scanner approved and placed in operation will be efficiently and effectively utilized and that unnecessary cost and duplication, associated with the unnecessary proliferation of CT services that would result from the absence of these rules, will be minimized.

At the request of the Health Care Administration Board, the Mathematical Model for Utilization (formerly attached as Appendix A) has been deleted from the proposed text because of its undue complexity. The Department and potential CT applicants have not used the Mathematical Model in the past three years. The Leonard Model (formerly Appendix B and now attached as Appendix A) has been used exclusively by potential CT applicants and is being proposed as the sole method of projecting CT utilization.

Social Impact

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

The New Jersey State Health Plan recognizes the underutilization of inpatient beds, specialty services, and expensive equipment as an important factor contributing to the rapidly escalating costs of health care. Regionalization of specialty services and equipment is viewed as an important mechanism for promoting health by improving the capabilities of services and quality of care offered, by assuring an adequate patient volume for hospitals offering these expensive services, and by containing the rising costs of health care services.

The Department conducted an internal review of the rules prior to this notice for readoption. In this review, it was determined that the rules adequately and reasonably provide access to efficient and effective CT services while avoiding unnecessary duplication of this costly service.

The rules have been effective because they establish a clear procedure for the certification of need for CT services that inhibits unrestricted growth in this service statewide, thereby

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promoting appropriate utilization levels and insuring that the service is provided in a cost efficient manner.

Economic Impact

To date, a total of 77 CT units have been approved through the State's certificate of need process. The total capital costs for these CT units amounts to $78,335,185. Operational costs for these CT units adds, at a minimum, approximately $20,000,000. annually to the cost of providing these services statewide.

It must be emphasized that the cost of providing CT services is largely determined by the spreading of fixed costs over the number of cases performed at each site. Given the resources devoted to CT services as cited above, it is abundantly clear that any CT unit lacking sufficient volumes of patients represents a less than efficient use of a costly resource.

In the absence of these rules, the growth of CT units would be unrestricted. Permitting this to occur would lead to a reduction in the utilization of existing CT units and the promotion of significant cost inefficiencies in the provision of this service.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:33G-1, as amended in the New Jersey Register.

Full text of the proposed amendments to the readoption follows.

8:33G-1.1 (No change.)

8:33G-1.2 Utilization standards

(a) Each applicant for a computerized tomographic scanner must show evidence of a minimal proposed volume of 2,000 scans per unit, per year by application of [either the mathematical model for utilization, herein attached as Appendix A or] the Leonard model, herein attached as Appendix [B] **A.**

1. Copies of the full text[s] of [both the mathematical model and] the Leonard model may be obtained by written request to the New Jersey Department of Health, Health Planning Services, Room [802, P.O. Box 1540] **403, CN 360**, Trenton, New Jersey 08625.

2.-3. (No change.)

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

(d) Each application for an additional computerized tomography scanner, beyond the first approved unit, must be supported by documentation demonstrating that each existing computerized tomographic (CAT/CT) scanner is being used at least [76] **88** hours per week inclusive of scheduled down-time and exclusive of non-scheduled down-time.

8:33G-1.3 (No change.)

8:33G-1.4 General criteria

(a) As part of the application for a computed tomographic scanner, each applicant must meet each of the following minimum general criteria:

1. Provide written documentation of need as expressed by [the mathematical model (Appendix A) or] the Leonard model (Appendix [B] **A**) and show evidence that the proposed action is both consistent with the institution's approved long-range plan, submitted to the department under requirements of N.J.A.C. 8:31-16.1, and with the health systems plan and annual implementation plan of the health systems area in which the applicant is located.

2.-5. (No change.)

6. Maintain and provide basic statistical data on the operation of the unit and report that data to the New Jersey Department of Health on a quarterly basis and on a standardized form prepared by the department. Copies of the full text of the required quarterly reporting forms may be obtained upon written request to the New Jersey State Department of Health, Health Data Services, Room [501, P.O. Box 1540] **405, CN 360**, Trenton, New Jersey 08625.

7.-9. (No change.)

[APPENDIX A

MATHEMATICAL MODEL FOR ESTIMATING
CT UTILIZATION]
Delete in its entirety.

APPENDIX [B] **A**

LEONARD MODEL
PROSPECTIVE CT USE BASED ON
THE
INCIDENCE OF DISEASE AND TRAUMA

PROCEDURE

1.-8. (No change.)

APPENDIX [B] **A**
(GROUP A)
INDICATORS FOR COMPUTED TOMOGRAPHY
(No change in text)

APPENDIX [B] **A**
(GROUP B)
INDICATORS FOR COMPUTED TOMOGRAPHY
(No change in text.)

APPENDIX [B] **A**
(GROUP C)
INDICATORS FOR COMPUTED TOMOGRAPHY

APPENDIX [B] **A**
(GROUP D)
INDICATORS FOR COMPUTED TOMOGRAPHY

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HUMAN SERVICES

(a)

DIVISION OF PUBLIC WELFARE

Monthly Reporting Policy Handbook Benefit Computation Following Suspension of Grant and Loss of Employment

Proposed Amendment: N.J.A.C. 10:90-4.2

Authorized By: George J. Albanese, Commissioner, Department of Human Services.
Authority: N.J.S.A. 44:7-6, 44:10-3, 30:4B-2 and 45 CFR 233.34(c)(3).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 20, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Audrey Harris, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

At the close of the period for comments, the Department of Human Services may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-289.

The agency proposal follows:

Summary

The proposed amendment applies to those recipients of Aid to Families with Dependent Children (AFDC) who experience a significant change in circumstances during a month in which their assistance payments have been temporarily suspended. It defines a "significant change in circumstances" as loss of employment, and provides that the AFDC grants issued to such recipients for the two months following suspension will be computed using prospective budgeting of current income, rather than retrospective budgeting of prior months' income. The amendment resulted from a change in the Federal interpretation of the regulation found at 45 CFR 233.34(c)(3).

Social Impact

The proposed amendment will permit AFDC grants to reflect current month situations and thus lessen the hardship of loss of employment on a small group of AFDC recipients.

Economic Impact

The proposed amendment will result in slightly higher AFDC grants for two months for a relatively small category of AFDC recipients. The economic impact of this rule will be minimal.

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

10:90-4.2 Computing the assistance payment/food stamp benefit in the initial two payment months of eligibility

(a) The CWA shall use prospective budgeting to compute the assistance payments/food stamp benefits for the initial two payment months of eligibility, except in situations detailed in (b) below. See N.J.A.C. 10:90-2.4(a)2i for determination of gross monthly income in these two months. The CWA will compute the assistance payment by counting the budget month income of the same individuals whose income was considered in the prospective eligibility decision in N.J.A.C. 10:90-4.1.

1. (No change.)

2. The CWA shall use prospective budgeting to compute the assistance payments (but not the food stamp benefits) for the initial two payment months of eligibility, if the initial month follows a payment month of suspension (defined in N.J.A.C. 10:90-4.5) and the family's circumstances for the initial month had changed significantly from those reported for the corresponding budget month. A significant change in circumstances is defined as loss of employment.

i. Example: A family's AFDC grant for March is suspended for excess income from five pays received in the January budget month. The family's MSR, filed on March 4, shows continued receipt of earnings in the February budget month. However, in mid-March, the client advises the CWA that she lost employment and she does not expect to be employed in April. The circumstances in the initial month of April will be significantly different than circumstances in the corresponding budget month of February due to loss of employment. The family's AFDC grants for April and May must be calculated using prospective budgeting. Earned income received in February will be disregarded in the calculation of the April AFDC grant.

(b) The CWA shall use retrospective budgeting to compute the amount of the assistance payment/food stamp benefit in the initial two payment months of eligibility if:

1. Assistance had been suspended for one month (as defined in N.J.A.C. 10:90-4.5), and the initial month follows the month of suspension, **and the circumstances of the eligible unit in the initial month did not change significantly from those reported for the corresponding budget month due to loss of employment,** or

2. (No change.)

(c) The CWA shall use prospective budgeting to compute the assistance payment/food stamp benefit for the initial two payment months of eligibility that follow a period of ineligibility of at least one full payment month.

1. (No change.)

2. [A] **Except for circumstances in (a)2 above, a** payment month of suspension, as defined in N.J.A.C. 10:90-4.5, shall not be considered a payment month of ineligibility for purposes of this section.

3.-4. (No change.)

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CORRECTIONS

(a)

Manual of Standards for Juvenile Detention Commitment Programs

Proposed New Rule: N.J.A.C. 10A:33

Authorized By: William H. Fauver, Commissioner, New Jersey Department of Corrections.
Authority: N.J.S.A. 2A:4A-1 et seq., specifically 2A:4A-43c(1) and (2).

Interested persons may submit in writing, data, views, or arguments relevant to the proposed rule on or before June 20, 1984. These submissions and any inquiries about submissions and responses, should be addressed to:

New Jersey Department of Corrections
Joseph DeJames, Director
Juvenile Detention and Monitoring Unit
Whittlesey Road
P.O. Box 7387
Trenton, New Jersey 08628

The Department of Corrections thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). The adopted rules become effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-268.

The agency proposal follows:

Summary

On January 1, 1984 a new juvenile code became effective in New Jersey (N.J.S.A. 2A:4A-20 et. seq.). Among the many provisions of the code, this legislation provides for short-term (60 days maximum) commitment of juveniles adjudicated delinquent to county-operated juvenile detention facilities that are approved by the State Department of Corrections (N.J.S.A. 2A:4A-43c. 1 and 2). Prior to the adoption of the new code, these facilities provided care and custody only for juveniles accused of, but not yet adjudicated delinquent.

While the new code continues county responsibility to provide care and custody for juveniles awaiting court disposition of delinquent offenses, additional services and care are now necessary in those juvenile detention facilities which desire to also accept adjudicated delinquents for short-term rehabilitation. The proposed new rules establish additional minimum standards which must be met by all juvenile detention facilities seeking to establish and operate such a juvenile detention commitment program.

The proposed new standards do not alter or replace the current minimum requirements established for juvenile detention facilities as delineated in the Manual of Standards for Juvenile Detention Facilities which were adopted on January 11, 1980 (N.J.A.C. 10A:32) as proposed in the Notice of June 7, 1979 at 11 N.J.R. 284(b). Rather, the new minimum standards will be required in addition to the current standards in applicable facilities.

Social Impact

It is anticipated that the proposed standards will have a positive social impact on the juvenile detention facilities, juveniles in residence, and the general community. The establishment of these minimum standards of care and services will ensure that only those facilities which provide an acceptable program of rehabilitation and have adequate space will be permitted to receive this new category of juvenile residents.

Economic Impact

The economic impact of the proposed standards is expected to be very minimal. The proposed standards do not require counties to develop juvenile detention commitment programs or to provide such services in their juvenile detention facilities. The decision to provide this new juvenile court sentencing option is voluntary on the part of each county. Furthermore, the quality of care and services provided in most of the facilities which are eligible to develop a juvenile detention commitment program already exceeds the minimum standards currently in effect. Therefore, the cost to implement the proposed additional standards should be negligible.

Full text of the proposed rule follows.

CHAPTER 33
Manual of Standards for Juvenile Detention Commitment Programs

SUBCHAPTER 1. INTRODUCTION

10A:33-1.1 Purpose

In accordance with the revised New Jersey juvenile code, (N.J.S.A. 2A:4A-20, et. seq.) juveniles adjudicated delinquent may now be sentenced to a term of incarceration of up to 60 consecutive days in county-operated juvenile detention facilities. Since the juvenile code specifically requires that the Department of Corrections certify all juvenile detention facilities which may be utilized for this new dispositional alternative, the Department has promulgated the minimum standards contained in this chapter which must be met by those facilities receiving adjudicated delinquents under the Act. The standards in this chapter are in addition to the existing Manual of Standards For Juvenile Detention Facilities located at N.J.A.C. 10A:32.

10A:33-1.2 Definitions

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

"Juvenile" means an individual who is under the age of 18 years (N.J.S.A. 2A:4A-22a).

"Delinquency" means the commission of an act by a juvenile which if committed by an adult would constitute:

1. A crime;
2. A disorderly persons offense or petty disorderly persons offense; or
3. A violation of any other penal statute, ordinance or regulation (N.J.S.A. 2A:4A-23).

"Detention" means the temporary care of juveniles in physically restricting facilities pending court disposition (N.J.S.A. 2A:4A-22c).

"Department" means the New Jersey Department of Corrections.

"Juvenile Detention Commitment Program" means a short-term rehabilitation program operated within an approved juvenile detention facility for adjudicated juveniles committed by the court for a maximum of 60 consecutive days pursuant to N.J.S.A. 2A:4-43c(1).

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SUBCHAPTER 2. LEGAL PROVISIONS

10A:33-2.1 Legal authority for juvenile detention commitment

Pursuant to N.J.S.A. 2A:4A-43c(1), effective January 1, 1984, the court may, in addition to any other disposition enumerated in N.J.S.A. 2A:4A-43, incarcerate an adjudicated delinquent in a juvenile detention facility for a term not to exceed 60 consecutive days.

10A:33-2.2 Legal authority of department

(a) N.J.S.A. 2A:4A-43c(1) provides that "if the juvenile detention facility in the county in which the juvenile has been adjudicated delinquent has a juvenile detention facility meeting the physical and program standards established pursuant to this subsection by the Department of Corrections, the court may, in addition to any of the dispositions enumerated in this subsection, incarcerate the juvenile in a youth detention facility for a term not to exceed 60 consecutive days. The Department of Corrections shall promulgate such rules and regulations from time to time as deemed necessary to establish minimum physical facility and program standards for the use of juvenile detention facilities pursuant to this subsection."

(b) N.J.S.A. 2A:4A-43c(2) provides that "no juvenile may be incarcerated in any county detention facility unless the county has entered into an agreement with the Department of Corrections concerning the use of the facility for sentenced juveniles. Upon agreement with the county, the Department of Corrections shall certify detention facilities which may receive juveniles sentenced pursuant to this subsection and shall specify the capacity of the facility that may be made available to receive such juveniles; provided, however, that in no event shall the number of juveniles incarcerated pursuant to this subsection exceed 50 of the maximum capacity of the facility."

SUBCHAPTER 3. ELIGIBILITY REQUIREMENTS

10A:33-3.1 Statutory eligibility

Pursuant to N.J.S.A. 2A:4A-43c(1) only those counties in which an approved juvenile detention facility is located are eligible to participate in the juvenile detention commitment program.

10A:33-3.2 Departmental Eligibility

(a) Only those counties in which the population of the approved juvenile detention facility has consistently been less than the maximum population capacity established by the Department of Corrections are eligible to participate in the juvenile detention commitment program.

1. Counties deemed ineligible because of overpopulation may re-apply to the Department every 90 days after receipt of the notice of ineligibility.

(b) Only those counties which have been consistently in substantial compliance with the Manual of Standards For Juvenile Detention Facilities, (N.J.A.C. 10A:32), as determined by the Department of Corrections, are eligible to participate in the juvenile detention commitment program.

SUBCHAPTER 4. MANUAL OF STANDARDS FOR JUVENILE DETENTION FACILITIES

10A:33-4.1 Adoption of standards

(a) All provisions of the Manual of Standards For Juvenile Detention Facilities, (N.J.A.C. 10A:32), except provisions specifically exempted in this chapter, or provisions in contradiction to the standards and regulations of the Manual of Standards For Juvenile Detention Commitment Programs, (N.J.A.C. 10A:33) are hereby adopted by reference.

(b) All juvenile detention facilities must be in compliance with both the Manual of Standards For Juvenile Detention Facilities (N.J.A.C. 10A:32) and the Manual of Standards For Juvenile Detention Commitment Programs (N.J.A.C. 10A:33) in order to be certified by the Department of Corrections to receive juvenile commitments.

SUBCHAPTER 5. POPULATION CAPACITY

10A:33-5.1 Juvenile detention Commitment Program

(a) Pursuant to N.J.S.A. 2A:4A-43c(2), the Department of Corrections shall specify the capacity of the juvenile detention facility that may be made available to receive sentenced juveniles.

1. Based upon the county's past and present juvenile detention needs, as determined by such factors as the number of admissions, length of stay, daily population count, peak population figures, etc., the Department of Corrections, in collaboration with the county, shall specify the maximum number of juvenile commitments which may be housed in the facility.

2. Pursuant to N.J.S.A. 2A:4A-43c(2), the number of incarcerated juveniles shall not exceed 50 percent of the maximum population capacity of the facility.

10A:33-5.2 Population statistics

Reports regarding population statistics, in such form and such frequency as shall be required by the Department of Corrections, shall be submitted to the Department of Corrections.

SUBCHAPTER 6. MONITORING, INSPECTION, AND EVALUATION

10A:33-6.1 Population and capacity monitoring

Based upon juvenile detention needs, as determined by population statistics reports and periodic, on-site population monitoring visits, the Department of Corrections, in collaboration with the county, may reduce or increase the number of spaces for juvenile commitments certified to be housed at the facility.

10A:33-6.2 Program inspection

(a) Based upon periodic inspection of the facility's physical plant and evaluation of the programmatic components, the Department of Corrections may modify or withdraw its certification of the facility for juvenile commitments.

(b) At all times representatives from the Department shall be permitted to observe and interview juveniles and staff of the facility concerning any matter pertaining to the health, safety, treatment, training, and general well-being of the juveniles or the operation of the juvenile detention commitment program.

(c) All books, records, accounts, and reports, past and present, regarding the operation of the juvenile detention commitment program, residents, and personnel shall be made available to the Department for review.

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SUBCHAPTER 7. PROGRAM PROPOSAL

10A:33-7.1 Program proposal submission

(a) Prior to certification of a facility to receive juvenile commitments, a program proposal shall be submitted to the Department of Corrections which shall include, but not necessarily be limited to, the following information:

1. Requested capacity of the juvenile detention commitment program;
2. Specific sleeping room accommodations and other planned physical plant features;
3. Specific program activities and services which are planned and how they will be provided;
4. Additional staffing required, if necessary;
5. Additional budget requirements, if necessary;
6. Impact on the pre-dispositional juvenile detention program and services; and
7. Additional problems contemplated and how they will be resolved.

SUBCHAPTER 8. ADMISSIONS

10A:33-8.1 Eligibility for admission

Pursuant to N.J.S.A. 2A:4A-43c(3)(a), only juveniles adjudicated delinquent for an act which, if committed by an adult, would constitute a crime or repetitive disorderly persons offense are eligible for the juvenile detention commitment program. Thus, petty disorderly persons offenders and first time disorderly persons offenders are statutorily excluded from eligibility for the juvenile detention commitment program.

10A:33-8.2 Maximum juvenile detention facility population capacity

No juvenile, on either a pre-dispositional or juvenile detention commitment status, shall be admitted to a detention facility which has reached its maximum approved capacity for the entire facility, as designated by the Department of Corrections.

10A:33-8.3 Maximum Juvenile Detention Commitment Program population capacity

No adjudicated juvenile sentenced to a juvenile detention facility shall be admitted once the facility has reached its maximum approved capacity for the juvenile detention commitment program, as designated by the Department of Corrections, in collaboration with the county.

SUBCHAPTER 9. CLASSIFICATION

10A:33-9.1 Evaluation

Upon admission, each juvenile shall be evaluated and classified in regard to his or her sex, age, present offense, previous offenses, physical size, general personality characteristics and any other factors which could have an impact on the juvenile's adjustment to the facility and interaction with other residents.

10A:33-9.2 Housing and group assignments

To the extent that the physical plant permits, juveniles shall be assigned to sleeping accommodations and program groups based upon the classification evaluation.

SUBCHAPTER 10. PROGRAM DESCRIPTION

10A:33-10.1 Program plan and goals

Each facility receiving juvenile commitments shall maintain a written program plan which describes the overall goals and philosophy of the program. This plan shall also specify the objectives, and shall delineate the programs, activities, policies, and methods to achieve the stated goals and objectives. In some cases, facilities may wish to make arrangements with various provider agencies in the community to provide for specific social, educational, therapeutic, or recreational services. In such situations, the facility shall maintain a copy of the agreement describing the specific services to be provided by the provider agencies and the frequency with which the services will be delivered.

SUBCHAPTER 11. PROGRAM REQUIREMENTS

10A:33-11.1 Treatment plan

(a) An initial written treatment plan, based on a thorough assessment of the juvenile's problems and needs, shall be developed by the facility's social worker, in conjunction with other appropriate detention center staff, within one week of commitment. The assessment shall utilize the information included in the pre-dispositional investigation report which is made available by the Family Court pursuant to the Rules of Court.

(b) The initial assessment shall include, when available, the following information:

1. The juvenile's past record of offenses and dispositions;
2. School attendance and special problems, if any;
3. Family history and problems;
4. Psychological profile;
5. Medical history and current health problems;
6. Vocational goals (when age appropriate) and;
7. Post-release plans and goals.

(c) Within two weeks of the initial written treatment plan, a revised treatment plan which shall include all the requirements of (b) above shall be completed.

(d) All professional and line staff having regular contact with the committed juvenile shall be advised of the provisions of the initial and revised treatment plans.

(e) Each juvenile's progress and the effectiveness of his or her treatment plan shall be reviewed at least once every two weeks and, when indicated, modifications shall be made in the treatment plan.

(f) The treatment plan shall specify how, when, and where each element of treatment will be provided to the juvenile.

(g) When appropriate, community resources shall be utilized in the development and implementation of the treatment plan.

(h) Participation of the resident and his or her parents should be encouraged whenever practical.

(i) The treatment plan shall be signed by both the resident and a staff representative.

10A:33-11.2 Social services

(a) Juvenile detention facilities participating in the juvenile detention commitment program shall provide at least one full-time social worker or professional equivalent.

(b) In accordance with the maximum population capacity, as designated by the Department of Corrections, for both pre-dispositional juvenile detention and the juvenile detention commitment program, there shall be at least one full-time

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social worker employed for every 20 juveniles of the approved population capacity.

1. Part-time social workers may be employed when the maximum population capacity is greater than 20 and is not an even multiple of 20. For example, a facility approved for 30 juveniles would require at least one full-time and one part-time social worker.

(c) Aside from Civil Service qualifications for the title of Social Worker, the following qualifications are recommended:

1. A master's degree in social work, psychology, or counseling; and

2. At least one year of full-time professional experience in a residential facility serving troubled youth.

(d) Social services shall be provided to all juveniles in the juvenile detention commitment program. Services may be rendered on a direct or referral basis and shall include services such as casework and group work, as well as individual therapy provided in a clinical setting as required by each juvenile's treatment plan.

(e) Social services shall be structured to assist juveniles and their parents, to provide the individualized assistance needed for successful rehabilitation, and to prepare the juvenile for return to the community. Social worker duties shall include:

1. Participating in the evaluation and classification decision for each new admission to the facility as required by N.J.A.C. 10A:33-9;

2. Developing and implementing each juvenile's initial and follow-up treatment plan as required by N.J.A.C. 10A:33-11;

3. Selecting and coordinating appropriate community resources;

4. Initiating and maintaining ongoing liaison with other agencies providing services to juveniles and their parents;

5. Conducting admissions interviews as soon after admission as is practical and maintaining regular, ongoing contact with each juvenile in the juvenile detention commitment program;

6. Assisting juveniles and their families in identifying and dealing with the problems which resulted in their commitment;

7. Maintaining regular and frequent contacts with juveniles and their parents to assist in maintaining family relations and planning for their future care;

8. Planning for each juvenile's discharge.

(f) Clinical therapy shall be available to juveniles requiring this type of treatment. The therapy may be provided by professional staff or consultants, or through arrangement with an appropriate resource such as a Community Mental Health Agency. Therapy should assist the juvenile in understanding his or her behavior and feelings, and should strengthen the juvenile's ability to function as a productive, self-reliant juvenile.

1. The need for clinical therapy shall be determined during the treatment planning and specified in the treatment plan. The specification shall include a detailed description of the types of methods and objectives of the therapy, and the frequency of its scheduling.

10A:33-11.3 Medical services

(a) The facility shall provide a program of medical care for all juveniles in residence. The facility shall provide for medical emergencies on a 24-hours, seven day a week basis.

(b) Each juvenile committed to the juvenile detention commitment program shall receive a medical examination within 24 hours following admission. All medical examinations must be conducted by either a physician licensed to practice medicine in the State of New Jersey, or a registered nurse. When the initial examination is conducted by a registered nurse, the juvenile must receive a medical examination by a physician within 72 hours following admission.

(c) Psychiatric and psychological services shall be provided as required by individual treatment plans.

10A:33-11.4 Education

(a) The facility shall provide an education program which provides for the cognitive and affective development needs of each juvenile and which is in compliance with all applicable rules, regulations and provisions of the New Jersey Public School Education Act of 1975 (N.J.S.A. 18A:1 et seq.), and all other appropriate New Jersey statutes, rules, and regulations.

(b) A concerted effort shall be made to initiate and maintain contact with local schools to minimize the disruption of each juvenile's public or private school program of education.

(c) A concerted effort shall be made to transfer academic credits earned in detention to the juveniles' public or private school.

(d) The education program shall be operated on a twelve-month basis. A modified educational program may be conducted during periods when public schools are not in session.

(e) Class population shall not exceed 15 students.

(f) Appropriate educational equipment and supplies necessary to carry out the education program shall be provided.

(g) Appropriate records on each juvenile's work and progress shall be maintained in an orderly manner.

10A:33-11.5 Recreation

(a) The facility shall provide an appropriate range of indoor and outdoor recreational activities which are structured to meet the needs of juveniles of varying ages, interests, and abilities. Recreational activities should provide a balance of group play, competitive games, and quiet individual activity. Participation should be encouraged on the basis of individual treatment planning and interests. Recreational activities shall be scheduled throughout the week to provide a balance leisure time program.

(b) Recreational activities shall be scheduled a minimum of three hours each day, at least one hour of which provides the opportunity for active outdoor play throughout the year when the weather permits.

10A:33-11.6 Discipline

(a) Each facility shall maintain a written behavior management program which is designed to foster a positive, non-punitive environment. The written program shall include behavioral-rules and disciplinary regulations and sanctions to be employed. Reasonable limits for behavior necessary to maintain order should be governed by a system of rules and regulations that is consistent and easily understood.

(b) Discipline shall be determined by staff and never delegated to juveniles.

(c) Corporal punishment and cruel, degrading punishment, either physical or psychological, shall not be permitted.

(d) Under no circumstances shall a juvenile be deprived of his or her basic rights as a means of a discipline. Basic rights for each juvenile include:

1. A place to sleep (for example, a bed, a pillow, blankets and sheets);

2. Full meals;

3. A full complement of clean clothes;

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4. Parental and attorney visits;
5. Items necessary for personal hygiene (for example, toothpaste, toothbrush, soap, comb, etc.);
6. Minimum exercise;
7. Right to receive and send mail;
8. The opportunity for a daily shower and access to toilet and water fountain;
9. Clean and sanitary living conditions;
10. Medical care;
11. The opportunity to attend religious services and/or religious counseling of his or her choice.

10A:33-11.7 Grievance procedure

(a) Each juvenile shall be assured access to a written grievance procedure that provides an opportunity for a fair hearing and resolution of complaints pertaining to his or her care in the facility. The written grievance procedure shall include:

1. The steps that must be taken to use the grievance procedure;
2. An opportunity for hearing any grievance within a reasonable time;
3. Provisions for the juvenile to be present and to explain his version of the grievance;
4. Provisions for assistance to the juvenile from a staff representative or volunteer approved by the superintendent;
5. No reprisal for utilizing the grievance procedure;
6. A written decision on all grievances which shall include a statement regarding the evidence upon which the decision was based; and,
7. A mechanism for appealing an adverse decision.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Group Self-Insurance Joint Insurance Funds for Local Governmental Units

Proposed New Rule: N.J.A.C. 11:15-2

Authorized By: Kenneth D. Merin, Acting Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and P.L. 1983 c.372, supplementing chapter 10 of Title 40A of the New Jersey Statutes.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 20, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Margaret Harrison
Executive Assistant
Department of Insurance
CN 325
Trenton, New Jersey 08625

The Department of Insurance thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-287.

The agency proposal follows:

Summary

P.L. 1983, c.372 (supplementing Chapter 10 of Title 40A of the New Jersey Statutes) authorizes two or more local units of government to form a joint insurance fund for the purpose of insuring against liability, property damage and workers' compensation. The statute further provides that the Commissioner of Insurance, after consultation with the Commissioner of the Department of Community Affairs, shall promulgate rules to effectuate the purposes of the Act, including but not limited to, provisions relating to the establishment, operation, modification and dissolution of joint insurance funds.

N.J.A.C. 11:15-2.1 through 2.3 of the proposed new rule contain, respectively, a statement of the scope of the subchapter, a definitions section, and requirements relating to the ordinance or resolution adopted by the governing body of a local unit which authorizes such unit's participation in the fund.

N.J.A.C. 11:15-2.4, sets forth several requirements relating to the general operation of a joint insurance fund. These requirements primarily pertain to the financial aspects of a fund's operation and were suggested by the Department of Community Affairs. For example, this section specifies that each fund shall be subject to the provisions of the Local Fiscal Affairs Law (N.J.S.A. 40A:5-1 et seq.) and the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.). It further requires that each fund, on an annual basis, prepare and adopt a resolution concerning designated public depositories for the fund monies pursuant to N.J.S.A. 40A:5-14 and a budget.

N.J.A.C. 11:15-2.5 specifies filing requirements for the initial submission of a fund's bylaws, and accompanying documents, and plan of risk management, as well as any subsequent amendments thereto. Minimum requirements for the content of these submissions are set forth at N.J.A.C. 11:15-2.6. The proposal establishes several criteria in addition to those contained in the statute. For example, each fund's bylaws must include a plan providing for the establishment and maintenance of loss and claim reserves, and for the determination and distribution of assessment and/or investment refunds, including a statement from an actuary attesting to the plan's actuarial soundness. Examples of documents and information which must accompany the bylaws include a fidelity bond for the administrator, a surety bond for the servicing organization as well as errors and ommissions coverage for both.

N.J.A.C. 11:5-2.7 through 2.12 of the proposal contain procedures and requirements concerning the approval of prospective new members of a fund, termination or withdrawal of fund members and the dissolution of the fund. In particular, N.J.A.C. 11:15-2.12 provides that a fund's plan of dissolution must be filed with and approved by the Commissioners of Insurance and Department of Community Affairs.

N.J.A.C. 11:15-2.13 requires that each fund establish a separate claim or loss retention trust account for each type of liability or risk which is retained jointly on a self-insured basis, as provided in the fund's indemnity and trust agreement. These accounts must be utilized for payment of claims, claims expenses and excess insurance or reinsurance premi-

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ums. Except for such disbursements or as otherwise authorized by the rule, (as in the case of refund payments authorized at N.J.A.C. 11:15-2.21) no transfers or withdrawals may be made from these accounts without the prior approval of the Commissioner of Insurance.

N.J.A.C. 11:15-2.15 through 2.21 of the proposed new rule concern the assessments levied on participating members by the fund, investment income and refunds. N.J.A.C. 11:15-2.15 and 2.16, for example, concern the assessments paid by each participating member of the fund, and provide for a regular annual assessment of each member and authorize the fund or, if necessary, the Commissioner of Insurance to require payment of supplemental assessments in the event of a depletion of any of the fund's accounts.

N.J.A.C. 11:15-2.22 outlines procedures to be used by the fund in paying claims or making other disbursements. The proposal authorizes the fund to designate its administrator as a "certifying and approving officer" with limited authority to approve claim payments not in excess of $2,500. N.J.A.C. 11:15-2.23 requires the purchase of excess insurance or reinsurance by any fund which provides coverage on a self-insured basis. Requirements covering the preparation and filing of financial statements and other reports are set forth in N.J.A.C. 11:15-2.24 of the proposal. N.J.A.C. 11:15-2.25 authorizes the Commissioner of Insurance to examine any fund which may be insolvent or in a financial condition hazardous to its members or the public.

N.J.A.C. 11:15-2.26 concerns servicing organizations and administrators and, except with the approval of the Commissioner of Insurance, prohibits any officer, director or employee of a servicing organization from being an employee of or having either a direct or indirect financial interest in an administrator. Administrators are similarly prohibited from having an employment or financial interest in a servicing organization. N.J.A.C. 11:15-2.27 contains conflict of interest prohibitions and disclosure requirements which apply in any instance in which an employee or official of a participating local unit (as well as members of the employee's or official's family or businesses from which the employee, official or family member derives a beneficial interest) seeks to obtain or participate in a contract to be entered into by the joint insurance fund for any services.

Finally, N.J.A.C. 11:15-2.28 and 2.29 relate to enforcement actions by the Commissioner of Insurance including the suspension or revocation of the authority of a joint insurance fund. Procedures and requirements concerning hearings and the issuance of notices in connection with such actions are delineated therein.

Social Impact

The proposed new rules are designed to provide adequate regulatory oversight over joint insurance funds established by local units of government to ensure their solvency and viability and thereby protect the interests of claimants and taxpayers. At the same time, the procedures and requirements of the rules contain sufficient flexibility to permit the funds to operate in a cost-effective manner.

Economic Impact

By utilizing the mechanism of a joint insurance fund for insuring against liability, property damage and workers' compensation, local units of government could experience premium savings. The statute and these proposed rules for its implementation will substantially increase the regulatory responsibilities and administrative costs of the Department of Insurance and Community Affairs.

Full text of the proposed new rule follows.

CHAPTER 15
GROUP SELF-INSURANCE

SUBCHAPTER 2. JOINT INSURANCE FUNDS FOR LOCAL GOVERNMENTAL UNITS

11:15-2.1 Scope

(a) P.L. 1983, c.372 entitled "An Act concerning joint insurance funds for local units of government, and supplementing Chapter 10 of Title 40A of the New Jersey Statutes", authorizes two or more local units of government to join together to establish a joint insurance fund for the purpose of insuring against liability, property damage, and workers' compensation. This subchapter provides rules for the establishment, operation, oversight, modification and dissolution of such funds.

(b) No local unit of government shall join together with any other local unit or units to act as a joint insurance fund except as authorized by the Commissioner in accordance with the provisions of P.L. 1983, c.372 and this subchapter.

11:15-2.2 Definitions

"Actuary" means a person who is a member of the American Academy of Actuaries qualified in loss reserves and rate making according to professional guides, recommendations, interpretations, and opinions of the Academy or a member of the Casualty Actuarial Society.

"Administrator" means a person, partnership, corporation or other legal entity engaged by the joint insurance fund commissioners or executive committee, as defined herein, to carry out the policies established by the joint insurance fund commissioners or executive committee and to otherwise administer and provide day-to-day management of the joint insurance fund.

"Commissioner" means the Commissioner of Insurance.

"Department" means the Department of Insurance.

"Employers' liability" means the legal liability of a public employer to pay damages because of bodily injury or death by accident or disease at any time resulting therefrom sustained by an employee arising out of and in the course of his employment by the public employer, which is not covered by a workers' compensation law.

"Excess insurance" means insurance, purchased from an insurance company authorized or admitted in the State of New Jersey or deemed eligible by the Commissioner as a surplus lines insurer, covering losses in excess of an amount established between the joint insurance fund and the insurer up to the limits of coverage set forth in the insurance contract on a specific per occurrence, or per accident, or annual aggregate basis.

"Executive committee" means the committee of insurance fund commissioners, as provided in P.L. 1983, c.372.

"General liability" means any and all liability which may be insured under the laws of the State of New Jersey, excluding workers' compensation and employer's liability.

"Indemnity and trust agreement" means a written contract signed by the members of the joint insurance fund under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to such agreement arising from their participation in the fund.

1. The agreement shall also create a trust and govern the operation thereof under which monies shall be held by the fund commissioners as fiduciaries for the benefit of fund claimants.

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2. Where the fund shall provide for the retention on a self-insured basis of any or all of the risks or liabilities specified in i through iv below, the agreement shall require and provide for the establishment of separate trust accounts from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and excess insurance or reinsurance premiums for each such risk or liability:

i. Workers' compensation and employers' liability;

ii. Liability, other than motor vehicle;

iii. Property damage, other than motor vehicle;

iv. Motor vehicle.

"Insolvent fund" means a joint insurance fund which has been determined by a court of competent jurisdiction to be unable to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it, or for which, or for the assets of which, a receiver or liquidator, however entitled, has been appointed by a court of competent jurisdiction and authority, after the effective date of this subchapter.

"Joint insurance fund" or "Fund" means a group organized by two or more local units of government to establish an insurance fund for the purposes of insuring and/or self-insuring against property damage, general liability, vehicular and equipment liability, workers' compensation liability and employers' liability, approved by the Department pursuant to the authority of P.L. 1983, c.372 and this subchapter.

"Joint insurance fund commissioners" means local unit representatives chosen to represent those units in the fund, as provided in P.L. 1983, c.372.

"Lead agency" means a member of the joint insurance fund responsible for performing or providing administrative or other services as may be designated by the joint insurance fund commissioners.

"Local unit of government" or "local unit" means a county or municipality.

"Motor vehicular and equipment liability" means liability resulting from the use or operation of motor vehicles, equipment or apparatus owned by or controlled by the local unit or owned by or under the control of any subdivisions thereof including its departments, boards, agencies or commissions.

"Property damage" means any loss or damage, however caused, on property, motor vehicles, equipment or apparatus owned by the local unit or owned by or under the control of any of its departments, boards, agencies or commissions.

"Servicing organization" means an individual, partnership or corporation which provides services to the fund not provided by the administrator, including, but not limited to:

1. Claims adjustment;

2. Safety engineering;

3. Compilation of statistics and the preparation of assessment, loss and expense reports;

4. Preparation of reports required pursuant to P.L. 1983 c.372 or this subchapter;

5. Development of members assessments and fees; or

6. Claim administration.

"Surplus" means that amount of monies in a trust fund that is in excess of all fixed costs and incurred losses attributed to the fund net of any per occurrence or aggregate excess insurance or reinsurance for a particular year.

"Workers' compensation law" means the provisions of N.J.S.A. 34:15-7 et seq.

11:15-2.3 Agreement to join joint insurance fund; duration

Pursuant to Section 1 of P.L. 1983, c.372, the governing body of any local unit of government may by resolution or ordinance, as appropriate, agree to join together with any other local unit or units to establish a joint insurance fund as defined herein. The resolution or ordinance shall provide for execution of a written agreement specifically providing for acceptance of the fund's bylaws as approved and adopted pursuant to section 4 of the Act. The agreement shall specify the extent of the local unit's participation in the fund with respect to the types of insurance coverage to be provided by the fund and shall include the duration of fund membership, which in no event shall exceed three years, pursuant to N.J.S.A. 40A:11-15(6). Members may renew their participation by the execution of a new agreement to join the joint insurance fund.

11:15-2.4 General requirements

(a) Every joint insurance fund shall be subject to and operate in compliance with the provisions of the "Local Fiscal Affairs Law" (N.J.S.A. 40A:5-1 et seq.), the "Local Public Contracts Law" (N.J.S.A. 40A:11-1 et seq.), regulations (N.J.A.C. 5:30-14 et seq.), and the various statutes authorizing the investment of public funds, including but not limited to, N.J.S.A. 40A:10-10(b), 17:12B-241 and 17:9-4.1.

(b) All monies, assessments, funds and other assets of a joint insurance fund shall be under the exclusive control of its board of insurance fund commissioners or executive committee, as applicable.

(c) A joint insurance fund shall be considered a local unit for purposes of the "Local Public Contracts Law" (N.J.S.A. 40A:11-1 et seq.) and shall be governed by the provisions of that law in the purchase of any goods, materials, supplies and services.

(d) Each joint insurance fund shall utilize as its fiscal year, the calendar year, January 1 through December 31.

(e) Each joint insurance fund shall adopt a resolution designating a public depository or depositories for its monies pursuant to N.J.S.A. 40A:5-14. Such resolution shall also designate a person to be custodian of funds for the joint insurance fund and shall authorize the custodian to invest the temporarily free balances of any claim or administrative accounts periodically as authorized by law. The custodian shall periodically report to the fund commissioners on investment and interest income.

(f) The joint insurance fund commissioners shall annually prepare in November of each year the proposed budget for the fund's subsequent fiscal year. The budget shall identify the proposed items and amounts of expenditure for its operations, the anticipated amounts and sources of assessments and other income to be received during the fiscal year, and the status of the self-insurance or loss retention trust accounts maintained by the joint insurance fund. The budget shall be prepared on a cash basis.

1. A copy of the fund's proposed budget or any amendments thereto shall be made available to each member of the joint insurance fund at least two weeks prior to the time scheduled for its adoption. No budget or amendment shall be adopted until a hearing has been held giving all members of the joint insurance fund the opportunity to present comments or objections.

2. In January of each year the joint insurance fund commissioners, or the executive committee thereof, shall adopt by

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majority vote the budget for the fund's operations for that fiscal year.

3. An adopted budget may be amended by majority vote of the membership of the joint insurance fund commissioners, or executive committee thereof.

4. A copy of each adopted budget and any amendment thereto shall be filed with the governing body of each participating local unit, the Commissioner and the Commissioner of the Department of Community Affairs within 30 days of its adoption.

(g) Except as provided at N.J.A.C. 11:15-2.22(g), all books, records, files and other documents of the joint insurance fund shall be retained by the secretary of the fund.

(h) Each fund shall maintain minutes of its meetings and shall make such minutes available to the Commissioner upon request.

(i) A joint insurance fund shall provide its members with periodic reports covering the activities and status of the fund for the reporting period. Such reports shall be made at least quarterly and may be made more frequently at the discretion of the joint insurance fund commissioners.

(j) All officers, employees and agents of the joint insurance fund on the final day of their office or employment shall surrender and deliver to their successors all accounts, funds, property, records, books and any other material relating to such office or employment.

(k) A joint insurance fund may utilize the services of a member to serve as lead agency for the fund. The lead agency may agree to perform such duties and have such responsibilities as the joint insurance fund commissioners may determine and assign.

1. A lead agency may be compensated for its reasonable expenses incurred in administering the affairs of a joint insurance fund. Any administrative costs agreed upon to be paid to a lead agency shall be received by it as a Miscellaneous Revenue and be available for expenditure through the budget appropriation method.

2. A lead agency shall not advance funds of its own to cover a purchase on behalf of the fund or the other participating units.

11:15-2.5 Bylaws and plan of risk management; filing requirements

(a) Each joint insurance fund shall file with the Department for approval by the Commissioners of Insurance and Community Affairs, as provided in P.L. 1983, c.372, its bylaws and plan of risk management and any amendments thereto. The initial filing shall be accompanied by the information and documentation specified at N.J.A.C. 11:15-2.6(c).

1. All filings and accompanying documents shall be submitted to the Department in duplicate.

(b) No joint insurance fund shall begin providing insurance coverage to its member units until its bylaws and plan of risk management have been approved by the Commissioner.

(c) No amendment to a fund's bylaws or plan of risk management shall take effect until such amendment is approved by the Commissioner.

(d) Within 10 days following any change in the information or documentation required to accompany the filing of the fund's bylaws or amendments thereto, as provided in (a) above, the fund shall file notice of the change, with the Department and the Department of Community Affairs.

11:15-2.6 Bylaws and plan of risk management; contents

(a) The commissioners of a joint insurance fund shall prepare and, after the approval, by resolution, of the governing body of each participating local governmental unit, shall adopt bylaws for the joint insurance fund. The bylaws shall include, but not be limited to:

1. Procedures for the organization and administration of the joint insurance fund, the insurance fund commission and, if appropriate, the executive committee of the fund. The procedures may include the designation of one member local unit to serve as the lead agency to be responsible for the custody and maintenance of the assets of the fund and such other duties as may be assigned by the commissioners of the fund;

2. Procedures for the assessment of members for their contributions to the fund and for the collection of contributions in default;

3. Procedures for the maintenance and administration of appropriate reserves in accordance with sound actuarial principles;

4. Procedures for the purchase of commercial direct insurance or reinsurance if any;

5. Contingency plans for paying losses in the event that the fund is exhausted, including provision for supplemental assessments as provided at N.J.A.C. 11:15-2.16;

6. Procedures governing loss adjustment and legal fees;

7. Procedures for the joining of the fund by a non-member local unit;

8. Procedures for the withdrawal from the fund by a local unit;

9. Procedures for the expulsion of a member local unit;

10. Procedures for the termination and liquidation of the joint insurance fund and the payment of its outstanding obligations.

(b) In addition, the bylaws shall:

1. Include the fund's name, location of its principal office, date of organization, and name and address of each initial member;

2. Specify the insurance coverages to be provided by the fund and the minimum participation required of any member;

3. Describe the responsibilities and obligations of the participants, the terms and conditions of continued participation and discontinuance of participation in the fund;

4. Require that the fund demonstrate sufficient aggregate financial strength and liquidity to assure that all obligations will be promptly met, and shall further require that the fund provide a financial statement on a form acceptable to the Commissioner showing the financial ability of the fund to meet its obligations;

5. Where self-insured, provide a plan for specific and aggregate excess insurance or reinsurance and for retention in accordance with sound actuarial principles and the plan of risk management;

6. Require that the fund provide proof of competent personnel and ample facilities within its own organization with respect to claims administration, underwriting matters, loss prevention and safety engineering or present a contract with a service company for the provision of such services;

7. Describe the claims handling procedure to be utilized by the fund which procedure shall provide for the prompt, fair and equitable settlement of claims;

8. Describe the complaint handling procedure to be utilized by the fund;

9. Be accompanied by a certified copy of the resolution or ordinance and written agreement adopted by each participating local unit as specified at N.J.A.C. 11:15-2.3;

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10. Be accompanied by a certified copy of its indemnity and trust agreement as defined in N.J.A.C. 11:15-2.2, and in a form satisfactory to the Commissioner;

11. Provide a plan satisfactory to the Department for the establishment and maintenance of reserves for unearned assessments, loss reserves and claim reserves and for the determination and distribution of assessment and/or investment refunds which shall include a statement from an actuary that the fund's proposed plan is actuarially sound;

12. With respect to funds providing for self-insurance of workers' compensation liabilities, the bylaws of each fund shall:

i. Guarantee benefit levels equal to those required by the workers' compensation law and other applicable statutes and provide a plan for the prompt payment of such benefits. Information documenting an individual member's financial strength and liquidity shall be made available to the Department upon the Department's written request and in a form specified by the Department;

ii. Certify the aggregate of the latest year's payroll of the members of the fund multiplied by the current approved loss and loss adjustment expense portion of the applicable manual rates promulgated by the New Jersey Compensation Rating and Inspection Bureau is equal to or greater than $1 million as adjusted annually by the percentage increase in the Statewide average weekly wage as such Statewide average weekly wage is determined and promulgated by the Commissioner of Labor on or about September 1 of each year in accordance with the provisions of N.J.S.A. 34:15-12a. Such adjusted dollar eligibility requirement shall take effect on January 1 of each year;

iii. Unless otherwise approved by the Commissioner, provide for assessments based upon the mandatory merit rating plan on file with the Commissioner;

(c) The bylaws shall be accompanied by the following information and documentation:

1. Designation of the fund commissioners, executive committee, if any, chairman, secretary, administrator and custodian of the fund's assets;

2. Copies of the fund's prospective agreements or contracts with any administrator or servicing organization. Copies of the above shall be accompanied by a list of all parties having or deriving any interest, right or benefit in the servicing organization or administrator;

3. A fidelity bond for the administrator in a form and amount acceptable to the Commissioner;

4. A surety bond for the servicing organization in a form and amount acceptable to the Commissioner;

5. Errors and omissions coverage for the servicing organization and administrator;

6. Contain a designation and appointment of an agent in New Jersey to receive service of process on behalf of the fund as well as the address in this State where the books and records of the fund will be maintained at all times;

7. A letter from each of the fund members certifying that such members:

i. Have never defaulted on claims if self-insured;

ii. Have not been cancelled for nonpayment of insurance premiums for a period of at least two years prior to application.

(d) Each joint insurance fund shall, concurrently with the filing of its bylaws as provided at N.J.A.C. 11:15-2.5(a), file its plan of risk management and any amendments thereto with the Department as provided in P.L. 1983, c.372 as specified in (e) below.

(e) The commissioners shall prepare, or cause to be prepared a plan of risk management for the joint insurance fund. The plan shall include, but not be limited to:

1. The perils or liability to be insured against;

2. Limits of coverage, whether self-insurance, direct insurance purchased from a commercial carrier, or reinsurance;

3. The amount of risk to be retained by the fund;

4. The amount of reserves to be established;

5. The proposed method of assessing contributions to be paid by each member of the fund;

6. Procedures governing loss adjustment and legal fees;

7. Coverage to be purchased from a commercial insurer, if any;

8. Reinsurance to be purchased, if any, and the amount of premium therefor;

(f) The Commissioner may, at the time of filing of the bylaws and plan of risk management and whenever thereafter he deems it expedient, make or cause to be made, an examination of the assets and liabilities, financial condition, method of conducting business and all other affairs of any fund. For the purpose of the examination, the Commissioner may request the fund commissioners or the executive committee, if any, to authorize and employ such person or persons to conduct the same or to assist therein as he deems advisable. The reasonable expenses of the examination shall be fixed and determined by the Commissioner, and such expenses shall be paid by the fund examined to the appropriate entity or person upon presentation of a detailed account.

11:15-2.7 Disapproval of bylaws and plan of risk management

If the Commissioner determines that the bylaws or plan of risk management of the fund or any subsequent amendments thereto do not meet the requirements of P.L. 1983, c.372 or this subchapter, the Commissioner shall issue a written order containing the specific reasons for disapproval, and the requirements to be met before approval may be granted. If not disapproved by the Commissioner within 30 working days of receipt of the bylaws and plan of risk management, the bylaws and plan shall be deemed approved.

11:15-2.8 Revocation of approval

(a) After notice and opportunity for a hearing, the Commissioner may revoke his approval of a fund's bylaws or plan of risk management if a fund:

1. Is found to be insolvent or in a financial condition hazardous to the public;

2. Fails to pay any fee or assessment; or

3. Fails to comply with any of the provisions of P.L.1983, c.372 or this subchapter, or with any lawful order of the Commissioner within the time prescribed.

(b) In addition, the Commissioner may revoke approval if, after notice and opportunity for hearing, he finds that:

1. There was a material misrepresentation in any of the information supplied to the Commissioner or the Commissioner of the Department of Community Affairs;

2. The fund, or any of its commissioners or its administrator, has otherwise shown itself to be untrustworthy or incompetent; or

3. The fund, its commissioners or its administrator has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, an employee of a member, or a person otherwise entitled thereto and that have been entrusted to the fund, its

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commissioners, or its administrator in their fiduciary capacities.

11:15-2.9 Approval of non-member local units

(a) Prospective new members of the fund shall submit an application for membership to the fund's commission, or executive committee, as applicable, on a form approved by the Commissioner. Such application shall include the indemnity and trust agreement executed herein. The commission or executive committee may approve or disapprove the application for additional members, pursuant to the bylaws of the fund.

(b) The application approved by the fund shall be concurrently filed with the Department and the Department of Community Affairs and shall be accompanied by such amendments to the fund's bylaws and plan of risk management as may be necessary.

(c) No new membership in the fund shall become effective until the application and accompanying amendments to the fund's bylaws and plan of risk management are approved by the Commissioners of Insurance and Community Affairs.

11:15-2.10 Termination and/or withdrawal of fund members

(a) A member of the fund must remain a member for the full term of membership, as provided in the fund's bylaws, unless earlier terminated by the fund for nonpayment of assessments. However, such member shall not be deemed terminated for nonpayment until:

1. At least 10 days notice in writing of the intention to terminate such member is given by registered mail by the fund to the member; and

2. Until like notice shall be filed with the Department and the Department of Community Affairs, together with a certified statement that the notice provided for by (a)1 above has been given; and

3. Until 10 days have elapsed after the filing required by (a)2 above has been made.

(b) A member of the fund that does not desire to continue as a member after the expiration of its membership term, as provided in the fund's bylaws, must give written notice of its intent to withdraw 90 days before expiration of the term period. The fund shall immediately notify the Department and the Department of Community Affairs of all members that have given notice of withdrawal from the fund.

(c) A member that has been terminated by or does not continue as a member of the fund shall nevertheless remain jointly and severally liable for claims incurred by the fund and its members during the period of its membership, including, but not limited to, being subject to and liable for supplemental assessments.

(d) The fund shall immediately notify the Department, and the Department of Community Affairs, if termination or withdrawal of a member causes the fund to fail to meet any of the requirements of P.L. 1983, c.372 or this subchapter. Within 15 days of such notice, the fund shall advise the Department and the Department of Community Affairs, of its plan to bring the fund into compliance.

(e) A fund member is not relieved of the claims incurred during its period of membership except through payment by the fund or member of those claims.

11:15-2.11 Insolvency and/or bankruptcy of fund members

The insolvency or bankruptcy of a member does not relieve the fund or any other member of joint and several liability for the payment of any claims incurred by the member during the period of its membership, including, but not limited to, being subject to and liable for supplemental assessments.

11:15-2.12 Voluntary dissolution of a fund

(a) A fund may not voluntarily dissolve, or otherwise cease to do business and distribute its assets to its members, unless and until it satisfies the following requirements:

1. A majority of the fund's members must have voted in favor of a resolution to dissolve the fund, pursuant to a written plan of operation, provided for in the fund's bylaws, at a meeting duly called for such purposes;

2. The plan of dissolution must provide for the payment of all incurred losses of the fund and its members, including all incurred but not reported losses, as certified by an actuary, before any assets of the fund or the trust fund accounts may be used for any other purpose.

3. Such plan of dissolution shall contain a statement of the fund's current financial condition computed according to generally accepted accounting principles as attested to by an independent certified public accountant;

4. The plan of dissolution, and such other information as may be required, must be filed with and approved in writing by the Commissioner and the Commissioner of the Department of Community Affairs.

11:15-2.13 Establishment of trust fund accounts; transfers or withdrawals prohibited

(a) Pursuant to the terms of the indemnity and trust agreement, each fund shall establish a separate trust fund account from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and excess insurance or reinsurance premiums for each type of liability or risk retained jointly on a self insured basis. Such accounts shall be designated as claims or loss retention fund accounts.

1. Other than for the purposes specified in (a) above, or as otherwise authorized by this subchapter, no transfers or withdrawals may be affected from a claim or loss retention fund without the prior written approval of the Commissioner.

11:15-2.14 Administrative account

Each fund shall establish an administrative account which shall be utilized for payment of the fund's general operating expenses, loss prevention activities, data processing services and general legal expenses.

11:15-2.15 Assessments

(a) Each participating member of a joint insurance fund shall appropriate and pay to the fund its assessments as required by the joint insurance fund. During the first year of operation of a joint insurance fund, these contributions shall be paid in full. Subsequent years' assessments may be paid in full or in such installments as shall be provided in the fund's bylaws.

(b) Each member's annual assessment shall consist of an amount allocated for the administrative account, plus a specific assessment to establish and/or replenish the claim or loss retention trust fund account for each type of coverage provided by the fund and in which such member participates.

(c) The total amount of each member's annual assessments to the joint insurance fund shall be certified by the joint insurance fund commissioners to the governing body of each participant at least one month prior to the beginning of the next fiscal year. As a condition of continued participation in the joint insurance fund each member shall pay the amount

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certified at such time and in such manner provided in the fund's bylaws.

(e) Unless otherwise approved by the Commissioner, the annual assessment of each fund member funds providing for the self-insurance of workers' compensation and employers' liability coverages shall be based upon the mandatory merit rating plan on file with the Commissioner. The Commisioner of Insurance may withdraw his approval of any assessment not based upon the mandatory plan if he shall find that such assessment is unreasonable or inadequate for the members of the fund to which it applies. In taking any action under this section, the Commissioner may seek assistance from the fund commissioners, the executive committee or the administrator.

(f) Nothing contained in this section shall preclude the assessment and payment of supplemental assessments as provided in N.J.A.C. 11:15-2.16.

11:15-2.16 Supplemental assessments

(a) Each fund shall levy upon its members an additional assessment whenever needed or so ordered by the Commissioner, to supplement the fund's claim or loss retention or administrative accounts to assure payment of the fund's obligations, including payment of benefits under the worker's compensation law.

1. The fund shall assess each participating member an additional proportionate amount, as provided in the fund's bylaws and plan of risk management or as directed by the Commissioner, to replenish claims or loss retention or administrative accounts.

(b) The joint insurance fund commissioners shall submit to the Commissioner of Insurance and the Commissioner of the Department of Community Affairs a report of the causes of the fund's or account's insufficiency, the assessments necessary to replenish it and the steps taken to prevent a recurrence of such circumstances.

(c) The participants shall provide such additional assessments in accordance with the provisions of the Local Budget Law (N.J.S.A. 40A:4-1 et seq.).

11:15-2.17 Failure or refusal to provide required assessments

Should any member of a joint insurance fund fail or refuse to pay as directed its assessment(s) to the fund or to pay as directed any supplemental assessment(s), or should the joint insurance fund commissioners fail to assess funds required to meet the obligations of the fund, the chairman of the joint insurance fund commission or in the event of his or her failure to do so, the custodian of the fund's assets, shall notify the Commissioner and the Commissioner of the Department of Community Affairs.

11:15.2-18 Individual loss reserve funds

(a) Whenever the risk management plan of a joint insurance fund requires the fund's members to individually retain a specified amount of risk, potential liability, or incurred losses, the participant shall provide for such liability, or incurred losses:

1. As a deductible to be charged to the operating expenses of the incurring department or agency;

2. Through a separate item of appropriation for the loss year in its annual budget; or,

3. Through establishment of an insurance fund pursuant to N.J.S.A. 40A:10-1 et seq.

11:15-2.19 Certification of funds

Prior to any commitment or agreement requiring the expenditure of funds by the joint insurance fund, the custodian of the fund's assets shall certify as to the availability of sufficient unencumbered funds to fully pay all charges or commitments to be accepted.

11:15-2.20 Investments; application of investment income

(a) The free balance of any account maintained by a joint insurance fund, whether for administrative or claims or loss purposes, shall be invested to obtain the maximum interest return practicable. All investments shall be in accordance with the fund's cash management plan and consistent with the statutes and rules governing the investment of public funds by local governments and pursuant to N.J.S.A. 40A:10-10b.

(b) The investment and interest income earned by the investment of the assets of each claim or loss retention fund account shall be credited to each such account.

(c) The investment and interest income earned by investment of the assets of the administrative account shall be credited to that account.

11:15-2.21 Refunds

(a) Any monies for a fund year in excess of the amount necessary to fund all obligations for that fiscal year as certified by an actuary may be declared to be refundable by the fund not less than 12 months after the end of the fiscal year.

(b) The initial refund for any year from a claim or loss retention trust account shall not exceed 30 percent of the surplus available for the year. The fund may, however, seek annual approval for payment of refunds from a claims or loss retention trust fund account remaining from any year which has been completed for at least 30 months or longer and may include such refund payments with initial refund payments from the preceding year.

(c) A refund for any fiscal year shall be paid only in proportion to the members participation in the fund for such year. Payment of a refund on a previous year shall not be contingent on the member's continued membership in the fund after that year.

(d) At the option of the member the refund may be retained by the fund and applied towards the member's next annual assessment.

11:15-2.22 Disbursements and/or payment of claims

(a) All disbursements, payment of claims settlements or other expenditure of funds of the joint insurance fund whether for administrative expenses or for claims purposes must be approved by a majority of the joint insurance fund commissioners or the executive committee thereof, unless approved pursuant to (b) below.

(b) To allow the expeditious resolution of certain claims, the joint insurance fund commissioners may designate the fund's administrator as a "certifying and approving officer" pursuant to N.J.S.A. 40A:5-17. The certifying and approving officer may be authorized by the joint insurance fund commissioners to approve for payment any or specified types of claims in an amount not to exceed $2500 per claim or payment. The designation of the certifying and approving officer may be conditioned or restricted by the joint insurance fund commissioners to require prior consultation, limitation as to the types or total amount of claims or payments which may be approved, or such other procedures or restrictions as the joint insurance fund commissioners may deem appropriate.

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(c) Upon approval, the certifying and approving officer shall certify the amount and particulars of such approved claims to the official having custody of the fund's assets, directing that a check for payment be prepared.

(d) The certifying and approving officer shall prepare a report of all claims approved by him or her since the last such report, detailing the nature and amount of the claim, the payee, the reasons supporting payment and any other pertinent information. This report shall be submitted to the joint insurance fund commissioners at their next scheduled meeting. The joint insurance fund commissioners shall review and approve the actions of the certifying and approving officer. In the event a claim approved and paid by the certifying and approving officer is not approved by the joint insurance fund commissioners, they shall direct appropriate action to be taken.

(e) All requests for payments must be accompanied by a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the certification of the party claiming payment that it is correct, and must carry the certification of some officer or duly designated agent or employee of the joint insurance fund having knowledge of the facts that the goods have been received by, or the services rendered to the fund. In the case of claims or losses to be charged against any loss fund, the joint insurance fund's claims administrator, if there be one, shall certify as to the claim's correctness and validity.

(f) All claims shall be paid by check. The check shall be signed by the chairperson of the joint insurance fund and countersigned by the treasurer or other officer having custody of the fund's assets.

(g) All claims and other disbursements approved for payment by the joint insurance fund commissioners or the certifying and approving officer shall be recorded in a claims register maintained by the custodian of the fund's assets.

11:15-2.23 Excess insurance and/or reinsurance

(a) Each fund providing coverage on a self-insured basis shall secure excess insurance or reinsurance in a form, in an amount and by an insurance company acceptable to the Commissioner.

(b) The policy of excess insurance and/or reinsurance issued by an insurance carrier to a fund shall include provisions for aggregate excess insurance in addition to single accident (single occurrence) excess insurance.

(c) Certificates of excess insurance and/or reinsurance showing policy limits and other information shall be available for the inspection of each member and shall be filed with the Commissioner.

(d) Losses in excess of the established self-insurance retention shall be borne by the excess carrier(s) according to the terms and conditions of the excess contract(s).

11:15-2.24 Financial statement and reports

(a) A sworn annual report in a form prescribed by the Commissioner shall be prepared by each fund, filed concurrently with the Department and Department of Community Affairs and made available to each fund member on or before April 1 of each year. The report shall be accompanied by:

1. An annual audited statement of the financial condition of the fund prepared by an independent certified public accountant or registered municipal accountant and performed in accordance with generally accepted accounting principles and section 11 of P.L. 1983, c.372.

2. Reports of outstanding liabilities showing the number of claims, amounts paid to date and current reserves for losses, claims and unearned assessments as certified by an actuary.

3. Such other information, as may be required by the Department.

11:15-2.25 Examination of funds possibly in financial condition detrimental to the public

(a) The Commissioner shall examine any fund which the Commissioner has reasonable cause to believe may be insolvent or in a financial condition detrimental to its members or to the public. It shall be the duty of the fund members, upon majority vote, to notify the Commissioner of any information indicating that any fund may be insolvent or in a financial condition detrimental to the fund's members or the public.

(b) The members may, upon majority vote, request that the Commissioner order an examination of any fund member which the fund, commissioners or executive committee, if any, in good faith believes may be in a financial condition detrimental to other fund members or to the public.

(c) Any examination made pursuant to P.L. 1983, c.372 and this subchapter shall be conducted in a manner satisfactory to the Commissioner and by such persons as the Commissioner designates. The cost of any examination shall be borne by the fund.

11:15-2.26 Servicing organizations; administrator

(a) Except with the approval of the Commissioner, no servicing organization or its employees, officers or directors shall have either a direct or indirect financial interest in an administrator or be an employee, officer or director of an administrator.

(b) Except with the approval of the Commissioner, no administrator, or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, a servicing organization.

(c) Each service contract shall include a clause stating, "Unless the Commissioner otherwise permits, the service organization shall handle to their conclusion all claims and other obligations incurred during the contract period."

(d) The fund commissioners or the executive committee, if any, shall designate an administrator to carry out the policies established by the commissioners or the executive committee, if any, and to provide day-to-day management of the fund. The minutes of the commissioners or executive committee, if any, meetings shall detail the areas of authority delegated to the administrator.

11:15-2.27 Conflict of interest

(a) No official or employee of a participating local unit or any members of the family of such officials or employees, or any businesses in which such officials, employees or family members have a beneficial interest shall seek to obtain or participate in any contract to be entered into by the joint insurance fund for administration, loss control, investment or depository services, insurance coverage or any other service, commodity or material without first fully disclosing in writing the nature and extent of such interest, financial or otherwise, to the joint insurance fund commissioners. It shall be the responsibility of the joint insurance fund commissioners to determine if the interest so disclosed is such as to constitute an actual or potential conflict of such degree as to impair the ability of the officer, employee, family member or business from fully and impartially performing the duties required by

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the joint insurance fund. If so, the officer, employee, family member or business shall be prohibited from entering into such contract until the cause of such conflict is removed.

(b) Any contract entered into between the joint insurance fund and any individual, firm corporation or agency which fails to disclose an actual or potential conflict situation shall be void.

(c) There shall be no collusion or evidence or appearance of collusion, between any official or employee of the members or employees of the joint insurance fund and any official or employee of any contractor, vendor, insurance company, bank, consultant, brokerage firm or any other profit making or non-profit firm attempting to solicit a contract with the joint insurance fund or awarded a contract by the joint insurance fund.

11:15-2.28 Notice and hearings

(a) The Commissioner shall give 10 days prior written notice of any proposed suspension, revocation, cease and desist order, assessment or other enforcement action to the fund commissioners, its executive committee, or member local unit as the case may be, or to any person to whom the proposed enforcement action applies specifically. Such notice shall be served personally or by certified or registered mail upon all interested parties, shall set forth the grounds for the proposed enforcement action, and shall inform the fund or the person of its right to request a hearing on the proposed enforcement action. A copy of such written notice shall also be provided to the Commissioner of the Department of Community Affairs.

(b) The fund involved shall have 15 days from mailing of the notice to request a hearing, which may be formal or informal, on the proposed enforcement action. Failure to mail a request for hearing within the time prescribed shall result in the revocation, monetary penalty or cease and desist order becoming effective 30 days from issuance of the original notice. In no event shall any revocation become effective prior to the date that a hearing is scheduled. If, after complying with the requirements of this section, the Commissioner orders the revocation of a fund's authority, such revocation shall become effective 30 days after issuance of the Commissioner's order. The Commissioner, in his discretion, may for good cause shown, provide for a reasonable extension of such 30 day period.

11:15-2.29 Orders

(a) After notice and opportunity for a hearing, as provided in 11:15-2.28, the Commissioner may issue an order requiring a person or fund to cease and desist from engaging in an act or practice found to be in violation of any provision of P.L. 1983, c.372 or this subchapter.

(b) Upon a finding, after notice and opportunity for a hearing, as provided at N.J.A.C. 11:15-2.28, that a fund has violated any cease and desist order, the Commissioner may revoke his approval of the fund.

(c) Upon a finding, after notice and opportunity for a hearing, as provided at N.J.A.C. 11:15-2.28, the Commissioner may issue an order requiring the joint insurance fund commissioners, or the executive committee, if any, to dismiss an administrator or terminate the service contract of a servicing organization because of any fraud, material misrepresentation, incompetence or untrustworthiness, misappropriation or conversion of monies or violation of any fiduciary responsibilities by such administrator or servicing organization, or any of the employees, officers or directors thereof.

(d) A copy of any notice issued pursuant to this section shall be furnished to the Commissioner of the Department of Community Affairs.

11:15-2.30 Severability

The rules contained in this subchapter and any of the provisions thereof shall be severable, and if any of its provisions shall be held to be unconstitutional or otherwise invalid, the decision of the court shall not affect the validity of the remaining rules and regulations or any of the provisions thereof.

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Boilers, Pressure Vessels and Refrigeration Improving Safety for the Public

Proposed Repeal: N.J.A.C. 12:90
Proposed New Rule: N.J.A.C. 12:90

Authorized By: Roger A. Bodman, Commissioner, Department of Labor.
Authority: N.J.S.A. 34:1-40, 34:1-47 and 34:7-18.

A **public hearing** concerning this proposal will be held on July 12, 1984 at 9:30 A.M. at:

Thomas A. Edison College
101 West State Street
Corner West State Street and Willow Street
Trenton, New Jersey

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before July 30, 1984. These submissions and any inquiries about submissions and responses, should be addressed to:

William J. Clark, Director
Division of Workplace Standards
New Jersey Department of Labor
CN 054
Trenton, New Jersey 08625-0054

The Department of Labor thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-281.

The agency proposal follows:

Summary

The proposed new rules are essentially an editorial treatment of the existing rules. The new format organizes the text to provide for greater facility in its use, and is consistent with the accepted style of the New Jersey Administrative Code.

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Also the new rules update the documents referred to, reflect administrative changes in the Department of Labor, and clarify the intent of the rules, which is to assure the safe operation of boilers, pressure vessels and refrigeration systems.

The new rules are intended to continue to provide standards to implement the purposes of the boiler, pressure vessel and refrigeration laws; N.J.S.A. 34:1-38.1 et seq., N.J.S.A. 34:7-1 et seq., and N.J.S.A. 34:7-14 et seq.

The new chapter consists of eight subchapters. Subchapter 1, General Provisions are general rules. Subchapter 2 covers definitions. Subchapter 3 addresses administration, licensing and duties of persons involved with equipment within the scope of the chapter. Subchapter 4 contains safety requirements for boilers. Subchapter 5 contains safety requirements for unfired pressure vessels. Subchapter 6 contains safety requirements for refrigeration systems. Subchapter 7 covers examination and licensing for operating engineers and firemen. Subchapter 8 lists the documents referred to by reference and their availability.

Development of the rules was accomplished with internal agency review, public input and notice to affected persons.

Social Impact

These rules impact on boiler operating engineers and firemen, contractors, suppliers and owners of boiler, pressure vessel and refrigerator equipment. The proposed rules, however, do not contain any changes in technical requirements of boiler equipment operation. The proposal is a reorganization and rewriting of the rules intended to provide the affected persons who must comply with these requirements with a clear and more understandable set of rules.

Economic Impact

The proposal does not impose any new, additional or increased economic burdens on the regulated public. The current economic costs of obtaining licenses, hiring licensed people, conducting inspections and maintaining the standards of this chapter will remain the same.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 12:90.

Full text of the proposed new rules follows.

CHAPTER 90
BOILERS, PRESSURE VESSELS AND REFRIGERATION

SUBCHAPTER 1. GENERAL PROVISIONS

12:90-1.1 Title and citation

This chapter shall be known and may be cited as N.J.A.C. 12:90, Boilers, Pressure Vessels and Refrigeration.

12:90-1.2 Authority

These rules are promulgated pursuant to the authority of the Operating Engineers and Firemen Licensing Act, N.J.S.A. 34.7-1 et seq. and the Boiler, Pressure Vessel and Refrigeration Act, N.J.S.A. 34:7-14 et seq.

12:90-1.3 Purpose

(a) The purpose of this chapter is to provide reasonable standards for:

1. The protection of life and property in the use of boilers, pressure vessels and refrigeration systems; and

2. The licensing of engineers and firemen.

12:90-1.4 Scope

(a) This chapter shall apply to:

1. The design, construction, alteration, repair, operation, use and inspection of boilers, pressure vessels and refrigeration systems; and

2. The examination and licensing of operating engineers, firemen, and operators of long boom cranes.

12:90-1.5 Documents referred to by reference

The availability of standards and publications referred to in this chapter is explained in N.J.A.C. 12:90-8.

12:90-1.6 Validity

Should any section, paragraph, sentence or word of this chapter be declared for any reason to be invalid, such decision shall not affect the remaining portions of this chapter.

SUBCHAPTER 2. DEFINITIONS

12:90-2.1 Definitions

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

"Act", ("Inspection Act") means the Boiler, Pressure Vessel and Refrigeration Act, N.J.S.A. 34:7-14 et seq.

"Act", ("Licensing Act") means the Operating Engineers and Firemen Licensing Act, N.J.S.A. 34:7-1 et seq.

"Alteration" means change in original design.

"ANSI" means American National Standards Institute.

"API-ASME" means the American Petroleum Institute—American Society of Mechanical Engineers.

"Approved" means acceptable to the Commissioner of Labor.

"Approved central system" means:

1. A system remote from the boiler room that receives a signal transmitted to it by the failure of any of the automatic boiler controls; and

2. A system designed in accordance with N.J.A.C. 12:90-3.6.

"ASME" means the American Society of Mechanical Engineers.

"ASME Code" means the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers.

"Authorized inspection agency" means one of the following:

1. The State of New Jersey, or

2. An inspection agency authorized to write boiler and pressure vessel insurance and having inspectors that are authorized with a valid certificate of competency to inspect.

"Board" means the Board of Boiler and Pressure Vessel and Refrigeration Rules appointed under N.J.S.A. 34:1-38.1.

"Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for external use by the direct application of heat. The term "boiler" shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

1. "Low pressure boiler" means a boiler complying with N.J.A.C. 12:90-4.2(b)4.

2. "Heating boiler" means a steam or vapor boiler operating at a pressure not exceeding 15 psig, or a hot water boiler operating at a temperature not exceeding 250 degrees Fahrenheit.

3. "Hot water heating boiler" means a boiler in which no steam is generated, from which hot water is circulated for

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heating purposes and then returned to the boiler; and which operates at a pressure not exceeding 160 psig or a temperature of 250 degrees F or both at or near the boiler outlet.

4. "High temperature water boiler" means a water boiler operating at a pressure exceeding 160 psig or a tem-perature exceeding 250 degrees Fahrenheit.

5. "Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 psig. Power boiler also means a high temperature, high pressure water boiler.

"Boiler horsepower" means the evaporation of 34.5 pounds of water from and at 212 degrees Fahrenheit or its equivalent. "One boiler horsepower" shall be deemed to mean five square feet of boiler heating surface, or ten kilowatts input, or 40,000 Btu input.

"Btu" means a British thermal unit or the quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit.

"Building of public assembly" means an assembly building, Use Group A, which is a place of assembly as defined by Section 302.0 of the BOCA Basic National Building Code-1984.

"Certificate of competency" means a certificate issued to a person who has passed the inspection examination prescribed by the Board.

"Certificate of inspection" means an inspection, the report of which is used by the chief boiler inspector as justification for issuing, withholding or revoking the certificate as provided for in N.J.S.A. 34:7-24.

"Chief engineer" means a properly licensed person supervising one or more of the licensed operators of boilers, power plants or refrigeration systems working in the same plant.

"Commissioner" means the Commissioner of Labor or his authorized agent.

"Dissimilar" means designed to accomplish the same result but by different methods.

"Division of Workplace Standards" means the Division of Workplace Standards of the New Jersey Department of Labor, CN 054, Trenton, NJ 08625-0054.

"External inspection" means an inspection made when a boiler or pressure vessel is in operation.

"Flame failure device" means a device designed to cut off the fuel supply within prescribed time limits in the event of loss of ignition.

"Insurance company inspector" means an employee of an insurer who is trained and specializing in the inspection of boiler or pressure vessels for safety reasons to represent the interests of the insurer.

"Internal inspection" means as complete an examination as can reasonably be made of the internal surfaces of a boiler or pressure vessel when all manhole plates, handhold plates, or other inspection opening closures are removed.

"Kilowatt" means a unit of electrical power equal to 1000 watts.

"License" means a certificate documenting acceptance of a person as competent to operate specified equipment.

"Long boom crane" means a hoisting machine with a boom of over 99 feet.

"Major repair" means a repair affecting the strength of a boiler or pressure vessel or other equipment.

"Manual reset device" means a control designed to prevent recycling of automatically fired burners until reset manually.

"Mechanical Inspection Bureau" means the Office of Boiler and Pressure Vessel Compliance.

"National Board Commission" means the commission issued by the National Board of Boiler and Pressure Vessel Inspectors to a holder of a certificate of competency who desires to make shop or field inspections in accordance with the National Board for such commission.

"NBBPVI" means the National Board of Boiler and Pressure Vessel Inspectors.

"N.J.A.C." means the New Jersey Administrative Code.

"N.J.S.A." means the New Jersey Statutes Annotated.

"Office of Boiler and Pressure Vessel Compliance" means the Office of Boiler and Pressure Vessel Compliance of the Division of Workplace Standards, New Jersey Department of Labor, CN 392, Trenton, NJ 08625-0392.

"Owner or user" means any person, firm or corporation legally responsible for the safe operation of any boiler, pressure vessel, or refrigeration system.

"Pressure vessel" (See unfired pressure vessel).

"Psig" means pounds per square inch gauge.

"Refrigeration system" means a system that is a combination of interconnected refrigerant containing parts constituting one closed refrigerant circuit in which a refrigerant is circulated for the purpose of extracting heat.

"Secondhand boiler or pressure vessel" means a boiler or pressure vessel which has changed both location and ownership since the last certificate of inspection.

"Shall" means a mandatory requirement.

"Shift engineer" means a properly licensed person operating a boiler, power plant or refrigeration system.

"Shop inspection" means an inspection performed when the boiler or pressure vessel is being fabricated or undergoing major repair.

"State inspector" means an employee of the Office of Boiler and Pressure Vessel Compliance who is authorized to inspect boilers or pressure vessels or other equipment.

"Total capacity" means the sum of the horsepower at ratings of all boilers comprising the system based on the minimum safety valve relieving capacity as required by the ASME Code.

"Unfired pressure vessel" means a vessel in which the pressure is obtained from an external source, or by the application of heat from a direct or indirect source.

"Water heater" means a closed vessel in which water is heated by a fuel supply and water is withdrawn for use external to the system at pressures not exceeding 160 psig and includes controls necessary to prevent water temperatures from exceeding 210 F.

SUBCHAPTER 3. ADMINISTRATION

12:90-3.1 Scope of subchapter

This subchapter shall apply to the administrative functions required to be performed by the owner or user of any boiler, pressure vessel or refrigeration system within the scope of this chapter.

12:90-3.2 Right of entry

For the purpose of examination or inspection of any boiler, pressure vessel, refrigeration system, power plant or other equipment, the commissioner may enter such premises at all reasonable hours in accordance with N.J.S.A. 34:1-15.

12:90-3.3 Equipment requiring a licensed operator

(a) No person shall operate the equipment listed below without the appropriate license as specified in N.J.A.C. 12:90-3.4 through 3.8.

1. Any steam boiler, steam generator, hot water boiler for service over 250 degrees Fahrenheit, or similar equipment potentially capable of generating steam having a safety valve

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or valves set higher than 15 pounds per square inch gauge and rated over six horsepower;

2. A steam or hot water heating plant with an indicated or rated capacity that exceeds either 499 square feet of heating surface of 100 boiler horsepower or 1,000 kilowatts or 4,000,000 Btu input regardless of pressure or temperature conditions, except as provided in N.J.A.C. 12:90-3.6;

3. Any steam turbine, steam engine or other steam driven prime mover, rated over six horsepower;

4. Any refrigerating system using a refrigerant which is either flammable or toxic and rated over six tons of refrigerating capacity;

5. Any hoisting machine with a boom exceeding 99 feet in length; or

6. Hot-oil generators or equipment using fluids other than water to produce steam indirectly.

12:90-3.4 Licenses for high pressure boilers

(a) This section shall apply to the grades of licenses required to operate a high pressure boiler.

(b) The chief engineer and shift engineer of a high pressure boiler shall hold at least the license designated in Table 3.4.

Table 3.4
Licenses for High Pressure Boilers

Boiler horsepower over	Boiler horsepower not over	Chief Engineer's License (1)	Shift Engineer's License
3,000 and over		1-A gold seal 1st class engineer	1-C blue seal 3rd class engineer
1,000	3,000	1-B red seal 2nd class engineer	1-C blue seal 3rd class engineer
500	1,000	1-C blue seal 3rd class engineer	black seal boiler operator in charge
100	500	black seal boiler operator in charge	black seal boiler operator in charge
6	100(2)	—	boiler operator special

Notes to Table

(1) When required by N.J.A.C. 12:90-3.9

(2) Applies only to fully automatic boilers over six but not over 100 boiler horsepower.

12:90-3.5 Licenses for low pressure boilers

(a) This section shall apply to the licenses required to operate a low pressure boiler.

(b) Except as provided in N.J.A.C. 12:90-3.6, no unlicensed person shall operate a low pressure steam or hot water heating boiler in which the rated capacity exceeds 100 horsepower or 499 square feet heating surface or 4,000,000 Btu input or 1,000 kilowatts regardless of pressure or temperature conditions.

12:90-3.6 Exemption under N.J.S.A. 34:7-1(6)

(a) This section shall apply to the conditions necessary to obtain an exemption for a licensed operator in constant attendance of a low pressure boiler serving a heating plant in other than a building of public assembly.

(b) Boilers described in (a) above shall comply with Section IV, Heating Boilers of the ASME Code.

(c) Automatic safety control systems and safety devices shall comply with N.J.A.C. 12:90-4.13.

12:90-3.7 Licenses for power generating plants

(a) This section shall apply to the various grades of licenses required to operate the steam driven prime mover in power generating plants.

(b) The chief engineer, shift engineer and boiler operator of a power generating plant shall hold at least the license designated in Table 3.7.

Table 3.7
Licenses for Power Generating Plants

Power Generating Plant Prime Mover horsepower over	Power Generating Plant Prime Mover horsepower not over	Chief Engineer's License (1)	Shift Engineer's License	Boiler Operator's License
500 and over		1-A gold seal 1st class engineer	1-C blue seal 3rd class engineer	black seal boiler operator in charge
100	500	1-B red seal 2nd class engineer	1-C blue seal 3rd class engineer	black seal boiler operator in charge
6	100	1-C blue seal 3rd class engineer		black seal boiler operator in charge (2)

Notes to Table

(1) When required by N.J.A.C. 12:90-3.9.

(2) If needed.

12:90-3.8 Licenses for refrigeration systems

(a) This section shall apply to the various grades of licenses required to operate refrigeration systems using toxic or flammable refrigerants.

(b) The chief engineer or shift engineer of a refrigeration system shall hold at least the license designated in Table 3.8.

Table 3.8
Licenses for Refrigeration Systems

Refrigeration Plant Capacity tons over	Refrigeration Plant Capacity tons not over	Chief Engineer's License (1) (2)	Shift Engineer's License (2)
300 and over		2-A gold seal 1st class engineer	2-C blue seal 3rd class engineer
65	300	2-B red seal engineer	2-C blue seal engineer

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Not over 65	2-C blue seal 3rd class engineer	2-C blue seal 3rd class engineer

Notes to Table
(1) When required by N.J.A.C. 12:90-3.9.
(2) When steam driven prime movers are employed as part of the refrigeration system, the engineer shall hold the appropriate steam and refrigeration engineer's license.
(3) Fully automatic systems.

12:90-3.9 Chief engineer and scope of certain licenses

(a) When more than one licensed person is required to operate a boiler, refrigeration system, or power generating plant, whether or not the operators are employed on the same shift, the management of the plant shall designate a chief engineer.

(b) A chief engineer may be called a supervising engineer in some plants.

(c) The engineer designated as chief engineer shall be permitted to serve as chief engineer in one plant location only.

(d) The designated chief engineer may be a shift engineer holding a license of a grade required for a chief engineer.

(e) The chief engineer designated in (a) above shall hold the proper grade and classification of license as provided by N.J.A.C. 12:90-3.4 through 3.8.

(f) The Office of Boiler and Pressure Vessel Compliance may recognize an engineer holding a license one grade lower than that required to serve as acting chief engineer on a temporary basis provided:

1. Every reasonable effort has been made by the employer to obtain a properly licensed chief engineer;

2. The candidate has submitted an acceptable application for examination for the higher grade license; and

3. The employer has submitted a request in writing for the acting chief engineer status.

(g) A fireman holding a fireman in charge license may act as chief engineer of an installation of 500 boiler horsepower or less. He may assume charge of a shift, under the supervision of a properly licensed chief engineer, in installations not over 1,000 boiler horsepower. When the total capacity exceeds 1,000 boiler horsepower, he may act as fireman, under the direction of, and responsible to, a properly licensed engineer in charge of his shift.

(h) An engineer holding a C or third grade license of the proper classification may act as chief engineer of any plant where the total capacity of the equipment involved does not exceed 1,000 boiler horsepower, 100 engine horsepower or 65 tons refrigerating capacity. He may also act as operating engineer, under the supervision of a properly licensed chief engineer, in installations exceeding the above limits.

(i) An engineer holding a B or second grade license of the proper classification may act as chief engineer of any plant where the total capacity of the equipment involved does not exceed 3,000 boiler horsepower, 500 engine horsepower or 300 tons refrigerating capacity. He may also act as operating engineer, under the supervision of a properly licensed chief engineer, in installations exceeding the above limits.

(j) An engineer holding an A or first grade license of the proper classification may act as chief engineer in any plant.

12:90-3.10 Duties of licensed persons

(a) This section shall apply to the duties of persons licensed in accordance with this chapter.

(b) Licensed persons on watch shall give constant attention to the equipment entrusted to their care to the extent that they know at all times it is operating safely.

(c) Each licensed person shall determine how long he can stay away from his equipment and not jeopardize the safe operation of a low pressure boiler.

(d) The owner or management shall not require a licensed person to stay away from his equipment to the detriment of the safe operation of the equipment.

(e) Licensed persons shall give constant attention to the following types of equipment requiring licenses:

1. High pressure boilers; and

2. Refrigeration systems.

12:90-3.11 Duties of others involved

(a) All persons involved with equipment within the scope of this chapter including among others engineers, contractors, suppliers, owners, or operators shall:

1. Be conversant with this chapter; and

2. Have all required certificates and licenses posted in a conspicuous place and available for inspection at all times.

(b) Manufacturer's data reports, specifications, drawings and calculations when required for boilers and unfired pressure vessels manufactured or used within the jurisdiction of this State shall be filed with the Office of Boiler and Pressure Vessel Compliance.

(c) Users of boilers, pressure vessels, refrigeration systems and other equipment subject to the inspection and licensing acts, shall be guided by their authorized inspectors relative to the jurisdiction of the Office of Boiler and Pressure Vessel Compliance for purposes of registration, certification and licensing.

(d) No person shall contract for or purchase new or used boilers or unfired pressure vessels for use which do not comply with the applicable ASME Code. The applicable ASME Code shall be specified in such transactions.

(e) When writing the Office of Boiler and Pressure Vessel Compliance in reference to a boiler, unfired pressure vessel, refrigeration system or other equipment, the New Jersey State inspection registration number in the upper left corner of the registration certificate, the manufacturer's serial number, the ASME or National Board number and the name of the manufacturer shall be stated in the correspondence.

(f) When writing in reference to the ASME Code the edition, section, page and paragraph of the Code shall always be specified.

SUBCHAPTER 4. BOILERS

12:90-4.1 Scope of subchapter

(a) This subchapter shall apply to the design, construction, inspection, installation, repair and alteration of steam or hot water boilers, except as provided in (b) below.

(b) This subchapter shall not apply to:

1. Steam boilers having adequate relief devices set to discharge at a pressure not greater than 15 psig when such boilers serve dwellings of less than six family units or other dwellings with accommodations for less than 25 persons;

2. Hot water boilers having relief devices set to discharge at a pressure not greater than 160 psig and hot water boilers limited to temperatures not exceeding 250 degrees Fahrenheit when such boilers serve dwellings of less than six family units or other dwellings with accommodations for less than 25 persons;

3. Any steam or hot water boiler having less than 10 square feet of surface;

4. Any steam or hot water boiler having a heat input of less than 10 kilowatts or less than 40,000 Btu per hour;

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5. Any steam or hot water boiler under the jurisdiction and control of the United States Government when actively regulated by a Federal agency; and

6. Any steam or hot water boiler used solely for the propulsion of a motor vehicle regulated by the Motor Vehicle Act, Title 39 of the Revised Statutes.

12:90-4.2 Compliance with referenced standards

(a) Boilers shall be constructed, installed, maintained, altered, repaired and inspected in accordance with the standards referenced in (b) and (c) below.

(b) The applicable sections of the ASME Boiler and Pressure Vessel Code-1983 are adopted as safety standards under this subchapter and shall apply according to the provisions listed below.

1. Section I, Power Boilers;
2. Section II, Material Specifications;
3. Section III, Nuclear Power Plant Components;
4. Section IV, Heating Boilers;
5. Section VI, Recommended Rules for Care and Operation of Heating Boilers;
6. Section VII, Recommended Rules for Care of Power Boilers;
7. Section IX, Welding and Brazing Qualifications;
8. Section X, Fiberglass-Reinforced Plastic Pressure Vessels;
9. Section XI, Rules for Inservice Inspection of Nuclear Power Plant Components—Division 1;
10. Case Interpretation and Addenda of each section listed above, except as provided in (g) below.

(c) The National Board Inspection Code-1981 is adopted as the safety standard under this subchapter and shall apply according to the provisions thereof, except that:

1. R-301.2.2 shall not apply.

(d) Each person engaged with boilers shall protect the public by complying with the standards prescribed in (b) and (c) above.

(e) Only technical standards relating to public safety are adopted by any incorporation by reference as prescribed in (b) and (c) above. Other standards relating to administration and reporting shall be achieved by communication with the appropriate officials of the Office of Boiler and Pressure Vessel Compliance.

(f) Where any conflict occurs between the standards prescribed in (b) and (c) above and these rules, these rules shall prevail.

(g) All Sections of the ASME Code referenced in (b) above shall become mandatory six months after approval by the ASME Council as do published addenda and Code Cases unless specific exception is taken by the Office of Boiler and Pressure Vessel Compliance administratively subject to confirmation by the Board.

12:90-4.3 Classification of boilers

(a) Boilers shall be classified as Class I, Class II, Class III or Class IV boilers.

(b) Specific boilers shall meet or exceed the minimum provisions of its class.

(c) Class I boilers shall comply with N.J.A.C. 12:90-5.4.

(d) Class II boilers shall comply with N.J.A.C. 12:90-5.5.

(e) Class III boilers shall comply with N.J.A.C. 12:90-5.6, 5.7, 5.8 or 5.9, as applicable.

(f) Class IV boilers shall comply with N.J.A.C. 12:90-5.10.

12:90-4.4 High pressure boilers

High pressure boilers shall comply with Section I, Power Boilers of the ASME Code.

12:90-4.5 Low pressure boilers

(a) Low pressure boilers shall comply with Section IV, Heating Boilers of the ASME Code.

(b) Existing low pressure boilers installed prior to the effective date of the standards referenced in (a) above may remain in use while the Office of Boiler and Pressure Vessel Compliance is in receipt of favorable and current inspection reports.

(c) Low pressure boilers as described in (b) above shall be converted before the next annual inspection to conform to the standards referenced in (a) above with regard to appliances, auxiliaries and safety devices.

(d) Each automatically fired hot water boiler falling within the terms of N.J.S.A. 34:7-14(a) shall have an automatic low-water fuel cutoff which has been designed for hot water boiler service except that such low water cutoff shall not be required for hot water supply boilers.

(e) When low pressure boilers are connected to a common header, the connections from each boiler having a manhole opening shall be fitted with two stop valves having adequate free-blow drains. The free-blow drains shall be located between the stop valves.

1. One of these stop valves shall be placed as near the boiler nozzle as practicable and the other valve placed where the interconnection joins the common header.

2. Where such protection has not been provided in existing installations or where such stop valves may be omitted optionally on hot water boilers where full open internal inspection is less frequently performed, no entry shall be made through the manway for any purpose until all system boilers have been depressurized and vented.

12:90-4.6 Relief device settings

All boilers shall have primary relief devices set to discharge at a pressure not in excess of the stamped maximum allowable working pressure.

12:90-4.7 Steam boiler blowdown tanks and receivers

(a) This section shall apply to the construction and installation of steam boiler blowdown tanks and receivers.

(b) Pressure or unvented blowdown tanks:

1. A blowdown tank subject to possible maximum steam boiler pressure shall be constructed for the boiler pressure and stamped National Board, ASME, or New Jersey Standard.

2. A blowdown tank shall be used whenever the blowdown from any steam boiler is disposed in a sewerage or other interconnected system, and placed between the boiler and the sewer or such system.

(c) Atmospheric or vented blowdown tanks:

1. The outlet from the blowdown tank shall be not less than twice the area of the boiler blowdown pipe and made to extend internally to within six inches of the bottom of the tank.

2. A vent pipe, at least twice the diameter of the inlet, shall lead to the outside atmosphere. Vents shall be as direct as possible to the outside atmosphere and discharge at a point not less than seven feet above grade. No valve, water pocket, or other obstruction shall be in this line.

(d) Construction of blowdown tanks:

1. The minimum metal thickness of blowdown tanks, whether of the pressure or atmospheric type, shall be not less than five-sixteenths inch.

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2. All blowdown tanks, whether of the closed or vented type, shall have approved openings for cleaning and inspection, and shall be capable of a maximum discharge at 150 degrees Fahrenheit at five psig.

3. The capacity of blowdown systems shall be sufficient to prevent discharges from exceeding 150 degrees Fahrenheit at five psig.

(e) Centrifugal type separators:

1. Centrifugal type separators shall be built and stamped in accordance with the ASME Code and may be used as provided in (e)2 through (e)4 below.

2. Separators may be used when a safe point of discharge is available and the pressure and temperature conditions at the point of discharge need not be considered.

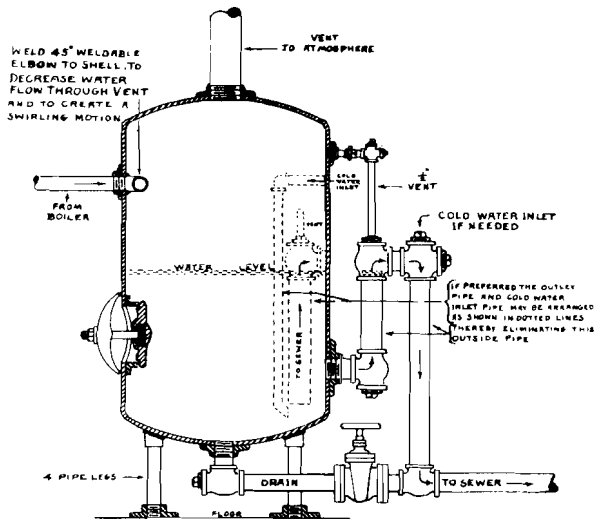
3. Separators may be used as an auxiliary to a blowdown tank but may not be used in lieu of a conventional blowdown tank in those installations requiring a blowdown tank.

4. Separators may be used as provided in Figure 4.7(f)1 or Figure 4.7(f)2, an open blowoff system, or the rules for boiler blowoff equipment of the National Board. The inlet line shall extend to within six inches of the bottom of the open receiver.

(f) Drawings of acceptable blowdown tanks and equipment:

1. Shown below are acceptable blowdown tanks and equipment as Figures 4.7(f)1 and 4.7(f)2.

Figure 4.7(f)1
Vertical Blowdown Tank for High Pressure Boiler



12:90-4.8 Welded repairs and alterations to boilers

(a) Welded repairs to boilers shall comply with the original construction standards and in accordance with National Board recommended rules for repairs.

(b) Welded repairs to boilers shall be performed by a contractor possessing a valid and appropriate ASME Code symbol stamp or have National Board repair authorization or New Jersey repair authorization.

(c) The ASME Code validity of piping repairs shall be maintained to the boundaries defined in Section I, Power Boilers for high pressure boilers and to the required stop valve connection for low pressure heating boilers. See N.J.A.C. 12:90-3.5(d).

(d) All repairs to boilers or connected piping shall be approved by a New Jersey authorized inspector holding a National Board Commission employed by an insurance company or the State of New Jersey and performed under his guidance.

(e) A record of welded repairs shall be filed with the Office of Boiler and Pressure Vessel Compliance.

(f) Alterations to boilers shall be performed by the appropriate Code symbol holder only.

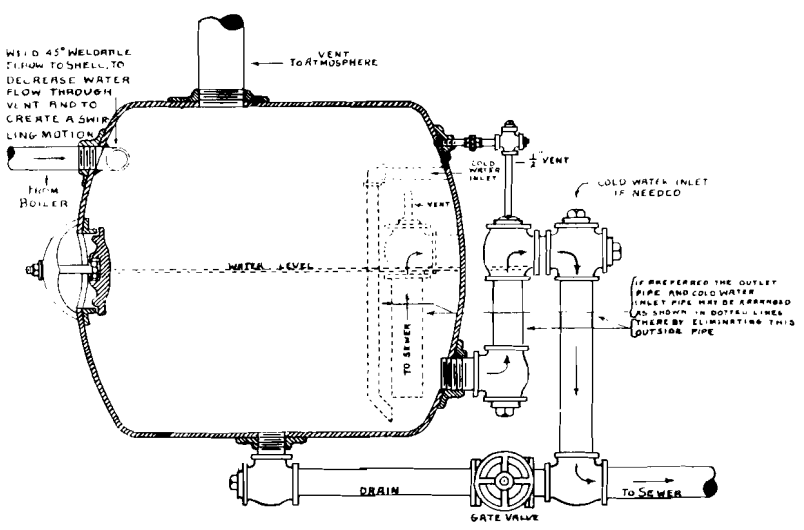
(g) An alteration report and a copy of the original manufacturer's data report shall be filed with the National Board of Boiler and Pressure Vessel Inspectors or the Office of Boiler and Pressure Vessel Compliance if the boiler is not registered with the National Board.

12:90-4.9 Qualification of authorized repair firms

(a) This section shall apply to the procedures required to obtain approval as a New Jersey authorized repair firm.

(b) A letter of application shall be addressed to the Office of Boiler and Pressure Vessel Compliance by a responsible officer of the firm requesting repair authorization. The letter shall include evidence that an authorized inspection agency has agreed to provide inspection service as required.

Figure 4.7(f)2
Horizontal Blowdown Tanks for High Pressure Boilers



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(c) A review of the firm's facilities and quality control system shall be conducted jointly by an inspection specialist of the Office of Boiler and Pressure Vessel Compliance and a representative of the authorized inspection agency. The assigned shop inspector shall be present during the review.

(d) The Office of Boiler and Pressure Vessel Compliance shall authorize the repair firm and, in conjunction with the authorized inspection agency of record, monitor the firm's repair activities in accordance with established administrative policy.

(e) Administrative policy guidelines shall be made available to applicants, users, inspection agencies and other interested parties.

(f) Repairs performed by an authorized repair firm shall be deemed to preserve intact the validity of the original construction standard of the boiler upon which the work was performed while the boiler is in the State.

(g) Alterations or modifications altering the original design shall be performed by an appropriate qualified ASME symbol holder.

(h) Repair firms may add nozzles no larger than an unreinforced nozzle size.

(i) Nothing herein shall be intended to prohibit repair by an appropriate qualified ASME authorized shop or National Board repair firm or to require additional qualification of such shop under these rules.

12:90-4.10 Inspection of boilers

(a) All steam or hot water boilers or similar equipment potentially capable of generating steam as described in (b) below shall be inspected and be subjected to a hydrostatic test, if necessary at least once each year at 12 month intervals. This inspection shall be a complete internal and external inspection as construction conditions will permit.

(b) Steam or hot water boilers subject to the inspection of (a) above shall include those listed in (b)1, (b)2 and (b)3 below, except as provided in (c) below:

1. Steam or hot water boilers having 10 or more square feet of heating surface;

2. Steam or hot water boilers having a heat input of 10 kilowatts or more; or

3. Steam or hot water boilers having a heat input of 40,000 Btu per hour or more.

(c) Steam or hot water boilers serving dwellings of less than six family units or other dwellings with accommodations for less than 25 persons need not comply with the annual internal and external inspection of (a) above.

(d) In addition to the annual internal and external inspection of (a) above, there may be an external inspection, if found necessary. This external inspection shall be made as near to the expiration of six months after the annual inspection date as practicable.

(e) Inspection shall be made more frequently if conditions warrant.

(f) The boiler to be inspected shall be open, clean, cool and ready for the inspector.

12:90-4.11 Ultrasonic testing

(a) The commissioner may accept ultrasonic test reports as a form of internal inspection for the purpose of compliance with N.J.S.A. 34:7-14 under certain specific instances upon receipt of application.

(b) Ultrasonic testing shall be considered under the following circumstances:

1. When it is operationally impractical to take the boiler out of service during the 12 month period;

2. If the user has a regularly scheduled fulltime "in service" inspection program;

3. Ultrasonic inspection, in lieu of the annual out-of-service and open internal and external inspection, shall be accepted only when it is made within a 12 month period following the internal and external inspection;

4. The insurer or the authorized inspection agency indicates acceptance of the ultrasonic testing; and

5. A history of the boiler including such items as operational characteristics, results of inspections, corrosion rates and ultrasonic procedures shall be required.

12:90-4.12 Equipment criteria for exemption under N.J.A.C. 12:90-3.6

(a) This section shall apply to equipment criteria required of low pressure boilers when serving a heating plant other than in a building of public assembly.

(b) The automatic safety control system shall consist of the following:

1. Dual, dissimilar, suitable primary (flame safeguard) fuel control devices, at least one with manual reset, installed independently of each other;

2. Dual, dissimilar, independently-connected, low-water fuel cut off devices, at least one with manual reset, and with a means of testing both;

3. An automatic water-feeding device for each boiler. Designs embodying a float and chamber shall be constructed so that the water inlet valve cannot feed water into the boiler through the float chamber and shall have a vertical drain pipe and blowoff valve not less than three-quarter inch pipe size;

4. Dual, independent steam pressure or in the case of hot water heating boilers, water temperature actuated combustion control. One such control shall have its high limit set above the normal range of the equipment operation but it shall operate before the steam pressure rises to the operational setting of the safety valve, but in no case above 15 psig, or in the case of hot water heating systems, before the pressure relief valve is actuated but in no case greater than 250 degrees Fahrenheit;

5. Hot water supply boilers provided with at least one officially rated pressure-temperature relief valve of the automatic-reseating type set to relieve at or below the maximum allowable working pressure of the boiler and a maximum temperature not greater than 250 degrees Fahrenheit;

6. Hot water heating systems with an independent circulating pump control separate from the water temperature actuated combustion control; and

7. Additional safety devices as deemed necessary by the Office of Boiler and Pressure Vessel Compliance.

(c) When the building is occupied, the safety components listed under (b) above shall be inspected operationally by the licensed operator in accordance with N.J.S.A. 34:7-1(6)b.

(d) Each time the licensed operator checks the boiler and controls he shall record such inspections in a log book that shall be maintained on the premises. The log book shall include such entries as the date, time, pressure, water level check, temperature, testing or checking the operation of the safety valves, flame failure devices, low-water fuel cutoffs and other control devices as recommended by the manufacturer or other recognized standards.

(e) The licensed operator shall be required to sign the log after such entries are made at each visit. Falsification of a log sheet shall be deemed cause for revocation of the operator's license.

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(f) The operational inspection shall include the checking of the equipment during a complete cycle in which combustion of the main fuel occurs and continues through the normal range of operation, including the rise of pressure or temperature, at which time the burner shall be observed to cut off automatically.

(g) Low water cutoffs on steam boilers shall be tested not less than once a month by means of cutting off the feed water and allowing water level to drop by evaporation, to the proper operational level of the low water fuel cutoff. The operator shall be in attendance during this testing procedure. The low water fuel cutoff shall also be tested at least once a week by lowering the water level in the boiler by means of the bottom blowdown on the boiler. Low water cutoff on hot water heating boilers shall be tested at least bimonthly.

(h) Safety relief valves shall be tested at least once a month manually or shall be activated by raising the pressure to the set pressure.

(i) High limit controls shall be checked for proper operation at least once a month by raising the steam pressure, or increasing the boiler water temperature above the normal operating range, to the operating level of the high limit controls.

(j) Flame safeguards shall be tested at least monthly by upsetting normal combustion of the fuel by any one of several methods which should cause the control to shut off the fuel. These safety devices shall be checked for proper operation by other usual methods at least weekly.

(k) Automatic water feed regulators shall be checked for proper operation weekly. Low water cutoffs on feed water controls having a float chamber shall be checked for proper operation and reduce build-up of sediment deposits by opening their drains, at least weekly.

(l) Water columns and gauge glasses shall be drained at least daily.

12:90-4.13 Fee for shop inspection

(a) A fee of $12.00 shall be charged for each boiler inspected in the shop.

(b) The minimum fee shall be $80.00 for any shop inspection that is four hours or less.

(c) The minimum fee shall be $150.00 for any shop inspection exceeding four hours.

12:90-4.14 Fee for field inspection

(a) An insurance company making an annual field inspection shall pay a fee of $5.00 to the State, payable by and collected from the user by the inspector at the time of inspection for each boiler.

(b) The owner or user may request a field inspection by the State.

(c) The fee for a State field inspection for each annual internal-external inspection, which shall include a hydrostatic test if found necessary, shall be paid to the inspector as follows:

1. Ten and not over 60 square feet	$15.00
2. 60 and not over 1,000 square feet	20.00
3. 1,000 square feet and over	35.00

(d) In addition to the inspection fee charged for a State field inspection the travel expense of the inspector shall be paid at the time of inspection.

(e) In addition to the annual internal-external inspection, there may be an external inspection for which the owner or user shall pay to the State inspector a fee of $15.00, in addition to the travel expense, at the time of the field inspection.

12:90-4.15 Registration of boilers

(a) Boilers shall be registered with the Office of Boiler and Pressure Vessel Compliance.

(b) Every boiler approved for use in the State shall be assigned a registration number, which shall be located in the upper left-hand corner of the boiler certificate.

(c) This number shall be stamped directly on the boiler drum near the manufacturer's stamping in letters at least ¼ inch high.

(d) This number shall also be attached to the front of the boiler in such a manner as to be plainly visible.

(e) The State boiler inspection certificate shall be properly framed and posted in the boiler room, engine room, engineer's office, or plant office and be readily available for examination.

SUBCHAPTER 5. UNFIRED PRESSURE VESSELS

12:90-5.1 Scope of subchapter

(a) This subchapter shall apply to the design, construction, inspection, installation, repair and alteration of unfired pressure vessels, except as provided in (b) below.

(b) This subchapter shall not apply to:

1. Unfired pressure vessels having an internal or external operating pressure not exceeding 15 psig;

2. Unfired pressure vessels having an inside diameter not exceeding six inches;

3. Unfired pressure vessels used as a hot water supply tank heated by steam or any other indirect means when such unfired pressure vessels serve dwellings of less than six family units or other dwellings with accommodations for less than 25 persons when none of the following limitations on the unfired pressure vessel are exceeded:

i. A heat input of 200,000 Btu per hour;

ii. A water temperature of 200 degrees Fahrenheit;

iii. A nominal water capacity of 120 gallons.

4. Any unfired pressure vessel under the jurisdiction and control of the United States Government when actively regulated by a Federal agency;

5. Any unfired pressure vessel used solely for the propulsion of a motor vehicle regulated by the Motor Vehicle Act, Title 39 of the Revised Statutes; and

6. Any unfired pressure vessel with a nominal water capacity of 120 gallons or less containing water with air under pressure, the compression of which serves only as a cushion.

12:90-5.2 Compliance with referenced standards

(a) Unfired pressure vessels shall be constructed, installed, maintained, repaired and inspected in accordance with the standards referenced in (b) and (c) below.

(b) The applicable sections of the ASME Boiler and Pressure Vessel Code-1983 are adopted as safety standards under this subchapter and shall apply according to the provisions listed below.

1. Section II, Material Specifications;

2. Section III, Nuclear Power Plant Components;

3. Section VIII, Unfired Pressure Vessels;

4. Section IX, Welding and Brazing Qualifications;

5. Section X, Fiberglass-Reinforced Plastic Pressure Vessels;

6. Section XI, Rules for Inservice Inspection of Nuclear Power Plant Components Division 1;

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7. All Case Interpretation and Addenda for each Section, except as provided in (g) below.

(c) The National Board Inspection Code-1981 is adopted as a safety standard under this subchapter and shall apply according to the provisions thereof, except that:

1. R-301.2.2 shall not apply.

(d) Each person engaged directly with the operation of unfired pressure vessels shall protect the public by complying with the standards prescribed in (b) and (c) above.

(e) Only technical standards relating to public safety are adopted by any incorporation by reference as prescribed in (b) and (c) above. Other standards relating to administration and reporting shall be achieved by communication with the appropriate officials of the Office of Boiler and Pressure Vessel Compliance.

(f) Where any conflict occurs between the standards prescribed in (b) and (c) above and these rules, these rules shall prevail.

(g) All Sections of the ASME Code referenced in (b) above become mandatory six months after approval by the ASME Council as do published addenda and Code Cases unless specific exception is taken by the Office of Boiler and Pressure Vessel Compliance administratively subject to confirmation by the Board.

12:90-5.3 Classification of unfired pressure vessels

(a) Unfired pressure vessels shall be classified as Class I, Class II, Class III, or Class IV unfired pressure vessels.

(b) Specific unfired pressure vessels shall meet or exceed the minimum provisions of its class.

12:90-5.4 Class I unfired pressure vessels

(a) Class I unfired pressure vessels shall conform in all respects to the pertinent sections of the ASME Code that are valid at the time of construction.

(b) All shop inspections of Class I unfired pressure vessels shall be conducted by qualified inspectors who shall satisfy the requirements of the ASME Code and shall be in possession of a valid National Board of Boiler and Pressure Vessel Inspector's Commission.

(c) All Class I unfired pressure vessels shall be stamped and identified as prescribed by the ASME Code.

(d) Class I unfired pressure vessels may be stamped and registered as designated by the National Board.

12:90-5.5 Class II unfired pressure vessels

Unfired pressure vessels designated as Class II unfired pressure vessels shall be existing unfired pressure vessels constructed prior to January 1, 1957 in accordance with the API-ASME joint code for unfired pressure vessels and registered with the State prior to January 1, 1957.

12:90-5.6 Class III unfired pressure vessels

(a) Unfired pressure vessels designed as Class III unfired pressure vessels shall fall into one of three groups identified as:

1. New Jersey Standard;
2. New Jersey Special; or
3. New Jersey Approved.

12:90-5.7 Class III unfired pressure vessels—New Jersey Standard

(a) This section shall apply to a procedure to obtain approval for a code vessel as a Class III unfired pressure vessel known as a New Jersey Standard.

(b) A New Jersey Standard unfired pressure vessel shall be;

1. Constructed in accordance with the ASME Code;
2. Inspected by a New Jersey authorized inspector; and
3. When approved, stamped New Jersey Standard.

12:90-5.8 Class III unfired pressure vessels—New Jersey Special

(a) This section shall apply to a procedure to obtain approval for a non-code vessel as a Class III unfired pressure vessel known as a New Jersey Special.

(b) To expedite handling of a request for non-code construction review, all material shall be gathered and submitted, in as complete a form as possible, by the user.

(c) When it is necessary to defer filing of some material, such omission shall be prominently noted in the letter of application.

(d) All written material shall be in the English language.

(e) All letters of application shall be accompanied by payment of $500.00 for each non-code design. Additional fees shall not be required for identical or essentially similar designs, submitted for a single project but shall be repetitive for each user-application of the design.

(f) Following final inspection and test, the manufacturer shall complete an appropriate manufacturers' data report form. This form shall be certified by the New Jersey authorized inspector who will identify his New Jersey certificate number.

(g) Reference to conformance to the ASME Code shall be deleted where such appears on the form. The completed form, in duplicate, together with a facsimile of the stamping shall be filed for registry.

(h) Compliance with (i) through (l) below shall be required to establish ASME code equivalency.

(i) Drawings, fully descriptive of the vessel, with special attention to clarity of weld details and nozzles and other openings, shall be submitted.

(j) Identification of materials within ranges of chemical and physical characteristics shall match with those listed in the appropriate section of the ASME Code.

(k) Should non-classified material impose an impediment to ASME Code stamping, the applicability of the material for the use intended shall be fully justified and the reasons for not using the ASME Code classified material set forth.

(l) Impediment to ASME Code compliance shall be noted.

(m) Full computations shall be provided using appropriate formulae as required by the pertinent applicable section of the ASME Code. Case interpretations, where used, shall be referenced. Where ASME Code formulae do not apply, the rationale of alternate methods of computation shall be clearly demonstrated.

(n) Evidence of appropriate welding procedures and operators' tests shall be supplied.

(o) All material shall be reviewed by a New Jersey registered professional engineer, who shall verify its equivalency to the basic requirements of the ASME Code. The "specifically assigned inspector" shall have a New Jersey certificate of competency and shall perform a shop inspection as required by the pertinent section of the ASME Code.

(p) The user's letter of application shall briefly outline the nature of the substance to be contained by the vessel, proposed pressure and temperature conditions and pressurizing medium.

(q) All of the foregoing material shall be forwarded to the Office of Boiler and Pressure Vessel Compliance by the user

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of the vessel with a letter requesting that New Jersey Special classification be assigned, if warranted.

(r) When approved, the unfired pressure vessel shall be stamped New Jersey Special.

12:90-5.9 Class III unfired pressure vessels—New Jersey Approved

(a) This section shall apply to a procedure to obtain approval for a non-code vessel as a Class III unfired pressure vessel known as New Jersey Approved.

(b) An unfired pressure vessel, to be eligible for classification as New Jersey approved, shall be a used vessel since provisions for new vessels are included under the Class I and New Jersey Special unfired pressure vessel classifications. The history of the used vessel shall accompany the initial request by the owner of the plant in which the vessel is in service or is intended to be placed in service.

(c) The application for a New Jersey Approved unfired pressure vessel shall comply with N.J.A.C. 12:90-5.8(b) through (g).

(d) The New Jersey Approved unfired pressure vessel may require periodic reinspection.

(e) Compliance with (f) through (n) below shall be required to establish ASME Code equivalency.

(f) The maximum allowable working pressure of the New Jersey Approved unfired pressure vessel at a given temperature may be limited to a maximum of 80 percent of that to which the vessel can be subjected in accordance with the ASME Code.

(g) Drawings, fully descriptive of the unfired pressure vessel, with special attention to clarity of weld details and nozzles and other openings, shall be submitted.

(h) Identification of materials within ranges of chemical and physical characteristics shall match with those listed in the appropriate ASME Code section.

(i) Full computations shall be provided, using appropriate formulae as required, by the applicable code section. All computations shall be labeled and ASME Code reference given. Where ASME Code formulae do not apply, the rationale of alternate methods of computation shall be clearly demonstrated.

(j) Evidence of appropriate welding procedures and operator's tests shall be supplied. If such is unavailable from the manufacturer, verification of sound welding shall be made as required by the Office of Boiler and Pressure Vessel Compliance.

(k) All material shall be reviewed by a New Jersey registered professional engineer, who shall verify its equivalency to the basic requirements of the ASME Code.

(l) The user's letter of application shall briefly outline the nature of the substance to be contained by the unfired pressure vessel, proposed pressure and temperature conditions and heating, cooling or pressurizing medium.

(m) All of the foregoing material shall be forwarded to the Office of Boiler and Pressure Vessel Compliance by the user of the vessel with a letter requesting that New Jersey Approved classification be assigned, if warranted.

(n) When approved, the unfired pressure vessel shall be stamped New Jersey Approved.

12:90-5.10 Class IV unfired pressure vessels

(a) Pressure vessels designated as Class IV unfired pressure vessels shall be userinspected, where applicable, warranted and expressly approved.

(b) To qualify as such, a userinspector shall be continuously employed as a full-time inspector by the inspection division of a user maintaining an adequate unfired pressure vessel design and inspection section.

(c) A user-inspector shall be approved by and registered with the Office of Boiler and Pressure Vessel Compliance, which reserves the right to withdraw such approval at its discretion.

(d) The Office of Boiler and Pressure Vessel Compliance shall be furnished, upon request, such copies of design, material specification calculations and allied data as available or needed. The Office of Boiler and Pressure Vessel Compliance shall retain its prerogative of supervision over user-inspection, joint inspection and reinspection as it may deem necessary.

(e) When approved, Class IV unfired pressure vessels shall be constructed and stamped in accordance with the user-inspection provisions of the ASME Code.

12:90-5.11 Design criteria

(a) Machines having internal pressure containing parts incidental to the prime purpose of the machine may be exempt from the ASME Code, if the design criteria of the machine results in the strength of the pressure containment portion exceeding that which would be required if designed in accordance with the ASME Code.

(b) Impervious graphite materials may be used in the fabrication of heat exchangers under the New Jersey Special classification pending acceptance of this material under the ASME Code.

(c) Manufacturers desiring to fabricate vessels utilizing impervious graphite materials shall be required to substantiate the design of such vessels and the composition of the graphite material under the New Jersey Special classification.

12:90-5.12 Welded repairs and alterations to unfired pressure vessels

(a) Welded repairs to unfired pressure vessels shall comply with the original construction standards and in accordance with National Board recommended rules for repairs.

(b) Welded repairs to unfired pressure vessels shall be performed by a contractor possessing a valid and appropriate ASME Code symbol stamp or have National Board repair authorization or New Jersey repair authorization.

(c) A record of welded repairs shall be filed with the Office of Boiler and Pressure Vessel Compliance.

(d) Alterations to unfired pressure vessels shall be performed by the appropriate Code symbol holder only.

(e) An alteration report and a copy of the original manufacturer's data report shall be filed with the National Board of Boiler and Pressure Vessel Inspectors or the Office of Boiler and Pressure Vessel Compliance if the boiler is not registered with the National Board.

12:90-5.13 Inspection of unfired pressure vessels

(a) Shop inspection of unfired pressure vessels shall be required, except as provided in (b) below.

(b) Unfired pressure vessels in which steam is not generated, and which do not exceed the following volume and pressure limits, may be exempted from shop inspections by qualified inspectors; provided, that they comply in all other respects with this subchapter:

1. Five cubic feet in volume and 250 psig design pressure;

2. One and one-half cubic feet in volume and 600 psig design pressure.

(c) Such vessels shall be of simple, single wall single chamber construction.

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(d) Shell and tube heat exchangers, jacketed vessels and other type vessels which may be subject to differential pressures shall be shop inspected by an authorized inspector.

(e) Vessels exempted from ASME Code inspection by this section shall be stamped with the "UM" symbol, or as otherwise provided for construction other than Class I pressure vessel.

12:90-5.14 Fee for shop inspection

(a) A fee of $12.00 shall be charged for each boiler inspected in the shop of the boiler manufacturer.

(b) The minimum fee shall be $80.00 for any shop inspection that is four hours or less.

(c) The minimum fee shall be $150.00 for any shop inspection exceeding four hours.

(d) The fee includes the actual travel expense of the inspector.

12:90-5.15 Registration of unfired pressure vessels and fees

(a) Unfired pressure vessels shall be registered with the Office of Boiler and Pressure Vessel Compliance.

(b) No original registration or registration fee shall be required for vessels stamped National Board, since registration is forwarded to the Office of Boiler and Pressure Vessel Compliance by the National Board.

(c) No original registration or registration fee shall be required for vessels inspected by State inspectors, since registration is made by the State inspector.

(d) In instances other than (a) and (b) above, the data reports of the manufacturer, in duplicate, with a registration fee of $2.00 for each unfired pressure vessel, shall be forwarded to the Office of Boiler and Pressure Vessel Compliance for registration.

1. When registered, one copy of the manufacturer's data report shall be returned to the user of the unfired pressure vessel.

2. If reports are not filed, the unfired pressure vessel shall be subject to inspection and State inspection fees.

SUBCHAPTER 6. REFRIGERATION SYSTEMS

12:90-6.1 Scope of subchapter

(a) This subchapter shall apply to the design, construction, inspection, installation, repair and alteration of refrigeration systems, except as provided in (b) below.

(b) This subchapter shall not apply to:

1. Systems using refrigerants of flammable or toxic nature of three tons or less of refrigerating capacity;

2. Systems using refrigerants of flammable or toxic nature requiring six driving horsepower or less;

3. Systems using refrigerants of nonflammable and nontoxic nature of 18 tons refrigerating capacity or less; and

4. Systems using refrigerants of nonflammable and nontoxic nature requiring 36 driving horsepower or less.

12:90-6.2 Compliance with referenced standards

(a) Refrigeration systems shall be constructed, installed, maintained, repaired and inspected in accordance with standards referenced in (b) below.

(b) The standards referenced in Article 13, Mechanical Refrigeration of the BOCA Basic National Mechanical Code-1984 are adopted as safety standards under this subchapter and shall apply according to the provisions thereof.

(c) Each person engaged directly with refrigeration systems shall protect the public by complying with the standards prescribed in (b) above.

(d) Only technical standards relating to public safety are adopted by any incorporation by reference as prescribed in (b) above. Other standards relating to administration and reporting shall be achieved by communication with the appropriate officials of the Office of Boiler and Pressure Vessel Compliance.

(e) Where any conflict occurs between the standards prescribed in (b) above and these rules, these rules shall prevail.

12:90-6.3 Relief devices

(a) A relief device of proper size shall be installed on the compressor discharge line, located between the compressor outlet port and the discharge shut-off valve. This relief device may discharge into the suction side.

(b) A relief device shall also be installed to relieve from the vapor space of the liquid receiver, condenser, and other pressure vessel in the system.

(c) Relief devices shall discharge to the atmosphere at a safe point and through a diffuser, except as provided in (a) above and (d) below.

(d) Where discharge to the atmosphere is impracticable or hazardous to the immediate neighborhood, the relief device may discharge into a receptacle through which the refrigerant can be disposed of in a safe manner.

12:90-6.4 Inspection of refrigeration systems

(a) Refrigeration systems shall be inspected annually by an authorized State or insurance company inspector.

(b) It shall be the responsibility of the operator and the inspector to carefully check for indications of irregular, faulty or hazardous conditions.

(c) This inspection shall include the liquid receiver, condenser, all safety valves and their discharge points, gauges, controls and all other items which might be considered potentially critical.

(d) The inspector shall check the license of the operator and the State registration certificate and make note of these items in the inspection report.

12:90-6.5 Fee for field inspection

(a) An insurance company making an annual inspection of refrigerating systems shall pay a $7.50 fee to the State, payable by and collected from the user by the inspector at the time of field inspection for each system.

(b) The owner or user may request field inspection by the State.

(c) The fee for an annual field inspection by the State, based on the refrigeration capacity of the system, shall be paid to the State inspector as follows:

1. Over three and under 25 tons	$20.00
2. 25 tons and over, but less than 300 tons	35.00
3. 300 tons and over	45.00

(d) In addition to the field inspection fee, the travel expenses of the State inspector shall be paid at the time of inspection.

SUBCHAPTER 7. LICENSING OF OPERATING ENGINEERS AND FIREMEN

12:90-7.1 Scope of subchapter

This subchapter shall apply to the procedures required to obtain a license as an operating engineer or fireman.

12:90-7.2 Application for licenses

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(a) The application shall be typewritten or neatly and legibly printed in ink.

(b) All applications shall be carefully completed and notarized.

(c) The statements of the applicant shall indicate the actual experience as specified in the eligibility provisions of NJAC 12:90-7.4 through 7.13. Only pertinent, applicable, lawful and full-time experience shall be listed. This experience shall have been completed within seven years of the filing of application.

(d) Incomplete or improper applications shall not be accepted.

(e) An application for a license shall be made on forms provided by the Office of Boiler and Pressure Vessel Compliance.

(f) The statements on the first or original application shall be endorsed by two engineers each holding a valid blue seal or higher New Jersey license, except as provided in (g) below. These endorsements shall verify the applicant's statement.

(g) Substitution for the signatures of the endorsers of (f) above may be the holder of:

1. A marine engineer's license with the holder's experience documented by trip discharges;
2. Another State or city license with the holder's experience documented with a letter from the employer identifying operational experience and equipment;
3. A United States service or Merchant Marine discharge establishing the required engineering experience; or
4. Written statements from two former employers or the present employer signed by responsible endorsers and showing required engineering experience.

(h) The endorsements of (f) above shall not be required for low pressure licenses or special licenses.

(i) No license shall be granted to a person less than 18 years of age.

(j) All correspondence relative to licenses or applications shall be addressed to the Office of Boiler and Pressure Vessel Compliance.

(k) The Office of Boiler and Pressure Vessel Compliance shall be notified of any change of residence. When writing, the license number shall be specified.

(l) The fee for examination for an original license shall be $15.00, and the fee for a raise of grade or additional classification shall be $10.00.

(m) The fee shall accompany the application.

(n) No annual renewal fee shall be charged for additional classifications on any license.

(o) The fee for application for a license shall be a check or money order made payable to the order of the Office of Boiler and Pressure Vessel Compliance.

(p) No liability shall be assumed by the Office of Boiler and Pressure Compliance for loss in the transmission of the fee.

12:90-7.3 Classification of licenses for operators

(a) The letters A, B and C shall be used to identify the grade of the license.

(b) "A" or gold seal shall designate a first-grade license; "B" or red seal, a second-grade license; and "C" or blue seal, a third-grade license.

(c) A black seal shall identify a boiler operator.

(d) The license stamped on its face, "in-charge" shall identify a boiler operator in charge.

(e) Boiler operator and firemen classifications shall be identical.

(f) The numbers listed in Table 7.3(f) shall be used to identify the equipment indicated.

Table 7.3(f)

Arabic Number	Equipment
1	steam stationary boiler and steam prime mover
2	refrigeration system
3	nuclear boiler and prime mover
7	hoisting machine and long boom crane
8	steam portable boiler and steam prime mover
9	steam locomotive crane

(g) Licenses for operators shall be classified as follows:

1. Special limited applications;
2. Low pressure boiler;
3. Operator in charge of low pressure boiler;
4. Operator in charge of high pressure boiler;
5. 1A, 1B, or 1C steam stationary boiler and steam prime mover;
6. 2A, 2B, or 2C refrigeration system;
7. 3A, 3B, or 3C nuclear boiler and prime mover;
8. 7C long boom crane;
9. 8A, 8B, or 8C steam portable boiler and steam prime mover; and
10. 9A or 9B steam locomotive crane.

12:90-7.4 Eligibility for boiler operator's license

To be eligible for a boiler operator's license, the applicant shall have had at least three months experience as a helper, apprentice or assistant to a licensed operator of equipment requiring such license.

12:90-7.5 Eligibility for low pressure boiler operator's license

(a) To be eligible for a low pressure boiler operator's examination, the applicant shall:

1. Be able to comply with N.J.A.C. 12:90-7.4, or
2. Have had intensive training for 30 full working days by a licensed operator and have written verification of such training from the instructor or the employer that the applicant was given such training.

(b) A licensed fireman may be eligible for examination for an "in-charge" license after three months actual service in the operation of boilers requiring such license.

12:90-7.6 Eligibility for high pressure boiler operator's license

(a) To be eligible for a high pressure boiler operator in charge examination, the applicant shall:

1. Be able to comply with N.J.A.C. 12:90-7.4, or
2. Have had at least six weeks experience in lieu of the normal three months experience, provided he is given intensive training during the period by the licensed operator and have written verification of such training from the chief engineer that applicant was given such training.

(b) If the applicant has had six months experience as a licensed low pressure fireman, the six week period referenced in (a) above may be reduced to 30 days.

(c) For special license up to 100 horsepower, an applicant with 30 days experience may be eligible.

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12:90-7.7 Eligibility for third grade steam engineer's license

(a) To be eligible for a third grade steam engineer's (1-C or 8-C) examination, the applicant shall have a fireman in-charge high pressure license and shall have had at least six months subsequent experience in the operation of equipment requiring supervision by a third grade engineer, or as an assistant in the operation of equipment requiring a third grade license for shift operation.

(b) Experience obtained outside the State of New Jersey may be considered if the applicant has served:

1. At least two years as a fireman, or

2. One year as an assistant to an engineer in the operation of equipment of comparable size as specified in (a) above.

12:90-7.8 Eligibility for third grade refrigeration engineer's license

(a) To be eligible for a third grade refrigeration engineer's (2-C) examination where the refrigerant used is of flammable or toxic nature, the applicant shall have had at least six months experience as an operator's assistant or three months' experience as an operator of such equipment.

(b) In lieu of the experience stated in (a) above, the applicant may be considered eligible after three months experience as an operator's assistant; provided he has been given intensive training for the period by the licensed operator, and the chief engineer verifies such training and experience by letter.

(c) In lieu of the intensive training as noted in (b) above, the applicant may be eligible if he has had at least six months experience as an operator of a nontoxic refrigeration system of at least 500 tons capacity in addition to the three months as assistant to the licensed operator of equipment using flammable or toxic refrigerant.

12:90-7.9 Eligibility for nuclear engineer's license

To be eligible for nuclear engineer's (3-C) examination, the applicant shall hold certification from the United States Nuclear Regulatory Commission qualifying him to operate nuclear power equipment.

12:90-7.10 Eligibility for long boom crane operator's license

(a) To be eligible for a hoisting machine long boom crane operator's (7-C) examination, the applicant shall have had at least six months experience as an operator of cranes.

(b) At least three months of the experience of (a) above shall be documented as being on long boom cranes.

12:90-7.11 Eligibility for second grade engineer's license

To be eligible for a second grade engineer's examination, the applicant shall have a third grade license and shall have had at least one year's subsequent practical experience in the operation of equipment requiring supervision by a second grade or first grade engineer.

12:90-7.12 Eligibility for first grade engineer's license

(a) To be eligible for a first grade engineer's examination in any classification, the applicant shall have:

1. A second grade license and subsequently served one year as chief engineer in a plant requiring supervision by a second grade engineer; or

2. A second grade license, which he has held for two years, and two years subsequent practical experience as an operating engineer in a plant requiring supervision by a first grade engineer, or

3. Experience of an equivalent amount or grade under some other jurisdiction.

12:90-7.13 Other eligibility considerations

(a) An applicant for original license, change of classification or raise of grade may show in writing, as a substitute for a minor portion of the experience listed in N.J.A.C. 12:90-7.4 through 7.12, non-operating experience, such as servicing, maintenance, repair or installation of equipment; or satisfactory proof of completion of sufficient formal education or academic study embracing such equipment.

(b) When an applicant's engineering experience and training warrants, the Office of Boiler and Pressure Vessel Compliance may determine the classification and grade of license most suitable.

12:90-7.14 Examinations

(a) Examinations shall be held on the first Wednesday of each month at Trenton, and at various other times and places throughout the State when warranted.

(b) Applicants shall be notified when and where to appear for the examination.

(c) Failure to appear for the examination shall be considered sufficient cause to discard the application, unless a satisfactory explanation is given for the failure to appear.

(d) Failure to appear for the examination or to obtain a passing grade shall not entitle the applicant to a refund of any fee.

(e) Examinations for an engineer's license shall be conducted in a written form and shall consist of as many questions and be of such nature as the office of Boiler and Pressure Vessel Compliance shall consider appropriate for the license desired.

(f) Examinations for a fireman's license shall consist of such questions as the Office of Boiler and Pressure Vessel Compliance shall consider proper and shall pertain to the safe operation of steam and hot water boilers, appliances, auxiliaries and such other equipment covered by the licensing act.

(g) An applicant for up to and including a C grade license may, upon prior request, be examined through a reader or interpreter accompanying the applicant provided the reader or interpreter is acceptable to the Office of Boiler and Pressure Vessel Compliance.

(h) Questions used in an examination shall not be copied by any applicant or retained by the applicant after examination, or taken from the presence of the authorized agent of the Office of Boiler and Pressure Vessel Compliance during the examination. Violation of this subsection shall be sufficient cause to disqualify the applicant.

12:90-7.15 Granting of license

(a) A license shall be granted and designated Grade A when an average of 80 percent or more is attained on a Grade A examination.

(b) A license shall be granted and designated Grade B when an average of 70 percent or more is attained on a Grade B examination.

(c) A license shall be granted and designated Grade C when an average of 60 percent or more is attained on a Grade C examination.

(d) No license shall be granted on an average of less than 60 percent.

(e) A license issued after examination covering one or more classifications shall be valid in any plant where the class of engineering is within the scope of the license issued.

(f) Licenses merely bearing the impression of the seal of the Department of Labor shall be issued as special licenses and are limited to the operation of equipment specified on the

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face thereof. These licenses may be transferred to similar equipment when approved following written request by the applicant or employer.

(g) Duplicate licenses for part-time employment may be issued at the discretion of the commissioner.

1. The fee for a duplicate license is $3.00 for one year.

2. A request by the licensee for a duplicate license shall be accompanied by a letter from the company desiring to employ the licensee.

3. The duplicate license shall specify the plant where it is to be used and may be transferred when approved following written request.

12:90-7.16 Re-examination

The applicant may not be re-examined for a period of at least three months, but may be allowed one re-examination, without additional charge, within six months of the original examination. If again unsuccessful, the applicant may request an additional examination, provided that the request is accompanied by a fee of $7.50.

12:90-7.17 Posting of license

(a) All licenses shall be framed and properly posted adjacent to the equipment involved, in the engineer's office or in the plant office, whichever is suitable.

(b) The license shall be available for examination.

(c) A penalty may be imposed for violation of this section.

12:90-7.18 Suspension or revocation of license

(a) Any license may be suspended or revoked for incompetence, negligence, intoxication, or drug abuse while on duty, or for any other valid reason establishing that the licensee is unfit to hold a license.

(b) Any license or identification card shall be surrendered and immediately revoked if, for any purpose, it is loaned, abandoned or allowed to pass from the personal control of the owner.

(c) All licenses shall expire unless renewed on or before the anniversary month of the original license. Changing of grade or addition of classification shall not change this anniversary date.

(d) A license shall be automatically cancelled on the date of its expiration. Any persons performing the duties of a licensee and holding an expired license shall be subject to the penalty provisions under N.J.S.A. 34:7-6, as is his supervisor and employer.

(e) Any person using fraudulent means to obtain a license shall be subject to prosecution. Any license acquired through such means shall be invalid.

12:90-7.19 Renewal of license

(a) When applying for the renewal of a license it shall be necessary to return only the signed identification card with a fee of $5.00 for a one year renewal or $10.00 for a three year renewal.

(b) A license may be renewed within 30 days prior to the date of its expiration.

(c) An application for a renewal of an expired license shall be approved provided:

1. A fee of $7.50 is enclosed for one year or $15.00 for a three year renewal;

2. The application is made within three years of the expiration date of the expired license; and

3. All penalties lawfully imposed on the applicant under N.J.S.A. 34:7-6 have been paid.

(d) Application for renewal of a license expired more than three years shall be treated as an original application. All records of the previous license may be destroyed.

(e) An altered, defaced or otherwise mutilated license shall be renewed only after review by the Office of Boiler and Pressure Vessel Compliance. Photostats, photographs or reproduction of a license shall have no status and shall not be recognized.

12:90-7.20 Employment of unlicensed person

(a) Employers shall immediately notify the Office of Boiler and Pressure Vessel Compliance, in writing, if for any reason of emergency it becomes necessary to employ an unlicensed person temporarily for a period not to exceed 15 days explaining fully the circumstances.

(b) The Office of Boiler and Pressure Vessel Compliance shall again be notified when a licensed person is employed, giving the name, address, and license classification, grade and number of such employee.

SUBCHAPTER 8. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER

12:90-8.1 Documents referred to by reference

(a) The full title and edition of each of the standards and publications referred to in this chapter are as follows:

1. ASME—1983, Boiler and Pressure Vessel Code
Section I, Power Boilers
Section II, Material Specifications
Part A—Ferrous Materials
Part B—Nonferrous Materials
Part C—Welding Rods, Electrodes and Filler Metals
Section III, Nuclear Power Plant Components
Subsection NCA—General Requirements for Division 1 and Division 2
Division 1—Subsection NB—Class 1 Components
Division 1—Subsection NC—Class 2 Components
Division 1—Subsection ND—Class 3 Components
Division 1—Subsection NE—Class MC Components
Division 1—Subsection NF—Component Supports
Division 1—Subsection NG—Core Support Structures
Division 1—Appendices
Division 2—Code for Concrete Reactor Vessels and Containments
Section IV, Heating Boilers
Section V, Nondestructive Examination
Section VI, Recommended Rules for Care and Operation of Heating Boilers
Section VII, Recommended Rules for Care of Power Boilers
Section VIII, Pressure Vessels
Division 1
Division 2—Alternative Rules
Section IX, Welding and Brazing Qualifications
Section X, Fiberglass-Reinforced Plastic Pressure Vessels
Section XI, Rules for Inservice Inspection of Nuclear Power Plant Components— Division 1
All Case Interpretations and Addenda

2. BOCA—1984, Basic National Mechanic Code

3. NBBPVI—1981, National Board Inspection Code.

4. N.J.S.A. 34:7-1 et seq., Operating Engineers and Firemen Licensing Act.

5. N.J.S.A. 34:7-14 et seq., Boiler, Pressure Vessel and Refrigeration Act.

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12:90-8.2 Availability of documents for inspection

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

New Jersey Department of Labor
Division of Workplace Standards
36 West State Street
Trenton, New Jersey

12:90-8.3 Availability of documents from issuing organization

Copies of the standards and publications referred to in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning, and are the organizations issuing the standards and publications listed in N.J.A.C. 12:90-8.1.

ASME—American Society of Mechanical Engineers
United Engineering Center
345 East 47th Street
New York, New York 10017

BOCA—Building Officials and Code Administrators International
4051 West Flossmoor Road
Country Club Hills, Illinois 60477

NBBPVI—National Board of Boiler and Pressure Vessel Inspectors
1055 Crupper Avenue
Columbus, Ohio 43229

N.J.S.A.—New Jersey Statutes Annotated
Copies available from:
Office of Boiler and Pressure Vessel Compliance
New Jersey Department of Labor
CN 392
Trenton, New Jersey 08625-0392

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Driver Control Service
Convulsive Seizures

Proposed Readoption with Amendment: N.J.A.C. 13:19-5

Authorized By: Clifford W. Snedeker, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:3-10, 39:3-10.4 et seq. and 39:5-30.

Interested persons may submit in writing, data, views, or arguments relevant to the proposal on or before June 20, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Clifford W. Snedeker, Director
Division of Motor Vehicles
25 So. Montgomery Street
Trenton, New Jersey 08666

The Division of Motor Vehicles thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on June 6, 1984. The readoption of the existing rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of their readoption. The concurrent amendment to the existing rules becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-272.

The agency proposal follows:

Summary

The Division of Motor Vehicles proposes to readopt the provisions of N.J.A.C. 13:19-5.1 through 13:19-5.10 concerning the procedures employed by the Division of Motor Vehicles to determine the driver qualification of persons who are affected by seizure disorders. These rules were initially filed and became effective prior to September 1, 1969. These rules were subsequently amended on June 6, 1979 and January 16, 1981, and are now to be readopted in accordance with Executive Order 66(1978).

The rules implement the provisions of the Motor Vehicle and Traffic Law (N.J.S.A. 39:3-10, 39:3-10.4 et seq. and 39:5-30) pertaining to the driver qualification of persons who are affected by seizure disorders. The rules require a person who has been subject to recurrent convulsive seizures, recurrent periods of impaired consciousness or from impairment or loss of motor coordination to establish that he or she has been free of such condition for one year as a prerequisite to the issuance of a learner's permit, driver's license, driver's license renewal or the retention of the driver's license which has been issued to said person. The Director, after notice and hearing, may suspend the driving privileges of, or deny the issuance of a learner's permit or driver's license to a person who is affected by a seizure disorder. When the Director determines it to be in the public interest a suspension may be imposed pending administrative hearing.

The Director, in determining the driver qualification of a person affected by a seizure disorder, may require the person to provide a statement of his medical history, a statement from the treating physician pertaining to diagnosis, treatment and prognosis, and any other information deemed necessary.

The Director may refer individual cases to the Division's Neurological Disorder Committee for review and recommendation relating to driver qualification. The Committee members are authorized to recommend that the one year seizure-free requirement be waived by the Director if, in their opinion, the person's medical history so warrants.

A determination to issue or restore driving privileges is predicated on the submission of a current statement of medical history, a current physician's statement, and evidence that the seizure-free requirement has been satisfied or that waiver thereof has been recommended by the members of the Neurological Disorder Committee.

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A determination to issue or restore driving privileges is conditioned upon the person's agreement to submit interval reports containing the medical history and physician's statement. Interval reports must be submitted every six months for a period of two years from the date of license issuance or restoration. Thereafter, yearly reports must be submitted. The Director, in his discretion, may waive or alter the interval report requirement. A driver examination may be required as a condition of restoration.

The Division of Motor Vehicles has reviewed the rules in accordance with Executive Order 66 and has determined that they are "necessary, adequate, reasonable, efficient, understandable and responsive to the purposes for which they were promulgated."

Social Impact

The rules proposed for readoption have a positive impact on highway safety. Persons who cannot safely operate motor vehicles due to seizure disorders may be suspended or denied a driver's license until they can satisfy the Director that they have been seizure-free for a period of one year and can safely operate motor vehicles. Between the years 1979 through 1984, the Division of Motor Vehicles suspended the driving privilege of 2,467 persons affected by seizure disorders, referred 1,164 cases to the Neurological Disorders Committee, processed 9,417 interval reports from drivers, and since July 19, 1972 conducted 1,233 reexaminations. The rules proposed for readoption will have a continuing beneficial impact on highway safety and have been determined necessary to assure such safety.

Economic Impact

There is an economic impact on the State in funding the Division's Driver Improvement Bureau and Neurological Disorders Committee. The Program is entirely State funded but the actual cost of administering is unknown since it is a part of the medical fitness unit's safety and driver improvement program which conducts numerous testing to determine the suitability of drivers. The cost of continuing the Program is justified in light of the highway safety which results. Presumably, the Program reduces costs by preventing seizure-prone drivers from operating vehicles thereby preventing automobile accidents and their resultant expenses. There is no economic impact on the general public or those persons determined to have a seizure disorder.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:19-5.

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

13:19-5.7 Committee recommendations

Notwithstanding the provisions of [section 1] N.J.A.C. 13:19-5.1 (Satisfaction of physical qualifications) [of this subchapter], if the members of the Committee so recommend, the Director may grant a learner's permit or initial driver's license or permit a motorist to retain his driver's license although such person may have suffered from a seizure, period of impaired consciousness, or from impairment or loss of motor coordination within a [two-year] **one year** period from the date of the Director's determination.

(a)

DIVISION OF MOTOR VEHICLES DEPARTMENT OF DEFENSE

Enforcement Service Special National Guard Plates

Proposed Amendments: N.J.A.C. 13:20-36.1 and 36.2

Authorized By: Clifford W. Snedeker, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:3-27.14 (P.L. 1983, Chapter 132).

Interested persons may submit in writing, data, views, or arguments relevant to the proposed rule on or before June 20, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Clifford W. Snedeker, Director
Division of Motor Vehicles
25 So. Montgomery Street
Trenton, New Jersey 08666; or

Major General Francis R. Gerard
Chief of Staff
Department of Defense
Eggerts Crossing Road
Trenton, New Jersey 08625

The Division of Motor Vehicles and Department of Defense thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). The adopted rules become effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-283.

The agency's proposal follows:

Summary

The proposed amendments would implement P.L. 1983, chapter 132, (N.J.S.A. 39:3-27.14) by permitting honorably separated members of the New Jersey National Guard to apply for or keep special National Guard license plates. In addition, the amendments would also allow these persons to obtain no more than two sets of special plates. Previously, they were limited to one set.

Social Impact

The proposed amendments will permit former members of the National Guard the honor of displaying National Guard license plates.

Economic Impact

The proposed amendments will not impose an economic impact on the State nor the general public. The only economic impact will be on those National Guardsmen who apply for the special plates and will have to pay a $15.00 fee for each set of plates.

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

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13:20-36.1 Application; certification; fees

(a) Application for special National Guard plates may be made by any person who is an active member of the New Jersey National Guard **or former active member who has been honorably separated under normal conditions from the New Jersey National Guard.** An active **or separated** member of the New Jersey National Guard may make application for [one] **no more than two** motor [vehicle] **vehicles** owned by him. The Division of Motor Vehicles will issue [only one set] **no more than two sets** of special National Guard plates to each active **or separated** member of the New Jersey National Guard.

(b) An application for special National Guard plates must be obtained from the Commander of the National Guard Unit of which the applicant is an active member **, or retired members may obtain an application from the New Jersey Department of Defense.**

1. The Commander shall certify that the applicant is an active **or separated** member of the New Jersey National Guard.

2. The Commander shall forward the completed application together with the fee established in this section to the Division's Special Plate Unit.

3. The Special Plate Unit shall notify the Department of Defense when the special National Guard plates are issued to an applicant.

(c) A fee of $15.00 **for each set of plates** shall be paid at the time of application for special National Guard plates. A fee of $5.00 shall be paid for replacement of lost, stolen or obliterated special National Guard plates.

13:20-36.2 Surrender of special plates

(a) Whenever the holder of special National Guard plates ceases to be an active member of the New Jersey National Guard **for reasons other than honorable separation or for honorable separation under abnormal conditions**, he shall obtain replacement plates from the Division of Motor Vehicles, within five days of his separation from the New Jersey National Guard and he shall then surrender the National Guard plates to the Department of Defense.

1. The Department of Defense shall forward the surrendered plates to the Division of Motor Vehicles.

2. If the special National Guard plates are not surrendered to the Department of Defense within five days from the date the holder of special plates ceases to be an active member of the New Jersey National Guard, the Department of Defense shall notify the Division of Motor Vehicles of the holders failure to surrender the special plates.

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF BARBER EXAMINERS

General Rules and Regulations Fee Schedule

Proposed New Rule: N.J.A.C. 13:27A-1.2

Authorized By: Louis Cagnole, President of the Board of Barber Examiners.

Authority: N.J.S.A. 45:4-54 and 45:1-3.2.

Interested persons may submit in writing data, views or arguments relevant to the proposed action on or before June 20, 1984. These submissions and any inquiries about submissions and responses, should be addressed to:

Vito J. Micele
Executive Secretary
Board of Barber Examiners
1100 Raymond Boulevard, Room 512
Newark, New Jersey 07102

The Board of Barber Examiners thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). The adopted rules become effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-284.

The agency proposal follows:

Summary

After extensive discussion with the Chief Fiscal Officer and careful evaluation of its current and anticipated fiscal status, the Board is proposing to adopt a schedule of fees which will enable it to fully meet its operating expenses with funds derived from its revenues. The current fees, as established by N.J.S.A. 45:4-44, are enumerated below, and can be compared with the sums contained in the proposed amendment.

		Current fee	Proposed fee
1.	Initial shop license	$60.00	$ 70.00
2.	Biennial shop renewal fee	$ 20.00	$ 50.00
3.	Late shop renewal fee	45.00†	$ 75.00‡
4.	Shop relocation fee	$ 25.00	$ 50.00
5.	Barber examination fee	$ 25.00	$ 50.00
6.	Apprentice barber fee	$ 10.00	$ 25.00
7.	Biennial barber certificate renewal fee	$ 16.00	28.00
8.	Late barber renewal fee	$ 23.00	$ 40.00‡
9.	License duplication	-	$ 5.00
10.	Initial barber school fee	$250.00	$250.00
11.	Barber school annual fee	$250.00	$250.00
12.	Initial Instructor fee	$ 25.00	$ 50.00
13.	Annual Instructor Renewal fee	$ 25.00	$ 50.00

† Persons now restoring lapsed licenses are required to pay $20.00 to renew the license as well as a $25.00 restoration fee.

‡ Late renewal fees include the sums necessary to renew and restore lapsed licenses.

The above increases have been found by the Board to be necessary to defray all proper expenses incurred by the Board in the performance of its duties in accordance with N.J.S.A. 45:1-3.2.

Social Impact

The proposed fee schedule would necessarily have a direct impact on all barbers and barber shop owners in New Jersey. Pursuant to this proposal, licensees will be required to bear the costs of administrative services provided to them. Since these services are primarily of benefit to the licensees themselves, they are clearly the appropriate group to bear the cost. Additionally, there will be a positive impact upon the public since the proposed fee structure will ensure that the State will

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continue to require that barber shops are operated in accordance with the public interest; and that applicants for licensure as barbers meet appropriate minimum standards.

Economic Impact

Certainly all licensees, applicants and holders of shop licenses will directly feel the economic impact of this regulation. The need for such increases, however, is evident. The current fee schedule has not increased since 1969. During this fifteen year period operating expenses have risen dramatically. Without the proposed increases, the Board anticipates substantial revenue shortages which will significantly impair its ability to carry out its statutory responsibilities. Accordingly, the proposed amendment serves to allow for continuation of the efficient regulation of the practice of barbering.

Full text of the proposed new rule follows.

13:27A-1.2 Fee schedule

(a) The following fees shall be charged by the Board:

1.	Initial shop license:	$ 70.00
2.	Biennial shop renewal fee:	$ 50.00
3.	Shop restoration fee:	$ 50.00
4.	Shop relocation fee	$ 50.00
5.	Barber examination fee:	$ 50.00
6.	Apprentice barber fee:	$ 25.00
7.	Biennial barber certificate renewal fee:	$ 28.00
8.	Barber restoration fee:	$ 40.00
9.	License duplication:	$ 5.00
10.	Initial barber school fee:	$250.00
11.	Barber school annual fee:	$250.00
12.	Initial instructor fee:	$ 50.00
13.	Annual Instructor renewal fee:	$ 50.00

ENERGY

(a)

THE COMMISSIONER

Business Energy Improvement Loan Subsidy Program

Proposed New Rule: N.J.A.C. 14A:6-2

Authorized by: Leonard S. Coleman, Jr., Commissioner, Department of Energy.

Authority: N.J.S.A.52:27F-11g and m and Pub. No. 97-377(1982).

DOE Docket No. DOE 007-84-05.

Interested persons may submit, in writing, data, views or arguments relevant to the proposal on or before June 20, 1984. The submissions, and any inquiries about submissions and responses should be addressed to:

Linda M. Scuorzo, Esq.
Office of Regulatory Affairs
Department of Energy
101 Commerce Street
Newark, NJ 07102

At the close of the period for comments, the Department of Energy may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-269.

The agency proposal follows:

Summary

The proposed regulations N.J.A.C. 14A:6-2 establish an interest subsidy program subsidized by the Department for those eligible businesses that obtain loans from lenders for energy conservation renovations.

Section 1 states the scope and purpose of the regulations, which is to provide interest subsidies to eligible businesses in order to make loans for energy conservation renovations more attractive to them.

Section 2 contains definitions relevant to the Business Energy Improvement Loan Subsidy Program.

Section 3 specifies that the program will continue so long as the Department has sufficient funds available to allocate to new applicants while continuing to provide previously-approved interest subsidies and providing sufficient reserves for the Department to make further interest subsidies. For this reason, the Commissioner is authorized to terminate the program (with respect to new applications) while continuing the program for previously approved interest subsidies in the event that the demand for interest subsidies becomes too great.

Section 4 states that Business Energy Improvement Loan Subsidy applications will be made available by the Department on request.

Section 5 indicates the information that must be submitted by an applicant to the Department in the Business Energy Improvement Loan Subsidy application. The information includes, the name and address of the applicant, a description of the energy conservation renovation for which an interest subsidy is sought, calculations of energy savings and payback, a reasonable construction bid or the results of an energy audit of the eligible business (or such other energy consumption analysis as the Department approves) and, if available at the time of application, a loan committment from the lender. All calculations of energy-related matters must be based on current American Society of Heating Refridgerating and Air Conditioning Engineers (ASHRAE) methodologies and standards.

Section 6 specifies the types of loans for which the Department will provide interest subsidies. Among other things, the loan must cover energy conservation renovations approved by the Department and the principal, interest and penalties due on the energy conservation renovations must be stated separately. The loan must be for a term of not more than five years; must be for a fixed interest rate; and must not obligate the Department to pay any portion of the principal, interest or penalties on the loan, in the event that the applicant fails to

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make payments or the Department withholds or seeks return of the subsidy from the applicant. In addition, the loan must be for an amount of not more than $250,000. The Department specifically requests comments as to whether a minimum dollar amount also should be established for loans below which the Department would not provide an interest subsidy.

Section 7 specifies the procedure by which the Department will review Business Energy Improvement Loan Subsidy applications. Such applications must bear a legible (non-metered) postmark or a date stamp from the Department's Office of Operations to be eligible for review. The initial review will be made beginning with the earliest postmark or date stamp. The Department will review applications for eligibility, documentary sufficiency, and substance (accuracy of calculations, appropriateness of the energy conservation renovations to the particular business). The Department may require the submission of supplemental information or the resubmission of an application.

Upon completion of the review, the Department will notify the applicant whether an interest subsidy is available. Applicants whose applications are approved will be informed in writing of the energy conservation renovations that may receive an interest subsidy, the amount of the subsidy and the payment schedule. Applicants that have not obtained an eligible loan will have 30 calendar days from approval of the application to obtain same. The Department may extend this period for additional 30 calendar days if the loan is not obtained within the original deadline. No application will receive more than one 30 day extension; failure to obtain the loan will result in a denial of the application by the Department.

After the loan commitment from the lender is obtained and the application is approved, the Department and the applicant will execute an interest subsidy agreement specifying the actual terms and conditions of the interest subsidy.

Section 8 indicates the conditions on which an interest subsidy will be paid by the Department. The subsidy will be made directly to the applicant; the applicant will be solely and independently responsible for all payments to the lender. Interest subsidies will be made at 50 percent of the commercial lending rate up to 600 basis points (the Commissioner may modify the subsidy prospectively in the event that rates change substantially). Payments will be made by the Department at a maximum of six-month intervals. The applicant will be required to certify his timely repayment by providing the lenders's audit confirmation to the Department at not more than six month intervals.

Section 9 requires the Department to monitor the progress of installation of the energy conservation renovations made pursuant to a loan subsidy.

Section 10 specifies the grounds for withholding or rescinding an interest subsidy. Applicants are provided an opportunity to consult with the Department prior to withholding or rescission of an interest subsidy. Applicants whose interest subsidies are withheld or rescinded are required to refund immediately the total amount of interest subsidy paid by the Department.

Section 11 is the severability provision.

Social Impact

The Business Energy Improvement Loan Subsidy Program is intended to encourage energy conservation in New Jersey businesses through the installation of energy conservation renovations. The Program will assist eligible businesses in making cost-effective energy conservation renovations to existing facilities by subsidizing the interest rate on certain eligible loans.

Since energy consumption and waste is high in many businesses, the Program will provide a means of contributing to the reduction of energy use in the State.

Economic Impact

The Department is aware of a number of instances in which energy conservation renovations are needed but are not made by businesses because the cost of the investment is too high. The Business Energy Improvement Loan Subsidy Program will provide subsidies to eligible businesses that obtain loans for energy conservation. The subsidy, which amounts to 50 percent of the interest rate up to 600 basis points, will provide a financial incentive to businesses to improve the energy efficiency of their buildings. Current high interest rate on energy conservation loans tend to discourage needed investments by businesses. The Program will not result in any direct cost to New Jersey taxpayers because it is funded with monies received from the Federal government. Therefore, it is anticipated that the costs of the progam will be minimal while the economic benefits to the businesses in need of energy conservation renovations that receive the loans (in the form of improved cash flow due to energy consumption), banks (as a result of an increased customer base), and the State as a whole (in the form of reduced demand for expensive foreign oil) will be significant.

Full text of the proposed new rule follows.

CHAPTER 6
[RECYCLING] GRANTS AND LOANS PROGRAMS

SUBCHAPTER 2. BUSINESS ENERGY IMPROVEMENT LOAN SUBSIDY PROGRAM

14A:6-2.1 Scope and purpose

This subchapter establishes the rules governing the Business Energy Improvement Loan Subsidy Program. The Program provides interest subsidies for certain loans obtained by eligible businesses for energy conservation renovations. The interest subsidies are intended to encourage the installation of energy conservation renovations by businesses by reducing the effective interest rate on loans for such renovations.

14A:6-2.2 Definitions

"Applicant" means an eligible business that applies for an interest subsidy pursuant to this subchapter.

"Application" means a Business Energy Improvement Loan Subsidy application.

"Commissioner" means the Commissioner of the Department.

"Department" means the New Jersey Department of Energy.

"Eligible business" means businesses meeting the Small Business Administration definition of small business contained in 13 **C.F.R.** Part 121.2 (49 **F.R.** 5030-37), multi-family buildings, and not-for-profit businesses, but not including religiously-owned or -affiliated businesses, which are located in New Jersey.

"Eligible loan" means a loan made by a lender to the applicant for energy conservation renovations, which meets the requirements of N.J.A.C. 14A:6-2.6.

"Energy conservation renovation" means any equipment, materials alterations or improvements that reduce energy con-

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sumption in or increase the energy efficiency of an eligible business, and which have been approved by the Department pursuant to N.J.A.C. 14A:6-2.7, but shall not include new construction or energy conservation renovations installed prior to approval of a Business Energy Improvement Loan Subsidy application by the Department.

"Interest subsidy" means funds provided by the Department to reduce the effective interest rate on an eligible loan.

"Lender" means New Jersey State-chartered banks, savings banks, savings and loan associations, national banks, and federally-chartered savings and loan associations, the principal place of business of which is located in New Jersey.

"Multi-family buildings" means owners and other proprietors of multi-family buildings used for residential occupancy and containing five or more dwelling units, but not including condominiums, co-operatives and similar property regimes.

"Program" means the Business Energy Improvement Loan Subsidy Program established by this subchapter.

14A:6-2.3 Program duration and limitation of funding

(a) The number and amount of interest subsidies and the duration of the Program shall depend on the availability of sufficient revenues to cover interest subsidies previously approved by the Department and to provide sufficient monies for further interest subsidies. The Business Energy Improvement Loan Subsidy Program shall continue only so long as funds remain available to the Department for the Program.

(b) The Commissioner may terminate the Program (with respect to new applicants) in the event that funds are exhausted or the anticipated demand for interest subsidies exceeds available funds.

14A:6-2.4 Requests for applications

The Department shall make available Business Energy Improvement Loan Subsidy applications on request, until the Program is terminated pursuant to N.J.A.C. 14A:6-2.3.

14A:6-2.5 Submission requirements

(a) Each Business Energy Improvement Loan Subsidy application submitted to the Department shall include the following information:

1. Name and address of the applicant.

2. A precise description of each energy conservation renovation for which an interest subsidy is sought.

3. An analysis of the energy conservation renovation requirements of the eligible business, which shall be comprised of:

i. The results of a Commercial and Apartment Conservation Service (CACS) energy audit, Commercial Light Industrial Energy Technical Service (CLIENTS) survey, or other energy consumption and cost analysis of the eligible business approved by the Department; or

ii. A reasonable construction bid with respect to the energy conservation renovations, including cost estimates for each energy conservation renovation. The construction bid shall be accompanied by the following:

(1) A sworn statement by the bidder, or an officer or partner of the bidder, indicating that the bidder is not, at the time of the construction bid, included on the State Treasurer's List of Debarred, Suspended and Disqualified Bidders; and

(2) A certification that, where applicable, the bidder is in compliance with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 **et seq.** and the rules and regulations promulgated pursuant thereto.

4. Engineering calculations and energy savings calculations for each energy conservation renovation.

5. The simple payback period and calculations for each energy conservation renovation. Only energy conservation renovations having a simple payback period of less than or equal to five years shall be included in the application and shall be eligible for an interest subsidy.

6. A commitment by a lender for an eligible loan and the terms thereof; provided, however, that in the event that the commitment is not available on the date of submission of the application, same may be submitted as a supplement to the application, in accordance with the provisions of N.J.A.C. 14A:6-2.7(b) 1, ii.

7. Such additional information as may be required by the Department to provide a complete and accurate description of the project.

(b) All calculations with respect to information contained in the application and any supporting documents shall be based on the energy estimating methods of the American Society of Heating, Refrigerating and Air conditioning Engineers, Inc. ("ASHRAE"), including all revisions and updates adopted by ASHRAE. Copies of the document may be obtained from ASHRAE, Inc., 1971 Tullie Circle, N.E., Atlanta, Georgia 30329.

14A:6-2.6 Eligible loans

(a) Only eligible loans shall be reviewed by the Department for interest subsidies pursuant to N.J.A.C. 14A:6-2.7. In order to be eligible for an interest subsidy the loan shall meet the following requirements:

1. The loan (and any supporting or related documents) shall:

i. Be for the purpose of financing the installation of energy conservation renovations that meet the requirements of N.J.A.C. 14A:6-2.5 and that are approved by the Department pursuant to N.J.A.C. 14A:6-2.7.

ii. State separately in the loan the amount representing the principal, interest, interest accruals and penalties with respect to each energy conservation renovation, and separately account for same for each energy conservation renovation during the term of the loan;

iii. Be for an amount (of principal) of not more than $250,000.

iv. Have a term of not more than five years.

v. Have a fixed interest rate; provided, however, that in the event of a substantial change in commercial loan market conditions, the Commissioner may, in his discretion, modify the requirement specified herein.

vi. Be amortized according to a predetermined monthly amortization schedule.

vii. Not obligate or render the Department liable to pay the lender or the applicant at any time, any amount of principal, interest, interest accruals or penalties, for any reason, including but not limited to:

(1) The default or late repayment of the eligible loan by the applicant.

(2) Failure to pay, withholding of payment or seeking the return of the interest subsidy by the Department.

viii. Have been reviewed and approved by the lender in accordance with standard procedures.

(b) The Department does not guarantee the approval by lenders of loans for energy conservation renovation. Applicants that are denied loans shall have no recourse to the Department. The Department shall not participate in any manner in any aspect of the lender's loan review process.

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14A:6-2.7 Application and review procedures

(a) Applicants shall submit to the Department a completed Business Energy Improvement Loan Subsidy application. The application shall bear either a legible (non-metered) postmark or a date stamp from the Department's Office of Operations indicating that the application was submitted on or before any deadline established pursuant to N.J.A.C. 14A:6-2.3.

(b) The Department shall conduct a review of the applications commencing with the application bearing the earliest submission date. The Department may require the submission of additional information to complete the application or may require the resubmission of the entire application if incomplete. The Department shall review the applications to determine whether:

1. The application is made on behalf of an eligible business;

2. The application covers energy conservation renovations;

3. The application is complete as to form (required documentation is present and complete);

4. The application is complete as to the submission requirements of N.J.A.C. 14A:6-2.5;

5. The engineering calculations and other technical matters with respect to the energy conservation renovations are accurate and correct; and

6. The energy conservation renovations are appropriate for the eligible business.

(b) Upon completion of the review of an application pursuant to (a) above, the Department shall notify the applicant in writing whether the application has been approved, approved with the condition that an eligible loan be obtained, or denied. Interest subsidies shall be extended to applicants in the order that applications are approved.

1. In the event that an application is approved an interest subsidy agreement shall be executed pursuant to (c) below.

2. In the event that an application is approved with the condition that the applicant obtain an eligible loan, the Department shall:

i. Indicate preliminarily in writing, the terms on which an interest subsidy will be extended to the applicant, including but not limited to the energy conservation renovations for which the interest subsidy will be extended and the amount of the interest subsidy.

ii. Allow the applicant a period of 30 calendar days from the date of approval of the application to obtain an eligible loan on the terms which include any requirements established pursuant to (b) 2 above i, and to file same with the Department.

iii. In the event that an eligible loan is not obtained for the energy conservation renovations approved by the Department within the 30 calendar day period, the Department may, in its discretion, extend the period for obtaining and filing the loan for an additional 30 calendar days. Upon filing of the loan by the applicant, the Department shall review the loan for eligiblity in accordance with the requirements of N.J.A.C. 14A:6-2.6. The Department shall notify the applicant whether the application is approved pursuant to (b) 1 above or denied pursuant to (b) 3 below.

iv. Failure of the applicant to obtain an eligible loan by the conclusion of the appropriate 30 calendar day period and to file same with the Department shall result in a denial of the application.

v. In the event that a loan is obtained for energy conservation renovations or on terms other than those approved by the Department the applicant shall be required to file a new application with the Department pursuant to N.J.A.C. 14A:6-2.5 in order to be considered for an interest subsidy.

3. In the event that an application is denied, the applicant shall be ineligible to receive an interest subsidy for the particular energy conservation renovations included in the application and shall not be permitted to submit another application for the same energy conservation renovations.

(c) Upon approval of an application pursuant to (b) 1 above, the Department and the applicant shall execute in writing an interest subsidy agreement, which shall include but not be limited to provisions specifying the energy conservation renovations to which the interest subsidy shall apply, the terms and conditions on which the interest subsidy shall be made by the Department, the amount of the interest subsidy and the payment schedule and the effect of prepayment on any outstanding balance of the interest subsidy. All interest subsidy agreements, whether specifically stated therein or not, shall be subject to the provisions of this subchapter.

14A:6-2.8 Conditions for payment of interest subsidies

(a) The Department shall pay interest subsidies directly to the applicant on the following terms:

1. The applicant shall be solely responsible and liable for repayment of the principal, interest, interest accruals and penalties with respect to the eligible loan. The Department shall not be liable to the applicant for the repayment of principal, interest, interest accruals or penalties.

2. Interest subsidies shall be made by the Department at 50 percent of the lender's commercial lending rate up to 600 basis points; provided, however, that in the event of a substantial increase or decrease in commercial lending rates, the Commissioner may, in his discretion, modify the percentage or basis points available to applications for which an interest subsidy agreement has not been executed pursuant to N.J.A.C. 14A:6-2.7(c).

3. Interest subsidies shall be paid by the Department at intervals not exceeding six months in accordance with the terms of the interest subsidy agreement.

4. The applicant shall provide, or cause to be provided, to the Department, at intervals not exceeding six months, and commencing not more than six months after the due date of the first repayment of the eligible loan, a certification that repayment of the eligible loan is being timely made to the lender, in accordance with the terms of the interest subsidy agreement. The certification shall be in the form of an official audit confirmation from the lender.

14A:6-2.9 Monitoring

(a) The Department shall monitor all work related to energy conservation renovations that are the subject of an interest subsidy agreement by the Department. "Monitoring" shall include, but not be limited to, reviewing plans, specifications and other documents and information and conducting on-site inspections to assess the progress and completion of work. The applicant shall comply promptly with all requests by the Department to conduct monitoring activities.

14A:6-2.10 Rescission and withholding of funds

(a) The Department, in addition to any other rights or remedies available pursuant to law, may withhold or rescind payment of an interest subsidy or any portion thereof for good cause. Such withholding or rescission shall terminate the obligation of the Department to make further payments of interest subsidies to the applicant. The term "good cause" shall include, but not be limited to the following:

1. Failure to comply with the requirements of this subchapter, or other applicable State laws or regulations.

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2. Failure to comply with any condition or requirement of the interest subsidy agreement.

3. Submission of false or misleading information, or failing to submit relevant information to the Department.

4. Non-payment or failure to make timely repayment of an eligible loan, or declaration by the lender that the applicant is in default of an eligible loan.

5. Insolvency, bankruptcy or other condition affecting the financial integrity of the applicant.

6. Use of the interest subsidy for any purpose other than as specified in the interest subsidy agreement.

7. Inability or failure to install the energy conservation renovations in a timely manner.

8. Failure to provide documentation with respect to the installation of energy conservation renovations.

9. Modification of the terms of the eligible loan without the express written consent of the Department.

(b) Interest subsidies shall be withheld or rescinded according to the following procedures:

1. The Department shall give written notice to the applicant of its intent to withhold or rescind an interest subsidy in whole or in part.

2. Prior to the withholding or rescission of the interest subsidy the Department shall afford the applicant a period of 20 days, commencing on the date of written notice, to consult the Department in the matter. The Department may, thereafter, withhold or rescind the interest subsidy in whole or in part. The withholding or rescission shall be in writing and shall be effective on the date such action is taken.

3. The determination to withhold or rescind an interest subsidy shall be solely within the discretion of the Department.

(c) In the event that an interest subsidy is withheld or rescinded by the Department the applicant shall refund immediately the total amount of interest subsidy paid by the Department as of the date of recession or withholding.

1. The Department shall return all rescinded monies to the Business Energy Improvement Loan Subsidy Program.

14A:6-2.11 Severability

If any section, subsection, provision, clause or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

OTHER AGENCIES

(a)

ATLANTIC COUNTY TRANSPORTATION AUTHORITY

Rules of Operation

Proposed Amendments: N.J.A.C. 19:75-2.1 and 2.3

Authorized By: Atlantic County Transportation Authority, Ian Jerome, Executive Director.

Authority: N.J.S.A. 40:35B-15(h).

A **public hearing** will be held on Thursday, June 7, 1984. For information about the time and place of the hearing please contact:

Atlantic County Transportation Authority
19 South New York Avenue
Atlantic City, New Jersey 08401
Phone: (609)-344-4149

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 20, 1984. These submissions, and inquiries about submissions and responses, should be addressed to:

Ian P. Jerome, Executive Director
Atlantic County Transportation Authority
19 South New York Avenue
Atlantic City, NJ 08401

At the close of the period for comments, the Atlantic County Transportation Authority may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-282.

The agency proposal follows:

Summary

The original Bus Management Rules of Operation were designed in 1983 to meet that level of bus activity associated with nine operating casinos. As of May 15, 1984, the Harrah's-Trump Hotel Casino becomes the tenth operating casino.

The following amendments to N.J.A.C. 19:75 Rules of Operation as adopted December 1983 are necessary to ensure the orderly flow of this increased level of activity. Specifically, the bus routes for Playboy Hotel Casino and Tropicana Hotel Casino are modified, and a bus route for Harrah's-Trump is added. These constitute the major changes herein submitted.

Additional minor refinements are also proposed as follows, which refinements are due to operational experience of the original plan over the past several months.

Social Impact

The proposed amendments will affect Atlantic City and Atlantic County residents, businesses and visitors. The results will include improved bus traffic flow and operation of this portion of the transportation system in Atlantic City. There will be additional impact to the residents of Iowa Avenue.

Overall, the social benefits include reduced traffic congestion, improved levels of air quality, noise and visual pollution, increased traffic safety, improved emergency vehicle access to one of the most congested corridors in Atlantic City, and improvements in the overall accessibility of visitors and local residents.

These amendments are necessary to mitigate the social and transportation impacts and provide continued accessibility to the growing recreation industry in Atlantic County.

Economic Impact

These amendments will result in reduced travel time in Atlantic City, fuel savings to bus operators and other motorized traffic that must queue for periods caused by bus traffic congestion.

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The Atlantic City hotel casinos will be able to handle current bus volumes, thus generating revenue to the casinos, bus operators, and related businesses. Reduced congestion and bus-related accidents will result in an overall cost saving to vehicle owners.

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

19:75-2.1 Routes of travel: generally

(a) (No change.)

(b) Except for Atlantic City, bus routes in Atlantic County are US Route 30, US Route 40/322 and the Atlantic City Expressway. All other routes are considered to be feeder routes to these major access roadways. The major access roadway is designed to enable the bus to enter the city in the zone where its destination is located.

1.-2. (No change.)

3. All other county roadway networks approved for bus travel are for special purposes. Some of these are as follows:

i.-vi. (No change.)

vii. Route 52 MacArthur Boulevard/Laurel Drive from the Atlantic County boundary to the Garden State Parkway (30N).

19:75-2.3 Routes of travel to and from casino hotels

(a) (No change.)

(b) Tropicana:

1. Arrival: via Albany Avenue to Atlantic Avenue to [Brighton Avenue] **Morris Avenue** to the Casino.

2. (No change.)

(c) Playboy:

1. Arrival: via [Atlantic City Expressway to Missouri Avenue to Atlantic Avenue to Mississippi Avenue to Pacific Avenue then to Convention Hall at Georgia Avenue, or to casino via Florida Avenue.] **Atlantic Avenue to Missouri Avenue to Pacific Avenue to the Playboy site or Convention Hall. In the event that, due to the severity of traffic conditions, inbound Missouri Avenue and Pacific Avenue are unavailable for Playboy, the alternate route will be Albany Avenue to Atlantic Avenue to Iowa Avenue to Pacific Avenue to Florida Avenue to Casino. This alternate route will only be available to Playboy buses when, in the opinion of ACTA and appropriate representatives of the Atlantic City Police Department, there exists a traffic condition on the primary route that constitutes an imminent threat to public safety.**

2. Departure[:] from [the] casino:[or Convention Hall via Pacific Avenue to Arkansus Avenue to the Expressway.] **via Florida Avenue to Pacific Avenue to Mississippi Avenue to Atlantic Avenue/Captain O'Donnell Parkway to Albany Avenue.**

(d)-(f) (No change.)

(g) Harrah's/**Marina**:

1.-2. (No change.)

(h) Harrah's/Trump Plaza:

1. Arrival: via Atlantic City Expressway to Missouri Avenue to Trump/Harrah's Transportation Center.

2. Departure: via Mississippi Avenue to Atlantic Avenue, right turn onto Atlantic Avenue to Atlantic City Expressway.

Editor's Note: Two maps of Bus Routes for Casinos accompanied this proposal. They are not reproduced herein but are filed and may be seen at:

The Office of Administrative Law
Filings Section
88 E. State Street
Trenton, NJ 08625
or
Atlantic County Transportation Authority
19 South New York Avenue
Atlantic City, NJ 08401

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RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Rules of Special Applicability
Special Education Hearings
Appeal, Use of Hearing Record, Obtaining Copy of Record and Contents of Record

Adopted Amendment: N.J.A.C. 1:6A-5.3

Proposed: March 5, 1984 at 16 N.J.R. 408(a).
Adopted: May 8, 1984 by Ronald I. Parker, Acting Director, Office of Administrative Law.
Filed: May 9, 1984 as R.1984 d.203, **without change**.

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

Effective Date: May 21, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): January 1, 1988.

Summary of Public Comments and Agency Responses:

A written comment was received during the comment period concerning N.J.A.C. 1:6A-5.3(b):

Comment: The Teaneck Parent Information Center Inc. commented that the cost of a transcript is prohibitive for the majority of parents, particularly those who come to the Center for representation and that the cost of transcripts poses a serious problem for parents when they are involved in an appeal.

Response: OAL responded to the Center, sympathized with their concerns and indicated that the OAL had not attempted in the proposed amendment to deal with the difficult problems involved with transcripts. OAL further stated that the Office of the Administrative Law's budget is not large enough to provide free transcripts, however, the problem has been under review for many months but unfortunately, has not been resolved because of the complicated issues involved. Further study and research is necessary before a resolution is found. The current process makes available to the parties a free audio cassette recording of the hearing.

Full text of the adoption follows.

1:6A-5.3 Appeal, Use of Hearing Record, Obtaining Copy of Record, and Contents of Record

(a) (No change.)

(b) A party intending to appeal the administrative law judge's final decision or an authorized representative is permitted to use, or may request a certified copy of, any portion or all of the original record of the administrative proceeding, provided a copy remains on file at the OAL. The requesting party shall bear the cost of any necessary reproduction. Written requests for this material should be directed to Decision Control, Office of Administrative Law, 185 Washington Street, Newark, NJ 07102.

(c) The record shall consist of all documents transmitted by the Department of Education to the OAL; correspondence; any documents relating to motions; briefs; exhibits; transcripts, if any; the administrative law judge's decision; and any other material specifically incorporated into the record by the judge.

BANKING

(b)

DIVISION OF BANKING

Executive Officer Participation in Major Policy-Making Functions of a Bank

Readoption: N.J.A.C. 3:6-3

Proposed: March 19, 1984, at 16 N.J.R. 475(a).
Adopted: April 26, 1984, by Dominick A. Mazzagetti, Acting Commissioner, Department of Banking.
Filed: April 27, 1984 as R.1984 d.188, **without change**.

Authority: N.J.S.A. 17:9A-71B.

Effective Date: April 27, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 27, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the readoption may be found in the New Jersey Register at 14 N.J.R. 491(a), 14 N.J.R. 834(c) 15 N.J.R. 1786(a) and 16 N.J.R. 45(a).

(c)

DIVISION OF CONSUMER COMPLAINTS AND LEGAL AND ECONOMIC RESEARCH

Premium Finance Agreement

Adopted New Rule: N.J.A.C. 3:22-1.4

Proposed: February 21, 1984 at 16 N.J.R. 298(a).
Adopted: May 4, 1984 by Dominick A. Mazzagetti, Acting Commissioner of Banking.
Filed: May 7, 1984 as R.1984 d.194, **without change**.

Authority: N.J.S.A. 17:16D-1 et seq., and specifically N.J.S.A. 17:16D-9.

Effective Date: May 21, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): May 9, 1985.

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Summary of Public Comments and Agency Responses:

There were two comments received relative to the proposed new rule. The first comment agreed with the intent of the proposed rule and contained an inquiry which dealt with the interpretation of subsection (c) of the rule and whether or not it was necessary to have two finance agreements where an insured wished finance two policies with a coinciding effective date. It was agreed that one insurance finance agreement per contract period would be sufficient if the requirements of the statute and regulation were met.

The second comment received opposed the adoption of the proposed rule on the ground that a new finance agreement would be required when there were changes in the underlying policy which changed the finance premium. It was stated that such a rule would create inconvenience and cost for the consumer, producer and finance company.

While the Department of Banking recognizes that a certain degree of effort will be required to conform with the rule as proposed, it is the Department's position that the requirements of the rule are necessary in order to conform with the letter and intent of N.J.S.A. 17:16D-9 which does not allow subsequent insertion of terms in a previously signed premium finance agreement.

Full text of the adoption follows.

3:22-1.4 Premium finance agreement

(a) There must be disclosure in the premium financing agreement of the key elements prior to the signature of the insured in accordance with the requirements set forth in N.J.S.A. 17:16D-9.

(b) A continuous payment agreement which authorizes renewable or continuing arrangements is prohibited.

(c) Separately signed premium finance agreements are required for each policy, renewal, or addition or change in order to disclose current conditions and provisions applicable to each loan.

(d) This rule shall apply to Insurance Premium Finance Companies doing business or authorized to do business in the State of New Jersey.

EDUCATION
(a)
STATE BOARD OF EDUCATION

Physical Education and Athletics Personnel and Procedures

Readoption with Amendments: N.J.A.C. 6:29-6

Proposed: February 21, 1984, at 16 N.J.R. 303(a).
Adopted: May 3, 1984, by State Board of Education, Saul Cooperman, Secretary.
Filed: May 3, 1984, as R.1984, d.192, **with substantive changes and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 18A:4-15, 18A:6-38, 18A:35-5 and 18A:35-7.

Effective Date for Amendments: May 21, 1984.
Operative Date for Amendments: July 1, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): May 1, 1989.

Summary of Public Comments and Agency Responses and **Reasons** for Making Changes:

The Department received comments concerning the readoption of the rules governing Physical Education and Athletics Personnel and Procedures from approximately 22 interested persons or organizations.

Five letters discussed the alteration in intent resulting from the Department's attempt to remove the double negative from N.J.A.C. 6:29-6.1(b). The Department of Education agreed, and inserted the word "not" to clarify the intent of the rule. The intent is that to organize public school pupils during recess or school time, for the purpose of instruction, conducting games, events or contests in physical education, an individual must be a certified teacher and/or in the employ of the district board of education.

Seven commenters questioned the advisability of the portion of the rule, N.J.A.C 6:29-6.2(d), allowing district boards of education to adopt a policy to permit pupils to acquire graduation credits in physical education through alternative programs of physical education activities. The Department continues to believe that alternative plans for awarding graduation credit, governed by N.J.A.C. 6:8-4.2, are policy making prerogatives of district boards of education. The rules are clear that the granting of high school graduation credit by means of course and program completion options do not deter from the locally developed pupil proficiency standards. This option requires that to receive graduation credit by alternative means, the pupil must demonstrate that the activity provides development equivalent to that provided by the physical education program. Those district boards of education deciding to adopt such a policy would also require, as is stated in N.J.A.C. 6:29-6.2(d)1, that the appropriateness of such activity would have to be approved by the principal, in consultation with appropriately certificated staff member(s).

In N.J.A.C. 6:29-6.4(a), one commenter recommended the reconstruction of the subsection. The previous wording indicating approval by the superintendent and the district board of education is inconsistent with current practice. The suggestion of the New Jersey School Boards Association clarifies the current practice that the chief school administrator recommends to the district board of education for approval. The Department accepted the recommendation.

A number of commenters were concerned with the new requirement, N.J.A.C. 6:29-6.4(c), that each candidate for a place on a school athletic squad or team be given a comprehensive physical examination no more than 30 days prior to the first practice session. Furthermore, the rule states that succeeding physical assessments for those pupils participating in more than one sport, and who have not sustained any serious injury or illness, may be of a more general nature.

The comments concerned:

1. Definition of the term "comprehensive." In developing the readoption proposal, the Department relied upon material developed by the Medical Society of New Jersey's Committee on the Medical Aspects of School Sports as guidelines for elements of a comprehensive medical assessment. Blood

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work, however, would be required only at the discretion of the examining physician.

2. Difficulties in scheduling caused by the "no more than 30 days" requirement. The Department believes that, initially, scheduling difficulties may occur, but the increased safety afforded participating pupils far out-weights initial scheduling difficulties. The intent is to protect both the pupil and district board of education from the consequences of preventable injuries sustained as a result of participation in school sponsored athletics.

3. The requirement that each candidate shall undergo at least one comprehensive physical examination per school year. The Department believes that it is in the best interest of both the district board of education and the pupil to require an assessment within the school year. Too frequently the desire to participate in athletics takes precedence over safety consideration by the pupil. The Department considers this requirement essential to insure that pupils are protected from the avoidable injury which an assessment would detect.

Finally, the Department received one letter of support for the amendments proposed. The communication states: "The health and safety of our youth participating in sports cannot be stressed strongly enough." The Department concurs with this statement.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 6:29-6, as amended in the New Jersey Register.

Full text of the changes upon adoption follows (additions shown in boldface with asterisks ***thus***; deletions shown in brackets with asterisks *[thus]*).

6:29-6.1 Physical education personnel

(a) (No change from proposal.)

(b) Any person not certified as a teacher and not in the employ of a district board of education shall ***not*** be permitted to organize public school pupils during school time or during any recess in the school day for purposes of instruction; or for conducting games, events or contests in physical education.

6:29-6.2 Physical education procedures

(a) The foundation program in physical education for the public schools of this State shall be the program as provided in this chapter. District boards of education may, at their discretion, accept the successful completion of basic training in the military or naval service of the United States or United States Merchant Marine in full satisfaction of the physical training requirements of N.J.S.A. 18A:35-7.

(b) A district board of education may give approval for members of an interscholastic athletic team of a school to be excused from physical activity in their physical education class on the days that a regular interscholastic game is scheduled. This approval applies only to those members listed for participation in the game.

(c) District boards of education shall provide by regular appropriations suitable and adequate equipment for carrying out the program for physical education activities.

(d) A district board of education may adopt a policy to permit pupils to receive graduation credit in physical education while participating in interscholastic team activity, alternative programs of athletics, or alternative programs of physical education activities that meet the requirements of N.J.A.C. 6:8-4.2 and are consistent with local district's physical education program goals and instructional objectives. Health and safety requirements must be satisfied, pursuant to the provisions of N.J.S.A. 18A:35-5. Any policy adopted under this authority shall include, but need not be limited to, the following provisions:

1. The principal, in consultation with an appropriately certificated staff member(s), shall, upon application by the pupil and parents, or guardian, determine the appropriateness of the interscholastic activity, alternative athletic program, or physical education activity.

2. To be eligible to receive graduation credit in physical education through interscholastic team activity, alternative programs of athletics, or alternative programs of physical education activities the pupil must:

i. Be enrolled in a four-year or senior high school;

ii. Demonstrate that the interscholastic activity or alternative program will provide activity and development equivalent to that provided by the physical education program.

3. Credit and grading for the alternative program shall be given through the administrative procedures of the local physical education program.

4. The permanent school records shall indicate the credits granted for physical education through the alternative program.

5. If the alternate program leaves unscheduled time during the school day, the pupil shall use the time for scholastic purposes.

6:29-6.3 Athletics personnel

(No change in text but see 14 N.J.R. 1010(a), 15 N.J.R. 84(c), and 15 N.J.R. 1152(b), 15 N.J.R. 1860(c)).

(a) The program of activities or sports to be employed by any public school in competitive contests, games or events or in exhibitions with individual pupils or teams of one or more schools of the same district, or of other districts, shall be *[approved]* ***recommended*** annually by the *[superintendent]* ***chief school administrator*** *[and by]* ***to*** the district board of education ***for approval***.

(b) In cases in which the athletic facilities are not owned by the municipality or the district board of education, the district board of education shall require that adequate safeguards to players and spectators be provided by the owner. The field, room, court, track, stands and surrounding premises shall be kept in good condition and free from hazards.

(c) Good physical condition, freedom from injury and full recovery from illness shall be prerequisites to participation in athletics, whether in practice or in competition. Each candidate for a place on a school athletic squad or team shall be given a comprehensive physical examination by the medical inspector or designated team doctor no more than 30 days prior to the first practice session. If a pupil participates in more than one sport, the initial physical examination must be comprehensive. If the pupil has not sustained any serious injuries or illnesses prior to participation in another sport, the succeeding physical assessment may be of a more general nature. Each candidate must undergo at least one comprehensive physical examination per school year. The parent or legal guardian shall receive a certificate or record card signed by the medical inspector or team doctor testifying to the candidate's physical fitness or lack of physical fitness for the sport he or she has selected. The reasons for the medical inspector's or team doctor's approval or disapproval for the candidate's participation shall be registered thereon. The health findings of the medical examination for participation in athletics shall be made a part of the general medical examination record.

(d) A pupil representing his or her school in interscholastic athletic competition shall sign a form furnished by the district board of education, the wording of which shall embody a

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request to be enrolled as a candidate for a place on a school team in a specified sport. The parent or legal guardian must execute an acknowledgment that physical hazards may be encountered.

(e) Every candidate for a place on the school athletic squad or team shall submit a form furnished by the district board of education conveying the consent of his or her parent or legal guardian to participate.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES BUREAU OF SHELLFISH CONTROL

Special Permits Relay Program

Readopted New Rule: N.J.A.C. 7:12-2.7

Proposed: March 19, 1984 at 16 N.J.R. 558(a).
Adopted: April 30, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: May 7, 1984 as R.1984 d.199, **with substantive changes** not requiring additional public notice and comment (see: N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 58:24-1 et seq.

Effective Date: May 7, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): June 6, 1988.

Summary of Public Comments and Agency Responses: **No comments received.**

Summary of change upon adoption:
The Department of Environmental Protection has made a change in the bag requirement for the Relay of Clams. The change was made to provide for uniformity within the program.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

7:12-2.7 Relay program

(a) The purpose of this program is to harvest market size hard clams from areas other than Approved Areas, for replanting in Approved Areas on special leased lots for purposes of natural purification prior to marketing. Two different types of permits are issued depending on participant request.

1. Permit 5a (Harvest, Buy, Sell, and Relay Hard Clam Permit) allows hard clams to be harvested, purchased, sold and relayed from specified Special Restricted, Seasonal Special Restricted or Condemned Waters in conjunction with a State approved shellfish relay program. All applicants are required to possess a special relay lease issued by the department (see N.J.A.C. 7:25-15.1) as a condition of this permit. The applicant is solely responsible for maintenance of all signs, stakes and markers as established in N.J.S.A. 50:1-5.

2. Permit 5b (Harvest Hard Clams For Sale Purposes Only Permit) allows hard clams to be harvested from specified Special Restricted, Seasonal Special Restricted, or Condemned Waters for sale purposes only (thus eliminating the requirement for obtaining a special relay leased plot in Approved waters) in conjunction with a state approved shellfish relay program.

(b) Permits 5a and 5b shall be valid only under the following specific requirements or conditions. Violation may subject the holder to prosecution under N.J.S.A. 58:24-3. These rules must be read together with the Shellfisheries regulations which appear at N.J.A.C. 7:25-15.1.

1. Species limited under said permit to hard clams (Mercenaria mercenaria).

2. Areas of harvest are limited to those delineated on the chart attached to each permit. These areas specified for harvest may consist of Special Restricted, Seasonal Special Restricted or Condemned waters as classified by this department.

3. The inclusive dates of the permit shall be specified on the face of the special permit unless revoked or suspended by the department prior to the dates indicated and for cause. A schedule of harvest dates by section and landing sites will be sent by the department to the permittee at the address on file with the Bureau of Shellfish Control (Leeds Point). A change of address must be reported to the Bureau of Shellfish Control (Leeds Point) within one week of the change.

4. The harvester must possess a valid NEW JERSEY COMMERCIAL HARVESTING LICENSE issued by the New Jersey Division of Fish, Game and Wildlife.

5. Harvesting from waters designated for relay purposes shall be subject to all state laws and regulations applicable to the harvest of hard clams from Approved waters.

6. The relay of hard clams from the waters designated for relay purposes shall be permitted as established by N.J.A.C. 7:25-15.1. Hard clams shall be planted on the specified leased lots in Approved waters as scheduled by the department. The shellfish shall be removed from the bags at time of planting.

7. The participant must have this permit in his possession while working in all phases of the relay program.

8. This permit shall apply only to the waters specified in an attached chart provided with each permit and further specified in a schedule determined by the department to manage the resource and protect the public health, safety and welfare.

9. All hard clams taken from the designated relay waters shall be relayed to the special relay leased plots on a schedule set by this department and shall remain upon said leased lots until written permission for harvest has been granted by the Bureau of Shellfish Control. Relayed hard clams are required to remain for a minimum of 30 days in the special relay leased plots. The minimum 30-day purging period will begin on a schedule established by the department. Additionally, the water temperature of the Approved waters during the minimum 30 day purging period shall be at or above 13 degrees centigrade (55 degrees Fahrenheit) as determined by the Bureau of Shellfish Control. Reharvesting of the relayed shellfish will be regulated by the Department of Environmental Protection's Division of Water Resources, Bureau of Shellfish Control. Reharvesting of shellfish from the special relay leased plots may commence only after receipt of written permission from this office.

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10. The State Department of Environmental Protection reserves the right to suspend or revoke this permit at anytime that, in the department's judgement, its continued use may imperil the public health.

11. Signs having a white background with 6 inch legible black lettering, giving the participant's first initial and last name and Special Relay permit number shall be placed and maintained (amidships) on both sides of the participants boat while participating in any phase of the program.

12. Said boats shall remain in the designated relay section during the time harvesting operations are underway. Harvesting beyond the designated section is prohibited.

13. Upon completion of the day's harvesting, all shellfish shall be transferred to the authorized vehicle(s). No clams are to remain in the marked clam boats or transferred to other vehicles or boats. The location(s) of all loading and unloading sites associated with the transfer of shellfish from one vehicle/vessel to another, shall be assigned by the enforcement unit(s) designated in the Bureau of Shellfisheries regulations appearing at N.J.A.C. 7:25-15.1. There shall be no variance from said designated area unless so authorized by same.

14. Dredging and other illegal methods of harvesting are prohibited.

15. Shellfish taken from the designated relay area shall be bagged by the participant, three quarter bushel to the bag, in bags *[approved by the department.]* ***available to the participant from the department. These bags will be provided, at cost, to the participant through the Leeds Point office of this bureau.*** *[All bags shall be marked "RELAY CLAMS" with 2 inch letters on the side.]* No unmarked bags will be allowed in the harvesters' or buyers' vehicles or boat except during reharvest. Each bag shall have a tag attached, marked with the harvesters' and/or buyers' name and permit number. Shellfish not in compliance with the bagging requirements will be seized and returned to Condemned waters by the designated enforcement unit. Participants will place the shellfish in vehicles provided by them and approved by the department or New Jersey State employee designated by the department. The vehicles will be sealed by the department or New Jersey State employee designated by the department at the harvest landing site and opened by the department at the off-loading site. Each participant shall inform the designated enforcement unit(s) of the route he will routinely follow from the harvest area to the planting area.

16. The bags will be counted by the relay harvester and listed on the numbered three-part relay receipt forms which shall be certified by the harvester. The forms must be filled out in their entirety before the clams are transported. Receipts for all clams must be in the transporting vehicle. When clams are sold to the holder of a 5a permit, the form shall be signed by both the harvester and the buyer-planter at the landing site. The possession or submission of incomplete, fraudulent or misleading relay receipt forms shall be a violation of this permit.

17. Participants shall not harvest approved clams from their leased plots on the same trip they plant clams from the day's relay. Persons harvesting clams from relay lots after written permission has been received from the Bureau of Shellfish Control shall not have any "RELAY" transport bags, as described in N.J.A.C. 7:25-15.1 of the relay rules, in their vehicles or vessels at the time they harvest.

18. The department shall have the authority to inspect and collect shellfish from any phase of the relay to ensure compliance with all relay program regulations. Shellfish found under participant's control contrary to these and other applicable statutes and regulations shall be subject to seizure.

19. Only the lessee or a substitute harvester shall remove clams from the leased plots. A substitute harvester must possess a Letter of Permission (issued by the Division of Fish, Game and Wildlife) from the lessee giving the dates for which he is allowed harvest privileges, and the lessee's permit number from the Division of Water Resources Permit 5a.

20. Violations of these conditions may subject the violator to prosecution under N.J.S.A. 58:24.

21. This permit shows on its face specific conditions that are deemed necessary for the proper operation of the shellfish relay program. All permittees are also required to comply with all other applicable statutes and regulations. Included with every permit are charts of the harvest sites showing specific sections within the estuaries that may be harvested on a particular day, as determined by the designated enforcement unit(s).

i. Penalty: Any participant violating the regulations or the terms of the special relay permit issued by the Division of Water Resources, may be subject to prosecution under the provisions of N.J.S.A. 58:24-3, proscribing the taking shellfish from Condemned Areas in violation of the permit, and may incur the penalty prescribed by the N.J.S.A. 58:24-9 described below.

ii. Any person who shall gather any oysters, clams or other shellfish from a place which has been Condemned by the department pursuant to N.J.S.A. 58:24-2 of this title or who shall distribute, sell, offer or expose for sale or have in his possession any such shellfish so gathered unless he shall first have secured a permit in writing from the department to distribute, sell, offer or expose for sale or have in his possession any such shellfish so taken, is guilty of a petty disorderly offense and any such person convicted of a subsequent offense is guilty of a disorderly persons offense (N.J.S.A. 58:24-9). Additionally, N.J.S.A. 58:24-10 states that the vessel, vehicle and all equipment used to violate this law, regulation or permit may be subject to seizure and forfeiture.

22. Due to the necessity to closely monitor this program for the purpose of protecting public health, the Division of Water Resources shall immediately suspend the Special Relaying Permit of any participant who violates any condition of the permit or any of these regulations. Pursuant to the Administrative Procedure Act, such individual may apply to the Division of Water Resources for an administrative hearing regarding the decision to suspend such permit.

23. Conviction of a shellfish violation as provided in N.J.S.A. 58: 24-1 et seq., and N.J.S.A. 50:2-1 et seq., shall be adequate cause for the suspension and denial of all special permits issued by the New Jersey Department of Environmental Protection involving the harvesting of shellfish from the waters of this state.

24. Discrimination against any harvester on the basis of race, sex, creed, domicile, or any other non-work related factor shall be adequate cause for revocation of this permit.

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(a)

DIVISION OF WATER RESOURCES

Flood Hazard Area Regulations

Adopted New Rule: N.J.A.C. 7:13
Adopted Recodification: N.J.A.C. 7:13-1.11 to N.J.A.C. 7:13-7

Proposed: December 19, 1983 at 15 N.J.R. 2104(a).
Adopted: May 4, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Filed: May 7, 1984 as R.1984 d. 201, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 58:16A-50 et seq., N.J.S.A. 58:10A-1 et seq. and N.J.S.A. 13:1D-1 et seq.

Effective Date: May 21, 1984.
Expiration Date pursuant to Executive Order No. 66 (1978): May 4, 1989.
DEP Docket No. 068-83-11.

Summary of Public Comments and Agency Responses and Reasons for changes:

The Department has undertaken a substantial public participation process to insure that consideration is given to all concerns of the State's citizens and industries, potentially impacted by these rules. These rules were informally pre-proposed in June of 1983 and three regional public hearings were held. Numerous comments were received by the Department both at the hearings and in writing. These comments were discussed in the New Jersey Register Notice, formally proposing these rules on December 19, 1983 (15 N.J.R. 2104). As the preamble to the proposal indicated, various changes in the rules were made in response to these comments.

As part of the public participation process associated with proposal of the rules, two additional public hearings were held and written comments were received. Most of these comments were similar to those received during the pre-proposal phase of the rule-making process.

NET FILL

As with earlier comment, the largest single issue raised in the public comment process relates to the Department's insistence that flood plain development be governed by a firm standard. The Department staff has determined that only steadfast restrictions on the amount of "net fill" allowed in flood hazard areas will result in effective flood hazard protection, as required by the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq. This means that areas which may be flooded at some time in the future, can only be filled-in up to the amount of fill (net fill) allowed by these rules. Net fill in flood hazard areas, except in the Central Passaic River Basin where no net fill is allowed, is limited to filling up to 20 percent of the space now available to flood waters. It is this "20 percent net fill" rule that has caused the greatest concern in the adoption of these rules. The rule states: "**N.J.A.C. 7:13-4.7(d)1.** Within the flood fringe area of delineated streams or within the 100-year flood plain but outside of encroachment lines of non-delineated streams, the volume of net fill and structures to be placed on an applicant's site shall be limited to occupying 20 percent of the total volume between the natural ground surface of the applicant's property and the level of the flood hazard design elevation along delineated streams or the 100-year storm elevation along non-delineated streams." Contrary to the conclusion suggested by certain commentors, this rule does not mean that only 20 percent of the land surface in flood hazard areas may be developed. Proper planning of the grading and filling of a property will usually permit the use of much more than 20 percent. This is especially true when one considers that such things as roads, lawns and parking areas do not usually contribute to the net fill quantity.

Numerous commentors expressed strong support for the position of Department staff to propose a clear and unambiguous standard for regulatory control. Several of these citizens and public interest groups stated that a "no-net-fill" standard for the entire State was their desire, but that any firm standard is better than the situation without such a rule.

Commentors representing landowners and developers objected to the net-fill standards as being arbitrary. They asserted that there is inadequate technical support to justify the setting of a strict standard. Though the Department does not concede that the net-fill limits lack any needed technical support, several comments revealed an apparent misunderstanding of what categories of facts are proper to be considered by a regulatory agency when it sets control standards. Misunderstanding is also revealed by criticism of the Department's position that it is appropriate to consider environmental impact factors in the review of major stream encroachment applications. Clearly, technical data is an important part of the foundation for rule-making. However, several other criteria must be considered if the Department is to adequately fulfill its legislative mandates.

Among the factors to be considered is historical experience. The literature of flood history in New Jersey and elsewhere reveals that no effective control of flooding has occurred or will occur until development in flood hazard areas is brought under effective control. A variety of control systems have been implemented by State and Federal governments. Their inadequacy is evident in the statistics of continual increase in flood damage and loss of life. These programs all contain the uncertainty of application which developers seek to retain, under the name of flexibility. The results can be witnessed virtually every Spring and Fall. Experts in the Department have examined the records of experience of many government efforts to control flooding. They are convinced that a strict standard must be set, or the continual increase in flood damages will result.

A second factor must be considered when evaluating the reasonableness of a strict, net-fill requirement. Critics of this approach appear to perceive the Department as a group of autonomous programs with totally separate legal objectives. According to this logic, the flood hazard area regulations may only concern themselves with flooding. The Department constantly attempts to overcome this tunnel-vision by looking to the many laws which describe what this Department is to do. The Legislature has instructed the Department to protect the environment by controlling discharges of sediments and other pollutants into the streams and rivers of the State, by protect-

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ing the habitats of endangered and nongame animal species in the State, by preserving the few remaining natural recreation areas in the State and by implementing many other environmental protection and control laws. The hazard of flooding and the presence of low-lying, swampy areas in flood plains have caused such areas to remain undeveloped, except where development pressure has become great enough to justify the increased costs of development. These factors retarding development in flood plains are the same factors which also make them vital and valuable ecological resources. Not only does the Department have the authority to consider matters other than the hazards of flooding, when setting the scope of this regulatory program, it is bound to do so if it is to adequately fulfill the mandates of the law and of thorough environmental management.

Another factor which must be considered, when deciding between a set standard and a more ambiguous one, is the fairness which necessarily results from the use of a single standard. Where a set standard is justified, it is always preferred, because it precludes the application of different requirements to different applicants. Decisions are made, based upon a clear, legal standard, rather than upon bureaucratic discretion.

A variety of questions were raised concerning the Departments technical foundation for setting net fill restrictions. The following discussion addresses the major issues:

As is well known, the national program of flood plain management arose largely from the thinking of one man, Gilbert White, whose initiative developed into a strong, Federally directed program. States and municipalities now implement systems of flood plain management, designed originally with two basic purposes: to prevent either filling or building in a narrow strip of land along a stream, called the floodway, and to require that any structures in the rest of the flood plain be raised above the level of a 100-year flood. It was originally considered that, with such programs, no further developments susceptible to flood damage would come into being.

This program could not be mandated by the Federal government directly because of constitutional and political considerations. As a result, it was implemented as a condition to eligibility for highly subsidized flood insurance, administered by the Federal Emergency Management Administration (FEMA). A great amount of work is required to delineate the floodways and the wider sections of the flood plain, called the flood fringe, and to compute the surface of the design flood. Additional effort is required by FEMA to administer the flood insurance program. Also, much time and effort of state agency staff and of the various developers and their engineers is required for even minimal administration of the stream encroachment permit programs. States vary greatly in the quality of their flood plain laws and regulations and of the administration of the programs.

Considerable progress is being made through these procedures in controlling building in flood hazard areas. However, two major engineering problems exist, which have greatly complicated an already time-consuming and expensive process. These problems stem from two major deficiencies in the basic Federal criteria for flood plain management. As a result of these deficiencies, the flood plain management programs in all developing regions require major readjustment to avoid long term deterioration in the security provided.

The first of these deficiencies stems from the fact that the established procedures base the extent of the 100-year flood plain, and the predicted elevation of the flood, entirely upon present hydrology. It is now universally accepted by hydrologists that, in small drainage areas, flood discharges occurring with given rainfall are greatly increased by development. With urbanization, the peak flood discharge from small storms may be more than doubled, and even from 100-year storms, a major increase in flood discharge occurs. These effects are most important for small streams. This deficiency was recognized in the National Science Foundation's 1980 study of flood hazard mitigation†; but the recommendation seems to have had no effect upon the policies of the federal government and most state agencies.

† "A Report on Flood Hazard Mitigation", National Science Foundation, Washington, DC 1980, pages 210 and 215, Conclusion 12, Recommendation D

A less evident but equally serious engineering deficiency in present flood control strategies is their failure to take account of valley storage loss, when determining 100 year flood profiles. The Federal criterion for establishing boundaries of a floodway is that it should be at least wide enough to pass the computed discharge of a 100 year flood with an increase in flood evaluation of no more than one foot, if the balance of the flood plain cross section (the flood fringe) were filled, and therefore not available to pass part of the flow. No account is taken of the fact that any filling of valley storage will inevitably increases flood magnitude of the section under consideration. The New York District Corps of Engineers, at the request of the State of New Jersey, recently made a computation of the effects upon 100 year floods in the upper Passaic River which would be caused by filling in of just half of the flood hazard areas. It was found that even this partial filling of flood plain valley storage would raise the crest of the 100 year flood by 2.3 feet. This is in an area where it has been estimated that any 100 year flood, even without this increase, would cause approximately a billion and a half dollars in flood damages. This startling result only provides a specific evaluation of what is obvious in general terms, if one considers the hydraulics of floods.

In view of these gross engineering deficiencies, which grow more serious with passage of time, it is apparent that our national and State flood plain management programs in their present form, provide totally inadequate long term protection. With the adoption of the proposed rules in New Jersey, the Department believes that this State will finally have reasonably adequate protection from flood hazards. If all the flood fringe area is developed with 20 percent of the maximum fill, there will still be an appreciable increase in flood discharges due to loss of valley storage, but it will be much less than would occur if development caused filling of the entire flood fringe.

Several commentors suggested that there are many streams in New Jersey where a specific engineering analysis would show that it would be acceptable to fill in the floods fringe area. A few types of streams are sometimes suggested, as examples. Such suggestions are very misleading. The only streams where this condition might apply are those which either have no appreciable flood plains (for example, flow in ravines or gorges) or those streams where it can be guaranteed that there will be no future development in the flood plains downstream. There are a number of small streams discharging into bays and estuaries where it is appropriate to relax the 20 percent fill restriction near the mouth. It is for this reason that the rules provide for such a waiver by the Department, N.J.A.C. 7:13-1.4(f). A general requirement of formal flood routing studies, prior to restraining filling, would be expensive, time consuming, and, except as noted above, would result in confirming that even the 20 percent fill rule, as

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applied throughout the flood fringe areas of the watershed, will allow a considerable increase in flood discharges. Finally, it is notable that those who have confidently made such generalized assertions never cite a specific, developable stream where the claim has been demonstrated to be valid.

Another group of comments of a technical nature suggested that filling of flood fringe areas, absent the 20 percent fill restriction, would not result in a significant rise in flood water levels. These assertions are based upon analysis of the impact of a specific water discharge at a specific point, resulting from an encroaching project, using computations made in streams defined as explained below. However, these analyses do not take account of the fact that the filling, by reducing valley storage, will contribute to raising discharges downstreams. The complete filling of all flood fringe areas would raise flood discharges by amounts much greater than the levels suggested by these commentors. This can readily be shown by any flood routing which takes valley storage into consideration. Formal flood routing is practiced only by qualified hydraulic engineers and requires a large data base. The principle can be illustrated, however, by use of empirical tables in the most common handbook used to substitute for formal flood routing, "Urban Hydrology for Small Watersheds" of the U.S. Soil Conservation Service (TR 55, 1975). Table E-3 (Page E-4) of this publication shows that, where "ponding and swampy areas" occur in a watershed to an extent of only 5 percent of the total watershed area, the peak flows from a storm of 100 year frequency would be only 78 percent of those which would otherwise occur. Obviously, in such a watershed, if the 5 percent ponding and swampy areas were to be filled, the peak discharge would be the 100 percent figure, with an increase of 22 percent. For lesser floods, according to the table, relative increases would be even greater. These SCS figures represent average conditions, and in any given stream, a detailed flood routing, based on accurate topography, would be required to determine exact results. Regardless, it is obvious that, in any stream with a flood plain, the filling-in of any major part of the flood fringe will have a major impact upon flood discharges and flood heights. Those who assert otherwise are either technically uninformed or are evading the issue.

One reason for continued insistence that filling has only a minor effect upon floods is the way the original Federal (and New Jersey) flood plain management regulations were structured. These regulations based the delineation of floodways on the passage of a computed 100 year discharge past any point, with floodway width required to be sufficient to allow the discharge to be passed with only a minor effect on flood heights (one foot according to Federal criteria; 0.2 feet according to N.J. State criteria). However, once again, these criteria take no account of the cumulative effect upon the system as a whole of reducing valley storage at numerous points along the stream. This matter is covered in a lead article, "Water Resources and Water Management", by William Whipple, The Military Engineer, March-April, 1984. The relevance of valley storage to flood heights is succinctly described in "A Report on Flood Hazard Mitigation" published by the National Science Foundation, Sept. 1980 as follows (p 15): "Encroachment on valley storage by levees, bridges, fill for buildings, navigation facilities and other structures can alter the height and deviation of floods. . . . Such alterations in a basin's hydrologic regimen can increase the risk of damage to structures that originally were designed and located to minimize flood damage." Finally the importance of preserving flood storage (valley storage) is clearly revealed in a recent (1982) publication prepared for the United States Water Resources Council, "Regulation of Flood Hazard Areas to Reduce Flood Losses". This report (on pp. 42, 44, 50 and 81) emphasizes that natural flood storage attenuates flood peaks and that filling this natural storage increases them. This report confirms that "NFIP (National Flood Insurance Program) standards do not directly address storage, although floodway restrictions provide some protection." (p. 81)

The Department clearly recognizes that the 20 percent net fill rule will significantly impact some flood fringe landowners. However, the rights of individuals must always be subservient to the necessities of their community. There are many generally accepted restrictions on the rights of individuals which are less justifiable than those adopted here. The Department firmly believes that strict, net fill control is not only justified on numerous grounds but absolutely required to fulfill the intent of the law.

MUNICIPAL IMPLEMENTATION

Several commentors addressed issues arising from the fact that most of the requirements of these rules are to be implemented by local governments, primarily municipal. Comments and Department responses regarding these issues are as follows:

Comment: It is undesirable for municipalities to be permitted to adopt ordinances which are more stringent than the State rules, because it may result in the lack of uniform standards.

Response: The Flood Hazard Area Control Act expressly permits municipal ordinances to be more restrictive the Department rules, N.J.S.A. 58:16A-62. The Department has neither the authority nor the responsibility under the law to affect the scope of municipal ordinances, unless they fail to meet the minimum standards in the rules.

Comment: Municipalities may not have sufficient expertise or resources to adequately fulfill their responsibilities under the rules, thus resulting in possible deficiencies in local program implementation.

Response: The Department is and will remain available to any municipality to lend expert assistance in the performance of the responsibilities contemplated by these rules. To offset resource demands, municipalities will be allowed to collect application fees from applicants for permits. Ultimately, however, the law gives municipalities legal responsibility to implement the law and it is incumbent upon them to do what they must to fulfill this responsibility. If they fail, the law authorized the Department to take over the deficient programs.

Comment: Several comments, relating to the interface between the Department and local governments, identified areas where the Department deemed that the rules should be modified.

Response: A provision has been added at N.J.A.C. 7:13-4.2(g) to make clear that failure of a local agency to enforce the standards in their ordinance may result in return of the program to the State.

A provision has been added at N.J.A.C. 7:13-5.3(g) to allow the Department to certify to itself for permit review any project application submitted to a local agency which is believed to be a Project of Special Concern.

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A provision has been added at N.J.A.C. 7:13-5.3(h) to provide for distribution of the application fee where the Department retains jurisdiction over an application for a Project of Special Concern, originally submitted to the local agency.

A provision has been added at N.J.A.C. 7:13-2.11(d) and at N.J.A.C. 7:13-4.4(c) to make clear that construction on a stream encroachment project may not commence, pending the completion of all appeal processes.

A sentence has been added at N.J.A.C. 7:13-2.9(c) to allow for an appeal where a hardship waiver has been granted by the local agency or the Department.

A provision has been added at N.J.A.C. 7:13-4.2(h) to encourage municipalities and counties to develop cooperative arrangements, on a river basin/watershed basis if possible, to implement flood control strategies. The Department supports interlocal government cooperation and will provide assistance to realize necessary arrangements. Existing laws provide all legal authority needed to initiate the preparation of interlocal government agreements among any group or groups of municipalities and/or counties to provide flood control services.

PUBLIC NOTICE

A variety of comments were received with regard to the scope of the various public notice provisions in the rules. Some commentors favored expansion of the scope of the public notice requirements; others requested that the scope be narrowed. As stated in the preamble of the notice of proposal at 15 N.J.R. 2105, the Department believes that the proposed notice rules reveal a reasonable balance between the public's interest in having adequate notice of permitting actions and the regulated industries interests' in being free from unnecessary regulatory burdens. However, certain comments have been accepted by the Department, as follows:

A modification has been made to N.J.A.C. 7:13-2.2(a) to include the County engineer and the County Mosquito Control Commission as recipients of the application notice.

A provision has been added to N.J.A.C. 7:13-2.2(a), requiring that the notice invite written comments on a proposed application.

The public notice requirements in N.J.A.C. 7:13-4.3(e) have been expanded to require that the Fact Sheet, described in that rule, contain a description of the project for which application is made.

Finally, a provision has been added to N.J.A.C. 7:13-2.7(a) to require notice to persons identified in N.J.A.C. 7:13-2.2(a), concerning emergency stream encroachment work.

MISCELLANEOUS COMMENTS

The following miscellaneous changes have been made to the proposed rules in response to various comments:

A provision has been added to N.J.A.C. 13-4.6(b) to include utility poles and towers as non-regulated uses in the flood fringe.

A provision has been added at N.J.A.C. 7:13-4.2(i) to make clear that municipalities may consider the desirability of more restrictive development standards in areas particularly subject to potential flood hazard.

The provision at N.J.A.C. 7:13-3.8(a) has been changed to delete the absolute prohibition against the disposal of stream cleaning spoils in wetlands.

N.J.A.C. 7:13-5.2(c) has been changed to make it mandatory that projects which are likely to produce serious, adverse effects on the water resources of the State be considered Projects of Special Concern and that the effects described in the rule be considered.

N.J.A.C. 7:13-4.2(f) has been changed to restrict the power of municipalities to allow variation from the rules to variations associated only with hardship waivers granted under N.J.A.C. 7:13-2.9.

N.J.A.C. 7:13-4.7(e)2 has been modified to state that, to be considered in the net fill calculations, fill material must be taken from between the natural ground surface and the mean low water level of the adjacent stream or the seasonally adjusted high ground water level, whichever is higher.

Changes have been made to N.J.A.C. 7:13-3.5(a) to describe which near-stream areas are protected under this rule, where the stream bank is unascertainable.

A provision has been added at N.J.A.C. 7:13-1.4(e) to exclude from regulation tidal waters which have a 100 year tidal surge level which is higher than the computed flood hazard area elevation.

There were a variety of comments received by Department which were felt to be unacceptable. There comments and the reasons for their rejection are as follows:

Comment: The Department should prohibit or severely restrict encroachment within a certain distance (buffer zone) of stream channels, ranging up to 100 feet.

Response: Several provisions in the rules set especially strict standards for near-stream activity by encroaching development projects. To establish a complete or nearly complete prohibition against near-stream development appears to be beyond the scope of what was intended by Flood Hazard Area Control Act and the Water Pollution Control Act.

Comment: The provision in N.J.A.C. 7:13-2.8(a), which requires the Department to determine the "completeness" of project applications within 20 days, should provide for a shorter time-frame.

Response: The Department finds a 20-day completeness time-frame to be sufficient.

Comment: Standards should be developed to guide local agencies in their efforts to determine whether a project is or is not a Project of Special Concern, under N.J.A.C. 7:13-5.2.

Response: The Department has responded to the concerns on this subject by allowing an appeal to the Department where there is a question as to whether or not a project should be classified as a Project of Special Concern (See discussion above). In the relatively few cases where a project does not clearly fall into one of the categories described in N.J.A.C. 7:13-5.2, it is believed that this appeal process will insure proper treatment.

Comment: The Department should develop maps of areas in which encroaching projects would be considered Projects of Special Concern.

Response: Such mapping would be highly resource demanding and, in many cases, utterly impractical. The costs would far outweigh the benefits.

Comment: The rules contain no definition of "wetlands"; one should be added.

Response: The purpose of reference to wetlands in the rules is to insure that encroaching projects, which may impact wetlands, are reviewed to minimize impacts which might effect these environmentally sensitive areas. Since each application is to be reviewed on its own merit, the accuracy of initial determinations of potential wetlands impacts will be ascer-

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tained. Another factor to consider is that there are a variety of definitions of wetlands used or under consideration for use by various State and Federal agencies. The Department believes that it is unnecessary and unwise to create a definition of wetlands at this time.

Comment: The definition of "dam" should be modified.

Response: The definition of "dam" used in these rules was derived from the Safe Dam Act, N.J.S.A. 58:4-1 et seq. Accordingly, it is appropriate to rely upon the definition established by law.

Comment: The Department should be able to intervene in any local permit review process where some deficiency in local program is identified.

Response: The Department has the authority to review any local program to ascertain that it is implementing the minimum standards in the rules. If a local program fails to be adequately implemented, the Department may take jurisdiction from the local agency. The rules also provide a broad right of appeal from local decisions. The Department finds these procedures to be sufficient to insure that local programs meet the statewide standards.

Comment: Persons adversely effected by a municipal permit decision should be allowed to appeal the decision to the Department.

Response: N.J.A.C. 7:13-4.4 requires that an appeal procedure be established by the municipality. The Department concludes that this procedure will adequately protect the rights of adversely affected persons and that an additional appeal to the Department would be an unnecessary step in the appeal process.

Comment: Pond excavations should not be included in the 20 percent net fill calculation, under N.J.A.C. 7:13-4.7(d).

Response: Pond excavations are treated identical to any other excavation associated with an encroaching project. There appears to be no justification for special handling of ponds.

Comment: The review of impacts upon wetlands by an encroaching project by the Army Corp of Engineers under Section 404 of the Clean Water Act is sufficient to address the wetlands concerns for any project.

Response: If a "404" permit is obtained for an encroaching project, it is probable that all significant environmental concerns will be adequately addressed. However, the 404 permit application review does not address flood hazard issues and, as such, the fact of the 404 permit review does not negate the need for permit review under these rules. No rule change appears needed.

Comment: Only the Department should be authorized to grant hardship waivers under N.J.A.C. 7:13-2.9.

Response: A rule has been added to allow an appeal under local appeal procedures (N.J.A.C. 7:13-4.4) of any locally approved hardship waiver.

Comment: Public notice under N.J.A.C. 7:13-2.2 should be required by applicants, indicating that the project has been built as approved.

Response: Such public notice does not appear to serve to protect any public interest.

Comment: Detailed requirements should be adopted to insure that areas disturbed by project construction activity are adequately and properly revegetated.

Response: The requirements for soil erosion and sediment control under N.J.A.C. 7:13-3.4 will insure that the adverse impacts of land disturbance are adequately addressed. If these standards are met, disturbed areas will quickly return to their natural state of vegetation and erosion will be controlled.

Comment: Flood hazard will be increased by encouraging borrow excavation from within the flood hazard area. The rules permit the deduction from the gross fill associated with encroaching development of any excavated earth which increases the flood handling capacity of the flood hazard area.

Response: The Department does not agree that there will be significant increased flood hazards resulting from excavation in the flood hazard area which are managed in compliance with these rules. Only in isolated incidents would borrow areas increase potential damage associated with flooding. Such cases will be controlled by the engineering judgment of the permitting authority.

Comment: Applicants for encroaching development should have to comply with all other State and local requirements.

Response: Existing laws and regulations must be complied with. Nothing in these rules affect such obligations.

Comment: Regarding the reference to "maximum flood of record" in N.J.A.C. 7:13-1.8(a)3, how will this be determined and how will disputes be resolved?

Response: It is the obligation of the applicant to identify 100-year flood plains and encroachment lines to the satisfaction of the Department. All sources of flood information, including history records, not only should but must be examined by the applicant. The Department will set flood plain and encroachment limits according to that information that reveals the greatest flood hazard.

Comment: Standard notice language should be required to be included in the published public notices.

Response: The rules do require that various specific information be included in the notices. However, the Department agrees that standardized language could be useful. Accordingly, such language will be included in the Flood Fringe Area Model Ordinance which will be prepared for local program implementation.

Comment: Will local agencies have the authority to issue over-the-counter permits under N.J.A.C. 7:13-2.4?

Response: The 90-day rules only apply to permit decisions of the Department. Accordingly, over-the-counter permits are only available from the Department. Clarification of this has been inserted in the rules.

Comment: The letter to the Department, required in N.J.A.C. 7:13-2.5(d), should contain a summary of public comments.

Response: N.J.A.C. 7:13-2.5 only applies to projects with minor flood hazard impact. Accordingly, the Department believes that the letter requirement is sufficient, as proposed.

Comment: Permit conditions should have to be met before the permit is approved.

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Response: Most permit conditions involve restrictions applicable during the period of on-site development activity. Since the law requires a permit prior to encroaching development, the permit with need conditions must issue prior to any on-site activity.

Comment: Those who assert that an encroaching development may be a Project of Special Concern (N.J.A.C. 7:13-5.2) should be required to document their claim and post a bond to pay for the costs of any resulting delay.

Response: The Department will require that evidence be submitted to support any claim that a project is one of special concern. Its adequacy will be judged by the Department in its decision-making. It is unacceptable to require that persons put themselves at any financial risk in the exercise of their appeal rights under these rules.

Comment: Several commentors recommended that the scope of categories of Projects of Special Concern be expanded to include more projects.

Response: The Department believes that the proposed descriptions are sufficient to include all projects which justify special review. Experience may justify the expansion of what should make a project one of special concern.

Comment: Local governments which perform stream cleaning work should have to comply with all of the rules.

Response: There is no exemption from the requirements of these rules for stream cleaning projects performed by local governments.

Comment: The term "vicinity" in the definition of "alteration" in N.J.A.C. 7:13-1.2 is not adequately clear.

Response: The operative phrase in the definition of "alteration" is "changes . . . which may affect its [the stream's] flood carrying capacity or environment". Thus, the term "vicinity" neither narrows nor expands the scope of the term "alteration".

Comment: There should be standards for determining "flood damage potential" under N.J.A.C. 7:13-3.1(b).

Response: Standards for what is meant by "flood damage potential" are not needed since any increased potential of flood damage will be considered.

Comment: Since tree removal effects the flood carrying capacity of streams, parks, swimming areas, etc. should be regulated, see N.J.A.C. 7:13-3.2.

Response: The effects on the flood carrying capacity of streams caused by adjacent tree removal are increases in flood carrying capacity. Therefore, recreation uses described in N.J.A.C. 7:13-3.2 are appropriately identified as non-regulated uses and tree removal, per se, will not change that.

TECHNICAL AND PROCEDURAL CHANGES

The Department has identified a few inconsistencies and ambiguities in the proposed rules which warrant the following changes:

A provision has been inserted at N.J.A.C. 7:13-14(c), which clarifies the applicability of the rules as they relate to pending permit applications. Those applications described in this rule will be reviewed under the rules which preceded the rules now adopted.

A provision has been added at N.J.A.C. 7:13-5.6(g)iii which provides for trout-stream related construction to be undertaken in the summer, where such construction is needed to avoid unacceptable risks or delays to children carried in school buses.

A provision has been added at N.J.A.C. 7:13-5.9 to provide for the consideration of bridge approaches with the permit application associated with the bridge. Without this change, the bridge would be permitted by the State and the approaches would be permitted by the municipality(s).

Since there is no statutory or regulatory basis for setting permit review time limits on local agencies, the rules at N.J.A.C. 7:13-4.3(d), (f) and (g) have been changed to remove such limits.

The provision at N.J.A.C. 7:13-3.14(a)2 has been changed to clarify that it is discretionary upon the Department whether or not to consider exceptions from the fish-passage requirements of this section.

The proposed rules used several different terms to describe persons who have the right to appeal from various permit decisions. Accordingly, the term "adversely effected" has been chosen to be used consistently throughout the rules.

Since the penalty provisions in N.J.A.C. 7:13-6.4 are identical to the provisions in the Flood Hazard Area Control Act, this section has been changed to only contain a notice of the existence of penalties and a cross-reference to the law. This will negate the necessity for rule amendment, should the Legislature change the law.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

SUBCHAPTER 1. GENERAL PROVISIONS

7:13-1.1 Purpose and scope

(a) The general purpose of this chapter is to control construction and other developmental activities in stream channels and in areas subject to flooding in order to avoid or mitigate detrimental effects of such activity.

(b) Areas naturally subject to inundation by flood waters are called flood plains; and for the purpose of this chapter flood plains are divided into two major classes, delineated and nondelineated.

1. The delineated flood plains, or delineated streams, are those for which the flood hazard areas have been officially specified ("delineated") by the State of New Jersey and each flood hazard area has been divided into a floodway and a flood fringe area. The procedure for delineating streams is established by N.J.S.A. 58:16A-52.

2. Other flood plains, and the streams that create them, are referred to as nondelineated.

3. The United States Federal Emergency Management Agency (FEMA) classifies flood plain areas in much the same manner as the State of New Jersey. The provisions of these regulations refer to, and are controlled by, delineations by the State.

(c) The purpose of this chapter is to minimize losses and damage to public and private property caused by land uses and channel modifications which, at times of flood, increase flood heights and/or velocities; 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

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stream water quality from point and nonpoint pollution sources, and to protect wildlife and fisheries by preserving and enhancing water quality and the environment of the stream channel and flood plain.

(d) Without proper controls, stream encroachments may adversely affect the flood carrying capacity of the stream, may create new facilities within areas subject to floods, may reduce natural flood storage that the flood plain provides, and may result in increased sedimentation or erosion or other environmental damage. Any stream encroachment must conform to certain criteria which, as outlined in this chapter, depend upon the characteristics of the area and the type of activity involved.

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.

"Act" means the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.

"Alteration" means changes in banks, bed and vicinity of a stream which may affect its flood carrying capacity or environment.

"Applicant" means the owner of the property on which the permit is applied for or his legal agent.

"Application" means the department application form.

"Bureau" means the program unit in the Department which has the responsibility for implementing the requirements of the Act.

"Cascades" means sections of streams with stream beds consisting primarily of bedrock, with little rubble, gravel, or other such material present. The current is usually more swift than in riffles.

"Central Passaic Basin" means the flood hazard area or 100-year 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: Extending from its confluence with the Whippany River upstream to the Exxon Research and Engineering Center in the Borough of Florham Park; and
10. Beaver Dam Brook: Including East and West Ditches from Pompton River to Jacksonville Road in Lincoln Park.

"Channel" means a watercourse with a definite bed and banks which confine and conduct continuously or intermittently flowing water.

"Channelization" means any artificial reconstruction of the stream channel such as by straightening, lining or deepening.

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Compliant ordinance" means a municipal ordinance adopted in compliance with the Act and this chapter.

"Dam" means any artificial dike, levee 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 more above its usual mean low water height, prior to the construction of the dam, during passage of the spillway design flood.

"Delegated agency" means a county agency to which the department has delegated its power to approve or disapprove certain classes of stream encroachment applications.

"Delineated floodway" means any floodway designated by the department under the provisions of the act.

"Department" means the State Department of Environmental Protection.

"Division" means the Division of Water Resources in the Department of Environmental Protection.

"Encroachment line" means a line encompassing the channel of a natural stream and portions of the 100-year floodplain adjoining the channel which are reasonably required to carry and discharge the flood water or flood flow of any natural stream. It is approximately equal to the floodway line along delineated streams. Methods for determining this line are set out in N.J.A.C. 7:13-1.8 and in the Manual.

"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 substances, other than vegetation, from the water, land surface or beneath the land surface, whether exposed or submerged. Normal agricultural activities shall not be considered to be excavation.

"Exceptional and undue hardship" means situations where strict compliance with this chapter would result in peculiar and substantial burdens upon the applicant or owner and where such compliance would not be necessary to avoid substantial detriment to the public health, safety and general welfare.

"Fact finding meeting" means a meeting held by the Department to solicit information on a pending application and provide an opportunity to exchange views.

"Fill" means sand, gravel, earth or any other material placed or deposited within the 100-year floodplain or flood hazard area.

"Fishway" means a device that allows for the passage of fish over a barrier that would ordinarily preclude migration.

"Flats" means sections of streams with current too slow to be classified as riffle and too shallow to be classified as a pool. The stream bottom usually consists of sand or finer materials.

"Flood carrying capacity" means the ability of a channel or floodplain 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 at a particular site to damage by potential floods at that site, as well as increased off-site flooding or flood related damages caused by such use.

"Flood fringe" means that portion of the flood hazard area not designated as the floodway.

"Flood hazard area" means the floodway and the flood fringe area of a delineated stream.

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"Flood hazard area design flood" means the 100-year storm in nondelineated areas and the 100-year storm plus 25 percent in delineated areas.

"Flood hazard design elevation" means the elevation of the Flood Hazard area design flood.

"Flood plain" means the relatively flat area adjoining the channel of a natural stream which has been or may be hereafter covered by flood water.

"Floodproofing" 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, water and sanitary facilities, structures and their contents.

"Floodway" means the channel of a natural stream and portions of the flood hazard area adjoining the channel which are reasonably required to carry and discharge the flood water or flood flow of any natural stream.

"Hazardous materials" means any waste or combination of waste which poses a present or potential threat to human health, living organisms or the environment.

1. It shall include waste material that is toxic, carcinogenic, genetically harmful, corrosive, irritating or sensitizing, radioactive, biologically infectious, explosive, or flammable.

2. It includes, but need not be limited to, those materials and concentrations of materials that are determined to be toxic by the Federal Secretary of Health and Human Services pursuant to section 20(6) of the Occupational Safety and Health Act of 1970 (Public Law 91-596, OSHA) and those materials listed in the current Part 172, Title 49 of the Code of Federal Regulations issued by the Federal Department of Transportation.

"Local agency" means a municipality, county government body or county water resource association which is authorized to review applications pursuant to this chapter.

"Low dam" means a dam which will not raise the water level of a stream or river by more than five feet above its usual mean low water height.

"Low water" means the water level characteristic of a stream during low flow conditions.

"Major project" means that class of project defined as major in the 90 day rules.

"Manual" means the Technical Manual on Stream Encroachment published by the Department in draft form in December, 1981 and any subsequent amendments thereto.

"Minor project" means that class of project defined as minor in the 90 day rules.

"MLUL" means the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

"Net fill" means additional earth or other fill beyond the total quantity already present above the low water level of the stream or ground water level (whichever is higher) in that portion of the project site which is in the flood hazard area or 100-year flood plain.

"Ninety day rules" means N.J.A.C. 7:1C (90 Day Construction Permits).

"Nonregulated use" means any use set forth in N.J.A.C. 7:13-3.2 and 4.5.

"Non-trout waters" means the non-trout waters identified in the Department's Surface Water Quality Standards (N.J.A.C. 7:9-4.1 et seq.).

"Obstruction" means, but is not limited to, any structure, excavation, fill or other materials placed in, along, across, or projecting into any channel, watercourse or floodway which may impede, retard, or change the direction of the flow of water either in 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 to the damage of life or property.

"One hundred year floodplain" means the area inundated by a 100-year flood. A 100-year flood is estimated to have a one percent chance, or one chance in 100, of being equalled or exceeded in any one year.

"Perenial stream" means any stream mapped as perennial on either the 7½' topograhic maps published by the U.S. Geological Survey (latest revision) 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.

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

"Pools" means sections of stream that are deeper than immediately upstream or downstream sections and that have appreciably slower current. The stream bottom is usually a mixture of silt and coarse sand; the water depth exceeds two feet.

"Prohibited use" means a use which shall not be allowed under any circumstances.

"Projects of Special Concern" means stream encroachment projects which, because of their potentially serious adverse effects, will be subject to the special conditions described in N.J.A.C. 7:13-5.

"Regulated use" means any use which is subject to the provisions of the sections of this chapter dealing with regulated uses.

"Riffles" means sections of stream 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.

"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 solid materials.

"State Soil Conservation Committee" means the agency created by article 3 of N.J.S.A. 4:24-1 et seq.

"Stream encroachment" means any structure, alteration, filling, construction or other activity within the area which would be inundated by the 100-year flood of any nondelineated stream or within the flood hazard area of a delineated stream.

"Stream Encroachment Permit" means a permit issued by the Department, delegated agency or municipality under the provisions of N.J.S.A. 58:16A-50 et seq.

"Structure" means any assembly of materials above or below the surface of land or water including, but not limited to, buildings, fences, except as provided in this chapter, dams, fills, levees, bulkheads, dikes, jetties, embankments, causeways, culverts, roads, railroads, bridges and the facilities of any utility or governmental agency. Trees or other vegetation shall not be considered to be structures.

"Trout-associated streams" means streams 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); or

4. Non-trout waters less than one mile upstream from trout maintenance waters that are not upstream from trout production waters.

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"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 the Fish Code adopted by the New Jersey Fish and Game Council.

7:13-1.3 Construction

(a) This chapter shall be liberally construed to permit the Department to discharge its statutory functions.

(b) The Commissioner may amend, repeal or rescind this chapter from time to time in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

7:13-1.4 Applicability

(a) This chapter shall apply to all stream encroachments within the flood hazard area and 100-year floodplains 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 N.J.A.C. 7:13-5.

(b) This chapter will also apply to all perennial trout-associated streams.

***(c) These rules will be effective upon promulgation, except that the following projects will be processed in accordance with prior existing procedures and standards:**

1. Applications completed by January 15, 1984 and not approved upon date of promulgation.

2. Applications submitted prior to January 15, 1984 but either denied or not accepted for processing on the basis of the wetlands issue, provided that they are resubmitted and determined completed by May 1, 1984.*

(d) Activities otherwise encompassed by this chapter, that are located along tidal water bodies and segments of tidal water bodies on the following list, as identified on the 7½' U.S. Geological Survey topographic maps, shall not be required to obtain a permit under this chapter, provided that the Division of Coastal Resources has issued a permit for the activity:

1. Atlantic Ocean.
2. All water bodies named on the U.S. Geological Survey 7½' 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.
4. All sections of the "Intracoastal Waterway".
5. All streams south of Great Egg Harbor Bay and east of the Garden State Parkway to its end at the Cape May Canal except for Crooked Creek upstream from Stone Harbor Boulevard and Homes Creek.
6. Absecon Creek (Atlantic Co.): Absecon Bay to Absecon Blvd.
7. Alloway Creek (Salem Co.): Delaware River to Mill St.
8. Arthur Kill (Middlesex Co./Union Co.)
9. Ayers Creek (Cumberland Co.)
10. Back Creek (Cumberland Co.)
11. Bass River (Burlington Co.): Mullica River to Route 9.
12. Beach Creek (Cumberland Co.)
13. Beaverdam Creek (Ocean Co.): Barnegat Bay to Jordan Blvd.
14. Beaverdam Creek (N. Br.): Barnegat Bay to Route 88 (Ocean Co.).
15. Bidwell Creek (Cape May Co.): Delaware Bay to Route 47.
16. Big Creek (Ocean Co.)
17. Black Ditch (Salem Co.)
18. Cabin Creek (Cumberland Co.)
19. Cape Island Creek (Cape May Co.): Cape May Harbor to the Conrail Bridge.
20. Cedar Creek (Cumberland Co.) Delaware Bay to Main St. and Mulford Ave.
21. Cedar Creek (Ocean Co.): Barnegat Bay to Route 9.
22. Cedar Run (Ocean Co.): Little Egg Harbor to first bridge downstream from Route 9.
23. Cheesequake Creek (Middlesex Co.): Raritan Bay to 11,000 feet upstream of Garden State Parkway.
24. Cherry Tree Creek (Salem Co.)
25. Clam Creek (Atlantic Co.)
26. Cohansey River (Cumberland Co.): Delaware Bay to confluence with Rocaps Run.
27. Delaware River (Salem Co.): Delaware Bay to Delaware Memorial Bridge.
28. Dennis Creek (Cape May Co.): Delaware Bay to Route 47.
29. Dias Creek (Cape May Co.): Delaware Bay to Route 47.
30. Dinner Point Creek (Ocean Co.)
31. Dividing Creek and Tributaries (Cumberland Co.): Delaware Bay to Route 553.
32. Division Creek (Cumberland Co.)
33. Drumbo Creek (Cumberland Co.)
34. Dyer Creek (Cumberland Co.)
35. East Creek (Cape May Co.): Delaware Bay to Route 47.
36. Fishing Creek (Cape May Co.): Delaware Bay to Bay Shore Road.
37. Fishing Creek (Cumberland Co., Downe Twp.)
38. Fishing Creek (Cumberland Co., Greenwich Twp.)
39. Fishing Creek and tributaries (Salem Co.)
40. Flat Creek (Middlesex County)
41. Forked River, Middle and North (Ocean Co.): Barnegat Bay to Route 9 Branches.
42. Fortescue Creek (Cumberland Co.)
43. Goose Creek (Ocean Co.): Barnegat Bay to Fisher Blvd.
44. Great Egg Harbor River: Great Egg Harbor Bay to Atlantic County Route 50.
45. Green Creek (Cape May Co.): Delaware Bay to Route 47.
46. Hope Creek (Salem Co.)
47. Hudson River (Bergen Co./Hudson Co.)
48. Jacobs Creek (Cumberland Co.)
49. Kettle Creek (Ocean Co.): Barnegat Bay to Hooper Avenue.
50. Kill Van Kull (Hudson Co.)
51. Lone Tree Creek (Cumberland Co.)
52. Lower Deep Creek (Salem Co.)
53. Mad Horse Creek and tributaries (Salem Co.)
54. Manasquan River (Monmouth Co./Ocean Co.): Atlantic Ocean to Route 70.
55. Maurice River (Cumberland Co.): Delaware Bay to Route 548.
56. Melvins Creek (Middlesex Co.)
57. Metedeconk River (Ocean Co.): Barnegat Bay to Route 70.

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58. Middle Marsh Creek (Cumberland Co.)
59. Middle River (Atlantic Co.)
60. Mill Creek (Salem Co., Elsinboro Two.)
61. Mill Creek (Salem Co., Pennsville Twp.): Delaware River to Lighthouse Road.
62. Mott Creek (Atlantic Co.)
63. Mullica River (Atlantic Co./Burlington Co. Ocean Co.): Great Bay to Lower Road.
64. Nacote Creek (Atlantic Co.): Mullica River to Old New York Blvd.
65. Nantuxent Creek (Cumberland Co.)
66. Navesink River (Monmouth Co.): Shrewsbury River to Coopers Bridge.
67. Oranoaken Creek (Cumberland Co.)
68. Oyster Creek (Ocean Co.) Barnegat Bay to Route 9.
69. Padgetts Creek (Cumberland Co.)
70. Riggins Ditch (Cumberland Co.): Delaware Bay to Route 47.
71. Salem River (Salem Co.): Delaware River to confluence with Salem Canal.
72. Shark River (Monmouth Co.): Atlantic Ocean to confluence with Laurel Gully Brook.
73. Shore Ditch (Salem Co.)
74. Shrewsbury River (Monmouth Co.): Sandy Hook Bay to Seven Bridge Road.
75. Sluice Creek (Cape May Co.): Delaware Bay to Route 47.
76. South River (Atlantic Co.): Great Egg Harbor River to Route 50.
77. Sow and Pigs Creek (Cumberland Co.)
78. Stow Creek (Cumberland Co./Cape May Co.): Delaware Bay to Canton Road.
79. Straight Creek (Cumberland Co.)
80. Straight Ditch (Salem Co.)
81. Stump Creek (Middlesex Co.)
82. Toms River (Ocean Co.): Barnegat Bay to Route 9.
83. Tuckahoe River (Atlantic Co./Cape May Co.): Great Egg Harbor Bay to Route 557.
84. Tuckerton Creek (Ocean Co.): Little Egg Harbor to Route 9.
85. West Creek (Cape May Co.): Delaware Bay to Route 47 Cumberland Co.
86. Westecunk Creek (Ocean Co.): Little Egg Harbor to Route 9.
87. Whale Brook (Middlesex Co./Monmouth Co.): Raritan Bay to Route 35.

(e) This chapter shall not apply to activities along the Delaware and Raritan Canal except insofar as such activities affect streams that flow into, over, under, or parallel to the canal.

(f) Activities otherwise regulated by this chapter that are located along tidal water bodies and segments of tidal water bodies, shall be exempt from requirements of N.J.A.C. 7:13-4.7(d), provided that the computed flood hazard area elevation at that point is not higher than the level of the 100 year tidal surge at the mouth of the water body.

7:13-1.5 Program information

Information and forms relating to the stream encroachment permitting process may be obtained from:

Bureau of Flood Plain Management
Department of Environmental Protection
Division of Water Resources
CN 029
Trenton, NJ 08625
(609) 292-2402

7:13-1.6 Other State statutes, rules and regulations

The powers, duties, and functions vested in the Department under the provisions of the Act or these regulations shall not be construed to limit in any manner the powers, duties, and functions vested therein under any other provisions of law except as specifically set forth in this chapter.

7:13-1.7 Severability

If any section, subsection, provision, clause or portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

7:13-1.8 Establishment of 100-year flood plain zones and encroachment lines

(a) On non-delineated streams, the boundaries of 100-year flood plains and encroachment lines may be established accurately by technical engineering methods described in the Manual. If such computations have not been made, the limits of the 100-year flood plain may be established by comparison, where available, with the following:

1. Maps adopted pursuant to the National Flood Insurance Program:
2. United States Army Corps of Engineers lines of area inundated by 100-year flood; and
3. Actual area inundated by maximum flood of record.

(b) On non-delineated streams, in the case of minor or stream cleaning projects, if none of the methods in (a) above are used, the encroachment line may be taken as a smoothed line not extending closer to the bank of the stream than a distance twice the distance between banks.

(c) For major projects or Projects of Special Concern, an analysis and determination of the 100-year flood plan, as described in the Manual, will be necessary to be submitted by the applicant.

SUBCHAPTER 2. GENERAL PROCEDURES FOR THE STREAM ENCROACHMENT PERMITTING PROCESS

7:13-2.1 Required information for all applications submitted to the Department.

(a) The application form must be completed by the applicant or his agent including all signatures and seals. Notarization is not necessary.

(b) The engineering data sheet must be completed and all required information required by the engineering data sheet for the type of project must be supplied.

(c) The fee as required by the 90-day rules.

(d) Certification of notification required by N.J.A.C. 7:13-2.2, for major projects and projects of special concern must be included with the application.

(e) Five sets of plans prepared in accordance with the requirements outlined on the Engineering Data Sheet.

(f) Hydrologic and hydraulic computations (for major projects only) must be supplied as outlined in the Engineering Data Sheet.

(g) Except for applications by government agencies, easements or other property rights must be obtained before the Department will approve an application where any work is outside of the applicant's property or physically affects other properties.

7:13-2.2 Notice

(a) The applicant shall provide proof of notice with an application for a stream encroachment constituting a major

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project or Project of Special Concern, with a request for a hardship exemption or with an appeal from the decision of the Department. The notice shall include a description of the nature and location of the proposed project *[and]**,* data on the application ***and a request for written comment***. It shall be sent to the following:

1. Municipal Planning Board, Engineer, Environmental Commission, and Clerks Office where the project is located. Also the municipality, if any, across the stream and the municipality next downstream on both sides of the waterway, if within one mile of the project must be notified;

2. All abutting property owners;

3. County Planning Board *, **engineer and Mosquito Control Commission***;

4. The Soil Conservation District; and

5. Any other agencies or bodies as requested by the Department or the county.

(b) Notice sent pursuant to the 90-day rules or the MLUL to the above listed parties will satisfy the requirement of this section.

(c) For Projects of Special Concern, an advertisement is required as indicated in N.J.A.C. 7:13-5.3(b).

7:13-2.3 Pre-application conference

(a) A pre-application conference is suggested and may be requested by the applicant, his agent or his engineer to meet with one of the representatives of the Bureau to discuss the requirements for preparation of a specific application.

1. Minutes of the conferences will be kept by the Bureau.

2. When the application is submitted, it shall make reference to the date and parties present at any such conference.

(b) A pre-application conference may also be used to deliver an application to the Bureau to be checked for completeness and accepted for review.

(c) A pre-application conference will be scheduled by appointment only.

7:13-2.4 Over-the-counter permit processing

A one *-* day processing service *[may]* ***will*** be provided ***by the Department*** for certain minor stream encroachment applications *[as provided for in]* *, **to the extent required by*** the 90-day rules ***, N.J.A.C. 7:1C-1.***

7:13-2.5 Optional review for projects in small drainage areas

(a) When a project site is at a point along a stream or waterway with a small contributory drainage area, as defined in (b) below, approval from the municipal or county engineer, or any *[appropriate]* professional engineer *[for]* ***employed or retained by*** a State agency project, may be obtained as an alternative to submitting a stream encroachment application to the Department, provided that approval authority is not specifically reserved to the Department by this chapter and that the review is approved by the Department.

(b) The drainage area for a major project must be less than 150 acres and the drainage area for a minor project must be less than 320 acres to qualify for this approval process. Projects in flood plains will be construed to be within the drainage area which causes the flood plain.

(c) After municipal or county review a letter must be submitted to the *[Bureau]* ***Department*** by the approving authority specifically addressing the following points:

1. The project must conform to the criteria of this chapter;

2. The drawings being approved must be listed by title block, page, original date and any revision date; and

3. The drainage area to the downstream-most point must be noted.

(d) The letter must state that the review is subject to Department approval. A copy must be sent to the Department and must be accompanied by two sets of plans prepared by the applicant or his designee *[so that the Department may approve such review]*.

7:13-2.6 Optional Soil Conservation District Review

Certain farming practices which would otherwise constitute stream encroachments may be reviewed by the local Soil Conservation District in conformance with the agreement entered into between the *[DEP]* ***Department*** and State Soil Conservation Committee in September 1978 entitled "Stream Encroachment Permit Procedures for Soil Conservation District Projects" and any subsequent amendments thereto. The Soil Conservation District approval letter recommending approval and engineering plans are to be forwarded to the Department.

7:13-2.7 Emergency permit waiver

(a) Situations which threaten the public health, safety and welfare and require emergency work will be considered by the Department under the following procedure:

1. Inform the Bureau by telephone as to the extent of work to be performed, the reason for the emergency and the location of the project.

2. Perform the emergency work upon verbal approval of the Bureau Chief, which approval shall be verified by the Department in writing within three working days. The Bureau Chief or one of the staff engineers shall offer guidance and instructions in performing the work.

3. After the work has been completed in accordance with the Department's instructions, a stream encroachment application with appropriate fees and "as built" drawings shall be submitted to the *[Bureau]* ***Department*** for review. A letter shall then be issued by the *[Bureau]* ***Department*** in lieu of a stream encroachment permit.

4. Notice of emergency work performed shall be given to those listed at N.J.A.C. 7:13-2.1(a).

7:13-2.8 Permit application review procedures by the Department

(a) A maximum of 20 working days from the receipt of the application will be allowed for preliminary review of the application for completeness. During this period the Department will either accept the application for review, which will begin the 90-day review period, or reject the application for incompleteness and inform the applicant in writing of the information necessary to complete his application.

(b) The 90-day review period begins on the day a project number is assigned and the application is accepted for review. At this time an acknowledgment letter is sent to the applicant. During the 90-day review period, the *[Bureau]* ***Department*** may:

1. Request additional information from the applicant.

2. Schedule a fact-finding meeting for Projects of Special Concern or other projects.

3. Approve the application.

i. The applicant will receive a permit which will specify how long it will be effective. This will generally be for a period of two years from the effective date of the permit. However, the Department reserves the right to issue the permit for any period of time.

4. Conditionally approve the application.

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i. All conditions specified in the conditional permit must be complied with or the permit may be *[recinded]* ***revoked***.

5. Deny the application.

i. Denial with prejudice is a disapproval of the project.

ii. Denial without prejudice is a disapproval of the application. However, a subsequent revised application by the same applicant for the same project on the same site may be submitted within one year of the date of disapproval without additional fees.

6. Grant a 30-day extension of time to the 90-day review period, if agreed to by both parties, provided that the applicant or the *[Bureau]* ***Department*** request***s*** from the other such an extension at least 15 days prior to the expiration date for the approval or disapproval of such an application.

(c) In the event of a denial of a stream encroachment application where no hardship was initially claimed the applicant may submit a petition for reconsideration of that decision on the basis of a hardship without the payment of an additional fee. The Department shall have 90 days to review the petition.

7:13-2.9 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; or

2. Cases in which the Department determines that *[there is an unreasonably disproportionate relationship between the benefits to be achieved by impairing strict compliance and the added costs of the requirements]* ***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, provide equal or better protection to the public health, safety and welfare.

(b) No such waiver shall be granted without advance public notice and, where *[demanded or necessary]* ***requested or needed*** , a fact-finding meeting. These requirements may be waived in emergency situations, as determined by the Department.

(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. 7:13-2.11 and N.J.A.C. 7:13-4.4.***

(d) In order for the Department to consider a hardship waiver the applicant must demonstrate the following:

1. That by reason of the extraordinary or exceptional situation or condition of the property, the strict enforcement of this subchapter 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 public health, safety, and general welfare;

3. That the hardship is unique or peculiar to the applicant; and

4. That the exceptional or undue hardship claimed as grounds for the waiver has not been created by the applicant.

(e) The applicant shall submit to the Department 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 implementation of which shall be a condition of the waiver;

2. Proof that appropriate steps shall be taken to anchor materials in order to prevent flotation, collapse, or lateral movement;

3. The relationship of the proposed project to the comprehensive land use plan and flood plain program for the area;

4. Proposed routes to and from the property during flood times;

5. The projected height, velocity and duration of the flood waters expected at the site during the Design Flood;

6. The type of soil located at the proposed site;

7. A statement concerning the land use and value absent the granting of the hardship waiver;

8. Information regarding the existing development of the area and the impact of the additional work;

9. Evidence that the project will not distort the stream's flood carrying capacity so as to cause substantial problems along the stream; and

10. An analysis of the extent to which the sediment regimen and water quality of the stream will be affected by the proposed exemption *[with consideration of possible effects upon the environment]*.

11. A description of the potential effects of the project upon the environment.

(f) The applicant shall also submit proof of required public notice for consideration of a hardship waiver as required by N.J.A.C. 7:13-2.2

(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.

2. Before making a decision, the department may request that additional information and/or documentation be supplied. When additional information is not provided by the applicant as requested, the waiver will be denied.

(h) If the material submitted to the Department by the applicant in support of the petition for a hardship waiver does not satisfactorily demonstrate that a hardship waiver is warranted, the Department shall so notify the applicant by letter advising the applicant that the petition for a hardship waiver has been denied by the Department and shall also state the reasons for this denial.

(i) The denial of a waiver shall be treated as the denial of an application without prejudice.

(j) A hardship waiver granted pursuant to this section does not relieve the applicant from obtaining any other approvals, certifications or permits required by Law.

7:13-2.10 Post-review procedures by the Department

(a) Extension of time for permit: Permits may be extended beyond the two year period for a maximum of five years, granted in one year increments.

1. Requests shall be made in writing to the Department before the permit has expired and shall include the permit number and fee as specified in the 90-day rules.

2. The applicant will then be informed in writing of the new time limit of the permit.

(b) Modification in detail: Approved plans may be modified in detail at the request of the applicant. Five sets of plans accompanied by a letter requesting the modification and a fee as specified in the 90 day rules are required for this procedure.

1. Only items already approved on the original permit can qualify for this procedure.

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2. *[Any]* ***New structures, major channel modification or major changes in the hydraulic capacity of a structure** *[cannot be allowed and a new application for a permit must be submitted for this work]* ***are not allowed without first obtaining a new permit***.

7:13-2.11 Appeal procedure to the Department

(a) The applicant or any person alleging to be adversely affected by the Department's decision shall have a right to apply for a hearing thereon pursuant to N.J.A.C. 1:1 (Uniform Administrative Procedure).

(b) Such a hearing request shall be accompanied by proof of publication or pending publication of the request for the appeal in a newspaper of local circulation.

(c) For 30 days following receipt of the request for a hearing the Department may attempt to settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate or deny the appeal if it is found to be without merit. The 30 days may be extended upon agreement of all parties.

(d) No project may commence, pending completion of all appeal processes, unless expressly approved by the Department.

7:13-2.12 Permit application review by delegated agencies

When authority to approve certain types of stream encroachments is delegated by the Department to another agency under provisions of this chapter and the Act, the standards and criteria of this chapter shall remain applicable. However, procedures for submission of information may be simplified to the extent permitted by the greater availability of information and greater ease of verification of questioned points by delegated agencies.

SUBCHAPTER 3. GENERAL STANDARDS FOR PERMITTING STREAM ENCROACHMENT WITHIN THE FLOODWAYS OF DELINEATED STREAMS AND WITHIN ENCROACHMENT LINES OF NONDELINEATED STREAMS

7:13-3.1 Prohibited uses

(a) No person shall engage in or cause other persons to engage in any of the following prohibited uses within the delineated floodways and within the encroachment lines of non-delineated streams of the State.

1. Placing, depositing or dumping any solid or hazardous waste;

2. The erection of structures for occupancy at any time by humans or livestock, and the erection of kennels for the boarding of domestic pets;

3. The discharge (except as authorized under other provisions of law), processing, storage or disposal of pesticides, domestic or industrial wastes, radioactive materials, petroleum products or other hazardous materials;

4. The storage of materials or equipment;

5. The construction of septic systems;

6. The addition of net fill.

(b) Exceptions to (a) above are as follows:

1. Lawful pre-existing prohibited uses may be maintained provided that if they are expanded or enlarged that they do not increase the flood damage potential.

2. Lawful pre-existing prohibited structures damaged by any means other than flooding may be restored provided that:

i. Any expansion or enlargement will not decrease the flood carrying capacity of the stream; and

ii. Efforts are made to provide floodproofing or other similar techniques to minimize future flood damage.

3. Lawful pre-existing prohibited structures damaged by flooding may be restored provided that:

i. Any expansion or enlargement will not decrease the flood carrying capacity of the stream;

ii. The owner submits an application together with drawings of the proposed reconstruction and the application is approved by the Division; and

iii. Plans for the proposed reconstruction include provisions for floodproofing or other similar techniques designed to minimize future flood damage to the structure from the occurrence of the flood hazard area design flood.

4. Lawful pre-existing sanitary landfills may be expanded vertically provided that:

i. No horizontal expansion is made;

ii. The side slopes of the landfill shall not be steeper than a ratio of two horizontal to one vertical;

iii. Adequate soil erosion and sediment control measures are taken ***, as provided in N.J.A.C. 7:13-3.4 below***;

iv. The flood damage potential is not increased; and

v. The other applicable provisions of law are complied with.

5. Bridges shall be handled on a case-by-case basis.

7:13-3.2 Non-regulated uses

(a) For purposes of this section, non-regulated uses are uses which:

1. Do not require fill borrowed from outside the floodway or encroachment lines;

2. Do not require erection of structures;

3. Do not require channel modification or relocation;

4. Do not obstruct flood flows:

5. Do not affect the flood carrying capacity of any stream;

6. Are undertaken with full on-site flood damage risks accepted by the owner;

7. Do not increase offsite flood damage potential; and

8. Do not constitute a Project of Special Concern.

(b) Non-regulated uses which satisfy the conditions of (a) above shall include, but not be limited to:

1. Lawns, gardens and play areas;

2. Private and public recreation uses: Playing fields, picnic grounds, swimming areas, parks, wildlife and nature preserves, game farms, hunting and fishing areas, shooting preserves, bike paths, and hiking and horseback riding trails.

3. Agriculture uses: General cultivation, pasture, grazing, outdoor plan nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting.

i. Additionally, 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 nonregulated uses, but only when designed and constructed nonregulated uses, but only when designed and constructed under the immediate supervision of the appropriate County Soil Conservation District Office and the local U.S.D.A. Soil Conservation Service.

ii. Single strand fences associated with these agricultural uses are nonregulated.

(c) Irrigation head gates along stream banks are non-regulated uses when approved by a certification issued by a County Agricultural Agent, pursuant to N.J.A.C. 7:20A-1.

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7:13-3.3 Regulated uses

Any activity not specifically prohibited or non-regulated by N.J.A.C. 7:13-3.1 or 3.2 or the Act, shall be a regulated use and be subject to the applicable provisions of this chapter.

7:13-3.4 Soil erosion and sediment control

(a) Soil erosion and sediment control measures are required on all submissions under the jurisdiction of the Act if such submissions:

1. Require modification of the stream channel or stream bank(s);

2. Require disturbance of more than 1,000 square feet of the surface area of land within 50 feet of the stream bank of trout associated streams and 25 feet of the stream bank for all other streams.

3. Require disturbance of more than 5,000 square feet of the surface area of land.

(b) 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. 2:90-1.3 et seq., shall be used in the preparation and submission of Stream Encroachment Applications.

(c) The following additional soil erosion and sediment control requirements shall also be met:

1. The area of soil disturbance shall be no larger than that which is necessary for the conduct of the project.

2. Soil disturbance schedules shall be formulated to provide minimum practicable exposure of soils to erosion.

3. If erosion and sediment control measures such as diversions, sediment basins, or sediment barriers, whose purpose 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 installed prior to any major soil disturbance or in their proper sequence 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 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 sprayed for mulch anchoring in such areas.

ii. Calcium chloride or spray-on adhesives shall not be applied for dust control in such areas.

5. In areas where vegetative methods (including "mulch only") are relied on for erosion and sediment control (without down slope controls to intercept sediment such as sediment basins or sediment barriers), seeding, mulching, or placement of sod shall be performed within 48 hours of soil exposure in accordance with the "Standards for Soil Erosion and Sediment Control". Seeding shall, in such areas, always be accompanied by mulching.

i. If weather conditions are unfavorable for seeding, sod placement, or the subsequent establishment of such 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. Slopes exceeding 15 percent (in areas without downslope sediment controls) shall be protected within 48 hours of soil exposure by special treatment such as water such as water diversion berms, sodding, or approved mulch netting, in accordance with the "Standards for Soil Erosion and Sediment Control".

6. Pumping of sediment-laden water from the dewatering of trenches or other excavations directly into waterways is prohibited.

i. Wherever possible, pumpage shall be piped to sediment basins of sediment barriers that meet the "Standards for Soil Erosion and Sediment Control", or mechanical filtration or sedimentation devices shall be used to minimize the discharge into waterways of sediment in pumpage.

ii. Pump intakes shall be placed near the water surface to minimize the sediment content of pumpage.

iii. Special approval may be granted for the pumpage to be spread onto land as far from the stream bank as possible, providing that care is taken to avoid damaging trees not scheduled for removal.

(d) When a certification is given by a SCD or exempt municipality that a plan meets both the "Standards for Soil Erosion and Sediment Control in New Jersey" and the additional requirements contained in this section, said certification shall be accepted by the Department or delegated agency as satisfying the requirements of this section.

7:13-3.5 Protection of near-stream vegetation

(a) Trees, shrubs, grasses, and other vegetation within 25 feet of the stream bank ***or 25 feet from the edge of the low water flow, where the bank is unascertainable,*** shall not be disturbed except where necessary for the conduct of the project. Where possible trees shall be left standing. Brush and stumps shall not be removed except for the purpose of landscaping. Construction shall be performed from one stream bank where possible, leaving vegetation on the opposite bank. Where there is a practical choice, access roads to work sites shall not be constructed along shoreline routes.

(b) Vegetative waste from construction shall not be disposed of in the floodway or within the encroachment lines. This prohibition shall not apply to vegetative mulches applied for soil erosion and sediment control. However, waste mulch *[which is no longer serving]* ***not serving*** to control erosion or sediment shall not be disposed of in channels or on waterway banks.

7:13-3.6 Stream cleaning

(a) Stream cleaning permits may be issued for projects which involve the removal of no more than two feet in depth of material as specified in (c)3iii below and such removal is restricted to the channel bed alone. These projects involve de-snagging, silt or sediment removal or removal of only logs, leaves and debris, and removal shall not extend below the natural stream bed.

(b) Governmental agencies may obtain yearly permits by submitting a stream encroachment application for all the streams where stream cleaning is planned within the upcoming year. If additional streams require maintenance or de-snagging within the year, a modification in detail to the original permit is necessary and the necessary information must be submitted to the Department.

(c) The required information for stream cleaning applications is the same as that outlined in N.J.A.C. 7:13-2.1. In addition, the following information is required:

1. A narrative which includes the following:

i. Description of project area;

ii. Need for project;

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iii. Methods of excavation; and

iv. Methods of spoil disposal and soil erosion and sediment control.

2. Color photographs of the stream(s)

3. Plan drawing showing the limits of work for each affected reach of stream and a typical cross-section sheet showing the extent of proposed work.

i. When a Mosquito Commission is the applicant, drawings may be signed by a Mosquito Commission superintendent.

ii. A United States Geological Survey 7½ feet topographic map may be submitted for the plan drawing, however, the requirements for the drawing shall still be adhered to.

iii. The following provisions must be noted on the drawings:

"The maximum amount of material to be removed from the stream bed or ditch shall not exceed two feet in depth and shall be restricted to the channel bed alone. Removal shall not extend below the natural stream bed."

"Stream cleaning within two hundred (200) feet of any government structure in the channel shall be under the direct supervision of the appropriate government engineer or his agent. Care shall be exercised to avoid any structural damage within such limits."

"No heavy equipment shall be operated within the channel section. Removal of materials from the watercourse shall be performed by one of the following:

1) dragline
2) backhoe
3) clamshell
4) hydraulic dredge
5) hand labor"

iv. Deviation from these methods will be considered by the Department in special cases.

(d) Spoil disposal methods and soil erosion and sediment control techniques shall comply with the provisions of this chapter.

(e) Municipalities which administer a stream encroachment program in flood fringe areas under provisions of N.J.A.C. 7:13-4 may also, at their option, review and recommend approval for stream cleaning permits within their boundaries.

7:13-3.7 Excavation

(a) All projects involving permanent excavation within the 100-year floodplain or flood hazard area shall not have cut faces at slopes steeper than a ratio of two horizontal to one vertical.

(b) Excavation projects shall not be so deep as to affect any wells in the surrounding areas or to cause any groundwater pollution.

(c) The Department may require information, and set conditions, concerning the character, excavation methods and disposal sites of any excavated materials.

7:13-3.8 Disposal of spoils

(a) Disposal ***of spoils*** *[shall be]* ***is*** prohibited within the floodway or encroachment lines of any stream *[,any wetlands]* or within any surface waters to which this chapter applies, except in stream cleaning projects, or disposals specifically authorized by individual permit pursuant to the Federal Clean Water Act (33 U.S.C. 466 et seq.)

(b) Where *[materials removed by]* stream cleaning ***spoils*** cannot be feasibly removed from the site, a description of the method of disposal shall be indicated on the plan.

1. *[A minimum 15-foot buffer zone from the top of banks shall be established wherein no spoilage shall be placed.]* ***No spoils shall be placed within 15 feet of the top of bank or 15 feet from the edge of the low water flow where the top of bank is unascertainable.*** The *[buffer zone]* ***15 foot area*** shall remain as natural as possible with *[only]* selective tree removal *[being]* permitted ***only where needed***. Brush and trees less than 4 inches in diameter***, measured 6 inches from the ground*** may be selectively cleared to provide access *[through the buffer zone]* ***to the stream***.

2. The material being disposed of must be spread evenly.

(c) Any disposal in the flood hazard area or within the 100-year floodplain *[should]* ***may*** not inhibit the drainage of the area. Such spoil material must be stabilized within 48 hours according to the "Standards for Soil Erosion and Sediment Control". Details of the methods of stabilization shall be included on the plan.

7:13-3.9 Retention and detention basins

(a) No off-stream detention or retention basin is to be located in the floodway or within the encroachment lines.

(b) ***Persons seeking to develop *[Any]* *any*** on- *[channel]* ***stream*** retention and detention basins for storm water management within the floodway or within encroachment lines *[shall be submitted to]* ***must obtain a Stream Encroachment Permit from*** the Department *[for a permit]* and ***must*** *[be]* ***construct*** *[ed]* ***such basins*** in accordance with criteria of the State Storm Water Management Regulations (N.J.A.C. 7:8).

(c) If the municipal ordinances are not in full compliance with said storm water regulations, the plans for the basin shall be submitted to the Department for approval as part of the stream encroachment application. If such a local ordinance does exist, a copy of the approved by the local municipality or county shall be submitted.

7:13-3.10 Channel modification

(a) Channelization of existing streams and stream relocation are discouraged except when necessary to control existing flooding problems or where carefully planned to restore or improve environmental values. Any channelization or relocation project which involves more than 100 feet of stream is a Project of Special Concern unless it is associated with the construction or maintenance of a bridge or culvert, in which case the limit is 300 feet on either side of the structure.

(b) If any change in stream bed grade or cross section is made, the channel shall be stabilized where the change takes place in a manner so that no erosion will occur at either high or low flows. In addition, care must be taken to ensure that if a change in slope causes a hydraulic jump to occur just downstream of the constructed area, proper channel protection is provided.

7:13-3.11 Underground utility crossings

(a) Underground utility crossings 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) Basic criteria for underground utility crossings:

1. Vertical clearance: In general, the top of pipe or encasement shall be at least three feet below the stream bed. In special circumstances, such as hard rock bottoms, this may be varied with the approval of the department.

2. Encasement: Sanitary sewer, petroleum product and gas lines shall be encased in six inches of concrete or a larger steel pipe for protection. The encasement requirement may be

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waived if a minimum of four feet of cover is maintained for as long as the crossing is in use.

3. Horizontal clearance: The crossing should be horizontal under the stream, and the pipe or encasement should extend a minimum of 10 feet beyond the top of banks. This may also be varied in special circumstances by the department.

4. Slopes: The inclined leg of the crossing should not be steeper than a ratio of one vertical to two horizontal unless a special justification is shown.

5. Manholes: If manholes are to be located in the floodway or within the encroachment lines, the top of the manhole shall be flush with the ground and shall have a watertight manhole cover.

6. Cables: For large or tidal channels, a cable may be laid directly on the stream bed. The cable should be laid with slack so as to be readily moveable.

7. Trenches: The width of trenches for installation of underground utilities shall be limited to the minimum necessary to permit installation.

7:13-3.12 Aboveground utility crossings

(a) Cables or pipes may be attached to a bridge above the lowest member crossing the stream. However, if it is on the outside of the structure it is preferable that the crossing be located on the downstream face of the structure.

(b) Cables or pipes will generally not be approved if they are to be located within a culvert or bridge opening. However, special consideration will be given if no other alternatives exist.

(c) Aerial crossings should be at least one foot above the 100-year flood elevation and shall be protected to prevent damage. Such applications will be treated on a case-by-case basis.

(d) Electric and telephone aerial crossings are usually high enough above the waterway so that the *[Bureau]* ***Department*** will not require a stream encroachment permit.

1. However, if the towers are to be located in the floodway or within encroachment lines it will be necessary for the *[Bureau]* ***Department*** to review the plans for the towers.

2 Poles for the support of aboveground utilities shall be adequately anchored to withstand flood flow forces and erosion.

7:13-3.13 Stability of structures

(a) All structures to be placed or construction to be undertaken in the floodway or within the encroachment lines shall be stable.

(b) Particular attention shall be paid to stability to resist soil and frost pressures, and footings, if required, shall be placed well down so as not to be undermined by streambed degradation. For any wall or structure extending vertically four feet or more above the stream bed, a stability analysis by a licensed professional engineer will be required.

7:13-3.14 Fish passage

(a) The following fish passage requirements apply to channel modifications at bridges, culverts (including upstream and downstream transition zones), to channelization projects, to stream cleaning projects, and to other channel modifications (excluding dams).

1. Any new or modified channel of a perennial stream shall, where practicable as determined by the department or delegated agency, 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.

2. Exceptions to the requirement in (a)1. above shall not be granted by any delegated agency, but *[shall]* ***may*** be considered by the Department if:

i. The existing channel does not allow for the upstream passage of fish during low flow conditions; or

ii. Fish passage in the particular channel segment is irrelevant because of upstream or downstream conditions unfavorable to fish passage; or

iii. Other conditions such as public need or extreme hardship make this requirement impracticable.

7:13-3.15 Dams

(a) Any dam which raises the waters of a stream five feet or less above its usual mean low-water height is under the jurisdiction of this chapter. *[Dams greater than five feet in height]* ***All other dams*** fall under jurisdiction of ***the Safe Dam Act,*** N.J.S.A. 58:4. *[t]* ***T*** requirements of that legislation shall be met, and no permit under this chapter for the dam structure shall be required.

(b) The stability of a low-dam shall be assured *[by]* ***in*** compliance with this subchapter.

(c) Any backwater created by a 100-year storm passing the dam shall be contained within the applicant's property unless written consent is obtained from all affected property owners. Effects on both surface water and groundwater shall be considered.

(d) In addition to the above, 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 the fish to pass the dam in either direction (see: N.J.S.A. 23:5-29.1). This provision is applicable to dams of any size.

1. The determination of whether a stream is currently a runway for migratory fish is made by the Department's Division of Fish, Game and Wildlife during the Department's review of the stream encroachment application.

2. Applicants are encouraged to discuss the matter with the Bureau and the Division of Fish, Game and Wildlife prior to filing the application.

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 NON-DELINEATED STREAMS

7:13-4.1 General provisions

(a) The *[following]* ***rules in this subchapter*** govern*[s]* minimum standards for the development and use of land in the flood fringe area, and outside the encroachment lines but within the 100-year flood plain of non-delineated streams, and the procedures to be followed by all affected local agencies.

(b) Under provisions of this subchapter, the Department shall administer the program of stream encroachment permits for non-delineated stream outside the encroachment lines but within the 100-year flood plain. This subchapter shall also apply to delineated stream for which a compliant ordinance has not been adopted within the time period allowed by the Act, or, having been adopted, has later been found by the Department to be noncompliant by reason of modification or non-enforcement.

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(c) Lawful pre-existing prohibited structures damaged by any means other than flooding may be restored provided that:

i. Any expansion or enlargement will not increase the flood damage potential; and

ii Efforts are made to provide floodproofing or other similar techniques to minimize future flood damage to the structure.

(d) Lawful pre-existing prohibited structures damaged by flooding may be restored provided that:

1. Any expansion or enlargement shall not increase the flood damage potential;

2. The owner submits an application together with drawings of the proposed reconstruction and the application is approved by the Division; and

3. Efforts are made to provide floodproofing or other similar techniques to minimize future flood damage to the structure.

7:13-4.2 Municipal responsibilities and procedures, flood fringe area

(a) Each municipality shall adopt and enforce a flood fringe area ordinance complying with the minimum standards set forth in this subchapter. Although not required by this subchapter, in order to be in compliance with the National Flood Insurance Program, the ordinance should include in that ordinance the Federal "Criteria For Land Management and Use", 44 CFR 603(a) through (d). The ordinance may be more restrictive but shall not be less restrictive than this subchapter.

1. When adopted the Flood Fringe Area Ordinance shall take precedence over any existing ordinance establishing standards less restrictive than the Flood Fringe Area Ordinance.

2. Any ordinance adopted subsequent to the adoption of the Flood Fringe Area Ordinance or modifications of pre-existing ordinances or sections thereof shall not diminish the effect of the Flood Fringe Area Ordinance.

(b) If a municipality fails to adopt a compliant ordinance effective within 12 months after promulgation of this subchapter or within 12 months after the adoption of a delineation of the flood fringe area by the Department, whichever is later, or if a municipality having adopted a compliant ordinance shall subsequently modify it so that it becomes noncompliant, then the Department may apply these flood fringe area rules and enforce this subchapter in the noncompliant municipality.

(c) The municipality shall submit three copies of its Flood Fringe Area Ordinance to the *[Bureau]* ***Department*** and a copy to the County Planning Board immediately upon its adoption.

(d) Each municipality shall notify the *[Bureau]* ***Department*** when it has adopted its Flood Fringe Area Ordinance and every time said ordinance is amended or modified.

(e) For municipalities whose ordinances, even though previously approved, have been determined to be noncompliant, the Department shall act upon stream encroachment applications in the flood fringe area and shall collect the fees thereon.

(f) A municipality may grant variances to standards and criteria of this subchapter *[pursuant to ordinance or resolution]* ***regarding hardship waivers granted pursuant to N.J.A.C. 7:13-2.9.*** In all such cases, an information copy of the action taken, giving reasons, shall be furnished to the *[Bureau]* ***Department***, within one month from the date of the action.

(g) Failure by municipalities and counties to enforce their flood control ordinances or resolutions to a degree deemed adequate by the Department will result in the reestablishment of jurisdiction under the Act in the Department.

(h) Municipalities and counties are strongly encouraged to develop interlocal government agreements in an effort to establish flood control on a basin/watershed basis.

(i) Municipalities are encouraged to consider the desirability of more restrictive development standards in areas particularly subject to flood hazards.

7:13-4.3 Applications to local agency

(a) Upon adoption of a compliant municipal ordinance or upon delegation pursuant to this subchapter the local agency shall be responsible for processing all applications, issuing all permits, and enforcing all permit conditions and the procedures thereof in accordance with the requirements of this chapter and within the authority delegated.

(b) The local agency shall provide standard forms and procedures for all applications and a Docket Number to identify each application. This Docket Number shall be clearly marked on all correspondence and submissions related to the application.

(c) The local agency shall require at least one copy of the application, including detailed drawings of the project showing the floodway line and the flood fringe line, and of any additional information required to be kept on file for public review.

(d) ***Upon receipt of the application*** *[The]* ***the*** local agency shall *[within 20 days of receipt of the application]* either:

1. Declare the application complete for the purpose of making a review for determination and decision; or

2. Return the application as unacceptable for further review. The applicant shall be notified in writing of the reasons for such action; or

3. Request in writing that the applicant submit, within a specific period of time, additional information to assist in its review.

(e) When the application is deemed complete, the local agency shall provide for public notice and review. One copy of the application and other submitted information and a Fact Sheet stating the following shall be made available for public review:

1. The docket number;

2. The applicant;

3. The date the application was declared complete by the local agency;

4. The date by which interested parties may submit comments concerning the application. Such date shall be 30 days from the date the application is declared complete; and

5. The date by which the local agency shall approve, condition, or disapprove the application.

6. A description of the proposed project.

(f) The local agency shall render its decision and notify the applicant in writing *[within 90 days after the date the application is declared complete]* as follows:

1. Approval: By issuance of a stream encroachment permit.

2. Conditional approval: By issuance of a stream encroachment permit with conditions.

3. Disapproval: By issuance of a letter citing the reasons for disapproval.

(g) The local agency shall notify all persons who have submitted comments concerning the application of the decision within five working days after the decision.

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(h) To give persons who may object to the issuance of the permit time to appeal, the permit shall not be valid until 15 days following issuance of the permit.

7:13-4.4 Appeals and hearings in the flood fringe area

(a) The municipality shall establish appeal procedures for application in the flood fringe area which shall provide a fair hearing for persons *[aggrieved]* ***adversely effected*** by the municipality's decision concerning an applicant's stream encroachment application.

(b) *[Aggrieved]* *[p]* ***P***ersons ***adversely effected*** shall file an appeal with the appropriate body within 15 days of the issuance of the permit.

(c) A verbatim record must made of any appellate hearing held pursuant to (a) above.

(d) No project may commence construction pending the completion of all appeal processes.

7:13-4.5 Prohibited uses

The disposal of pesticides, industrial wastes, radioactive materials, petroleum products or other hazardous materials shall not be permitted within the flood fringe area or outside of encroachment lines but within the 100-year flood plain. Wastewater and water treatment plants may be permitted and shall comply with this subchapter.

7:13-4.6 Non-regulated uses

(a) For the purposes of this chapter, non-regulated uses are land uses within flood fringe areas or outside of encroachment lines but within the 100-year flood plain which:

1. Do not require the construction of structures with an area of more than 100 square feet or major regrading; and

2. Do not require modification or relocation of any channel.

(b) Non-regulated uses ***must*** satisfy the conditions of (a) above and ***may*** include, but are not limited to, the following:

1. Residential: Improvements such as lawns, play areas, gardens, landscaping, fences, anchored dog houses and auxiliary utility buildings, driveways, barbecues, and addition of no more than 200 square feet to existing residential structures.

2. Private and public recreation: Playing fields, bike paths, picnic grounds, fences, swimming areas, parks, wildlife and nature preserves, gamefarms, hunting and fishing areas, shooting preserves, hiking and horseback riding trails, tennis courts, basketball courts, driving ranges, archery ranges, target ranges, trap and skeet ranges, fish hatcheries and anchored auxiliary utility buildings.

3. Agriculture: General cultivation, pasture, grazing, fences, irrigation, outdoor plants, nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting.

i. Additionally, specific soil conservation practices such as terracing, construction of diversions, subsurface drainage and the construction of grassed waterways and dug ponds will be considered non-regulated uses but only when designed and constructed under the supervision of the appropriate Soil Conservation District.

ii. Anchored plastic covered greenhouses and other anchored auxiliary utility buildings constructed without permanent foundations, and fences associated with agricultural uses, are non-regulated.

4. Utility poles and towers.

7:13-4.7 Regulated uses

(a) Regulated uses are all land uses within the flood fringe area of delineated streams and between the encroachment lines and the 100-year flood plain of non-delineated streams, except for non-regulated uses and prohibited uses as defined in N.J.A.C. 7:13-4.5 and 4.6.

(b) No person shall engage in a regulated use within a delineated flood fringe area or outside the encroachment lines but within the 100-year flood plain of any non-delineated stream until he has received a Stream Encroachment Permit from the local agency or Department as appropriate.

(c) Requirements for structures under regulated use:

1. Within the 100-year floodplain but outside of encroachment lines of non-delineated streams and within the flood fringe area in delineated streams, all proposed structures must be designed and anchored to prevent collapse, lateral movement and buoyancy.

2. All proposed hospitals, nursing homes, schools, day care centers, residences and similar noncommercial structures shall be elevated so that the lowest floor, including any basement, is a minimum of one foot above the 100-year flood elevation along non-delineated streams, or at or above the flood hazard design elevation along delineated streams.

i. At least one driveway and access route to any hospital, school, nursing home, day care center or other similar noncommercial structure, except for individual residences, shall be elevated to comply with the *[above]* requirements ***of (c) 1 and 2 above***.

ii. Recreation areas may be allowed to be inundated in low areas where it is determined that there is acceptable flood damage potential.

3. All proposed commercial and industrial structures, including water supply and wastewater treatment facilities, shall be elevated so that the lowest floor, including any basement, is a minimum of one foot above the 100-year flood elevation along non-delineated streams or at or above the flood hazard design elevation along delineated streams.

i. An exception to this may be allowed if said structures are floodproofed in a manner which reflects flood velocities, durations, rates of rise, hydrostatic and hydrodynamic forces, probable evacuation time available after flood warning, and other similar factors.

ii. The applicant shall submit a plan or document certified by a licensed professional engineer that the floodproofing measures are consistent with the design elevation and associated flood factors.

iii. All or any of the following floodproofing measures may be required so as to result in a dry floodproofed structure:

(1) Installation of watertight doors, bulkheads, and shutters, or similar devices;

(2) Reinforced walls to resist water pressures;

(3) Use of membranes or mortars to reduce seepage of water through walls;

(4) Installation of pumps to remove water from the structures;

(5) Construction of water supply and wastewater treatment systems in a manner which prevents the entrance of floodwaters;

(6) Pumping facilities, or comparable measures, for the subsurface drainage systems of buildings to relieve external foundation wall and basement flood pressures;

(7) Construction that resists rupture or collapse caused by water pressure or floating debris;

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(8) Installation of valves or controls on sanitary and storm drains which will permit the drains to be closed to prevent backup of sewage or storm waters into the structure. Gravity drainage of basements may be eliminated by mechanical devices;

(9) Location or floodproofing of all electrical equipment, in a manner which will assure that it is not subject to flooding; and

(10) Adequate emergency electrical power supplies.

4. Parking lots and recreation areas may be allowed to be inundated where it is determined by the permitting authority that the risk is acceptable.

(d) Requirements for fill under regulated uses:

1. Within the flood fringe area of delineated streams or within the 100-year flood plain but outside of encroachment lines of non-delineated streams, the volume of net fill and structures to be placed on an applicant's site shall be limited to occupying 20 percent of the total volume between the natural ground surface of the applicant's property and the level of the flood hazard design elevation along delineated streams or the 100-year storm elevation along non-delineated streams.

2. It will have to be shown adequately on submitted plans and in calculations that this limit of 20 percent is not being exceeded. There shall be no net fill in the floodway or within stream encroachment lines except as provided in N.J.A.C. 7:13-3.1.

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 latest amendment thereto, adopted pursuant to N.J.A.C. 2:90-1.3.

(e) Additional requirements for fill in the Central Passaic Basin:

1. In addition to the requirements of (d) above, within the Central Passaic Basin *[any net]* ***all*** fill ***, beyond the total quantity already present,*** placed upon an applicant's project site must be counterbalanced by corresponding excavation within the Central Passaic Basin.

2. Said fill must be taken from between the natural ground surface and the ***mean*** low water level of the ***adjacent*** stream , or the ***seasonally adjusted high*** groundwater level, whichever is higher.

(f) Soil erosion and sediment control:

1. Soil erosion and sediment control measures are required on all submissions under this subchapter if such submissions require disturbance of more than 5,000 square feet of the surface area of land within the flood hazard area along delineated streams or within the 100-year flood plain along non-delineated streams.

2. 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. 4:24-39 et seq.) and N.J.A.C. 2:90-1.3 shall be used in the preparation and submission of Stream Encroachment Applications.

3. The following additional soil erosion and sediment control requirements shall also be met:

i. The area of soil disturbance shall be no larger than that which is necessary for the conduct of the project.

ii. Soil disturbance schedules shall be formulated to provide minimum practicable exposure of soils to erosion.

iii. If erosion and sediment control measures such as diversions, sediment basins, or sediment barriers, whose purpose 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, such measures shall be installed prior to any major soil disturbance or in their proper sequence 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.

iv. In areas where vegetative methods (including "mulch only") are relied on for erosion and sediment control (without downslope controls to intercept sediment such as sediment basins or sediment barriers), seeding, mulching, or placement of sod shall be performed within 48 hours of soil exposure in accordance with the "Standards for Soil Erosion and Sediment Control". Seeding shall, in such areas, always be accompanied by mulching.

(1) If weather conditions are unfavorable for seeding, sod placement, or the subsequent establishment of such 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".

(2) Slopes exceeding 15 percent (in areas without downslope sediment controls) shall be protected within 48 hours of soil exposure by special treatment, such as water diversion berms, sodding, or approved mulch netting, in accordance with the "Standards for Soil Erosion and Sediment Control."

v. Pumping of sediment-laden water from the dewatering of trenches or other excavations directly into waterways is prohibited.

(1) Pump intakes shall be placed near the water surface to minimize the sediment content of pumpage.

(2) Wherever possible, pumpage shall be piped to sediment basins or sediment barriers that meet the "Standards for Soil Erosion and Sediment Control", or mechanical filtration or sedimentation devices shall be used to minimize the discharge into waterways of sediment in pumpage.

(3) As a last resort, special approval may be granted for the pumpage to be spread onto land as far from the streambank as possible, providing that care is taken to avoid damaging trees not slated for removal.

(g) Excavation requirements under regulated uses:

1. All projects involving permanent excavation within the 100-year floodplain or flood hazard area, except as related to the installation of underground utilities or foundation for structures, shall not have cut faces at slopes steeper than a ratio of one vertical to two horizontal (1:2).

2. Excavation projects shall not be so deep as to affect any wells in the surrounding areas or to cause any groundwater pollution.

(h) Disposal of spoil requirements under regulated uses:

1. Material being disposed of within the flood fringe area along delineated streams or between encroachment lines and the 100-year floodplain along non-delineated streams shall be spread evenly and should not inhibit the drainage of the area. Such spoil material shall be stabilized within 48 hours according to the "Standards for Soil Erosion and Sediment Control". Details of the methods of stabilization shall be included on the plan.

2. The Department may require information and set conditions concerning excavation methods, contents and disposal

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sites of any excavated materials except material recovered from stream cleaning.

(i) Retention and detention basins for storm water management: Retention and detention basins for storm water management within the flood fringe area along delineated streams or between encroachment lines and the 100-year floodplain along non-delineated streams shall be constructed in accordance with criteria of the State Storm Water Management Regulations (N.J.A.C. 7:8).

(j) Manhole requirements under regulated uses: If manholes are to be located within the flood fringe area along delineated streams or between encroachment lines and the 100-year floodplain along non-delineated streams, they shall be flush with ground level and provided with watertight manhole covers.

(k) Minimization of environmental damage:

1. Consideration shall be given to short and long term primary environmental effects of any stream encroachment whether or not it is classified or handled as a Project of Special Concern.

2. Stream encroachment projects shall be carried out in such a manner that the pollution, impairment, or destruction of the environment as related to the flood hazard area, is minimized to the extent practicable. Federal, State, and local statutes, regulations, and ordinances designed to minimize or prevent such damage shall be complied with.

(l) Sewage disposal requirements under regulated uses: Individual sewage disposal systems within the 100-year floodplain but outside of encroachment lines or within the flood fringe area shall be constructed in accordance with the Department's Standards for the Construction of Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9-2.

SUBCHAPTER 5. SPECIAL CASES

7:13-5.1 General provisions

(a) To help assure adequate protection of the State's aquatic life and water resources from the adverse impacts of some kinds of stream encroachments, special procedures and standards have been prepared to supplement the general standards. These special requirements include the following:

1. The classification of some kinds of stream encroachments as "Projects of Special Concern"; and

2. The establishment of special standards for various kinds of stream encroachments affecting selected geographic areas.

3. The general standards in subchapter 3 and 4 remain applicable to any stream encroachment to which this subchapter is applicable, except insofar as the requirements of this subchapter are more stringent.

(b) As described in N.J.A.C. 7:13-5.2, Projects of Special Concern are stream encroachment projects which, because of their potentially serious adverse effects, will not be 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.

1. Some kinds of stream encroachment projects are always classified as Projects of Special Concern.

2. Other kinds of stream encroachment projects may be classified as Projects of Special Concern depending on geographic location or on the characteristics of the individual projects.

3. Projects of Special Concern are subject to special requirements for public notice and fact-finding meetings.

(c) Dams built for any purpose are subject to special requirements for public notice and fact-finding meetings described in N.J.A.C. 7:13-5.3.

7:13-5.2 Projects of Special Concern, defined

(a) A Project of Special Concern shall be any stream encroachment project in perennial streams with over 50 acres of drainage area, which involves either or both of the following:

1. Channelization or relocation of a stream for a distance over 100 feet (except for low-flow channels constructed as part of a detention basin) or for a distance over 300 feet on either side of a bridge or culvert; or

2. Loss of more than 6,000 square feet of the existing woodland within 25 feet of the banks.

(b) Where a project is performed in phases and two or more applications are submitted, the total length of the affected stream segment shall be used in applying the criteria in (a) above.

(c) In addition, stream encroachment projects which the Department determines would be likely to produce serious adverse effects on the water resources of the State *[may]* ***shall*** also be handled as Projects of Special Concern. Such effects *[may]* ***shall*** include, but are not limited to, the following:

1 Potential serious adverse effects on the biota of the stream, the adjoining wetlands, or on the sites where dredge spoils are to be disposed of including, but not limited to, rare or endangered species.

2. Potential serious degradation of water quality below the Department's Surface Water Quality Standards or Ground-Water Quality Standards.

3. Potential serious adverse effects on water resources including, but not limited to, adverse effects on potable water supplies, flooding, drainage, channel stability, navigation, energy production, municipal, industrial, or agricultural water supplies, fisheries or recreation. Such adverse effects include damage to potential as well as existing water uses.

(d) Projects affecting the following are always Projects of Special Concern in the indicated geographic areas:

1. Trout-associated streams:

i. Stream encroachment applications requiring loss of more than 6,000 square feet of the existing woodland within 50 feet of the banks of perennial trout-associated streams; or

ii. Construction of low dams across perennial, trout-associated streams, except for the reconstruction or repair of existing dams.

2. Acid-producting deposits: Stream encroachment projects causing exposure of acid-producing deposits along more than 50 feet of stream channel, if the drainage area of the stream is over 50 acres. However, this applies to smaller streams if the stream is trout-associated and if the stream is perennial.

7:13-5.3 Procedural requirements

(a) The Department shall *[not]* ***neither:***

1. *Delegate to any other agency its power to approve or disapprove any stream encroachment application that is classified or handled as a Project of Special Concern *[or]* ***nor***

2. *Process any such application on an over-the-counter basis.

(b) Concurrent with submitting any application for a Project of Special Concern, the applicant shall publish a public notice in a local newspaper stating the name of the applicant and the location, reference number, and description of the

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project, and inviting interested persons to send written comments to the Bureau of Flood Plain Management within 15 days from the date of publication. A reference number shall be obtained from the Bureau by phone or letter.

1. A copy of such published notice shall accompany the applicant's application.

2. The Department will accept comments from interested parties up to 15 days from the date of publication.

(c) If a project submitted to the Department is not determined to be a Project of Special Concern until after the application is accepted as complete, the applicant shall upon notice by the Department immediately publish the public notice for comment.

(d) Applicants are encouraged to have a pre-application conference to determine if the application is to be treated as a Project of Special Concern.

(e) Fact-finding meetings shall be scheduled by the Department prior to issuance or denial of a permit in all cases of Projects of Special Concern, except where there is no objection to the issuance of the permit and the Department considers a meeting unnecessary. Fact-finding meetings may also be scheduled in other cases where it is considered desirable either to obtain more information or to provide an opportunity for consideration or reconsideration of opposing views.

1. At such a meeting, the applicant and any interested parties will be given the opportunity to present information and arguments and to raise questions.

2. These meetings shall be open to the public and minutes of the meeting, including the facts found will be kept.

3. Those persons expressing an interest will be given advance notice of such a meeting as practicable.

(f) If a formal objection is raised to a delegated agency considering granting a stream encroachment permit and if such objection asserts that the proposed project is a Project of Special Concern, the matter shall be referred to the Department by the delegated agency for determination of the project's status and the procedure to be followed.

(g) The Department may certify to itself for review any local permit application for a stream encroachment project which the Department determines to be a Project of Special Concern.

(h) Where a stream encroachment permit application is initially submitted to the local agency and then is transferred to the Department for review as a Project of Special Concern, the application fee shall be apportioned at 20 percent to the local agency and 80 percent to the State.

7:13-5.4 Permits for Projects of Special Concern

(a) Permits for Projects of Special Concern may be granted when the Department determines, based upon information supplied by the applicant and information otherwise available to the Department, that:

1. There is no feasible and prudent alternative, including the no action alternative, which would avoid, or substantially reduce, the hydraulic environmental or other damage, and which is consistent with the reasonable requirements of the public health, safety, and welfare; or

2. Denial of the permit would create exceptional and undue hardship upon the applicant; or

3. There is an unreasonably disproportionate relationship between the hydraulic, environmental or other damage of the proposal and the added cost of avoiding or mitigating such damage.

7:13-5.5 Procedural requirements for low dams

Stream encroachment applications to construct low dams are subject to the requirement applications to construct low dams are subject to the requirements of N.J.A.C. 7:13-5.3(d) and (e) whether or not such applications are classified or handled as Projects of Special Concern.

7:13-5.6 Projects along trout streams

(a) Except for the timing requirements for trout-stocked streams in N.J.A.C. 7:13-5.6(g), the requirements of this section are applicable only to those stream encroachment applications along trout-associated streams with a drainage area of over 50 acres or which are perennial and which require one or more of the following:

1. Excavation within the channel or along the banks;

2. Channel relocation;

3. Placement of construction equipment in the channel;

4. Placement of fill within the channel;

5. Modifications to the channel or banks that could result in increased stream erosion;

6. Disturbance of a total of more than 1,000 square feet of the surface area of land within 50 feet of the banks of a stream;

7. Loss of more than 6,000 square feet of the existing woodlands within 50 feet of the banks of the perennial, trout-associated streams;

8. Replacement of the natural bed of perennial, trout-associated streams with an artificial floor; or

9. Construction of impoundments across perennial, trout-associated streams.

(b) The requirements of this section are applicable to such stream encroachments in (a) above in trout streams whether the project requires approval by the Department or by a delegated agency, and are applicable whether or not such stream encroachments are classified as "minor" in the 90-day constrution permit rules (N.J.A.C. 7:1C) or are processed "over-the-counter" pursuant to those rules, or are classified or handled as Projects of Special Concern.

(c) Applications for stream encroachments along trout-associated streams shall identify:

1. The planned method for disposing of sediment-laden pumpage from dewatering operations;

2. Channel segments of perennial, trout-associated streams along which trees or shrubs would be removed if the length of such segments would exceed 500 fee; and

3. Places where construction vehicles would ford or operate within the channel of trout-associated streams and the physical character of the stream bed at such places.

(d) Where practicable, trees and shrubs along perennial, trout-associated streams shall be removed form the northerly rather than the southerly bank.

(e) Placing construction equipment directly in trout-associated streams is prohibited unless such placement is necessary for the project and is prohibited unless such placement is necessary for the project and is specifically authorized by the Department. Where feasible, fording shall be permitted only where the stream bottom is firm and the approaches are gentle and stable.

1. The Department may require the construction of bridges or culverts if many equipment crossings are necessary at an unfavorable location.

2. All crossings shall be made at right angles to the stream and extra care shall be taken to minimize washing of petroleum products or sediment into the stream.

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3. Any stream bank disturbed during durding shall be stabilized within 48 hours to minimize the potential for erosion.

(f) Construction equipment for stream encroachment projects shall not be washed in trout-associated streams or where wash water would drain as surface runoff into such streams.

(g) Unless modified, the following timing requirements are to be observed when constructing within 50 feet of the banks of a trout-stocked or trout-associated stream to minimize adverse impacts:

1. Stream encroachment projects shall not be constructed during certain periods along trout production waters or waters that are less than one mile upstream from trout production waters. These periods depend on the particular species of trout spawning in the particular trout production stream, as identified in the Department report, "Classification of New Jersey Waters as Related to Their Suitability for Trout", as follows:

i. Brook trout: September 15 through December 31, inclusive;

ii. Brown trout: October 1 through January 31, inclusive; and

iii. Rainbow Trout: February 1 through March 31, inclusive.

2. Stream encroachment projects shall not be constructed along trout-associated streams during the period of June 1 through August 31, inclusive.

3. Stream encroachment projects shall not be constructed along trout-stocked streams, or one mile or less upstream from trout-stocked streams, during the period of April 1 through June 30, inclusive. However, for those trout-stocked streams which are nontrout waters, the applicable period is April 1 through May 31, inclusive.

4. Modifications of the requirements of (g), 1 through 3 above, may be granted by the Department for the following reasons:

i. Cases in which the Department determines, for the particular project, that the hazard of damage to trout-associated streams from construction during period of low flow in the June 1 through August 31 period would be less than the hazard of damage from encroachment at prospectively higher flows in other seasons.

ii. In cases where the combined effect of N.J.A.C. 7:13-5.6(g), 5.7, or 5.8 would allow construction in less than 183 days of each year, the Department shall modify the requirements of N.J.A.C. 7:13-5.6(g)(2) or (3) above, or both, to permit construction during 183 days of each year.

iii. Cases in which it is determined that construction must be undertaken during non-school periods in order to avoid unacceptable risk or delay to school children carried in school buses.

(h) The mining of bottom material from trout-associated streams is prohibited. This prohibition does not extend to the incidental use or sale of stream bottom material removed during the course of channelization, stream cleaning or other approved stream encroachments performed for purposes other than mining.

(i) Where logs or boulders create adjacent pools or riffles that provide fish habitat, removal of such logs or boulders for stream cleaning is prohibited unless such removal is necessary for the project and is specifically authorized by the Department.

(j) Established below are the requirements for channelization projects along trout production or trout maintenance waters. These requirements do not apply to:

1. Stream cleaning;

2. Channel modifications directly and immediately associated with the construction or maintenance of bridges or culverts including transition zones up to 300 feet upstream or downstream from such bridges or culverts; or

3. Minor bank reestablishment or protection projects limited to 100 feet of channel length; or

4. Other projects which require 100 feet or less of channel modification including, but not limited to:

i. Sewer headwalls;

ii. Sewer outlet works;

iii. Sewer outlet diffusers;

iv. Minor water intake facilities;

v. Minor regarding; and

vi. Channel crossings of utilities.

(k) Any stream encroachment application for channelization of a perennial trout production or trout maintenance stream shall include a map of the existing stream channel that identifies the location and extent of cascades, riffles, flats and pools unless the Department determines that the project would not significantly disturb the existing stream bed.

(l) The new or modified channel of perennial, trout production or trout maintenance streams shall be designed and constructed in such a manner as to duplicate or preserve permanently, to the extent practicable, the existing arrangement and proportional extent of pools, flats, riffles, and cascades in the channel.

(m) *[Cover and shelter for fish]* *[to]* ***To*** the extent practicable, ***cover and shelter for fish*** *[is]* ***are*** to be provided in the new or modified channel of perennial, trout production or trout maintenance streams to replace, cover or shelter lost because of the channelization project.

7:13-5.7 Projects affecting coastal fish resources

(a) Applicability: The requirements of this section apply whether or not stream encroachment projects are classified as "major" or "minor" in the 90-day construction permit rules (N.J.A.C. 7:1C) or are classified as Projects of Special Concern. The requirements of this section apply to all projects within the authority of the Act whether or not the project is located in the New Jersey Coastal Zone defined in the Department's Coastal Resource and Development Policies (N.J.A.C. 7:7E).

(b) Special standards: The Department or delegated agency may only approve stream encroachment projects in accordance with the provisions for protection of coastal fish resources in the Department's Coastal Resource Development Policies (N.J.A.C. 7:7E-1.1 et seq.) including, but not limited to, policies concerning finfish migration pathways (N.J.A.C. 7:7E-3.5), maintenance dredging, new dredging, and dredge spoil disposal (N.J.A.C. 7:7E-4.10), and marine fish and fisheries (N.J.A.C. 7:7E-8.2).

7:13-5.8 Projects affecting shellfish areas

(a) Applicability: The requirements of this section apply whether or not stream encroachment projects are classified as "major" or "minor" in the 90-day construction permit rules (N.J.A.C. 7:1C) or are classified as Projects of Special Concern. The requirements of this section apply to all projects within the authority of the Act whether or not the project is located in the New Jersey Coastal Zone defined in the Department's Coastal Resource and Development Policies (N.J.A.C. 7:7E).

(b) Special standards: The Department or delegated agency may only approve stream encroachment projects that are in accordance with the shellfish protection provisions of the

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Department's Coastal Resource and Development Policies (N.J.A.C. 7:7E), including policies concerning shellfish beds (N.J.A.C. 7:7E-3.2), maintenance dredging, new dredging, and dredge spoil disposal (N.J.A.C. 7:7E-4.10), and potentially productive shellfish area (N.J.A.C. 7:7E-8.3).

***7:13-5.9 Projects involving bridges which traverse a floodway**

Bridge approaches for bridges which traverse a floodway shall be considered as part of the permit application submitted to the Department for the bridge.*

[7:13-5.9] ***7:13-5.10*** Projects exposing acid-producing deposits

(a) Applicability of this section follows:

1. The requirements of this section apply only to acid-producing deposits that are sometimes found in the following Coastal Plain geologic formations:

i. Raritan Formation;
ii. Magothy Formation;
iii. Merchantville Formation;
iv. Woodbury Clay;
v. Englishtown Sand;
vi. Marshalltown Formation;
vii. Navesink Formation;
viii. Red Bank Sand; and
ix. Kirkwood Formation.

2. These formations are mapped on the "Geologic Overlay" maps published by the Department for the Department's topographic atlas sheets. A map showing the general location of these deposits can be found in the Manual.

(b) Except where otherwise provided in this section, the requirements of this section apply only to stream encroachments which result in:

1. Exposure of acid-producing deposits (to air or surface waters) within the stream channel or among the stream bank(s); or

2. Exposure of more than 1,000 square feet of acid-producing deposits within the floodway or encroachment lines.

(c) The requirements of this section are applicable to such stream encroachment projects whether or not such stream encroachments are classified as "major" or "minor" in the 90-day construction permit rules (N.J.A.C. 7:1C) or are classified or handled as Projects of Special Concern.

(d) Where it is known in advance that acid-producing deposits would be exposed by the proposed stream encroachment, the stream encroachment application shall include a written site evaluation prepared by a properly qualified person approved by the Department, that identifies the extent of exposure, a plan to mitigate the impacts of such exposure, and the result of the special laboratory analysis, if required by (h) below.

(e) If a stream encroachment application submitted directly to the Department does not include a site evaluation and mitigation plan and if the Department knows or has reason to believe that acid-producing deposits would be exposed by the proposed stream encroachment, the Department shall, within a maximum of 20 working days of receipt of the application, notify the applicant in writing that the application shall not be considered complete until a site evaluation and mitigation plan deemed acceptable for review is received by the Department.

(f) If the Department accepts as complete a stream encroachment application that does not include a site evaluation and mitigation plan, but subsequently determines that acid-producing deposits would be or have been exposed by the stream encroachment, the Department shall:

1. Request the applicant to submit a site evaluation and mitigation plan within an allotted time period; or

2. Disapprove the application if the application has not yet been approved and if a site evaluation and mitigation plan is not received; or

3. Order the applicant to desist from further exposure of acid-producing deposits and to apply mitigation procedures to deposits already exposed, pending submission to and approval by the Department of a site evaluation and a mitigation plan.

(g) The Department may specify the use of simple chemical tests for use in the field or laboratory to identify the presence of acid-producing deposits.

(h) Speical laboratory analysis:

1. If a stream encroachment application has been submitted and the Department determines that a proposed stream encroachment would expose acid-producing deposits along more than 100 feet of stream channel or stream bank and if the Department determines that information about characteristics of such deposits is needed for the Department's decision to approve or disapprove the stream encroachment application, the department may require the site evaluation (see (d) above) to include the results of the following chemical analysis, performed using methods specified in the Manual by a certified lab, on samples of such deposits taken from preconstruction borings along such stream channel or bank:

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 analyses of physical characteristics. These chemical and physical tests shall be performed by the applicant in accordance with procedures specified by the Department. Pending submission of the results of the tests to the Department, the application shall be considered incomplete or disapproved in accordance with the provisions of N.J.A.C. 7:13-2.8.

(i) When acid-producing deposits are to be exposed as the result of a stream encroachment, mitigation measures shall be taken to:

1. Minimize the extent and period of exposure of acid-producing deposits;

2. Minimize the spreading or mixing of acid-producing deposits onto or into soil free of such deposits and control the disposal of such deposits inside or outside the flood hazard area or the 100-year floodplain.

3. Cover acid-producing deposits with a sufficient quantity of limestone and of non-acid-producing soil to permit the establishment of vegetation; and

4. Provide for prompt, temporary and permanent stabilization of areas where acid-producing deposits were exposed.

(j) When acid-producing deposits are exposed within a stream channel or along stream banks as the result of a stream encroachment, mitigation procedures shall be applied in order to:

1. Minimize the period of exposure;

2. Keep post-construction oxidation rates from exceeding preexposure oxidation rates; and

3. Neutralize acid generated in the brief period of exposure.

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SUBCHAPTER 6. IMPLEMENTATION

7:13-6.1 Consistency with other requirements in permit review

(a) All project applications, in addition to complying with the standards set forth in this chapter, shall be consistent with all other relevant Federal, State and local statutes, rules and regulations, orders, standards, plans, and ordinances to the extent required by law.

1. The granting of a stream encroachment permit does not waive the requirement for Federal or other State or local government consent when necessary.

2. A stream encroachment permit is not effective and no work shall be undertaken until such time as all other required approvals and permits have been obtained.

(b) In cases where authority has not been delegated, no application for development, as defined in the "Municipal Land Use Law" (P.L. 1975, c.291 (C. 40:55D-1 et seq.)), for a structure or alteration within the area which would be inundated by the 100-year design flood of any non-delineated stream or for a change in land use within a delineated floodway or delineated flood fringe area may be granted by any local agency to any person without application to and approval by the Department or its agents as required pursuant to this chapter. *[Nor will any project]* ***No*** application ***for a stream encroachment permit*** *[defined as]* ***for*** a Project of Special Concern ***may*** be approved by any agency other than the Department.

7:13-6.2 Creation of a county water resources association

Any county governing body may, by ordinance or resolution, as appropriate, create a county water resources association which may include the chief administrative officer of any county planning agency, county engineers office, county utilities authority, county health department, county mosquito commission, county soil conservation district or county parks agency and any other public or private members. The county water resources association shall advise the county governing body, shall coordinate the flood control and water management programs for the county and shall have such powers as the county governing body may delegate to it concerning water management in the ordinance or resolution of creation.

7:13-6.3 Delegation of power to counties

(a) Except as otherwise indicated in this chapter, the Department may delegate its power to approve or disapprove any application made to it pursuant to the Act and its power to enforce any aspect of the Act to a county governing body which agrees to accept such designation and in the Department's judgment is capable of utilizing the rules, regulations and standards adopted by the Department for the administration of this program.

1. The county must make ***written*** application to the Department *[,by letter,]* for said delegation and must adopt an ordinance or resolution *[adopting]* ***containing all required provisions of*** this chapter and include provisions for enforcement and the administration of this program.

2. The Department may from time to time issue guidelines governing the county's administration of the program.

3. The Department shall review this delegation at least every two years and may revoke such delegation for failure to properly administer such delegated powers *[in the opinion of the Department]*.

4. The county governing body may charge the same fees promulgated by the Commissioner pursuant to P.L. 1975, c.232 (c.13:1D-33), when such powers are delegated to it.

(b) The Department shall not delegate the powers to review any project application defined as a Project of Special Concern or any project being undertaken by a state agency.

(c) Any applicant *[, injured party]* or *[party]* ***person*** claiming to be *[injured]* ***adversely affected*** by the action of a delegated agency may appeal to the Department. The Department will handle the appeal as provided for in N.J.A.C. 7:13-2.11.

7:13-6.4 Penalties

(a) Any person who *[knowingly]* violates a provision of this chapter adopted pursuant to the Act shall be subject to *[a penalty of not more than $2,500 for each offense and any person who otherwise violates a provision of the Act shall be subject to a penalty of not more than $1,500 for each offense, both to be collected by the Department in a summary proceeding under the Penalty Enforcement Law (N.J.S.A. 2A:58-1 et seq.), and in any court of competent jurisdiction wherein injunctive relief has been requested.]*

[1. The Superior Court and county district court shall have jurisdiction to enforce said Penalty Enforcement Law.]

[2. If the violation is of a continuing nature each day which it continues shall constitute an additional, separate and distinct offense.]

[3. The Department is authorized and empowered to compromise and settle any claim for a penalty in such amount, in the discretion of the Department, as may appear appropriate and equitable under all of the circumstances. All moneys recovered in any such action, together with the costs recovered therein, shall be paid to the Environmental Services Fund.]

[(b) If any person violates any of the provisions of this chapter promulgated pursuant to the provisions of the Act, the Department may institute an action in a court of competent jurisdiction for injunctive relief to prohibit and prevent such violation or violations, and the said court may proceed in the action in a summary manner.] ***penalties and possible injunctive relief, pursuant to N.J.S.A. 58:16A-63 and N.J.S.A. 58:10A-1 et seq.****

SUBCHAPTER 7. DELINEATED FLOODWAYS

7:13-7.1 recodified from 7:13-1.11 with no change in text (see 15 N.J.R. 839(a), 15 N.J.R. 1374(b)).

(a)

DIVISION OF WATER RESOURCES

Flood Hazard Area Delineations Delineated Floodways for Various Tributaries to the Delaware River and Delaware Bay in Cumberland, Gloucester and Salem Counties

Adopted Amendment: N.J.A.C. 7:13-1.11(c)

Proposed: September 19, 1983 at 15 N.J.R. 1541(a).
Adopted: May 3, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: May 7, 1984 as R.1984, d.200, **without change**.

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Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et seq.

Effective Date: May 21, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): July 19, 1988.

Summary of Public Comments and Agency Responses:

The Department of Environmental Protection held a public hearing on October 6, 1983 at 1 P.M. at the Board of Freeholders Building, Salem, New Jersey. One person attended the meeting and made oral comments. No written comments were received concerning the proposal. The one commenter noted that "Walking John Creek" is known locally as "Henby Creek, and that "Henby Creek" is known as "Bouttowns Creek." Therefore, State delineation maps have a double notation with both the original name and the proposed revision for these small creeks indicated. This clarification did not require any change in the delineation as proposed.

Full text of the adopted amendment follows.

7:13-1.11 Delineated floodways
(a)-(b) (No change.)
(c) A list of delineated streams in the Delaware Basin follows:
1.-29. (No change.)
30. Tributaries to Delaware Bay in Cumberland, Salem and Gloucester counties:
The floodway and flood hazard area of the Cohansey River from the downstream corporate limits upstream to Sunset Lake Dam, the Raceway Canal for its entire length in Bridgeton, from its spillway confluence with the Cohansey River to Sunset Lake Dam, Mill Creek/Indian Fields Branch from its confluence with Cohansey River upstream through East Lake to the upstream corporate limit in Bridgeton, Jackson Run from its confluence with Cohansey River upstream through East Lake to the upstream corporate limit in Bridgeton, Jackson Run from its confluence with East Lake upstream 7,600 feet to the upstream corporate limit in Bridgeton; Salem River from its confluence with the Delaware River upstream to the junction with Fenwick Creek (approximately 350 feet upstream of Route 46), and Fenwick Creek from its confluence with Salem River upstream to its junction with Keasbeys Creek in Salem, and Keasbeys Creek from its confluence with Fenwick Creek to 75 feet upstream of Grant Street in Salem; Alloways Creek from its confluence with the Delaware River upstream to Salem-Hancocks Bridge Road; Raccoon Creek from its confluence with the Delaware River to 100 feet upstream of Kings Highway in Woolwich, and Oldmans Creek from its confluence with the Delaware River to 800 feet upstream of Interstate highway Route 295 (northbound) in Logan; and Maurice River from its confluence with the Delaware Bay upstream to its junction with Buckshutem Creek.
(d)-(g) (No change.)

(a)

DIVISION OF WATER RESOURCES

Assessment of Civil Administrative Penalties

Readoption with Amendments: N.J.A.C. 7:14-8.

Proposed: February 6, 1984 at 16 N.J.R. 181(b).
Adopted: April 25, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: May 1, 1984 d.189, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 58:10A-1 et seq., specifically 58:10A-4, 10 and 58:11-64 et seq. (L.1983, c.230).

Effective Date: May 21, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 27, 1989.
DEP Docket No. 074-83-12.

Summary of Public Comments and Agency Responses:

A **public hearing** concerning this proposal was held on February 27, 1984 at the State Library, 185 W. State Street, Trenton, N.J. The public comment period remained open until March 8, 1984.

The Department received public comments on the proposed readoption with amendments from the following:
1. New Jersey Petroleum Council
2. New Jersey State Chamber of Commerce
3. Public Service Electric and Gas Company
4. Jersey Central Power and Light Company
5. New Jersey Independent Liquid Terminals Association
6. Chemical Industry Council of New Jersey

In general, all of those who submitted comments supported the readoption of the regulations. All of those who submitted comments had specific concerns about the amendments. These comments and the Department's responses are summarized below.

1. Comment: All of the commentors objected to the proposed change in N.J.A.C. 7:14-8.4 which would alter the time to request a hearing after receiving a Notice of Assessment from 20 business days to 20 calendar days. The commentors stated that 20 calendar days would be insufficient time to evaluate and respond to a Notice of Assessment.

Response: As was stated in the proposal, this change would be made to more accurately reflect the legislative intent in enacting the Water Pollution Control Act. Therefore the Department is compelled to adopt the proposed change. However, several points should be made about the provision. First, the Department will accept any hearing request which is postmarked within the 20 day period as meeting the limit. The

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request need not be actually received by the Department by the 20th day. Second, the Office of Administrative Law's rule on the computation of time allows for the time to be extended if the deadline falls on a weekend or legal holiday. (See N.J.A.C. 1:1-4.1.)

2. Comment: Several commentors objected to the changes made in the factor values in N.J.A.C. 7:14-8.10 which are used for the computation of basic penalties for discharge violations. There were objections to the doubling of the seriousness factor and also to the elimination of a range for insignificant damage (N.J.A.C. 7:14-8.10(a)5(4)) and for unintentional and unforeseeable types of violations. (N.J.A.C. 7:14-8.10(a)5ii(4)). Doubling the factors was considered unwarranted for inflation. Also the doubling, it was contended, would blur the distinction between significant and insignificant damage. By eliminating the range, it was contended, the Department supposedly automatically placed a monetary penalty upon any violation thereby creating an automatic penalty of $1,250. In theory this was also supposed to be a conflict with N.J.A.C. 7:14A-3.10(c), "upset of a facility as a defense to noncompliance."

Response: The doubling of the factor range was proposed, in part, to give more emphasis to environmental damage in assessing penalties. In the past when the situation arose where serious or moderate damage occurred and the violation was unintentional but foreseeable or unintentional and unforeseeable, penalties were imposed which were not commensurate with the actual amount of damage involved. Doubling the values is the Department's effort to address this problem.

Careful analysis of potential shows that the increase in the seriousness factor will not distort the use of the values. For example, in order to assess the maximum penalty of $5,000 for a violation that is unintentional but foreseeable, one must assume that the top of the type range is used and that the damage caused is either serious or moderate, that is, a value of 1.33 or more. This shows that using the factors the Department retains considerable discretion within the ranges and between the ranges. Also the Department has the discretion to compromise penalties in accordance with N.J.A.C. 7:14-8.5.

As for the conflict with the upset provision in N.J.A.C. 7:14A-3.10(c), if an upset actually occurs, the use of N.J.A.C. 7:14-8 may not arise because a permittee may use the upset provision as an affirmative defense, and if successful in this assertion, not be liable to assessment of civil administrative penalties therefore under subchapter 8.

3. Comment: A commentor noted that the examples for discharge and non-discharge violations overlap and that a permittee could be placed in double jeopardy under the regulations. The example cited was the violation for failure to implement an emergency plan (N.J.A.C. 7:14-8.13(a)2v and N.J.A.C. 7:14-8.14(a)8).

Response: There is a distinction in the regulations between discharge and non-discharge violations. If the failure to implement an emergency plan resulted in the discharge of pollutants, then the permittee would be assessed using the schedule for discharge violations. Otherwise the non-discharge schedule would be used. Therefore, there is no overlap. Note, however that situations may arise where permittees may be assessed for both discharge and non-discharge violations out of a single incident, for example, failure to submit an emergency plan and failure to implement an emergency plan resulting in a discharge of pollutants (see N.J.A.C. 7:14-8.11.).

4. Comment: Use of the term violator in N.J.A.C. 7:14-8.4 has a prejorative connotation.

Response: The Department agrees and will adopt the term "alleged violator".

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

7:14-8.1 Authority and purposes

(a) This subchapter is enacted to provide a schedule and procedures for the assessment of civil administrative penalties as provided in section 10(d) of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-10(d) and section 8b of the Water Supply and Wastewater Operators Licensing Act, N.J.S.A. 58:11-71(b).

(b) (No change.)

(c) N.J.S.A. 58:11-71 provides the department with three options for enforcement actions to which it may resort whenever it finds that a person is in violation of the Water Supply and Wastewater Operators Licensing Act. One of the options is to levy a civil administrative penalty in accordance with N.J.S.A. 58:11-71(b). Under that section, the department is authorized to assess a penalty of not more than $5,000.00 for each offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate, and distinct offense.

7:14-8.2 Scope

(a) (No change.)

(b) The following is a list of Department regulations which have been adopted pursuant to the authority of the Water Pollution Control Act, and for violations of which penalties may be assessed under this subchapter:

1. N.J.A.C. 7:9-1, Sewer systems and wastewater treatment plants;

[2. N.J.A.C. 7:9-2, Standards for construction of individual subsurface sewage disposal systems;]

***2.**[3.]* N.J.A.C. 7:9-4, Surface water quality standards;

***3.**[4.]* N.J.A.C. 7:9-6, Groundwater quality standards;

***4.**[5.]* N.J.A.C. 7:9-8, Treatment of wastewaters discharged into waters of the State;

***5.**[6.]* N.J.A.C. 7:9-13, Sewer extension bans; and

***6.**[7.]* N.J.A.C. 7:14A, Regulations concerning the New Jersey Pollutant Discharge Elimination System.

NOTE: This list is reproduced here for information purposes only. If a rule validly adopted pursuant to the Water Pollution Control Act is omitted from this list, such omission shall not affect the ability of the Commissioner or the Department to enforce that rule by assessment of a penalty pursuant to this subchapter.

(c) Examples of the most common kinds of violations for which penalties could be assessed under this subchapter are listed in N.J.A.C. 7:14-8.13 and 8.14. Others are possible. These lists are for information purposes only and are not intended in any way to limit the kinds of violations for which a penalty may be assessed under this subchapter. The department will use its best judgement in determining the type of violation.

7:14-8.3 Definitions

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

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NOTE: The definitions of N.J.A.C. 7:14A-1.9 apply to this subchapter. In particular, the terms "Commissioner", "Department", "Discharge", "Domestic treatment works", "Effluent Limitation", "Federal Act", "Municipal treatment works", "MPDES", "NJPDES", "Permit", "Permit by rule", "Person", "Point Source", "Pollutant", "Pretreatment standards", "Treatment works", and "Waters of the State" shall have the meanings ascribed to them in N.J.A.C. 7:14A-1.9.

. . .

"Discharge violation" means a violation which includes or results in the discharge of pollutants (including the release of any pollutant into a domestic treatment works). Examples are provided at N.J.A.C. 7:14-8.14(a).

"Non-discharge violation" means a violation other than a discharge violation. Examples are provided at 7:14-8.13(a).

"Hazardous pollutant" means:

1. Any "toxic pollutant" as defined in N.J.A.C. 7:14A-1.9*, **as amended***.

2. Any "hazardous substance" as defined in N.J.A.C. 7:14A-1.9*, **as amended***.

3. Any substance regulated as a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. et seq.*, **as amended.***

4. Any substance the use or manufacture of which has been prohibited under the Federal Toxic Substances Control Act, 15 U.S.C. 2601 et seq.*, **as amended.***

5. Any substances listed as a known carcinogen on the registry of the National Institute of Occupational Safety and Health (NIOSH)*, **as amended***.

6. Any "hazardous waste" as defined in the "Hazardous Waste Management Regulations", N.J.A.C. 7:26-8 or at a minimum as defined in 40 CFR Part 261*, **as amended***.

"Time related non-discharge violation" means that type of non-discharge violation that occurs when there is a failure to meet a time limit or deadline imposed by a NJPDES permit, permit by rule, regulation, treatment works approval, statute, schedule of compliance, ***or order** [or directive letter]*. Examples are given at N.J.A.C. 7:14-8.13(a)1.

"Non-time related non-discharge violation" means a non-discharge violation other than a time related non-discharge violation. These may occur when there is a failure to carry out a duty imposed by statute, order, permit, regulation, or directive letter. Examples are given at N.J.A.C. 7:14-8.13(a)2.

"Order" means any and all orders issued by the department including, but not limited to, Notice of Assessment, *[Final Assessments,]* Administrative Orders, and ***Administrative*** Consent Orders.

7:14-8.4 Procedures for assessment of civil administrative penalties

(a) Before any assessment is levied pursuant to this subchapter the ***alleged*** violator shall be notified by certified mail, return receipt requested, or by personal service. Such notice shall include:

1. A reference to the section of the statute, regulations, order and/or permit condition violated:

2. A concise statement of the facts alleged to constitute the violation;

3. A statement of the amount of civil administrative penalties sought to be imposed; and

4. A statement of the ***alleged*** violator's right to a hearing and notice of the procedures for requesting a hearing.

NOTE: A notice of assessment of a civil administrative penalty may be issued separately or as part of an administrative order issued pursuant to N.J.S.A. 58:10A-10(b) requiring the ***alleged*** violator to take affirmative actions to comply with the Water Pollution Control Act or a rule, regulation, water quality standard, effluent limitation, or permit issued pursuant to the Act.

(b) The ***alleged*** violator shall have 20 calendar days from receipt of the notice of assessment within which to deliver a written request for a hearing to the appropriate Region Chief:

Division of Water Resources
Enforcement Element
CN-029
Trenton, New Jersey 08625

1. After a hearing, and upon finding that a violation has occurred, the Commissioner or his authorized representative may issue a final assessment of the amount of the fine specified in the notice or such lesser amount as he may assess pursuant to the provisions on compromise of N.J.A.C. 7:14-8.5.

(c) If no hearing is requested, the original notice of assessment shall become a final *[assessment] **order*** after expiration of the 20 calendar day period following receipt of the notice by the ***alleged*** violator.

(d) Payment of an assessed civil administrative penalty is due when a final *[assessment] **order*** is issued or the notice becomes final. If the ***alleged*** violator fails to pay the penalty to the department under (b) above, or to make acceptable arrangements to pay the penalty within a reasonable period of time thereafter, the Department may institute a civil action pursuant to N.J.S.A. 58:10A-10(e) for a civil penalty not to exceed $10,000 per day.

(e) The Department shall publish in the "DEP Bulletin" a list of all notices and final assessments issued under this section.

7:14-8.5 Compromise of penalties

(No change.)

7:14-8.6 Alternative remedies

(No change.)

7:14-8.7 Records of assessments

In order to promote consistency in the application of this subchapter, the Department shall collect and maintain in a discrete file a record of each assessment made pursuant to this subchapter. Such file shall be a public record and shall be kept available for public inspection pursuant to the "Right to Know Law", N.J.S.A. 47:1A-1 et seq. The file shall at a minimum include a copy of each notice issued pursuant to N.J.A.C. 7:14-8.4(a), all final *[notices] **orders*** issued pursuant to N.J.A.C. 7:14-8.4(b), and the terms of any compromise agreed to pursuant to N.J.A.C. 7:*[24]**14***-8.5.

7:14-8.8 Penalties for violations of the Water Supply and Wastewater *[Operations] **Operators*** Licensing Act

(a) *[Basic penalty] **Penalties*** for violations of the Water Supply and Wastewater Operators Licensing Act are as follows:

1. Basic penalty shall be:

i. $500.00 for the first violation;

ii. $1000.00 for the second similar violation;

iii. $5000.00 for each similar violation thereafter.

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2. Daily fine:

i. Each day during which the violation continues constitutes an additional, separate, and distinct offense subjecting the violator to the basic party schedule in 1 above. For example, on the second day of violation, the total penalty which may be assessed is $1500.00; on the fourth day of violation, the total penalty which may be assessed is $11,500.00.

***(b) Examples of violations for which penalties may be assessed under (a) above include but are not limited to the following:**

1. System owner's failure to employ a licensed operator of the proper class for the system;

2. Failure to hold the proper license to operate the system: and

3. Failure to comply with the Licensing Act, rules contained in N.J.A.C. 7:10-13, as amended, or orders issued pursuant to the Licensing Act.*

7:14-8.9 (Reserved)

7:14-8.10 Basic Penalty for discharge violations

(a) The basic penalty which may be assessed for a discharge violation under this subchapter is $5,000 or a fraction thereof, to be determined by application of factors indicative of the type, seriousness, and duration of the violation, as described below.

1.-3. (No change.)

4. The following presumptions shall be applied in the determination the appropriate type factor:

i. (No change.)

ii. Any discharge violation known to the violator which continues for a period of 30 days or more without the violator taking steps to abate it shall be presumed a willful violation.

iii. Any discharge violation which occurs as the result of a condition which involved the violation of any rule of the Department, or of any permit condition the purpose of which was to prevent discharges or promote practice to that end, shall be presumed forseeable or highly forseeable. This includes, but is not limited to, any regulation or permit condition which specifies design criteria or engineering practices for the storage, treatment, disposal, or handling of pollutants.

5. Schedule of factor values: Penalties for discharge violations shall be computed after assigning values to the Seriousness and Type Factors from the ranges set forth below:

		Values
i. Seriousness:		
(1) Serious damage:		2.00-1.50;
(2) Moderate damage:		1.50-1.00;
(3) Slight damage:		1.00-0.50;
(4) Insignificant damage:		0.50.
ii. Type *:		
(1) Willfull:		1.00;
(2) Highly foreseeable:	1.00	0.75;
(3) Unintentional but foreseeable	0.75	0.50;
(4) Unintentional and unforeseeable	0.50.	

*Hazardous pollutant: if the discharge violation involves the discharge of a hazardous pollutant, an additional number between 0.10 and 0.25, depending on the inherent toxicity or harmful characteristics of the pollutant, shall be added to the type factor. This is intended to reflect the higher standard of care in the storage and use of hazardous pollutants which the Department seeks to encourage.

6. (No change.)

7:14-8.11 Non-discharge violations which result in discharge violations

(No change.)

7:14-8.12 (Reserved)

(No change.)

7:14-8.13 Non-discharge violations

(a) There are two types of non-discharge violations: time related and non-time related violations.

1. Examples of time related violations include, but are not limited to, the following:

i. Failure to submit permit fee on time in accordance with N.J.A.C. 7:14A-1.8;

ii. Failure to submit a timely and complete application or renewal application in accordance with N.J.A.C. 7:14A-2.1(f), 3.2 and 10.1;

iii. Failure to submit timely reports incuding, but not limited to, Discharge Monitoring Reports, Monitoring Report Forms, Monthly Operators Reports, planned changes, anticipated noncompliance, transfers, compliance schedule reports or other information in accordance with N.J.A.C. 7:14A-2.5*[(1)]**(a)2*** and 2.9*[(c)]**(a)3***;

iv. Failure to comply with schedules of compliance in accordance with N.J.A.C. 7:14A-2.8;

v. Failure to submit a timely emergency plan in accordance with N.J.A.C. 7:14A-3.12; ***and***

vi. Failure to report changes in effluent quality in a timely manner in accordance with N.J.A.C. 7:14A-3.11 and 3.10 *[; and].*

[vii. Failure to pay a penalty assessed pursuant to this subchapter.]

2. Examples of non-time related violations include, but are not limited to, the following:

i. Failure to provide complete and accurate information in accordance with N.J.A.C. 7:14A-2.1(g), 2.1(h) and 10.3.

ii. Failure to maintain records in accordance with N.J.A.C. 7:14A-2.5*[(j)]**(a)10*** and 2.1(i);

iii. Denial of the right of inspection and entry to departmental personnel or departmentally designated personnel in accordance with N.J.A.C. 7:14A-2.5*[(i)]**(a)9***;

iv. Failure to properly carry out monitoring and sampling activities in accordance with N.J.A.C. 7:14A-2.5*[(j)]**(a)10***, 2.9 and 6.1;

v. Failure to implement an emergency plan in accordance with N.J.A.C. 7:14A-3.12;

vi. Improper maintenance or operation in accordance with N.J.A.C. 7:14A-2.5*[(e)]**(a)5***;

vii. Construction of a facility for the collection, prevention, treatment or discharge of a pollutant (for example, sewer mains, treatment plant) without obtaining required Treatment Works Approval, NJPDES permit, and/or waiver letter pursuant to N.J.A.C. 7:14A-12;

viii. Failure to request and/or submit endorsements or submit proof of such request in accordance with N.J.A.C. 7:14A-2.1(j);

ix. Failure to have signatories in compliance with N.J.A.C. 7:14A-2.4 and 2.5*[(k)]**(a)11***; and

x. Distribution, sale, offer or exposure for sale of any sewage system cleaner containing restricted chemical material, as defined in N.J.S.A. 58:10A-16.

(b) ***The penalty schedule** [Penalties]* for violations of the Water Supply and Wastewater Operators Licensing Act, N.J.S.A. 58:11-64 to 73, shall be imposed as authorized by N.J.A.C. 7:14-8.8 and are not subject to the provisions of N.J.A.C. 7:14-8.13. *[The basic penalty schedule may be found at 7:14-8.8.]*

7:14-8.14 Discharge violations

(a) Discharge violations include but are not limited to:

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1. Discharging pollutants without a valid NJPDES permit issued in accordance with N.J.A.C. 7:14A-1.3(e) or 10.1;

2. (No change.)

3. Discharging pollutants in excess of effluent limitations, including effluent limitations adopted as part of N.J.A.C. 7:14A, contained in a valid NJDES permit, permit by rule, Treatment Works Approval, construct and operate permit, or in violation of any other permit conditions restricting the quantity, period of release, or any other characteristics of the effluent stream;

4. Failure to reduce or halt activities in accordance with N.J.A.C. 7:14A-2.5*[(c)]**(a)3***;

5. Failure to mitigate in accordance with N.J.A.C. 7:14A-2.5(d);

6. Failure to properly maintain and operate in accordance with N.J.A.C. 7:14A-2.5*[(e)]**(a)5***;

7. Failure to properly dispose of sludge or septage in accordance with N.J.A.C. 7:14A-2.5*[(m)]**(a)13***;

8. Failure to implement an emergency plan in accordance with N.J.A.C. 7:14A-3.12;

9. Failure to meet a schedule of compliance in accordance with N.J.A.C. 7:14A-2.8;

10. Use of any sewage system cleaner containing restricted chemical material, as defined in N.J.S.A. 58:10A-16;

11. Operation of a facility for the collection, prevention, treatment, or discharge of a pollutant (for example, sewer mains, treatment plant) without obtaining a required Treatment Works Approval, a waiver letter from the department (violation of N.J.A.C. 7:14A-12), or in violation of the conditions of such authorization;

[12. Operating sewage facilities covering 50 or more realty improvements without obtaining required approval from the department (violation of N.J.A.C. 7:9-2)];

*[13.] **12.*** Operating a sewer extension in violation of a sewer extension ban (violation of N.J.A.C. 7:9-13);

*[14.] **13.*** Discharging after the expiration of a NJPDES permit in violation of N.J.A.C. 7:14A-2.3;

*[15.] **14.*** Using or attempting to use dilution to achieve permit compliance in violation of N.J.A.C. 7:14A-2.5(a)***1ii;** *[and]*

*[16.] **15.*** Discharging into a domestic treatment works in violation of duly promulgated pretreatment standards, including N.J.A.C. 7:14A-13.

16. Discharging in violation of a NJPDES permit-by-rule.

(b) (No change.)

7:14-8.15 Construction of unpermitted facilities

(a) The following kinds of actions constitute violations of regulations of the Department adopted pursuant to the authority of the Water Pollution Control Act:

1. Building or installing a treatment works without obtaining required Treatment Works Approval or NJPDES permit from the Department (violation of N.J.A.C. 7:14A-1.1 et seq.) or in violation of the conditions of such approval.

[2. Building sewage facilities covering 50 or more realty improvements without obtaining required approval from the Department (violation of N.J.A.C. 7:9-2).]

*[3.] **2.*** Building a sewer extension or tying into a public sewage system in violation of a sewerage extension ban (violation of N.J.A.C. 7:9-13).

*[4.] **3.*** Any other construction which violates a regulation of the Department promulgated pursuant to the authority of the Water Pollution Control Act.

(b) If the construction and operation of a facility in violation of a regulation of the Department promulgated pursuant to the authority of the Water Pollution Control Act results in a discharge violation, the violation may be assessed (as described in N.J.A.C. 7:14-8.11) as a discharge violation only, or according to subsection (c) below, or both.

(c) The penalties which may be assessed for unlawful building or construction as a non-discharge violation shall be as follows:

1. Basic penalty: The basic penalty shall be five percent of the value of the construction, to a maximum of $5,000; unless it can be shown that the owner knew of the requirement for obtaining approval from the Department and deliberately sought to evade it, in which case the basic penalty shall be ten percent of the value of the construction, to a maximum of $5,000.

2. Daily fine:

i. (No change.)

ii. If the owner of an unapproved facility has been ordered to submit plans and specifications and apply for Department approval, a daily fine of $100 may be assessed for each day the operator fails to submit such plans, specifications and application beyond the date specified by the Department for its receipt of such submission. In determining such date, the Department shall afford the owner a reasonable period for obtaining the information and drawing the papers necessary to such submission. If the owner still fails to submit the required material within 30 calender days after the date set by the Department, the daily fine shall rise to $200, and after 60 calender days to $500. The Department may, in its discretion, extend the deadline for submitting required material for good cause shown.

7:14-8.16 *[Basic penalties] **Penalties*** for non-discharge violations

(a) The penalties which may be assessed for time related non-discharge violations shall be as follows:

1. Basic penalty up to a maximum of $5,000.00:

i.-v. (No change.)

2. (No change.)

(b) The penalties which may be assessed for non-time related non-discharge violations shall be:

1. Basic penalty shall be as follows:

i. $500.00 for the first violation;

ii. $1,000.00 for a second similar violation;

iii. $5,000.00 for each similar violation thereafter.

2. Daily fine: After the receipt of an order from the department requiring cessation of the violation, the daily fine shall be:

i. During the first week after receipt of the order: $100.00 per day.

ii. During the second week after receipt of the order ***and subsequently***: $500.00 per day.

3. Penalties for the construction of a facility for the collection, transmission, prevention, treatment, or discharge of a pollutant (for example, sewer mains, treatment plant) without obtaining required Treatment Works Approval pursuant to N.J.A.C. 7:14A-12 shall be imposed as authorized by N.J.A.C. 7:14-8.15 and are not subject to the provisions of N.J.A.C. 7:14-8.16.

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(a)

DIVISION OF WASTE MANAGEMENT
DIVISION OF WATER RESOURCES

Hazardous Waste Land Disposal

Adopted New Rules: N.J.A.C. 7:14A-4.7 and 6.15; 7:26-10.6 and 10.8
Adopted Amendments: N.J.A.C. 7:14A-4.4, 6.1, and 6.2; 7:26-1.4, 11.3, and 12.2

Proposed: December 5, 1983 at 15 N.J.R. 1997(a).
Adopted: May 7, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: May 7, 1984 as R.1984 d.198, **with substantive changes** not requiring additional public notice (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:1B-3, 13:1E-6, and 58:10A-4.

Effective Date: May 21, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): February 21, 1989 for 7:26-1, June 9, 1988 for 7:14A.

Summary of Public Comments and Agency Responses:

The Department held two public hearings on the proposed rules. The first public hearing was held on January 4, 1984 at 7 P.M. at the Cherry Hill Township Municipal Building in Cherry Hill, New Jersey. Thirteen people registered their attendance at this hearing and, of those, one person offered oral testimony. The second public hearing was held on January 11, 1984 at Rutgers University in New Brunswick, New Jersey. Eleven people registered their attendance. No oral testimony was received at the second hearing although two organizations submitted written comments. In addition, the Department received written comments from seventeen individuals or organizations. The comment period closed on January 19, 1984.

General Comments

Several commenters complained that the preamble of the notice for this proposal which appeared in the December 5, 1983 New Jersey Register did not provide sufficient technical support and economic impact information, particularly where the provisions of State regulations were more stringent than their Federal counterparts.

Response: As stated in the preamble, the Department is required to adopt land disposal rules equivalent to the RCRA regulations in order to obtain authorization to administer the hazardous waste management program in New Jersey. The Department, therefore, relied on the knowledge and expertise utilized by the United States Environmental Protection Administration (U.S. EPA) in the development of these Federal regulations. Where the Department chose to include provisions more stringent than the Federal regulations, it was based on the Department's experience in land disposal matters and its concern with providing a margin of safety to insure adequate environmental and health protection. The Department has no concrete figures available regarding the economic impact its more stringent regulations will have and relies on the regulated community to provide insight into these matters during the public comment period; however, no commenter provided such data.

Several commenters urged the Department to discourage future land disposal (via surface impoundments or landfills) and encourage alternate disposal technologies such as source reduction, recycling, high temperature incineration, and treatment and waste exchange programs.

Response: The Department recognizes the environmental risks posed by the land disposal of hazardous waste and is addressing those risks through the adoption of these regulations. However, it is also recognized that sufficient alternative treatment, storage and disposal methods for the volumes of hazardous waste generated each year in New Jersey are not yet available, not yet developed, or not yet operational.

One commenter urged the Department to be helpful to industry.

Response: The Department's policy has been one of fostering the lines of communication with both the regulated community and with environmental groups. Numerous task forces have been formed and have met with the public on all issues of hazardous waste management. The Hazardous Waste Advisement Program within the Division of Waste Management is set up to handle inquiries from the public regarding hazardous waste matters and also to disseminate information to the public.

The same commenter urged the Department to improve its overall enforcement record.

Response: The Department's ability to further enhance its enforcement effort includes the commitment to hire additional personnel, initiate new inspection procedures and continue to improve in-depth training. The Department has authorization and approval to hire additional enforcement staff which will effect an approximate 40 percent increase in its field operations unit. In addition, to make its presence more widely felt, the Department has enlisted the aid of municipal and county health officers to perform initial evaluations and follow-ups. The Department provides training activities to keep staff abreast of current technological developments as well as to increase their investigative abilities. The future computerization of all enforcement data will make retrieval and case processing more expeditious.

Surface Impoundments

N.J.A.C. 7:26-10.6(a): One commenter requested that this section provide an exception for non-hazardous surface impoundments.

Response: N.J.A.C. 7:26-10.6 sets forth the requirements for surface impoundments used for the storage, treatment or disposal of hazardous waste; it does not apply to non-hazardous waste and, therefore, an explicit exception is not necessary. However, non-hazardous surface impoundments may be subject to regulation under N.J.A.C. 7:14A.

N.J.A.C. 7:26-10.6(a)3. and 10.6(b): One commenter suggested that the following should be added to N.J.A.C. 7:26-10.6(a)3 and 10.6(b), "except as authorized by a NJPDES permit".

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Response: The Department agrees that N.J.A.C. 7:26-10.6(a)3 should be changed to clarify the point that surface water discharges from a surface impoundment are legal if they are authorized by a valid NJPDES permit. The Department, however, does not agree to a similar change in N.J.A.C. 7:26-10.6(b), as this portion of the regulations deals with liner requirements. The change made to N.J.A.C. 7:26-10.6(a)3 will allow a surface water discharge if the conditions of a valid NJPDES surface water permit are met.

N.J.A.C. 7:26-10.6(a)6: One commenter suggested that the reference to Subchapter 13 in this section is a typographical error.

Response: Land disposal facilities that will meet the definition of a major commercial facility will be subject to the siting criteria for new major commercial hazardous waste facilities set forth in N.J.A.C. 7:26-13. Subchapter 13, adopted September 9, 1983 pursuant to the Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E-49 et seq. and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., establishes the Department of Environmental Protection's criteria for the siting of new major commercial hazardous waste facilities.

N.J.A.C. 7:26-10.6(a)7: The U.S. EPA commented that, in order to be equivalent to the RCRA regulations, the Department must adopt the language of 40 CFR 264.221 (e), which would require that the permit specify all design and operating practices that are necessary to ensure that the Federal surface impoundment requirements of 40 CFR 264.221 are satisfied.

Response: The Department agrees and has included the provision at N.J.A.C. 7:26-10.6(a)7.

N.J.A.C. 7:26-10.6: Three commenters suggested the adoption of regulations which would allow alternative equivalent technology for design criteria.

Response: The regulations being adopted reflect the state of the art designs for hazardous waste land disposal. The Department recognizes that alternative designs may be available in the future. These regulations may be revised at a future date to include alternative technology provided engineering calculations or performance data from other applications (for example, non-hazardous wastes) can be supplied to justify the effectiveness of an alternative design.

N.J.A.C. 7:26-10.6(b): One commenter requested that the Department delay adoption of the land disposal regulations pending EPA's determination regarding the classification of coal combustion-related wastes.

Response: The Department must adopt the land disposal regulations in May 1984 in order to receive authorization to administer the RCRA program. Therefore, the Department can not delay the adoption of the regulations. However, when EPA makes its determination regarding coal combustion-related wastes, the Department will review them for possible amendments to the State regulations.

N.J.A.C. 7:26-10.6(b): Three commenters suggested that the regulations be flexible in accordance with waste types.

Response: These regulations apply to the land disposal of hazardous wastes. Those solid wastes which are subject to regulation as hazardous wastes are identified in N.J.A.C. 7:26-8. The Department feels that any waste that is identified in these sections is a threat to human health and the environment if managed improperly and therefore should be managed in accordance with the hazardous waste management regulations including the minimum design standards being adopted in the land disposal regulations. The design may be required to be more stringent than these minimum design standards on a case by case basis (that is, applications involving very mobile wastes).

N.J.A.C. 7:26-10.6(b)1: One commenter requested that performance criteria (for example, shear resistance, puncture resistance) should be used rather than specific design standards for liners.

Response: The Department has chosen design standards rather than performance standards due to its experience with liners and the history of liner leakage in the State.

N.J.A.C. 7:26-10.6(b)1ii and (h)3iii: One commenter indicated that a synthetic liner with a permeability of 1×10^{-7} cm/sec would not be adequate in a hazardous waste landfill.

Response: The Department agrees with the commenter and finds the comment applicable to surface impoundments, also. The regulations have been revised and the revision does not include a hydraulic conductivity for synthetic liners. The Department concludes that hydraulic conductivity should not be specified for synthetic liners. Synthetic liners will be required to be designed to prevent the flow of liquids through the liner.

N.J.A.C. 7:26-10.6(b)1: Two commenters suggested that liner design standards for new surface impoundments should be as stringent as the design standards for new hazardous waste landfills due to impoundments' greater potential for liner degradation, higher concentration of contaminants in the leachate, and the faster migration rate.

Response: There are several factors on which the Department based the decision for requiring more stringent design requirements for hazardous waste landfills. 1. The liner system of a surface impoundment will have a definite life and will be removed at closure. 2. The potential for punctures, tears, and rips is a more prevalent problem for landfills than it is for surface impoundments because of the type of wastes and the nature of waste placement activities. The wastes themselves may be capable of causing damage because they contain sharp objects or abrasives. The act of placing wastes sometimes causes damage (for example, due to dropping of wastes, or driving of vehicles in the landfill). 3. The head on the liner system in a surface impoundment is equally distributed due to the fact that an impoundment contains liquids and semi-liquids which distribute their weight equally. The head on the liner system in a landfill is not equally distributed due to point loading.

N.J.A.C. 7:26-10.6(b)1i and (h)3iii: One commenter suggested that the wording in this section be rephrased to state: "A surface impoundment shall have two liners" rather than "a surface impoundment shall have a minimum of two liners".

Response: The regulations have been revised to require two liners rather than a minimum of two liners.

N.J.A.C. 7:26-10.6(b)1ii: One commenter requested that the regulations be revised to allow the upper liners to consist of synthetic material which is at least the equivalent of 30 mils thick. The commenter suggested that the regulations allow for multiple liners of less than 30 mils thick.

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Response: The Department will not permit the installation of multiple liners of less than 30 mil thickness to substitute the 30 mil requirement. Multiple liners do not have the same structural properties as a single liner with the same thickness.

N.J.A.C. 7:26-10.6(b)1v and 10.6(e): Several commenters stated that restriction should be placed on the disposal of certain particularly hazardous wastes in surface impoundments, particularly wastes which may dissolve the liners or attract vermin.

Response: The Department requires that the liners be designed so as to be compatible with the hazardous waste placed in the surface impoundment (N.J.A.C. 7:26-10.6(b)1v). As a matter of operational standards, wastes which are incompatible with each other or the liner can not be placed in a surface impoundment (N.J.A.C. 7:26-10.6(e)6). As a further safeguard, N.J.A.C. 7:26-10.6(e)5 imposes a restriction on the placement of ignitable and reactive wastes in surface impoundments. As far as vermin control is concerned, the Department's experience with hazardous waste surface impoundments indicates that vermin are not a problem. The Department recognizes the need to regulate waste types accepted by a surface impoundment due to the history of liner leakage. At the present time, the Department reviews each permit application and makes a case-by-case determination as to waste types which may be accepted. In the future, the Department expects to promulgate regulations concerning waste type acceptance.

N.J.A.C. 7:26-10.6(b)1vii: Two commenters suggested that the requirement for a minimum separation of twelve inches between liners be revised. One of these commenters argued that the use of geotextiles would require less than a twelve inch separation.

Response: The basis for this requirement is to protect the primary and secondary liner from damage, to protect the piping in the leak detection system, and to promote drainage for the leak detection system. This requirement was also based on the draft RCRA guidance document for Surface Impoundment Design dated July, 1982. The Department believes that even with the use of geotextiles, a twelve inch separation is necessary to adequately protect the liners and the leak detection system.

N.J.A.C. 7:26-10.6(b)2: Three commenters suggested that existing surface impoundments be exempt from liner requirements and two of these commenters suggested that surface impoundments have a liner system only where groundwater contamination has been demonstrated by an existing facility's groundwater monitoring network.

Response: The Department disagrees. While recognizing the significant costs involved in retrofitting, the land disposal regulations have been developed to prevent the contamination of groundwater using acceptable engineering designs. The purpose of these regulations is to prevent migration of hazardous waste off-site and especially to prevent the contamination of groundwater since the cleanup of contaminated groundwater is normally very costly and sometimes is extremely difficult and takes years to accomplish. A liner system designed in accordance with these regulations is the minimum requirement to accomplish this goal. Groundwater monitoring will be required to detect contamination when it occurs but monitoring does not prevent contamination. The regulations have been modified and will allow an existing surface impoundment which is equipped with a single liner that is functioning properly based on groundwater monitoring data to operate in the same manner. An existing surface impoundment without a liner system will be required to install a double liner to prevent groundwater contamination rather than detect contamination after it occurs. A surface impoundment, by definition (N.J.A.C. 7:26-1.4 and 7:14A-1.9) is designed to hold an accumulation of liquids. Unless it has a liner it cannot fulfill its stated design purpose; if it is designed so as to hold liquids and transmit them to the subsurface, the facility would be classified as an infiltration-percolation lagoon and would be regulated as such.

N.J.A.C. 7:26-10.6(b)2: One commenter suggested that existing surface impoundments be required to comply with the design standards for new surface impoundments, in particular with the double liner requirement.

Response: The Department agrees in part and the proposed regulations have been revised regarding the design standards for existing surface impoundments. An existing impoundment which is equipped with a single liner that appears to be functioning properly based on groundwater monitoring data will not be required to comply with the design standards for new surface impoundments. An existing surface impoundment which is not equipped with a liner will be required to comply with the design standards of new surface impoundments.

N.J.A.C. 7:26-10.6(b)2: One commenter noted that no liner thickness requirement is stated for the single liners of existing surface impoundments. The commenter felt that this was a serious loophole in ensuring groundwater protection.

Response: The Department has modified this paragraph. No liner thickness has been specified because the Department has determined that the burden on the industry of requiring retrofitting to specific liner thickness requirements where the liner meets conductivity standards for soil liners or performance standards for synthetic liners and where the review of groundwater data indicates the liner is functioning properly is not justified.

N.J.A.C. 7:26-10.6(b) and (c): One commenter urged that liners be constructed of materials which have appropriate properties to prevent failure due to chemical or biological action as well as physical stress.

Response: The regulations contain appropriate safeguards at N.J.A.C. 7:26-10.6(b)1vi.

N.J.A.C. 7:26-10.6(c)2 and (e)2: One commenter indicated that the standards for minimum freeboard should be set with definite limits, rather than case-by-case discretion of the Department.

Response: The Department agrees and the proposed regulations have been revised to require a minimum of two feet of freeboard in a surface impoundment. The minimum freeboard requirement is based on the Department's experience with existing surface impoundments.

N.J.A.C. 7:26-10.6(d): One commenter argued that post closure groundwater monitoring requirements should only apply to facilities where the waste will remain in the impoundment after closure.

Response: The Department agrees in part with the commenter and has amended N.J.A.C. 7:26-10.6(d). Post-closure groundwater monitoring requirements may be waived if all

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hazardous and non-hazardous waste and waste residues, all standing liquids, the liner, and underlying and surrounding contaminated soil have been removed at closure and all contaminated groundwater has been cleaned-up.

N.J.A.C. 7:26-10.6(d): One comment was received stating that this subsection requires all owners and operators of surface impoundments that store non-hazardous materials to implement a groundwater monitoring program in accordance with the NJPDES regulations.

Response: The commenter erroneously believes that N.J.A.C. 7:26-10.6 applies to surface impoundments that contain non-hazardous waste; the requirements in this subsection only apply to surface impoundments which are used for the storage or treatment of hazardous wastes.

N.J.A.C. 7:26-10.6(d): One commenter argued that the proposed regulations were too stringent in requiring groundwater monitoring for double-lined hazardous waste surface impoundments. The commenter pointed out that the Federal regulations had no such requirement and that a double liner with a leak detection system gave adequate groundwater protection.

Response: The Department and the EPA agree that a commercially available completely impermeable liner does not exist. The Department does agree that a double-lined surface impoundment with a leak detection system will afford a very high degree of safety. However, because New Jersey is unique in its high population density, its high industrial density, and its high dependence on the State's limited groundwater resources, the Department considers the additional requirement of groundwater monitoring a necessity at all hazardous waste surface impoundments.

N.J.A.C. 7:26-10.6(e)8: One commenter recommended adding language that would require a groundwater decontamination program only if "the groundwater is a sole source drinking water supply or in cases where the groundwater could be potable were it not for some other existing conditions including natural degradation; that is, salt water intrusion." The commenter went on to point out that this concept is included in the Department's rules under the New Jersey Spill Fund. The basis for this recommendation was stated to be recognition of current use and condition of the groundwater.

Response: The concerns of the commenter regarding groundwater use and use classification are covered by the groundwater quality protection standards in N.J.A.C. 7:9-6.1 et seq. The NJPDES program has relied upon N.J.A.C. 7:9-6.1 et seq. in its strategy for groundwater protection and its permitting process for all types of NJPDES groundwater permits. N.J.A.C. 7:9-6.1 et seq. presently provides for use classifications of aquifers. The land disposal regulations are only a part of the NJPDES overall groundwater protection strategy, the cornerstone of which is the Ground-Water Quality Standards. The regulation has been clarified to reflect this.

N.J.A.C. 7:26-10.6 (f)1: The U.S. EPA commented that, in order to be equivalent to the RCRA regulations, the Department must adopt the language of 40 CFR 264.226(a) which requires that surface impoundments be inspected immediately after, as well as during, construction and installation.

Response: The Department agrees and has modified N.J.A.C. 7:26-10.6(f)1.

N.J.A.C. 7:26-10.6(f)2: One commenter requested that the requirements for inspecting an impoundment be revised from daily to weekly.

Response: The failure of a surface impoundment can occur rapidly and should be repaired immediately. Therefore, the Department has concluded that inspections should be conducted on a more frequent basis than weekly.

N.J.A.C. 7:26-10.6(g)1ii: One commenter suggested that the regulation be clarified to clearly indicate that the removal from service requirement applies only to new surface impoundments with double liner systems.

Response: The Department sees no need to modify N.J.A.C. 7:26-10.6(g)1ii as this requirement could only apply to new facilities that are equipped with a double liner system and a leak detection system.

N.J.A.C. 7:26-10.6(g)1ii and 3: One commenter stated that requiring the removal of an impoundment from service whenever liquid is detected in the leak detection system is unwarranted where marginally hazardous waste is being held in the impoundment or where an impoundment is equipped with double liners. The commenter goes on to state that the removal remedy is severe and should only be required in cases of massive or catastrophic failure.

Response: The Department has reviewed this requirement and has adopted the Federal provisions at 40 CFR 264.222(b).

N.J.A.C. 7:26-10.6(g)2iii: One commenter requested that the owner or operator be required to stop a leak "as soon as reasonably possible" rather than "immediately".

Response: The surface impoundment regulations are required to be as stringent as the Federal land disposal regulations effective January 26, 1983. The regulation to immediately cause the leak to be stopped in cases of impoundment failure is a Federal regulation in accordance with 40 CFR 264.227.

N.J.A.C. 7:26-10.6(g)3v: One commenter stated that including repair techniques in a facility's contingency plan in the event of a leak due to system failure or deterioration which does not require removal of the impoundment from service will result in needless confusion and should not be required.

Response: The Department agrees and has deleted this requirement.

N.J.A.C. 7:26-10.6(g)7: One commenter indicated that all wastes removed from the impoundment are not necessarily hazardous and should not have to be managed as hazardous wastes.

Response: The regulations have been revised for wastes removed from surface impoundments. All wastes must be managed as a hazardous waste unless the owner or operator can demonstrate in accordance with N.J.A.C. 7:26-8 that the solid waste removed from the surface impoundment is not a hazardous waste.

N.J.A.C. 7:26-10.6(h)2 and 10.6(h)2ii: One commenter stated that h(2) and h(2)ii make use of language which has no understandable meaning in scientific or engineering terms.

Response: The language in the proposed regulations, specifically, the word "ever" in h(2) and "in perpetuity" in

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h(2)ii, has been changed to "throughout the post-closure period". The length of the post-closure period will be thirty years in accordance with N.J.A.C. 7:26-9.9 unless the entombment is not functioning properly at which time the post-closure period can be extended indefinitely if the Department finds that the extended period is necessary to protect human health and the environment.

N.J.A.C. 7:26-10.6(h)3iii: One commenter suggested that two impervious top liners at closure of an impoundment where wastes will remain after closure is not necessary.

Response: The Department feels that the proposed regulations for the design of final cover, which includes a double top liner, are necessary to adequately minimize infiltration of precipitation, which is the primary purpose of the final cover. A final cover with this design will act to minimize infiltration by causing precipitation to run off through the use of slopes, drainage layers, and impermeable and slightly permeable barriers. By minimizing infiltration, the generation of leachate will also be minimized, thereby reducing long-term discharge of pollutants to the groundwater.

N.J.A.C. 7:26-10.6(h)4 and 5: The U.S. EPA commented that, in order to be equivalent to the RCRA regulations, the Department must adopt language equivalent to 40 CFR 264.228 (c) and (d) which specifies the procedures for closure of a surface impoundment under certain conditions as well as notice requirements if a leak is detected.

Response: The Department agrees and has modified N.J.A.C. 7:26-10.6(h)4 and 5.

N.J.A.C. 7:26-12.2(f)3xiii: In reviewing the Department's regulation to determine equivalency with the RCRA regulations, U.S. EPA has pointed out that the Department has no regulatory provision equivalent to 40 CFR 270.14(c)(1) which requires owners and operators of surface impoundments to submit, as part of the permit application, groundwater monitoring data.

Response: The Department has modified N.J.A.C. 7:26-12.2(f)3xiii, accordingly.

Landfills

N.J.A.C. 7:26-10.8: Two commenters suggested the adoption of regulations which would allow alternative equivalent technology for design criteria for hazardous waste landfills.

Response: As stated in the comment to N.J.A.C. 7:26-10.6, above, the regulations reflect the state of the art for landfill design. The regulations may be revised in the future to allow for justifiable alternative technology.

N.J.A.C. 7:26-10.8: One commenter stated that restriction should be placed on the disposal of certain particularly hazardous wastes in landfills.

Response: As with surface impoundments, the Department recognizes a need to regulate waste types accepted by a hazardous waste landfill. At the present time, the Department reviews each permit application and makes a case-by-case determination as to waste types which may be accepted based on the engineering design. In the future, the Department expects to promulgate regulations concerning this matter.

N.J.A.C. 7:26-10.8(b)lii: One commenter questioned the requirement to use only synthetic liners as primary liners for new hazardous waste landfills.

Response: The Federal regulations at 40 CFR 264.301(a)(1) require that the liner be constructed of materials that prevent waste from passing into the liner. Natural liners will not meet this requirement. The Department will require synthetic liners as primary liners due to the fact that synthetic liners typically achieve complete rejection of fluids and are thus most effective. Soil liners do allow some of the liquid reaching them to enter the pore structures and ultimately escape. For this reason, soil liners are recommended only as a backup in the event the primary liner fails. In addition, the use of a soil liner as a primary liner is not desirable due to construction problems associated with the compaction of the soils (for example, damage to leak detection system and permeable drainage layer).

N.J.A.C. 7:26-10.8(c): Three commenters suggested that the regulations be flexible in accordance with waste types.

Response: See discussion under N.J.A.C. 7:26-10.6(b), above.

N.J.A.C. 7:26-10.8(c): One commenter requested that the Department delay adoption of the land disposal regulations pending EPA's determination regarding the classification of local combustion-related wastes.

Response: See response under N.J.A.C. 7:26-10.6(b), above.

N.J.A.C. 7:26-10.8(c): One commenter suggested that the regulations provide for certain exceptions to double liner requirements as the Federal regulations do.

Response: The Department concludes that all hazardous waste landfills in the State should have a double liner system based on the Department's experience with the performance of liners and the history of liner leakage throughout the State. The double liner requirement is also based on New Jersey's high population density, its high industrial density, and its high dependence on the State's limited groundwater resources.

N.J.A.C. 7:26-10.8(c): The commenter argued that the proposed regulations were burdensome in requiring both a double-liner system and a groundwater monitoring program for hazardous waste landfills and urged the Department to adopt the Federal scheme which provides for a double liner or a single liner with monitoring system, but not both.

Response: The Department and the EPA agree that a commercially available completely impermeable liner does not exist. As with the same requirements for surface impoundments, the Department agrees that a double-lined landfill will provide a very high degree of safety. As stated previously, the Department considers New Jersey unique in its high population density, its small size and its high dependence on the State's limited groundwater resources. The requirements for a groundwater program are even more important when one realizes that hazardous waste will remain in the landfill after closure. The Department will require groundwater monitoring not only during the active life of the facility and the closure period, but also during the post-closure period.

N.J.A.C. 7:26-10.8(c)1i: One commenter suggested that two liners should be required rather than "a minimum of two liners."

Response: The Department agrees and has modified N.J.A.C. 7:26-10.8(c)li.

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N.J.A.C. 7:26-10.8(c)1ii and 1iii: One commenter indicated that a synthetic liner with a permeability of 1 x 10^{7} cm/sec. would not be adequate in a hazardous waste landfill.

Response: The regulations have been revised and the revision does not include a hydraulic conductivity for synthetic liners. The Department concludes that hydraulic conductivity should not be specified for synthetic liners and will utilize a performance standard that requires synthetic liners to be designed to prevent the flow of liquids through the liner. (See also discussion concerning N.J.A.C. 7:26-10.6(b)1ii and (h)3iii, above.)

N.J.A.C. 7:26-10.8(c)1ii: One commenter requested that the upper liner specification be 30 mils, rather than 40 mils, claiming that 30 mils is the standard thickness for manufacturers of liners. The commenter noted that no justification was provided for requiring 40 mils rather than 30 mils.

Response: The Department rejects this suggestion. The polymeric materials most frequently used in liners are polyvinyl chloride (PVC), chlorosufonated polyethylene (CSPE), chlorinated polyethylene (CPE), butyl rubber, ethylene propylene rubber (EPDM), neoprene, and high-density polyethylene (HDPE). The thickness of polymeric membrane for liners range from 20 to 120 mils, with most in the 20-60 mil range. The Department requires 40 mils thickness rather than the EPA suggested 30 mils due to the Department's experience with the use of liners that are 30 mils.

N.J.A.C. 7:26-10.8(c)1iii: One commenter questioned the requirement of 5 feet of soil for the secondary liners.

Response: The Department does not require 5 feet of soil for the secondary liner. The owner or operator has the option of using 5 feet of soil or a 40 mils synthetic liner as the secondary liner.

N.J.A.C. 7:26-10.8(c)1vi and (d): One commenter urged that liners be constructed of materials which have appropriate properties to prevent failure due to chemical or biological action as well as physical stress.

Response: The Department has already included appropriate safeguards at N.J.A.C. 7:26-10.8(c)1vi.

N.J.A.C. 7:26-10.8(c)1ix: During the Department's review of these regulations, it was decided that the one foot layer of sand/gravel over the primary liner be increased to two feet.

Response: U.S. EPA's technical resource document, "Lining of Waste Impoundments and Disposal Facilities", dated March 1980, recommends a minimum of two feet of sand/gravel over the primary liner to promote good drainage. The Department has modified N.J.A.C. 7:26-10.8(c)1ix to require a layer of sand/gravel at least two feet thick.

N.J.A.C. 7:26-10.8(c)1ix: One commenter suggested that the Department establish a permeability standard for the one foot layer of sand/gravel on top of the primary liner.

Response: The Department agrees and has established a maximum permeability of 1 x 10^{-2} cm/sec.

N.J.A.C. 7:26-10.8(c)1ix: One comment was received requesting that this section be revised so as to grant the Department discretion to require a material other than sand/gravel to be placed on top of the primary liner.

Response: The minimum thickness of the drainage layer is the state of the art design for hazardous waste landfills as specified in the Draft RCRA guidance manual for landfill design dated July, 1982. The Department recognizes that alternative designs may be available in the future and is amenable to revisions at a future date to include alternative technology as it becomes available.

N.J.A.C. 7:26-10.8(c)2: Three comments were received indicating that an existing hazardous waste landfill cannot be retrofitted. Two of the commenters suggested that existing hazardous waste landfills be exempt from the liner requirements.

Response: There are presently two active authorized hazardous waste landfills located in the State. Both of these landfills meet the liner requirements of N.J.A.C. 7:26-10.8(c)2 for an existing landfill and would not be required to retrofit.

N.J.A.C. 7:26-10.8(d)1i and 10.8(e)15: One commenter indicated that it is not possible to keep the leachate level below the top of the one foot layer of sand or gravel placed over the upper liner.

Response: The Department disagrees. The hydraulic conductivity of the sand or gravel layer will be greater than 1 x 10^{-3} cm/sec. This hydraulic conductivity will promote drainage to the leachate collection system and therefore leachate levels may be kept to less than one foot provided the leachate collection and removal system is designed properly and is functioning properly.

N.J.A.C. 7:26-10.8(d)3: One commenter requested that the requirements for a gas monitoring system be more detailed.

Response: The requirements for a gas monitoring system will be included in an air pollution control permit which will be required for all hazardous waste landfills. The specific requirements for each hazardous waste landfill will be determined by the types of wastes being placed in the landfill. An air pollution control permit may be obtained from the Bureau of Air Pollution Control Operations, Division of Environmental Quality, Department of Environmental Protection.

N.J.A.C. 7:26-10.8(e)7: One commenter requested that the word "operation" be eliminated from this section.

Response: The transporting of hazardous waste by trucks is not considered a disposal operation. The operation of a hazardous waste landfill includes the active portion of the landfill as well as any standby equipment used to operate the landfill (for example, leachate collection holding tanks).

N.J.A.C. 7:26-10.8(e)8: One commenter requested that the Department be consistent with the Federal regulations by deleting the prohibition against "corrosive" wastes and allowing the exceptions to the "reactive" class of wastes that are permitted at the Federal level. The commenter also suggested that the prohibition of certain waste types may thwart the efforts of the Hazardous Waste Siting Commission to establish new hazardous waste facilities that could handle these wastes.

Response: The regulations for reactive wastes are identical to the Federal regulations. The basis for prohibiting corrosive wastes is to protect the leachate collection and removal system

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from corrosion. The prohibition of certain waste types from land disposal will complement the Hazardous Waste Siting Commission in protecting the resources of the State. The purpose of the regulations is to provide operational and design standards for existing facilities and new facilities which will be sited in areas approved by the Hazardous Waste Siting Commission.

N.J.A.C. 7:26-10.8(e)16 and 10.8(g): One commenter suggested that those subsections are an overall prohibition of containers in a hazardous waste landfill.

Response: These regulations allow the disposal of containers which contain solids and are 90 percent full. A similar Federal provision can be found at 40 CFR 264.315.

N.J.A.C. 7:26-10.8(e)20: One commenter suggested that in addition to the restriction on liquids in hazardous waste landfills, an additional restriction should be placed on the acceptance of absorbent materials which will either biodegrade or will release liquids under pressure so as to allow free liquids to enter the landfill.

Response: The Department has revised the regulations to include a provision which bans liquid waste or waste containing free liquids that have been mixed with an absorbent material unless the absorbent material is approved for this use by the Department. The Department will develop a list of acceptable materials for use as absorbents.

N.J.A.C. 7:26-10.8(g): One commenter requested that the language in this subsection be revised to make it clear that this section applies to liquid hazardous wastes.

Response: The regulations in this subsection apply to small containers of hazardous waste (liquids and solids) in overpacked drums. No language change is necessary.

N.J.A.C. 7:26-10.8(h)1: The U.S. EPA commented that, in order to be equivalent to the RCRA regulations, the Department must adopt language equivalent to 40 CFR 264.303(a), which requires inspections of landfills for certain defects immediately after construction or installation.

Response: The Department agrees and has included this provision at N.J.A.C. 7:26-10.8(h)1.

N.J.A.C. 7:26-10.8(i)2ii: One commenter indicated that the drainage layer of the final cover for hazardous waste landfills should have a high hydraulic conductivity.

Response: The Department agrees. "Maximum" saturated hydraulic conductivity has been deleted and "minimum" hydraulic conductivity has been inserted.

N.J.A.C. 7:26-10.8(i)2iii(1): One commenter suggested that the requirement for two top liners be modified to allow for one top cover with a system for actually measuring any liquid inflow. The reasons for this suggestion was to decrease construction costs and to increase the useful depth of the landfill.

Response: The Department believes that the double top cover requirement is necessary to ensure that no inflow will occur. Allowing only one cover with an inflow measuring system will not provide sufficient protection and will detect inflow after the fact rather than preventing the occurrence itself. The draft RCRA guidance document, dated July 1982, for landfill design recommends a double top liner.

N.J.A.C. 7:26-10.8(j): The U.S. EPA commented that, in order to be equivalent to the RCRA regulations, the Department must adopt language equivalent to 40 CFR 264.301(g) which would require that the permit specify all design and operating practices that are necessary to ensure that the Federal hazardous waste landfill requirements of 40 CFR 264.301 are satisfied.

Response: The Department agrees and has included this provision at N.J.A.C. 7:26-10.8(j).

N.J.A.C. 7:26-12.2(f)5ix: One commenter requested that the requirement for a statement by a licensed professional engineer that he or she will, when construction of the landfill is completed, provide certification that construction was properly completed be deleted because it is a meaningless preliminary step.

Response: The Department disagrees. It is a necessary piece of information in an application review to ensure that the facility will be constructed properly.

Land Treatment Facilities

N.J.A.C. 7:14A-4.4(b)2: The Department, at N.J.A.C. 7:14A-4.7(e)1ii, proposed to require owners and operators to obtain a permit pursuant to N.J.A.C. 7:14A-2.2 in order to conduct field tests or laboratory analysis in making a treatment demonstration. N.J.A.C. 7:14lA-2.2(b) covers permits issued on an emergency basis. In reviewing the proposed regulations, the Department has determined that an emergency permit is not an appropriate mechanism for regulating treatment demonstration projects.

Response: The Department has revised the permitting requirements for treatment demonstration projects. A new paragraph has been added at N.J.A.C. 7:14A-4.4(b)2 which sets forth the permit requirements.

N.J.A.C. 7:14A-4.7: One commenter commented that there is a lack of guidance materials available to insure the environmentally sound operation of hazardous waste land treatment facilities, that the Department must rely on the applicant's own data without independent evaluation, and that land treatment should be discouraged due to the high risk of contamination in the event of misuse.

Response: The Department views land treatment as the only regulated hazardous waste land disposal option that constitutes both treatment of the waste and final disposal. An EPA survey ("A Survey of Existing Hazardous Waste Land Treatment Facilities in the United States," K.W. Brown & Associates, EPA Contact No. 68-03-2943, August 1981) showed that 197 hazardous waste facilities dispose of more than 2.45×10^9 kg of waste per year by land treatment. The Department has been regulating land treatment of nonhazardous waste under the existing NJPDES regulations. The EPA has published several guidance documents for hazardous waste land treatment units. The Department presently has a staff of qualified soil scientists and agronomists who possess the necessary technical expertise to effectively regulate these types of units. There are presently only four operating hazardous waste land treatment units within the State. All of these are disposing of oily waste from the petroleum refining industry. Land treatment of petroleum refinery industry is the most prevalent type of land treatment being carried out in the country today. Over half of the hazardous waste land treatment units in the country are associated with the petroleum refining industry. As a result the largest body of literature for hazardous waste land treatment exists for petroleum refinery wastes. The Department has conducted an extensive review of EPA's guidance

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document on hazardous waste land treatment (EPA Publication SW-874). The Department intends to rely upon the document as an aid in evaluating permit applications.

The commenter went on to suggest the regulations should contain detailed guidance on the following four factors:

1. The types of waste that are suitable for land treatment.
2. Guidance on acceptable soil conditions for land treatment.
3. Buffer zone requirements for land treatment units.
4. Maximum application rates to prevent overloading the system.

The Department feels that its experience coupled with the present regulations and EPA guidance documents sufficiently address the concerns of the types of hazardous waste which can be land applied, acceptable soils and application rates. Under the proposed regulations the applicant is required to perform an in-depth treatment demonstration which must show that hazardous constituents placed in or on the treatment zone are degraded, transformed, or immobilized within the treatment zone and will create no discharge to the surface or groundwater. The regulations require that the permit will specify the wastes which are allowed to be land applied and the application rate to prevent over loading. The demonstration project must be carried out on soils similar to those found in the treatment zone. Additionally, the Department intends to use its current soil-site guidelines for non-hazardous land application sites in determining soil suitability. In terms of buffer zones, the Department also intends to use the buffer zones contained in its draft guidelines for land application of nonhazardous residuals. Due to the very site specific nature of land treatment and the nature of the wastes, the Department has chosen to include performance standards in place of design standards in the regulations.

N.J.A.C. 7:14A-4.7: The commenter argued that the proposed hazardous waste land treatment regulations allow applicants to write their own land treatment programs due to the fact that the regulations lack specific design standards for land treatment units.

Response: The regulations contain performance and operational standards in place of specific design standards as the design must be specific for each site and waste characteristics. The design of the system will differ depending on the waste characteristics and the specific soil site conditions. The Department feels that a performance standard is more realistic than specific design standards due to the variability of land treatment units and will review the permit applications for each land treatment unit on a facility specific basis. EPA has published several guidance documents on land treatment which the Department will utilize in its permit review process. This, along with the treatment demonstration and the performance and monitoring requirements contained in the regulations, will result in adequate ground water protection.

N.J.A.C. 7:14A-4.7(f)1 and (m)1i: One commenter suggested that the term "other groundwater contaminants" is too broad and could become burdensome. The commenter went on to suggest that land treatment systems are not designed to treat some of the pollutants contained in land treated wastes.

Response: The term "groundwater contaminant" contained in N.J.A.C. 7:14A-4.7(f)1 and (m)1i was mistakenly used. The term that should have been used is "groundwater pollutant". Groundwater pollutants are defined in N.J.A.C. 7:14A-4.7(a)2. The phrase groundwater contaminant will be changed to groundwater pollutant in this subsection. The regulations require that conditions in the treatment zone be designed and sustained to maximize the degradation, transformation and immobilization of groundwater pollutants. The regulations require that only hazardous constituents be completely degraded, transformed or immobilized within the treatment zone. The prohibition of migration out of the treatment zone for nonhazardous constituents of the waste is not contained in these regulations; the prohibition only exists for hazardous constituents. This does not, however, exempt the facility from complying with the requirements of N.J.A.C. 7:14A-6.1 et seq., and the groundwater protection standards contained in the facility's permit.

N.J.A.C. 7:14A-4.7(i): The commenter argued that greenhouse studies and submission of available data will not adequately indicate the potential contamination of food chain crops and suggested that actual field tests on the proposed treatment zone be required to be conducted.

Response: The Department, based on its present experience regulating existing hazardous waste land treatment facilities, does not expect these facilities to request to be allowed to grow food chain crops. These facilities are usually located in very heavily industrialized areas which are typically not used for crop production. The Department however, believes that the proposed regulations contain the safeguards necessary to ensure the safe growth of food chain crops. The regulations require that the owner or operator who wishes to grow food chain crops must demonstrate that there is no substantial risk to human health caused by the growth of such crops. The demonstration must additionally ensure that hazardous constituents will not be transferred to the food or feed portions of the crop or will not occur in greater concentrations in or on the food or feed portions of crops than would be found on identical portions of the same crops grown on untreated soils. The Department intends to require the applicant to submit in-depth studies, prior to granting any approvals for the growth of food chain crops. Greenhouse and field plot studies would, in the Department's opinion, constitute the minimum acceptable demonstrations as required under the regulations. Greenhouse and field plot studies have been the accepted approach to crop studies for decades in the field of agronomy. The regulations allow the owner or operator to conduct field tests, but does not require them as part of the demonstration requirements. The Department agrees with the commenter and has modified N.J.A.C. 7:14A-4.7(i)1iii to grant the Department the authority to require field testing.

N.J.A.C. 7:14A-4.7(k)2ii(1): The commenter suggested that a typographical error be corrected by adding "of the" between "make-up" and "soil".

Response: The Department agrees and will make the change.

N.J.A.C. 7:14A-4.7(k)3: The commenter suggested that the phrase "statistically significant" is too broad and that the Department should require the same level of significance as the Federal regulations.

Response: The Federal regulations at 40 CFR 264.278 do not specify a level of statistical significance for unsaturated zone monitoring. The Department will specify the level of significance along with the approved statistical procedure in the facility's permit.

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N.J.A.C. 7:14A-4.7(k)8: One commenter argued that in the case of a statistically significant difference between change over background lysimeter values, the Department should require the facility to stop land applying wastes until the source of the statistical change is identified.

Response: The application of statistics for lysimeter monitoring is an EPA requirement for hazardous waste land treatment units. At this time the Department is still unsure as to the reliability of statistical procedures when applied to lysimeter studies. However, the Department does agree that it should have the power to stop a regulated land treatment facility from land applying based on a statistically significant change in lysimeter data over background values and a change has been adopted.

N.J.A.C. 7:14A-4.7(m): (40 CFR Part 264.280(e)) The commenter argued that the Department should include the Federal exemption from groundwater monitoring (40 CFR Part 264.280(e)) in the Department's hazardous waste land treatment regulations.

Response: The Department has chosen to omit the requirements of 40 CFR Part 264.280(e) from its regulations. 40 CFR 264.280(e) grants an exemption from post closure groundwater monitoring where the level of hazardous constituents in the treatment zone soil does not exceed the background value by a statistically significant amount and if unsaturated zone monitoring indicates no migration of hazardous constituents beyond the treatment zone. The Department, as previously mentioned, considers all possible groundwater pollutants to be a potential threat to the State's groundwater, not just the hazardous constituents. Soil pore liquid monitoring is a new requirement for groundwater dischargers. At this time the Department does not consider lysimeters and similar devices as being a foolproof means of monitoring for potential groundwater contamination.

Groundwater

N.J.A.C. 7:14A-6: Several commentors complained that the State's proposed groundwater monitoring requirements were in general more stringent than the Federal 40 CFR Part 264 Subpart F RCRA regulations. The commentors felt that the Federal regulations gave adequate groundwater protection.

Response: The State has had substantially more experience in regulating groundwater dischargers than their Federal counterparts. Based on that experience it is the Department's opinion that the Federal program is not comprehensive enough in regulating actual or potential groundwater dischargers. In New Jersey groundwater is relied upon as a source of drinking water for nearly half the State's population. Much of this priceless resource has already been contaminated. Based on the Department's experience, groundwater monitoring is a necessary requirement for all land disposal facilities. While the new standards for hazardous waste land disposal facilities being promulgated along with N.J.A.C. 7:14A-6 do provide a very high degree of protection, the possibility of a leak still exists. It is the Department's belief that groundwater monitoring is a necessary backup to the required liner and leak detection system requirements.

The primary goal of the Federal RCRA regulations is to regulate hazardous wastes. It is not comprehensive in its approach to groundwater protection. The State, by proposing these regulations under the NJPDES program intends, as its primary objective, to protect the resource. The State's proposed approach regulates both hazardous as well as nonhazardous constituents of the actual or potential discharge. It is the State's experience that an aquifer can just as easily be contaminated by a nonhazardous constituent as it can from a hazardous constituent of the waste. The Department has therefore chosen to protect the groundwater resource by including all "groundwater pollutants" in its regulatory scheme in N.J.A.C. 7:14A-6.15, as opposed to EPA's approach which limits its authority to solely hazardous constituents. The EPA promulgated its hazardous waste groundwater regulations solely under the statutory authority of the Federal 1976 Resource Conservation and Recovery Act, and was therefore limited in its scope in terms of groundwater protection. The State has promulgated N.J.A.C. 7:14-6.15 under its statutory authority for the NJPDES program. The State's authority for the NJPDES program include the following acts: the "Water Quality Planning Act", N.J.S.A. 58:11A-1 et seq., the "Spill Compensation and Control Act", N.J.S.A. 58:10-23.11 et seq., the "Solid Waste Management Act", N.J.S.A. 13:1E-1 et seq., and the New Jersey "Water Pollution Control Act", N.J.S.A. 58:10A-1 et seq. This statutory authority allows the Department to take this more comprehensive approach to groundwater protection.

N.J.A.C. 7:14A-6.1(a)1 and (a)6: Several commenters argued that the Department is acting ultra vires of the Water Pollution Control Act in applying N.J.A.C. 7:14A-6 to past dischargers and potential dischargers. One commenter went on to argue that past discharges are regulated under the authority of the Spill Compensation and Control Act where the Department can show an imminent or potential hazard exists. One commenter concluded by stating that if the Department attempts to regulate potential discharges, it should define what conditions constitute a potential discharge.

Response: Two main goals of the State's Water Pollution Control Act are to protect the health and safety of the citizens of the State and to protect the State's groundwater resources. It is the Department's position that in the case of past discharges, the precise timing of the discharge has little effect on the adverse health and environmental effects that may occur. Under certain geologic and soil conditions the movement of pollutants to the groundwater through the geologic material may take many years to occur. Discharges that may have occurred prior to these regulations may not have begun to, or are only now beginning to impact groundwater resources. Adverse effects to the public health and safety, and the groundwater resource must be protected under these circumstances pursuant to the New Jersey Water Pollution Control Act. An example of this would be a presently operating facility which closed a surface impoundment prior to these regulations while leaving the waste buried in the impoundment. The waste in the impoundment begins to migrate out of the impoundment due to liner failure which occurred after the effective date of these regulations. This type of a discharge to groundwater would clearly be regulated by these regulations pursuant to the Water Pollution Control Act.

The question of the Department's authority to regulate potential groundwater dischargers has already been established under the New Jersey Water Pollution Control Act. The term "discharge" is defined in N.J.S.A. 58:10A-3e. Included in the definition are actions which cause pollutants to be released so that they might flow or drain into the waters of the State. Additionally the existing portions of the NJPDES

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regulations have already allowed the Department to regulate potential discharges. For example, under the existing scope of the regulations the Department is required to regulate surface impoundments, as per N.J.A.C. 7:14A-1.3(e)5 of the regulations. Surface impoundments, by definition, are designed not to leak but are clearly regulated as potential groundwater discharges under the existing regulations. Additionally, N.J.A.C. 7:14A-1.3(d)7 allows the Department to regulate "[t]he storage of any liquid or solid pollutant, in a significant quantity, in a manner designed to keep it from entering the waters of the State;". Facilities which are designed to store pollutants so as to prevent pollutants from entering the groundwaters of the State are therefore clearly regulated. The Department will continue to protect the environment and the health and safety of the public by continuing to regulate activities which may potentially impact the State's groundwater resources. There have been too many storage tanks, containers and other facilities which have been designed not to leak but have failed resulting in adverse effects on groundwater resources.

N.J.A.C. 7:14A-6.1(a)6: Several commenters assumed all nonhazardous waste groundwater dischargers must comply with N.J.A.C. 7:14A-6.15.

Response: While nonhazardous dischargers are mentioned in N.J.A.C. 7:14A-6.15, the regulations are specifically required only for hazardous waste land disposal facilities. The Department does, however, reserve the right to use the groundwater protection strategy in N.J.A.C. 7:14A-6.15 for nonhazardous groundwater dischargers if the Department determines that N.J.A.C. 7:14A-6.15 will be the best groundwater protection strategy for that particular nonhazardous waste's actual or potential discharge. The Department will make this determination based on the criteria in N.J.A.C. 7:14-6.15(d)2. It is the Department's opinion that if a nonhazardous waste can impact an aquifer to the same extent as a hazardous waste facility, then the groundwater protection strategy contained in N.J.A.C. 7:14A-6.15 should apply.

N.J.A.C. 7:14A-6.1(a)6: One commenter indicated that due to the scope of N.J.A.C. 7:14A-6.1, more facilities than the 3 landfills and 40 surface impoundments indicated in the economic impact section of the preamble will be impacted by the new regulations.

Response: The Department acknowledges that the preamble language could have been clearer. At least 40 known surface impoundments and two hazardous waste landfills (one landfill is no longer active) will be impacted by N.J.A.C. 7:26-10.6 and 10.8, respectively. The potential scope of the groundwater requirements of N.J.A.C. 7:14A-6 will, of course, be broader than just those 42 facilities and will apply to any discharge of a pollutant. However, the authority existed prior to the adoption of the land disposal regulations by virtue of the Water Pollution Control Act and the existing regulations to regulate discharges to ground and surface waters and, therefore, there will be no actual increased economic effect.

N.J.A.C. 7:14A-6.1(a)7: In reviewing the proposal, the Department decided that there was a need to clarify the requirements that the owner or operator of an infiltration-percolation lagoon must meet for proper closure and post-closure.

Response: A provision has been added to make it clear that, in addition to N.J.A.C. 7:14A, an owner or operator must comply with the closure and post-closure requirements in N.J.A.C. 7:26.

N.J.A.C. 7:14A-6.15: One commenter felt that the absolute prohibition for the discharge of any pollutant is unreasonable.

Response: The design requirements for surface impoundments and landfills require that the facility be designed to prevent discharges (N.J.A.C. 7:26-10.6(a)3 and N.J.A.C. 7:26-10.8(c)); however, given the fact that no liner is totally impermeable the regulations in N.J.A.C. 7:14A-6.15 set discharge limits for various pollutants. For those pollutants that are hazardous constituents, a cleanup standard will be established by the Department within the permit (N.J.A.C. 7:14A-6.15(c)). Therefore, although the Department has not set zero discharge limits, the limits which are established will ensure the protection of the ground and surface waters.

N.J.A.C. 7:14A-6.15(b)1i: Several commenters argued that reference to the groundwater quality standards (GWQS), N.J.A.C. 7:9-6, should be omitted from N.J.A.C. 7:14A-6.15(b)1i. The commenters felt that including both permit limits and the GWQS was ambiguous and might force a facility into compliance monitoring due to natural background conditions. They went on to argue that if natural background conditions exceeded the GWQS the facility would be forced into compliance monitoring for contamination that did not result from a land disposal activity.

Response: The Department disagrees. N.J.A.C. 7:14A-6.15(b)1i states that the Department may require the owner/operator to institute a compliance monitoring program if groundwater quality standards or permit specified limitations are exceeded. This requires that the Department make the determination as to whether the owner/operator is required to enter into a compliance monitoring program as a result of exceeding groundwater quality standards or permit limits. Under N.J.A.C. 7:9-6.10(b) a facility has the right to petition the Department for reclassification of designated areas for less restrictive uses at any time. Additionally under the NJPDES permit process the permittee has the right to comment on and request a hearing on any permit conditions required by the Department.

Historically, under New Jersey law and regulations, water quality standards have been used to determine compliance and the development of discharge limitations. Both water quality based and technology based limitations have played and continue to play an important role in this process. Therefore, the appropriate cross reference is necessary.

N.J.A.C. 7:14A-6.15(b)1v, (i)9ii, (i)9iii, (j) and (k): Several commentors argued that the response time allowed under these regulations is unrealistic.

Response: The regulations cited above require that if the possibility of groundwater contamination from the regulated unit exists, the permittee must, within a specified number of days, submit a report to the Department that a source other than the regulated unit caused the change in groundwater quality and submit an application for a permit modification in order to make any needed changes in the detection monitoring program. Additionally, the regulations allow the Department to require the permittee to install additional monitoring wells within thirty days of notification to the Department that the groundwater protection standard has been exceeded. The Department believes that these time periods are realistic and are necessary for groundwater protection. Additionally, a quick response in determining the actual presence and extent of groundwater contamination will ensure quicker corrective

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action with fewer potential adverse environmental or health impacts and result in lower clean-up costs if corrective action is required. Groundwater is dynamic, it does flow, and in most cases, as it flows it carries contaminants with it. The response time therefore is a critical factor in preventing the spread of the pollutant plume. The owner/operator can meet these time periods through advanced planning.

N.J.A.C. 7:14A-6.15(b)1vi: One commenter suggested changing N.J.A.C. 7:14A-6.15(b)vi to read "Any groundwater pollutants migrating beyond the waste management area are not assumed to originate from the regulated unit if the operator can demonstrate the absence of or a low potential for pollutant migration from the unit." In support, the commenter stated that the requirement contained in the regulations is burdensome in that it requires the owner/operator to locate and prove some other source caused the contamination.

Response: The Department disagrees with the commenter and has not changed N.J.A.C. 7:14A-6.15(b)1vi. The Department does not believe that the requirement that the owner/operator must prove that another source besides the regulated unit caused the contamination is burdensome. The owner/operator under these regulations must have in place a background groundwater monitoring network. This will aid the owner/operator in identifying whether the contamination originated from the regulated unit.

N.J.A.C. 7:14A-6.15(d)1: One commenter requested that the Department specify in the permit only those hazardous constituents and other groundwater contaminants which could be reasonably expected to be present in the discharge and for which it is cost effective to test for.

Response: The Department will be reasonable in establishing the ground water pollutant identification required under N.J.A.C. 7:14A-6.15(d). For those facilities which have submitted detailed waste analyses and site management history, the Department will consider whether the pollutant can reasonably be expected to be present in or derived from the waste in establishing the list of ground water pollutants under N.J.A.C. 7:14A-6.15(d). If the Department does not possess sufficient detailed information on the facility, it will be the responsibility of the facility to prove that specific hazardous constituents and other groundwater pollutants have not been discharged to the groundwater by the facility. The commenter went on to argue that the lack of standardized test methods should also be considered when determining the list of constituents to be monitored under N.J.A.C. 7:14A-6.15(d). U.S. EPA presently has standardized test methods for all but ten of the hazardous constituents listed in N.J.A.C. 7:26-8 and is presently working on test methods for the remaining ten. The Department is also reviewing draft EPA test methods which will substantially lower analytical costs for the hazardous constituents.

N.J.A.C. 7:14A-6.15(d)1: Two commenters suggested changing the phrase "other groundwater contaminants" to "other indicator parameters" in N.J.A.C. 7:14A-6.15(d)1.

Response: The term "groundwater contaminants" contained in N.J.A.C. 7:14A-6.15 was mistakenly used. The term that should have been used is "groundwater pollutant" as defined in N.J.A.C. 7:14A-6.15(a)1. The Department intends to set permit limits for nonhazardous constituents as well as hazardous constituents for groundwater protection. As stated before, the Department believes that an aquifer can be as easily destroyed by nonhazardous constituents as it can from hazardous constituents. N.J.A.C. 7:14A-6.15(d)1 is concerned with a groundwater protection standards limit. Indicators are only used in groundwater monitoring as an indication of initial contamination. Once contamination is confirmed and or corrective action is needed indicators are of little value. At that time it becomes necessary to identify the individual contaminants of concern and to specify a level for corrective action.

N.J.A.C. 7:14A-6.15(e)1i: One commenter complained that in N.J.A.C. 7:14A-6.15(e)1i it is unclear what is meant by "natural" background levels and urged that the Department adopt the language of 40 CFR 264.94(a)1.

Response: The Department agrees that clarification is needed and will utilize the definition of "natural background" in the State's groundwater quality standards (N.J.A.C. 7:9-6.3) in order to be consistent with the approach taken by the Department in its overall groundwater protection strategy under the NJPDES program.

N.J.A.C. 7.14-6.15(e), Table I: One commenter suggested that the groundwater protection values found in N.J.A.C. 7:14A-6.15, Table I should be consistent with the State's Groundwater Quality Criteria. The commenter additionally suggested that a concentration limit for phenols should be specified in Table I.

Response: The Department agrees with the commenter. Table I found in the proposed regulations was identical to Table I in 40 CFR 264.94. In order to achieve consistency with the State's groundwater quality standards, two values in Table I have been changed as follows: Endrin is being changed from .0002 mg/1 to .004 ug/1 and Toxaphene is being changed from .005 mg/1 to .005 ug/1. The Department is currently considering adding additional parameters to Table I. For the time being, the Department has the authority to add additional parameters, such as for phenols, to Table I on a facility specific basis thru the permit process.

N.J.A.C. 7:14A-6.15(h)7ii(1): The commenter argued that the requirement that background water quality for hazardous constituents from upgradient wells in the compliance monitoring program must be available before permit issuance is costly and unnecessary.

Response: This is a Federal requirement as found in 40 CFR 264.97(g)2(i) which the Department is required to promulgate in order to be equivalent to the Federal regulations.

N.J.A.C. 7:14-6.15(i)5: One commenter was concerned with a possible inadequacy in the groundwater detection monitoring program. The commenter felt that the determination of groundwater flow gradients, rates, and direction should be made on a more frequent basis than that which was in the proposed N.J.A.C. 7:14A-6.15 provisions.

Response: The Department agrees that frequent determinations of groundwater flow under the detection monitoring program are necessary to insure that background and downgradient groundwater quality is actually being monitored. N.J.A.C. 7:14A-6.15(h)6 requires that groundwater elevations in the monitoring well be determined each time a monitoring well is sampled in order to determine groundwater flow. A minimum of quarterly groundwater monitoring is

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typically required for hazardous waste NJPDES permits. This will insure a minimum of quarterly flow direction determinations. The Department has modified N.J.A.C. 7:14A-6.15(i)5 to require more frequent flow determinations in the permit if, based on a review of the facility, the Department finds that tidal or other effects may cause changes in groundwater flow (including gradients, rates, and direction).

N.J.A.C. 7:14A-6.15(i)8ii: The commenter argued that the immediate sampling of all monitoring wells for all constituents found in N.J.A.C. 7:26-8.16 was unreasonable and expensive.

Response: This is a Federal requirement which can be found at 40 CFR 264.98(h)(2), which the Department is required to promulgate in order to be equivalent to the Federal regulations.

N.J.A.C. 7:14A-6.15(j)13: In reviewing the proposal the Department decided that it would be important to give guidance to industry as to what might be required by the Department for groundwater pollution cases that result from contamination by other than a regulated unit. Such a provision clarifies the application of these rules to non-regulated units.

Response: In those situations where the source of pollution is from a source other than a regulated unit but the source is under the control of the owner or operator, the Department may require groundwater monitoring and corrective action equivalent to that which could be required for pollution from a regulated unit.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated with asterisks and brackets *[thus]*).

7:26-1.4 Definitions

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

. . .

"Hazardous waste landfill" means a solid waste facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, or a waste pile.

. . . .

7:26-10.6 Surface impoundments

(a) General requirements applicable to all surface impoundments:

1. This section applies to owners or operators of facilities that store, treat or dispose of hazardous waste in surface impoundments as defined in N.J.A.C. 7:14A-1.9 or N.J.A.C. 7:26-1.4.

2. The requirements of this section apply to hazardous waste surface impoundments upon which a final disposition of a permit application has been made in accordance with N.J.A.C. 7:26-12.

3. Surface impoundments utilized for the purpose of treating, storing or disposing of hazardous waste shall be designed, operated and maintained in such a manner as to prevent discharges onto the land, into the ground and surface waters, and into the ambient air environment of this State ***, except for surface water discharges from the surface impoundment which are authorized by a NJPDES permit***.

4. All surface impoundments, whether or not they treat, store or dispose of hazardous waste, require a permit issued in accordance with N.J.A.C. 7:14A.

5. Where N.J.A.C. 7:26-10.1 and 10.2 conflict with N.J.A.C. 7:14A, N.J.A.C. 7:26 will prevail.

6. Owners or operators of hazardous waste surface impoundments shall comply with all relevant and applicable provisions of N.J.A.C. 7:26-13.

7. The Department shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of subsections (b), (c) and (e), below, are satisfied.

(b) A surface impoundment that is used for storage, treatment or disposal of hazardous waste shall have a liner system that is designed, constructed, and installed to prevent any migration of wastes out of the surface impoundment to the adjacent subsurface soil or groundwater or surface water during the active life of the surface impoundment (including the closure period as described in N.J.A.C. 7:26-9.8(i)).

1. A new surface impoundment shall be designed with a liner system in accordance with the following:

i. A surface impoundment shall have *[a minimum of]* two liners installed to cover all surrounding earth likely to be in contact with the waste or leachate;

ii. The primary or upper liner shall consist of a synthetic material at least 30 mils (.03 inches) thick *[with a maximum saturated hydraulic conductivity of 3.23×10^{-9} ft/sec (1×10^{-7} cm/sec), under maximum anticipated hydrostatic head]* ***which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature to ensure the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life (including the closure period) of the facility***;

iii. The secondary or lower liner shall consist of soil at least three feet (.091 meters) thick with a maximum saturated hydraulic conductivity of 3.28×10^{-9} ft/sec (1×10^{-7} cm/sec), under maximum anticipated hydrostatic head or shall consist of a synthetic material at least 30 mils (.03 inches) thick *[with a maximum saturated hydraulic conductivity of 3.28×10^{-9} ft/sec (1×10^{-7} cm/sec), under maximum anticipated hydrostatic head]* ***which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature to ensure the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life (including the closure period) of the facility***;

iv. The lower liner shall be placed on a foundation capable of providing support;

v. Each liner shall be suitable for the purposes intended and shall be compatible with the hazardous waste placed in the surface impoundment;

vi. The liners shall be constructed of materials having appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure head, physical contact with the waste to which they are exposed, climatic conditions, and the stress of installation;

vii. The distance between the primary and secondary liners shall be a minimum of 12 inches (30.5 centimeters) and shall be filled with a permeable material which will rapidly convey fluids;

viii. The bottom surface of the secondary liner shall be no less than five feet (2.28 meters) above the seasonally high groundwater table; and

ix. A surface impoundment shall have a secondary collection system (leak detection system) constructed between the

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primary and secondary liner that is designed to monitor for any failure of the primary liner and to collect and remove all leachate that may pass through as a result of primary liner failure;

x. Upon completion of construction or installation, the owner or operator shall obtain a certification by a New Jersey licensed professional engineer stating that the systems contained in this subsection have been constructed in accordance with approved engineering plans and specifications and there are no damages or imperfections present.

2. *[An existing surface impoundment does not have to meet the design standards of (b)1, above, but shall be underlain by a minimum of one liner, that shall consist of soil or synthetic material with a maximum saturated hydraulic conductivity of 3.28 x 10^{-9} ft./sec. (1 x 10^{-7}cm/sec).]* ***If the following conditions are not met, an existing surface impoundment shall comply with the design standards of b(1) above:***

i. The surface impoundment is underlain by a liner that consists of soil or material with a maximum saturated hydraulic conductivity of 3.28 x 10^{-9} ft sec (1 x 10^{-7} cm/sec) or a synthetic material which is designed to prevent the flow of liquids through the liner. The liner shall have properties of such a nature to ensure that prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life (including the closure period) of the facility; and

ii. The Department has approved of the liner based on a review of existing data from groundwater monitoring.

(c) A surface impoundment that is used for treatment, storage or disposal of hazardous waste shall have the following design characteristics and shall be constructed in accordance therewith:

1. A surface impoundment shall be designed to prevent discharge into the land, the groundwater, and to the surface water (except discharges authorized by a permit issued in accordance with N.J.A.C. 7:14A) during the active life of the surface impoundment including the closure period;

2. A surface impoundment shall be designed and constructed to prevent overtopping resulting from normal or abnormal operations, overfilling, wind and wave action, rainfall, run-on, human error, and malfunctions of level controllers, alarms, and other equipment and to provide ***at least 60 centimeters (two feet) of freeboard;*** *[:]*

[i. At least 60 centimeters (two feet) of freeboard; or]

[ii. An amount of freeboard other than 60 centimeters (two feet) based on documentation, acceptable to the Department, that the specified amount of freeboard will prevent overtopping;]

3. A surface impoundment shall be designed with dikes which have sufficient structural integrity to prevent massive failure without dependence on any liner system included in the surface impoundment design;

4. Earthern dikes shall have a protective cover to minimize wind and water erosion and to preserve the structural integrity of the dike;

5. A surface impoundment shall be designed so that any flow of waste into the impoundment can be immediately shut off in the event of an unauthorized discharge to the environment; and

6. The surface impoundment shall be designed with a run-on control system capable of preventing flow onto the surface impoundment during peak discharge from at least a 24-hours, 25 year storm.

7. Upon completion of construction or installation, the owner or operator shall obtain a certification by a New Jersey licensed professional engineer stating that the systems contained in this subsection have been constructed in accordance with approved engineering plans and specifications and there are no damages or imperfections.

(d) The owner or operator of a surface impoundment shall implement a groundwater monitoring program *[in accordance with N.J.A.C. 7:14A-6 which shall be carried out during the active life of the facility, the closure period, and during the post-closure period]* ***under a NJPDES permit issued pursuant to N.J.A.C. 7:14A-1 et seq. which shall be carried out during:***

1. The active life of the facility;

2. The closure period;

3. The post-closure period, except for those surface impoundments where the owner or operator has received approval from the Department to waive post-closure based on;

i. The removal of the following from the impoundment:

(1) Standing liquids;

(2) Hazardous and non-hazardous wastes and waste residues;

(3) Underlying and surrounding contaminated soils and subsoils;

(4) Contaminated system components; and

ii. The absence of actual or potential groundwater pollutants.

(e) Operational and maintenance standards for surface impoundments include the following:

1. A surface impoundment shall be operated and maintained to prevent any overtopping due to normal or abnormal operations, wind and wave action, run-on, overfilling, precipitation, human error, and malfunctions of equipment or any combination thereof to comply with (c)2, above;

2. A surface impoundment shall be operated to maintain at least the amount of freeboard specified by the Department in the permit issued in accordance with N.J.A.C. 7:26-12. The amount of freeboard shall be at least 60 centimeters (two feet)*[, or an amount other than 60 centimeters (two feet) based on documentation acceptable to the Department that the specified amount of freeboard will prevent overtopping]*;

3. Earthen dikes shall be operated and maintained in accordance with the design requirements of (c)3, above, and shall be kept free of:

i. Vegetation with root systems which could displace the earthen materials upon which the structural integrity of the dike is dependent; and

ii. Burrowing animals which could remove earthen materials upon which the structural integrity of the dike is dependent or which could create leaks through burrows in the dike;

4. Run-on shall be diverted away from a surface impoundment to comply with (c)6, above;

5. Ignitable or reactive waste shall not be placed in a surface impoundment unless either:

i. The waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that:

(1) The resultant waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under N.J.A.C. 7:26-8.9 and N.J.A.C. 7:26-8.11, respectively; and

(2) There is compliance with N.J.A.C. 7:26-9.4(e); or

ii. The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react; or

iii. The surface impoundment is used solely for emergencies;

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6. Incompatible wastes, or incompatible wastes and materials***, as defined in N.J.A.C. 7:26-1.4,*** shall not be placed in the same surface impoundment.

7. Special requirements for ignitable and reactive wastes include the following:

i. As required by N.J.A.C. 7:26-9.4(b), the waste analysis plan shall include analysis needed to comply with (e)5, above; and

ii. The owner or operator shall include the results of each waste analysis and trial test and any documented information in the operating record of the facility required by N.J.A.C. 7:26-9.4(i);

8. Where there has been evidence that there has been contamination of soil or groundwater, the owner or operator shall conduct a groundwater decontamination program *[which is sufficient to enable the owner or operator to meet the groundwater monitoring permit limits in N.J.A.C. 7:14A and the groundwater quality standards in N.J.A.C. 7:9-6; and]* ***or other remedy consistent with the designated use of the aquifer as provided in N.J.A.C. 7:9-6 so that the owner or operator can comply with the limits specified in the NJPDES permit issued pursuant to N.J.A.C. 7:14A and with the groundwater quality standards in N.J.A.C. 7:9-6.***

9. The operation of a hazardous waste surface impoundment shall not result in odors being detected off-site by sense of smell in any area of human use or occupancy.

(f) Inspection and testing requirements for surface impoundments include the following:

1. During construction and installation, liners and final covers (as required by (b), above, and (h), below) shall be inspected for uniformity, damage, and imperfections (for example, holes, cracks, thin spots and foreign materials) and as follows ***, immediately after construction or installation***:

i. Earth material liner systems and final covers shall be tested for compaction density, moisture content, and permeability after placement;

ii. Earth material liner systems and final covers shall be inspected for lenses, cracks, channels, root holes, and other structural non-uniformities; and

iii. Synthetic liner materials (for example, membrane, sheets, and coatings) shall be inspected to ensure tight seams and joints and the absence of tears and blisters;

2. At least once each operating day during the active life and on at least two days each week during the closure period, the owner or operator shall inspect:

i. A surface impoundment which contains free liquids *[a day]* to ensure compliance with (e)1 and 2, above, and to detect any leaks or other failure of the surface impoundment;

ii. Each surface impoundment to detect evidence of sudden drops in the level of the contents of the surface impoundment;

iii. Each surface impoundment, including dikes, berms, and vegetation surrounding the dike, to detect any evidence of, or potential for, leaks from the impoundment, erosion of dikes, and to ensure compliance with (e)3, above;

iv. The leak detection system for the presence of liquids; and

v. Equipment for malfunctions or improper operating of overtopping control systems to ensure compliance with (e)1 and 2, above;

3. The owner or operator shall remedy any deterioration or malfunction, or condition of permit non-compliance found as required by N.J.A.C. 7:26-9.4(f); *[and]*

4. Upon completion of construction or installation, the liners shall be certified by a registered professional engineer stating that:

i. The liner(s) have been installed in accordance with the approved engineering designs; and

ii. The liner(s) have been inspected in accordance with N.J.A.C. 7:26-10.6(f)1 and there are no imperfections or damages; and

5. *[4.]* Prior to the issuance of a permit and after any extended period of time (at least six months) during which the surface impoundment was not in service, the owner or operator shall obtain a certification from a registered professional engineer that the impoundment's dike, including that portion of any dike which provides freeboard, has structural integrity. The certification shall establish that the dike:

i. Will withstand the stress of the pressure exerted by the types and amounts of wastes to be placed in the impoundment; and

ii. Will not fail due to scouring or piping, without dependence on any liner system included in the surface impoundment construction.

(g) An owner or operator shall comply with the containment system repairs and contingency plan requirements as follows:

1. A surface impoundment shall be removed from service in accordance with (g)2, below, when:

i. The level of liquids in the impoundment suddenly drops and the drop is not known to be caused by changes in the flows into or out of the impoundment; ***or***

[ii. Liquid is detected in the leak detection system; or]

[iii.] ***ii.*** The dike leaks;

2. If the surface impoundment is removed from service as required by (g)1, above, the owner or operator shall:

i. Immediately shut off the flow or stop the addition of wastes into the impoundment;

ii. Immediately contain any leakage which has occurred or is occurring;

iii. Immediately cause the leak to be stopped;

iv. If the leak cannot be stopped, empty the impoundment;

v. Notify the Department in writing within seven days after detecting a problem with the surface impoundment; and

vi. Take any other necessary steps to stop or prevent catastrophic failure;

3. If liquid leaks into the leak detection system, the owner or operator shall notify the Department of the leak in writing within seven days after detecting the leak and:

i. Within a period of time specified in the permit, remove accumulated liquid, repair or replace the liner which is leaking to prevent the migration of liquids through the liner and obtain a certification from a qualified engineer that, to the best of his or her knowledge and opinion, the leak has been stopped; or

ii. If a detection monitoring program pursuant to N.J.A.C. 7:14A-6.15(i) has already been established in the permit (to be complied with only if a leak occurs), begin to comply with that detection monitoring program and any other applicable requirement of N.J.A.C. 7:14A-6.15 within a period of time specified in the permit.

[3.] ***4.*** As part of the contingency plan required in N.J.A.C. 7:26-9.7, the owner or operator shall specify:

i. A procedure for complying with the requirements of (g)2, above;

ii. A containment system evaluation and repair plan describing testing and monitoring techniques;

iii. Procedures to be followed to evaluate the integrity of the containment system in the event of a possible failure;

iv. A schedule of actions to be taken in the event of a possible failure; ***and***

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[v. A description of the repair techniques to be used in the event of a leak due to a containment system failure or deterioration which does not require the impoundment to be removed from service; and]

[vi.] ***v.*** A description of the method by which the materials which were previously stored in the surface impoundment will be stored while repairs to the impoundment are being performed;

[4.] ***5.*** No surface impoundment that has been removed from service in accordance with (g)1, above, may be restored to service, unless:

i. The containment system has been repaired;

ii. The containment system has been certified by a registered professional engineer as meeting the design specifications approved in the permit; and

iii. *[Approval]* ***Written approval*** has been obtained from the Department;

[5.] ***6.*** A surface impoundment that has been removed from service in accordance with (g)1, above, and that is not being repaired shall be closed in accordance with (h)1 through 5, below; and

[6.] ***7.*** All wastes removed from the impoundment shall be managed as a hazardous waste *[in compliance with all applicable requirements of N.J.A.C. 7:26]* ***unless the owner or operator can demonstrate in accordance with N.J.A.C. 7:26-8 that the solid waste removed from the surface impoundment is not a hazardous waste*.**

(h) An owner or operator of a surface impoundment shall comply with the following closure requirements:

1. Unless (h)2 below applies, at closure the owner or operator shall remove the following from the impoundment:

i. Standing liquids;

ii. Hazardous waste and hazardous waste residues;

iii. The liner; and

iv. Underlying and surrounding contaminated soil;

2. ***For existing surface impoundments (as defined in N.J.A.C. 7:26-1.4) which do not comply with (b)1, above,*** *[For existing surface impoundments, as defined in N.J.A.C. 7:26-1.4]*, the removal of the materials specified in (h)1ii and iii, above, may be deferred pending the approval by the Department of a containment plan for a total, permanent entombment of referenced materials in such a fashion that no release of contaminants into the environment shall *[ever]* occur ***during the post-closure period*.** In order to obtain such approval, the owner or operator shall:

i. Provide evidence that there has not been any contamination of soil or ground water to date;

ii. Provide sufficient financial responsibility, as deemed necessary by the Department, to maintain *[in perpetuity]* the integrity of the entombment ***throughout the post-closure period***;

iii. Stabilize remaining waste or waste residue to a bearing capacity sufficient to support final cover;

iv. Cover the surface impoundment with a final cover with a design in accordance with (h)3 below;

v. Maintain the integrity and effectiveness of the final cover, including making repairs to the liner (required at (h)3iii, below) as necessary to correct the effects of settling, subsidence, erosion and other events;

vi. Maintain and monitor the groundwater monitoring system and comply with all other requirements of (d), above;

vii. Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

viii. Comply with the post-closure requirements of N.J.A.C.

3. For existing surface impoundments that will be closed in accordance with (h)2, above, the owner or operator shall place final cover over the surface impoundment which will provide long-term minimization of migration of liquids into the closed impoundment. The final cover shall function with minimum maintenance and consist of the following:

i. A vegetative top cover with the following design characteristics:

(1) A soil material with a minimum thickness of two feet (.6 meters);

(2) The soil shall compact well, not crack excessively when dry, and support a vegetative cover that will effectively minimize erosion; and

(3) Seed bed preparation and planting operations for the vegetative cover shall be done as soon as whether permits and seasonal conditions are suitable for the establishment of the type of vegetation to be used;

ii. A drainage layer with the following design characteristics:

(1) Consist of a material with a minimum thickness of one foot (.3 meters) with a maximum saturated hydraulic conductivity of 3.28×10^{-5} ft/sec (1×10^{-3} cm/sec); and

(b) Be designed to allow for an effective drainage path for flow through the vegetative top cover to minimize head on the liner system;

iii. A liner system constructed with the following design characteristics:

(1) *[A minimum of two]* ***Two*** liners;

(2) The upper liner shall consist of a synthetic material at least 30 mils (.03 inches) thick *[with a maximum saturated hydraulic conductivity of 3.28×10^{-9} ft/sec (1×10^{-7} cm/sec) under maximum hydrostatic head]* ***which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature to ensure the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life (including the closure period) of the facility***;

(3) The lower liner shall consist of a soil material at least three feet (.91 meters) thick with a maximum saturated hydraulic conductivity of 3.28×10^{-9} ft/sec (1×10^{-7} cm/sec) under maximum hydrostatic head or shall consist of a synthetic material at least 20 mils (.02 inches) thick *[with a maximum saturated hydraulic conductivity of 3.28×10^{-9} ft/sec (1×10^{-7} cm/sec) under maximum hydrostatic head]* ***which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature to ensure the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life (including the closure period) of the facility***;

(4) The distance between the upper and lower liner shall be a minimum of six inches (15 centimeters) and shall be filled with a bedding material, which is free of foreign material which could damage the liner; and

(5) The lower liner shall be underlain by a minimum of six inches (15 centimeters) of bedding material which is free of foreign materials;

4. *[At closure, any component of the containment system or any appurtenant structures or equipment containing or contaminated with hazardous waste or hazardous waste residues shall be decontaminated or removed; and]* ***For existing surface impoundments that will be closed in accordance with (h)1, above, the following requirements shall also be complied with:***

i. The closure plan for the impoundment under N.J.A.C. 7:26-9.8 must include both a plan for complying with (h)1,

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above, and a contingent closure plan for complying with (h)2. above, in case not all contaminated subsoils can be practicably removed at closure; and*

ii. The owner or operator must prepare a contingent post-closure plan under N.J.A.C. 7:26-9.9 for complying with this section in case not all contaminated subsoils can be practicably removed at closure.

iii. The closure cost estimate required under N.J.A.C. 7:26-9.10 and N.J.A.C. 7:26-9.11 for closure and post-closure care of an impoundment must include the cost of complying with the contingent closure plan and contingent post-closure plan; and

5. During the post-closure care period, if liquids leak into the leak detection system, the owner or operator shall notify the Department of the leak in writing within seven days after the leak is detected. The Department shall modify the permit to require compliance with the requirements of N.J.A.C. 7:14A-6.15.

[5.] ***6.*** At closure, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of N.J.A.C. 7:26 unless the owner or operator can demonstrate in accordance with N.J.A.C. 7:26-8 that the solid waste removed from the surface impoundment is not a hazardous waste.

7:26-10.8 Hazardous waste landfills

(a) The requirements of this section apply to owners and operators of hazardous waste landfills upon which a final disposition of a permit application has been made in accordance with N.J.A.C. 7:26-12.

(b) A landfill that is used for the disposal of hazardous waste shall be in compliance with the applicable provisions of N.J.A.C. 7:14A, including the permit provisions contained therein, and shall also comply with all relevant and applicable provisions of N.J.A.C. 7:26-13.

(c) A landfill that is used for the disposal of hazardous wastes shall have a liner system that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water during the active life of the landfill including the closure period as described in N.J.A.C. 7:26-9.8(i).

1. A new landfill shall be designed ***, constructed, and installed*** with a liner system in accordance with the following:

i. The liner system shall consist *[of a minimum]* of two liners which shall be installed to cover all surrounding earth likely to be in contact with waste or leachate;

ii. The primary or upper liner shall consist of a synthetic material at least 40 mils (.04 inches) thick *[with a maximum saturated hydraulic conductivity of 3.28 x 10^{-9} ft./sec (1 x 10^{-7} cm/sec), under maximum anticipated hydrostatic head]* ***which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature to ensure the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life (including the closure period) of the facility***;

iii. The secondary or lower liner shall consist of soil at least five feet (1.5 meters) thick with a maximum saturated hydraulic conductivity of 3.28 x 10^{-9} ft/sec (1 x 10^{-7} cm/sec) under maximum anticipated hydrostatic head or shall consist of synthetic material at least 40 miles (.04 inches) thick *[with a maximum saturated hydraulic conductivity of 3.28 x 10^{-9} ft/sec (1 x 10^{-7} cm/sec), under maximum anticipated hydrostatic head]* ***which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature to ensure the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life (including the closure period) of the facility***;

iv. The secondary or lower liner shall be placed on a foundation capable of providing support to the liner;

v. Each liner shall be suitable for the purposes intended and shall be compatible with the hazardous waste placed in the landfill;

vi. The liners shall be ***designed,*** constructed ***and installed with*** *[of]* materials having appropriate chemical properties and sufficient strength and of sufficient thickness to prevent failure due to pressure head, physical contact with the waste to which they are exposed, climatic conditions, and the stress of installation;

vii. The distance between the primary and secondary liners shall be a minimum of 12 inches (30.5 centimeters) and shall be filled with a permeable material which will rapidly convey fluids;

[iii] ***viii.*** The bottom surface of the secondary liner shall be no less man five feet (1.5 meters) above the seasonally high groundwater table;

ix. *[A one foot (3.5 cm.) layer of sand/gravel shall be placed on top of the primary liner to provide protection for the liner and to allow for an effective drainage path for the leachate; and]* ***A minimum of a two foot (61 centimeters) layer of sand/gravel, which shall to the maximum extent possible have a coefficient of uniformity equal to or less than 2.5 and shall have a permeability equal to or greater than 1 x 10^{-2} cm/sec, shall be placed over the primary liner to provide protection for the liner and to allow for an effective drainage path for the leachate; and***

x. Upon completion of construction or installation, the owner or operator shall obtain a certification by a New Jersey licensed professional engineer stating that the systems contained in this subsection have been constructed in accordance with approved engineering plans and specifications and there are no damages or imperfections.

2. An existing hazardous waste landfill does not have to meet the specific liner *[design]* requirements in (c)1i through x, above, but shall be underlain by a minimum of two liners.

(d) Landfills that are used for the disposal of hazardous wastes shall have the following systems:

1. A leachate collection and removal system, which shall include a system for either the treatment or the disposal, or both, of collected leachate, to handle all leachate generated within the landfill and which must be:

i. Designed to ensure that the leachate depth over the primary liner does not exceed one foot (30 cm);

ii. Constructed of materials that are chemically resistant to the waste managed in the landfill and the leachate expected to be generated;

iii. Constructed of material of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill;

iv. Designed and operated to function without clogging through the scheduled post-closure period; and

v. Constructed such that any leachate formed will flow by gravity into collection sumps from which the leachate will be removed, treated, and/or disposed;

2. A secondary collection system (leak detection system) constructed between the primary and secondary liner and designed to monitor for any failure of the primary liner and to collect and remove all leachate that may pass through as a result of primary liner failure;

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3. A gas monitoring system, a gas monitoring program, and a gas venting program as specifically required by the Department. If gas is detected migrating outside the boundary of the landfill, the Department shall be notified immediately and an abatement program acceptable to the Department shall be submitted within 30 days of detection. The requirements of N.J.A.C. 7:27 are applicable;

4. A run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 24-hour, 25 year storm; and

5. A run-off management system to collect and control at least the water volume resulting from a 24-hour, 25 year storm.

6. Upon completion of construction or installation, the owner or operator shall obtain a certification by a New Jersey licensed professional engineer stating that the systems contained in this subsection have been constructed in accordance with approved engineering plans and specifications and there are no damages or imperfections present.

(e) Operational standards for hazardous waste landfills include the following:

1. Collection and holding facilities associated with run-on and run-off shall be managed after storms to maintain design capacity of the system;

2. Run-off from active portions of a hazardous waste landfill shall be collected in the run-off management system and managed as a solid waste pursuant to N.J.A.C. 7:26 and as a discharge pursuant to 7:14A if discharged to surface waters or groundwaters of the State;

3. Leachate collected in the collection sumps required in ***(d)1v*** *[(d)1iv]*, above, shall be removed, treated, and/or disposed of in accordance with the regulations concerning hazardous waste contained in N.J.A.C. 7:26 and in accordance with the regulations contained in N.J.A.C. 7:14A;

4. The owner or operator of a hazardous waste landfill shall prevent the migration of pollutants into the surface or groundwater;

5. A groundwater monitoring program shall be established to prevent the contamination of groundwater pursuant to N.J.A.C. 7:14A-6.15 and shall be carried out during the active life of the facility, the closure period, and during the post-closure period;

6. The owner or operator of a hazardous waste landfill containing hazardous waste which is subject to dispersal by wind shall:

i. Cover or otherwise manage the hazardous waste landfill so that wind dispersal of hazardous waste is eliminated; and

ii. Apply daily or intermediate cover, if determined to be necessary and required by the Department;

7. No waste disposal or disposal operation shall occur within 200 feet (60.6 meters) of the property boundary;

8. Ignitable, corrosive and reactive waste shall not be placed in a hazardous waste landfill, unless the waste is treated, rendered, or mixed before placement in the hazardous waste landfill so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable, corrosive or reactive waste under N.J.A.C. 7:26-8.9, 7:26-8.10, and N.J.A.C. 7:26-8.11, respectively;

9. Incompatible wastes, or incompatible wastes and materials, as defined in N.J.A.C. 7:26-1.4, shall not be placed in the same hazardous waste landfill cell;

10. The following shall not be placed in a hazardous waste landfill:

i. Bulk liquids;

ii. Non-containerized liquid waste; or

iii. Waste containing free liquid;

11. A container holding liquid waste or waste containing free liquids shall not be placed in a hazardous waste landfill, unless:

i. The container is very small, such as an ampule; or

ii. The container is a lab pack as described in (g), below, and is disposed of in accordance with (g), below;

12. All empty containers, as defined in N.J.A.C. 7:26-8.4(b), shall be crushed flat, shredded, or similarly reduced in volume before disposal in a hazardous waste landfill;

13. The owner or operator of a hazardous waste landfill shall neither accept nor dispose of hazardous wastes subsequent to the detection of any liquid in the secondary collection system unless the owner of operator has obtained written authorization from the Department for continued disposal.

i. The owner or operator shall comply with any conditions contained in said authorization; and

ii. The owner or operator shall again cease acceptance and disposal when the circumstances regarding the liquid in the secondary detection system change adversely;

14. If leachate is detected in the secondary collection system, it shall be pumped out and disposed of properly;

15. The leachate collection and removal system shall be operated so that the leachate depth over the primary liner does not exceed one foot (30 cm);

16. Except as otherwise provided by (e)11, above, containers may not be placed in a hazardous waste landfill unless:

i. The container is very small, such as an ampule; or

ii. The container is at least 90 percent full when placed in the landfill;

17. The operation of a hazardous waste landfill shall not result in odors being detected off-site by sense of smell in any area of human use or occupancy;

18. The owner or operator of a hazardous waste landfill shall control insects and rodents when necessary and when determined to be necessary and required by the Department; and

19. The owner or operator of a hazardous waste landfill shall prevent dust from interfering with landfill operation or from causing safety hazards and nuisances.

20. Liquid waste or waste containing free liquids that have been mixed with an absorbent material so that the resultant waste is not a liquid or does not contain free liquids shall not be placed in a hazardous waste landfill unless the absorbent material is approved by the Department for this use.

(f) The owner or operator of a hazardous waste landfill shall include the following items as part of the operating record required in N.J.A.C. 7:26-9.4(i):

1. A map showing the locations, dimensions, and depth of each cell, with respect to permanently surveyed benchmarks;

2. The contents of each cell; and

3. The approximate location of each hazardous waste within each cell.

(g) Small containers of hazardous waste in overpacked drums (such as lab packs) may be placed in a hazardous waste landfill if the following conditions are met:

1. Hazardous waste shall be packaged in non-leaking inside containers which shall be:

i. Designed and constructed of a material that will not react dangerously with, be decomposed by, or be ignited by the contained waste;

ii. Tightly and securely sealed; and

iii. Of the size and type specified in the federal Department of Transportation (U.S. DOT) hazardous materials regulations (49 C.F.R. Pars 173, 178, and 179);

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2. The inside containers shall be overpacked in an open head U.S. DOT-specification (40 C.F.R. Parts 178 and 179) metal shipping container of no more than 416-liter (110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of absorbent material to completely absorb all of the liquid contents of the inside containers.

i. The metal outer container shall be full after packing with inside containers and absorbent material.

ii. The absorbent material used shall not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers in accordance with N.J.A.C. 7:26-9.4(e);

3. Incompatible wastes, as defined in N.J.A.C. 7:26-1.4, shall not be placed in the same outside container; and

4. Reactive wastes, other than cyanide- or sulfide-bearing waste as defined in N.J.A.C. 7:26-8.11, shall be treated or rendered non-reactive prior to packaging in accordance with (g)1, 2 and 3, above. Cyanide- and sulfide-bearing reactive waste may be packed in accordance with (g)1, 2 and 3, above, without first being treated or rendered non-reactive.

(h) Inspection and testing requirements for hazardous waste landfills include the following:

1. During construction and installation, liners and final covers (as required by (c), above and (i)2111, below) shall be inspected for uniformity, damages, and imperfections (for example, holes, cracks, thin spots and foreign materials) and also as follows ***, immediately after construction or installation***:

i. Earthen material liner systems and final covers shall be tested for compaction density, moisture content, and permeability after placement;

ii. Earthern material liner systems and final covers shall be inspected for imperfections including lenses, cracks, channels, root holes, and other structural non-uniformities; and

iii. Synthetic liner materials and final covers shall be inspected to ensure tight seams and joints and the absence of tears and blisters;

2. At least once each operating day during the active life of the landfill and at least on two days each week during the closure period, the owner or operator shall inspect the hazardous waste landfill to detect evidence of any of the following:

i. Improper operation of the run-on and run-off control systems;

ii. Improper operation of wind dispersal control systems;

iii. The presence of liquids in the leak detection system; and

iv. The presence of leachate in and proper functioning of leachate collection and removal systems.

(i) Closure and post-closure requirements for hazardous waste landfills include the following:

1. At final closure of the landfill or upon closure of any cell, the owner or operator shall place final cover over the hazardous waste landfill to provide long-term minimization of migration of liquids into the closed landfill;

2. The final cover shall function with minimum maintenance and shall consist of the following:

i. A vegetative top cover with the following design characteristics:

(1) Consist of a soil material with a minimum thickness of two feet (.60 meters);

(2) The soil shall compact well, not crack excessively when dry, and support a vegetative cover that will effectively minimize erosion; and

(3) Seed bed preparation and planting operations for the vegetative cover shall be done as soon as weather permits and seasonal conditions are suitable for the establishment of the type of vegetation to be used;

ii. A drainage layer with the following design characteristics:

(1) Consist of a material with a minimum thickness of one foot (.3 meters) with a *[maximum]* ***minimum*** saturated hydraulic conductivity of 3.28 x 10^{-5} ft/sec (1 x 10^{-3} cm/sec); and

(2) Be designed to allow for an effective drainage path for flow through the vegetative top cover to minimize head on the liner system;

iii. A liner system constructed with the following design characteristics:

(1) *[A minimum of two]* ***Two*** liners;

(2) The upper liner shall consist of a synthetic material at least 30 mil (.03 inches) thick *[with a maximum saturated hydraulic conductivity of 3.28 x 10^{-9} ft/sec (1 x 10^{-7} cm/sec), under maximum hydrostatic head]* ***which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature to ensure the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life (including the closure period) of the facility****;

(3) The lower liner shall consist of soil at least three feet (.91 meters) thick with a maximum saturated hydraulic conductivity of 3.28 x 10^{-9} ft/sec (1 x 10^{-7} cm/sec), under maximum hydrostatic head or shall consist of a synthetic material at least 20 mils (.02 inches) thick *[with a maximum saturated hydraulic conductivity of 3.28 x 10^{-9} ft/sec (1 x 10^{-7} cm/sec), under maximum hydrostatic head]* ***which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature to ensure the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life (including the closure period) of the facility****;

(4) The distance between the upper and lower liner shall be a minimum of six inches (15 centimeters) and shall be filled with a bedding material which is free of foreign material which could damage the liner; and

(5) The lower liner shall be underlain by a minimum of six inches (15 centimeters) of bedding material which is free of foreign materials; and

iv. The design of the final cover shall accommodate settling and subsidence so that the cover's integrity is maintained;

3. In the closure plans required in N.J.A.C. 7:26-9.8, the owner or operator shall address the following objectives and indicate how they will be achieved:

i. Prevention of pollution migration from the landfill via groundwater, surface water, air, and methane gas through the ground;

ii. Prevention of surface water infiltration, including prevention of pooling; and

iii. Prevention of erosion.

4. The owner or operator shall consider at least the following factors in addressing the closure and post-closure objectives of (i)3i, ii, and iii, above.

i. Type and amount of hazardous waste and hazardous waste constituents in the landfill;

ii. The mobility and the potential rate of migration of the hazardous waste constituents;

iii. Site location, topography, and surrounding land use, with respect to potential effects of pollutant migration;

iv. Climate, including amount, frequency, and pH of precipitation;

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v. Characteristics of the cover material including final surface contours, thickness, porosity and permeability, slope, length and run of slope, and type of vegetation on the cover;

vi. Geological and soil profiles of the site; and

5. In addition to the post-closure requirements of N.J.A.C. 7:26-9.9, the owner or operator of a hazardous waste landfill, shall:

i. Maintain the function and integrity of the final cover, including making repairs to the liner as necessary to correct the effects of settling, subsidence, erosion or other events, as specified in the approved closure plan;

ii. Continue to operate the leachate collection and removal system until the end of the post-closure period so that the leachate depth over the primary liner does not exceed one foot;

iii. Maintain and monitor the leak detection system and notify the Department within seven days if a leak is detected in the leak detection system and take all remedial action required by the Department;

iv. Prevent run-on and run-off from eroding or otherwise damaging the final cover;

v. Maintain and monitor the gas collection and control system to control the vertical the vertical and horizontal escape of gases;

vi. Maintain and monitor the ground water monitoring system and comply with the requirements of N.J.A.C. 7:14A-6.15;

vii. Protect and maintain surveyed benchmarks; and

viii. Restrict access to the hazardous waste landfill as appropriate for its post-closure use.

(j) The Department shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of (c), (d) and (e), above, are satisfied.

7:26-11.3 Surface impoundments

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

(e) At closure, the owner or operator shall comply with the requirements of N.J.A.C. 7:26-10.6(h)2 through 5.

(f)-(g) (No change.).

7:26-12.2 Permit applications

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

(f) The following additional information is required from an owner or operator of specific types of hazardous waste management facilities that are used or to be used for storage or treatment:

1.-2. (No change.)

3. For facilities that store or treat hazardous waste in surface impoundments, except as otherwise provided in N.J.A.C. 7:26-10.6(a), the owner or operator shall submit detailed plans and specifications accompanied by an engineering report which shall collectively include the information itemized in N.J.A.C. 7:26-12.2(f)3i through *[xi.]* ***xii.*** For new surface impoundments, the plans and specifications shall be in sufficient detail to provide complete information to a contractor hired to build the surface impoundment even if the owner or operator intends to construct the surface impoundment without hiring a contractor. For existing surface impoundments, comparable detail shall be provided, but the form of presentation need not assume contractor construction except to the extent that the facility will be modified.

i. (No change.)

ii. Detailed drawings of the structure which is or will be provided to immediately stop flow into the impoundment to comply with N.J.A.C. 7:26-10.6(c)5 or, if no structure is needed to comply with N.J.A.C. 7:26-10.6(h), a description of the means by which waste additions will be stopped.

iii. (No change.)

iv. A basis of design and design analysis of any dikes to comply with N.J.A.C. 7:26-10.6(c)3 and N.J.A.C. 7:26-10.6(c)4. The design analysis shall show that any dike will meet the requirements of N.J.A.C. 7:26-10.6(g)4.

v. Detailed design drawings and specifications of the liner(s) and the leak detection, collection, and removal system and the basis of design and design analysis to comply with N.J.A.C. 7:26-10.6(b) and (c).

vi. Liner installation instructions to comply with the requirements of N.J.A.C. 7:26-10.6(f). For existing facilities, when the owner or operator proposes to rely on existing liners, a description of the installation procedures used.

vii. Design plans and specifications and basis and design of any structures needed to comply with N.J.A.C. 7:26-10.6(c)6.

viii. A description of the maintenance and repair procedures proposed to comply with N.J.A.C. 7:26-10.6(e)3 and N.J.A.C. 7:26-9.4(f).

ix. A description of the operating procedures that will ensure compliance with N.J.A.C. 7:26-10.6(e)5, 6, and 7.

x. A certification by a licensed professional engineer which complies with N.J.A.C. 7:26-10.6(f)4. The owner or operator of a new facility shall submit a statement by a licensed professional engineer that the engineer will provide such a certification upon completion of construction in accordance with the plans and specifications.

xi. Site geology and hydrology information including but not limited to:

xii. For existing surface impoundments, a summary of any groundwater monitoring data obtained during the interim status period pursuant to N.J.A.C. 7:14A-6.

(1)-(6) (No change.)

4. (No change.)

5. For facilities that dispose of hazardous waste in a landfill, the owner or operator shall submit detailed plans and specifications accompanied by an engineering report which shall collectively include the information itemized in (f)5i through xi, below. For new hazardous waste landfills, the plans and specifications shall be in sufficient detail to provide complete information to a contractor hired to build the facility even if the owner or operator intends to construct the facility without having a contractor. For existing hazardous waste landfills, comparable detail shall be provided, but the form of presentation need not assume contractor construction except to the extent that the facility will be modified.

i. Detailed design drawing and specifications of the liners and the leachate detection, collection, and removal system and leak detection system and the basis of design and design analysis to prevent pollution migration.

ii. Detailed plans and an engineering report describing how the landfill will control run-on and run-off.

iii. Detailed plans and an engineering report to show how the collection and holding facilities associated with run-on and run-off collection systems will be managed.

iv. Detailed plans and an engineering report to describe the control of wind dispersal of particulate, where applicable.

v. Liner installation instructions to be used. For existing facilities, when the owner or operator proposes to rely on existing liners, a description of the installation procedures used.

vi. A list of hazardous wastes placed or to be placed in each landfill cell to comply with the requirements of N.J.A.C. 7:26-10.8(f).

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vii. Detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with N.J.A.C. 7:26-10.8(i), and a description of how each landfill will be maintained and monitored after closure in accordance with N.J.A.C. 7:26-10.8(i).

viii. If containers of hazardous wastes are to be landfilled, an explanation of how the requirements of N.J.A.C. 7:26-10.8(e)11 or 16, as applicable, will be complied with.

ix. The owner or operator of a new facility shall submit a statement by a licensed professional engineer that the engineer will provide a certification upon completion of construction that construction has been completed in accordance with plans and specifications.

x. The following additional information regarding protection of groundwater is required from owners and operators of hazardous waste landfills;

(1) For existing hazardous waste landfills, a summary of the groundwater monitoring data obtained during the interim status period under N.J.A.C. 7:14A-6;

(2) For al hazardous waste landfills, identification of the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property, including groundwater flow direction and rate and the basis for such identification;

(3) For all hazardous waste landfills, on the topographic map required under (e)13, above, a delineation of the waste management area, the property boundary, and the proposed location of groundwater monitoring wells as required under N.J.A.C. 7:14A-6;

(4) For existing hazardous waste landfills, documentation showing the performance of the primary liner throughout the operating life of the landfill. This should include, at a minimum, a record showing all instances where liquid was detected in the secondary collection system;

(5) For existing hazardous waste landfills, a description of any plume of contamination that has entered the groundwater from the landfill at the time the application is submitted that:

(A) Delineates the extent of the plume on the topographic map required under (e)13, above; and

(b) Identifies the concentrations of the parameters in N.J.A.C. 7:14A-4.6(b) throughout the plume or identifies the maximum concentrations of the parameters in N.J.A.C. 7:14A-6.4(b).

(6) Detailed plans and an engineering report describing the proposed groundwater monitoring program to be implemented to meet the requirements of N.J.A.C. 7:14A-6 including the groundwater quality assessment program.

xi. A statement regarding the need for a gas monitoring and gas venting system, including plans and specifications and any permit application required by N.J.A.C. 7:27-8, if appropriate.

(g)-(j) (No change.)

7:14A-4.4 Application for a permit

(a) (No change.)

(b) For land treatment facilities only.

1. In addition to complying with the requirements of N.J.A.C. 7:26-12 an applicant for a hazardous waste land treatment facility shall comply with N.J.A.C. 7:14A-10.8 and shall provide a description of design and operating procedures which demonstrates compliance with the requirements of N.J.A.C. 7:14A-4.7.

2. The requirements for applications for land treatment demonstration permits are as follows:

i. For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of N.J.A.C. 7:14A-4.7(e) of this subchapter the Department may issue a NJPDES permit for a treatment demonstration project. In addition to the general requirements for all NJPDES permits, the permit must contain only those requirements necessary to meet the standards in N.J.A.C. 7:14A-4.7(e)2. The permit may be issued either as a treatment or disposal permit covering only the field test or laboratory analyses, or as a two-phase facility permit covering the field tests, or laboratory analyses, and design, construction operation and maintenance of the land treatment unit.

(1) The Department may issue a two-phase facility permit if it finds that, based on information submitted in the land treatment permit application, substantial, although incomplete or inconclusive, information already exists upon which to base the issuance of a facility permit.

(2) If the Department finds that not enough information exists upon which it can establish permit conditions to attempt to provide for compliance with all of the requirements of N.J.A.C. 7:14A-4.7, the Department must issue a treatment demonstration permit covering only the field test or laboratory analyses.

ii. If the Department finds that a phased permit may be issued, it will establish, as requirements in the first phase of the facility permit, conditions for conducting the field tests or laboratory analyses. These permit conditions will include design and operating parameters (including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone), monitoring procedures, post-demonstration clean-up activities, and any other conditions which the Department finds may be necessary under N.J.A.C. 7:14A-4.7(e)2. The Department will include conditions in the second phase of the facility permit to attempt to meet all N.J.A.C. 7:14A-4.7 requirements pertaining to unit design, construction, operation, and maintenance. The Department will establish these conditions in the second phase of the permit based upon the substantial but incomplete or inconclusive information contained in the land treatment permit application.

(1) The first phase of the permit will be effective as provided in N.J.A.C. 7:14A-8.

(2) The second phase of the permit will be effective as provided in (b)2iv, below.

iii. When the owner or operator who has been issued a two-phase permit has completed the treatment demonstration, the owner or operator submit to the Department a certification, signed by a person authorized to sign a permit application or report, that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting such tests or analyses. The owner or operator must also submit all data collected during the field tests or laboratory analyses within 90 days of completion of those tests or analyses unless the Department approves a later date.

iv. If the Department determines that the results of the field tests or laboratory analyses meet the requirements of N.J.A.C. 7:14A-4.7, the Department will modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with N.J.A.C. 7:14A-4.7, based upon the results of the field tests or laboratory analyses.

(1) This permit modification may proceed as a minor modification under N.J.A.C. 7:14A-2.14, provided any such change is minor, or otherwise will proceed as a modification under N.J.A.C. 7:14A-2.12.

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(2) If no modifications of the second phase of the permit are necessary, or if only minor modifications are necessary and have been made, the Department will give notice of this final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of the final decision on the second phase of the permit. The second phase of the permit then will become effective as specified in N.J.A.C. 7:14A-8.6.

(3) If modifications under N.J.A.C. 7:14A-2.12 are necessary, the second phase of the permit will become effective only after those modifications have been made.

(c) For surface inpoundments only. In addition to complying with the requirements of N.J.A.C. 7:26-12.1, an applicant for a IWMF permit for a surface impoundment which treats or stores or hazardous waste shall provide a description of design and operating procedures which demonstrates compliance with the requirements of N.J.A.C. 7:26-10.6.

(d) (No change.)

7:14A-4.7 Standards for hazardous waste land treatment units

(a) The following applies to this section:

1. The regulations in this section apply to owners or operators of facilities that treat or dispose of hazardous waste in land treatment units, except as otherwise provided in (b), below.

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

"Closure period" means the period described in N.J.A.C. 7:26-9.8(i).

"Groundwater pollutant" means a hazardous waste or a hazardous waste constituent as defined in N.J.A.C. 7:26-8.16, those pollutants identified in N.J.A.C. 7:9-6, pollutants that may adversely affect groundwater quality or pose a threat to human health or safety, or pollutants that may be limited in a NJPDES permit.

"Hazardous waste constituent" means constituents identified in N.J.A.C. 7:26-8.16 that are reasonably expected to be in, or derived from, waste placed in or not he treatment zone.

"Treatment zone" means the portion of the unsaturated zone below and including the land surface in which the owner or operator intends to maintain the conditions necessary for effective degradation, transformation, or immobilization of hazardous constituents.

(b) An owner or operator who has fully complied with the requirements for existing facilities as defined in N.J.A.C. 7:26-1.4 and N.J.A.C. 7:26-12 shall comply with the regulations specified in 40 CFR Part 265, subpart M, in lieu of the standards and requirements of this section, until final disposition of the permit application is made.

(c) All new hazardous waste land treatment facilities shall comply with the requirements of:

1. N.J.A.C. 7:26-10.3; and

2. N.J.A.C. 7:26-13, if applicable.

(d) The treatment program requirements are as follows:

1. An owner or operator subject to this section shall establish a land treatment program that is designed to ensure that hazardous constituents placed in or on the treatment zone (defined in (d)4, below) are degraded, transformed, or immobilized within the treatment zone and will create no discharge to the surface water or groundwater;

2. The permit will specify the elements of the treatment program and shall include:

i. The wastes that are capable of being treated at the unit based on the demonstration required by (e), below;

ii. Design measures and operating practices necessary to maximize the success of degradation, transformation, and immobilization processes in the treatment zone in accordance with (f)1, below; and

iii. Unsaturated zone monitoring provisions meeting the requirements of (k), below;

3. The permit will specify the hazardous constituents that shall be degraded, transformed, or immobilized under this section; and

4. The permit will specify the vertical and horizontal dimensions of the treatment zone. The maximum depth of the treatment zone shall be:

i. No more than 1.5 meters (five feet) from the initial soil surface; and

ii. More than one meter (three feet) above the seasonal high water table.

(e) The treatment demonstration requirements are as follows:

1. For each waste that will be applied to the treatment zone, the owner or operator shall demonstrate, prior to application of the waste, that hazardous constituents in the waste can be completely degraded, transformed, or immobilized in the treatment zone.

i. In making this demonstration, the owner or operator may use field tests, laboratory analyses, available data, or, in the case of existing units, operating data.

ii. If the owner or operator intends to conduct field tests or laboratory analyses in order to make the demonstration, the owner or operator shall obtain a permit pursuant to N.J.A.C. *[7:14A-2.2(b)3]* ***7:14A-4***.

iii. The permit will specify the testing, analytical, design, and operating requirements (including the duration of the tests and analyses, and, in the case of filed tests, the horizontal and vertical dimensions of the treatment zone, monitoring procedures, closure and clean-up activities) necessary to meet the requirements in (e)2, below.

2. Any field test or laboratory analysis conducted in order to make a demonstration under (e)1, above, shall:

i. Accurately simulate the characteristics and operating conditions for the proposed land treatment unit including:

(1) The characteristics of the waste including the presence of any hazardous waste constituents per N.J.A.C. 7:26-8.16;

(2) The climate in the area;

(3) The topography of the unit and of the surrounding area;

(4) The characteristics of the soil in the treatment zone including the texture, pH, cation exchange capacity, bulk density, permeability, and depth; and

(5) The operating practices to be used at the unit;

ii. Be designed to show that hazardous constituents in the waste to be tested will be completely degraded, transformed, or immobilized in the treatment zone of the proposed land treatment unit; and

iii. Be conducted in a manner that protects human health and the environment considering:

(1) The characteristics of the waste to be tested;

(2) The operating and monitoring measures taken during the course of the test;

(3) The duration of the test;

(4) The volume of waste used in the test; and

(5) In the case of field tests, the potential for migration of hazardous constituents and other groundwater pollutants to groundwater or surface water.

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(f) The permit will specify how the owner or operator will design, construct, operate, and maintain the land treatment unit in compliance with this section.

1. The owner or operator shall design, construct, operate, and maintain the unit to maximize the degradation, transformation, and immobilization of hazardous constituents and other groundwater *[contaminants]* ***pollutants*** in the treatment zone. The owner or operator shall design, construct, operate, and maintain the unit in accord with all design and operating conditions that were used in the treatment demonstration in (e), above. At a minimum, the permit will specify the following:

i. The rate and method of waste application to the treatment zone;

ii. Measures to control soil pH;

iii. Measures to enhance microbial or chemical reactions (for example, utilization and tilling); and

iv. Measures to control the moisture content of the treatment zone.

2. The owner or operator shall design, construct, operate, and maintain the treatment zone to minimize run-off hazardous constituents and other groundwater pollutants during the active life of the land treatment unit.

3. The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the treatment zone during peak discharge from at least a 24-hour, 25-year storm.

4. The owner or operator shall design, construct, operate, and maintain a run-off management system to collect and control, at least, the water volume resulting from a 24-hour, 25-year storm.

5. Collection and holding devices (for example, tanks or basins) associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously after storms to maintain the design capacity of the system.

6. If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator shall manage the unit to control wind dispersal.

7. The owner or operator shall inspect the unit weekly and after storms to detect evidence of:

i. Deterioration, malfunctions, or improper operation of run-on and run-off control systems; and

ii. Improper functioning of wind dispersal control measures.

(g)-(h) (Reserved)

(i) The permit may allow the growth of food-chain crops in or on the treatment zone only if the owner or operator satisfies the conditions of this subsection. The permit will specify the specific food-chain crops which may be grown.

1. The demonstration requirements for hazardous constituents other than cadmium are as follows:

i. The owner or operator shall demonstrate that there is no substantial risk to human health caused by the growth of such crops in or on the treatment zone by demonstrating, prior to the planting of such crops, that hazardous constituents other than cadmium:

(1) Will not be transferred to the food or feed portions of the crop by plant uptake or direct contact, and will not otherwise be ingested by food-chain animals (for example, by grazing); or

(2) Will not occur in greater concentrations in or on the food or feed portions of crops grown on the treatment zone than in or on identical portions of the same crops grown on untreated soils under similar conditions in the same region;

ii. The owner or operator shall make the demonstration required under (i)1 of this section prior to the planting of crops at the facility for all constituents identified in N.J.A.C. 7:26-8.16 that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone;

iii. In making a demonstration under (i)1 of this section, ***the Department may require*** the owner or operator *[may use]* ***to conduct*** field tests, greenhouse studies, ***use*** available data, or, in the case of existing facilities, ***use*** operating data, and ***the owner or operator*** shall:

(1) Base the demonstration on conditions similar to those present in the treatment zone, including soil characteristics (for example, pH and cation exchange capacity), specific wastes, application rates, application methods, and crops to be grown; and

(2) Describe the procedures used in conducting any tests, including the sample selection criteria, sample size, analytical methods, and statistical procedures; and

iv. ***Where*** *[If the owner or operator intends to conduct]* field tests or greenhouse studies ***are conducted*** in order to make the demonstration required under (i)1 of this section, the owner or operator shall obtain a permit for conducting such activities.

2. The owner or operator shall comply with the following conditions if the only hazardous constituent in the wastes applied to the treatment zone is cadmium.

i. If food chain crops are to be grown, the following criteria shall be complied with:

(1) The pH of the waste and soil mixture shall be 6.5 or greater at the time of each waste application, except for waste containing cadmium at concentrations of 2 mg/kg (dry weight) or less;

(2) The annual application of cadmium from waste shall not exceed 0.5 kilograms per hectare (kg/ha) on land used for production of tobacco, leafy vegetables, or root crops grown for human consumption. For other food-chain crops, the annual cadmium application rate shall not exceed the limitations in the following chart:

Time Period	Annual Cd application rate (Kilograms per hectare)
Present to June 30, 1984	2.0
July 1, 1984 to Dec. 31, 1986	1.25
Beginning Jan. 1, 1987	0.5

(3) The cumulative application of cadmium from waste shall not exceed 5 kg/ha if the waste and soil mixture has a pH of less than 6.5; and

(4) If the waste and soil mixture has a pH of 6.5 or greater or is maintained at a pH of 6.5 or greater during crop growth, the cumulative application of cadmium from waste shall not exceed 5 kg/ha if soil cation exchange capacity (CEC) is less than 5 meq/100g and 10 kg/ha if soil CEC is 5-15 meq/100g, and 20 kg/ha if soil CEC is greater than 15 meq/100g; or

ii. If the cumulative application rate of cadmium exceeds those levels specified in (i)2i(3) and (4), above, then no food chain crops may be grown and future property owners shall be notified by a stipulation ***placed*** in the land record or property deed ***by the owner or operator*** which states that the property has received waste at high cadmium application rates and that food-chain crops shall not be grown.

3. If the wastes applied to the treatment zone contain cadmium and other hazardous constituents, the owner or opera-

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tor shall comply with (i)1, above, for the non-cadmium constituents and also comply with (i)2, above, for the cadmium constituent.

(j) (Reserved)

(k) An owner or operator subject to this section shall establish an unsaturated zone monitoring program to discharge the following responsibilities:

1. The owner or operator shall monitor the soil and soil-pore liquid to determine whether hazardous constituents have migrated out of the treatment zone.

i. The permit will specify the hazardous constituents to be monitored. The hazardous constituents to be monitored are those specified under (d)3, above.

ii. The permit may require monitoring for principal hazardous constituents (PHCs) in lieu of the constituents specified in (d)3, above. PHCs are hazardous constituents contained in the wastes to be applied at the unit that are the most difficult to treat, considering the combined effects of degradation, transformation, and immobilization. The permit will establish PHCs if, based on waste analyses, treatment demonstrations, or other data, it is found that effective degradation, transformation, or immobilization of the PHCs will assure treatment at levels at least as equivalent for the other hazardous constituents in the wastes;

2. The owner or operator shall install an unsaturated zone monitoring system as follows:

i. The unsaturated zone monitoring system shall include soil monitoring using soil cores and soil pore liquid monitoring using devices such as lysimeters.

ii. The unsaturated zone monitoring system shall consist of a sufficient number of sampling points at appropriate locations and depths to yield samples that:

(1) Represent the quality of background soil-pore liquid quality and the chemical make-up ***of the*** soil that has not been affected by leakage from the treatment zone; and

(2) Indicate the quality of soil-pore liquid and the chemical make-up of the soil below the treatment zone;

3. The owner or operator shall establish a background value for each hazardous constituent to be monitored under (k)1, above. The permit will specify the background values for each constituent or specify the procedures to be used to calculate the background values.

i. Background soil values may be based on a one-time sampling at a background plot having characteristics similar to those of the treatment zone.

ii. Background soil-pore liquid values shall be based on at least quarterly sampling for one year at a background plot having characteristics similar to those of the treatment zone.

iii. The owner or operator shall express all background values in a form necessary for the determination of statistically significant increases under (k)6, below.

iv. In taking samples used in the determination of all background values, the owner or operator shall use an unsaturated zone monitoring system that complies with (k)2ii(1), above;

4. The owner or operator shall conduct soil monitoring and soil-pore liquid monitoring immediately below the treatment zone. The permit will specify the frequency and timing of soil and soil-pore liquid monitoring after considering the frequency, timing, and rate of waste applicaiton, and the soil permeability. The owner or operator shall express the results of soil and soil-pore liquid monitoring in a form necessary for the determination of statistically significant increases under (k)6, below;

5. The owner or operator shall use consistent sampling and analysis procedures as follows:

i. The sampling and analysis procedures shall be designed to ensure sampling results that provide a reliable indication of soil-pore liquid quality and the chemical make-up of the soil below the treatment zone; and

ii. At a minimum, the owner or operator shall implement procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures; and

(4) Chain of custody control;

6. The owner or operator shall determine whether there is a statistically significant change over background values for any hazardous constituents to be monitored under (k)1, above, below the treatment zone each time he conducts soil monitoring and soil-pore liquid monitoring under (k)4, above.

i. In determining whether a statistically significant increase has occurred, the owner or operator shall compare the value of each constituent, as determined under (k)4, above, to the background value for that constituent according to the statistical procedures specified in the facility permit under this paragraph.

ii. The owner or operator shall determine whether there has been a statistically significant increase below the treatment zone within a reasonable time period after completion of sampling. The permit will specify that time period after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of soil and soil-pore liquid samples.

iii. The owner or operator shall determine whether there is a statistically significant increase below the treatment zone using a statistical procedure that provides reasonable confidence that migration from the treatment zone will be identified. The permit will specify a statistical procedure that:

(1) Is appropriate for the distribution of the data used to establish background values; and

(2) Provides a reasonable balance between the probability of falsely identifying migration from the treatment zone and the probability of failing to identify real migration from the treatment zone;

7. If the owner or operator determines, pursuant to (k)6, above, that there is a statistically significant increase of hazardous constituents below the treatment zone, the owner or operator shall:

i. Submit written notification of this finding to the Department within seven days which indicates what constituents have shown statistically significant increases; and

ii. Within 90 days, submit to the Department an application for a permit modification to modify the operating practices at the facility in order to maximize the success of degradation, transformation, or immobilization processes in the treatment zone.

8. Where the owner or operator determines, pursuant to (k)6, above, that there is a statistically significant increase of hazardous constituents below the treatment zone, the following applies:

i. The owner or operator may demonstrate that a source other than the land treatment units caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation;

ii. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under (k)7ii, above, the owner or operator is not relieved of the requirement to submit a permit modification application within the time specified in (k)7ii, above, unless the demonstration made under this para-

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graph successfully shows that a source other than the land treatment unit caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation; and

iii. In making a demonstration under this paragraph, the owner or operator shall:

(1) Notify the Department in writing within seven days of determining a statistically significant increase below the treatment zone that s/he intends to make a determination under this paragraph;

(2) Within 90 days, submit a report to the Department demonstrating that a source other than the land treatment unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation;

(3) Within 90 days, submit to the Department an application for a permit modification to make any appropriate changes to the unsaturated zone monitoring program at the facility; and

(4) Continue to monitor in accordance with the unsaturated zone monitoring program established under this section.

iv. The Department reserves the right to require the immediate cessation of land application of all wastes to the land treatment unit.

(l) The owner or operator shall include hazardous waste application dates and rates in the operating record required under N.J.A.C. 7:26-9.4(i) for each waste applied.

(m) Closure and post-closure care requirements for land treatment units include the following:

1. During the closure period, the owner or operator shall:

i. Continue all operations (including pH control) necessary to maximize degradation, transformation, immobilization of hazardous constituents and other groundwater *[contaminants]* ***pollutants*** within the treatment zone as required pursuant to (f)1, above, except to the extent such measures are inconsistent with (m)1viii, below;

ii. Continue all operations in the treatment zone to minimize run-off of hazardous constituents and other groundwater *[contaminants]* ***pollutants*** as required by (f)2, above;

iii. Maintain the run-on control system required under (f)3, above;

iv. Maintain the run-off management system required under (f)4, above;

v. Control wind dispersal of hazardous waste if required by (f)6, above;

vi. Continue to comply with any prohibitions or conditions concerning growth of food-chain crops under subsection (i), above;

vii. Continue unsaturated zone monitoring in compliance with (k), above, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone; and

viii. Establish a vegetative cover on the portion of the land treatment unit being closed at such time that:

(1) The cover will not substantially impede degradation, transformation, or immobilization of hazardous constituents and other groundwater *[contaminants]* ***pollutants*** in the treatment zone;

(2) It is capable of maintaining growth without extensive maintenance;

2. For the purpose of complying with N.J.A.C. 7:26-9.8, when closure is completed the owner or opeator shall submit to the Department certification by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the land treatment unit has been closed in accordance with the specifications in the approved closure plan;

3. During the post-closure care period the owner or operator shall:

i. Continue all operations (including pH control) necessary to enhance degradation and transformation and sustain immobilization of hazardous constituents and other groundwater *[contaminants]* ***pollutants*** in the treatment zone to the extent that such measures are consistent with other post-closure care activities;

ii. Maintain a vegetative cover over closed portions of the land treatment unit;

iii. Maintain the run-on control system required by (f)3, above;

iv. Maintain the run-off management system required by (f)4, above;

v. Control wind dispersal of hazardous waste if required by (f)6, above;

vi. Continue to comply with any prohibitions or conditions concerning growth of food-chain crops under subsection (i) above;

vii. Continue unsaturated zone monitoring in compliance with (k), above, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone; and

4. The owner or opeator is not subject to regulation under (m)1viii and (m)3, above, if the Department finds that the level of hazardous constituents in the treatment zone soil does not exceed the background value of those constituents by an amount that is statistically significant when using the test specified in (m)4iii, below. The owner or operator may submit such a demonstration to the Department at any time during the closure or post-closure care periods. For the purpose of this paragraph:

i. The owner or operator shall establish background soil values and determine whether there is a statistically significant increase over those values for all hazardous constituents specified in the facility permit under (d)3, above.

(1) Background soil values may be based on a one-time sampling of a background plot having characteristics similar to those of the treatment zone.

(2) The owner or operator shall express background values and values for hazardous constituents in the treatment zone in a form necessary for the determination of statistically significant increases under (m)4iii, below;

ii. In taking samples used in the determination of background and treatment zone values, the owner or operator shall take samples at a sufficient number of sampling points and at appropriate locations and depths to yield samples that represent the chemical make-up of soil that has not been affected by leakage from the treatment zone and the soil within the treatment zone, respectively; and

iii. In determining whether a statistically significant increase has occurred, the owner or opeator shall compare the value of each constitutent in the treatment zone to the background value for that constituent using a statistical procedure that provides reasonable confidence that constituent presence in the treatment zone will be identified. The owner or operator shall use a statistical procedure that:

(1) Is appropriate for the distribution of the data used to establish background values; and

(2) Provides a reasonable balance between the probability of falsely identifying hazardous constituent presence in the treatment zone and the probability of failing to identify real presence in the treatment zone.

(n) The owner or operator shall not apply ignitable or reactive waste to the treatment zone unless:

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1. The waste is immediately incorporated into the soil so that:

i. The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under N.J.A.C. 7:26-8.9 or 8.11; and

ii. The requirements of N.J.A.C. 7:26-9.4(e) are met; or

2. The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

(o) The owner or opeator shall not place incompatible wastes, or incompatible wastes and materials (see 40 CFR Part 264 Appendix V for examples), in or on the same treatment zone, unless N.J.A.C. 7:26-9.4(e) is complied with.

7:14A-6.1 General requirements

(a) Scope:

1. This subchapter describes the requirements for groundwater monitoring programs for all discharges, past or present, actual or potential, of pollutants, including hazardous and non-hazardous waste as defined in N.J.A.C. 7:14-1.9, to groundwater or onto land which might flow or drain into the waters of the State. A new source shall not discharge to groundwater prior to installing a groundwater monitoring system which satisfies the requirements of this subchapter and has been approved by the Department. All permits for a DGW shall include requirements for groundwater monitoring programs.

2.-3. (No change.)

4. N.J.A.C. 7:14-6.3 through 6.6 shall be applicable to:

i. Hazardous waste facilities (as defined in N.J.A.C. 7:26-1.4) prior to a final disposition of a permit application pursuant to N.J.A.C. 7:26-12 which have an actual or potential DGW;

II. IWMF's which are existing facilities under N.J.A.C. 7:14A-4.3; and

iii. Any other activity, process or operation which has an actual or potential DGW, based on the criteria set forth at N.J.A.C. 7:14A-6.15(d)2.

5. N.J.A.C. 7:14A-6.15 shall be applicable to:

i. Hazardous waste facilities (as defined in N.J.A.C. 7:26-1.4) which have been issued a permit pursuant to N.J.A.C. 7:26-12; and

ii. IWMF's which have been issued a permit pursuant to N.J.A.C. 7:14A-4.4(a).

iii. Any actual or potential discharges from an existing waste pile or any other accumulation of hazardous or non-hazardous materials, not withstanding the prohibition of waste piles in N.J.A.C. 7:26-9.2 and 7:26-9.3 in order to determine the extent of environmental or human health impact and the necessary degree of corrective action. Based on the criteria in N.J.A.C. 7:14A-6:15(d)2 the Department may require the institution of a detection monitoring program, compliance monitoring program, or corrective action program.

6. N.J.A.C. 7:14A-6.15 may also be applicable to any activity, process or operation where current or past practices have resulted in an actual or potential discharge of hazardous waste, hazardous waste constitutents or other groundwater pollutants onto the land or into the groundwater as determined by the Department based on the criteria set forth in N.J.A.C. 7:14A-6.15(d)2. The Department may require a discharger to obtain a NJPDES permit in order to satisfy the requirements of this section.

7. The owner or operator of an infiltration-percolation lagoon which accepts or has accepted hazardous wastes, in addition to complying with N.J.A.C. 7:14A-1 et seq., must comply with closure and post-closure requirements of N.J.A.C. 7:26-9.1 et seq. and N.J.A.C. 7:26-10.6(h).

(b) (No change.)

7:14A-6.2 Hazardous waste monitoring

(a) As specified in N.J.A.C. 7:14A-6.1(a)4, the owner or operator of a surface impoundment, landfill, overland flow disposal system or infiltration-percolation system, land treatment facility or other means of land disposal or solid or liquid hazardous waste must implement a groundwater monitoring program approved by the Department and capable of determining the facility's impact on the quality of grandwater. The owner or operator must install, operate and maintain a groundwater monitoring system which meets the requirements of N.J.A.C. 7:14A-6.3, and must comply with N.J.A.C. 7:14A-6.4 through 6.6. This monitoring program must be carried out during the active life of the facility, and, for disposal facilities, during the post-closure care period. An owner or operator may install, operate and maintain an alternate groundwater monitoring system other than the one described in N.J.A.C. 7:14A-6.3 and 6.4. If the owner or operator decides to use an alternate groundwater monitoring system, the owner or operator must:

1.-2. (No change.)

7:14A-6.15 Criteria for groundwater protection and response for hazardous waste facilities and IWMFs subject to groundwater monitoring requirements

(a) The following apply to this section:

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

"Closure period" means the period described in N.J.A.C. 7:26-9.8(i).

"Compliance period" means the number of years equal to the active life of the waste management area (including any waste management activity prior to permitting and the closure period).

"Groundwater pollutant" means a hazardous waste or a hazardous waste constitutent as defined in N.J.A.C. 7:26-8.16, those pollutants identified in N.J.A.C. 7:9-6, pollutants that may adversely affect groundwater quality or pose a threat to human health or safety, or pollutants that may be limited in a NJPDES permit.

"Point of compliance" means a vertical surface located at the hydraulically downgradient limit of the waste management area that extents down into the uppermost aquifer, uppermost zone of groundwater or any other groundwater or aquifer that may be impacted by the discharge underlying the regulated units.

"Regulated unit" means any surface impoundement, waste pile, land treatment unit or landfill, or part thereof, that receives hazardous waste or other potential groundwater pollutants after January 26, 1983.

"Waste management area" is the limit projected in the horizontal plane of the area on which hazardous waste will be placed during the active life of a regulated unit. It includes the horizontal space taken up by any liner, dike, or other barrier designed to contain hazardous waste in a regulated unit. If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

2. The owner or operator is not subject to regulation under this section if the owner or operator is exempted under N.J.A.C. 7:26-9.1 (except 7:26-9.1(c)2) and N.J.A.C. 7:26-

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12.1 (except N.J.A.C. 7:26-12.1 (a)1, (b)3 and (b)6). The Department may, however require that an application for a NJPDES permit be submitteed to the Department if the Department determines that there is an actual or potential discharge.

3. This section applies during the active life of the regulated unit (including the closure period).

4. After closure of the regulated unit, this section:

i. Does not apply if all groundwater pollutants, waste, waste residues, contaminated containment system components, contaminated groundwater and contaminated soils and subsoils are removed or decontaminated at closure;

ii. Applies during the post-closure care period if the owner or operator is conducting a detection monitoring program under (i), below; or

iii. Applies during the compliance period under (g), below, if the owner or operator is conducting a compliance monitoring program under (j), below, or a corrective action program under (k), below.

(b) The required programs are as follows:

1. Owners and operators subject to this section shall conduct a monitoring and response program as follows:

i. Whenever hazardous constituents under (d), below, from a regulated unit are detected at the compliance point under (f), below, the owner or operator shall institute a compliance monitoring program under (j), below. Further, the Department may require the compliance program to be implemented when the groundwater quality standards, N.A.J.C. 7:9-6, or a permit-specified limitation is exceeded.

ii. Whenever the groundwater protection standard for a hazardous constituent under (c), below, is exceeded, the owner or operator shall institute a corrective action program under (k), below. For nonhazardous constituents the Department may require the owner or operator to institute either a compliance monitoring program or a corrective action program based on the criteria identified in (d)2, below.

iii. Whenever hazardous constituents under (d), below, from a regulated unit exceed concentration limits under (e), below, in groundwater between the point of compliance under (f), below, and the downgradient facility property boundary, the owner or operator shall institute a corrective action program under (k), below. For nonhazardous constituents the Department may require the owner or operator to institute either a compliance monitoring program or a corrective action program based on the criteria identified in (d)2, below.

iv. In all other cases, the owner or operator shall institute a detection monitoring program under (i), below.

v. The Department may require additional monitoring wells to be installed within 30 days of the notification to the Department that the groundwater protection standard in (c), below, is exceeded in order to make the determination under (b)1iii, above.

vi. Any groundwater pollutants migrating beyond the waste management area are assumed to originate from a regulated unit unless the owner or operator can prove to the satisfaction of the Department that such waste, waste constituent or other groundwater pollutant originated from another source.

2. The Department will specify in the permit the specific elements of the monitoring and response program. The Department may include in the permit one or more of the programs identified in (b)1, above, as may be necessary to protect human health and the environment and will specify the circumstances under which each of the programs will be required. In deciding whether to require the owner or operator to be prepared to institute a particular program, the Department will consider the potential adverse effects on human health and the environment that might occur.

(c) The owner or operator shall comply with conditions specified in the permit that are designed to ensure that hazardous constituents or other groundwater *[contaminants]* ***pollutants*** under (d), below, entering the groundwater from a regulated unit do not exceed the concentration limits under (e), below, in the uppermost aquifer, uppermost zone of groundwater or any other groundwater or aquifer that may be impacted by the discharge underlying the waste management area beyond the point of compliance under (f), below, during the compliance period under (g), below. The Department will establish this groundwater protection standard in the permit. When hazardous constituents or other groundwater *[contaminants]* ***pollutants*** have entered the groundwater from a regulated unit the Department will modify the permit to include a new groundwater protection standard if it is necessary.

(d) The groundwater *[contaminant]* ***pollutant*** identification is as follows:

1. The Department will specify in the permit the hazardous constituents or other groundwater *[contaminants]* ***pollutants*** to which the groundwater protection standard of (c), above, applies.

2. The Department may exclude a hazardous waste constituent identified in N.J.A.C. 7:26-8.16 from the list of hazardous constituents specified in the permit if it finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption, the Department will consider the following:

i. Potential adverse effects on groundwater quality in an aquifer where the discharge is occurring or that may be hydraulically connected to the aquifer where the discharge is occurring, considering:

(1) The physical and chemical characteristics of the hazardous waste or other groundwater *[contaminants]* ***pollutants*** in the regulated unit, including its potential for migration;

(2) The hydrogeological characteristics of the facility and surrounding land;

(3) The quantity of groundwater and the rate and direction of groundwater flow;

(4) The proximity and withdrawal rates of groundwater users;

(5) The current and future uses of groundwater is in the area;

(6) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality in so far as this is consistent with the State groundwater quality standards, N.J.A.C. 7:9-6;

(7) The potential for health risks caused by human exposure to hazardous waste constituents or other groundwater *[contaminants]* ***pollutants***;

(8) The potential damage to wildlife, domestic animals, aquatic life, crops, vegetation, and physical structures caused by exposure to hazardous waste constituents or other groundwater *[contaminants]* ***pollutants***;

ii. Potential adverse effects on hydraulically-connected surface water quality, considering:

(1) The volume and physical and chemical characteristics of the hazardous waste and other groundwater *[contaminants]* ***pollutants*** in the regulated unit;

(2) The hydrogeological characteristics of the facility and surrounding land;

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(3) The quantity and quality of groundwater, and the rate and direction of groundwater flow;

(4) The patterns of rainfall in the region;

(5) The proximity of the regulated unit to surface waters;

(6) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(7) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality in so far as it is consistent with the State surface water quality standards, N.J.A.C. 7:9-4;

(8) The potential for health risks caused by human exposure to hazardous waste constituents or other groundwater *[contaminants]* ***pollutants***;

(9) The potential damage to wildlife, domestic animals, aquatic life, crops, vegetation, and physical structures caused by exposure to hazardous waste constituents or other groundwater *[contaminants]* ***pollutants***; and

(10) The persistence and permanence of the potential adverse effects.

3. In making any determination under (d)2, above, about the use of groundwater in the area around the facility, the Department will consider any identification of underground sources of drinking water and State groundwater quality standards, N.J.A.C. 7:9-6.

(e) The Department will specify in the permit the concentration limits in the groundwater for hazardous constituents established under (d), above.

1. The concentration of a hazardous constituent:

i. Shall not exceed the natural background level for individual hazardous constituents as identified in N.J.A.C. 7:26-8.16 in the groundwater;

ii. For parameters not included in (e)1i, above, *[the concentration]* shall not exceed the concentration limit specified in the State groundwater quality standards, N.J.A.C. 7:9-6 or State surface water quality standards, N.J.A.C. 7:9-4;

iii. For any of the constituents listed in Table I, shall not exceed the respective value given in that table if the background level of the constitutent is below the value given in Table 1. Where the maximum concentrations specified in Table I conflict with the groundwater quality criteria in N.J.A.C. 7:9-6, the more stringent concentration limit will be applied;

iv. Must not exceed an alternate limit established by the Department under (e)2, below.

2. The Department may establish a concentration limit as an alternative to the limit in (e)1, above, for a hazardous constituent if it finds that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the Department will consider the factors specified in (d)2, above.

TABLE 1: MAXIMUM CONCENTRATION OF CONSTITUENTS FOR GROUNDWATER PROTECTION

Concentration	Maximum Concentration in Milligrams per *[liter]* ***Liter Unless Otherwise Specified***
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium	0.05
Lead	0.05
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin (1,2,3,4,10,10-hexachloro-1, 7-expoxy-1,4,4a,5,6, 7,8,9a-octahydro-1, 4-endo, endo-5,8-dimethano naphthalene)	*[0.0002]* *0.004 ug/l*
Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer)	0.004
Methoxychlor (1,1,1-Trichloro-2,2-bis (p-methoxyphenylethane)	0.1
Toxaphene (C10H10Cl8, Technical chlorinated camphene, 67-69 percent chlorine)	0.005 *ug/l*
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.1
2,4,5-TP Silvex (2,4,5-Trichlorophenoxy propionac acid)	0.01

3. In making any determination under (e)2, above, about the use of groundwater in the area around the facility the Department will consider any identification of underground sources of drinking water and State groundwater quality standards.

4. The Department may utilize the criteria specified in Appendix F of N.J.A.C. 7:14A to establish concentration limits for parameters not contained in (e)1, above.

(f) The Department will specify in the permit the point of compliance at which the groundwater protection standard of (c), above applies and at which monitoring shall be conducted.

(g) The compliance period is as follows:

1. The compliance period begins when the owner or operator initiates a compliance monitoring program meeting the requirements of (j), below.

2. If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in (g)1, the compliance period is extended until the owner or operator can demonstrate that the groundwater protection standard of (c), above, has not been exceeded for a period of three consecutive years.

(h) The owner or operator shall comply with the following requirements for any groundwater monitoring program developed to satisfy (i), (j), or (k), below:

1. The groundwater monitoring system shall consist of a sufficient number of satisfactory wells*[, as required in N.J.A.C. 7:14A-6.13]* installed at appropriate locations and depths to yield groundwater samples that:

i. Represent the quality of background water that has not been affected by leakage or other discharges from a regulated unit; and

ii. Represent the quality of groundwater passing under the regulated unit and through the point of compliance.

2. If a facility contains more than one regulated unit, separate groundwater monitoring systems may not be required for each regulated unit provided that provisions for sampling the groundwater in the uppermost aquifer, uppermost zone of groundwater or any other groundwater or aquifer that may be impacted by the discharge will enable detection and measurement at the compliance point of hazardous constituents or other groundwater *[contaminants]* ***pollutants*** from the regulated units that have entered the groundwater.

3. All groundwater monitoring wells shall be constructed pursuant to N.J.A.C. 7:14A-6.13. In cases where the groundwater monitoring wells do not meet the requirements of the

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Department they shall be replaced within 30 days of receipt of notification from the Department that they are not satisfactory. The replacement wells shall be subject to Departmental approval.

4. The groundwater monitoring program shall also be consistent with N.J.A.C. 7:14A-6.12. Sampling and analysis procedures shall be designed to ensure monitoring results that provide a reliable indication of groundwater quality below the waste management area. At a minimum, the program shall include procedures and techniques for:

i. Sample collection;

ii. Sample preservation and shipment;

iii. Analytical procedures; and

iv. Chain of custody control.

5. The groundwater monitoring program shall include Department approved sampling and analytical methods that are appropriate for groundwater sampling in order to accurately measure hazardous constituents or other groundwater *[contaminants]* ***pollutants*** in groundwater samples.

6. The groundwater monitoring program shall include a determination of the groundwater surface elevation made prior to flushing, pumping or evacuating the well or sampling each time groundwater is sampled.

7. When required by the Department the groundwater monitoring program shall establish background groundwater quality for any or all of the hazardous constituents or other groundwater *[contaminants]* ***pollutants*** specified in the permit.

i. In the detection monitoring program under subsection (i), below, background groundwater quality shall be based on data from quarterly sampling of wells upgradient from the waste management area for one year.

ii. In the compliance monitoring program under (j), below, background groundwater quality for a hazardous constituent shall be based on data from upgradient wells that:

(1) Is available before the permit to conduct the compliance monitoring program is issued;

(2) Accounts for measurement errors in sampling and analysis; and

(3) Accounts, to the extent possible, for seasonal fluctuations in background groundwater quality if such fluctuations are expected to affect the concentration of the hazardous constituent.

iii. With Department approval, background quality may be based on sampling of wells that are not upgradient from the waste management area where:

(1) Hydrogeologic conditions do not allow the owner or operator to determine what wells are upgradient; or

(2) Sampling at other wells will provide an accurate indication of background groundwater quality that is as representative or more representative than that provided by the upgradient wells.

iv. In developing the data base used to determine a background value for each groundwater *[contaminant]* ***pollutant*** or ***hazardous waste*** constituent, the owner or operator shall take a minimum of one sample for each well and a minimum of four samples from the entire system used to determine background groundwater quality, each time the groundwater monitoring system is sampled.

8. The owner or operator shall use the following statistical procedure in determining whether background values or permit concentration limits have been exceeded:

(i) An owner or operator required to establish a detection monitoring program under this section shall, at a minimum, discharge the following responsibilities:

1. The owner or operator shall monitor for indicator parameters (such as, pH, specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The Department shall specify the parameters or constituents to be monitored in the permit, after considering the following factors:

i. If, in a detection monitoring program, the level of a constituent at the compliance point is to be compared to the constituent's background value and that background value has a sample coefficient of variation less than 1.00:

(1) The owner or operator shall take at least four portions for a sample at each well at the compliance point and determine whether the difference between the mean of the constituent at each well (using all portions taken) and the background value for the constituent is significant at the 0.05 level using the Cochran's Approximation to the Behrens-Fisher Student's t-test as set forth in Appendix IV of 40 C.F.R. 264. If the test indicates that the difference is significant, the owner or operator shall repeat the same procedure (with at least the same number of portions as used in the first test) with a fresh sample from the monitoring well. If this second round of analyses indicates that the difference is significant, the owner or operator shall conclude that a statistically significant change has occurred; or

(2) With Departmental approval, the owner or operator may use an equivalent statistical procedure for determining whether a statistically significant change has occurred. The Department will specify such a procedure in the permit if it finds that the alternative procedure reasonably balances the probability of failing to identify a non-contaminating regulated unit and the probability of failing to identify a contaminating regulated unit in a manner that is comparable to that of the statistical procedure described in (h)8i(1), above.

ii. In all other situations in a detection monitoring program and in a compliance monitoring program, the owner or operator shall use a Department-approved statistical procedure providing reasonable confidence that the migration of hazardous constituents from a regulated unit into and through the aquifer will be indicated. The Department will specify a statistical procedure in the facility permit that it finds:

(1) Is appropriate for the distribution of the data used to establish background values or concentration limits; and

(2) Provides a reasonable balance between the probability of falsely identifying a non-contaminating regulated unit and the probability of failing to identify a contaminating regulated unit.

(i) An owner or operator required to establish a detection monitoring program under this section shall, at a minimum, discharge the following responsibilities:

1. The owner or operator shall monitor for indicator parameters (such as, pH, specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The Department shall specify the parameters or constituents to be monitored in the permit, after considering the following factors:

i. The type(s), quantities, and concentrations of constituents in wastes managed at the regulated unit;

ii. The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the waste management area;

iii. The detectability of indicator parameters, waste constituents, and reaction products in ground water; and

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iv. The concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the ***background*** groundwater *[background]*.

2. The owner or operator shall install a groundwater monitoring system at the compliance point as specified in (f), above. The groundwater monitoring system shall comply with (h)1ii, 2 and 3, above.

3. The owner or operator shall establish a background value for each monitoring parameter or constituent specified in the permit pursuant to (i)1, above. The permit shall specify the background values for each parameter or specify the procedures to be used to calculate the background values.

i. The owner or operator shall comply with (h)7 in developing the data base used to determine background values.

ii. The owner or operator shall express background values in a form necessary for the determination of statistically significant increases under (h)8, above.

iii. In taking samples used in the determination of background values, the owner or operator shall use a groundwater monitoring system that complies with (h)1i, 2 and 3, above.

4. The owner or operator shall determine groundwater quality at each groundwater monitoring well at the compliance point as specified in the permit, but at least semi-annually during the active life of a regulated unit (including the closure period) and the post-closure care period. The owner or operator shall express the groundwater quality at each groundwater monitoring well in a form necessary for the determination of statistically significant increases under (h)8, above.

5. At least annually ***or on a more frequent basis as specified in the facility's NJPDES permit***, the owner or operator shall determine the groundwater flow gradients, rates, and directions for all geologic formations or zones monitored.

6. The owner or operator shall use procedures and methods for sampling and analysis that meet the requirements of (h)4 and 5, above.

7. The owner or operator shall determine whether there is a statistically significant increase over background values for any parameter or constituent specified in the permit pursuant to (i)1, above, each time he determines groundwater quality at the compliance point under (i)4, above.

i. In determining whether a statistically significant increase has occurred, the owner or operator shall compare the groundwater quality at ewach groundwater monitoring well at the compliance point for each parameter or constituent to the background value for that parameter or constituent, according to the statistical procedure specified in the permit under (h)8, above.

ii. The owner or operator shall determine whether there has been a statistically significant increase at each groundwater monitoring well at the compliance point within a reasonable time period after completion of sampling. The Department will specify that time period in the permit, after considerng the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

8. If the owner or operator determines, pursuant to (i)7, above, that there is a statistically significant increase for parameters or constituents specified pursuant to (i)1, above, at any groundwater monitoring well at the compliance point, the owner or operator shall:

i. Notify the Department of this finding in writing within seven days. The notification shall indicate what parameters or pollutants have shown statistically significant increases;

ii. Immediately sample the ground water in all monitoring wells and determine the concentration of all constituents identified in N.J.A.C. 7:26-8.16 and other permit-limited pollutants that are present in groundwater;

iii. Establish a background value for each N.J.A.C. 7:26-8.16 hazardous constituent that has been found at the compliance point under (i)8ii as follows:

(1) The owner or operator shall comply with (h)7 in developing the data base used to determine background values;

(2) The owner or operator shall express background values in a form necessary for the determination of statistically significant increases under (h)8;

(3) In taking samples used in the determination of background values, the owner or operator shall use a groundwater monitoring system that complies with (h)1i, 2 and 3, above;

iv. Within 45 days, submit to the Department an application for a permit modification to establish a compliance monitoring program meeting the requirements of (j), below. The application shall include the following information:

(1) An identification of the concentration of any N.J.A.C. 7:26-8.16 constituents found in the groundwater at each groundwater monitoring well at the compliance point;

(2) Any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of (j), below;

(3) Any proposed changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical procedures used at the facility necessary to meet the requirements of (j), below;

v. Within 90 days, submit to the Department an engineering feasibility plan for a corrective action program necessary to meet the requirements of (k), below.

9. If the owner or operator determines, pursuant to (i)7, that there is a statistically significant increase of parameters or constituents specified pursuant to (i)1, a violation of State groundwater quality standards, N.J.A.C. 7:9-6.1, or a violation of permit conditions at any groundwater monitoring well at the compliance point, the owner or operator may demonstrate to the satisfaction of the Department that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under (i)8iv ***above***, the owner or operator is not relieved of the requirement to submit a permit modification application within the time specified in (i)8iv unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator shall:

i. Notify the Department in writing within seven days of determining astatistically significant increase at the compliance point a violation of State groundwater quality standards, N.J.A.C. 7:9-6, or a violation of permit conditions that the owner or operator intends to make a demonstration under (i)9 of this section;

ii. Within 45 days, submit a report to the Department which demonstrates that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation;

iii. Within 45 days, submit to the Department an application for a permit modification to make any appropriate changes to the detection monitoring program at the facility; and

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iv. Continue to monitor in accordance with the detection monitoring program established under this subsection.

10. If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, the owner or operator shall, within 45 days, submit an application for a permit modification to make any appropriate changes to the program.

11. The owner or operator shall assure that monitoring and corrective action measures necessary to achieve compliance with the groundwater protection standard under (c), above, are taken during the term of the permit.

(j) An owner or operator required to establish a compliance monitoring program under this subsection shall, at a minimum, discharge the following responsibilities:

1. The owner or operator shall monitor the groundwater to determine whether regulated units are in compliance with the groundwater protection standard under (c), above. The Department will specify the groundwater protection standard in the permit, including:

i. A list of the hazardous constituents identified under (d), above, and other groundwater *[contaminants]* ***pollutants***;

ii. Concentration limits under (e), above, for each of the hazardous constituents. The Department may also set concentration limits for the other groundwater *[contaminants]* ***pollutants***;

iii. the compliance point under (f), above; and

iv. The compliance period under (g), above.

2. The owner or operator shall install a groundwater monitoring system at the compliance point as required by (f), above. The groundwater monitoring system shall comply with (h)1ii,(h)2 and (h)3.

3. Where a concentration limit established under paragraph (h)1ii is based on background groundwater quality, the Department will specify the concentration limit in the permit as follows:

i. If there is a high temporal correlation between upgradient and compliance point concentrations of the hazardous constituents, the Department may establish the concentration limit through sampling at upgradient wells each time groundwater is sampled at the compliance point. In all other cases, the concentration limit will be the mean of the pooled data on the concentration of the hazardous constituent.

ii. If a hazardous constituent is identified on Table 1 under (e) and the difference between the respective concentration limit in Table 1 and the background value of that constituent under (h)8 is not statistically significant, the owner or operator shall at the Department's discretion use the background value of the constituent as the concentration limit. In determining whether this difference is statistically significant, the owner or operator shall use a statistical procedure providing reasonable confidence that a real difference will be indicated. The statistical procedure shall:

(1) Be appropriate for the distribution of the data used to establish background values; and

(2) Provide a reasonable balance between the probability of falsely identifying a significant difference and the probability of failing to identify a significant difference.

iii. The owner or operator shall:

(1) Comply with (h)7 in developing the data base used to determine background values;

(2) Express background values in a form necessary for the determination of statistically significant increases under (h)8; and

(3) Use a groundwater monitoring system that complies with (h)1i, 2 and 3.

4. The owner or operator shall determine the concentration of hazardous constituents in ground water at each monitoring well at the compliance point at least quarterly during the compliance period. The owner or operator shall express the concentration at each monitoring well in a form necessary for the determination of statistically significant increasses under (h)8.

5. The owner or operator shall determine the groundwater flow rate annually and determine the groundwater flow direction in all affected geologic formations or zones at each sampling event specified in the permit but, in any case, at least quarterly.

6. The owner or operator shall analyze samples from all groundwater monitoring wells at the compliance point for all constituents contained in N.J.A.C. 7:26-8.16 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer, uppermost zone of groundwater or any other groundwater aquifer that may be impacted by the discharge. If the owner or operator finds N.J.A.C. 7:26-8.16 constituents in the groundwater that are not identified in the permit as hazardous constituents, the owner or operator shall report the concentrations of these additional constituents to the Department within seven days after completion of the analysis.

7. The owner or operator shall use procedures and methods for sampling and analysis that meet the requirements of (h)4 and 5.

8. The owner or operator shall determine whether there is a statistically significant increase over the concentration limits for any hazardous constituents specified in the permit pursuant to (j)1, above, each time the owner or operator determines the concentration of hazardous constituents in groundwater at the compliance point.

i. In determining whether a statistically significant increase has occurred, the owner or operator shall compare the groundwater quality at each groundwater monitoring well at the compliance point for each hazardous constituent to the concentration limit for that constituent according to the statistical procedures specified in the permit under (h)8.

ii. The owner or operator shall determine whether there has been a statistically significant increase at each groundwater monitoring well at the compliance point, within a reasonable time period after completion of sampling. The Department will specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

i. If the owner or operator determines, pursuant to (j)8, above, that the groundwater protection standard in (j)1, above, is being exceeded at any groundwater monitoring well at the point of compliance, the owner or operator shall:

i. Notify the Department of this finding in writing within seven days. The notification shall include a copy of the laboratory analysis and indicate what concentration limits have been exceeded.

ii. Submit to the Department an application for a permit modification to establish a corrective action program meeting the requirements of (k), below, within 60 days, or within 45 days if an engineering feasibility study previously has been submitted to the Department under (i)8v. The application shall at a minimum include the following information:

(1) A detailed description of corrective actions that will achieve compliance with the groundwater protection standard specified in the permit under (j)1, above; and

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(2) A plan for a groundwater monitoring program that will demonstrate the effectiveness of the corrective action. Such a groundwater monitoring program may be based on a compliance monitoring program developed to meet the requirements of this subsection.

10. If the owner or operator determines, pursuant to (j)8, that the groundwater protection standard is being exceeded at any groundwater monitoring well at the point of compliance, the owner or operator may demonstrate to the satisfaction of the Department that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis or evaluation. While the owner or operator may make a deomonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under (j)9ii, the owner or operator is not relieved of the requirement to submit a permit modification application within the time specified in j(9)ii unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator shall:

i. Notify the Department in writing within seven days that the owner or operator intends to make a demonstration under (j)10 of this section;

ii. Within 30 days, submit a report to the Department which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation;

iii. Within 45 days, submit to the Department an application for a permit modification to make any appropriate changes to the compliance monitoring program at the facility; and

iv. Continue to monitor in accord with the compliance monitoring program established under this subsection.

11. If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, the owner or operator shall, within 45 days, submit an application for a permit modification to make any appropriate changes to the program.

12. The owner or operator shall assure that monitoring and corrective action measures necessary to achieve compliance with the groundwater protection standard under (c), above, are taken during the term of the permit.

13. In those cases where the owner or operator demonstrates in accordance with (j)10, above, that the source is other than a regulated unit but the source is under the control of the owner or operator, the Department may require the owner or operator to undertake groundwater monitoring which is equivalent to that specified in (j) and corrective action which is equivalent to that specified in (k), below.

(k) An owner or operator required to establish a corrective ation program under this section shall, at a minimum, discharge the following responsibilities:

1. The owner or operator shall take corrective action to ensure that regulated units are in compliance with the groundwater protection standard under (c), above. The Department will specify the groundwater protection standard in the permit, including:

i. A list of the hazardous constituents identified under (d), above;

ii. Concentration limits under (e), above, for each of those hazardous constituents;

iii. The compliance point under (f), above; and

iv. The compliance period under (g), above.

2. The owner or operator shall implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The permit will specify the specific measures that will be taken.

3. The owner or operator shall begin corrective action within a reasonable time period after the groundwater protection standard is exceeded. The Department will specify that time period in the permit. If a permit includes a corrective action program in addition to a compliance monitoring program, the permit will specify when the corrective action will begin and such a requirement will operate in lieu of (j)9ii.

4. In conjunction with a corrective action program, the owner or operator shall establish and implement a groundwater monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program under (j), above, and shall be as effective as that program in determining compliance with the groundwater protection standard under (c), above, and in determining the success of a corrective action program under (k)5, where appropriate.

5. In addition to the other requirements of this subsection, the owner or operator shall conduct a corrective action program to remove or treat in place any hazardous constituents under (d), above, that exceed concentration limits under (e), above, in groundwater between the compliance point under (f), above, and the furthest extent of groundwater contamination which is either statistically significant as defined in (h)8, or exceeds the State groundwater quality standards in N.J.A.C. 7:9-6.1 or exceeds permit limits. The permit will specify the measures to be taken.

i. Corrective action meansure under (k)5 of this section shall be initiated and completed within a reasonable period of time considering the extent of contamination.

ii. Corrective action measures under (k)5 of this section may be terminated once the concentration of hazardous constituents under (d), above, is reduced to levels below their respective concentration limits under (e), above.

6. The owner or operator shall continue corrective action measures during the compliance period to the extent necessary to ensure that the groundwater protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, the owner or operator shall continue that corrective action for as long as necessary to achieve compliance with the groundwater protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area (including the closure period) if the owner or operator can demonstrate to the Department's satisfaction, based on data from the groundwater monitoring program under (k)4, above, that the groundwater protection standard of (c), above, has not been exceeded for a period of three consecutive years.

7. The owner or operator shall report in writing to the Department on the effectiveness of the corrective action program. The owner or operator shall submit these reports as specified by the Department, but no less frequent than semiannually.

8. If the owner or operator determines that the corrective action program no longer satisfies the requirements of this subsection, the owner or operator shall, within 45 days, submit an application for a permit modification to make any appropriate changes to the program.

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(a)

DIVISION OF WASTE MANAGEMENT
DIVISION OF WATER RESOURCES

Hazardous Waste Regulations

Adopted Amendments: N.J.A.C. 7:14A-4.6, 7:26-7.4, 7.6, 8.15, 9.1, 9.4, 9.6, 10.3, 12.1 and 12.11

Proposed: February 21, 1984 at 16 N.J.R. 306(a).
Adopted: May 7, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: May 7, 1984 as R.1984 d.202, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:1B-3, 13:1E-6, and 58:10A-1 et seq.

Effective Date: May 21, 1984.

Summary of Public Comments and Agency Responses:

These amendments were proposed on February 21, 1984 at 16 N.J.R. 306(a). The Department provided a 30 day comment period which commenced on February 21, 1984 and closed on March 23, 1984. During this time period, four written comments were received.

One commenter, a member of the regulated community, fully supported the adoption of these proposed amendments as they "will be beneficial for the regulated community in that they will then be subject to one set, as opposed to the present two sets, of hazardous waste regulations." This commenter went on to urge that the Department continue to review and amend the hazardous waste regulations so that they are "consistent with, but not unnecessarily more stringent than, the RCRA regulations" because of the negative impact the more stringent rules may have on the siting of new hazardous waste facilities in New Jersey. The Department does not feel that this comment needs a specific response at this time, as the subject rule amendments are not more stringent than their federal counterparts.

Another commenter indicated that 40 CFR 271.10 does not, for RCRA authorization, require the Department to adopt the regulation which it proposed as N.J.A.C. 7:26-7.4(i) and therefore it should not be adopted.

This commenter argued that 40 CFR 271 sets forth those substantive provisions which must be included in State regulations in order to obtain authorization to regulate hazardous waste in New Jersey; 40 CFR 271 does not require that State programs contain a provision equivalent to 40 CFR 262.43 (which was the basis for the regulation proposed as N.J.A.C. 7:26-7.4(i)). In the alternative, this commenter suggests that the language of N.J.A.C. 7:26-7.4(i) be modified so as to limit the information which the Department can request. The Department agrees that 40 CFR 271.10 does not require the adoption of N.J.A.C. 7:26-7.4(i) for RCRA equivalency. However, this provision is included in the regulation and is modified so as to limit the information the Department may require to only the quantities and disposition of hazardous wastes.

An industry commenter pointed out that N.J.A.C. 7:26-9.6(f)6 will require generators who accumulate hazardous waste on-site for 90 days or less (see N.J.A.C. 7:26-9.3) to maintain an operating record (see N.J.A.C. 7:26-9.4(i)) which would include entries which may not be applicable to generators.

The Federal rules at 40 CFR 265.37(b) require that such refusals be documented in the "operating record"; 40 CFR 265.37(b) does not cross-reference the facility operating record requirement of 40 CFR 265.73. Therefore, since the Department agrees that the entries required in the facility operating record may create an additional burden on generators, the Department has modified N.J.A.C. 7:26-9.6(f)6 to delete the cross-reference to the facility operating record in N.J.A.C. 7:26-9.4(i). This deletion will make N.J.A.C. 7:26-9.6(f)6 identical to its Federal counterpart (40 CFR 265.37(b)) for RCRA equivalency purposes. The Department, thus, will have flexibility in defining the extent of the generator "operating record".

The fourth commenter was the United States Environmental Protection Agency, Region II ("U.S. EPA"). U.S. EPA indicated that it has no objection to these regulations; however, it pointed out that, in order to be equivalent to the Federal regulations, N.J.A.C. 7:26-12.11(c) must be amended so as to require the preparation of fact sheets for every draft permit for a major hazardous waste facility (see 40 CFR 124.8 and 271.14). Currently, the State regulations require that fact sheets be prepared only for draft permits in three situations: (1) new major hazardous waste facilities, (2) expansions at major hazardous waste facilities and (3) where the draft permit will create widespread public interest or raise major issues. The Department agrees with U.S. EPA and has adopted a change to N.J.A.C. 7:26-12.11(c) which will require a fact sheet for every draft permit for a major hazardous waste facility, rather than just for a new facility. The Department has further amended N.J.A.C. 7:26-12.11(c) to reflect the requirements of a recent statutory amendment to the Solid Waste Management Act (P.L. 1983, c.464). N.J.S.A. 13:1E-5.1 now requires that all tentative approvals of permits for new solid waste facilities, including hazardous waste facilities, be accompanied by a fact sheet. N.J.A.C. 7:26-12.11(c) is amended to require fact sheets for all hazardous waste facilities, both major and non-major. These new fact sheet requirements for draft permits place a burden only on the Department and will impact only on the Department's internal permit procedures.

In further reviewing the Department's regulations on hazardous waste, the U.S. EPA has identified that, in order to be equivalent to the Federal regulations, the Department must add language equivalent to the language at 40 CFR 261.33(d) which lists, as a hazardous waste, debris resulting from the cleanup of a spill of any off-specification chemical product. Therefore, the Department has modified N.J.A.C. 7:26-8.15(d).

U.S. EPA has also identified that, in order to be equivalent to the Federal regulations, the Department must add language equivalent to 40 CFR 262.10(f) which states that facility owners and operators who initiate shipments of hazardous waste must comply with the generator manifest requirements. Therefore, the Department has added a provision at N.J.A.C. 7:26-7.4(a)9. This provision merely clarifies existing regulations and will not create an additional burden on facilities.

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Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

7:14A-4.6 Standards for wastewater treatment units subject to a permit-by-rule

(a) Purpose, scope, and applicability:

1. (No change.)

2. The standards in this part apply, in lieu of the requirements of N.J.A.C. 7:26-7.6(f) and N.J.A.C. 7:26-9 through 11 to owners and operators of eligible industrial waste management facilities.

(b)-(h) (No change.)

7:26-7.4 Hazardous waste generator responsibilities

(a) General requirements for generators not exempted pursuant to N.J.A.C. 7:26-8.1 et seq. are as follows:

1.-6. (No change.)

7. For shipment of hazardous waste within the United States solely by railroad or solely by water (bulk shipments only), the generator must send three copies of the approved manifest form dated and signed in accordance with this section to the owner or operator of the designated facility. Copies of the manifest are not required for each hauler.

8. For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must send at least three copies of the approved manifest form dated and signed in accordance with this section to:

i.-iii. (No change.)

9. An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility shall comply with the generator requirements of this section.

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

(h) Exception reporting requirements are as follows:

1. A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial hauler must contact the hauler and/or the owner or operator of the designated facility to determine the status of the hazardous waste and the Department at 609-292-8341 to inform the Department of the situation.

2.-3. (No change.)

(i) The Department, as it deems necessary, may require generators to furnish additional reports concerning ***only*** the quantities and disposition of hazardous wastes identified or listed in N.J.A.C. 7:26-8.

7:26-7.6 Hazardous waste facility operator responsibilities

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

(c) When importing hazardous waste from a foreign country, a person must meet all requirements of this subchapter for the manifest except that:

1.-2. (No change.)

3. Notice in writing shall be given to the Department and to the Regional Administrator for the United States Environmental Protection Agency (Region II) at least four weeks in advance of the date that the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

(d)-(e) (No change.)

(f) Reporting and recordkeeping requirements are as follows:

1. (No change.)

2. The owner or operator must prepare and submit two copies of an annual report to the Department by March 1 of each year, except for owners and operators of industrial waste management facilities which are subject to N.J.A.C. 7:14A-4.6. The report must include:

i.-ix. (No change.)

3. (No change.)

7:26-8.15 Discarded commercial chemical products, off-specification species, containers, and spill residues thereof

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded.

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

(d) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic named listed in subsections 8.15(e), 8.15(f), or 8.15(g) of this section ***or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if met specifications, would have the generic name listed in subsections 8.15(e), 8.15(f), or 8.15(g) or this section*.**

(e) The following commercial chemical products or manufacturing chemical intermediates, referred to in (a) through (d) above, are identified as acute hazardous waste (H). These wastes and their corresponding EPA Hazardous Waste Numbers are:

. . .

P060 Hexachlorohexahydro-exo,exo-dimethanonaphthalene

. . .

(f) (No change).

7:26-9.1 Scope and applicability

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

(c) The standards and requirements of this subchapter do not apply to:

1.-8. (No change.)

9. The owner or operator of a device burning a hazardous waste, provided the following conditions are met:

i. The wastes to be burned in the device are to be beneficially used or reused as a fuel for the purpose of recovering usable energy and are limited to on-site wastes or specific wastes between intra-company and intra-state facilities under the control of the same person. Said wastes to be burned pursuant to this authorization shall be fully classified in accordance with the requirements of N.J.A.C. 7:26-8, and shipped using New Jersey DEP manifests in accordance with the requirements of N.J.A.C 7:26-7.

ii.-vii. (No change.)

10.-11. (No change.)

12. The owner or operator of an industrial waste management facility (IWMF) constructed and operated in accordance with N.J.A.C. 7:14A-4.

(d) (No change.)

7:26-9.4 General facility standards

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

(c) The owner or operator shall comply with the requirements of this subsection for unauthorized waste shipments.

1. (No change.)

2. An owner or operator, if offered hazardous waste of a type which the facility is not authorized to handle, shall:

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i.-iv. (No change.)
v. Telephone the Department, at 609-292-8341, and report the unauthorized waste shipment; and
vi. (No change.)
(d)-(h) (No change.)
(i) The owner or operator shall keep a written operating record at the facility in which the following information shall be recorded, as it becomes available, and maintained until closure of the facility:
1.-8. (No change.)
9. Declinations by authorities, in accordance with N.J.A.C. 7:26-9.6(f).
(j)-(o) (No change.)

7:26-9.6 Preparedness and prevention
(a)-(e) (No change.)
(f) The owner or operator shall make the following arrangements, in addition to the requirements of N.J.A.C. 7:26-9.4(g)8, as appropriate for the type of waste handled at the facility and the potential need for the services of these organizations:
1.-5. (No change.)
6. Where the authorities identified in (f)1 through 5, above, decline to enter into such arrangements, the owner or operator must document the refusal in the operating record required by N.J.A.C. 7:26-9.4(i).

7:26-10.3 Location standards for new hazardous waste facilities
(a) (No change.)
(b) Additional regulations concerning hazardous waste facilities subject to N.J.S.A. 13:1E-49, the Major Hazardous Waste Facilities Siting Act, are set forth in N.J.A.C. 7:26-13.

7:26-12.1 Scope and applicability
(a) (No change.)
(b) The following persons are not required to obtain a permit pursuant to this subchapter to conduct the following activities or construct *[to]* ***or*** operate the following hazardous waste facilities:
1.-6. (No change.)
7. The owner or operator of a device burning a hazardous waste, provided the following conditions are met (see N.J.A.C. 7:26-9.1(c)9):
i. The wastes to be burned in the device are to be beneficially used or reused as a fuel for the purpose of recovering useable energy and are limited to on-site wastes or specific wastes between intra-company and intra-state facilities under the control of the same person. Said waste to be burned pursuant to this authorization shall be fully classified in accordance with the requirements of N.J.A.C. 7:26-8, and shipped using New Jersey DEP manifests in accordance with the requirements of N.J.A.C. 7:26-7.
ii.-vii. (No change.)
8.-10. (No change.)

7:26-12.11 Decision making process for completed permit applications
(a)-(b) (No change.)
(c) A fact sheet shall be prepared for every draft permit for a *[new major]* hazardous waste facility, for every expansion at a major hazardous waste facility which would increase its treatment, storage or disposal capacity by more than fifty percent, and for *[every]* ***any other*** draft permit which the Department finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Department shall send this fact sheet to the applicant and, on request, to any other person. The fact sheet shall include, when applicable:
1.-7. (No change.)

HEALTH

(a)

PUBLIC HEALTH COUNCIL

Chapter X—State Sanitary Code Collection, Processing, Storage and Distribution of Blood

Adopted New Rule: N.J.A.C. 8:8-1.1 through 10.7
Adopted Repeal: N.J.A.C. 8:8-1.1 through 6.2

Proposed: February 21, 1984 at N.J.R. 316(a).
Adopted: May 2, 1984 by Evelyn Geddes, Chairperson, Public Health Council.
Filed: May 4, 1984 and R.1984 d.193, **with substantive changes** not required additional public notice and comment (see N.J.A.C. 1:30-3.5).
Authority: N.J.S.A. 26:1A-7.
Effective Date: May 21, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): May 21, 1989.

Summary of Public Comments and Department Responses:

Written comments were received during the comment period. Commentors included:
Sera-Tec Biologicals
New Jersey Blood Services, Medical Advisory Council
JFK Medical Center, Edison

Comment: 8:8-4.1(g)(7)-New Jersey Blood Services would like this rule modified so that the last sentence of the paragraph reads "by supervisor and/or director."
This suggested change has been accepted because it does not change the intent of the regulation which was to have supervisory review of quality control records.

Comment: 8:8-4.2(a)(1)-New Jersey Blood Services would like this rule modified so that it is consistent with the Federal regulations which require reporting of only fatal reactions.
This comment has not been accepted because it would change the intent of the regulation which is to have blood banks report any hemolytic or life threatening transfusion reaction.

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Comment: 8:8-7.11(c)(9)–Sera-Tec Biologicals would like this rule modified so that it is consistent with Federal regulations.

This comment has been accepted because it was the intent of this regulation to be consistent with the Federal regulation.

Comment: 8:8-8.1–JFK Medical Center would like this rule modified so that it is required that the name on the specimen tube used for testing be verified in writing by two laboratory personnel.

This comment has not been accepted because it would be a major change in cxurrently accepted procedures.

Comment: 8:8-8.1(e)–JFK Medical Center would like this rule modified so that it is required that when the blood sample is drawn, the recipient identified be verified in writing by two qualified hospital personnel.

This comment has not been accepted because it would be a major change in currently accepted procedures for drawing blood for crossmatch.

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 8.
COLLECTION, PROCESSING, STORAGE AND DISTRIBUTION OF BLOOD

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 and all regulations of this Chapter.

(b) Failure to comply with these regulations shall be cause for revocation of license and imposition of penalities as prescribed by law.

8:8-1.2 Definitions

For the purpose of this Chapter, the terms listed below shall be defined and interpreted as follows:

"Additive solution system" means blood preservative systems designed primarily for the extended storage of red blood cells. These systems utilize a second preservative solution for red cell storage in addition to the anticoagulant solution necessary for whole blood collection.

"Autologous transfusion" means the removal and storage of blood or blood components from a donor for subsequent reinfusion into the same individual.

"Blood bank" means any facility involved in the handling of human blood, blood components or products and which participates in any of the following operations: collection, processing, donor and recipient testing, the storage and distribution of blood and blood *[product]* ***components***.

"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, for further manufacturing, or as products used for in vitro testing.

"Brokerage" means procuring, selling and distributing of whole blood, components and blood products without engaging in processing, alteration or other manipulation of the blood *[product]* ***component***.

"Closed system" means a system in which the blood container is not entered or air introduced.

"Code of Federal Regulations" means the current Code of Federal Regulations, Title 21.

"Collection" means the procedure for obtaining blood by donor phlebotomy.

"Commissioner" means the commissioner of the New Jersey State Department of Health or his duly authorized agent.

"Cytapheresis" means the procedures in which blood is removed from the donor, certain cellular elements are separated, and the remaining formed elements and residual plasma are returned to the donor.

"Department" means the New Jersey State Department of Health.

"Distribution" means the transfer of blood or blood components from one blood bank facility to any other location for processing or storage or for the purpose of providing the blood for therapeutic, prophylactic or in vitro purposes.

"Donor" means and includes any individual from whom blood or components *[is]* ***are*** collected by a blood bank.

"Health system" means a multidivisional hospital with a blood bank and no more than three satellite blood bank facilities.

"Hemapheresis" means the process of separating freshly drawn whole blood into various components, some of which are retained while the remainder is reinfused into the donor.

"Office of Biologics" means the Federal Office of Biologics, Department of Health and Human Services.

"Phlebotomist" means a person who obtains blood from donors by venipuncture.

"Plasmapheresis" means the procedure in which blood is removed from the donor, the plasma is separated from the formed elements and at least the red blood cells are returned to the donor.

"Pyrogen-free" means a system free from any material capable of causing a febrile response.

"Processing" means all tests and procedures required to prepare and identify the blood and blood products as to their suitability for therapeutic, prophylactic or other in vivo or in vitro purposes.

"Reagent" means a substance used for any in vitro purpose.

"Recipient" means any person who receives a transfusion of whole blood or blood components.

"Satellite blood bank" means a facility ***which is part of a health system*** which does emergency or limited blood banking activities.

"Storage" means the physical environment of blood or blood components during collection, storage, distribution, transportation or processing.

"Therapeutic phlebotomy" means the removal of whole blood from a donor for the purpose of medical treatment.

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. 26:1A-7 commonly known as the Blood Bank Licensing Act, shall be made on forms provided for that purpose by the State of New Jersey.

(b) Renewal of the license will be on an annual basis on or before November 10th of each year on forms provided for that purpose by the State of New Jersey.

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(c) Amendments to the license shall be as follows:

1. A license renewal shall be obtained within 30 days whenever the name or the location of a blood bank is changed.

2. The Department shall be notified in writing within 30 days whenever the ownership, corporate structure or director of a blood bank is changed.

8:8-1.4 Inspection

(a) Blood bank facilities and operations shall be made available for inspection upon request by any authorized representative of the Department during normal working hours.

(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) Blood banks must successfully participate in a proficiency testing program approved by the Department.

(b) Records in all proficiency testing results must be maintained, including results and interpretations, and a periodic review by the blood bank director.

8:8-1.6 Quality control

All blood banks and transfusion services shall have a written quality control program which is sufficiently comprehensive to ensure that reagents and equipment perform as expected and that there is compliance with these regulations, and shall be acceptable to the Department.

8:8-1.7 Brokers

Brokers must maintain records of all applicable standards and procedures set forth in these regulations.

8:8-1.8 Exemptions

The Department is empowered to waive such of these regulations as may be necessary for purposes of research, experimentation and new methodologies in blood banking activities, provided requests for such activities, are received in writing and approved by the Department.

8:8-1.9 Waivers

The Public Health Council on the advice of the Commissioner may promulgate, enforce and may amend or repeal these regulations that at any given time shall be no less stringent than the complete interim or revised *[regulations of the Office of Biologics]* ***Code of Federal Regulations*** in effect at that time. In administering the Blood Bank Licensing Act, the Department can seek the advice and recommendations of an advisory committee.

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 for all procedures and policies relating to all phases of donor and recipient testing as well as the collection, processing, storage and distribution of all blood and blood components.

2. 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 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 shall be readily available for personal or telephone consultation.

5. The director is responsible for the employment of qualified blood bank personnel and their in-service training.

6. If the director is to be absent, the director must arrange for a qualified substitute director.

(b) Qualifications:

1. The blood bank director must have four years of full time clinical experience, of which at least two years were spent acquiring proficiency in blood banking.

2. This experience must include all phases of blood banking including but not limited to:

i. Donor and recipient testing;

ii. The collection, preparation, storage, processing and distribution; and where applicable;

iii. Transfusion of whole blood and blood components.

8:8-2.2 Donor related personnel

(a) General provisions for donor related personnel are:

1. Each blood bank during the collection of blood shall have a responsible individual on the premises who is qualified to provide emergency care.

2. An adequate number of phlebotomists shall be available.

3. All other personnel associated with donor related functions must be suitably trained and supervised in the performance of their prescribed tasks.

(b) Donor emergency care personnel shall be available as follows:

1. If a physician is not present, a person available to administer donor emergency care 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 *[medical]* director of the blood bank;

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.

(c) A phlebotomist shall be properly trained or supervised for six months and be proficient in the collection of blood from a donor.

(d) All other personnel associated with donor related functions must be suitably trained and supervised in the performance of their prescribed tasks.

8:8-2.3 Laboratory personnel

(a) The laboratory 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 responsible for proper performance of all laboratory 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.

(c) The laboratory supervisor and laboratory personnel must meet the requirements of N.J.A.C. 8:44 under Regulations for Supervision and Technical Personnel.

SUBCHAPTER 3. FACILITIES, EQUIPMENT AND CONTAMINATED MATERIAL

8:8-3.1 Facilities and equipment

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(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, 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.

1. The laboratory shall have appropriate equipment for donor and/or recipient testing, component preparation, record keeping, storage and distribution of blood and blood components.

2. All laboratory tests required for proper donor blood processing, not performed by the collecting facility, must be referred to a laboratory or blood bank licensed by the Department or possess a Federal interstate license.

8:8-3.2 Contaminated material

Contaminated material shall be disposed in a manner consistent with current standards of the New Jersey Department of Health, Health Facilities Evaluation Division and the New Jersey Department of Environmental Protection.

SUBCHAPTER 4. RECORDS AND REPORTING REQUIREMENTS

8:8-4.1 Records

(a) Suitable legible records prepared with indelible material shall be maintained for a period of not less than five years.

(b) If records are maintained on computer systems, adequate provisions must be made to safeguard against the eventuality of unexpected electronic loss of data from the computer storage medium.

(c) A system must be in existence which maintains duplicate records on electronic storage media, updates these duplicates continuously and/or transfers electronically stored data periodically to hard copy such as prints or microfiche.

(d) The records shall:

1. Include all data secured and developed by blood banks concerning donor and/or recipient testing, donor identification, medical qualifications, registration as well as the processing, storage and distribution and final disposition of blood and blood components;

2. Make it possible to trace a unit of any blood or blood component from source; (for example, donor or shipping facility) to final disposition; (for example, transfused, shipped, discarded).

3. Be available for review;

4. Be made available annually by January 31, of each year on forms provided by the Department for the purpose of preparing the State's Statistical Summary of Blood Use report;

5. Include the actual result of each test observed, recorded immediately, and the final interpretation recorded upon completion of testing.

(e) Before blood is issued for transfusion, test results for each recipient sample shall be compared with the following:

1. Past records of previous ABO and Rh typing results for the current admission.

2. Past records of all patients known to have significant unexpected antibodies, severe adverse reactions to transfusion, and/or difficulty in blood typing.

(f) If computers are used, hard copies of these results must be available.

(g) Records must include at least the following:

1. Donor records:

i. An annual record of each unit of blood or component as to its source bank and destination (this may be final disposition);

ii. Donor history, examination, consent, deferral, reactions and also the result of required laboratory tests performed on plasmapheresis and cytapheresis donors;

iii. An annual alphabetical file of donor registration cards or a cross index system;

iv. Blood and component labelling, including initials of person responsible for such labelling;

v. Storage temperatures of components, including dated and initialled temperature recording charts;

vi. Results of visual inspection of blood;

vii. Results of blood processing, including results and interpretation of all tests and retests;

viii. Component preparation, including all relevant dates and times;

ix. Documentation of separation and pooling of recovered plasma;

x. Documentation of units included in pooling of source plasma;

xi. Reissue records, including records of proper temperature maintenance.

2. Recipient records shall include:

i. An alphabetical file of the recipient and all units administered (transfusion services only);

ii. Each recipient's ABO and Rh type available for immediate reference at least for the duration of the current hospitalization;

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 five years;

iv. Transfusion request records;

v. Test results, interpretations and release (issue) date for compatibility testing;

vi. Emergency release of blood including signature of requesting physician, type of blood and blood component.

3. List of therapeutic bleedings, including signed request by physician, donor's disease and disposition of units;

4. Detailed procedure manual including all policies and procedures developed for use in the blood bank;

5. Evidence of annual review of the procedure manual by the blood bank director;

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 which occurred and how they were treated;

7. Quality control records, including but not limited to: periodic evaluation of personnel, reagent, equipment, including dates of performance; test performed; observed result; interpretations; identification of personnel performing the test; any appropriate corrective action taken, review by supervisor and *[director]* ***/or director.***

8. Antibody identification records;

9. Reports of adverse reactions and laboratory investigation of suspect transfusion reactions;

10. *[Lost]* ***Lot*** numbers of supplies and reagents.

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8:8-4.2 Reporting requirements

(a) Transfusion reactions shall be reported as follows:

1. Any hemolytic or life threatening transfusion reaction must be reported on forms provided by the Department within 10 days of occurrence.

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.

(b) Transfusion associated hepatitis shall be reported as follows:

1. Any known or presumed case of transfusion associated hepatitis brought to the attention of a blood bank shall be reported to the Department within 10 days on forms provided for this purpose.

2. All prospective donors found to test positive for hepatitis B surface antigen shall be reported to the Department within 10 days on forms provided for this purpose and shall be considered ineligible for transfusion purposes as long as they continue to be identified on current lists of interdicted donors supplied by the Department.

SUBCHAPTER 5. CRITERIA FOR DONOR SELECTION

8:8-5.1 Donor identification

(a) Blood donors shall be identified by a comparison of their signature at the time of donation with an identification card.

(b) The type of identification used shall be written on the donor registration card at the time of each blood donation.

8:8-5.2 Medical history; physical examination; bleeding limitations

(a) Medical history, physical examinations, bleeding limitation of the donor shall be consistent with the Code of Federal Regulations and the American Association of Blood Banks guidelines. If necessary these documents may be reviewed at the Department of Health, Clinical Laboratory Improvement Program, CN 360, Trenton, NJ 08625.

8:8-5.3 Donor selection

(a) On the day of donation the prospective donor's history shall be evaluated and the donor examined by qualified blood bank personnel trained to follow guidelines acceptable to the Department in order to determine that blood donation will not be detrimental to the donor and to determine that the donor has no evidence of disease transmissible by blood transfusion.

(b) Donors shall be excluded from donating blood for transfusion while their names appear in the latest revision of publications supplied to the blood bank by the Department which prohibit them from serving as a donor.

(c) Before blood is issued for transfusion, test results shall be compared with past records.

8:8-5.4 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.

(b) The donor must be instructed in post phlebotomy care and cautioned as to possible adverse reactions.

(c) The blood bank director shall be responsible for a mechanism for notifying the donors of the cause of rejection.

SUBCHAPTER 6. BLOOD AND BLOOD COMPONENTS

8:8-6.1 General criteria

(a) The procedure for the collection, processing, storage and distribution of blood and blood components shall meet the requirements of this subchapter. Based upon compliance, the Department will grant approval.

(b) All units of blood or blood components found to have positive tests for HB_sAg shall not be issued for transfusion or for the preparation of components for fractions.

(c) Sale or exchange of such material positive for *[HBAg]* ***HB_sAg*** shall not be made without the express permission, in writing, of the Department.

(d) Blood banks distributing blood and blood components shall:

1. Have available an information circular with each product explaining its proper indications and usage (thawing, dosage, stability, side effects, adverse reactions, hazards, etc.).

2. Provide accurate expiration dates and hours on the container label for all blood and blood components.

3. Establish criteria, according to current standards acceptable to the Department, for the blood bank including but not limited to the following:

i. The container closure has not been disturbed;

ii. The product has been transported and stored within appropriate containers for the products, especially frozen or labile components;

iii. Records indicate that the product has been reissued;

iv. Pilot samples have remained attached to the container if the product has left the issuing facility;

v. Meets licensed expiration dates for the product.

8:8-6.2 Processing

(a) The processing of all blood and blood components shall be in accordance with the Code of Federal Regulations.

(b) All laboratory tests shall be made on specimens of blood taken from the donor at the time of phlebotomy in properly identified tubes.

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 HB_sAg which is acceptable to 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 units 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.

3. Determination of ABO group:

i. Each container of blood shall be properly identified and labeled as to its blood group.

ii. 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 A_1 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.

(2) All Anti-A and Anti-B sera shall meet the *[Office of Biologics]* ***Code of Federal Regulations*** minimum require-

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ments, and the procedures used shall follow the manufacturer's directions.

iii. 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.

4. Determination of D type:

i. The D type of each container of donor blood shall be determined with Anti-D reagent.

ii. If the blood is D negative, it shall be tested using a technique designed to detect D^u.

iii. Only anti-sera meeting *[Office of Biologics]* ***the Code of Federal Regulations*** minimum requirements for the products shall be used and the technique of typing shall be that recommended by the manufacturer.

5. Determination of antibodies:

i. Each container of blood shall be tested for unexpected antibodies using a screening cell suspension which meets the Code of Federal Regulations minimum requirements.

ii. The techniques employed shall be those which will detect clinically significant antibodies and shall include the anti-human globulin test.

iii. Screening procedures must employ fresh serum not older than 48 hours.

iv. Blood in which antibodies are found shall be used in a manner not detrimental to the recipient.

6. Repeat testing:

The facility at which the transfusion is administered must confirm the ABO type, on a sample obtained from the integral attached segment, of all units of whole blood and red blood cells, and the D type of all D negative units of whole blood and red blood cells.

(c) Any additional testing for product quality and patient safety may be performed under this Chapter.

SUBCHAPTER 7. COLLECTION OF BLOOD

8:8-7.1 Donor's emergency care

(a) Blood shall be drawn from donors only when a physician or donor emergency care personnel are available on the premises.

(b) The qualifications of donor emergency care personnel and the procedures for implementation of donor selection and donor care standards shall be approved by the Department.

(c) This rule does not waive the requirements for physicians' attendance at a location where a plasmapheresis is being performed.

8:8-7.2 Medical contingency plan

(a) Each location for collection of whole blood units shall have a current medical contingency plan specific for that location which will include;

1. Name, address and telephone number of nearest hospital;

2. Route of evacuation to that hospital;

3. Emergency vehicle on hand or telephone number of local ambulance squad and/or local police;

4. Name, address and telephone number of physician on call with hours of coverage, or name, address and telephone number of emergency room of nearest hospital;

5. When a private physician in the area of a mobile whole blood collection site is providing medical coverage, personnel will be responsible for;

i. Notifying the physician of the location and telephone number of the unit and that donor bleeding is being initiated;

ii. Reconfirming the hours of coverage;

iii. Notifying the physician at the end of operation.

(b) When a hospital in the area of the mobile blood collection site is providing medical coverage, personnel will be responsible for;.

1. Notifying the hospital emergency room of the location and telephone number of the unit and the hour donor bleeding is being initiated;

2. Notifying the hospital emergency room at the close of operation.

(c) A copy of the Medical contingency plan for each location must be maintained on file on the premises of each licensed blood bank for a period of not less than five years.

8:8-7.3 Donor protection

(a) Preparation of the donor's skin for phlebotomy shall be adequate to afford protection from infection to the donor and to the future recipient.

(b) All equipment used in the collection of blood, such as syringes, needles, lancets or other blood letting devices, capable of transmitting infection to donor or recipient, shall be sterile and pyrogen free.

(c) Oral thermometers shall be used in a sanitary manner.

(d) All personnel concerned with the collection of blood shall be instructed in appropriate first aid procedures in the event of donor reaction.

(e) Suitable drugs, supplies and instructions for use shall be immediately available at all times.

8:8-7.4 Method of routine whole blood collection

(a) The method employed for the removal of blood from the donor must conform to accepted standards of asepsis.

(b) Blood containers and donor sets shall be sterile and pyrogen-free.

(c) A closed system must be used.

(d) If more than one venipuncture is needed, another set and container must be used.

(e) The container into which the blood is collected at one venipuncture shall be the final container.

(f) During bleeding, the anticoagulant solution and the blood shall be thoroughly mixed.

(g) The outside of the container shall be kept clean.

(h) Immediately after bleeding, the blood shall be placed in storage at 1-6°C, unless platelets are to be harvested.

8:8-7.5 Pilot samples

(a) At the time of collection the integral donor tubing must be filled with anticoagulated blood and sealed in such a manner that it will be available for subsequent tests for serologic *[incompatibility]* ***compatibility.***

(b) The integral donor tubing segments must be separable from the container without breaking the sterility of the container.

(c) At the time of collection additional blood may be collected for laboratory tests provided containers are properly labelled before or at the time of collection, accompany the blood container, and are reidentified with the blood container after filling.

8:8-7.6 Blood containers

(a) Containers for whole blood and blood components used by licensed establishments, shall be identified by recording the manufacturer's lot numbers and shall be sterile and pyrogen-free.

(b) The containers shall be sufficiently colorless and transparent to permit visual inspection of blood.

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(c) They shall be provided with closures which maintain a hermetic seal and prevent contamination of the contents.

(d) The container and the closure shall not interact with the contents under customary conditions of storage and use.

(e) The anticoagulant solution and additive solution systems shall be sterile, pyrogen-free in the amount prescribed for the volume of blood collected, and prepared according to the Code of Federal Regulations.

8:8-7.7 Labeling

Labeling shall be consistent with the Code of Federal Regulations.

8:8-7.8 Collection of blood for autologous transfusion

(a) Donor processing for autologous transfusion shall be as follows:

1. Donor qualifications for autologous transfusion may vary from standard donor criteria but this entire procedure must be arranged by consultation between the blood bank director and the donor-patient's physician.

2. If the patient-donor and/or donated unit do not meet the criteria for donor selection listed in this Chapter to protect the recipient, the unit must be labeled "For Autologous Use Only", segregated, and used solely for this purpose.

(b) Criteria for donation shall be as follows:

1. Volume of blood must comply with the Code of Federal Regulations.

2. There are no age limits for autologous transfusion procedures.

3. The hemoglobin concentration of patient-donor should be no less than 11 gms. per dl. The packed cell volume, if substituted, should be no less than 34 percent.

4. Frequency of phlebotomy for autologous transfusion shall be determined by competent medical decision but blood should not be collected from the patient within 72 hours of the anticipated procedure.

5. Phlebotomy concurrent with transfusion of previously collected autologous units should not be undertaken more frequently than once every three days.

(c) Pretransfusion testing of units for autologous transfusion shall be subject to the following:

1. ABO group must be determined by the collection facility. If the transfusion facility is different from the collecting facility, the ABO type must be confirmed.

2. Other factors tested for routine transfusion are optional.

3. Compatibility testing is optional.

8:8-7.9 Intraoperative autologous transfusion

(a) Facilities initiating the intraoperative autologous transfusion procedure must notify the Department in writing within 30 days.

(b) Current guidelines established by the American Association of Blood Banks must be observed.

8:8-7.10 Therapeutic phlebotomy

(a) General criteria for therapeutic phlebotomy follows:

1. Any blood or blood component withdrawn from a patient for therapeutic purposes shall be clearly indicated as such on the blood label.

2. The use of this blood or blood component for allogeneic transfusion purposes shall be determined by the physician in charge of the blood bank, in *[consulation]* ***consultation*** with the recipient's attending physician.

3. Collection of such blood for transfusion purposes shall be restricted to an institution where the status of both the donor and the recipient are known.

4. The unit shall be labeled to indicate the donor's disease.

(b) There shall be a written procedure describing the technique used.

(c) Records shall be maintained which include patient identification, diagnosis, therapeutic procedure, volume of plasma and cells removed, volume replaced, nature of the replacement fluids, and a record of the administered medications.

(d) Informed written consent of the patient must be obtained.

(e) There shall be provisions for the management of reactions.

8:8-7.11 Routine plasmapheresis

(a) Blood banks wishing to employ these techniques shall file a request in writing with the Department, including their protocol and other relevant details.

(b) Such techniques may be employed upon receipt of written approval from the Department.

(c) The procedures used shall meet with the approval of the Department and shall include as a minimum the following requirements;

1. Within one week prior to the first plasmapheresis, the donor shall be examined and certified to be in good health by a licensed physician.

2. A licensed physician on the premises shall supervise the performance of these procedures, including the reinfusion of red cells.

3. Prior to each procedure, records shall be made and maintained of the major pertinent elements of each donor's physical condition and must also include a determination of the donor's total protein.

4. A donor shall not serve as a source of plasma unless his or her total protein is within normal limits.

5. Quality control records of the total protein determinations shall be maintained.

6. If a second plasmapheresis is to be performed within 30 days of the first procedure, laboratory tests shall be done on samples of the donor's serum to determine that the protein level and ratio of the various protein components, as shown by electrophoresis, fall within normal limits.

7. A donor shall not serve as a source of plasma while there is any significant change in his health, or in the values of these initial determinations.

8. Periodic determinations shall be made as frequently as necessary and at least every four months to monitor these evaluations.

[9. The plasma from no more than two liters of blood may be retained in a seven day period and the plasma from no more than one liter of blood may be retained in a 48 hour period.]

9. The amount of plasma withdrawn shall be consistent with the current Code of Federal Regulations.

10. Red blood cell loss should not exceed 25 ml per week during serial plasmapheresis.

11. A plasmapheresis donor may donate a unit of whole blood if 48 hours have lapsed since the last plasmapheresis, but at least eight weeks shall elapse after a regular whole blood donation before starting a donor in a plasmapheresis program.

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12. A plasmapheresis donor must, on each occasion of plasmapheresis satisfy all requirements of donor whole blood outlined in N.J.A.C. 8:8-5 Criteria for Donor Selection.

8:8-7.12 Cytapheresis

(a) Blood banks wishing *[a]* ***to*** employ these techniques shall file their protocol and a request in writing with the Department.

(b) Such techniques may be employed upon receipt of written approval from the Department.

(c) The procedures used shall meet with the approval of the Department and shall include as a minimum the following requirements;

1. N.J.A.C. 8:8-5 Criteria for Donor Selection.

2. A licensed physician on the premises shall supervise the performance of these procedures including the reinfusion procedure.

3. The interval between procedures shall be at least 48 hours, and no more than 1,000 ml of plasma should be removed per seven days, or 250 ml of red blood cells per eight weeks.

4. Plasmapheresis requirements as outlined in N.J.A.C. 8:8-7.11 shall apply to donors undergoing cytapheresis at least biweekly over several months.

i. The results of these tests shall be reviewed by a licensed physician to determine suitability for continued donation.

ii. The donor must be tested appropriately to detect developing cytopenia.

5. If a cytapheresis donor donates a unit of whole blood or if it becomes technically impossible to return the donor's red blood cells, at least eight weeks must elapse before a subsequent cytapheresis procedure.

6. Donors may receive drugs before or during leukapheresis.

i. Such drugs shall not be used for donors whose medical history suggests that they may exacerbate previous intercurrent disease.

ii. The blood bank director is responsible for setting appropriate guidelines in such circumstances.

8:8-7.13 Immunized donor

(a) If specific immunization of a donor is to be performed, the selection and scheduling of the injection of the antigen, and the evaluation of each donor's clinical response, shall be by a qualified physician.

(b) Any material used for immunization shall be either a product licensed under Section 351 of the Public Health Service Act for such purpose or one specifically approved by the Director, Office of Biologics.

(c) Immunization procedures shall be on file at each plasmapheresis center where immunizations are performed.

(d) Each donor to be immunized shall be instructed regarding possible hazards associated with use of his blood at other blood banks and each shall agree that he will not donate blood elsewhere without first divulging his immunization status.

(e) Informed consent of the donor must be obtained.

8:8-7.14 Sterility testing

(a) Sterility testing shall be performed at regular intervals and not less than once monthly, where blood is collected in an open system. Such tests shall not be done on blood intended for transfusion.

(b) Culture techniques shall be in accordance with the *[regulations of the Office of Biologics.]* ***Code of Federal Regulations.****

(c) Permanent records of the sterility tests and the results shall be kept.

SUBCHAPTER 8. RECIPIENT BLOOD TESTING

8:8-8.1 General provisions

(a) Forms and requests for blood and blood components and forms accompanying recipient blood samples must have sufficient information for the positive identification of the recipient.

(b) The recipient's first and last names and identification number are required.

(c) Incomplete or illegible forms shall not be accepted.

(d) The intended recipient and the blood sample shall be identified at the time of collection by a mechanism which positively identifies the recipient.

(e) The sample for compatibility testing shall be;

1. Identified by a label containing at least the recipient's first and last names and identification number, firmly attached to the sample before leaving the side of the recipient.

2. Identified as to the person who drew the recipient's blood sample.

3. Less than 48 hours old when a recipient has been transfused or pregnant in the preceding three months or this information is not known.

(f) 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. 8:8-6.2(b)3ii and iii.

ii. Serum tests for Anti-A and Anti-B in neonatal patients should be omitted.

2. D typing:

i. It is sufficient to test each blood sample from the recipient with Anti-D typing sera only.

ii. This will determine whether the recipient should receive D positive or D negative blood.

iii. The test for D^u is unnecessary when testing recipient red cells.

iv. A control system appropriate to the typing system used is required.

3. Detection of unexpected antibodies:

i. Each blood sample submitted with a request for transfusion shall be tested prior to, or concurrently with, the performance of the crossmatch.

ii. Methods for testing for unexpected antibodies shall be those which demonstrate clinically significant antibodies and shall include an antiglobulin test.

4. Compatibility testing:

i. Compatibility testing requirements shall be consistent with *[current regulations of the Office of Biologics]* ***the Code of Federal Regulations**** but must include at least an immediate spin crossmatch of donor cells and patient serum.

8:8-8.2 Operative blood order schedules

(a) If type and screen procedure is used, there must be prompt availability of ABO compatible blood to meet unexpected transfusion requirements.

(b) If this blood is needed before compatibility testing is completed, an immediate spin crossmatch must be performed before the blood can be released.

1. Testing should be completed promptly and the results documented.

8:8-8.3 Urgent requirement for blood

(a) Urgent requirements for blood are situations in which delay in provision of blood may unduly jeopardize the pa-

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tient, therefore, blood may be issued before completion of routine tests.

(b) The following standards apply to urgent situations:

1. Recipients whose ABO and D Types have been determined by the transfusing facility without reliance on previous records may receive type-specific blood before required tests have been completed.

2. Recipients whose ABO type is not known shall receive type O red blood cells.

3. The records shall contain a statement of the requesting physician indicating that the clinical situation was sufficiently urgent to require release of blood before completion of required testing.

4. The tag or label shall indicate in a conspicuous fashion that required testing had not been completed at the time of issue.

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.

3. 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.

4. Irradiation of blood shall be consistent with current acceptable guidelines of the American Association of Blood Banks.

SUBCHAPTER 9. ISSUE AND ADMINISTRATION OF BLOOD AND BLOOD COMPONENTS FOR TRANSFUSION

8:8-9.1 Issue of blood

(a) A blood transfusion request form indicating the recipient's name, identification number, and ABO and D types shall be completed for each unit of donor blood or component.

(b) A label or tag with the appropriate information to identify the unit with the intended recipient shall be attached to the blood container before its release from the laboratory for transfusion.

(c) Retention of blood samples shall be as follows:

1. A stoppered or sealed sample of each donor blood, and a similar sample of the recipient's blood, shall be stored at 1 to 6°C for at least seven days after *[tansfusion]* ***transfusion.***.

(d) 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.

8:8-9.2 Administration of blood and components

(a) Identification of the recipient and the blood container shall be as follows:

1. Each transfusion service must have a written procedure for the positive identification of the recipient and the blood container.

2. Immediately prior to transfusion the transfusion form shall be signed indicating that all information identifying the container with the intended recipient has been matched.

3. It is required that a second qualified person check the same information before transfusion and sign the transfusion form.

4. All identification attached to the container shall remain attached at least until the transfusion has been completed.

(b) Blood transfusions shall be conducted as follows:

1. Blood and components shall be transfused through a sterile, pyrogen-free transfusion set equipped with a filter.

2. Warming of blood shall be performed as follows:

i. When warming of blood is performed, it should be accomplished during its passage through the transfusion set.

SUBCHAPTER 10. STORAGE OF BLOOD

8:8-10.1 Refrigerators for the storage of blood

(a) The refrigerator for the storage of blood shall maintain the blood at a temperature between 1-6°C.

(b) Refrigerators for blood or blood component storage shall be provided with a fan for circulating air or be of a design to ensure that the proper temperature is maintained throughout.

(c) Both liquid and air temperature shall be monitored.

(d) The liquid medium used shall reflect the actual temperature of blood in storage.

8:8-10.2 Freezers for blood components

(a) Freezers for blood components stored frozen shall maintain the blood component at a temperature below −18°C.

(b) Liquid nitrogen freezers used to store red blood cells shall maintain them at a gas phase temperature below −120°C.

8:8-10.3 Room temperature storage

Components for room temperature storage shall be maintained at a temperature of 20 to 24°C.

8:8-10.4 Temperature monitoring systems

(a) All refrigerated equipment used to store blood and blood components shall have a system to record temperature continuously.

(b) The temperature recording device shall be calibrated periodically, inspected at least daily and written records of the temperatures shall be kept on file.

(c) Alarms shall be attached to the refrigeration equipment and shall be subject to the following:

1. Visual and audible alarm systems shall be attached to the equipment to indicate whenever the temperature is outside acceptable ranges.

2. Alarms should be installed in *[location]* ***locations*** to provide 24 hour coverage by night personnel or switchboard operators.

3. The alarms shall be set to activitate at a temperature which will allow proper action to be taken before the blood or blood components reach undesirable temperatures.

(d) There shall be a written procedure posted prominently for staff to follow in case of electrical or equipment failure.

(e) The equipment shall be kept clean and used only for the storage of blood and blood components, blood banking sera, pilot and patient samples.

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(f) No food or potentially contaminated material shall be stored in the refrigeration equipment.

8:8-10.5 Inspection of stored blood

(a) Stored blood shall be inspected daily and records maintained during the entire period of storage and immediately prior to issue or use.

(b) If the color or physical appearance is abnormal or there is any indication or suspicion of contamination, the unit of blood shall not be issued for transfusion purposes.

8:8-10.6 Expiration dates of blood and blood components

(a) The expiration date is the last day on which the blood and blood components are considered suitable for transfusion purposes.

(b) Expiration dates shall be in accord with the Code of Federal Regulations.

8:8-10.7 Packaging and transportation

(a) During periods of transportation the blood shall be maintained at temperatures between 1-10°C in insulated or wet ice containers shown to be capable of maintaining this temperature for a suitable period of time.

(b) Immediately upon arrival, the receiving facility shall transfer the blood to a temperature controlled refrigerator as in N.J.A.C. 8:8-10.1 for further storage.

HUMAN SERVICES

(a)

DIVISION OF PUBLIC WELFARE

Assistance Standards Handbook
Income from Rentals

Adopted Amendments: N.J.A.C. 10:82-4.10 and 4.12

Proposed: December 5, 1983 at 15 N.J.R. 2019(a).
Adopted: April 25, 1984 by George J. Albanese, Commissioner, Department of Human Services.
Filed: April 25, 1984 as R.1984 d.191, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 44:7-6 and 44:10-3.
Effective Date: May 21, 1984.

Summary of Public Comments and Agency Responses:

Comments were received from one county welfare agency and a representative of a county legal services agency. The county welfare agency observed that while the description of the amendment stated that rental income will be considered earned income when the recipient is performing duties involved in the generation of the income, the proposed wording of the regulation made no such reference. The county legal services representative objected to adoption of the proposal on the grounds that it was "incomplete and substantially invalid." Specifically, he urged that the proposed rule be retroactive to November 1982, the month in which a decision in the Melendez v. Department of Human Services case was rendered. He further observed that the proposed amendment does not make any provision for "income disregards" nor does it address the treatment of income derived from the rental of rooms.

Response: The observation submitted by the county welfare agency is deemed valid. The proposed amendment is altered to stipulate that unless rental property is in the hands of a rental agency, income from such property is to be treated as earned income. This approach is based on the fact that in all other situations the individual would have to perform some duties in the generation of income, such as in the collection of rent. With respect to comments of the legal services agency, the Department finds that clarifying language as to the treatment of income from rental of rooms is indeed appropriate for inclusion in the text of the amendment and a revision to that effect is made. The commenter's observations dealing with retroactivity of the proposed rule and the need for inclusion of language relevant to income disregards are not viewed as items which justify alteration of the proposed text. In the absence of specification as to retroactivity in the Melendez decision, it is the Department's view that such retroactivity would not be appropriate or a permissible rulemaking activity. Since the earned income derived from rentals under the proposed provisions of N.J.A.C. 10:82-4.12 is not to be treated in a manner which varies from approaches that govern other earned income, it is the Department's belief that delineation of the income disregard concept and applicable procedure relevant to rental income is not required.

Full text of the adoption follows (additions to proposal indicated by boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

10:82-4.10 Income which is not earned

Net income from noneligible household members (except as stated in N.J.A.C. 10:82-4.3(c)), returns from capital investment such as dividends and interest, benefits and pensions, annuities, contributions from relatives, compensation payments, and so forth, shall be considered as unearned income. All such income shall be recognized in establishing eligibility and in computing the assistance grant.

10:82-4.12 Income from apartment***s, rooms*** or housekeeping units in the eligible unit's home

(a) When the eligible unit is receiving payment from rental of apartments***, rooms*** or housekeeping units, the net income shall be determined by deducting cost of operation and maintenance from the gross income received, as follows:

1.-2. (No change.)

3. Deduct the total cost from the amount of rental income received by the eligible unit. The difference is the net [unearned] ***[earned]*** income, to be entered on Form PA-3A ***or 105*** [under "Other Income."] ***[accordingly]*.**

i. Rental income shall be treated as earned income except in those situations where rental properties are in the hands of rental agencies; in such cases the income shall be considered as unearned.

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INSURANCE

(a)

DIVISION OF ADMINISTRATION

Group Self Insurance
Hospital Workers' Compensation Group Self Insurance Regulation

Adopted New Rule: N.J.A.C. 11:15

Proposed: February 21, 1984 at 16 N.J.R. 340(a).
Adopted: April 13, 1984 by Joseph F. Murphy, Commissioner, Department of Insurance.
Filed: April 25, 1984 as R.1984 d.172, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1 and P.L. 1983, c.376.

Effective Date: May 21, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): May 21, 1989.

Summary of Public Comments and Agency Responses:

The Department received only one comment on the proposed new rule. That comment, submitted by the American Insurance Association, supported the rule's adoption but suggested several technical changes. Upon review the Department has decided to incorporate these suggestions into the adopted rule.

The first two changes involve the addition of definitions for the terms "insolvent or insolvency" and "service organization" in section 11:15-1.2. These terms are being included for the sake of clarity and conform to the proposed NAIC model act for workers' compensation group self insurance.

The final change affects section 11:15-1.10(b) which is being modified to require that the contract itself contain a clause permitting the Commissioner of Insurance to relieve the service company of handling all claims and obligations to their conclusion. This modification ensures that such action by the Commissioner would not violate the terms of the contract.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions shown in brackets with asterisks *[thus]*).

CHAPTER 15

HOSPITAL WORKERS' COMPENSATION GROUP SELF-INSURANCE REGULATIONS

SUBCHAPTER 1. GENERAL PROVISIONS

11:15-1.1 Purpose

P.L. 1983, c.376, approved November 10, 1983, authorizes 10 or more employers licensed by the state as hospitals under the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., to apply to the Commissioner of Insurance, pursuant to rules and regulations established by him, for his permission to enter into agreements to pool their liabilities under the New Jersey Workers' Compensation Law for the purpose of qualifying as self-insurers. The general purpose of this chapter is to promulgate such rules and regulations as are deemed by the Commissioner to be necessary to implement, supplement, and effectuate the minimum conditions and provisions of P.L. 1983, c.376.

11:15-1.2 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 provisions of the New Jersey Workers' Compensation Law regarding self-insurance as contained in N.J.S.A. 34:15-77, as amended and supplemented by P.L. 1983, c.376.

"Actuary" means a person who is a member of the American Academy of Actuaries qualified in loss reserves and rate making according to professional guides, recommendations, interpretations, and opinions of the Academy.

"Administrator" means an individual, partnership, or corporation engaged by a group to carry out the policies established by the group and to provide day-to-day management of the group.

"Bona fide hospital association" means any association of more than 10 hospitals which has been in existence for more than five years.

"Commissioner" means the Commissioner of Insurance of the State of New Jersey or an employee of the New Jersey Department of Insurance designated by him to act on his behalf.

"Contribution" means the amount contributed by each member of a group.

"Excess insurance" means insurance, purchased from an insurance company appropriately licensed in the State of New Jersey or qualified by the Commissioner as a surplus lines insurer, covering losses in excess of an amount established between the group and the insurer up to the limits of coverage set forth in the insurance or indemnity agreement on a specific per occurrence or per accident or annual aggregate basis.

"Group" means a self-insurance group organized by 10 or more hospitals which enter into agreements to pool their liabilities for worker's compensation benefits and employer's liability obligations in a manner approved by the Commissioner under the authority of the Act and these regulations.

"Hospital" means a health care facility licensed as a hospital by the New Jersey Department of Health pursuant to N.J.S.A. 26:2H-1 et seq.

"Indemnity and trust agreement" means a written contract signed by the members of the group under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to such agreement for workers' compensation benefits, which agreement shall also create a trust and govern the operation thereof under which monies shall be held by one or more trustees as fiduciaries for the benefit of persons qualifying to receive workers' compensation awards or payments from employers participating in the group.

"Insolvent" or "Insolvency" means the inability of a hospital workers' compensation self-insurance group to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all its outstanding liabilities after paying all accrued claims owed by it.

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***"Service organization" means a person, partnership, corporation or other legal entity which provides services to a group not provided by the administrator, including but not limited to:**

1. Claims adjustment,

2. Safety engineering,

3. Compilation of statistics and the preparation of contribution, loss expense and tax reports,

4. Preparation of other required self-insurance reports, and

5. Development of any member's contribution and fees.*

"Workers' compensation", when used as a modifier of "benefits", "liabilities", or "obligations", means both workers' compensation and employer's liability.

11:15-1.3 Qualifications for initial approval and continued authority to act as a group

(a) A proposed group shall file its application with the Commissioner for his approval on a form prescribed by him and accompanied by a non-refundable processing fee in the amount of $1,000. The application shall include the group's name, location of its principal office, date of organization, name and address of each of its trustees and its administrator or general manager, and service organizations, the name and address of each member hospital, and such other information as the Commissioner may reasonably require, together with the following:

1. Proof of compliance with the provisions of subsection (b) below;

2. A copy of the articles of association, if any;

3. A copy of agreements with the administrator and with any service organizations maintained by the group for the prevention of injuries, underwriting, and claims administration services;

4. A copy of the group's operating rules, including, but not limited to, by-laws, if any;

5. A copy of the indemnity and trust agreement between the group and each member of the group;

6. The address in New Jersey where the books and records of the group will be maintained at all times and the designation and appointment of a person in New Jersey upon whom service of process for the group might be made;

7. A pro forma financial statement, on a form acceptable to the Commissioner, providing him satisfactory proof of its financial ability to pay such compensation for the members of the group;

8. A statement from an actuary that the proposed group plan of operation is actuarially sound;

9. A listing of the estimated annual contributions to be paid by each member of the group;

10. Proof of payment to the group by each member of not less than 25% of that member's first year estimated annual contributions.

(b) To obtain and to maintain its certificate of approval, a group shall comply with the following requirements, as well as any other requirements established by law or regulation:

1. A combined net worth of all members of the group of at least $1,000,000;

2. To provide assurance that such benefits as are payable by the group will continue to be paid and that the group will meet its statutory obligations, security in a form and amount prescribed by the Commissioner shall be posted by either a surety bond, security deposit, letter of credit, or financial security endorsement, or any combination thereof. If a surety bond is used to meet the security requirement, it shall be issued by a corporate surety company authorized to transact business in this State. If a security deposit is used to meet the security requirement, securities shall be limited to bonds or other evidences of indebetedness issued, assumed, or guaranteed by the United States of America, or by an agency or instrumentality thereof; certificates of deposit in a federally insured bank; shares or savings deposit in a federally insured savings and loan association or credit union, or any bond or security issued by a State of the United States of America and backed by the full faith and credit of the State. If a letter of credit is used, it shall be issued by a banking association authorized to transact business in New Jersey and in a form acceptable to the Commissioner. A financial security endorsement, issued as part of an acceptable excess insurance contract, may be used to meet all or part of the security requirement. The bond, security deposit, letter of credit, or financial security endorsement shall be:

i. For the benefit of the State solely to pay claims and associated expenses; and

ii. Payable upon the failure of the group to pay workers' compensation benefits it is legally obligated to pay. The Commissioner may establish requirements for the amount of security based on differences among groups in their size, years in existence, and other relevant factors; however, the Commissioner may not require an amount lower than $100,000 for any group during its first year of operation and may subsequently increase such amount as he deems necessary;

3. Confirmation of the availability of specific and aggregate excess insurance in a form, in an amount, and by an insurance company acceptable to the Commissioner. The Commissioner may establish minimum requirements for the amount of specific and aggregate excess insurance based on difference among groups in their size, years in existence, and other relevant factors and may permit a group to meet this requirement by placing in a designated depository securities of the type referred to in paragraph 2 of this subsection;

4. Estimated annual standard contributions of at least $250,000 during the group's first year of operation. Thereafter, the annual standard contributions shall be at least $500,000;

5. An indemnity and trust agreement, in a form satisfactory to the Commissioner, jointly and severally binding the group and each member thereof to meet the workers' compensation obligations of each member, and establishing a trust for the benefit of persons qualifying to receive workers' compensation awards or payments from employers participating in the group;

6. A fidelity bond for the administrator in a form and amount prescribed by the Commissioner;

7. A listing of any underwriting, claim, loss prevention, or other service organization used by the group.

(c) A group shall notify the Commissioner of any change in the information required to be filed under subsection (a) above or in the manner of its compliance with subsection (b) above no later than 30 days after such change.

11:15-1.4 Issuance of certificate of approval

(a) The Commissioner shall issue a certificate of approval to the group upon finding that the group:

1. Guarantees benefit levels equal to those required by the Workers' Compensation Law;

2. Demonstrates sufficient aggregate financial strength and liquidity to assure that all obligations under the Workers' Compensation Law will be promptly met;

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3. Proposes a plan for the prompt payment of such benefits; and

4. Has satisfactorily met all requirements of the Act and these regulations.

(b) Such certificate shall remain in effect until terminated at the request of the group or revoked by the Commissioner.

(c) If the Commissioner determines that an application does not satisfactorily meet all requirements, he shall notify the group of the reasons for rejection and requirements to be met for approval to be granted.

(d) No person or entity shall act as a group except as so authorized by the Commissioner.

11:15-1.5 Financial statement and other reports

(a) Annually (or more frequently if the Commissioner deems it necessary), each group shall submit to the Commissioner, on or before the last day of the sixth month following the end of the group's fiscal year, a sworn statement of financial condition audited by an independent certified public accountant in accordance with generally accepted accounting principles. The financial statement shall be on a form prescribed by the Commissioner and shall include, but not be limited to, actuarially appropriate reserves for:

1. Known claims and expenses associated therewith;

2. Claims incurred but not reported and expenses associated therewith;

3. Unearned contributions; and

4. Bad debts, which reserves shall be shown as liabilities.

(b) The opinion of an actuary regarding reserves for known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith shall be submitted with the audited financial statement. The opinion shall comply with the provisions of Rule 9 (other than paragraph (1) thereof) for completing the fire and casualty annual statement blank as promulgated for this State.

(c) The Commissioner may prescribe a uniform accounting system for all groups to ensure the accurate and complete reporting of groups' financial information.

(d) The Commissioner may prescribe the format and frequency of other reports, which may include, but shall not be limited to, payroll audit reports, summary loss reports, and quarterly financial statements.

(e) An annual filing fee of $100.00 times the number of members of the group.

11:15-1.6 Examinations

The Commissioner shall examine the affairs, method of conducting business, transactions, account, records, and assets of each group as often as the Commissioner deems advisable, but not less often than once every three years. The expense of such examinations shall be assessed against the group and paid by it in the same manner that insurers are assessed for examinations.

11:15-1.7 Trustees: qualifications, powers, duties, and prohibitions

(a) Each group shall be operated by not fewer than five trustees whom the members of a group shall elect for stated terms of office. At least two-thirds of the trustees shall be employees, officers, directors, or trustees of members of the group. Except in the case of bona fide hospital associations, or organization affiliated therewith, as determined by the Commissioner, the group's administrator, service company, or any owner, officer, or employee of, or any other person affiliated with, such administrator or service company shall not serve as trustees of the group. In the case of bona fide hospital associations, the proceding sentence shall apply only to any compensated employee of such association, or organization affiliated therewith, who is not also an officer, director, or trustee of a hospital. All trustees shall be residents of this State or officers of corporations authorized to do business in this State. The trustees of each group shall ensure that all claims are paid promptly and take all necessary precautions to safeguard the assets of the group, including all of the following:

1. The trustees shall:

i. Maintain responsibility for all monies collected or disbursed from the group and allocate all monies to a claims fund account and an administrative fund account. At least 70% of the net contributions shall be allocated on the books of the group for the sole purpose of paying claims, allocated claims expenses, reinsurance or excess insurance, and special fund contributions. This shall be called the claims fund account. The remaining net contributions shall be allocated on the books of the group for the payment of taxes, general regulatory fees and assessments, and administrative costs. This shall be called the administrative fund account. The Commissioner may approve an administrative fund account of more than 30% and a claims fund account of less than 70% only if the group shows to the Commissioner's satisfaction that:

(1) More than 30% is needed for an effective safety and loss control program or

(2) The group's aggregate excess insurance attaches at less than 70%. The Commissioner may require that the accounts be segregated;

ii. Maintain minutes of their meetings and make such minutes available to the Commissioner;

iii. Designate an administrator to carry out the provisions of the indemnity or trust agreement and the operating rules of the group. The authority of the administrator shall be set forth in such indemnity or trust agreement or operating rules or in the minutes of the trustees;

iv. Retain an independent certified public accountant and an independent actuary to prepare the required statements of financial condition.

2. The trustees shall not:

i. Extend credit to individual members for payment of a contribution, except pursuant to payment plans approved by the Commissioner;

ii. Borrow any monies from the group or in the name of the group, except in the ordinary course of business, without first advising the Commissioner of the nature and purpose of the loan and obtaining prior approval from the Commissioner.

11:15-1.8 Group membership; termination; liability

(a) An employer joining a group after the group has been issued a certificate of approval shall:

1. Submit an application for membership to the trustees or the administrator and

2. Enter into the indemnity and trust agreement. Membership shall take effect no earlier than each member's date of approval. The application for membership and its approval shall be maintained as permanent records of the group and copies shall be filed with the Commissioner.

(b) Individual members of a group shall be subject to cancellation by the group pursuant to the provisions of the indemnity and trust agreement or operating rules of the group. In addition, individual members may elect to terminate their

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participation in the group. The group shall notify the terminating member, all other members, and the Commissioner, by registered or certified mail, of the termination or cancellation of a member at least 10 days prior to the effective date and shall maintain coverage of each cancelled or terminated member for 30 days after such notice, unless, after such notice, the group is notified sooner that the cancelled or terminated member has procured workers' compensation insurance, has become an approved self-insurer, or has become a member of another approved group.

(c) The group shall pay all workers' compensation benefits for which each member incurs liability during its period of membership. A member who elects to terminate its membership or is cancelled by a group remains jointly and severally liable for workers' compensation obligations of the group and its members which were incurred during the cancelled or terminated member's period of membership and shall be subject to and liable for supplemental assessments appropriate to its period of membership.

(d) A group member is not relieved of its workers' compensation liabilities incurred during its period of membership except through payment of required workers' compensation benefits by the group or the member.

(e) The insolvency or bankruptcy of a member does not relieve the group or any other member of liability for the payment of any workers' compensation benefits incurred during the insolvent or bankrupt member's period of membership.

11:15-1.9 Voluntary dissolution of group

(a) A group may not voluntarily dissolve, or otherwise cease to do business, and distribute its assets to its members, unless and until it satisfies the following requirements:

1. A majority of the group's members must have voted in favor of a resolution to dissolve the group pursuant to a written plan of dissolution at a meeting duly called for such purposes;

2. The plan of dissolution must provide for the payment of all incurred expenses and losses of the group and its members, including all incurred but not reported losses and associated expenses, before any assets of the group may be used for any other purposes.

3. Such plan of dissolution shall contain a statement of the group's current financial condition computed according to generally accepted accounting principles as attested to by an independent certified public accountant;

4. The plan of dissolution, and such other information as may be required by the Commissioner, shall be filed with and approved by the Commissioner.

(b) If such a group self-insurance plan is terminated, the securities or surety bond on deposit with the Commissioner shall remain in the custody of the Commissioner for a period of at least 26 months. At the expiration of such time or such further period as the Commissioner may deem proper and necessary, he may accept, in lieu thereof, and for the additional purpose of securing such further and future contingent liability as may arise from prior injuries to workers and be incurred by reason of any change in the condition of such workers which warrant awards for additional compensation, a policy of insurance furnished by the group self-insurer, its successor, assigns, or others carrying on or liquidating such self-insurance group.

11:15-1.10 Service organizations

(a) Except with the approval of the Commissioner, no service organization or its employees, officers, or directors shall be an employee, officer, or director of, or have either a direct or indirect financial interest in, an administrator, and no administrator or its employees, officers, or directors shall be an employee, officer, or director of, or have either a direct or indirect financial interest in, a service company.

(b) *[Unless the Commissioner otherwise permits, the service contract shall require the service company to handle to their conclusion all claims and other obligations incurred during the contract period.]* ***The service contract shall include a clause that, "unless the Commissioner otherwise permits, the service organization shall handle to their conclusion all claims and other obligations incurred during the contract period.***

11:15-1.11 Misrepresentation or unfair acts or practices prohibited

No person shall make a material misrepresentation or omission of a material fact in connection with the solicitation of a membership in a group or engage, with respect to membership in or the business and affairs of a group, in any activities of the type prohibited by N.J.S.A. 17:29B-4 and the regulations of the Department of Insurance promulgated thereunder when engaged in by persons engaged in the business of insurance.

11:15-1.12 Investments

Funds not needed for current obligations may be invested by the trustees in accordance with N.J.S.A. 17:24-1 et seq.

11:15-1.13 Rates and reporting of rates

(a) For the first five years of its existence, except as otherwise approved by the Commissioner, each group shall maintain information in accord with the uniform classification system, uniform experience rating plan, and manual rules filed with the Commissioner.

(b) Contributions to the group shall be determined by applying its rates and rules to each member.

11:15-1.14 Refunds

(a) Any monies for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared to be refundable by the trustees not less than 12 months after the end of the fund year.

(b) Each applicant for membership in the group shall be given a written description of the refund plan at the time of application for membership. Each member shall be given a written description of any changes in the refund plan prior to its being put into effect. A refund for any fund year shall be paid only in proportion to participation in the group for the fund year. Payment of a refund based on a previous fund year shall not be contingent on continued membership in the group after that fund year.

11:15-1.15 Contribution payment; reserves

(a) The group shall establish to the satisfaction of the Commissioner a contribution payment plan.

(b) The group shall establish and maintain actuarially appropriate loss reserves, which shall include reserves for: (1) known claims and expenses associated therewith; and (2) claims incurred but not reported and expenses associated therewith.

(c) The group shall establish and maintain bad debt reserves based on the historical experience of the group.

11:15-1.16 Deficits

(a) If the assets of a group are at any time insufficient to enable the group to discharge its legal liabilities and other

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obligations and to maintain the reserves required of it under the Act and these regulations, it shall forthwith make up the deficiency or levy an assessment upon its members for the amount needed to make up the deficiency.

(b) In the event of a deficiency in any fund year, such deficiency shall be made up immediately.

(c) If the group fails to assess its members or to otherwise make up such deficit within 30 days, the Commissioner shall order it to do so.

(d) If the group fails to make the required assessment of its members within 30 days after the Commissioner orders it to do so, or if the deficiency is not fully made up within 60 days after the date on which such assessment is made, or within such longer period of time as may be specified by the Commissioner, the group shall be deemed to fall within the condition in N.J.S.A. 34:15-77.8c.

11:15-1.17 Revocation of certificate of approval

(a) After notice and opportunity for a hearing as in a contested case (N.J.S.A. 52:14B-9), the Commissioner may revoke a group's certificate of approval if it is found that:

1. There has been deterioration of the financial condition of the group to such an extent that such deterioration would have an adverse affect on the ability of the group to pay expected losses;

2. The group has failed to pay any regulatory fee or assessment, or special fund contribution imposed upon it;

3. The group has failed to comply with any of the provisions of the Act, any regulations promulgated thereunder, or with any lawful order of the Commissioner within the time prescribed;

4. Any certificate of approval that was issued to the group was obtained by fraud;

5. There was a material misrepresentation in the application for the certificate of approval; or

6. The group or its administrator has misappropriated, converted, illegally withheld or refused to pay over, upon proper demand, any monies that belong to a member, an employee of a member, or a person otherwise entitled thereto and that have been entrusted to the group or its administrator.

11:15-1.18 Public record

Any document filed with the Commissioner pursuant to the Act or these regulations shall be deemed a public record and available for inspection at the New Jersey Department of Insurance during usual business hours.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Issuance of Special Permits by Director

Readoption: N.J.A.C. 13:2-5

Proposed: March 19, 1984, at 16 N.J.R. 492(a).

Adopted: April 25, 1984, by John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.

Filed: April 26, 1984, as R.1984 d.175, **without change.**

Authority: N.J.S.A. 33:1-39, 1-42 and 1-74.

Effective Date: April 26, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): April 26, 1989.

Summary of Public Comments and Agency responses: **No comments received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-5.1 to 5.3, as amended in the New Jersey Register.

(b)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Transfers of State and Municipal Licenses

Readoption: N.J.A.C. 13:2-7

Proposed: March 19, 1984, at 16 N.J.R. 493(a).

Adopted: April 25, 1984, by John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.

Filed: April 26, 1984, as R.1984 d.176, **without change.**

Effective Date: April 26, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): April 26, 1989.

Summary of Public Comments and Agency Responses. **No comments received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-7.1 to 7.24, as amended in the New Jersey Register.

(c)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Club Licenses

Readoption: N.J.A.C. 13:2-8

Proposed: March 19, 1984, at 16 N.J.R. 494(a).

Adopted: April 25, 1984, by John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.

Filed: April 26, 1984 as R.1984 d.177, **without change.**

Authority: N.J.S.A. 33:1-12, 1-23, 1-25, 1-26, 1-31.2, 1-39, 1-40, 1-40.3, 1-44, 1-45, 1-45.1, 1-46, 1-46.1 et seq., 1-47, 1-47.1.

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Effective Date: April 26, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 26, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-8.1 to 8.14, as amended in the New Jersey Register.

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Petition Proceedings; Discrimination Against Wholesalers

Readoption: N.J.A.C. 13:2-18

Proposed: March 19, 1984, at 16 N.J.R. 495(a).
Adopted: April 25, 1984, by John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Filed: April 26, 1984, as R.1984 d.178, **without change**.

Authority: N.J.S.A. 33:1-23, 1-39, 1-93.6 et seq.

Effective Date: April 26, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 26, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-18.1 to 18.8, as amended in the New Jersey Register.

(b)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Marketing and Advertising Regulation of Display Services and Advertising Promoters

Notice of Correction: N.J.A.C. 13:2-24.12

Errors appear in the April 16, 1984 issue of the New Jersey Register at 16 N.J.R. 916(b) concerning regulation of display services and advertising promoters. N.J.A.C. 13:2-24.12 should have appeared as follows:

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks ***thus***; deletions to the proposal shown in brackets with asterisks *[thus]*).

13:2-24.12 Display services *[and advertising promoters]*

(a) No licensee, permittee, or registrant privileged to engage in the commerce of alcoholic beverages in this State shall, directly or indirectly, furnish to, provide payment for, receive or accept anything of value from, or otherwise utilize in any manner whatsoever, any display service *[or advertising promoter]* unless such service *[or promoter]* has registered with the Division in a form prescribed by the Director. Such registration shall include:

1. The name and address of the display service *[or advertising promoter]* and all officers, directors, partners, stockholders and/or employees thereof ***unless a publicly traded corporation, in which case only officers, directors and stockholders having at least one percent interest need be furnished***;

2. An affidavit or certification that no person listed in N.J.A.C. 13:2-24.12(a)1 would be disqualified from having an interest in an alcoholic beverage license in this State;

3. Copies of all existing *[promotion or]* ***display*** service agreements with licensees, permittees, registrants, suppliers, importers, manufacturers or cooperatives doing business in the State of New Jersey; and

4. The issuance of a *[special permit]*, ***registration acknowledgement***, which shall be renewable on *[March]* ***May*** 1 of each year *[, upon payment of a fee to be established by the Director]*.

(b) Every display service *[or advertising promoter]* shall file with the Director quarterly reports on or before the 15th of January, April, July and October for the preceding calendar quarter, which reports shall identify the amounts and sources of all monies received from any licensee, permittee, registrant, supplier, importer or manufacturer of alcoholic beverages, *[or cooperative]*; indicate the name, address, and license number of all licensees to which services were furnished; and set forth, *[if applicable,]* the value of the *[advertising or]* display materials furnished to or on behalf of each such licensee. Such reports shall be confidential pursuant to N.J.A.C. 13:2-29.2(a)3.

(c) Every licensee, permittee or registrant privileged to engage in the commerce of alcoholic beverages in this State shall maintain on its licensed premises all written agreements and detailed records of all transactions with any display service *[or advertising promoter]* for a period of three years.

(c)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Diversion, Transshipment and Registered Distribution

Readoption: N.J.A.C. 13:2-25

Proposed: March 19, 1984, at 16 N.J.R. 496(a).
Adopted: April 25, 1984, by John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Filed: April 26, 1984, as R.1984 d.179, **without change**.

Authority: N.J.S.A. 33:1-3, 1-11, 1-23, 1-39, 1-43 and 1-79.

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Effective Date: April 26, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 26, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the readoption can be found in the New Jersey Administrative Code Code at N.J.A.C. 13:2-25.1 to 25.3, as amended in the New Jersey Register.

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Retail Cooperative Purchases

Readoption: N.J.A.C. 13:2-26.1

Proposed: March 19, 1984, at 16 .J.R. 497(a).
Adopted: April 25, 1984, by John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Filed: April 26, 1984, as R.1984 d.180, **without change.**

Authority: N.J.S.A. 33:1-3, 1-12, 1-12.31, 1-13, 1-23, 1-28, 1-31, 1-39, 1-39.2, 1-74, 1-89, 1-90 and 1-93.

Effective Date: April 26, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 26, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-26.1, as amended in the New Jersey Register.

(b)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Labeling and Standards of Fill; Deposit Marked Containers

Readoption: N.J.A.C. 13:2-27

Proposed: March 19, 1984, at 16 N.J.R. 497(b).
Adopted: April 25, 1984, by John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Filed: April 26, 1984, as R.1984 d.181, **without change.**

Authority: N.J.S.A. 33:1-23, 1-39, 1-39.1 and 1-88.

Effective Date: April 26, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 26, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-27.1 and 27.2, as amended in the New Jersey Register.

(c)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Records

Readoption: N.J.A.C. 13:2-29

Proposed: March 19, 1984, at 16 N.J.R. 498(a).
Adopted: April 25, 1984, by John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Filed: April 26, 1984, as R.1984 d.182, **without change.**

Authority: N.J.S.A. 33:1-23, 1-35, 1-37, 1-39 and 47:1A-1 et seq.

Effective Date: April 26, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 26, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-29.1 to 29.4, as amended in the New Jersey Register.

(d)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Product Information Filing; Brand Registration

Readoption: N.J.A.C. 13:2-33

Proposed: March 19, 1984, at 16 N.J.R. 499(a).
Adopted: April 25, 1984, by John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Filed: April 26, 1984, as R.1984 d.183, **without change.**

Authority: N.J.S.A. 33:1-3, 1-10, 1-11, 1-12, 1-23, 1-39, 1-43, 1-79 and 1-88.

Effective Date: April 26, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 26, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

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Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-33.1 and 33.2, as amended in the New Jersey Register.

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Request for Advisory Opinions

Readoption: N.J.A.C. 13:2-36.1

Proposed: March 19, 1984, at 16 N.J.R. 500(a).
Adopted: April 25, 1984, by John F. Vassallo, Jr., Dirctor, Division of Alcoholic Beverage Control.
Filed: April 26, 1984, as R.1984 d.184, **without change**.

Authority: N.J.S.A. 33:1-3, 1-23, 1-39 and 1-93.

Effective Date: April 26, 1984.
Expiration Date pursuant to Executive Order No. 66 (1978): April 26, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-36.1, as amended in the New Jersey Register.

(b)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Contracts of Employment and Conduct of Solicitors

Readoption: N.J.A.C. 13:2-37

Proposed: March 19, 1984, at 16 N.J.R. 501(a).
Adopted: April 25, 1984, by John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Filed: April 26, 1984, as R.1984 d.185, **without change**.

Authority: N.J.S.A. 33:1-23, 1-35, 1-39, 1-43, 1-67 and 1-90.

Effective Date: April 26, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 26, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-37.1 to 37.3, as amended in the New Jersey Register.

(c)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Credit Terms; Requires Records; Returns; Notices

Readoption: N.J.A.C. 13:2-39

Proposed: March 19, 1984, at 16 N.J.R. 501(b).
Adopted: April 25, 1984, by John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Filed: April 26, 1984, as R.1984 d.186, **without change**.

Authority: N.J.S.A. 33:1-3, 1-23, 1-28.1, 1-35, 1-39, 1-39.2, 1-49, 1-50, 1-89, 1-90 and 1-93.

Effective Date: April 26, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 26, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-39.1 to 39.5, as amended in the New Jersey Register.

(d)

DIVISION OF MOTOR VEHICLES

Enforcement Service
Standards and Procedures to Be Used by Licensed Reinspection Centers

Readoption: N.J.A.C. 13:20-33

Proposed: March 19, 1984 at 16 N.J.R. 503(a).
Adopted: April 23, 1984, Clifford W. Snedeker, Director of the Division of Motor Vehicles.
Filed: April 25, 1984 as R.1984 d.173, **without change**.

Authority: N.J.S.A. 39:8-2, 39:8-4.1 and 39:8-23.

Effective Date: April 25, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 25, 1989.

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Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:20-33, as amended in the New Jersey Register.

(a)

BOARD OF MEDICAL EXAMINERS

General Rules of Practice
Prescribing and Dispensing Medications

Adopted Amendment: N.J.A.C. 13:35-6.6

Proposed: March 5, 1984 at 16 N.J.R. 416(a).
Adopted: April 11, 1984 by New Jersey State Board of Medical Examiners, Joseph A. Riggs, M.D., Acting President.
Filed: May 7, 1984 as R.1984 d.197, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 45:9-2.

Effective Date: May 21, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): August 1, 1988.

Summary of Public Comments and Agency Responses:

The proposed amendment was published in the March 5, 1984 New Jersey Register at 16 N.J.R. 416(a) and distributed to the usual list of presumed interested parties, including the New Jersey Medical Society and the Osteopathic Society, the New Jersey Hospital Association, the Department of Health, three major circulation newspapers, the Board of Pharmacy, the Pharmaceutical Association of New Jersey, 21 county medical societies, and the New Jersey Podiatry Society.

Several comments were received. The Director of the Division of Medical Assistance and Health Services supported the proposal. The Chief of the Department of Health's Drug Control Program favored the proposal but suggested adding a requirement regarding child resistant or poison-proof containers. Similar suggestions were made by the Board of Pharmacy, which also favored as much information being placed on doctor-dispensed medications as are presently required on written prescriptions. The New Jersey Pharmaceutical Association suggested numerous other specifications, including all of the packaging, caution and advise requirements observed by pharmacist dispensers. After review of the suggestions, the Board determined that it was not necessary to include them as pharmaceutical company samples are labeled adequately to deal with the problem of possible overdose or reaction to the medication; the Board was not concerned with packaging problems in this rule, but was concerned only with the provision of adequate information to the patient receiving verbal personal instruction from the physician as well as the dispensed package and the rule is thought to be adequate for this purpose. The rule is no way seeks to preempt any other applicable State or Federal laws pertaining to packaging. On its own, the Board considered and adopted an amendment clarifying that a physician or podiatrist may direct an office staff member to dispense the specified medication while the licensee retains full responsibility for compliance with the rule. The rule is to be effective upon promulgation.

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 6. GENERAL RULES OF PRACTICE

13:35-6.6 Requirements for issuing prescriptions for and dispensing all medications; special requirements for prescribing or dispensing controlled drugs

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

(h) Every physician and podiatrist shall *[, in a legible manner, label each container of medication dispensed directly to a patient]* ***assure that each container of medication dispensed directly to a patient is labeled in a legible manner*** with at least the following information:

1. Physician's or podiatrist's full name;
2. Full name of patient;
3. Date medication dispensed;
4. Name, strength and quantity of medication dispensed;
5. Adequate instructions for the patient regarding the frequency of administration of the medication;
6. When a physician or podiatrist dispenses a pharmaceutical sample which has been packaged and labeled by the manufacturer and such sample package contains the information required by 4 and 5 above, the information listed in 1 through 3, inclusive, above need not be added;
7. When a physician or podiatrist dispenses a medication, other than a sample exempted pursuant to 6 above, in a container without sufficient space for the information required by this subsection, the container shall be placed in a larger container or envelope, and the larger container or envelope shall be labeled as indicated in this subsection;
8. Each container of medication dispensed shall contain only one type of medication.

(i) (No change in text.)

(b)

DIVISION OF CONSUMER AFFAIRS

Resale of Tickets of Admission to Places of Entertainment
Requirements for Licensure Sale, Advertising and Record Keeping

Adopted New Rule: N.J.A.C. 13:45A-20

Proposed: March 5, 1984 at 16 N.J.R. 417(a).
Adopted: May 4, 1984 by James J. Barry, Jr., Director, Division of Consumer Affairs.
Filed: May 7, 1984 as R.1984 d.196 **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

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Authority: N.J.S.A. 56:8-36.

Effective Date: May 21, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): May 21, 1989.

Summary of Public Comments and Agency Responses:

Proposed rules regarding the resale of tickets of admission to places of entertainment were originally published in the New Jersey Register of September 6, 1983 at 15 N.J.R. 1945. The Division received several comments which necessitated substantive change in the rules as proposed.

Proposed rules were published in revised form in the New Jersey Register of March 5, 1984 at 16 N.J.R. 417.

Two comments were received. The first was from Joseph Rafalowics, General Counsel to Ticketron. Mr. Rafalowics, wrote in a March 28, 1984 letter that the definition of a "ticket agent" contained in proposed N.J.A.C. 13:45A-20.1 was "overly broad and superfluous." His concerns regarded whether Ticketron and the Sports and Exposition Authority would be included within this definition and therefore subject to licensure under N.J.S.A. 56:8-27. The second comment received was from James Lockwood, Assistant General Counsel to the New Jersey Sports and Exposition Authority. By a telephone conversation of April 3, 1984, Mr. Lockwood stated that the Sports and Exposition Authority was concerned that its box office was a ticket agent as defined by proposed N.J.A.C. 13:45A-20.1 and would therefore be required to obtain a license under N.J.S.A. 56:8-27.

These comments were rejected since the definition of a ticket agent contained in N.J.A.C. 13:45A-20.1 does not control the definition of who must be licensed pursuant to N.J.S.A. 56:8-27. N.J.A.C. 13:45A-20.5(f) was changed to reflect a prohibition against a licensee insisting on the purchase of more than one ticket where the buyer wishes to purchase only one ticket as a means of extracting monies for a ticket in excess of the lawful premium. N.J.A.C. 13:45-20.5(f) is designed to make clear that nothing shall be demanded of value from a buyer of a ticket except the premium which may be lawfully charged for that ticket.

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]*).

13:45A-20.1 Definitions

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

"Advertisement" means any attempt by a licensee to directly or indirectly induce the purchase of tickets, appearing in any newspaper, magazine, periodical, circular, sign or other written matter placed before the public, or in any radio or television broadcast or any other media, electronic or otherwise.

"Director" means the Director of Consumer Affairs in the Department of Law and Public Safety.

"Division" means the Division of Consumer Affairs in the Department of Law and Public Safety.

"Person" means corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals.

"Place of entertainment" means any privately or publicly owned and operated entertainment facility within the State of New Jersey such as a theater, stadium, museum, arena, racetrack or other place where performances, concerts exhibits, games or contests are held and for which entry fee is charged.

"Ticket" means any piece of paper which indicates that the bearer has paid for entry or other evidence which permits entry to a place of entertainment.

"Ticket agent" means any person who is involved in the business of selling or reselling tickets of admission to places of entertainment who charges a premium in excess of the price, plus taxes, printed on the tickets.

13:45A-20.2 Licensure

(a) An application for licensure shall be on a form prescribed by the Director.

(b) An application for licensure shall not be approved unless the Director finds that the submitted application form is complete in all respects.

(c) An application for licensure shall be accompanied by a bond in due form made payable to the Division of Consumer Affairs, State of New Jersey in the sum of $10,000 with two or more sufficient sureties or an authorized surety company, which bond shall be approved by the Director.

1. A suit to recover on the bond may be brought by the person damaged or by the Division of Consumer Affairs.

2. Upon the commencement of any action or actions against the surety upon the bond, the surety shall immediately notify the Division of Consumer Affairs.

3. The licensee shall file a new and additional bond in the sum of $10,000 consistent with provisions of P.L. 1983, Chapters 135 and 220 within 30 days of the commencement of a suit to recover on the bond.

4. Any failure by the licensee to file such a new and additional bond within such period shall constitute cause for the revocation of the license previously issued to the licensee.

(d) The Director shall afford an applicant who has been rejected for licensure, an opportunity to be heard in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

1. The burden of establishing that the application should be approved shall rest with applicant.

(e) The Director may consider in determining whether or not to grant a license:

1. Whether the applicant has previously been found to have violated or been convicted of any statute or crime involving dishonesty, fraud or deceit.

2. Whether the applicant is financially responsible.

13:45A-20.3 Fees: new or renewal license

(a) An application for a new or renewal license, shall be submitted on an application form obtained from the Director, fully executed and accompanied by a fee of $300.00 in the form of a money order or certified check made payable to the order of the State of New Jersey, Division of Consumer Affairs.

(b) A refund of 50 percent of the fees shall be made by the Division of Consumer Affairs when an application is rejected. Fifty percent of the fee shall be retained by the Division to cover administrative and investigative costs in the processing of the application.

(c) A request by a licensee for a copy of the license issued for the purpose of display in a branch office shall be accompanied by a fee of $50.00.

(d) A request for a change of business address shall be accompanied by a fee of $10.00.

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13:45A-20.4 Places of business

(a) A licensee shall maintain a bona fide place of business within the State of New Jersey.

1. A bona fide place of business when used in this subsection shall include, but is not limited to, a place of business which provides reasonable access to the public.

(b) A licensee shall not sell nor permit any employee, agent or servant to sell any ticket for a place of entertainment at any location other than those places of business licensed for the sale of tickets by the Director.

(c) A licensee shall request the prior approval of the Director for any change in the business address.

(d) A license shall not be transferred nor assigned.

1. A corporate licensee shall notify the Director prior to any change in the ownership interest in the licensed business including but not limited to a transfer of 10 percent or more of stock interest held therein.

(e) A licensee shall clearly and conspicuously post his license in each of his places of business.

13:45A-20.5 Sale or exchange

(a) A licensee shall not acquire tickets for a place for entertainment from any person other than the owner of a place of entertainment or another licensee.

(b) A licensee shall not sell or exchange any ticket for entry to a place of entertainment without first impressing his sale or exchange stamp clearly showing the license number issued by the Division on the reverse side of that portion of each ticket which is retained by the owner of the place of entertainment.

1. A ticket should bear the stamp of every licensee engaged in its sale or exchange.

(c) A place of entertainment shall not sell or resell any ticket for entry to a place of entertainment unless there is printed on the face of each ticket the price charged therefore.

(d) A place of entertainment shall not sell or resell any ticket for entry to a place of entertainment unless the maximum premium, not to exceed 20 percent of the ticket price or $3.00 whichever is greater, plus taxes, at which a ticket may be resold shall be printed either in a dollar amount or as a formula on the face or back of any ticket. Where the maximum premium which may be charged for a ticket is printed on the back of the ticket, the phrase "see reverse side" shall appear on the face of each ticket or ticket stock printed after the effective date of these regulations.

(e) It shall be a prohibited practice for a licensee as a condition of selling or exchanging a ticket for a particular entertainment event, to require a buyer to purchase other tickets.

(f) It shall be a prohibited practice for a licensee to accept or demand any other thing of value in excess of the lawful purchase price of *[the tickets]* ***a ticket***.

(g) Any buyer who pays any monies towards the purchase of ticket and fails to receive the promised ticket on the promised delivery date shall be given notification by the licensee of the failure to deliver tickets and shall be given the option of receiving a full refund within 30 days or consenting to an extension of the delivery date.

(h) A licensee shall provide a buyer of a ticket with a receipt which specifies the date on which the tickets will be delivered to the buyer and the total purchase price for the tickets.

13:45A-20.6 Records

(a) A licensee shall keep full and accurate sets of records maintained in accordance with generally accepted accounting practices and principles.

(b) Records of a licensee shall clearly set forth:

1. The prices which all tickets have been bought and sold by the licensee.

2. The names and addresses of the persons from whom the licensee purchased the tickets and to whom the licensee sold the tickets.

(c) Records of a licensee shall include sales invoice books.

1. The invoices used shall be printed and numbered consecutively.

2. The invoices used shall be in duplicate, the original of which shall be given to the purchaser and the duplicate kept by the licensee in consecutive order.

3. The invoices used shall include the following information:

i. Date of the transaction;

ii. Name and place of entertainment;

iii. Number of ticket(s) sold;

iv. Price of ticket(s) with licensee's premium recorded separately;

v. Seat location;

vi. Date of performance;

vii. Whether payment was made by cash, check or charge account;

viii. Name and address of purchaser;

(d) Records of licensee shall include a sales journal which reflects a record of daily sales.

(e) Records set forth in this subchapter shall be made available for inspection by the Division at any reasonable time and upon reasonable notice.

13:45A-20.7 Advertising

(a) A licensee shall not attempt in any advertisement or in any advertising material, directly or indirectly, to include any statement or representation relating to a concert that has not been scheduled to occur on a particular date and at a specific place of entertainment.

(b) A licensee shall clearly and conspicuously disclose his license number in any public advertisement or advertising material.

(c) Advertising for any event shall include the price charged by a place of entertainment for each ticket offered for sale but ticket prices are not required to be included in pamphlets, brochures or billboards prepared as a schedule of events prior to the time a ticket is offered for sale.

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TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Public Employees' Retirement System Contributory Insurance Rate

Adopted Amendment: N.J.A.C. 17:2-3.3

Proposed: February 21, 1984, at 16 N.J.R. 358(a).
Adopted: April, 1984, by the Board of Trustees of the Public Employees' Retirement System, John P. Olender, Secretary.
Filed: May 2, 1984 as R.1984 d.190, **without change.**

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

Effective Date: May 21, 1984.

Full text of the adoption follows.

17:2-3.3 Contributory insurance rate
All participating members' contribution rate for contributory group insurance shall be six-tenths of one percent of the member's base or contractual salary, effective as of April 1, 1984.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Gross Income Tax
Extension of Time to File New Jersey Gross Income Tax Return

Adopted New Rule: N.J.A.C. 18:35-1.18

Proposed: March 19, 1984 at 16 N.J.R. 514(a).
Adopted: May 5, 1984 by John R. Baldwin, Director, Division of Taxation.
Filed: May 7, 1984 as R.1984 d.195, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 54A:9-17(a).

Effective Date: May 21, 1984.
Expiration Date pursuant to Executive Order No 66(1978): August 12, 1988.

Summary of Public Comments and Agency Response:

The Division received a comment by letter in which the writer stated that the automatic two month extension of time to file the New Jersey Gross Income Tax Return be for a period of four months. In reply, the Division indicated that the two month extension period codifies the present administrative policy and that the primary purpose of the proposed rule was to make clear to taxpayers that at least 80 percent of a taxpayer's tax liability as shown on the final return must be paid on or before the original due date or the extension would be deemed invalid and the taxpayer would be subject to both later filing and late payment penalties.

Full text of the adoption follows (additions to the proposal indicated in boldface with asterisks ***thus***).

18:35-1.18 Extension of time to file New Jersey gross income tax return

(a) ***Subject to the requirements set forth in (e) below, an*** *[An]* automatic two month extension of time may be obtained by all taxpayers for filing their annual New Jersey Gross Income Tax Return provided the taxpayer has been granted at least a two month extension for Federal income tax purposes.* A copy of the Federal application for automatic extension must be attached to the taxpayer's New Jersey return.

(b) If no automatic Federal extension has been obtained, the taxpayer must file a request for an automatic two month extension on Form NJ-630—Application for Extension of Time to file New Jersey Gross Income Tax Return. This form can be obtained from the Forms Section of the Division of Taxation, CN-269, 50 Barrack Street, Trenton, New Jersey 08646, or at any District Office. The request for extension must be filed with full payment of the estimated tax (as required on Form NJ-630) on or before the original due date of the New Jersey return ***and is subject to the requirements set forth in (e) below***.

(c) Additional extensions beyond the automatic two month extension in subsections (a) and (b) above must be specifically requested by a taxpayer from the New Jersey Division of Taxation using Form NJ-630—Application for Extension of Time to File New Jersey Gross Income Tax Return. This form can be obtained from the Forms Section of the Division of Taxation, CN-269, 50 Barrack Street, Trenton, New Jersey 08646, or at any District Office. An extension beyond two months will not be considered unless the request is submitted on Form NJ-630 and the full amount of any estimated tax (as required on Form NJ-630) has been paid. The request for additional extension must be filed on or before the extended due date of the New Jersey return ***and is subject to the requirements set forth in (e) below***.

(d) Extensions may be granted for a maximum of six months from the original due date of the return unless exceptional circumstances justify a longer period.

(e) At least 80 percent of the taxpayer's tax liability as shown on the final return must be paid, either in the form of withholdings or estimated payments, on or before the original due date of the New Jersey tax return. Where a taxpayer has failed to pay at least 80 percent of the actual New Jersey tax liability, the extension will be deemed to be invalid and the taxpayer will be subject to late filing and late payment penalties as described in subsections (f) and (g) below as if no extension had been granted.

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(f) A taxpayer who has not paid the required 80 percent of the tax liability at the time of the extension will become liable for the following late filing penalties (see N.J.S.A. 54:49-4).

1. $2.00 per day for each day of delinquency, and

2. Five percent per month or fraction thereof for each month of delinquency up to a maximum of 25 percent of the balance of any tax due with the return.

(g) All taxpayers making a late payment of tax, whether or not they have obtained an extension of time to file, are subject to the following late payment penalty and interest payments:

1. A five percent penalty and interest payments:

1. A five percent penalty for late payment of any tax balance (see N.J.S.A. 54:49-4), and

2. Interest at the rate of nine percent per annum from the original due date of the return to the date of payment where the amount thereof is $1.00 or more (see N.J.S.A. 54A:9-5(a)).

†Note: Under present Federal procedure, an automatic four month extension is granted.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Casino Service Industries

Readoption: N.J.A.C. 19:43-1

Proposed: March 19, 1984 at 16 N.J.R. 515(a).
Adopted: April 26, 1984 by Casino Control Commission, Walter N. Read, Chairman.
Filed: April 27, 1984 as R.1984 d.187, **without change**.

Authority: N.J.S.A. 5:12-63(c), 69, 70(a), (b) and (i) and 92.

Effective Date: April 27, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 27, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the readopted rules appears in the New Jersey Administrative Code at N.J.A.C. 19:43-1, as supplemented by the New Jersey Register.

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MISCELLANEOUS NOTICES

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Change of Regional Cardiac Diagnostic and Surgical Services, Modernization/Renovation and Equipment Certificate of Need Batching Cycles.

Public Notice

Take notice that the Commissioner of Health in cooperation with the Health Care Administration Board, has changed for one time only the batching cycles, scheduled to begin June 15, 1984, and October 15, 1984, for certificate of need applications for additions to and new Regional Cardiac Diagnostic and Cardiac Surgery equipment and services.

The batching cycles for certificate of need applications scheduled to begin on June 15, 1984 and October 15, 1984 are being changed. The next deadline for the submission of new or revised certificate of need applications for Cardiac Diagnostic and Cardiac Surgery equipment and services will be October 30, 1984.

The changes are for one time only and shall have no effect on subsequent batching cycles for certificate of need applications for Regional Cardiac Diagnostic and Cardiac Surgery equipment and services. During 1985, the Spring batching cycle for Cardiac Diagnostic and Cardiac Surgery certificate of need applications will once again commence on June 15th and the Fall batching cycle will once again commence on October 15, 1985.

This one time change in the cycles for the review of certificate of need applications for Regional Cardiac Diagnostic and Cardiac Surgery services is being implemented in order to avoid possible confusion and disruption within the planning process resulting from the expiration of the existing rule (N.J.A.C. 8:33E-2) prior to the conclusion of the June 15, 1984 cardiac services batching cycle.

Deferral of the June 15, 1984 and October 15, 1984 cardiac services batching cycles will allow the revision of existing cardiac surgery center rules, currently being developed by the Statewide Health Coordinating Council, to proceed in time for the next cardiac services batching cycle of November 15, 1984.

Any inquiries should be addressed to:

John A. Calabria, Coordinator
Health Planning Services
New Jersey Department of Health
Room 403
CN 360
Trenton, NJ 08625

LAW AND PUBLIC SAFETY

(b)

BOARD OF EXAMINERS OF OPHTHALMIC DISPENSERS AND OPHTHALMIC TECHNICIANS

Petition for Amendment of Rule: N.J.A.C. 13:33-1.35

Petitioner: Coalition of Ophthalmic Professionals

Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6.

Interested persons may submit comments or request further information about the petition by writing to:

Jan C. Flanagan
Executive Secretary
State Board of Examiners of
Ophthalmic Dispensers and
Ophthalmic Technicians
1100 Raymond Boulevard-Room 501
Newark, New Jersey 07102

Take notice that on April 4, 1984, the Coalition of Ophthalmic Professionals through its legal representative, Mr. Theodore Abeles, petitioned the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians to amend N.J.A.C. 13:33-1.35 which currently details advertising guidelines and sets limitations upon referrals, rebates and commissions. The petition proposes that the Board amend the current regulation to contain provisions which would declare unlawful ophthalmic practice by ophthalmic dispensers or technicians while they are in direct or indirect economic relationships with physicians who specialize in eyecare. Further, petitioners seek the Board to preclude the practice of ophthalmic dispensing services when it is known to a licensee that an ophthalmologist is steering or directing a patient to that licensee due to the existence of an economic relationship between the licensee and that physician. Finally, petitioner seeks to permit the continuation of current relationships of the type sought to be prohibited by the proposal until such time as a Board investigation results in a specific Board order to cease such relationship.

Petitioner requests such amendment based upon its perception of desirability and necessity in order "to permit members of the public to reduce their costs of health care in the eyeglass field and to assure them true freedom of choice while assuring that licensed opticians will not be subjected to the temptations of unethical and unlawful conduct." ("Report on Proposed Amendment to Regulation of the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians", pp. 1,2). The interest of petitioner in making this request is said to

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be the opening up of the optical marketplace for everyone's benefit. At the Board's request, petitioner has also referred to N.J.S.A. 52:17B-41.13 and 41.17 as the authority upon which the Board could take the requested action. Thus, inasmuch as the petition conformed with the substantive requirements of N.J.S.A. 52:14B-4(f)(1)(2)(3), the Board formally accepted receipt of the same on April 4, 1984.

Take further notice that the Board considered the merits of the request contained in the petition at its meeting on April 4, 1984. Formal action resulted which consisted of a decision to commence its own investigation in order that it might ascertain the clear necessity for promulgation of the amendment which petitioner seeks. Thus, while the Board is not initiating formal rule-making proceedings at this time, it is not denying the petition. Rather the Board is taking preliminary steps which it feels are necessary before it can make a determination on how it will proceed regarding the substance of the request.

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

13:33-1.35 Advertising; **Steering profits and economic benefits,** rebates and commissions for referring patients

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

(f)1. It shall be unlawful for any ophthalmic dispenser or ophthalmic technician to engage in ophthalmic dispensing as a partner, co-venturer, participant in the sharing of revenues or profits, or employee, directly or indirectly, of and/or with, any physician specializing in eye care in this State.

2. It shall be unlawful for any ophthalmic dispensers to act in such capacity where he is aware that any Ophthalmologist has steered or directed any of his patients to use such dispenser because an economic relationship exists between them.

3. This regulation shall be effective from the date hereof; except however, that any relationship lawful prior to such date shall be permitted to continue during (a) the pendency of an investigation pursuant to N.J.S. 45:1-16 et seq of the practices and circumstances of all such economic relationships and the activities of Ophthalmic Dispensers in connection therewith, and (b) until further order of the Board.

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INDEX OF PROPOSED RULES

The *Index of Proposed Rules* contains rules which have been proposed in the New Jersey Register between May 16, 1983, and May 7, 1984, and which have not been adopted and filed by May 7, 1984. **The index does not contain rules proposed in this Register and listed in the Table of Rules in This Issue. These proposals will appear in the next Index of Proposed Rules.**

A proposed rule listed in this index may be adopted no later than one year from the date the proposal was originally published in the Register. Failure to timely adopt the proposed rule requires the proposing agency to re-submit 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 of the Office of Administrative Law (N.J.A.C. 1:30).

The *Index of Proposed Rules* appears in the second issue of each month, complementing the *Index of Adopted Rules* which appears in the first Register of each month. Together, these indices make available for a subscriber to the Code and Register all legally effective rules, and enable the subscriber to keep track of all State agency rulemaking activity from the initial proposal through final promulgation.

The proposed rules are listed below in order of their Code citation. Accompanying the Code citation for each proposal is a brief description of its contents, the date of its publication in the Register, and its Register citation.

The full text of the proposed rule will generally appear in the Register. If the full text of the proposed rule was not printed in the Register, it is available for a fee from:

Administrative Filings
CN 301
Trenton, New Jersey 08625

N.J.A.C. CITATION		PROPOSAL DATE	PROPOSAL NOTICE (N.J.R. CITATION)
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1:1-1.3	Reaching the merits	9-6-83	15 N.J.R. 1398(a)
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1:1-17.1	Approving the settlement	9-6-83	15 N.J.R. 1401(a)
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2:76-4	Municipally-approved farmland preservation	4-2-84	16 N.J.R. 582(a)
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5:80-5	Multi-family projects: transfer of ownership interests	5-7-84	16 N.J.R. 951(a)
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7:14-4.4	NJPDES: local control over dischargers	7-5-83	15 N.J.R. 1059(b)
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7:25-5	1984-85 Game Code	5-7-84	16 N.J.R. 972(a)
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7:26-1.7	Solid waste disposal: exemption from registration (with Emergency Adoption)	5-7-84	16 N.J.R. 1100(a)
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8:21A-2.45	Retention period for radioactive drug samples	11-7-83	15 N.J.R. 1818(a)
8:31-26.5	Licensure fees for hospital facilities	4-16-84	16 N.J.R. 802(a)
8:31-26.6	Health care facilities: reporting information to Medical Examiners Board	4-16-84	16 N.J.R. 804(a)
8:31A-7	SHARE: Rate Review Guidelines	5-7-84	16 N.J.R. 1002(a)
8:31B-3.23, 3.24, 3.43, 3.75	Hospital rate setting: outpatient dialysis reimbursement hospital-based physician costs	4-2-84	16 N.J.R. 669(a)
8:33H-3.11	Long-term care beds for former psychiatric patients	4-16-84	16 N.J.R. 806(a)
8:35	Repeal (see 8:43B-8)	2-6-84	16 N.J.R. 188(a)
8:43-2	Sheltered care homes: readopt Building Requirements rules	2-21-84	16 N.J.R. 325(a)
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8:43B-1.7, 1.8	Licensure fees for hospital facilities	4-16-84	16 N.J.R. 802(a)
8:43B-3	Hospital facilities: readopt Physical Plant rules	2-21-84	16 N.J.R. 327(a)
8:43B-8	Hospital licensure: obstetric and newborn services	2-6-84	16 N.J.R. 188(a)
8:43B-10	Pharmaceutical services in hospital facilities	1-17-84	16 N.J.R. 107(a)
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8:71	Generic drug list additions (see 16 N.J.R. 142(b), 1093(a))	11-7-83	15 N.J.R.1819(a)
8:71	Additions to generic drug list (see 16 N.J.R. 1092(a))	2-6-84	16 N.J.R. 202(a)
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9:9-1.16	Defaulted student loans: interest liability	5-7-84	16 N.J.R. 1012(a)
9:9-9.2	PLUS Program: direct loan prerequisites	5-7-84	16 N.J.R. 1012(b)
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10:53-1	Special Hospital Services: readopt Coverage rules	4-16-84	16 N.J.R. 809(a)
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19:54-2	Investment obligations and investment alternative tax	11-21-83	15 N.J.R. 1931(a)

The following rules were proposed in the New Jersey Register, but have not been timely adopted and therefore have expired pursuant to N.J.A.C. 1:30-4.2(c).

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