

NEW JERSEY



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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JULY 20, 1992

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT AUGUST 17, 1992

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **November 4, 1992**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

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NEW JERSEY REGISTER

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

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RULE PROPOSALS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Municipal Enforcing Agency Fees

Mechanical Inspectors

Proposed New Rule: N.J.A.C. 5:23-5.19A

Proposed Amendments: N.J.A.C. 5:23-3.4, 4.4, 4.18, 4.20, 5.3, 5.5, 5.21, 5.22, 5.23 and 5.25

Authorized By: Melvin R. Primas, Jr., Commissioner,
Department of Community Affairs.

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

Proposal Number: PRN 1992-421.

Submit comments by November 4, 1992 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625-0802

The agency proposal follows:

Summary

These proposed amendments and new rule set forth a new type of license for a mechanical inspector. Though the State Uniform Construction Code contains a mechanical subcode, the present rules divide mechanical code responsibilities among the building, fire protection, and plumbing subcodes. This often necessitates three or four different inspectors inspecting one piece of mechanical equipment. For example, a single-family homeowner installing a gas-fired water heater might be subject to building, plumbing, fire protection, and electrical inspections, along with fees for each, under the current code. Not only is this duplicative and overly expensive to the homeowner, it is also inefficient for several code enforcement officials to travel to a site to each check one code section item on a given installation.

If one of the existing inspectors or subcode officials obtains a mechanical license, mechanical plan review and inspections of a Use Group R-3 or R-4 structure can be completed by that one inspector. If the mechanical inspector has a subcode official license in another area, he or she may sign off on inspection and plan review. If the mechanical inspector does not have a subcode official license in any other subcode area, the construction official may assign a subcode official to approve the mechanical inspector's work.

Mechanical licensure will be available to currently qualified inspectors who pass the following national certification tests:

4A Mechanical 1 and 2 family

4B Mechanical General

2A Electrical 1 and 2 family

Successful results from any of these tests taken previously will be accepted. No additional experience or courses will be required. However, to maintain mechanical licensure, 1.0 continuing educational units (CEU) in technical subjects will be required to be completed for each two year renewal period, in addition to any other requirements for a given licensee with other continuing education requirements. Any mechanical licensee who is subject to any license revocation shall also lose his or her mechanical license.

The employment of a mechanical licensee by any municipality will be voluntary, and the classification of a municipality as "Class I, II, or III" will not be affected by the presence or absence of a licensed mechanical inspector on staff.

In 1994, there will be a national certification test for "Mechanical Plan Review." It is contemplated that a later proposal could expand the requirements and duties of mechanical licensees, if this initial proposal is successful.

Under these present proposed amendments and new rule, a mechanical licensee would perform plan review and would inspect, for example, electrical, oil and gas-fired forced hot air, hot water or steam boilers, air conditioning equipment, hot water heaters and heat pumps

in any Use Group R-3 or R-4 structures. Municipalities will be able to have more than one mechanical inspector. Because the mechanical inspector would make the site visits, the burden on other officials would be lessened.

Social Impact

Once inspectors have earned mechanical certification, plan review, and code enforcement, inspections for Use Group R-3 or R-4 structures will be simplified. While the State Uniform Construction Code has long contained a mechanical subcode, no licensure has previously been available in this area. Mechanical review and inspection tasks have, therefore, been performed, in consort, by the other subcode inspectors. This has often necessitated site visits by numerous individuals. A mechanical license will enable one person to perform initial plan review and site inspections.

Economic Impact

The Department anticipates that mechanical licensure, by reducing the need for multiple site visits by different inspectors, will save money for homeowners, builders, and code enforcement agencies. Actual fee receipts are not expected to change. While the rules may require some individuals to obtain additional CEU credits, the costs of such training can be reimbursed to those individuals, upon application to the Department.

Regulatory Flexibility Analysis

The proposed amendments and new rule provide a more efficient means of inspection of sites involving more than one subcode. All businesses, whether large or small, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., should benefit from the more efficient process of inspection. The Department has provided no specific differentiation based upon business size in this proposal.

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

5:23-3.4 Responsibility

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

(j) A mechanical inspector employed by the Department or by a municipality, and so assigned by the construction official, shall have responsibility for enforcement of all provisions of the code relating to the installation of mechanical equipment, such as refrigeration, air conditioning or ventilating apparatus, gas piping or heating systems, in Use Group R-3 or R-4 structures.

5:23-4.4 Municipal enforcing agencies—organization

(a) The municipality shall organize its enforcing agency in accordance with the ordinance adopted pursuant to N.J.A.C. 5:23-4.3 and to meet the following additional requirements:

1.-7. (No change.)

8. A municipality may, at its discretion, employ a mechanical inspector to perform plan review and mechanical inspections with oversight by a designated subcode official for Use Group R-3 or R-4 structures.

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

5:23-4.18 Standards for municipal fees

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

(c) Basic construction fee: The basic construction fee shall be computed on the basis of the volume of the building[,], or, in the case of alterations, the estimated construction cost, and the number and type of plumbing, electrical and fire protection fixtures or devices as herein provided.

1.-4. (No change.)

5. The municipality shall set a flat fee for a mechanical inspection in a Use Group R-3 or R-4 structure by a mechanical inspector. No separate fee shall be charged for gas, fuel oil, electrical, or water piping connections associated with the mechanical equipment inspected.

5:23-4.20 Departmental fees

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

(c) Departmental (enforcing agency) fees shall be as follows:

1.-8. (No change.)

9. The fee for a mechanical inspection in a Use Group R-3 or R-4 structure by a mechanical inspector shall be \$43.00 for the first device and \$10.00 for each additional device. No separate fee shall be charged for gas, fuel oil, electrical, or water piping connections associated with the mechanical equipment inspected.

5:23-5.3 Types of licenses

(a) Rules concerning code enforcement licensure categories are:

1. Technical licenses: Subject to the requirements of this subchapter, persons may apply for, and may be licensed in, the following specialties:

i-vi. (No change.)

vii. **Mechanical inspector: Mechanical inspectors are authorized to carry out field inspection and plan review work for all work under the mechanical subcode in Use Group R-3 or R-4 structures. Only a person already holding a valid inspector's license may apply for a mechanical inspector's license.**

2. (No change.)

5:23-5.5 General license requirements

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

(d) Special provisions:

1. (No change.)

2. **An applicant licensed as an inspector may apply for a mechanical inspector's license to perform mechanical inspections of Use Group R-3 or R-4 structures.**

5:23-5.19A Mechanical inspector requirements

(a) **A person validly licensed as an inspector in any subcode may apply for a mechanical inspector's license qualifying such person to perform mechanical inspections of Use Group R-3 or R-4 structures, if that person successfully completes the examinations required by N.J.A.C. 5:23-5.23.**

(b) **Notwithstanding the three-year time limit set forth in N.J.A.C. 5:23-5.5(b)4, results from any of the examinations already successfully completed and currently used for licensure may be submitted at the time of application and, in such case, examinations need not be re-taken.**

5:23-5.21 Renewal of license

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

(d) Continuing education requirements are as follows:

1-3. (No change.)

4. **To maintain a mechanical inspector's license, 1.0 CEU (technical) shall be completed annually, in addition to any other CEU requirements for other licenses held.**

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

5:23-5.22 Fees

(a) No application for a license shall be acted upon unless said application is accompanied by a fee as specified herein.

1. An application fee of \$43.00 shall be charged in each of the following instances:

i. Application for any one given technical license specialty, or for the Inplant Inspector or Mechanical Inspector license.

ii-iii. (No change.)

2-6. (No change.)

5:23-5.23 Examination requirements

(a) (No change.)

(b) Requirements for specific licenses are as follows:

1-11. (No change.)

12. **Examination requirements for mechanical licensure are:**

i. **Successful completion of the National Certification Test, 4A Mechanical, 1 and 2 family;**

ii. **Successful completion of the National Certification Test, 4B Mechanical General; and**

iii. **Successful completion of the National Certification Test, 2A Electrical 1 and 2 family.**

(c)-(f) (No change.)

5:23-5.25 Revocation of licenses and alternative sanctions

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

(e) **If a mechanical inspector loses any licensure, through any circumstances, mechanical licensure shall be terminated at the same**

time, whether or not the loss of the other licensure is in any way related to the performance of mechanical inspection duties.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Interpretations

Process Equipment

Proposed New Rule: N.J.A.C. 5:23-9.7

Authorized By: Melvin R. Primas, Jr., Commissioner,

Department of Community Affairs.

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

Proposal Number: PRN 1992-422.

Submit comments by November 4, 1992 to:

Michael L. Ticktin, Esq.

Chief, Legislative Analysis

Department of Community Affairs

CN 802

Trenton, NJ 08625-0802

The agency proposal follows:

Summary

The Department has published two interpretations concerning process equipment, dated August 15, 1979, and in effect since that time. These interpretations, formerly designated "6" and "6A," explained that some specialized equipment and machinery is to be exempt from the State Uniform Construction Code (UCC). Highly specialized, often pre-assembled equipment designed for commercial or industrial use, manufacturing, production and process equipment, or "process equipment," is often unique to its function and designed beyond the referenced standards in the UCC. This makes it impractical or impossible for code officials to review it in an appropriate way. They do, however, review electrical, water, and sanitary connections to such process equipment, as these can affect public safety.

Proposed N.J.A.C. 5:23-9.7(b)1 to 10 list the types of equipment previously listed in "6A."

In a recent binding arbitration between two municipalities and a petrochemical company, the written decision enumerated other types of equipment which code officials should deem to be "process equipment" and, therefore, exempt from review. (*In re: State Uniform Construction as it applies to Mobil Oil Corporation, Borough of Paulsboro and Township of Greenwich*, decided August 20, 1991.) Proposed N.J.A.C. 5:23-9.7(b)11 to 16 correspond to exempt equipment, pursuant to that decision.

Proposed N.J.A.C. 5:23-9.7(b)17 is an exemption for an oil/water separator, a device covered by the plumbing subcode, but exempt from review when it is employed initially in a series of water treatment processes, and where its functioning has no impact on the public.

These former exemptions from interpretations 6 and 6A and from other sources are being proposed here, according to the requirements of the State Administrative Procedures Act, and to list them all at one citation, for easy reference.

Social Impact

Because the first 16 items enumerated in the proposed new rule have already been exempt, the first 10 by previous documents and the next six pursuant to a binding arbitration agreement, it is not anticipated that these will have any novel social impact. As noted in the summary, it makes sense to exempt commercial or industrial processes from review under the UCC because much of this equipment is not adequately covered by the UCC and its referenced standards.

The new item 17, oil/water separators, otherwise covered in the plumbing subcode, are exempted where they are employed in the early phase of water treatment processing. Their functioning at this phase is so remote from the release of treated water that it cannot impact the public.

Economic Impact

This proposed new rule reaffirms the Department's commitment to exempt from the UCC those types of equipment that are not properly covered by UCC standards. These exemptions save time and money for would-be applicants and for code officials. The former are able to understand precisely what requires permits under the UCC; the latter need not concern themselves with equipment outside UCC jurisdiction. They can use their resources elsewhere.

Regulatory Flexibility Analysis

This proposed new rule exempts specified equipment from Uniform Construction Code inspection. While most of the affected businesses may be considered large businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq., this rule benefits businesses of all sizes by exempting their equipment, which is not properly covered by UCC standards, from code requirements. The Department has provided no differentiation based upon business size in this rule.

Full text of the proposal follows:

5:23-9.7 Manufacturing, production and process equipment

(a) Manufacturing, production and process equipment is not under the jurisdiction of the Uniform Construction Code. Manufacturing, production, and process equipment is defined as all equipment employed in a system of operations for the explicit purpose of the production of a product.

(b) Manufacturing, production, and process equipment shall include, but is not limited to, the following:

1. Electrical generation equipment, such as turbines, condensers, generators, and the like;

2. Electrical transmission equipment such as transformers, capacitors, regulators, switchgears, and the like;

3. Air pollution equipment, such as scrubbers;

4. Metal working equipment, such as castings, screen machines, grinders, lathes, presses, drills, welders, and the like;

5. Material handling equipment, such as rollers, control belts, and the like;

6. Packaging equipment, such as bottling machines;

7. Process drying equipment, such as ovens, kettles, fans, and the like;

8. Finishing equipment, used for such purposes as heat treatment, plating, painting, and the like;

9. Petrochemical refinery/plant equipment used for distillation, conversion, treatment and blending;

10. Electric, steam, pneumatic- or hydraulic-actuated equipment, such as motors, pumps, compressors, and the like;

11. Tanks which constitute part of a controlled industrial process, including those tanks containing flammable and combustible liquids;

12. All piping used to transport products to and between industrial processes; any piping connected to the potable water supply downstream of an appropriate backflow prevention device; any piping located upstream of the first joint at the outlet of the equipment or upstream of the indirect connection to the sanitary or storm sewer;

13. Pipe racks, hangers, and the like that support the process piping and the storage racks for the raw materials and finished products. Building structural systems supporting the racks, hangers, storage loads, and the like are excluded from the definition of process equipment;

14. Boilers, pressure vessels, furnaces and the like used exclusively for industrial process;

15. Pre-wired and/or pre-engineered (bearing name plate) electro-mechanical equipment or machinery used exclusively for an industrial process.

16. Electrical work which forms a part of the power or control system of industrial process equipment, up to the point where that work connects to the plant electrical distribution system. Such a point shall be considered a suitable junction box, panel board, disconnect switch, or a terminal box which constitutes the final connection to the factory-installed equipment wiring. Where these items are not supplied as a part of the equipment, they shall be subject to local enforcing agency jurisdiction; and

17. An oil/water separator used in ground water remediation if the following conditions are met:

i. The separator is directly upstream of at least two water decontamination processes;

ii. The downstream decontamination process ceases if the oil/water separator fails; and

iii. The separator is located in an already contaminated area, so that failure of the separator would not result in any new or extensive contamination.

ENVIRONMENTAL PROTECTION AND ENERGY**(a)****OFFICE OF ENERGY****Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules)**

Proposed Amendments: N.J.A.C. 7:27-1.4, 8.1, 8.3, 8.4, 8.24, 18.1, 18.3, 18.4, 18.7 and 18.9

Proposed New Rules: N.J.A.C. 7:27-1.36, 1.37, 1.38, 18.3, 18.7, 18.11 and 18.12

Proposed Repeal and New Rules: N.J.A.C. 7:27-18.2, 18.5 and 18.9

Proposed Repeal: N.J.A.C. 7:27-18.6 and 18.10

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

Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., in particular 26:2C-8.

DEPE Docket Number: 41-92-09.

Proposal Number: PRN 1992-440.

A **public hearing** concerning this proposal will be held on:

November 5, 1992, at 10 A.M.

First Floor Hearing Room

Department of Environmental Protection and Energy

State of New Jersey

401 East State Street

Trenton, New Jersey

Submit written comments by November 19, 1992 to:

Richard J. McManus, Director

Office of Legal Affairs

New Jersey Department of Environmental Protection

and Energy

CN 402

Trenton, New Jersey 08625-0402

Copies of this notice and of the proposed amendments are being deposited and will be available for inspection during normal office hours until November 19, 1992, at:

Atlantic County Health Department

20 South Shore Road

Northfield, New Jersey 08225

Middlesex County Air Pollution Control Program

County Anne Building

841 Georges Road

North Brunswick, New Jersey 08902

Warren County Health Department

319 West Washington Avenue

Washington, New Jersey 07882

New Jersey Department of Environmental Protection

and Energy

Office of Energy

401 East State Street, Seventh Floor

Trenton, New Jersey 08625

New Jersey Department of Environmental Protection

and Energy

Bureau of Enforcement Operations

Northern Regional Office

1259 Route 46, Bldg. #2

Parsippany, New Jersey 07054

New Jersey Department of Environmental Protection

and Energy

Bureau of Enforcement Operations

Southern Regional Office

20 East Clementon Road, 3rd Floor North

Gibbsboro, New Jersey 08026

New Jersey Department of Environmental Protection
and Energy

Bureau of Enforcement Operations
Central Regional Office
Horizon Center, Building 300
Route 130
Robbinsville, New Jersey 08691

New Jersey Department of Environmental Protection
and Energy

Bureau of Enforcement Operations
Metropolitan Regional Office
2 Babcock Place
West Orange, New Jersey 07052

These amendments will become operative 60 days after adoption by the Commissioner (See N.J.S.A. 26:2C-8).

The agency proposal is set forth below. It contains six major components: a "Summary" section which describes the purpose and scope of the new rules and amendments, a "Social Impact" section which describes the anticipated societal effects of the new rules and amendments, an "Economic Impact" section which sets forth the anticipated costs and benefits of the new rules and amendments, an "Environmental Impact" section which sets forth the anticipated emission reductions to be obtained, a "Regulatory Flexibility Analysis" section which examines the effect of the new rules and amendments on small businesses, and a full statement of the text of the proposed new rules and amendments.

Summary

The New Jersey Department of Environmental Protection and Energy (Department) is proposing amendments to N.J.A.C. 7:27-18 (Subchapter 18), Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules). As mandated by the 1990 Clean Air Act Amendments (CAA), the proposed amendments and new rules would eliminate certain differences between Subchapter 18 and the corresponding Federal regulations, 40 CFR 51.165. The United States Environmental Protection Agency (EPA) has delineated the differences for which changes to the New Jersey rules are required. The proposed amendments and new rules also incorporate certain provisions established in the CAA pertaining to emission offsets. The Department has additionally incorporated modifications to Subchapter 18, beyond those required by EPA, which make the rules consistent with the Federal rule and the CAA. The proposed amendments and new rules also would discount the value of banked emission reductions resulting from source shutdowns. The discounted portion of these banked emission reductions would revert to the State, which can use these emission reductions to show reasonable further progress toward attaining the national ambient air quality standard (NAAQS). Future amendments may include provisions for use of these discounted emission reductions for other purposes also, such as economic development. Such provisions would be developed with the Department of Commerce and Economic Development and the Department of Labor. Finally, the changes clarify certain sections of the rules and correct inconsistencies with other provisions of the Department's air pollution control rules, N.J.A.C. 7:27.

The purpose of Subchapter 18 is to ensure that industrial growth and development may occur even in areas where the ambient air quality does not meet Federal or State ambient air quality standards established to protect public health. To serve this purpose, Subchapter 18 establishes requirements for certain facilities seeking permits for emission increases to reduce emissions from existing sources (obtain emission offsets), if an increase in emissions could significantly and adversely affect air quality. The rules impose conditions upon growth and development so as to prevent any further deterioration of air quality from resulting. Specifically, these conditions ensure that new construction and alteration of sources of air pollutants do not result in increased emissions which could cause violations of State and Federal ambient air quality standards in attainment areas and significantly exacerbate violation of the standards in nonattainment areas.

A "nonattainment area" is an area of the State which either: (i) the EPA designates as an area in which the ambient air concentration of a criteria pollutant (such as ozone, PM-10, sulfur dioxide, nitrogen dioxide, carbon monoxide or lead) exceeds the applicable NAAQS for the pollutant found at 40 CFR 50; or (ii) the Department identifies as an area in which the ambient air concentration of a criteria pollutant exceeds the applicable New Jersey ambient air quality standard (NJAAQS) set forth at N.J.A.C. 7:27-13. An "attainment area" is any other area of the State. A listing of the nonattainment areas in New Jersey is located in the Social Impact below.

(CITE 24 N.J.R. 3460)

A facility subject to the emission offset requirements of Subchapter 18 must obtain an emission offset, to counterbalance emission increases proposed by the facility, as a condition of obtaining a permit for the construction or alteration of equipment or control apparatus. An emission offset is a "creditable emission reduction" (the definition of which is discussed in detail below) which is approved by the Department.

Emission reductions to be used to offset proposed emission increases may be obtained from mobile sources, as well as stationary sources. Implementation of transportation control measures (TCMs) not otherwise required by State or Federal statute, rules, or regulations could provide such reductions. Such TCMs could include early removal of older vehicles from use, conversion to alternatively fueled fleets, and other measures listed in Section 108(f)(1)(A) of the CAA. Although the existing rules allow mobile source emission reductions to be used as emission offsets, the proposed amendments and new rules clarify this provision. As discussed below, the Department expects to expand these provisions in the future.

Subchapter 18 allows existing facilities to bank creditable emission reductions for later use to offset increased allowable emissions. In addition, a facility may obtain creditable emission reductions which another facility has banked, and use those reductions to comply with the emission offset requirements.

Section 182(g)(4)(b) of the CAA requires the EPA to promulgate a policy for Economic Incentive Programs by November 15, 1992. This policy will address mobile source, as well as stationary source, programs including programs to reduce vehicle emissions and vehicle miles traveled. Once this Federal policy is adopted, it is the Department's intent to promulgate generic rules for the banking and trading of credits for emission reductions, including reductions obtained from mobile sources. The objective of the future generic rules would be to create administrative mechanisms which would allow free market forces to find the least cost alternatives available for achieving the emission reduction goals established by the CAA.

The Department also intends to revise Subchapter 18 to include, as a contingency measure for inclusion in the State Implementation Plan for ozone (O₃) and carbon monoxide (CO), incentives to encourage use of emission reductions from mobile sources as offsets. The Department invites comment as to which types of incentive measures would be practical and effective in achieving reductions of volatile organic compounds (VOC), oxides of nitrogen (NO_x), and CO from mobile sources.

In addition to the amendments and new rules proposed herein, the Department anticipates that further revision of the emission offset provisions of this subchapter will be needed in the future. The EPA expects that in 1993 it will adopt revisions to the Federal New Source Review Rules for nonattainment areas. These revisions will clarify ambiguities in the CAA. Therefore, further changes to New Jersey's Emission Offset Rule will likely be proposed and adopted in 1994, to make these rules consistent with the revised Federal New Source Review Rules.

As these rules affect the potential for growth and development to occur within the State, they must be considered in light of New Jersey's State Development and Redevelopment Plan (the State Plan), adopted in June, 1992. The State Plan encourages compact development in centers to assure efficient infrastructure and protection of natural and environmental resources. It also encourages growth management programs that promote land-use patterns that reduce automobile dependency. Goals of the State Plan include revitalizing urban areas through use of incentives and controlling sprawl in suburban and rural areas by restructuring the pattern of growth in those areas. The Department invites comments as to how the future revisions of Subchapter 18 can be crafted to be consistent with and support the goals of the State Plan.

The proposed new rules and amendments are intended to satisfy the CAA requirements set forth at Section 182(a)(2)(C), that certain changes in state rule pertaining to permitting by November 15, 1992. A detailed summary of the proposed amendments follows:

N.J.A.C. 7:27-1 General Provisions

The proposed amendments to the general provisions of N.J.A.C. 7:27-1 include new definitions of commonly used terms such as "CFR," "Department," "EPA," "State" and "USC." The proposed amendments also clarify construction of the air pollution control rules by expressly providing that compliance with one subchapter of N.J.A.C. 7:27 does not relieve a person of the obligation to comply with all other applicable provisions; that if a court holds that any portion of N.J.A.C. 7:27 is invalid, the remainder of the chapter will remain in effect; and that the chapter is to be liberally construed.

N.J.A.C. 7:27-8 Permits and Certificates, Hearings, and Confidentiality

The proposed amendments add a definition of the terms "Federally enforceable," "major facility," "potential to emit" and "significant net emission increase" in N.J.A.C. 7:27-8.1. These definitions are identical to that proposed in N.J.A.C. 7:27-18.1, and are explained in more detail below. Definitions of the following air contaminants are also proposed: "carbon monoxide," "lead," "oxides of nitrogen," "PM-10," "sulfur dioxide" and "total suspended particulate matter."

The proposed amendments add N.J.A.C. 7:27-8.3(k), which clarifies that decreasing the maximum allowable emission rate, hours of operation, or rate of production in any permit or certificate would be considered an amendment of an existing permit if the decrease does not entail any change made to the equipment or control apparatus. This is significant because an amendment of an existing permit is a relatively simple procedure, far less administratively complex and burdensome than obtaining a new permit.

The proposed amendments also revise N.J.A.C. 7:27-8.4(f)3 to correct the referenced citation of Subchapter 18, and to use terminology that is consistent with Subchapter 18.

The proposed amendments add N.J.A.C. 7:27-8.4(j) which sets forth the requirement for applicants to conduct an air quality impact analysis if the application is subject to the Federal Prevention of Significant Deterioration (PSD) requirements set forth at 40 CFR 52. This is consistent with the Department's policy concerning PSD applications, and is also consistent with the PSD regulations. Certain persons proposing significant net emission increases of an air contaminant would also be required to conduct an air quality impact analysis under N.J.A.C. 7:27-8.4(j). This has been a requirement under N.J.A.C. 7:27-18.3(a) of the existing rules, and is being recodified at N.J.A.C. 7:27-8.4(j).

The proposed amendments add N.J.A.C. 7:27-8.4(k), which requires persons subject to N.J.A.C. 7:27-8.4(f) or (j) to obtain the Department's approval of a protocol for analyzing the impact of a facility's emissions upon air quality. The Department has prepared a technical manual entitled "Guidance on Preparing an Air Quality Modeling Protocol" to provide guidance to the regulated community in preparing protocols.

The proposed amendments expressly provide that the Department's approval of the protocol must come before the affected person submits the air quality impact analysis. In its experience implementing Subchapter 18, the Department has found that an air quality impact analysis performed without an approved protocol frequently is inadequate and must be redone, causing delay in the review of the permit application. The submittal and approval of a protocol prior to the submittal of an air quality impact analysis speeds and streamlines permit reviews, reduces the Department's workload, and is consistent with the permit application procedures set forth at N.J.A.C. 7:27-8.4(f).

The proposed amendments revise N.J.A.C. 7:27-8.24(b)1 to refer to the applicability section of Subchapter 18.

N.J.A.C. 7:27-18.1 Definitions

The proposed amendments add or revise definitions of several terms used in Subchapter 18.

The proposed amendments revise the definition of "allowable emissions" so as to be consistent with the terminology used in 40 CFR 51.165. "Allowable emissions" is based on the maximum rated capacity of the source operation unless it is subject to Federally enforceable limits which restrict the operating rate or hours of production. The revision clarifies the definition without changing its meaning.

The proposed amendments revise the current definitions of "attainment area" and "nonattainment area." The existing definition of "nonattainment area" refers only to areas which the Department has identified as having an ambient air concentration of a criteria pollutant exceeding an NJAAQS. The proposed amendment expands this definition, and the resulting scope of certain provisions of the emission offset requirements, to include areas which EPA has designated as having an ambient air concentration of a criteria pollutant exceeding the applicable NAAQS. The term "nonattainment area" would include areas which EPA has designated as exceeding a NAAQS for a criteria pollutant. In the future, this term would also include any areas which the EPA has, as of that time, additionally designated as nonattainment. The proposed amendments simplify the definition of "attainment area," making it clear that any area of the State which is not a nonattainment area is an attainment area.

The proposed amendments add a definition of "contemporaneous." An occurrence is "contemporaneous" with the construction or alteration of equipment or control apparatus if it occurs during the period begin-

ning five years before the construction or alteration begins, and ending when operation of the new or altered equipment or control apparatus begins. This time period is the same as the time period specified in 40 CFR 51.165. The term is central to N.J.A.C. 7:27-18.7 in determining whether a "significant net emission increase" has occurred, and is also central in determining whether a reduction in emissions is a "creditable emission reduction." The use of the contemporaneous period to determine applicability results in fewer new sources being subject to this rule. This is discussed in more detail in the summary of these provisions below.

The proposed amendments add a definition of "creditable emission reduction." Only "creditable emission reductions" can be used as emission offsets. To be creditable, an emission reduction must be contemporaneous with the construction or alteration of the new or altered equipment or control apparatus; it must be quantifiable and verifiable; and it must be capable of being enforced by the Department and EPA. This is not a change from the current emission offset rule. To avoid double counting, creditable emission reductions must be over and above what is required under any Federal or State regulations, State Implementation Plan, or other legal document used to demonstrate reasonable further progress toward attainment of any NAAQS. Such "reasonable further progress" refers to the annual incremental reductions in emissions of an air contaminant as are required for the purpose of ensuring attainment of a NAAQS by the deadline established in the CAA. The criteria for determining creditable emission reductions may be subject to additional EPA and State rulemaking in the future.

The proposed amendments revise the definition of "criteria pollutant" to include any air contaminant for which EPA has promulgated a NAAQS under 40 CFR 50, or for which the Department has promulgated a NJAAQS under N.J.A.C. 7:27-13. The existing definition lists only specific pollutants such as ozone, total suspended particulate matter, sulfur dioxide, nitrogen dioxide, volatile organic substances, carbon monoxide, and lead. The revised definition deletes this list of pollutants.

The definition of "emission offset" is revised to make it clear that the term includes only "creditable emission reductions," discussed above.

The proposed amendments revise the definition of the term "minimum offset ratio" to delete the requirement that emission offsets be obtained from existing facilities. Since the existing rules at N.J.A.C. 7:27-18.4(a)5 allow for the use of emission offsets from the use of employer commuter travel control measures and employer business travel control measures, this modification does not change the substance of the meaning of this term.

A proposed new definition of the term "motor vehicle," using the common meaning of the term, clarifies the definition of "transportation control measures."

The proposed amendments define "national ambient air quality standard" and "New Jersey ambient air quality standard," to incorporate by reference the Federal standards at 40 CFR 50 and the State standards at N.J.A.C. 7:27-13.

A new definition of "NESHAP" incorporates by reference the National Emission Standards for Hazardous Air Pollutants promulgated by EPA, 40 CFR 61. This definition is relevant to the definition of "allowable emissions," "Federally enforceable" and "lowest achievable emission rate (LAER)."

A new definition of "NSPS" incorporates by reference the Standards of Performance for New Stationary Sources promulgated by EPA, 40 CFR 60. These standards are commonly referred to as New Source Performance Standards. This definition is relevant to the definition of "allowable emissions," "Federally enforceable" and "lowest achievable emission rate (LAER)."

A new definition of "PM-10" reflects EPA's promulgation of a NAAQS for inhalable particulate matter, also known as PM-10. PM-10 is an air contaminant which includes all particulate matter with an aerodynamic diameter less than a nominal 10 microns. To clarify this definition, the proposed amendments also add a definition of "aerodynamic diameter" which is in accordance with the common engineering definition.

The proposed amendments revise the term "person" to clarify that this term may refer to any individual or entity.

The proposed amendments revise the definition of the term "secondary emissions" to clarify it without changing its meaning.

The proposed amendments replace the defined term "significant emission increase" with "significant net emission increase," and revise the definition to reflect the criteria in N.J.A.C. 7:27-18.7 for determining

whether an emission increase is a significant net emission increase. An effect of this change is to eliminate the use of the daily and hourly rates in the current definition to determine whether an increase is a "significant emission increase." Daily and hourly rates are not part of the CAA requirements. This change would make New Jersey's definition consistent with the CAA provisions.

The proposed amendments replace the defined terms "employee commuter travel control measures" and "employer business travel control measures" with the term "transportation control measures" (TCM), to conform with Federal terminology. The term is used in N.J.A.C. 7:27-18.5(b)5, to make it clear that creditable emission reductions resulting from the implementation of TCM may be approved by the Department for use as offsets pursuant to N.J.A.C. 7:27-18.5(b)5.

The proposed amendments replace the term "threshold increase" with the term "significant air quality effect level" to prevent confusion with the threshold levels used in other sections of Subchapter 18.

The proposed amendments also add definitions of currently undefined terms used in Subchapter 18. These terms include "actual emissions," "Federally enforceable," "net emission increase" and "State Implementation Plan." The definitions are consistent with the corresponding Federal definitions at 40 CFR 51.165. The Department has been interpreting these terms based upon the Federal definitions. Therefore, the definitions will not result in any change in the interpretation of Subchapter 18. In addition, the proposed amendments modify the existing definitions of "fugitive emissions," "lowest achievable emission rate" and "reasonable further progress," to make the definitions consistent with the Federal definitions of these terms.

In addition, the proposed amendments add definitions of several terms to make it clear that these terms, as used in Subchapter 18, have the same meaning as when used in N.J.A.C. 7:27-8. These terms include "air quality impact analysis," "alter," "operating certificate," "plume rise" and "source operation." The Department also has modified the existing definitions of the following terms, again to be consistent with N.J.A.C. 7:27-8: "air contaminant," "air quality simulation model," "alteration," "banking," "control apparatus," "equipment," "facility," "permit" and "stack or chimney." These modifications and new definitions do not change the substance of the meanings of those terms.

The proposed amendments revise the definition of "ambient air quality standard" to clarify that it is a limit on the concentration of an air contaminant in the general outdoor atmosphere as specified in N.J.A.C. 7:27-13 or in 40 CFR 50. This definition is relevant for the definitions of NAAQS and NJAQS.

The proposed amendments also add the definitions of the following air contaminants: "carbon monoxide," "lead," "nitrogen dioxide," "oxides of nitrogen," "ozone," "sulfur dioxide," "total suspended particulate matter" and "volatile organic compounds" to clarify what form or forms of the contaminants these terms include.

The proposed amendments add a new definition of "alternative fuel" to clarify that it is a fuel whose use is not authorized by a permit or, for a source operation without a permit, any fuel that was not used by the source operation since December 21, 1976. The date used in this definition is the date specified in the Federal rules concerning the use of alternative fuels in existing equipment. This term is used in the emission offset exemption provisions of N.J.A.C. 7:27-18.10.

The proposed amendments add a definition of the acronym "CAA" to indicate that this refers to the Federal Clean Air Act as amended in 1990.

The proposed amendments define the new term "complete." This term is significant in determining whether an application for a permit is necessarily subject to the new requirements contained in these proposed revisions. An application that has been submitted to the Department and has been found by the Department to be "complete" prior to November 15, 1992, may be reviewed and acted upon by the Department under the requirements that were in effect at the time the application was determined to be complete.

The proposed amendments define the new term "major facility." This term is significant in determining the facilities to which this rule is applicable. The threshold levels included in the definition are derived from the de minimis levels established in the CAA for defining major stationary sources. The proposed definition specifies that, if potential emissions of any air contaminant exceeds a major source de minimis level, then that facility is a major source. This is the same as the Federal rules concerning the applicability of New Source Review regulations for major stationary sources.

As the threshold levels are set in terms of a facility's "potential to emit" a given air contaminant, a definition of the term "potential to emit" is also set forth in these proposed amendments.

The proposed amendments add a definition of "net air quality benefit" to clarify that it is a decrease in the ambient concentration of the air contaminant of concern, in the area where there is a proposed emission increase. This term is used to be consistent with the Federal regulations, which require facilities to obtain emission offsets in an amount needed to cause a net air quality benefit. The amount of offsets needed is dependent on the type of pollutant being offset, as well as the distance between the proposed emission increase and the emission offset. Generally, emissions of CO, lead, PM-10, sulfur dioxide (SO₂), and total suspended particulates (TSP) impact areas closer to the source of the emission increase, than do emissions of NO_x and VOC.

The term "respective criteria pollutant" is added to clarify the relationship between the emissions of air contaminants with the ambient concentration of criteria pollutants. Since NO_x and VOC are air contaminants, but not criteria pollutants, the term "respective criteria pollutant" identifies NO_x as affecting the ambient concentration of nitrogen dioxide and ozone, and VOC as affecting the ambient concentration of ozone.

The proposed amendments delete the definition of the term "Department." This term is being defined at N.J.A.C. 7:27-1.4 for the chapter, and to define it again in Subchapter 18 is redundant.

N.J.A.C. 7:27-18.2 Facilities subject to this subchapter

The proposed amendments add a section explaining to whom Subchapter 18 is applicable. The requirements of this subchapter apply to certain persons submitting applications for a permit to the Department, as their applications are considered most likely to cause adverse effects on air quality. If the facility is not a major facility, or if the amount of the proposed emission increase does not in itself equal or exceed the threshold level used to determine a major facility, this subchapter does not apply. Furthermore, for the requirements to be applicable, the proposed emission increase must result in a "net emission increase" of an air contaminant corresponding to a criteria pollutant at a facility for which emission offsets have previously been obtained; or the proposed emission increase must result in a "significant net emission increase" of an air contaminant corresponding to a criteria pollutant at one of the following classes of facilities:

1. Facilities located in an area which is nonattainment for the criteria pollutant;
2. Facilities located in an area which is attainment for the criteria pollutant, if the emission increase would increase the ambient concentration of that pollutant in a nonattainment area to a level at or exceeding the "significant air quality effect level" set forth in N.J.A.C. 7:27-18.4; and
3. Facilities located in an area which is attainment for the criteria pollutant, if the increase would cause a violation of a NAAQS or NJAQS for that criteria pollutant.

The Economic Impact statement below contains a more detailed description of the effect of specific provisions of the proposed amendments upon the applicability of Subchapter 18, along with the economic impacts of such applicability.

As discussed under N.J.A.C. 7:27-18.10, the proposed amendments also continue to exempt from the emission offset requirements certain sources which combust alternative fuels, portable facilities which will be relocated outside the nonattainment area within six months after commencing operation, and temporary source operations at a facility which will cease production of an experimental product within six months after commencing operation. In addition, N.J.A.C. 7:27-18.2(d) clarifies that Subchapter 18 does not apply if the allowable emissions proposed in the application would not result in a net emission increase.

N.J.A.C. 7:27-18.3 Standards for issuance of permits

The current N.J.A.C. 7:27-18.2 establishes requirements for each class of facility which is subject to Subchapter 18. The proposed amendments revise those provisions and recodify them at N.J.A.C. 7:27-18.3. The existing rule requires a person to demonstrate that all existing facilities owned or operated by the person are in compliance with the provisions of N.J.A.C. 7:27, and with all applicable CAA requirements, or are operating in conformance with an enforceable compliance schedule approved by the Department. The proposed amendments to N.J.A.C. 7:27-18.3(b)2 provide that the person subject to Subchapter 18 can satisfy these requirements by certifying to the Department that the requirements have been met.

The existing rule requires facilities subject to Subchapter 18 to analyze "employer business travel control measures and employee commuter travel control measures" to assess the feasibility of their use at the subject facility. The proposed amendments delete the requirement. The proposed amendments would require such an analysis only if a person decides to use TCM as a means of obtaining emission offsets.

The existing rule requires a facility causing a significant net emission increase of VOC in an ozone nonattainment area to submit an analysis of alternative sites, sizes, production processes and environmental control techniques to demonstrate that the benefits of the facility significantly outweigh the environmental and social cost imposed as a result of its location, construction, or alteration. As required by the CAA, the proposed amendments to N.J.A.C. 7:27-18.3(c)2 require the submittal of such an analysis for any facility causing a significant net emission increase of any air contaminant in a nonattainment area for the respective criteria pollutant. The proposed amendments clarify the analysis must be done for alternative sites located in New Jersey. The proposed amendments also require the submittal of a demonstration on the availability of emission offsets before a permit is issued and also clarify that operation of the new or altered equipment cannot commence unless the required offsets are obtained.

The proposed amendments at N.J.A.C. 7:27-18.3(e) require persons who must secure emission offsets to submit to the Department an emission offset demonstration. The demonstration would include: a listing of the proposed emission reductions to be used as emission offsets, how the emission reductions would be effected, how achieving the permanent reduction of emissions would be ensured, and how the emission offsets would comply with Subchapter 18.

The proposed amendments at N.J.A.C. 7:27-18.3(f) prohibit persons from commencing operation of any new or altered equipment or control apparatus until the person has acquired the required emission offsets.

The proposed amendments make special provision for permit applications that have been submitted to the Department and are complete prior to November 15, 1992. If the Department has determined the application to be complete prior to November 15, 1992, the applicant may, under conditions specified at N.J.A.C. 7:27-18.3(g), elect to have the Department review and act on the application based on the provisions of the existing rule, rather than on the provisions of the rule as revised by these amendments and new rules. This flexibility does not include the provisions in the rule which pertain to emission offset postponements. If the application is determined to be complete on or after November 15, 1992, the Department would apply the standards required under the Clean Air Act Amendments. In accordance with draft EPA guidance, the Department is proposing that the final date for the option to have the current emission offset rules apply to a permit application that is submitted and complete is November 15, 1992. This date is set in order to adhere to the permit program deadline set forth at Section 182(a)(2)(C) of the CAA.

N.J.A.C. 7:27-18.4 Air quality impact analysis

The current N.J.A.C. 7:27-18.3 requires any person who proposes to significantly increase the emission of an air contaminant to determine the effect of the increase upon the ambient air concentration of the respective criteria pollutant. The proposed amendments revise that requirement, and recodify it at N.J.A.C. 7:27-18.4.

Part of the air quality impact analysis is a determination of whether the emission increase would increase the ambient air concentration of a criteria pollutant by an amount greater than the applicable "significant air quality effect level." Table 1 of this section lists those significant air quality effect levels. The proposed amendments add to Table 1 significance levels for PM-10, which are consistent with the levels used by EPA.

For purposes of clarity, the proposed amendments also add a cross-reference to the supplementary fee schedule at N.J.A.C. 7:27-8.11, which specifies the applicable service fees required in connection with an air quality impact analysis. The proposed amendments do not change this fee schedule.

N.J.A.C. 7:27-18.5 Standards for use of emission reductions as offsets

The current N.J.A.C. 7:27-18.4 states that any person required to obtain emission offsets do so before commencing operation of the new or altered equipment or control apparatus which triggered the emission offset requirement. The existing rule also states how emission offsets can be obtained, and the criteria that emission reductions must meet to be used for emission offsets. The proposed amendments revise these provisions, and recodify them at N.J.A.C. 7:27-18.5.

The proposed amendments at N.J.A.C. 7:27-18.5(a) expressly state that only creditable emissions reductions may be used to offset an emission increase. As discussed above, to be "creditable" an emission reduction must be contemporaneous with the construction or alteration of the new or altered equipment or control apparatus; it must be quantifiable and verifiable; it must be capable of being enforced by the Department and EPA; and, to avoid double counting of emission reductions, it must be over and above what is required under any Federal or State regulation, demonstration of attainment of any NAAQS in the State Implementation Plan, or any reasonable further progress submittal to EPA.

The proposed amendments to N.J.A.C. 7:27-18.4(a)1, 2, and 3 recodify these provisions at N.J.A.C. 7:27-18.5(b)1, 2 and 3, and make minor changes to clarify these sections without substantively changing their meaning.

N.J.A.C. 7:27-18.4(a)4 and (b)4 currently require that emission offsets be provided in a manner that will not cause summer increases of allowable VOC emissions (when the ambient ozone concentration is high) to be offset by winter reductions of actual emissions (when the ambient ozone concentration is low). The proposed amendments recodify that provision at N.J.A.C. 7:27-18.5(h), add NO_x as an ozone precursor, and make this provision more specific, requiring that reductions in emissions of VOC or NO_x between November 1 and March 31 may not be used to offset increased emissions of VOC or NO_x emitted between April 1 and October 31.

The proposed amendments to N.J.A.C. 7:27-18.4(a)5 recodify and clarify this provision at N.J.A.C. 7:27-18.5(b)5, which concerns the use of employer business travel control measures and employee commuter travel control measures as a means of obtaining emission reductions, and revise it to use the terminology used in the CAA.

The proposed amendments to N.J.A.C. 7:27-18.4(a)6 recodify this provision at N.J.A.C. 7:27-18.5(b)7 and clarify that creditable emission reductions may be generated by pollution prevention measures.

The proposed amendments at N.J.A.C. 7:27-18.5(b)6 clarify that a person can obtain an emission offset by shutting down a source operation. This amendment would have no substantive effect on this rule, because the existing rule already provides that emission offsets can be obtained by any method "approved by the Department for reducing the rate of actual emissions to less than that of the allowable emissions." Shutting down a source operation would reduce actual emissions to less than its allowable emissions.

The current N.J.A.C. 7:27-18.4(b)2 requires that emission reductions can be used as offsets only if they are of "like quality and nature." The proposed amendments recodify that provision as N.J.A.C. 7:27-18.5(g), and clarify it by stating that the emission reductions must be for the same air contaminant and explain the meaning of like quality and nature by adding that the significance of the emission reductions for public health and welfare is relevant in determining their acceptability as emission offsets. As a result, N.J.A.C. 7:27-18.4(b)3, which requires facilities obtaining emission offsets of SO₂, lead, or TSP to obtain these offsets from sources which have an effective stack height no greater than that of the proposed emission increase, would be deleted.

The current N.J.A.C. 7:27-18.4(b)5 specifies emission offset requirements for significant emission increases of lead. The proposed amendments recodify these requirements at N.J.A.C. 7:27-18.5(d) and (k), and clarify them, without changing their meaning.

The proposed amendments also add a provision at N.J.A.C. 7:27-18.5(i) making it clear that an emission reduction can be used only once as an emissions offset.

Table 2 of Subchapter 18 establishes the minimum ratios of emission offsets to emission increases. The offset ratio represents the minimum quantity of emission reductions which must be obtained to offset a given quantity of the net emission increase. For example, if a minimum emission offset ratio is 1.3:1, at least 1.3 tons of emission reductions must be obtained for every ton of net emission increase.

The existing rules at N.J.A.C. 7:27-18.4(b)1, which establish different minimum offset ratios depending upon the type of pollutant in question and upon the distance between the point of discharge of the increased emissions and the point of discharge of the reduced emissions which are the subject of the offset, would be recodified at N.J.A.C. 7:27-18.5(c).

The proposed amendments at N.J.A.C. 7:27-18.5(e) clarify that an emission reduction cannot be used as an emission offset if the distance between the points of discharge of the increased and decreased emissions exceeds the maximum listed in Table 2, or the minimum offset ratio is less than that specified in Table 2, unless air quality modeling demonstrates that there would be a net air quality benefit (see Item 2, below).

To conform with the requirements of Title I of the CAA, the Department proposes to amend Table 2 as follows:

1. Volatile organic compounds (VOC) and oxides of nitrogen (NO_x)

In the existing rule, VOC are specified and regulated as a precursor to ozone formation. In these proposed amendments NO_x is also proposed to be specified and regulated as an air contaminant which is a precursor to ozone formation in accordance with Section 182(d) of the CAA. Because the entire State is not attaining the NAAQS or NJAAQS for ozone, any facility in New Jersey causing a significant net emission increase of NO_x would be subject to the same requirements as a facility causing a significant net emission increase of VOC.

The minimum offset ratio requirement for VOC and NO_x in Table 2 of N.J.A.C. 7:27-18.5 is proposed to be changed from 2:1 to 1.3:1, which is the minimum offset ratio mandated by the CAA. Since neighboring states will also be using the minimum offset ratio specified in the CAA, the proposed amendments would maintain consistency throughout the region. Although the minimum offset ratio for VOC and NO_x will be reduced, the Department expects an overall environmental benefit over the existing rules, since the number of facilities that would be required to obtain NO_x or VOC offsets is expected to increase significantly as a result of these amendments.

2. Alternate emission offset ratios

Table 2 requires an emission offset to be obtained from a source within a certain distance from the facility which is the source of the emission increase, in the ratio specified. As the distance between the two sources increases, the minimum offset ratio also increases. This requirement is intended to ensure that emission offsets have a net air quality benefit in the same general area that the increased emissions will affect.

Under the current N.J.A.C. 7:27-18.4(c), the minimum offset ratios in Table 2 do not apply if the Department determines that reasonable further progress toward attainment of the ambient air quality standard allows or requires that different minimum offset ratios be applied. The existing rules also allow any person to petition the Department for a different offset ratio, if an air quality simulation model shows that a net air quality benefit would result. The proposed amendments would recodify this subsection at N.J.A.C. 7:27-18.5(e). The proposed amendments at N.J.A.C. 7:27-18.5(f) require that if the Department approves such a different offset ratio, that ratio would be no less than the minimum required under the CAA (1.0:1 for CO, 1.3:1 for NO_x and VOC). This provision only applies if the distance between the increased emissions and the offsets is less than 0.5 miles for CO, or less than 100 miles for VOC or NO_x. At closer distances, the offset ratios for these pollutants are identical to the minimums required by the CAA. The proposed amendments also clarify that offset distances that are farther than specified in Table 2, or offset ratios lower than specified in Table 2, may be acceptable if an air quality simulation model shows that a net air quality benefit would result.

To conform with CAA requirements, a new subsection N.J.A.C. 7:27-18.5(j) specifies that emission offsets can be obtained from the following locations, provided the Table 2 criteria is met:

- (i) If the facility is in a nonattainment area, from the same facility or from another facility located in the same nonattainment area;
- (ii) If the facility is in an attainment area, from the nonattainment area whose air quality could be adversely impacted by the proposed construction or alteration.

N.J.A.C. 7:27-18.6 Emission offset postponement

The current N.J.A.C. 7:27-18.5 provides for postponements from the emission offset requirements for resource recovery sources, equipment which must switch fuels because of fuel availability, or equipment altered to comply with a State or Federal regulation or directive. The proposed amendments revise this provision, so that emission offset postponements would not be allowed for any sources permitted after the effective date of these amendments. Postponements granted under the existing rule would continue, provided that any person who has obtained such a postponement under the existing rule (i) obtains emission offsets within one year of becoming available, and (ii) until that time, annually demonstrates to the Department that emission offsets are not available. This change is necessary for the rule to be consistent with 40 CFR 51.165(a)(2).

The emission offset exemption provisions currently codified at N.J.A.C. 7:27-18.6 are recodified at N.J.A.C. 7:27-18.10(b).

N.J.A.C. 7:27-18.7 Determination of net emission increase or a significant net emission increase

As discussed above, the proposed amendments replace the term "significant emission increase" with "significant net emission increase," to be consistent with the terminology used in 40 CFR 51.165. The proposed amendments also explain and clarify the procedure for determining if a significant net emission increase will occur. Specifically, N.J.A.C. 7:27-18.7 sets forth a formula for determining the net emission increase of SO₂, TSP, PM-10, NO_x, CO, lead and VOC; and adds a table which states how large an increase will be considered a "significant net emission increase." This formula is consistent with the Department's current rules for determining net emission increases, and is being provided to clarify the components of such a determination.

The formula takes into account emission increases and decreases which occurred during the "contemporaneous" period. As discussed above, this period begins five years before the construction or alteration of equipment or control apparatus begins, and ends when operation of the new or altered equipment or control apparatus begins. Under the existing rule, a facility must analyze all of its allowable emission increases from December 21, 1976 to the present. Therefore, the proposed amendment reduces this burden on the facility in analyzing past emission increases and in related recordkeeping, while maintaining consistency with the CAA requirements.

The proposed criteria for determining whether a net emission increase is a "significant net emission increase" is consistent with the Federal rules at 40 CFR 51, and Title I of the CAA. Specifically, the level at which an increase would be considered significant would be as follows:

Pollutant	Existing Significant Emission Increase Level	Proposed Significant Net Emission Increase Level
CO	50 tons per year	100 tons per year
NO _x	50	25
VOC	50	25
TSP	50	25
PM-10	n/a	15
SO ₂	50	40
Lead	0.6	0.6

The definition of "significant emission increase" in the existing rules also include an hourly threshold of 100 pounds per hour, and a daily threshold of 1,000 pounds per day, for each of the pollutants listed above (except PM-10). These thresholds were based on EPA's Emission Offset Interpretative Ruling codified at 40 CFR 51, Appendix S, which have been largely superseded by the CAA. Since the CAA and the Federal rule only consider net emission increases calculated on an annual basis, the Department is proposing to eliminate the use of hourly and daily emission rates in determining if a "significant net emission increase" would occur. This would make New Jersey's procedure for determining significant net emission increases more consistent with the CAA and the Federal rule. This proposed amendment would also reduce the burden on facilities required to calculate net emission increases by reducing the documentation needed to demonstrate net emission increases.

In some cases, a facility may be able to reduce or avoid offset requirements by reducing its own total emissions so as to keep its emission increase from becoming a significant net emission increase. This process is commonly known as "netting." In effect, netting is the same as offsetting, except that the offsetting reductions come from within the boundaries of the particular facility planning an emission increase. Like reductions used as offsets, any reductions used for netting must occur during the contemporaneous period.

The Department expects that N.J.A.C. 7:27-18.7 will eliminate any confusion caused by the wording of the existing definition of "significant emission increase," and standardize the methods which facilities use to determine whether a significant net emission increase will occur.

N.J.A.C. 7:27-18.8 Banking of emission reductions

The current N.J.A.C. 7:27-18.7 provides for "banking" of emission reductions for a facility desiring to reserve creditable emission reductions for future use as emission offsets. The proposed amendments recodify this section as N.J.A.C. 7:27-18.8, and make minor clarifications and modifications. The existing rules require that if the emissions reduction from shutting down a source is to be eligible for banking, the Department must have an opportunity to inspect the source before it is dismantled. The proposed amendments provide that this inspection opportunity must be at least 30 days before dismantling, to allow the Department sufficient

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time to evaluate the information collected during the inspection and reinspect the equipment if necessary and require the banking application be certified in accordance with N.J.A.C. 7:27-8.24. The proposed amendments also add a cross-reference to the fee schedule at N.J.A.C. 7:27-8.11. The proposed amendments do not change this fee schedule. The remainder of the amendments to this provision are clarifications which do not change the meaning of the existing rule.

The proposed amendments also add N.J.A.C. 7:27-18.8(f) and (g). Under N.J.A.C. 7:27-18.8(f), the value of a banked emission reduction, obtained from the shutdown or curtailment of operation of equipment or source operations, is discounted by 50 percent five years after it is submitted for banking. The value of the discounted portion of the banked reduction reverts back to the State. In addition, under N.J.A.C. 7:27-18.8(g), the remaining value will revert to the State, 10 years after the banked emission reduction is submitted for banking. The State can use these reverted emission reductions in showing "reasonable further progress" toward attainment of a NAAQS for a criteria pollutant. In the future, the Department may also consider using these discounted emission reductions for economic development purposes. Such provisions would be developed with the Department of Commerce and Economic Development and the Department of Labor. This proposed discounting and eventual reversion of banked emission reductions would encourage emission trading, because if the holder of an emission offset cannot use it immediately, there will be an incentive to trade it before discounting reduces its value. As a result, the Department expects this provision to enhance economic growth while helping to demonstrate reasonable further progress towards attaining the NAAQS.

Under N.J.A.C. 7:27-18.8(h), it is clarified that the discounting of banked emissions reductions occurs automatically, without any action by the Department. For the purpose of discounting emissions banked prior to the effective date of the amendments, N.J.A.C. 7:27-18.8(i) would treat these emissions as if they were submitted for banking on the operative date of the amendments. N.J.A.C. 7:27-18.8(j) clarifies that the service fees in N.J.A.C. 7:27-18.11 apply to applications for approval of banking. The proposed amendments do not make any changes to this fee schedule.

N.J.A.C. 7:27-18.9 Secondary emissions

The current N.J.A.C. 7:27-18.8 sets forth requirements for secondary emissions, such as emissions from marine vessels or railroad cars associated with the construction, installation or operation of a new or altered facility. The proposed amendments recodify this section as N.J.A.C. 7:27-18.9, and make minor changes to clarify it without changing its meaning.

N.J.A.C. 7:27-18.10 Exemptions

The current N.J.A.C. 7:27-18.9 establishes an exemption from Subchapter 18 for certain uses of alternative fuels in existing fuel-burning equipment. The proposed amendments recodify this section as N.J.A.C. 7:27-18.10, and revise it to include terminology changes made elsewhere in the rule.

Additionally, the emission offset exemption provisions for portable and temporary experimental facilities that are codified at N.J.A.C. 7:27-18.6 of existing rules are recodified at N.J.A.C. 7:27-18.10(b) with minor clarifications without change to their meaning.

N.J.A.C. 7:27-18.11 Procedures for intrastate and interstate trading

No procedures are proposed in the rule for interstate trading. While intrastate trading for emission offsets have occurred, there has been no interstate trading, primarily because there are no workable mechanisms to govern such trades. EPA will be adopting revised New Source Review rules and a new Economic Incentive policy, which are expected to include provisions that will set the framework for any intrastate and interstate trading program. The Department intends to address interstate trading, after these Federal requirements are published. The Department intends to promulgate detailed trading procedures for intrastate and interstate trading in the future. Such rules will be developed in cooperation with EPA and other states, through the Ozone Transport Commission.

N.J.A.C. 7:27-18.12 Civil or criminal penalties for failure to comply

Proposed new rule N.J.A.C. 7:27-18.12 expressly states that failure to comply with Subchapter 18 may subject a person to all applicable penalties.

Recodification of Existing Sections of Subchapter 18

For organizational clarity, the following table lists the rule sections and their location as a result of the proposed repeals, new rules and amendments. Unless otherwise specified, any reference made in the

summary section shall refer to the location specified in the "Proposed Location" section.

Current N.J.A.C. 7:27 Section	Action	Recodified N.J.A.C. 7:27 Location
18.1 Definitions	None	18.1 Definitions
18.2 General provisions	Divide	18.2 Facilities subject to this subchapter and 18.3 Standards and issuance of permits
18.3 Air quality impact review	Move	8.4(j) Applications for permits and certificates and 18.4 Air quality impact analysis
18.4 Emission offset demonstration	Move	18.5 Standards for use of emission reductions as offsets
18.5 Emission offset postponement	Move	18.6 Emission offset postponement
18.6 Emission offset exemption	Move	18.10(b)
18.7 Banking of emissions	Move	18.8 Banking of emission reductions
18.8 Secondary emissions	Move	18.9 Secondary emissions
18.9 Exemption for alternative fuel	Move	18.10 Exemptions
18.10 Applicability	Move	1.36 Applicability
...	New section	18.7 Determination of net emission increase or a significant net emission increase
...	New section	18.11 Procedures for interstate and intrastate trading
...	New section	18.12 Civil or criminal penalties for failure to comply

Social Impact

Subchapter 18 allows economic growth in industrialized areas of New Jersey without negative environmental and health impacts. The proposed new rules and amendments will have several positive social impacts. As discussed below, the proposed amendments will help protect the public health and welfare, by furthering New Jersey's efforts to comply with the NAAQS and NJAAQS for ozone, TSP, SO₂, and CO. In addition, as mandated by the CAA, the proposed amendments eliminate certain differences between Subchapter 18 and the corresponding Federal regulations, 40 CFR 51.165. This consistency between the State and Federal regulations will allow New Jersey to continue to issue air pollution control permits for new sources and avoid Federal sanctions and Federal issuance of such permits.

The ambient air concentration of ozone throughout the State exceeds the NAAQS. The proposed amendments will increase the effectiveness of Subchapter 18 in controlling VOC and NO_x emissions from commercial and industrial sources, a step which is necessary in order to reduce ozone concentrations.

New Jersey's exceedance of the ozone NAAQS is a serious public health concern. Exposure to ozone in concentrations greater than the NAAQS may decrease pulmonary function in humans, as evidenced by chest pain, coughing and wheezing. Such exposure also may result in lung damage. Ozone also increases the ability of inhaled infectious viruses to survive within the lungs. In addition to this adverse effect on the lungs' ability to resist infections, laboratory studies have shown that ozone accelerates the lungs' aging process. A reduction of the ambient ozone in New Jersey will produce a corresponding reduction of respiratory problems associated with exposure to the current ambient ozone concentration.

The proposed amendments also will increase the effectiveness of Subchapter 18 in controlling emissions of CO, TSP and SO₂ from commercial and industrial sources. Harmful health effects result from the presence of CO, TSP, and SO₂ in the atmosphere. At 10 parts per million, CO interferes with the oxygen carrying capacity of the blood, causing reduced awareness. SO₂ aggravates respiratory disease and impairs breathing. Particulates can be inhaled deep into the lungs, where they become lodged and interfere with lung function.

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The following tables outline the areas of the State which currently are non-attainment areas for TSP, SO₂, CO and ozone:

Table I—Areas Identified By NJDEPE
Which Are Nonattainment For Total Suspended Particulates

City of Camden
Borough of Carteret
City of Elizabeth
City of Jersey City and all of Hudson County
City of Linden
City of Newark (east of the Garden State Parkway)
City of Perth Amboy
Township of Woodbridge

Table II—Areas Designated By EPA
Which Are Nonattainment For Sulfur Dioxide

Town of Belvidere
Township of Harmony
Portion of Township of Liberty
Portion of Township of Mansfield
Township of Oxford
Township of White

Table III—Areas Designated by EPA
Which Are Nonattainment For Carbon Monoxide

Bergen County
Essex County
Hudson County
Passaic County (part)
City of Clifton
City of Patterson
City of Passaic
Union County
Camden County
City of Atlantic City
City of Burlington
Borough of Freehold
Portion of Borough of Penns Grove
City of Perth Amboy
Borough of Somerville
City of Toms River
City of Trenton
Town of Morristown

Table IV—Areas Designated By USEPA
Which Are Nonattainment For Ozone

Entire State of New Jersey

Economic Impact

The proposed new rules and amendments will have both positive and negative impacts upon facilities which are subject to Subchapter 18. The impacts of the specific changes are discussed in more detail below.

Applicability

As a result of the proposed amendments, some facilities that would be subject to Subchapter 18 will no longer be subject. However, other facilities not currently subject to Subchapter 18 will become subject. The Department expects that the net result will be that a larger number of new or modified facilities will be subject to Subchapter 18.

The specific changes affecting applicability of Subchapter 18 are discussed below.

Subchapter 18 is applicable to certain facilities proposing a significant net emission increase of a criteria pollutant. The following changes narrow the applicability of Subchapter 18:

1. Restriction of applicability to "major facilities." Under existing rule, Subchapter 18 is applicable whenever emission increases proposed in a permit application would result in a significant net emission increase for the facility. In these proposed new rules and amendments, the subchapter would apply only if the facility is a major facility or if the proposed emission increase in itself is large enough to equal or exceed the major facility threshold level. As the major source threshold level is higher (that is, less stringent) than the significant net emission increase level for SO₂, TSP, PM-10, and lead in the proposed new rules and amendments, some permit applications may no longer be subject to this subchapter.

2. Use of "contemporaneous" period. Changes in the procedures for determining a "significant net emission increase" may result in fewer

facilities being subject to these rules. Under the existing rules, the extent of a net emissions increase is based upon all of a facility's allowable emission increases from December 21, 1976 to the present. Under the proposed new rules and amendments, the only emissions increases considered are those which occurred during the "contemporaneous" period beginning five years before the construction or alteration of equipment or control apparatus begins, and ending when operation of the new or altered equipment or control apparatus begins.

3. Increase in threshold level for CO. The proposed new rules and amendments raise the threshold level beyond which an increase in CO emissions is considered a "significant net emission increase" from 50 tons per year to 100 tons per year. This change could result in fewer facilities emitting CO being subject to this rule.

The following changes broaden the applicability of Subchapter 18. As a result, some new and modified facilities which were not subject to Subchapter 18 under the existing rules, or would have been outside the scope of Subchapter 18 as a result of the changes discussed above, will become subject:

1. Decrease in threshold for VOC, NO_x, TSP and SO₂. The proposed new rules and amendments lower the threshold level beyond which an increase in emissions of VOC, NO_x, TSP or SO₂ is a "significant net emission increase." As a result of this change, emissions increases from more facilities will be considered "significant net emission increases" subjecting the facility to Subchapter 18.

2. Inclusion of PM-10. The proposed new rules and amendments establish a threshold level beyond which an increase in emissions of PM-10 is a "significant net emission increase." As a result of this change, more particulate emission increases will be considered "significant net emission increases" possibly subjecting facilities to Subchapter 18 in the future. However, at this time there are no designated nonattainment areas for PM-10 in New Jersey, so this provision is only relevant if a new violation of the PM-10 NAAQS would be caused.

3. Regulating nitrogen oxides as a precursor to the formation of ozone. Under the proposed new rules and amendments, NO_x will be regulated as an air contaminant which is a precursor to ozone formation in accordance with Section 182(d) of the CAA. Because the entire State is not attaining the NAAQS or NJAAQS for ozone, any facility in New Jersey causing a significant net emission increase of NO_x would be subject to similar requirements as a facility causing a significant net emission increase of VOC. As a result of this change, more types of emissions increases will be considered "significant net emission increases" subjecting the facility to Subchapter 18.

4. Elimination of the emission offset postponement under N.J.A.C. 7:27-18.6. The proposed amendments eliminate the ability of certain types of facilities (specifically, resource recovery sources, equipment which must switch fuels because of fuel availability, or equipment altered to comply with a State or Federal regulation or directive) to apply to the Department for a postponement of the required date for complying with the emission offset requirements.

Becoming subject to Subchapter 18 would have a negative economic impact on a facility. The economic impact results from requiring the facility to:

1. Submit an air quality impact analysis;
2. Use lowest available emission rate (LAER) technology;
3. Obtain emission offsets; and
4. Demonstrate that the environmental and social costs of the new or altered equipment are significantly outweighed by its benefits.

Under the Department's existing rules, the sources to which Subchapter 18 applies are already required to obtain an air pollution control permit and certificate under N.J.A.C. 7:27-8.2(a). A facility which is subject to Subchapter 18 would already be subject to some of the same or similar requirements pursuant to Subchapter 8 in order to obtain the permit and certificate. The requirements under N.J.A.C. 7:27-8 include air quality impact analyses pursuant to N.J.A.C. 7:27-8.4(f), and the implementation of advances in the art of air pollution control for the type and amount of contaminant emitted, pursuant to N.J.A.C. 7:27-8.6(b). The air quality impact analysis required by N.J.A.C. 7:27-8.4(f) is the same analysis that would be necessary to comply with Subchapter 18. Furthermore, the inclusion of a PM-10 air quality impact analysis requirement in Subchapter 18 has already been a requirement in N.J.A.C. 7:27-8.4(f). The control efficiency mandated by N.J.A.C. 7:27-8.6(b) could be equivalent to LAER and is usually a significant percentage of the costs of LAER. Therefore, the additional economic burden caused by Subchapter 18 is incremental.

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The costs of installing LAER equipment and control apparatus, and obtaining emission offsets, can vary significantly. This can be attributed to the type of equipment proposed and the type of pollutant emitted.

In terms of estimating the costs of LAER equipment, it may be found that controlling emissions of a particular pollutant may not be technically feasible. In such a case, the incremental cost of using LAER equipment would be zero. In other cases, installing add-on control apparatus to reduce pollutant emissions may be technically feasible. Although the applicant may already be required to install the control apparatus under N.J.A.C. 7:27-8, Subchapter 18 may require the applicant to use equipment with a higher control efficiency, which may increase costs significantly.

The range of costs for obtaining emission offsets can also vary significantly, depending on the type of pollutant emitted, and its availability as an emission offset. The proposed new rules and amendments that would discount banked emissions could also potentially reduce the cost of obtaining emission offsets by providing holders of offsets an incentive to sell creditable emission reductions before discounting reduces their value.

Since the Department does not require the submittal of the costs associated with obtaining emission offsets, it is difficult to determine the economic impact of such emission trades. A recent emission trade between two Midwest utilities to comply with the acid rain provisions of the CAA was reported to cost approximately \$300.00 per ton. The price range for obtaining emission offsets in the South Coast Air Quality Management District during the second half of 1991 reportedly ranged from \$123.00 to \$730.00 per ton. In New Jersey, there have been unverified reports of offsets costing as much as \$2,000 per ton.

While purchasing LAER equipment and obtaining emission offsets are usually one-time costs, the annual operation and maintenance costs of the LAER equipment may be higher than the operating and maintenance costs of non-LAER equipment. This increased cost is usually the result of the requirement to achieve higher control efficiencies.

In addition, the following summarizes how the proposed new rules and amendments not listed above would impact the costs of a facility subject to Subchapter 18.

Increase in the CO "Significant Net Emission Increase" Level

Increasing the CO "significant net emission increase" level from 50 tons per year to 100 tons per year would have a positive economic impact. This change would result in reduced costs to those facilities proposing significant net emission increases of CO of between 50 and 100 tons per year.

Use of Contemporaneous Period

The use of the contemporaneous period in determining emission increases could have a significant beneficial economic impact to existing facilities since emission increases that occurred outside of the contemporaneous period would not be included in the determination of significant net emission increases. This change would result in fewer facilities becoming subject to Subchapter 18, resulting in a potentially significant cost savings in not being required to use LAER equipment and obtain emission offsets. In addition, this change could also decrease the amount of offsets required for existing facilities that are subject to Subchapter 18. The use of the contemporaneous period will also result in reduced costs in determining if a significant net emission increase would occur by reducing the amount of paperwork and calculation needed in the determination. Although this savings would be negligible for facilities with few source operations, the savings could be significant for larger facilities.

Regulating NO_x as a Precursor to Ozone

Since the entire State is nonattainment for ozone, the number of facilities made subject to this subchapter as a result of regulating NO_x as a precursor to ozone is expected to increase. These facilities would be required to use LAER equipment and obtain emission offsets for NO_x emission increases. This could result in significant economic impacts to certain facilities that would add equipment which combusts fuel to generate steam or electricity, or to incinerate waste, since NO_x emissions generally occur as a result of combustion. The exact extent of the cost to these facilities would vary greatly, depending on the magnitude of NO_x emission, and is expected to be mitigated to some degree by reducing the minimum NO_x offset ratio.

Reducing the Minimum Offset Ratio for VOC and NO_x

Reducing the minimum offset ratio for VOC and NO_x from 2:1 to 1.3:1 would have an economic benefit to facilities proposing significant

net emission increases of VOC since the proposed amendments reduce the amount of offsets required in the existing rules by about one-third. For facilities that would be required to obtain NO_x or VOC offsets under the proposed amendments, but not under the existing rules, the reduction in the minimum NO_x and VOC offset ratio would mitigate the costs in obtaining emission offsets.

Elimination of Emission Offset Postponements

The elimination of emission offset postponements for resource recovery sources may have a negative economic impact on the resource recovery industry, because new resource recovery sources may have to be downsized, relocated, or not constructed if sufficient offsets are not available. Downsizing may deny a facility the advantage of economies of scale. Relocation may increase startup, transportation, and other expenses related to source siting. The exact extent of these costs will vary greatly, depending upon the circumstances of the particular resource recovery source in question.

Department Costs

The new rules and amendments to Subchapter 18 would have a minor economic impact on the Department. The Department will need to commit additional resources to implement Subchapter 18. As stated, a greater number of sources would be subject to Subchapter 18 as a result of the modifications. This would mean Department personnel spending more time making LAER determinations, and reviewing emission offset transactions and significant net emission increase calculations.

In addition, the Department will be reviewing more air quality impact analyses. The Department currently reviews about 6,000 Air Pollution Control (APC) permit and certificate applications annually. The Department expects that approximately one percent of these applications will be subject to Subchapter 18. No additional APC permit and certificate applications will be required as a result of the modifications to Subchapter 18.

Economic benefits resulting from emission reductions

The proposed new rules and amendments will result in improved air pollution control, reduced emissions, more cost-effective emission reduction, and ultimately the economic benefits of clean air. The impact on the general public of not improving the air quality is very significant. The American Lung Association has recently estimated the cost of health problems attributed to air pollution, including the loss of worker productivity, to be in the range of \$4.43 to \$93.49 billion dollars per year, nationally. New Jersey has an extremely high density of industrial sources as compared to other states. For this reason, taking all prudent measures to limit the emission of air pollutants from industrial sources is an essential step in reducing these pollutants.

Failure to meet the statutory deadline could result in the imposition by EPA of mandatory sanctions on the State. The most likely sanction would be the loss of certain Federal highway funds for New Jersey. As an example, in fiscal year 1992, up to \$415 million of Federal highway funds could have been withheld were such sanctions in effect. Also, EPA could prohibit or restrict the issuance of permits for proposed major sources of nonattainment pollutants.

Economic Benefits from Emission Trading

Trading to obtain emission reductions for use as emission offsets is a necessity for new facilities subject to these rules. Trading may also be the most practical and cost effective means of obtaining offsets for expansion of an existing facility. Since 1985, a number of facilities within the State have engaged in such trading in order to secure the emission offsets required under these rules. The banking provision of these rules has facilitated this trading process by providing a clearinghouse for emission reductions which can potentially be used as emission offsets.

The Department also is evaluating the expansion of emissions trading and other market-based approaches to enable business and industry within the State to find lower cost methods of achieving compliance with environmental standards. Allowing the flexibility inherent in these market-based approaches may contribute to the economic health of the State economy and help achieve air quality standards faster.

As such, the trading mechanisms contained in the rules should be viewed as a precursor to broader market-based approaches to be developed and implemented over the next few years. The Department intends to aggressively pursue the development of these programs and invites comment on the types of emission trading programs and approaches that should be considered.

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To date, the emissions trading that has occurred has been between facilities within the State. Comment on the advisability of allowing interstate trading and on the most appropriate design of the administrative mechanisms needed is also invited.

Environmental Impact

The proposed new rules and amendments will have a positive environmental impact. The Department expects the proposed new rules and amendments to result in a reduction in the concentration of air contaminants for which the State is exceeding the ambient air quality standards (AAQS), and would prevent the violation of AAQS in areas that are now in attainment. Currently, certain areas of the State are not attaining the AAQS for TSP, CO, and SO₂. The entire State is exceeding the AAQS for ozone, for which VOC and NO_x are precursors. The primary objective of these amendments is the attainment of the AAQS in New Jersey for all criteria pollutants. In addition, the proposed new rules and amendments are mandated by the Federal nonattainment provisions at 40 CFR 51.165 and the CAA.

Elevated ozone concentrations not only pose threats to public health, as discussed in the Social Impact statement above; they also injure plants and damage property. Foliar damage to sensitive plants is one of the earliest and most obvious manifestations of ozone injury to the environment. Subsequent effects include reduced plant growth and decreased crop yield. The reduction in the ambient ozone concentration which would result from the proposed rule will help relieve damage to plants, improving agricultural productivity, and supporting healthier growth of both natural vegetation and ornamental plantings. Due to its oxidizing ability, ozone also degrades rubber, textiles, dyes, and paints. Natural rubbers and synthetic polymers become hard or brittle at a faster rate by oxidation at elevated ozone concentrations than by oxidation in the presence of atmospheric oxygen. The attainment of the ozone AAQS would mitigate the increased rate of degradation of natural and man-made materials, thus preventing the property damage caused by ozone.

SO₂ and NO_x react in the atmosphere to form sulfates and nitrates, respectively. These compounds are a constituent of "acid rain" and of the haze commonly seen over metropolitan areas. Acid rain damages plants and trees, cuts crop yields, and injures aquatic life by acidifying lakes and streams. The reductions in SO₂ and NO_x emissions brought about by the amendments would help to alleviate the acid rain problem in New Jersey and other states.

CO interferes with the oxygen carrying capacity of the blood in animals. Although the amendments would increase the level of CO emissions which constitute a significant net emission increase, CO impacts caused by stationary sources are insignificant especially when compared to mobile sources. Therefore, the proposed new rules and amendments are not expected to cause adverse CO effects for wildlife.

TSP in the air reduces the amount of sunlight reaching the ground, decreases visibility, and increases haze and precipitation. Smaller particulates, such as PM-10, may travel long distances on wind currents. Unlike larger particles, which are cleared rapidly from the nose and upper airways, tiny particulates are inhaled deep into the lungs of animals, where they become lodged and interfere with lung function. A variety of chemicals, including some toxics, may cling to the particulates, thereby increasing the danger to wildlife. The reduction of TSP emissions and the introduction of a PM-10 standard brought about by these amendments will help to alleviate this problem.

The provisions for discounting and eventual reversion of banked creditable emission reductions obtained from shutdown or curtailment of operations will have a positive environmental impact. If these banked reductions could be offset against new emission increases forever, there would be less incentive to avoid or reduce such emission increases, because there would be a greater supply of the banked reductions available for offsetting. The emission reduction credits obtained by overcontrolling existing source operations would not be discounted. This would encourage industries to overcontrol existing source operations to generate emission credits and cause further improvements in air quality.

The discounting and reversion of banked emission reductions which could have been used to offset emission increases, the "discounting" provision at N.J.A.C. 7:27-18.8(f) and (g), would effectively eliminate those emissions from occurring again. Instead, they would be used by the State in demonstrating reasonable further progress in attaining the NAAQS.

The proposed amendments would increase the number of facilities that must obtain emission offsets and install control technologies that represent LAER, by reducing the significant net emission increase thresholds for VOC, NO_x, TSP, and SO₂; establishing a threshold for

PM-10; and recognizing NO_x as a precursor to ozone formation. These requirements would help to enable New Jersey to attain the NAAQS and NJAAQS for all pollutants. The proposed amendments to Subchapter 18 can therefore be expected to prevent and control the emission of criteria pollutants and their precursors, and help to protect the environment from the adverse effects caused by exposure to pollutant concentrations above the AAQS.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act at N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed new rules and amendments would impose additional compliance requirements on small businesses, as defined by the Regulatory Flexibility Act ("any business which is resident in New Jersey, independently owned and operated, not dominant in its field, and which employs fewer than 100 full time employees"). These small businesses could include such types of operations as cogeneration facilities and surface coating facilities. Any facility, even if it is a small business under the Regulatory Flexibility Act, is subject to these rules if it is a major facility in terms of its potential to emit air contaminants and causes a significant net emission increase during a contemporaneous time period of greater than 100 tons per year (tpy) of CO; 40 tpy of SO₂; 25 tpy of NO_x, VOC, or TSP; 15 tpy of PM-10; or 0.6 tpy of lead. Since all facilities are currently subject to this Subchapter if they cause an emission increase of 50 tpy of VOC, NO_x, CO, SO₂, TSP, or 0.6 tpy of lead, it is expected that the primary impact would be to small businesses that are major facilities, and propose to cause an emission increase of between 25 and 50 tpy of VOC, NO_x, or TSP; between 40 and 50 tpy of SO₂; or 15 tpy or more of PM-10. The affected small businesses would be required to conduct air quality impact analyses. Depending on the location and magnitude of the air quality impacts from these emissions, the affected small businesses may also be required to use air pollution control technologies in order to achieve the Lowest Achievable Emission Rate, and to obtain emission offsets. It is likely that these new rules and amendments would impose some additional costs on the affected small businesses due to the dedication of employees and employment of consultants and/or contractors to implement these requirements.

It is expected that initial capital costs for affected small facilities would vary widely. For example, capital costs would be negligible to an affected small business proposing a significant net emission increase of an air contaminant in an attainment area, while not causing a violation of an ambient air quality standard nor significantly contributing to a violation of a standard in a nonattainment area. However, costs could be substantial to those affected small businesses that are required to install and operate LAER equipment and obtain emission offsets. As discussed in the Economic Impact statement above, the costs depend on the amount, type, and location of the net emission increases. Also, these facilities may already be subject to the requirements of Subchapter 18, so that the cost from these rules may only be incremental.

The Department has attempted to minimize the impact of Subchapter 18 on small businesses by minimizing the time period which must be examined to determine the extent of an emission increase. By limiting this examination to the period beginning five years before the construction or alteration begins, instead of the period beginning December 21, 1976, the proposed new rules and amendments reduce the cost of determining the extent of an emission increase, thereby reducing the cost of determining whether compliance with Subchapter 18 is required.

The Department has also reduced the minimum offset ratio required for VOC and NO_x, and increased the significant net emission increase level for CO, both of which reduce the impact of these rules on small businesses.

However, some facilities operated by small businesses may be subject to Subchapter 18 because they have a relatively large potential to emit criteria pollutants. Accordingly, in preparing these new rules and amendments, the Department has balanced the impact upon small businesses against the environmental and health impacts from facilities operated by small businesses. The Department has also considered the potential effect of exemptions or reduced requirements for small businesses upon New Jersey's efforts to comply with the CAA and of Federal regulations, and the potential cost New Jersey would incur if it did not comply (as discussed in the Economic Impact statement above). Based upon this analysis, the Department has not proposed to exempt small businesses as a class from the requirements of Subchapter 18, or to reduce compliance, recordkeeping or reporting requirements for small businesses.

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

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Interested Persons see Inside Front Cover

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7:27-1.4 Definitions

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

... "CFR" means the Code of Federal Regulations.

... "Department" means the New Jersey Department of Environmental Protection and Energy.

... "EPA" means the United States Environmental Protection Agency.

... "State" means the State of New Jersey.

... "USC" means United States Code.

7:27-1.36 Applicability

Compliance with any subchapter of this chapter shall not relieve any person of the obligation to comply with all other applicable provisions of this chapter.

7:27-1.37 Severability

If any portion of this chapter or the application thereof to any person or circumstance is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter and the application thereof to other persons or circumstances shall not be affected thereby, and shall remain in full force and effect.

7:27-1.38 Liberal construction

This chapter, being necessary to promote the public health and welfare, and to protect the environment, shall be liberally construed to permit the Department to discharge its statutory functions under the Act.

7:27-8.1 Definitions

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

... "Carbon monoxide" or "CO" means a gas having a molecular composition of one carbon atom and one oxygen atom.

... "Federally enforceable" means all limitations and conditions on operation, production, or emissions which can be enforced by the EPA pursuant to authorities which include, but are not limited to, those established in:

1. Any standards of performance for new stationary sources (NSPS) promulgated at 40 CFR 60;
2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR 61;
3. Any provision of an applicable SIP; or
4. Any permit issued pursuant to requirements established at 40 CFR 51, Subpart I; 40 CFR 52.21; 40 CFR 70; 40 CFR 71; or this chapter.

... "Lead" or "Pb" means elemental lead or any compound containing lead.

... "Major facility" means a facility which has the potential to emit any air contaminant listed below in an amount which is equal to or exceeds the major facility threshold level given below for that air contaminant. A facility that is a major facility in respect to any one air contaminant shall be deemed to be a major facility in respect to all air contaminants listed below. The major facility threshold levels are as follows:

Air Contaminant	Major Facility Threshold Level
Carbon monoxide	100 tons per year
PM-10	100 tons per year
TSP	100 tons per year
Sulfur dioxides	100 tons per year
Oxides of nitrogen	25 tons per year
VOC	25 tons per year
Lead	10 tons per year

... "Oxides of nitrogen" or "NO_x" means all oxides of nitrogen including, but not limited to, nitric oxide and nitrogen dioxide, except nitrous oxide.

... "PM-10" means a class of air contaminants which includes all particulate matter having an aerodynamic diameter less than or equal to a nominal 10 micrometers.

"Potential to emit" means the capability of a source operation or of a facility to emit an air contaminant at maximum design capacity, except as constrained by any Federally enforceable condition. Such Federally enforceable conditions may include, but are not limited to, the effect of installed control apparatus, restrictions on the hours of operation, and restrictions on the type or amount of material combusted, stored, or processed.

... "Significant net emission increase" means an emission increase of any air contaminant determined pursuant to the procedures set forth in N.J.A.C. 7:27-18.7 to be a significant net emission increase.

... "Sulfur dioxide" or "SO₂" means a gas that has a molecular composition of one sulfur atom and two oxygen atoms.

... "Total suspended particulate matter" or "TSP" means any air contaminant dispersed in the outdoor atmosphere which exists as solid particles or liquid particles at standard conditions and is measured in accordance with N.J.A.C. 7:27B-1; 40 CFR 60, Appendix A, Methods 5 through 5H; or another method approved by the Department and EPA.

7:27-8.3 General provisions

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

(k) Any person holding a permit or certificate may decrease any of the following as an amendment of the permit or certificate, provided that the decrease does not entail any change made to equipment or control apparatus or the use thereof, or otherwise constitute an alteration as defined in N.J.A.C. 7:28-8.1:

1. Any maximum allowable rate of emission of any contaminant or category of air contaminant limit;
2. Any maximum allowable hours of operation per time period; or
3. Any maximum allowable rate of production.

7:27-8.4 Applications for Permits and Certificates

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

(f) Upon request of the Department, and in accordance with a protocol approved in advance by the Department, the applicant for a permit shall demonstrate [by], utilizing an air quality impact analysis[, including air quality simulation modeling.] conducted in accordance with (k) below and [possibly], as deemed necessary by the Department, ambient air monitoring and risk assessment, whether the maximum controlled emissions stated on the permit application may cause:

1.-2. (No change.)

3. [A threshold] An increase in ambient air concentration that equals or exceeds the significant air quality effect level, as set forth in Table 1 of N.J.A.C. 7:27-[18.3(a)] 18.4(a), in a nonattainment area for any air contaminant; or

4. (No change.)

(g)-(i) (No change.)

(j) An applicant for a permit shall conduct an air quality impact analysis in accordance with (k) below if:

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1. The application is subject to PSD air quality impact analysis requirements set forth at 40 CFR 52; or

2. The proposed maximum allowable emissions of air contaminant would result in a significant net emission increase, as calculated in accordance with N.J.A.C. 7:27-18.7, and:

i. The facility for which the application is submitted is a major facility; or

ii. The emission increase, proposed in the application for any air contaminant, by itself equals or exceeds the major facility threshold level which determines if a facility is a major facility for that air contaminant, as set forth in the definition of the term "major facility" at N.J.A.C. 7:27-8.1.

(k) An air quality impact analysis shall be conducted in accordance with a protocol approved in advance by the Department. The Department shall not approve a protocol unless it takes all relevant site-specific and general factors into account. These factors include, but are not limited to, a land use analysis, proper consideration of topography, a good engineering practice stack height analysis, use of the most recent version of EPA-approved models, identification of the most appropriate meteorological data, and consideration of all relevant averaging times. The protocol shall document how the person proposes to conduct the air quality impact analysis and how the results of the analysis would be presented to the Department. Technical guidance on the preparation of a protocol and procedures for obtaining approval of a protocol may be requested from:

New Jersey Department of Environmental Protection
and Energy
Air Quality Regulation Program
401 East State Street
Trenton, NJ 08625-0027
Attention: Air Quality Evaluation

7:27-8.24 Certification of information

(a) (No change.)

(b) The following documents shall be additionally certified as set forth in (c) and (d) below:

1. Any permit application[,] which is subject to any PSD requirement or [any provisions] to N.J.A.C. 7:27-18.2 of the emission offset rules [contained in N.J.A.C. 7:27-18.2(a) or (b)]; or

2. (No change.)

(c)-(e) (No change.)

7:27-18.1 Definitions

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

"Actual emissions" means the actual rate of emissions of an air contaminant from a source operation, equipment, or control apparatus. The actual rate of emissions, as of a particular date, shall equal the average rate at which the air contaminant was actually emitted during the two calendar years that are immediately preceding the particular date and that are representative of normal source operation. The Department may allow the use of a time period different from this year period only upon a determination that the different time period is more representative of normal operation. Actual emissions shall be calculated using the actual operating hours, production rates, and types of materials used, processed, stored, or combusted during the selected time period. Generally, the particular date may be the permit application date or other date specified by the Department. For any equipment, source operation, or control apparatus which has not begun normal operations as of the particular date, the Department shall assume that its actual emissions equal its allowable emissions. Actual emissions shall be expressed in tons per year.

"Aerodynamic diameter" means the theoretical diameter of a nonspherical particle having the same terminal settling velocity as an equally dense, spherical particle of such diameter.

"Air contaminant" means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases [which are discharged into the outdoor atmosphere].

"Air quality impact analysis" means a procedure, entailing the use of an air quality simulation model, for determining whether air contaminant emissions will result in an ambient air concentration that exceeds a standard established for the protection of human health and welfare and the environment.

"Air quality simulation model" means a mathematical procedure [for predicting the ambient air], taking into account the dispersive capacity of the atmosphere, meteorological data, topography, and other relevant factors, to predict the concentration of [pollutants resulting from the dispersive properties of the atmosphere] an air contaminant in the ambient air.

"Allowable emission" means the rate at which an air contaminant may be emitted into the outdoor atmosphere. [For the purposes of this subchapter, the allowable emissions] This rate shall be based on the maximum rated capacity of the equipment [or on Federally] unless the equipment is subject to Federally enforceable [permit conditions] limits which [limit] restrict the operating rate, hours of operations or both[, and on]. In such cases this rate is based on the most stringent of the following:

1. Applicable [new source] standards of performance [standards] for new stationary sources (NSPS) as set forth in 40 CFR [Part] 60;

2. Applicable national emission standards for hazardous air pollutants (NESHAP) as set forth in 40 CFR [Part] 61;

3. Applicable emission, equipment, and operating standards as set forth in this [Chapter] chapter, including those with a future compliance date; [and]

4. [The maximum emission rate specified as a condition of the last applicable permit in effect prior to an emission reduction approved by the Department for an emission offset or for banking.] Applicable emission limitations specified in a Federally enforceable permit, including limitations with a future compliance date; and

5. Any emission limitation in an applicable State Implementation Plan (SIP).

"Alter" means to effect an alteration of equipment or control apparatus.

"Alteration" [means any change made to equipment or control apparatus or the use thereof, or in a process; including but not limited to any physical change, change in material being processed, or a change in the rate of production except where such a production rate change does not increase the quantity of air contaminants emitted or does not change the quality or nature of the air contaminant emitted] has the meaning as defined for this term at N.J.A.C. 7:27-8.1.

"Alternative fuel" means, with respect to any source operation, any fuel whose use is not authorized by any permit or, for a source operation without a permit, this term means any fuel not used in the source operation since December 21, 1976.

"Ambient [Air Quality Standard] air quality standard" means a limit on the concentration of [a] an air contaminant in the general outdoor atmosphere as set forth in N.J.A.C. 7:27-13 or in 40 CFR [Part] 50.

"Attainment area" means any area [identified by the Department as one in which the ambient air concentration for a criteria pollutant does not exceed an ambient air quality standard] of the State which is not a nonattainment area.

"Banking" means [reserving approved emission reductions] the reservation of creditable emission reductions, pursuant to N.J.A.C. 7:27-18.8, for future use as emission offsets.

"Carbon monoxide" or "CO" means a gas having a molecular composition of one carbon atom and one oxygen atom.

"CAA" means the Clean Air Act as amended November 1990 (42 USC 7401 et seq., as amended by Pub. L. 101-549).

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary, as determined by the Department, for processing the application. Designating an application complete for purposes of permit processing does not preclude the Department from requesting or accepting any additional information.

"Contemporaneous" means, in respect to the construction of new or altered equipment, occurring within a time period which includes:

1. The five years prior to the initiation of the construction; and
2. The period between the initiation of construction and the initiation of operation of that new or altered equipment.

"Control apparatus" means any device which prevents or controls the [emissions] emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Creditable emission reduction" means a decrease in actual emissions which meets the conditions listed in 1 through 6 below. A decrease is a creditable emission reduction only to the extent that the pre-decrease level of actual emissions or the pre-decrease level of allowable emissions, whichever is lower, exceeds the new level of allowable emissions. Decreases in allowable emissions attributable to equipment or control apparatus that was permitted, but never operated, shall not be considered a creditable emission reduction. In order to be a creditable emission reduction, the decrease must be:

1. Contemporaneous with the construction of the new or altered equipment;
2. Quantifiable;
3. Federally enforceable;
4. Not required pursuant to any Federal or State law, rule, permit, order, or other legal document;
5. Not relied on by the Department in the SIP or any revision thereto, adopted by the Department, to demonstrate attainment or maintenance of a NAAQS or to demonstrate reasonable further progress toward attainment of a NAAQS; and
6. Verifiable, to the satisfaction of the Department, to have in fact occurred.

"Criteria pollutant" means [ozone (O₃), total suspended particulate matter (TSP), sulfur oxides measured as sulfur dioxide (SO₂), nitrogen dioxide (NO₂), volatile organic substances (VOS) measured as non-methane hydrocarbons, carbon monoxide (CO), or lead (Pb), or any other air contaminant for which national ambient air quality standards have been adopted] any air contaminant for which a NAAQS has been promulgated under 40 CFR 50 or for which a NJAAQS has been promulgated in N.J.A.C. 7:27-13.

["Department" means the Department of Environmental Protection.]

"Emission offset" means a [legally enforceable] creditable emission reduction, approved by the Department for, in the rate of actual emissions from an existing facility, which reduction is used] use to offset [the] an increase in allowable emissions of an air [contaminants] contaminant from a [new or altered] facility.

["Employee commuter travel control measures" means methods used by an employer to reduce the amount of air contaminant emissions due to travel of his employees getting to and from the place of employment. Such methods may include, but are not limited to, ride sharing programs (car pooling or van pooling), preferential parking programs, employee incentives to use mass transportation, staggered work hours, and vehicle emission control programs.

"Employer business travel control measures" means methods used by an employer to reduce the amount of air contaminant emissions due to company related travel. Such methods may include, but are not limited to, ride sharing programs, optimization of delivery schedules, staggered work hours, vehicle emissions control programs, alternative fuel and alternative propulsion systems.]

"Equipment" means any device capable of causing the emission of an air contaminant [into the open air] either directly or indirectly into the outdoor atmosphere, and any stack[,] or chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment. This term includes, but is not limited to, equipment in which the preponderance of the air contaminants emitted is caused by a manufacturing process.

"Facility" means the combination of all structures, buildings, equipment, storage tanks, source operations, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person.

"Federally enforceable" means all limitations and conditions on operation, production, or emissions which can be enforced by the EPA pursuant to authorities which include, but are not limited to, those established in:

1. Any standards of performance for new stationary sources (NSPS) promulgated at 40 CFR 60;
2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR 61;
3. Any provision of an applicable SIP; or
4. Any permit issued pursuant to requirements established at 40 CFR 51, Subpart I; 40 CFR 52.21; 40 CFR 70; 40 CFR 71; or this chapter.

"Fugitive emissions" means any emissions of an air contaminant released directly or indirectly into the [open air] outdoor atmosphere which [does] do not pass through any stack or chimney.

"Lead" or "Pb" means elemental lead or any compound containing lead.

"Lowest [Achievable Emission Rate] (LAER)] achievable emission rate" or "LAER" means [the] a limitation on the rate of emission from any source operation, equipment, [facility,] or control apparatus which [incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted by the equipment or facility. For purposes of this subchapter, advances in the art of air pollution control shall result in an emission limitation at least as stringent as] is consistent with the most stringent of the following:

1. The most stringent emission limitation which is contained in the [implementation plan] SIP of any [State] state for such class or category of source operation, equipment, or [facility] control apparatus, unless the owner or operator of the proposed new or altered equipment or [facility] control apparatus demonstrates to the satisfaction of the Department that such [limitations are] a limitation is not achievable by that equipment or control apparatus; [or]

2. The most stringent emission limitation which is achieved in practice by such class or category of source operation, equipment, or [facility; whichever is more stringent. In no event shall the application of this term permit proposed new or altered equipment or facilities to emit any pollutant in excess of the amount allowable under applicable federal new source standards of performance] control apparatus; or

3. The most stringent emission limitation established in any NSPS or NESHAP applicable to such class or category of equipment or control apparatus.

"Major facility" means a facility which has the potential to emit any air contaminant listed below in an amount which is equal to or exceeds the major facility threshold level given below for that air contaminant. A facility that is a major facility in respect to any one air contaminant shall be deemed to be a major facility in respect to all air contaminants listed below. The major facility threshold levels are as follows:

Air Contaminant	Major Facility Threshold Level
Carbon monoxide	100 tons per year
PM-10	100 tons per year
TSP	100 tons per year
Sulfur dioxide	100 tons per year
Nitrogen oxides	25 tons per year
VOC	25 tons per year
Lead	10 tons per year

"Minimum offset ratio" means the minimum acceptable ratio of emission offsets [from an existing facility] to increases in the allowable emissions [from a new or altered] for a facility.

"Motor vehicle" means a vehicle propelled otherwise than by muscular power, excepting motorized bicycles and such vehicles as run only upon rails or tracks.

"National ambient air quality standard" or "NAAQS" means an ambient air quality standard promulgated at 40 CFR 50.

"NESHAP" means National Emission Standards for Hazardous Air Pollutants as promulgated under 40 CFR 61.

"Net air quality benefit" means, in the area affected by a proposed emission increase of an air contaminant, a net decrease in the ambient concentration of the respective criteria pollutant for the air contaminant.

“Net emission increase” means, in respect to any air contaminant emitted at a facility, an increase calculated in accordance with the procedures set forth at N.J.A.C. 7:27-18.7(a).

“New Jersey ambient air quality standard” or “NJAAQS” means an ambient air quality standard promulgated at N.J.A.C. 7:27-13.

“Nitrogen dioxide” or “NO₂” means a gas that has a molecular composition of one nitrogen atom and two oxygen atoms.

“Nonattainment area” means any area [identified] of the State:

1. Identified by the Department as one in which the ambient air concentration of a criteria pollutant exceeds an ambient air quality standard; or

2. Designated by the EPA at 40 CFR 81.331 as an area in which the ambient air concentration of a criteria pollutant exceeds the applicable NAAQS.

3. “NSPS” means Standards of Performance for New Stationary Sources as promulgated under 40 CFR 60, commonly referred to as New Source Performance Standards.

“Operating certificate” means a “Certificate to Operate Control Apparatus or Equipment” issued by the Department pursuant to the Air Pollution Control Act of 1954, and in particular N.J.S.A. 26:2C-9.2, which is valid for a period of five years from the date of issuance, unless sooner revoked by the Department.

“Oxides of nitrogen” or “NO_x” means all the oxides of nitrogen including, but not limited to, nitric oxide and nitrogen dioxide, except nitrous oxide.

“Ozone” or “O₃” means a gas having a molecular composition of three oxygen atoms.

“Permit” means a “Permit to Construct, Install, or Alter Control Apparatus or Equipment” [as required in accordance with the provisions of] issued by the Department pursuant to the Air Pollution Control Act (N.J.S.A. 26:2C-1 et seq.), and in particular N.J.S.A. 26:2C-9.2, and [subchapter 8 (Permits and Certificates) of this chapter] N.J.A.C. 7:27-8.

“Person” [includes] means any individual or entity and shall include corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof.

“Plume rise” means the vertical distance from the point at which an effluent stream is discharged into the outdoor atmosphere to the highest point attained by the center line of the effluent stream.

“PM-10” means a class of air contaminants which includes all particulate matter having an aerodynamic diameter less than or equal to a nominal 10 microns.

“Potential to emit” means the capability of a source operation or of a facility to emit an air contaminant at maximum design capacity, except as constrained by any Federally enforceable condition. Such Federally enforceable conditions may include, but are not limited to, the effect of installed control apparatus, restrictions on the hours of operation, and restrictions on the type or amount of material combusted, stored, or processed.

“Reasonable further progress” or “RFP” means such annual incremental [reduction] reductions in emissions to the outdoor atmosphere of [a criteria pollutant which are sufficient, in the judgement of the Department, to provide for] an air contaminant as are required by the CAA for the purpose of ensuring attainment of the [applicable ambient air quality standard as required by the Clean Air Act, as amended August, 1977 (42 U.S.C. 7401 et seq.)] NAAQS for the respective criteria pollutant by the applicable statutory deadline.

“Resource recovery source” means any equipment used for processing solid waste (including refuse derived fuel and sewage sludge) for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. For the purpose of this subchapter energy conversion equipment must use solid waste to provide more than 50[%] percent of the heat input to be considered a resource recovery source.

“Respective criteria pollutant” means the corresponding criteria pollutant for each air contaminant listed in Table 3 of N.J.A.C. 7:27-18.7. The following are the air contaminants listed in Table 3, and their respective criteria pollutants:

Category of Air Contaminants	Respective Criteria Pollutant
TSP	TSP
PM-10	PM-10
SO ₂	SO ₂
CO	CO
NO _x	NO ₂ and O ₃
VOC	O ₃
Pb	Pb

“Secondary emissions” means emissions to the outdoor atmosphere which occur as [a] an indirect result of the construction or operation of [a] new or altered source operations, equipment or control apparatus at a facility and which affect the air quality of the same general area [for the purpose of this subchapter] as emissions [resulting from] occurring as a direct result of the new or altered source operation, equipment or control apparatus. [within the facility. Emissions resulting from motor vehicle or aircraft traffic generated by the new or altered facility are not secondary emissions for the purposes of this subchapter. Secondary emissions include] This term includes, but [are] is not limited to:

1. Emissions from marine vessels or from vehicles running upon rails or tracks where such vessels or vehicles are associated with the construction or operation of the [facility] new or altered source operation, equipment or control apparatus. The term does not, however, include emissions resulting from motor vehicle or aircraft traffic; and

2. Emissions from off-site support facilities which would be constructed or whose rate of emissions would otherwise increase as a result of the construction or operation of the [primary facility] new or altered source operation, equipment, or control apparatus.

“Significant air quality effect level” means an increase, greater than or equal to that specified in Table 1 at N.J.A.C. 7:27-18.4, in the ambient air concentration of a criteria pollutant.

“Significant net emission increase” means [an increase, at a new or altered facility, since December 21, 1976, in the rate of allowable emissions, including fugitive emissions, of lead that is greater than or equal to 0.6 ton per year, or of any other criteria pollutant that is greater than or equal to 50 tons per year, 1,000 pounds per day, or 100 pounds per hour, not including decreases in the rates of actual emissions that are below allowable emissions except where such decreases are contemporaneous with emission increases. The increases in the rates of allowable emissions shall be the cumulative total of increases from all new or altered equipment for which permits have been issued or required on or after December 21, 1976 and the fugitive emissions associated with that equipment. The hourly and daily rates shall apply only with respect to a pollutant for which an ambient air quality standard for a period not exceeding 24 hours has been established. Any emission increase that is considered significant for volatile organic substances shall be considered significant for ozone] an emission increase of any air contaminant determined pursuant to the procedures set forth in N.J.A.C. 7:27-18.7 to be a significant net emission increase.

“Source operation” means any process or any identifiable part thereof that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere.

“Stack or chimney” means a flue, conduit or opening designed, [and] constructed, or used for the purpose of emitting any air [contaminants] contaminant into the outdoor [air] atmosphere.

“State Implementation Plan” or “SIP” means a plan for the attainment of NAAQS, adopted by a state and approved by the EPA pursuant to Section 110 of the Clean Air Act (42 USC 1857 et seq.).

“Sulfur dioxide” or “SO₂” means a gas that has a molecular composition of one sulfur atom and two oxygen atoms.

[“Threshold increase” means an increase in ambient air concentration of a pollutant in an area which is nonattainment for that pollutant, by an amount equal to or greater than specified in Table 1 of this subchapter.]

“Total suspended particulate matter” or “TSP” means any air contaminant dispersed in the outdoor atmosphere which exists as solid particles or liquid particles at standard conditions and is

measured in accordance with a test method at N.J.A.C. 7:27B-1; 40 CFR 60, Appendix A, Methods 5 through 5H; or another test method approved by the Department and EPA.

"Transportation control measure" or "TCM" means a measure directed toward reducing air contaminant emissions from motor vehicles. Such measures include those identified in Section 108(f)(1)(A), including the removal from use and the marketplace of pre-1980 model year light duty vehicles and pre-1980 model year light duty trucks.

"Volatile organic compound" or "VOC" shall have the meaning defined for this term at N.J.A.C. 7:27-16.1.

[7:27-18.2 General provisions

(a) No person shall cause, suffer, allow or permit an emission increase in any area of the State which will cause a threshold increase in a nonattainment area, of a criteria pollutant, not including volatile organic substances, for which the area is nonattainment, as determined by the air quality impact review required by section 3 of this subchapter, unless compliance with subsection (c) of this section is demonstrated.

(b) No person shall cause, suffer, allow or permit a significant emission increase in a nonattainment area, of a criteria pollutant for which that area is nonattainment, unless compliance with subsection (c) of this section is demonstrated.

(c) Any person required by (a) or (b) above to comply with this subsection shall demonstrate that:

1. Each new or altered equipment and facility is controlled to the degree which represents the lowest achievable emission rate (LAER) for the relevant criteria pollutant; and

2. All existing facilities owned or operated by the person (or an entity controlling, controlled by, or under common control with the person) in New Jersey are in compliance with the provisions of this Chapter and with all applicable emission limitations and standards promulgated pursuant to the Federal Clean Air Act as amended, 42 U.S.C. 7401 et seq., or are in conformance with an enforceable compliance schedule approved by the Department; and

3. Emission offsets in accordance with the provisions set forth in section 18.4 (Emission Offset Demonstration) of this subchapter are secured from existing facilities; and

4. All employer business travel control measures and employee commuter travel control measures have been analyzed to assess the feasibility of their use at the subject facility. Analysis of ride-sharing shall include participation in the state ride-sharing program; and

5. For a new or altered facility which would cause a significant emission increase in volatile organic substances, an analysis has been made of alternative sites, sizes, production processes, and environmental control techniques for such facility demonstrating that the benefits of the proposed facility significantly outweigh the environmental and social costs imposed as a result of its location, construction or alteration.

(d) No person shall cause, suffer, allow or permit an emission increase which has been determined, in accordance with N.J.A.C. 7:27-18.3(a) to cause a new violation of an ambient air quality standard, unless emission offsets, in accordance with the provisions of N.J.A.C. 7:27-18.4 (Emission offset demonstration), have been secured to eliminate such predicted violation.

(e) Once a facility is permitted to cause a significant emission increase in a nonattainment area for a criteria pollutant for which that area is nonattainment and has complied with the requirements of this section:

1. The requirements of (c)3, (c)4, and (c)5 above shall again become applicable when proposed new construction or alterations at the facility would cause the increase in the rate of allowable emissions of that criteria pollutant to again exceed the significant emission increase. The accumulation of increases in the rate of allowable emissions shall resume from zero after each application of (c)3 and (c)4 above;

2. The requirements of (c)1 and (c)2 above shall be applicable to each subsequent construction or alteration which increases the rate of allowable emissions for the relevant criteria pollutant.

(f) Once a facility is permitted to offset a threshold increase in a nonattainment area, for a criteria pollutant for which that area

is nonattainment, and has complied with the requirements of this section:

1. The requirements of paragraphs (c)3, (c)4, and (c)5 of this section shall again become applicable if proposed new construction or alteration of the facility would again cause a threshold increase in a nonattainment area, for a criteria pollutant for which that area is nonattainment, as determined by the air quality impact review required by section 3 of this subchapter; and

2. The requirements of paragraphs (c)1 and (c)2 of this section shall be applicable to each subsequent construction or alteration which increases the rate of allowable emissions for the relevant criteria pollutant.]

7:27-18.2 Facilities subject to this subchapter

(a) The requirements set forth in this subchapter pertain to certain applications, submitted to the Department pursuant to N.J.A.C. 7:27-8, for a permit to construct, install, or alter control apparatus or equipment at a facility. No person applying for a permit is subject to this subchapter unless either (b) or (c) below applies and:

1. The facility for which the application is submitted is a major facility; or

2. The emission increase for any air contaminant, proposed in the application, by itself equals or exceeds the major facility threshold level. The major facility threshold level determines if a facility is a major facility for that air contaminant and is set forth in the definition of the term "major facility" at N.J.A.C. 7:27-18.1.

(b) Except as provided in (a) above, a person applying for a permit is subject to this subchapter if any allowable emissions proposed in the application would result in a significant net emission increase of any air contaminant listed in Table 3 of N.J.A.C. 7:27-18.7, and if the facility for which the construction or alteration is proposed is located in an area which is any of the following:

1. Nonattainment for the respective criteria pollutant corresponding to that air contaminant. The respective criteria pollutant for each air contaminant is listed in the definition of the term "respective criteria pollutant" at N.J.A.C. 7:27-18.1;

2. Attainment for the respective criteria pollutant, and both (b)1i and ii below are true:

i. The proposed emission increase would result in an increase in the ambient concentration of the respective criteria pollutant in an area that is nonattainment for the respective criteria pollutant, as determined by an air quality impact analysis required under N.J.A.C. 7:27-8.4(j); and

ii. The increase in the ambient concentration of the respective criteria pollutant equals or exceeds the significant air quality effect level specified in Table 1 in N.J.A.C. 7:27-18.4, in the nonattainment area for the respective criteria pollutant; or

3. Attainment for the respective criteria pollutant, and the allowable emissions proposed in the application would result in a violation of an applicable NAAQS or NJAAQS, as determined by an air quality impact analysis required under N.J.A.C. 7:27-8.4(j).

(c) Except as provided in (a) above, a person applying for a permit is subject to this subchapter, if:

1. Emission offsets for an air contaminant have been previously required at the facility for which the permit is sought; and

2. The construction or alteration proposed in the application would result in a net emission increase, which is not a significant net emission increase, of that air contaminant within the contemporaneous period. A net emission increase shall be calculated pursuant to N.J.A.C. 7:27-18.7 for the air contaminant for which offsets were required.

(d) This subchapter shall not apply to any person applying for a permit, if the allowable emissions proposed in the application would result in no net emission increase, as calculated pursuant to N.J.A.C. 7:27-18.7(a).

7:27-18.3 Standards for issuance of permits

(a) The Department shall not issue a permit to any person subject to this subchapter unless such person has demonstrated that the facility will be in compliance with all of the applicable requirements

of this subchapter at the time the new or altered equipment commences operation.

(b) Any person subject to this subchapter pursuant to N.J.A.C. 7:27-18.2(a) and 18.2(b)1, (b)2, or (c), shall:

1. Demonstrate that air contaminant emissions from the equipment proposed to be constructed or altered will be controlled to the degree which represents the lowest achievable emission rate (LAER); and

2. Certify, in accordance with N.J.A.C. 7:27-8.24, that all existing facilities in New Jersey, which are owned or operated by the person applying for the permit, or by any entity controlling, controlled by, or under common control with such person, are operating:

i. In compliance with the provisions of this chapter and with all applicable emission limitations and standards promulgated pursuant to the Federal Clean Air Act; or

ii. In conformance with an enforceable compliance schedule approved by the Department.

(c) Any person subject to this subchapter pursuant to N.J.A.C. 7:27-18.2(a) and 18.2(b)1 or 2 shall:

1. Secure emission offsets, in accordance with N.J.A.C. 7:27-18.5, for each air contaminant having a significant net emission increase at the facility; and

2. Submit to the Department an analysis of alternative sites within New Jersey, and of alternative sizes, production processes and environmental control techniques, demonstrating that the benefits of the new or altered equipment significantly outweigh the environmental and social costs imposed as a result of the location, construction or alteration, and operation of the new or altered equipment.

(d) Any person subject to this subchapter pursuant to N.J.A.C. 7:27-18.2(a) and 18.2(b)3 shall secure emission offsets, sufficient to eliminate any predicted violation of the NAAQS or NJAAQS.

(e) Any person required to secure emission offsets pursuant to (c)1 or (d) above shall submit to the Department, as a part of the application for the permit, an emission offset demonstration that specifies:

1. The sources of the air contaminant emission reductions to be applied as emission offsets;

2. How the emission reductions shall be effected;

3. How achieving the permanent reduction of the emissions on or before the commencement of the operation of new or altered equipment shall be ensured; and

4. How the emission offsets to be secured will comply with N.J.A.C. 7:27-18.5.

(f) No person required to secure emission offsets pursuant to (c)1 or (d) above shall commence operation of any new or altered equipment or control apparatus, until such person secures the required emissions offsets and the emission reductions represented by the offsets have in fact occurred.

(g) A person who, prior to November 15, 1992, has submitted a complete application to the Department for a permit which is subject

to this subchapter may elect, under the conditions given below, to have the provisions of this subchapter which were in effect prior to the operative date of these amendments, rather than the provisions of the subchapter which are in effect on or after the operative date of these amendments, apply to the application. The emission offset postponement provisions, set forth at N.J.A.C. 7:27-18.5 prior to the operative date of these amendments, are excluded from this election. The emission offset postponement provisions in effect on or after the operative date of these amendments, set forth at N.J.A.C. 7:27-18.6, shall apply to all permits which the Department determines to be complete on or after November 15, 1992, regardless of the date on which the permit application was submitted. To elect to have the provisions which were in effect prior to the operative date of these amendments apply, a person shall:

1. Have received from the Department in writing, prior to November 15, 1992, a determination that the application is complete;

2. Commence the new construction or alteration as proposed in the application no later than 18 months from the date the permit is issued by the Department;

3. Not discontinue the new construction or alteration for a period of 18 months or more; and

4. Pursue the new construction or alteration with due diligence and complete the new construction or alteration within a reasonable time.

7:27-[18.3]18.4 Air quality impact [review] analysis

(a) Any person, subject to this subchapter pursuant to N.J.A.C. 7:27-18.2(a) and (b), who proposes to cause a significant net emission increase[, at a facility,] of an air contaminant listed in Table 3 of N.J.A.C. 7:27-18.7, not including VOC, shall conduct an air quality impact analysis to determine whether the proposed net emission increase would result in an increase in the ambient concentration of [a] the respective criteria pollutant, not including [volatile organic substances (VOS), must determine, by means of an air quality simulation model approved by the Department, whether the proposed emission increase of any criteria pollutant would cause:

1. A threshold increase in ambient air concentration, as set forth in Table 1, to be exceeded in any nonattainment area for the criteria pollutant, not including volatile organic substances, for which that area is nonattainment; and

2. A new violation of an ambient air quality standard.] ozone, and shall determine whether the increase in ambient concentration would:

1. Equal or exceed the significant air quality effect level for the respective criteria pollutant as set forth in Table 1; or

2. Taken together with the existing concentration of the criteria pollutant in the ambient air, cause a violation of a NAAQS or a NJAAQS.

TABLE 1
[THRESHOLD INCREASES] SIGNIFICANT AIR QUALITY EFFECT LEVELS FOR INCREASES IN AMBIENT AIR CONCENTRATIONS [FOR] IN NONATTAINMENT AREAS

Pollutant	Averaging Time				
	Annual	24-Hour	8-Hour	3-Hour	1-Hour
SO ₂	1.0 ug/m ³ *	5 ug/m ³		25 ug/m ³	
TSP	1.0 ug/m ³	5 ug/m ³			
NO ₂	1.0 ug/m ³				
CO			[0.5mg/m ³]500 ug/m ³		[2mg/m ³]2000 ug/m ³
Pb		0.1 ug/m ³			
PM-10	1.0 ug/m ³	5 ug/m ³			

*ug/m³ = micrograms per cubic meter

[(b) The determinations required by (a) above shall:

1. Consider all increases and contemporaneous decrease in the rate of allowable emissions since December 21, 1976 at the facility except for increases offset under the provisions of N.J.A.C. 7:27-18.2(c)3 and (d); and

2. Be required with each permit which causes the cumulative total of increases in the rates of allowable emissions of a criteria pollutant to exceed a multiple of the significant emission increase, not including increases offset under the provisions of N.J.A.C. 7:27-18.2(c)3 and (d).]

(b) Any person conducting an air quality impact analysis pursuant to (a) above is subject to the air quality impact analysis service fees set forth in the Supplementary Fee Schedule at N.J.A.C. 7:27-8.11.

7:27-[18.4]18.5 Standards for use of [Emission offset demonstration] emission reductions as offsets

(a) [Any person required to secure emission offsets in accordance with the requirements of this subchapter must achieve such offsets on or before the commencement of operation of the new or altered facility by:] Only a creditable emissions reduction, as defined at N.J.A.C. 7:27-18.1, may be used to offset an emission increase.

(b) Creditable emission reductions may result from:

1. Installing [air pollution] control [equipment which reduces the rate of the actual emissions to less than that of the allowable emissions] apparatus to decrease the actual emissions from existing equipment or source operations; [or]

2. Applying fugitive emissions control measures which reduce the rate of [the] actual emissions to less than [that of] the allowable emissions; [or]

3. [Using] Obtaining emission reductions banked [under] pursuant to [the provisions of] N.J.A.C. 7:27-[18.7]18.8; [or]

4. [Reducing] Permanently curtailing the production rate or operating hours [to less than the actual rates or hours for the year immediately preceding such reductions or for any representative year within 5 years of the reductions. For volatile organic substances (VOS), winter reductions of actual emissions may not be used to offset summer increases in allowable emissions] of an existing source operation; [or]

5. [Establishing and supporting employer business travel control measures or employee commuter travel control measures, provided that the reductions are quantifiable and enforceable and that they are not already required by the New Jersey State Implementation Plan for attaining and maintaining national ambient air quality standards; or] Implementing one or more transportation control measures (TCM);

6. Shutting down an existing source operation;

[6.]7. Adopting any other [measures] measure approved by the Department, including, but not limited to, pollution prevention measures, [for reducing] that reduces the rate of actual emissions [to less than that of the] or allowable emissions, whichever is lesser.

[(b) Emission offsets required by this subchapter must:

1. Exceed the minimum offset ratio and be within the respective distance specified in Table 2; and

2. Be of like quality and nature to the emissions being offset; and

3. Have an effective stack height no greater than that of the emissions being offset in the cases of sulfur dioxide, lead, and suspended particulates; and

4. Be provided in a manner that will not cause summer increases of allowable volatile organic substances (VOS) emissions to be offset by winter reductions of actual emissions; and

5. In the case of lead, come from the same facility as the increase or from the facility which is causing the lead ambient air quality standards to be exceeded. The minimum offset ratio for lead is 1.00:1.

TABLE 2

Distance of Offsets From Facility (Miles)		Minimum Offset Ratio
VOC & NO ₂	SO ₂ , TSP, CO	
—	0-0.5	1.00:1
—	0.5-1.0	1.5:1
0-100	1.0-2.0	2.00:1
100-250	—	4.00:1
250-500	—	8.00:1]

(c) Except as provided in (e), (f) or (g) below, the ratio of emission offsets to the proposed net increase in allowable emissions shall exceed the minimum offset ratio, specified in Table 2 below, that is applicable based on the distance between the facility and the location of the emission reductions being proposed as emission offsets.

TABLE 2
MINIMUM OFFSET RATIO

Air Contaminant	Distance (miles)	Minimum Offset Ratio (Reductions: Increase)
VOC	0-100	1.3:1.0
	100-250	2.6:1.0
	250-500	5.2:1.0
NO _x	0-100	1.3:1.0
	100-250	2.6:1.0
	250-500	5.2:1.0
SO ₂	0-0.5	1.0:1.0
	0.5-1.0	1.5:1.0
	1.0-2.0	2.0:1.0
TSP	0-0.5	1.0:1.0
	0.5-1.0	1.5:1.0
	1.0-2.0	2.0:1.0
PM-10	0-0.5	1.0:1.0
	0.5-1.0	1.5:1.0
	1.0-2.0	2.0:1.0
CO	0-0.5	1.0:1.0
	0.5-1.0	1.5:1.0
	1.0-2.0	2.0:1.0

(d) The minimum offset ratio for lead is 1.00:1.00.

[(c)](e) [The minimum offset ratios specified in Table 2 shall not apply if the] The Department may approve a lower minimum offset ratio or a greater distance than that specified in Table 2 if:

1. The Department determines that reasonable further progress toward attainment of the [ambient air quality standard] NAAQS or NJAAQS allows [or requires that different minimum offset ratios be applied.] a lower minimum offset ratio or greater distance; or [Any person may petition the Department for the application of an emission offset different from those specified in Table 2 if it is shown by an air quality simulation model that a net air quality benefit would result from the proposed emission offset.]

2. The applicant demonstrates to the Department, using an air quality simulation model, that the lower emission offset ratio or greater distance would result in a net air quality benefit.

(f) Notwithstanding (e) above, in no case shall the minimum offset ratio be less than:

1. For CO, 1.00:1.00; and
2. For VOC and NO_x, 1.30:1.00.

(g) Creditable emission reductions may be used as emission offsets only if they are emission reductions of the same category of air contaminant, and must be qualitatively equivalent in their effects on public health and welfare to the effects attributable to the proposed increase.

(h) Reductions in emissions of VOC or NO_x between November 1 and March 31 inclusive, may not be used to offset increased emissions of VOC or NO_x emitted between April 1 and October 31 inclusive.

(i) Emission reductions used previously as emission offsets, or used in calculating the proposed net emission increase, in ac-

cordance with N.J.A.C. 7:27-18.7(a)1, may not be used again as emission offsets.

(j) Except as provided in (k) below, the emission reductions used to offset emission increases shall be secured from the affected nonattainment area. That is, if the facility at which the emission increase is to occur is located in a nonattainment area, the emission reductions shall be secured at the applicant's facility or from another facility located in the same nonattainment area as the applicant's facility. If the facility at which the emissions increase is to occur is located in an attainment area, the emission reductions shall be secured from a facility in the nonattainment area whose air quality could be adversely affected by the proposed construction or alteration.

(k) Any emission offsets for lead shall be obtained from:

1. The facility to which the application for a permit pertains; or
2. A facility which is causing the NAAQS or NJAAQS for lead to be exceeded in the same general area as the facility for which an application for a permit has been made.

7:27-[18.5]18.6 Emission offset postponement

[Any person responsible for a significant emission increase from a resource recovery source, equipment which must switch fuels because of fuel availability, or equipment altered to comply with a state or federal regulation or directive, may apply to the Department for a postponement for complying with the provisions of N.J.A.C. 7:27-18.2(c)3 provided the person demonstrates that emission offsets are not immediately available. The Department may authorize such a postponement until such time as emission offsets become available at which time the person must secure such offsets without delay.]

(a) If the Department has authorized a postponement before the operative date of these amendments, for complying with N.J.A.C. 7:27-18.3(c)1 or (d), to any person, the postponement will continue in effect until one year after the emission offsets become available, provided that the person complies with (b) below.

(b) Until emission offsets become available, any person who has received a postponement described in (a) above shall demonstrate to the Department annually that emission offsets are unavailable and shall certify that demonstration in accordance with N.J.A.C. 7:27-8.24.

(c) Any person who has received a postponement described in (a) above shall obtain emission offsets within one year after they become available.

(d) A postponement shall terminate if a person fails to comply with (b) or (c) above.

[7:27-18.6 Emission offset exemption

The provisions of N.J.A.C. 7:27-18.2(c)3 shall not apply to emissions from temporary facilities including, but not limited to, portable facilities which will be relocated outside of the nonattainment area within six months of commencement of operations and pilot plants which will cease production of an experimental product within six months of commencement of operation.]

7:27-18.7 Determination of a net emission increase or a significant net emission increase

(a) Any calculation to determine whether the maximum allowable emissions proposed in an application for a permit would result in a net emission increase or a significant net emission increase at the facility of any air contaminant listed in Table 3 below shall be conducted in accordance with the following:

1. Determine the net emission increase of each air contaminant listed in Table 3 using the following formula:

$$NI = IP + INP + IF + IA - DO - DC$$

Where:

NI = The net emission increase at the facility;

IP = Any increase(s) in the allowable emissions of the air contaminant which occurred during the contemporaneous period and which were authorized by permits issued by the Department;

INP = Any increase(s) in the allowable emissions of the air contaminant which occurred during the contemporaneous period and which came from any equipment

or control apparatus for which no permit was in effect at the time of the increase;

IF = Any increase in fugitive emissions of the air contaminant from the facility during the contemporaneous period;

IA = Any proposed increase in allowable emissions of the air contaminant from the new or altered equipment or control apparatus which is the subject of the permit application;

DO = Any increase(s) in the allowable emissions of the air contaminant which occurred during the contemporaneous period, if emission offsets were secured for these increases from the facility or from another facility; and

DC = The sum of all creditable emission reductions at the facility during the contemporaneous period, not including any creditable emission reductions previously used as emission offsets at the facility or any other facility.

2. Compare the net emission increase of each air contaminant, derived pursuant to (a)1 above, to the significant net emission increase level for that air contaminant set forth in Table 3 below. If the net emission increase is equal to or greater than the applicable significant net emission increase level, it is a significant net emission increase.

TABLE 3
SIGNIFICANT NET EMISSION INCREASES

Air Contaminant	Significant Net Emission Increase Levels (tons per year)
SO ₂	40
TSP	25
PM-10	15
NO _x	25
CO	100
Pb	0.6
VOC	25

7:27-[18.7]18.8 Banking of [emissions] emission reductions

(a) [The Department may credit a] Any person [with] may apply to the Department for the banking of emission reductions [achieved in accordance with the provisions of N.J.A.C. 7:27-18.4(a).] to be applied in the future as emission offsets. The applicant shall make the application in writing, submitted on a form obtained from the Department, containing the following information: name and address of person making the application; chemical name of air contaminant; quantity of emission reductions with supporting calculations and documentation; reason for the emission reduction; specification of the equipment or source operations related to the emission reductions; and any additional information reasonably necessary to enable the Department to determine that a creditable emission reduction has been achieved. Such a form may be requested from:

New Jersey Department of Environmental Protection and Energy
Air Quality Regulation Program
Bureau of New Source Review
CN 027
Trenton, New Jersey 08625-0027

(b) Any application for the banking of emission reductions shall be certified in accordance with N.J.A.C. 7:27-8.24.

(c) [To obtain such credit, documentation of emission reductions must be submitted to the Department within] An application to bank emission reductions shall be made no later than 12 months after the emission reduction occurs. [For a shutdown source to] No emission reductions due to the shutdown of any equipment or source operation shall be eligible for banking [consideration], unless the applicant [must notify] notifies the Department at least 60 days prior to removal of the equipment [so] and provides the Department [has] with the opportunity to inspect the equipment or source operation at least 30 days before it is dismantled.

(d) [Emission] Any emission reductions[, if approved by] submitted to the Department for banking, shall [become] be an enforceable operating restriction for the facility.

(e) [Such banked emission reductions will be adjusted in accordance with the allowable emission rates in effect at the time when the banked emission reductions are offered to offset emissions from new or altered facilities.] If a State or Federal statute, rule, or regulation decreases an allowable emission limit for an air contaminant, the value of any banked emission reductions of that air contaminant shall be reduced, before discounting pursuant to (f) or (g) below, to equal the allowable emission limits in effect at the time the banked emission reductions are used to offset emission increases. The following example illustrates this reduction:

1. Assume that a CO reduction of 10 tons per year is approved for banking, and that seven years after that approval, the CO limit applicable to the equipment is reduced to four tons per year;

2. If the banked emission reduction is used five years after it was approved for banking, under (f) below its value is discounted by 50 percent, to five tons per year; and

3. If the banked emission reduction is used eight years after it was approved for banking (which is after the date of the change in the applicable CO limit), its value is reduced to two tons per year, as follows: first, from 10 tons per year to four tons per year, to reflect the reduction in the applicable CO limit; and second, from four tons per year to two tons per year, to reflect the 50 percent discount under (f) below.

(f) The value of banked emission reductions obtained from the shutdown or curtailment of operation of any equipment or source operation which remain unused as emission offsets for more than five years after the date the emission reduction is submitted for banking shall be discounted by 50 percent. The discounted portion of the banked emission reductions may no longer be used as an emission offset, but shall revert to the State.

(g) Any banked emission reductions obtained from the shutdown or curtailment of operation of any equipment or source operation which remain unused as emission offsets for 10 years after the date they have been submitted for banking, shall revert to the State. These emission reductions may no longer be used as emission offsets.

(h) Any discount of or reduction in the value of banked emission reductions pursuant to (e), (f) or (g) above shall take effect without further action by the Department.

(i) For the purposes of the discounting provisions set forth in (f) and (g) above, the Department shall treat any emission reductions which have been submitted for banking prior to the operative date of these amendments, as if they were submitted for banking on the operative date of these amendments.

(j) Any person applying for banking of emission reductions pursuant to this section is subject to the service fees for banking set forth in the Base Fee Schedule at N.J.A.C. 7:27-8.11.

7:27-[18.8]18.9 Secondary emissions

[(a) Any person, who, as a result of the construction of or alteration to a facility, is required to meet the provisions of section 2 of this subchapter must certify that any sources of secondary emission increases which are:

1. Under his control and which are associated with the facility, will meet all the provisions of section 2 this subchapter as well; and

2. Not under his control and which are associated with the facility, will meet the provisions of N.J.A.C. 7:27-18.2(c)3 as well.]

(a) Any person subject to this subchapter pursuant to N.J.A.C. 7:27-18.2(a) and 18.2(b)1, (b)2, or (c) shall certify that any increases in secondary emissions under the person's control will meet all requirements of N.J.A.C. 7:27-18.3.

(b) Any person subject to this subchapter pursuant to N.J.A.C. 7:27-18.2(a) and 18.2(b)1, (b)2, or (c) shall certify that any increases in secondary emissions not under the person's control will meet the requirements of only N.J.A.C. 7:27-18.3(c)1.

(c) The certifications required under (a) and (b) above shall be submitted with the permit application and shall be made in accordance with N.J.A.C. 7:27-8.24.

7:27-[18.9]18.10 [Exemption for alternative fuel] Exemptions

(a) [Where] If a person [has demonstrated that] demonstrates that a proposed significant net emission increase of an air contaminant which results from the use of alternative fuels in existing fuel

burning equipment will not cause [a threshold increase, in a nonattainment area, of] an exceedance of the significance level for the respective criteria pollutant in a nonattainment area for that pollutant [a criterion pollutant for which that area is nonattainment for a primary National Ambient Air Quality Standard (NAAQS)], and will not prevent reasonable further progress toward attaining any [secondary] NAAQS, the Department may, in its discretion, exempt [a] the person from compliance with the provisions of this subchapter [upon a further demonstration]. No exemption shall be granted unless the person demonstrates, at a minimum, that:

1. The equipment was capable of burning [such] the alternative fuel before December 21, 1976; or

2-3. (No change.)

4. The alternative fuel is to be used by reason of an order or rule issued under [the provision of] Section 125 of the Clean Air Act [as amended August 1977 (42 U.S.C. 7425)].

(b) N.J.A.C. 7:27-18.3(c)1 does not apply to any person submitting an application for:

1. Portable facilities which will be relocated outside of a nonattainment area within six months of commencement of operation; or

2. Temporary source operations which produce an experimental product, and which cease operation within six months of commencement of operation.

[7:27-18.10 Applicability

Whenever persons, facilities, equipment, control apparatus or air contaminants subject to the provisions of this subchapter are also subject to the provisions of any other subchapters of this chapter, the requirements of the relevant provisions of this subchapter and all subchapters of this chapter shall apply.]

7:27-18.11 Procedures for interstate and intrastate trading

(Reserved.)

7:27-18.12 Civil or criminal penalties for failure to comply

The owner or operator of any facility subject to this subchapter shall be responsible for ensuring compliance with all requirements of this subchapter. Failure to comply with any provision of this subchapter may subject the owner or operator to civil penalties in accordance with N.J.A.C. 7:27A-3 and applicable criminal penalties, including, but not limited to, those set forth at N.J.S.A. 26:2C-19(f)1 and 2. If there is more than one owner or operator of a facility, all owners and operators are jointly and severally liable for such civil and criminal penalties.

(a)

COMMISSIONERS OF PILOTAGE

Rules of the Commissioners of Pilotage

Proposed New Rules: N.J.A.C. 7:61

Authorized By: Board of Commissioners of Pilotage, Hon.

Edward B. Pulver, President.

Authority: N.J.S.A. 12:8-2.

Proposal Number: PRN 1992-426.

Submit written comments by November 4, 1992 to:

Hon. Frank A. Johannessen

Secretary-Treasurer

New Jersey Commissioners of Pilotage

P.O. Box 1022

Rahway, New Jersey 07065

The agency proposal follows:

Summary

This proposal contains the first two subchapters of a new chapter of rules to be promulgated by the Commissioners of Pilotage, a six member State Board authorized to issue licenses and to regulate the New Jersey Sandy Hook pilots. Pursuant to N.J.S.A. 12:8-1 et seq., Sandy Hook pilots must board all foreign vessels and vessels sailing under register entering and leaving certain ports of the State of New Jersey and New York by way of the bar at Sandy Hook, and also those ships entering and leaving the ports between Sandy Hook and Atlantic City. The use of licensed

pilots serves the purpose of ensuring the safe conduct of such ships, and avoiding the collisions or grounding which can lead to loss of lives and property and often to severe environmental damage from oil spills.

The first subchapter describes the purpose and scope of the rules and supplies definitions of terms. The second subchapter deals with applications for admission to the statutorily required apprenticeship for pilots and the requirements for admission to the licensing examination. N.J.S.A. 12:8-10 places responsibility for conducting the apprenticeship on the Sandy Hook Pilots' Association. The apprenticeship must be at least four years. After completion of the apprenticeship, application is made to the Commissioners to be admitted to the examination for the grade of deputy pilot. Licensed deputy pilots may be examined and licensed as branch pilots, or pilots able to handle ships of any draft and tonnage, after acquiring suitable on-the-job experience.

These rules will set out for persons interested in applying to become licensed Sandy Hook pilots the necessary qualifications and the procedures to be followed. Historically, the New Jersey Legislature has recognized since 1898 that a smoothly working pilotage system for New Jersey and the adjacent New York ports requires a cooperative effort on the part of the pilots of both states, and has further recognized that the necessary practice and training of competent pilots can be enhanced by an apprenticeship served under the combined auspices of the pilots' associations rather than under individual tutelage of a single licensee as was the case in the last century. To that end the Legislature decreed that all pilotage must be carried out on boats owned by the association and that the training of the apprentices registered with the Board should be in the hands of the association. In fact the training program and the pilot boats are jointly owned and operated by the New Jersey and New York Pilots' Associations. Over the years the apprenticeship program has evolved to include formal course work at the Sandy Hook pilots' school in addition to the actual practical experience in operating the various boats and equipment needed for the operation of the pilotage business.

Licensed pilots must be competent to handle any of the myriad kinds of ships entering or leaving the harbor, and apprentices take hundreds of trips under the supervision of a licensee before being deemed ready to take the written licensing examination. Apprentices are also required to obtain a Federal pilots' license with endorsements for the different areas of the harbor, as for example, the upper and lower bay areas and the various rivers such as the Raritan and the Hackensack. Also required is training in handling emergencies that may occur on board the pilot boats such as medical emergencies or fires.

The Commissioners have recognized that some applicants for the apprenticeship program have already completed some of the requirements and are therefore proposing that some flexibility in the actual length of time spent in the apprenticeship program be established to take into account such prior experience, so that some apprentices may serve the statutory minimum of four years and others may serve a longer time.

Social Impact

The proposed new rules will serve to inform interested persons of the initial requirements for applying to be a Sandy Hook pilot, and will describe the apprenticeship program required by N.J.S.A. 12:8-1 et seq. and served under the supervision and control of the association of licensed pilots. The requirement of at least four years of intensive supervised training serves to ensure the high standards of competency expected of the Sandy Hook pilots who are charged with responsibility for the safe passage of shipping in the New Jersey and New York waters adjacent to the ports extending from the Hudson River south to Atlantic City.

Economic Impact

The efficient functioning of the Sandy Hook pilots has a beneficial economic impact on the shipping in the New Jersey and New York port areas in that costly accidents and delays are avoided.

The individuals wishing to apply for apprenticeship will have to pay a reasonable fee to cover the costs of processing the applications and administering the requisite tests. Apprentices are not charged tuition or other fees, but do contribute their work to the operation of the pilotage system which involves, for example, the manning of the launches and larger station ships needed in the pilot service.

Environmental Impact

The efficient functioning and high degree of competency of the Sandy Hook pilots has been recognized by the Governor in the statement accompanying recent amendments to the licensing act (P.L. 1991, c.76)

as having made a significant contribution to the goal of protecting the harbors from the environmental damage caused by collisions and oil spills. These rules will ensure the continuation of the tradition of the intensive professional training expected of Sandy Hook pilots.

Regulatory Flexibility Statement

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the practice of piloting may be deemed to constitute a "small business" within the meaning of the statute, the following statement is applicable:

The proposed new rules concerning the apprenticeship program and licensing procedures of the Commissioners of Pilotage will have no direct impact on the conduct of the business of the Sandy Hook pilots, but simply set out the qualifications and procedures for acquiring the State license necessary for those individuals wishing to enter this business. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rules follows:

CHAPTER 61

THE NEW JERSEY COMMISSIONERS OF PILOTAGE

SUBCHAPTER 1. PURPOSE AND SCOPE; DEFINITIONS

7:61-1.1 Purpose

It is the purpose of this chapter to reduce the possibility of marine disasters such as collisions and pollution causing oil spills in the waters of New Jersey extending from the Upper and Lower New York bays and the adjoining rivers, channels, ports and harbors southward to include the bays, rivers, harbors or ports extending to Atlantic City, by setting out rules governing the piloting of foreign vessels and vessels sailing under register and by ensuring that the state-licensed pilots charged with this responsibility are qualified by high levels of training and experience.

7:61-1.2 Scope

This chapter prescribes the necessary qualifications and application procedures for persons wishing to be admitted to the apprenticeship program for Sandy Hook pilots, the general outline of the required apprenticeship program and licensure examination procedures.

7:61-1.3 Definitions

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

"Commissioners" shall mean the Commissioners of Pilotage appointed by the Governor pursuant to N.J.S.A. 12:8-1.

"Pilotage" or "piloting" shall mean the boarding of an incoming or outgoing ship for the purpose of safely conducting it over or through the waters of New Jersey as set out in N.J.S.A. 12:8-1 et seq.

"Sandy Hook pilot" shall mean a person licensed by the Commissioners to pilot ships into or out of the Port of New York or ports of New Jersey by way of the bar at Sandy Hook or into any bays, rivers, harbors, or ports of the waters of this State between Sandy Hook in the County of Monmouth and the City of Atlantic City in the County of Atlantic.

"Sandy Hook pilot apprentice" shall mean a person duly registered with the Commissioners in accord with this chapter and actively serving the apprenticeship prerequisite to admission to the Sandy Hook pilot licensing examination.

"Sandy Hook Pilots' Association" shall mean and include the United New Jersey Sandy Hook Pilots' Benevolent Association and the United New Jersey Sandy Hook Pilots' Association.

SUBCHAPTER 2. APPRENTICESHIP

7:61-2.1 Number of apprentices

The number of Sandy Hook pilot apprentices shall be set by the Commissioners after consultation with the Sandy Hook Pilots' Association and the New York Board of Pilot Commissioners. The number shall be set so as to assure the availability of the number of licensed Sandy Hook pilots necessary to safely pilot ships into or out of the ports of New Jersey and New York.

7:61-2.2 Qualifications of applicants for apprenticeship

(a) A person wishing to be registered with the Commissioners as an apprentice shall present satisfactory evidence that he or she:

1. Is not less than 18 years of age;
2. Is of good moral character;
3. Is in good health, has normal visual acuity and color perception, normal hearing, and is free of speech impediment, and in general has the physical ability to perform the rigorous duties required of a Sandy Hook Pilot; and
4. Is the holder of a bachelor's degree from an accredited college or university.

(b) Applicants shall be screened through an independent testing and review process and the results submitted to a selection board appointed by the Commissioners and consisting of two New Jersey Commissioners, two members of the New York Board of Commissioners of Pilotage, three New Jersey licensed Sandy Hook pilots and three New York licensed Sandy Hook pilots, as nominated by the respective state Sandy Hook pilots' associations. Final decisions as to the selection of New Jersey registered apprentices shall be made by the Commissioners. The availability of openings for applicant apprentices shall receive the widest dissemination by advertisement in area newspapers having the greatest circulation and in appropriate trade journals. These requirements are designed to ensure that all who apply do so on an equal footing, and that those selected have the greatest ability, temperament and aptitude to be a ship's pilot.

(c) Appropriate application and testing fees will be required from all applicants for apprentice selection in an amount sufficient to cover administrative costs and testing fees. Application forms and information concerning the apprenticeship program and application procedures may be obtained from the Sandy Hook Pilots Association, 201 Edgewater Street, Staten Island, New York. At least three months prior to any scheduled examination date notice of the scheduled examination date shall be published as set out in (b) above.

7:61-2.3 The registered apprenticeship

(a) The apprenticeship shall be served under the Sandy Hook Pilot Associations who shall be responsible for assuring that all apprentices are fully instructed in such manner as to fully qualify them in every respect to perform the duties of a Sandy Hook pilot.

(b) The apprenticeship program shall include a minimum of four years training. Additional time requirements will vary depending on the varying levels of professional training already possessed by those entering the apprenticeship.

(c) All apprentices must acquire Ordinary Seaman's papers, an Able-Bodied ticket, a Motorboat Operator's License and a Master of Pilot Vessel's License with an endorsement as First Class Pilot, and necessary extensions of route for all areas of the ports of New York and New Jersey, all as issued pursuant to 46 C.F.R. Part 10 of the rules of the United States Coast Guard.

(d) In addition to the trips required to meet the requirements under (c) above, the apprentice shall make at least 225 additional trips during the last six to nine months of the apprenticeship on various ships under the supervision of a licensed Sandy Hook pilot.

(e) The apprenticeship shall include the prescribed academic courses at the Sandy Hook pilot school, or their equivalent.

(f) Instruction shall cover all aspects of piloting and shiphandling including, but not limited to, the use of navigation and communication equipment; the rules of the road, the use of aids to navigation, tides and currents, soundings, bearings and location of the several shoals, rocks, bars, and points of land, courses, distances, and depths of channels; and pollution control and environment protection. The apprentice shall learn the use of charts, coast pilots, tide tables, and current diagrams. The apprentice shall become familiar with the publications of the Army Corps of Engineers, the Coast Guard, the National Oceanic and Atmospheric Administration, and such other publications as may pertain to the piloting of vessels in the ports of New Jersey and New York.

(g) The Sandy Hook Pilots' Associations shall periodically, but at least once a year, report to the Commissioners on the progress of each registered apprentice, and when an apprentice has completed

all the requirements of the apprenticeship, shall certify his or her record to the Commissioners who shall review the record, and if complete, shall admit the apprentice to the next scheduled licensing examination.

(h) The Commissioners shall periodically review and approve the course contents and practical experience requirements of the apprenticeship program after consultation with the Sandy Hook Pilots' Association and the New York State Board of Pilot Commissioners.

(i) Before any change in the approved program is instituted, the Sandy Hook Pilots' Association shall report the proposed change to the Commissioners for approval.

7:61-2.4 Dismissal of apprentices

(a) After an opportunity to be heard pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, a registered apprentice may be dismissed from the program on a showing that he or she:

1. Has repeatedly failed to complete academic assignments or to achieve passing grades on required tests and examinations;
2. Has repeatedly refused to perform or repeatedly failed to satisfactorily perform assigned apprenticeship duties;
3. Has engaged in gross negligence or gross incompetence in the performance of assigned apprenticeship duties;
4. Has repeatedly failed to comply with any of the rules and regulations of the Sandy Hook Pilots Association training program that have been approved by the Commissioners;
5. Has used or been found in possession of any illegal controlled dangerous substance;
6. Has pled guilty or nolo contendere or has been convicted of a crime of moral turpitude;
7. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
8. Has engaged in conduct inconsistent with, or which reflects adversely on, the position of registered apprentice, as may be determined by the Commissioners;
9. Is temperamentally unfit to fulfill the role of pilot; or
10. Is incapable, for medical or any other good cause, of discharging the necessary functions and duties of an apprentice pilot.

7:61-2.5 Examination

The Commissioner shall conduct examinations for initial licensure as a deputy pilot on the as-needed basis, depending on the schedule of the certification of apprentices.

7:61-2.6 Branch pilots

Full branch pilot licenses shall be issued to deputy pilots who have demonstrated the necessary proficiency in handling ships of unlimited draft and tonnage, and grades of proficiency shall be established through the rulemaking process for deputy pilots depending on their experience and years of active service.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

New Jersey Automobile Full Insurance Underwriting Association Claims Payment Deferral

Proposed New Rules: N.J.A.C. 11:3-2A

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

Authority: N.J.S.A. 17:1C-6(e) and 17:33B-3b(2).

Proposal Number: PRN 1992-441.

In accordance with N.J.S.A. 52:14B-4, the Department will hold a **public hearing** regarding the proposed deferral program. The hearing shall be held on the following date at the time and place set forth below:

Wednesday, October 21, 1992
9:30 A.M.

Department of Insurance
Mary Roebing Building
Room 219-220
20 West State Street
Trenton, NJ 08625

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

At the hearing, representatives of the Trustee will present a summary of the factual information regarding the proposed deferral of certain claim payments of the Association. Thereafter, interested parties may present oral comments and may direct questions through the Hearing Officer. **Persons who wish to present oral comments** or questions must contact the Department no later than 12:00 noon, October 19, 1992, either in writing to the Department at the address set forth above or by telephoning 609-984-3602.

The Department reserves the right to limit oral comments and questions in either time or number in order to complete the hearing by 4:30 P.M. on the scheduled date. As established below, interested parties may submit written comments on these proposed rules until November 4, 1992. Written comments will not be accepted on the Hearing Officer's Report.

Submit written comments by November 4, 1992 to:

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

The agency proposal follows:

Summary

These proposed new rules provide for the deferral of payment of residual bodily injury claims which are covered by the New Jersey Automobile Full Insurance Underwriting Association (the "Association"), pursuant to N.J.S.A. 17:33B-3b(2). These rules are promulgated as a result of the decision of the New Jersey Superior Court, Appellate Division in *Matter of the Order of the Commissioner of Insurance Deferring Certain Claim Payments by the New Jersey Automobile Full Insurance Underwriting Association*, 256 N.J. Super. 553 (App. Div. 1992) (hereinafter cited as *Matter of Order Deferring Claims*), which determined that the actions of the Trustee of the Association ("Trustee") and the Commissioner of Insurance ("Commissioner") in establishing a claims deferral program were subject to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as an agency rulemaking action.

The Legislature in enacting the Fair Automobile Insurance Reform Act of 1990 ("FAIR Act", P.L. 1990, c.8), recognized that the Association had accrued a deficit (N.J.S.A. 17:33B-3(a)). The FAIR Act provided for the liquidation of the Association and precluded it from issuing or

renewing insurance policies on or after October 1, 1990. N.J.S.A. 17:30E-7(e).

At its inception the Association derived funding for the payment of expenses and losses from: (1) net premiums earned; (2) income generated from any Association accident surcharge system authorized by law; (3) surcharges collected by the Division of Motor Vehicles ("DMV"); (4) income collected by Association members and by the Association from residual market equalization charges ("RMECs") and "policy constants;" and (5) income collected from the investment of the above sources. N.J.S.A. 17:30E-8.

With the elimination of the bulk of Association funding including the assessment of RMECs and policy constants after March 31, 1991 (N.J.S.A. 17:30E-8(a)) and the lack of earned premiums, the Association's cash receipts are now largely limited to monies received through the New Jersey Automobile Insurance Guaranty Fund ("NJAI GF") established by N.J.S.A. 17:33B-5. Despite regular draw-downs from the NJAI GF, the Association currently lacks sufficient cash flow to pay all of its claims and expenses as they come due. N.J.S.A. 17:33B-3(a). To bridge the cash flow shortfall, the FAIR Act provides for the deferral of the payment of residual bodily injury losses for a period not to exceed four years. N.J.S.A. 17:33B-3b(2).

Based upon documentation submitted to the Commissioner on August 7, 1991, October 2, 1991 and November 20, 1991, the Commissioner issued Order No. A91-343 on December 17, 1991, approving the Trustee's request for authority to defer the payment of residual bodily injury claims. The approved deferral program which resulted therefrom became effective at 12:01 A.M. on December 18, 1991. It applied to all residual bodily injury claims on which a check or draft had not been drawn by that time, by the Trustee or the Association through its servicing carriers. According to the terms of the Commissioner's Order, the payment of each claim included in the program would be deferred for a period not to exceed 12 months. In addition, the program itself would be in effect for 12 months, through December 17, 1992, unless modified by further order of the Commissioner. Finally, the Commissioner directed the Trustee to develop and submit, for the Commissioner's approval, procedures for the granting of an exemption from the deferral program on the grounds of hardship. Such procedures were approved by the Commissioner on February 3, 1992.

On September 2, 1992, the Trustee submitted to the Commissioner the results of ongoing financial analyses which support his request for a modification of Order No. 191-343. Specifically, the Trustee requested the authority to implement, immediately upon the termination of the current deferral program, a new program which would, again, apply only to residual bodily injury claims, but which would defer the payment of such claims for a period not to exceed 18 months. The Trustee proposed that this new program apply to all residual bodily injury claims on which closing papers are physically received by the Association's servicing carriers after 12:01 A.M. on December 18, 1992, the operative time and date of these proposed rules. Similar to the current deferral program, the amount ultimately paid on any deferral claim in the new program would include simple interest calculated at a rate of six percent per annum, and claim payments for present economic loss would not be subject to deferral. It is significant that the new program would have no effect on those claims already scheduled for payment under the terms of the current Order.

The Trustee's request was predicated on an analysis of current financial data and actuarial projections through December 1995. It, however, underscored the significance of several variables that may affect the Association's cash flow in the future. Because of these uncertainties, the Trustee requested that the new program be made effective for a period of 18 months, through June 1994. The Trustee, therefore, also advised that this new deferral program may require amendment either to permit the satisfaction of claims on an accelerated basis or to further extend the deferral of claims.

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

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

Trenton, New Jersey 08625

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

These proposed rules provide for a deferral program as requested by the Trustee. Such a deferral program will permit the Trustee to continue to pay currently all other claims and expenses presented to him for

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payment including, among others, personal injury protection claims for medical expenses, lost wages, property damage liability claims, physical damage claims, other claims for current economic loss and residual bodily injury claims deferred by Order No. A91-343.

The Department fully expects to complete the procedures necessary to adopt these proposed rules so that they will be effective and operative by December 18, 1992. In the event that the adoption process is delayed, the Department intends that upon adoption, these rules shall be operative retroactively to December 18, 1992, in order to avoid any gap between the existing deferral program and that proposed herein. The Department believes that should a further deferral program be implemented, if a gap were to occur, it would make administration unwieldy, would create confusion and inequities among claimants and would threaten the orderly payment of Association claims and expenses.

A summary of the proposed new rules follows:

Proposed N.J.A.C. 11:3-2A.1 sets forth the purpose and scope of these proposed rules.

Proposed N.J.A.C. 11:3-2A.2 sets forth the definition of terms used in the subchapter.

Proposed N.J.A.C. 11:3-2A.3 sets forth the deferral program.

Proposed N.J.A.C. 11:3-2A.4 sets forth certain provisions for administering the deferral program.

Proposed N.J.A.C. 11:3-2A.5 sets forth provisions for exempting from the deferral program persons to whom the deferral of claim payment would pose an extraordinary hardship.

Proposed N.J.A.C. 11:3-2A.6 provides for an appeal to the Commissioner from certain decisions of the Trustee.

Proposed N.J.A.C. 11:3-2A.7 provides that certain documents are public records, and sets forth rules for mailing and making copies of those records pursuant to N.J.S.A. 47:1A-1 et seq.

Social Impact

These rules carry out the legislative intent of establishing a plan for the orderly payment of claims covered by the Association in accordance with the appropriate priorities established by the Trustee pursuant to N.J.S.A. 17:33B-3b(2). The deferral program for residual bodily injury claims permits the payment of claims for ongoing medical treatment and other present economic loss, as well as other claims. The proposed rules also provide for the exemption of certain individuals from the deferral based on limited hardship grounds. Finally, these proposed rules provide for the payment of interest on claims that have been deferred, in order to compensate affected claimants for the delay.

Economic Impact

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

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

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

Regulatory Flexibility Analysis

Few if any small businesses are affected by these proposed new rules. Some servicing carriers may be deemed small business pursuant to the Regulatory Flexibility Act at N.J.S.A. 52:14B-17. However, these rules do not impose any new reporting requirements on servicing carriers. As with the prior 12-month deferral, servicing carriers are still required to submit documentation to support the date of claim settlement when there exists a dispute regarding same. Servicing carriers under the prior deferral period were required to notify claimants or defense counsel of the existence of the deferral. These rules likewise do not alter that requirement, rather they codify the requirements.

These rules require the submission of information which is essential to the Trustee in rendering a determination in the event of a dispute of a settlement date or information which must be imparted to claimants or their counsel. The resultant burden of these requirements on the servicing carriers is *de minimus* and, nevertheless, is outweighed by the benefit to claimants in the resolution of their claims.

Finally, it would be improper to impose different requirements on servicing carriers which are considered small businesses under the Regulatory Flexibility Act. To do so would be to treat claimants differently

based on the size of the servicing carrier administering their claims. Such a result would be inequitable and wholly improper.

Full text of the proposed new rules follows:

SUBCHAPTER 2A. NEW JERSEY AUTOMOBILE FULL INSURANCE UNDERWRITING ASSOCIATION CLAIMS PAYMENT DEFERRAL

11:3-2A.1 Purpose and scope

(a) This subchapter implements the provisions of N.J.S.A. 17:33B-3b(2) which authorizes the Trustee to defer the payment of residual bodily injury claims over a period not to exceed four years. This subchapter is intended to ensure the orderly payment of all Association claims in accordance with the priorities established by the Trustee pursuant to N.J.S.A. 17:33B-3b(2) by deferring payment of residual bodily injury claims, in accordance with certain terms, conditions and procedures.

(b) This subchapter shall apply to the Trustee, the Association, the Association's servicing carriers and claimants of the Association.

11:3-2A.2 Definitions

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

"Assets" means, but is not limited to, sources of income as enumerated in N.J.S.A. 17:30E-8 and any funds made available to the New Jersey Automobile Full Insurance Underwriting Association from the New Jersey Automobile Insurance Guaranty Fund created pursuant to N.J.S.A. 17:33B-5, monies, funds, accounts receivable, premium payments, payments and surcharges collected on any and all private passenger automobile policies, interest income, contracts, causes of action, books, records and property of the Association wherever located, including such property of the Association which may be discovered hereafter.

"Association" means the New Jersey Automobile Full Insurance Underwriting Association.

"Closing papers" means a release signed by the claimant releasing the Association and its insured(s) from liability for the claim, or a warrant of satisfaction of judgment and/or other closing documents.

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

"Covered claim" means an unpaid claim which arises out of and is within the coverage provided by the Association to an insured and is not in excess of the applicable limits of an insurance policy to which N.J.S.A. 17:30E-1 et seq., as amended, applies.

"Date of deferral" means the date upon which the Association's appropriate servicing carrier physically receives the proper closing papers associated with a residual bodily injury claim.

"New Jersey Automobile Insurance Guaranty Fund" ("NJAIGF") means the Guaranty Fund created pursuant to N.J.S.A. 17:33B-5.

"Plan of Operation" means the plan of operation promulgated pursuant to N.J.S.A. 17:33B-3b(2) by the Trustee and approved by the Commissioner.

"Residual bodily injury claim" means a liability claim for loss of any kind whatsoever, other than present economic loss, resulting from liability imposed by law for, or as a result of, bodily injury or death.

"Servicing carrier" means a member company or other entity that had or presently has a contract with the Association to underwrite, process and adjust automobile insurance policies for the Association pursuant to the New Jersey Automobile Full Insurance Availability Act.

"Trustee" means the person appointed by the Commissioner pursuant to N.J.S.A. 17:33B-3b(1) to carry out the obligations set forth in N.J.S.A. 17:33B-1 et seq. and the Plan of Operation.

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

(a) Payments by the Association of any residual bodily injury claims, including uninsured motorist claims and underinsured motorist claims, are deferred from payment for 18 months, except such claims as may be granted exemption from deferral by the Trustee as provided in N.J.A.C. 11:3-2A.5.

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(b) The deferral of claim payments provided in (a) above shall apply to all claims for which closing papers have not been physically received in the offices of the servicing carriers before December 18, 1992. Facsimile transmissions shall not constitute physical receipt by the servicing carriers.

(c) Payment of a claim which has been deferred pursuant to this subchapter shall occur on the first day of the eighteenth month following the date of deferral, that is the date upon which closing papers are received in the office of the Association's servicing carrier.

(d) The deferral of claim payments as provided in this subchapter shall continue until June 30, 1994.

(e) When claims deferred pursuant to this subchapter are paid by the Association, the payment shall include simple interest at the rate of six percent per annum beginning on the date of deferral.

(f) Payment of claims for current economic loss shall not be deferred.

11:3-2A.4 Administrative provisions

(a) In accordance with the provision of N.J.S.A. 17:33B-3b(3) and the Plan of Operation, the Trustee shall monitor the financial condition of the Association and shall issue a report to the Commissioner on a biannual basis.

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

1. Claims shall not be considered settled and ready for deferral until the servicing carrier physically receives the appropriate closing papers. Facsimile transmissions shall not be accepted for these purposes.

2. Deferral releases shall include the following language:

Payment: In consideration for making this Release, you have agreed to pay me a settlement of \$_____ plus simple interest at the rate of 6 percent per annum for a total amount of \$_____, to be paid no later than the first day of the eighteenth month after receipt of this Release by the Servicing Carrier. It is further understood that, if by further order of the Commissioner of Insurance for the State of New Jersey, the settlement amount may be released earlier, the interest will be pro-rated. I further understand and agree that I will not seek anything further including any other payments from you.

3. The date of deferral shall be deemed to be the date upon which closing papers are physically received in the office of the Association servicing carrier. Such date shall govern the period of deferral applicable to the deferred claim.

(c) Disputes regarding the date of deferral shall be resolved in the first instance by the Trustee in accordance with the following procedures:

1. A claimant who disputes the date of deferral as indicated by the servicing carrier shall notify the Trustee in writing of the factual basis for the dispute and shall include therewith all supporting documentation. The servicing carrier shall also provide all relevant documentation in opposition to the date of claim settlement alleged by the claimant.

2. The Trustee may adjust the ultimate pay-out date of a deferred claim upon a finding of inordinate delay by defense counsel or the servicing carrier in the handling or processing of the closing papers.

3. The Trustee shall establish appropriate procedures for obtaining additional information when required during the course of review.

4. The Trustee's written decision shall be mailed to the applicant by regular and certified mail, return receipt requested.

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

(e) Servicing carriers shall continue their efforts to resolve all outstanding claims. During negotiations and/or other discussions with

claimants or their attorneys, the servicing carrier and defense counsel shall advise all parties that payment will be deferred for 18 months.

11:3-2A.5 Hardship exemptions

(a) Notwithstanding the provisions of N.J.A.C. 11:3-2A.3, an exemption from the deferral of a claim payment shall be permitted in limited circumstances upon the filing of a written application with the Office of the Trustee which:

1. Demonstrates, through a written statement and sufficient supporting documentation, the existence of an extreme and immediate financial emergency; and

2. In which the applicant attests that the emergency cannot be resolved through use of any other reasonably available financial resources. "Reasonably available financial resources" includes, but is not limited to, resources such as reimbursement or compensation through insurance coverage, reasonable liquidation of assets to the extent that liquidation would not cause further economic hardship, or borrowing from commercial sources on reasonable commercial terms.

(b) Some examples which may constitute acceptable grounds for a hardship exemption are as follows:

1. The claimant, spouse or dependant has incurred substantial medical expenses (over \$5,000) not related to the subject motor vehicle accident and not covered by insurance. Copies of all medical bills and insurance coverages must be provided.

2. The claimant, spouse or dependant cannot pay for essential food and shelter. For this exemption to apply, the applicant, spouse or dependant must face imminent eviction or foreclosure from their principal residence. A copy of the imminent foreclosure or eviction notice must be provided.

3. The claimant, spouse or dependant faces immediate removal from a nursing home, hospital or other medical care institution due to the inability to pay, although continued medical care is prescribed by medical health care providers and not related to the subject motor vehicle accident. Copies of bills for treatment and medical insurance coverages, along with an original written statement by a doctor prescribing further medical treatment and an original written statement from the medical institution advising that removal due to the inability to pay is imminent, must be provided.

4. The applicant cannot pay funeral expenses of the claimant, spouse or dependant and the death is not related to the subject motor vehicle accident. Copies of the unpaid funeral bills must be provided.

5. Such other financial emergency or situations of an unusual or emergent nature which may be deemed to be appropriate based upon information provided.

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

1. A hardship application shall contain the following information:

i. The name, address, social security number, telephone number and date of birth of the claimant;

ii. The claim number and policy number;

iii. The caption of the case;

iv. The name of the association insured;

v. The amount deferred and date deferred;

vi. A description of the examples which constitute a hardship as set forth at (b) above;

vii. The documents required to be appended to the application as set forth at (c)2 below;

viii. The amount of exemption being sought and the grounds for the exemption; and

ix. An appropriate certification executed by the applicant.

2. Completed applications shall be submitted directly to the Trustee at the address noted above and shall include a certified-to-be-true copy of the associated judgment or fully-executed deferral release, a copy of the written acknowledgement of receipt of the letter issued by the Association's servicing carrier, copies of all unpaid medical bills, insurance coverages, foreclosures notices (that is Complaint for Foreclosure), eviction notices, funeral bills and

other appropriate documentation. Original documents shall be available for review upon the request of the Office of the Trustee.

(d) The amount requested and the amount released from deferral, if a hardship exemption is granted, shall not exceed the minimum amount required to meet the financial emergency, nor the net amount due the claimant.

(e) The Trustee shall establish appropriate procedures for obtaining additional information when required during the course of review.

(f) The Trustee's written decision shall be delivered to the applicant or his or her legal representative by certified mail, return receipt requested or by an express mail service of the Trustee's choice.

(g) Where an exemption is granted, the decision shall include a hardship exemption release amendment, prepared by the Office of the Trustee, to be reviewed by the applicant or his or her legal representative, executed by the applicant, and forwarded directly to the Association's servicing carrier. Additionally, where an exemption is granted, the appropriate servicing carrier shall be notified, in writing, with instructions to make the appropriate payment directly to and in the name of the claimant, upon receipt of the fully-executed hardship exemption release amendment. The servicing carriers shall proceed in accordance with procedures developed by the Trustee.

(h) Where an exemption is either denied or only partially granted, the Trustee's decision shall enclose a copy of the appropriate documents required to file an appeal.

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

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

1. A copy of the appeal shall be simultaneously filed by the claimant with the Trustee.

2. The Trustee, upon receipt of notice of the appeal, shall forward the claimant's file to the Commissioner for his or her review.

(b) The Commissioner's final decision shall be provided to the Trustee and shall be mailed to the applicant or his or her legal representative by certified mail, return receipt requested and regular mail.

11:3-2A.7 Public records

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

1. The Trustee's request to the Commissioner for approval of the deferral plan and the supporting analysis and data;
2. The Department staff evaluation and recommendation; and
3. The Commissioner's Final Decision.

(b) Interested parties may, by appointment only, review the above documents set forth at (a) above at the Offices of the Department of Insurance between the hours of 10:00 A.M. and 4:00 P.M., Monday through Friday, except holidays.

1. An appointment may be scheduled by telephoning the Department at (609) 984-3602.

(c) Interested persons may obtain copies of the documents set forth in (a) above by remitting, in advance, the following fees:

1. First page to 10th page: \$.75 per page;
2. Eleventh page to 20th page: \$.50 per page; and
3. All pages over 20: \$.25 per page.

(d) Original documents shall not be released from the Department.

(a)

**DIVISION OF THE REAL ESTATE COMMISSION
Special Accounts for the Funds of Others;
Commingling**

Proposed Amendment: N.J.A.C. 11:5-1.8

Authorized By: New Jersey Real Estate Commission,
Micki Greco Shillito, Executive Director.

Authority: N.J.S.A. 45:15-6.

Proposal Number: PRN 1992-427.

Submit comments by November 4, 1992 to:
Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
20 West State Street, CN 328
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Real Estate Commission proposes an amendment to N.J.A.C. 11:5-1.8(e) so as to advise its licensees that, in limited circumstances, there is some flexibility in the requirement imposed by the current text of that rule that all monies of others received by real estate brokers acting in that capacity, or as an escrow agent, or as the temporary custodian of the funds of others in a real estate transaction must be deposited into the broker's trust or escrow account no later than five business days next following the receipt of the money. The proposed amendment clarifies that in situations where, due to the termination of negotiations on an offer prior to the deposit of any monies paid to the broker and before the expiration of the five business day period, the broker can return such monies to the payor without first depositing them into their trust or escrow account. The proposed amendment explicitly provides that in all other cases such monies must be deposited into the broker's trust or escrow account within five business days of receipt. The proposed amendment then provides examples of such other cases which would compel the deposit of the monies. However, those examples are not intended to be all inclusive.

Social Impact

The Commission does not foresee any adverse impact upon the licensee community or the general public resulting from the adoption of this proposed amendment. Where proposed transactions have definitely terminated and the payor of the funds which accompanied an offer has requested the return of those funds by the broker to whom they were paid, no adverse affects to either the payor of the funds, the broker to whom the funds were paid, nor the person to whom the offer was made will result from permitting brokers to return those funds directly to the payor without first having to deposit the funds into their trust or escrow account, and then disburse the monies back to the payor.

Economic Impact

The Commission foresees that the adoption of this proposed amendment will have a beneficial economic impact upon the public. Certainly, the prompt return of funds to offerors who have either withdrawn their offers prior to acceptance or had those offers finally rejected will favorably impact upon the economic position of such persons. In the absence of the clarifying language proposed in this amendment, relying upon the current text of the rule licensees have placed deposits which accompanied offers into their trust accounts, waited for the deposit checks to clear the account, and then reimbursed those funds to the payor, notwithstanding the fact that negotiations on the transaction had terminated prior to the licensee's deposit of the funds. In such situations, offerors have encountered unnecessary delays in receiving the reimbursement of their deposits and again having the use of those funds.

The proposed amendment will also have a beneficial economic impact upon licensees. Broker licensees will now be able to avoid unnecessary banking transactions and the administrative expenses which result from such transactions. In addition, they will be able to reduce some of the recordkeeping related to their handling of escrowed funds.

Regulatory Flexibility Analysis

The proposed amendment will decrease the amount of recordkeeping required of small real estate brokerage businesses by permitting such brokers, in certain specified situations, to return monies entrusted to them as an escrow agent without the necessity of first depositing such

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monies into their trust or escrow account. In such situations, all brokers will still have to record the date of receipt and of disbursement of the funds, but will not have to note in their records the date of the deposit of the funds into their trust account. The amendment is expected to have a beneficial affect on small businesses through a reduction in administrative expenses.

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

11:5-1.8 Special accounts for the funds of others; commingling

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

(e) Within the meaning of this section, the word "promptly" means not more than five business days next following the receipt of the money or property of another. **However, where monies are received by a licensee as provided in (c)2 above as a good faith or earnest money deposit accompanying an offer to buy or lease property, if during the five business day period next following the date of the licensee's receipt of those funds the offer is withdrawn prior to acceptance by the offeree or is rejected with no counter-offer made by the offeree, the licensee need not deposit those funds into an escrow or trust account but may, upon the request of the offerer, return them in the same form in which they were received to the offerer. In all other cases, the licensee must deposit such monies within five business days of receipt. Examples of such cases include transactions where negotiations are ongoing, or if a contract or lease is being reviewed by an attorney, or if subsequent to the rejection of an offer the offerer has requested the licensee to retain the monies in the event that the offerer determines to submit another offer on the same or a different property.**

(f)-(g) (No change.)

(a)

DIVISION OF THE REAL ESTATE COMMISSION

Advertising Rules

Proposed Amendment: N.J.A.C. 11:5-1.15

Authorized By: New Jersey Real Estate Commission,

Micki Greco Shillito, Executive Director.

Authority: N.J.S.A. 45:15-16.

Proposal Number: PRN 1992-428.

Submit comments by November 4, 1992 to:

Robert J. Melillo

Special Assistant to the Director

New Jersey Real Estate Commission

20 West State Street, CN 328

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Real Estate Commission has proposed amendments to its advertising rule. Three amendments clarify areas of uncertainty which result from the current text of the rule and a fourth amendment reflects the Commission's interpretation of a statutory provision which requires that signs containing certain wording be placed on the offices of licensed brokers.

N.J.S.A. 45:15-12 imposes upon broker licensees the requirement that their places of business "shall have conspicuously displayed on the exterior thereof the broker's name and the words Licensed Real Estate Broker." Confusion has arisen with regard to this statutory section as it applies to partnerships and corporations licensed as real estate brokers in New Jersey. The Real Estate Commission has determined that the intent of this statutory requirement was to require that a sign be posted on the exterior of licensed real estate brokerage offices which identifies the individual who is licensed as a broker and who is ultimately responsible for the supervision of the brokerage operations at that office. The Commissioners have therefore concluded that in the case of corporate and partnership licensees, not only must the name of the licensed corporation or partnership appear on the sign on the exterior of their licensed offices, but the name of the individual who is licensed as their authorized broker or "broker of record" must also appear on that sign, with the words "Licensed Real Estate Broker". As is further described

below, the name of the licensed corporate or partnership broker which is displayed on the sign shall be the name in which that corporation or partnership is on record with the Commission as doing business as a real estate broker in this State.

The second proposed revision pertains to licensee advertising in general. The Commission has determined that, to maintain consistency between the name in which a sole proprietor, corporate or partnership broker operates and the name in which they are on record with the Commission as doing business in New Jersey, N.J.A.C. 11:5-1.15(b) needs to be amended so as to require that consistency. Because the Commission's current licensing system is incapable of imprinting on the formal licenses of brokers their "doing business as" names (that is, trade names reflected on trade name certificates filed with a county clerk or fictitious or alternative names reflected on fictitious or alternative name certificates filed with the Office of the Secretary of State), it is necessary to change the wording of subsection (b). The amended rule will clearly indicate that, notwithstanding the wording which appears on a formal license, where licensees have filed with the Commission copies of duly filed trade name certificates or fictitious or alternative name certificates, it is entirely correct for their advertising to reflect only such "doing business as" names, even if that name does not appear on the formal license issued to that broker. If a licensee wishes to include in their advertisements their individual, partnership or corporate name in addition to a "doing business as" name, or if in certain advertisements they wish to omit the "doing business as" name and include only the formal name, they will still be permitted to do so.

The third proposed change also concerns subsection (b). This revision imposes the requirement that all advertising by salesperson and broker-salesperson licensees must identify the broker through whom they are licensed. Because such licensees are only authorized to act through the broker with whom they are affiliated and under whom they are licensed, the Commission has determined that advertisements which refer to such individual licensees must also include the regular business name of the broker through whom they are licensed. The Commission considers it essential that when responding to any advertisement placed by a salesperson or broker-salesperson licensee, the public understand that that individual is affiliated with a particular broker and is aware of the identity of that broker.

The fourth change effectuated by these proposed amendments involves N.J.A.C. 11:5-1.15(e). It clarifies that the business cards of licensed brokers, as is the case with licensed salespersons and broker-salespersons, must include wording which identifies the person named on the card as a licensed broker. This requirement is not explicitly set forth in the current text of the rule and has led to some confusion regarding whether licensed brokers were required to include such language on their business cards. Because many licensed brokers are also officers in licensed corporations, or are the owners of sole proprietor brokerage firms, the Commission has in the past encountered situations where the business cards of such individuals identified them only as an officer of the corporate licensee or as the owner of the sole proprietorship. The business cards thus did not clearly indicate whether the holder of the card was or was not a licensed real estate broker. To eliminate any confusion in the minds of the public which resulted from such situations, the Commission has determined to require that brokers' business cards also contain language identifying them as a broker licensee.

The final change to the advertising rule, amending N.J.A.C. 11:5-1.15(j), merely brings language in that subsection into conformity with the language of subsection (b) as it is proposed to be amended with regard to the "regular business names" of real estate broker licensees.

Social Impact

The proposed revisions regarding signs on the exterior of the offices of licensed brokers and requiring persons licensed as salespersons or broker-salespersons to identify in any advertisements they disseminate the broker with whom they are licensed will provide significant benefits to the public. Identifying the authorized individual broker of corporate and partnership broker licensees on the signs of the exterior of their offices will afford the public the opportunity to contact the individual directly responsible for the operations at those offices and for the supervision of the licensees who work there. It is anticipated that a substantial number of problems which occasionally arise between members of the public and the individual licensees who deal with them will be susceptible to prompt resolution as a result of the client's or customer's ability to communicate directly with the individual broker ultimately responsible for the actions of the licensees under his or her

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supervision. Similarly, members of the public who read advertisements placed by salesperson or broker-salesperson licensees will now be able to discern which brokerage firm the person who placed the advertisement is affiliated with. Such information can only assist the person to whom such advertisements are directed in making an informed decision on whether and how to respond to the advertisement.

The requirement that broker licensees identify themselves as such on their business cards will also have a beneficial social impact. This will eliminate confusion in the minds of people who receive business cards from persons representing themselves as being in a position of authority with a licensed brokerage firm, but which do not indicate whether they are in fact personally licensed, and if so in what capacity.

The proposed revisions to this rule regarding "doing business as" names of broker licensees will not have any adverse social impact. These revisions are being proposed merely to eliminate confusion in the minds of licensees and to establish consistency between the language of this rule and current practice in the real estate brokerage business.

Economic Impact

The proposed amendments will have a minimal economic impact upon licensees. The proposed requirement regarding the signage on the exterior of licensed brokers offices may result in some brokers incurring some expense. However, there is no requirement that the signs be of a particular size or type, nor that they need be elaborate. It is the position of the Commission that the benefits to be attained by imposing this requirement as described in the Social Impact statement above outweigh the minimal costs which some brokers may incur in complying with the requirement. The same is true with regard to the requirement that non-broker licensees include in any advertisements they place language identifying the broker through whom they are licensed and the requirement that broker licensees include on their business cards wording indicating that they are the holder of a broker's license. The clarification to the rule with regard to the "doing business as" names of broker licensees will not have any economic impact upon the licensee community.

Regulatory Flexibility Analysis

The proposed amendments do impose compliance requirements on the approximately 6,300 small real estate brokerage businesses in this State. The compliance requirements include the possible revision of the language on the signs on the exterior of many of the offices of these firms and the possible revision of the text of the business cards of some of the brokers of these firms. These compliance requirements will require the services of printing companies and, at the option of the small business, sign companies. The Commission estimates the initial cost of compliance with the signage requirement to be, at the option of the small business and depending on what type of sign they desire, \$50.00 or less and, depending on the number of business cards which a small business broker desires to have printed, \$50.00 or less. The Commission does not anticipate that there will be additional costs related to these compliance requirements until, with regard to the signage requirement, there is a change in the broker of record of a corporate or partnership licensee, and until, with regard to the business card rule, the supply of business cards of an individual broker runs out and new cards must be ordered.

This rule does not require signs of any particular size or type. Thus the text of the rule minimizes the adverse economic impact which its adoption may have upon small businesses. The signage requirement in the rule can be satisfied by wording placed in a directory in the lobby of an office building where a broker's office is located, or by placing an attachment on a current sign of a licensed corporation or partnership which does not also contain the name of that licensee's authorized individual broker. While not establishing different compliance requirements or time tables for small businesses, the rule does take into account the resources available to them by providing flexibility as to the size and type of the sign which can be utilized to satisfy the rule's requirement. The Commission has concluded that the public benefits to be derived from the requirement that the authorized individual broker of small brokerage businesses operating as corporations or partnerships be identified on the signs on the exterior of their licensed offices is sufficiently substantial so as to warrant that no exemptions be included in the rule for small businesses.

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

11:5-1.15 Advertising rules

(a) Unless otherwise set forth herein, [this provision] **subsection (b) through (n) below** shall apply to all categories of advertising

including all publications, radio or television broadcasts, business stationery, business cards, business and legal forms and documents, and signs and billboards.

1. Individuals operating as sole proprietors and licensed as employing brokers shall conspicuously display on the exterior of their maintained place of business their name and the words "Licensed Real Estate Broker".

2. Firms licensed as corporate or partnership brokers shall conspicuously display on the exterior of their maintained place of business their regular business name and the name of the individual licensed as their broker of record and their words "Licensed Real Estate Broker".

(b) All advertising of any licensed individual, partnership, firm, or [corporation] **corporate broker shall include [the] their regular business name [under] which, for the purposes of these rules, shall mean the name in which that individual, partnership, firm or corporation is [licensed to do] on record with the Commission as doing business as a real estate broker. All advertising by a salesperson or broker-salesperson shall include the name in which they are licensed, and an indication of their licensed status as provided in (e) below, and the regular business name of the individual, partnership, firm or corporate broker through whom they are licensed.**

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

(e) The business card of any licensed salesperson shall indicate that this licensee is a salesperson by the use of the words salesperson or sales representative, or sales associate, or where permitted by law, realtor-associate or realtor associate. The business card of any licensed broker-salesperson shall indicate that this licensee is a broker-salesperson by the use of any of the aforementioned words or by the use of the words broker-salesperson. **The business card of any licensed broker shall indicate that this licensee is a broker by use of the word broker or, where permitted by law, Realtor or Realtist.**

(f)-(i) (No change.)

(j) Any use of an insignia, emblem, logo, trade name or other form of identification in any advertising or public utterance, either by a single licensee or any group of licensees, which suggests or otherwise implies common ownership or common management among such licensees, shall be prohibited except in the case of branch offices controlled by a single broker or licensee and duly licensed as branch offices pursuant to the provisions of N.J.S.A. 45:15-1 et seq. Nothing herein provided is intended to preclude or inhibit the use, advertising or display of any insignia, emblem, logo or trade name of any bona fide trade association by any licensee provided that such licensee is a member of such trade association.

1. Any franchised licensee using in any advertising the trade name of the franchisor shall include in such advertising in a manner reasonably calculated to attract the attention of the public the franchised licensee's [operating] **regular business name [under which the individual, firm or corporation is licensed to do business].**

2-3 (No change.)

(k)-(n) (No change.)

(a)

**DIVISION OF THE REAL ESTATE COMMISSION
Contracts of Sale, Leases and Listing Agreements
Proposed Amendment: N.J.A.C. 11:5-1.16**

Authorized By: New Jersey Real Estate Commission,

Micki Greco Shillito, Executive Director.

Authority: N.J.S.A. 45:15-6.

Proposal Number: PRN 1992-429.

Submit comments by November 4, 1992 to:

Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
20 West State Street, CN 328
Trenton, New Jersey 08625

The agency proposal follows:

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Summary

The New Jersey Real Estate Commission is proposing to amend N.J.A.C. 11:5-1.16 which requires licensees to provide copies of certain documents to parties to real estate transactions. The proposed amendment will clarify that in addition to applying to agreements or instruments which have been executed by all parties to a transaction, licensees will also be required to provide a copy of an offer or counter-offer executed by only one party to a prospective transaction to the maker thereof immediately upon its being signed by the maker. In addition, the existing requirements as to copies have been separately set out and detailed for clarity, and the current application of New Jersey law concerning attorney review of licensee-prepared contracts and leases to revisions, amendments and addenda to such documents is expressly stated.

Social Impact

The proposed amendment will have a beneficial impact upon the parties to prospective real estate transactions, particularly those who initiate a prospective transaction by submitting a written offer to purchase or lease real property. Compliance with the rule will avoid situations where allegations are made that after an offeror has signed an offer, alterations to the document were made before it was submitted for consideration by the selling or leasing party. In such situations, where no copy of the signed offer was left with the offeror, there is no documentation to confirm what were the actual terms of the signed offer were. Requiring that copies of signed offers and counter-offers be immediately provided to the maker upon that person signing the document will thus afford additional protections to such persons. This in turn should reduce disputes and the litigation and complaints to the Commission precipitated by such disputes.

Economic Impact

The proposed amendment will have a favorable economic impact upon the parties to real estate transactions, as it will ensure that documentary evidence confirming the actual terms of all offers and counter-offers submitted is created and provided to the makers. Therefore, many disputes about what were the actual terms of the offer signed by the offeror may be avoided. The requirement that licensees provide a copy of a signed offer to the offeror at the time it is signed will impose only a very minimal economic burden upon licensees, that is, some additional copying costs.

Regulatory Flexibility Analysis

The proposed amendment affects real estate brokers, most of which are small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While the amendment imposes no reporting or recordkeeping requirements, compliance requirements are imposed upon brokers.

Brokers and individuals licensed through them as salespersons or broker-salespersons are required to provide to individuals submitting offers or counter-offers a copy of such documents immediately upon their being signed by the maker. No significant capital costs of compliance or need for professional services are anticipated as a result of this requirement. The Commission's purpose in proposing the amendment, that is, to ensure the integrity of real estate transactions and afford added protection to offerors from unscrupulous persons who might alter the terms of an offer where no copy of the signed offer was retained by the offeror, outweighs the minimal costs which brokers will incur in complying with this amendment. Furthermore, the benefits to be derived warrant the application of these requirements to all licensees. Thus, no exemption has been established for small businesses.

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

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

(a) The following paragraphs specify licensees' obligations to obtain written confirmation of the intentions of, and to deliver copies of documents to, parties to a real estate transaction.

1. [A licensed individual, partnership, firm or corporation shall immediately] Where a licensee memorializes the terms of an offer or counter-offer on a writing which will itself become an "instrument" as defined in (a)3 below, the licensee shall deliver to the maker of such an offer or counter-offer a clear copy of the executed offer or counter-offer immediately upon its being signed, and initialled if necessary as provided in this section, by the maker of the offer or counter-offer [all parties to any agreement of sale, lease, option or any other instrument, or any amendment to any agreement

or other instrument affecting an interest in real property, a duplicate original of any such executed agreement or instrument or amended agreement or instrument]. Any addition, deletion, or other change in any [agreement or instrument or amended agreement or instrument] **such offer or counter-offer shall be initialled by [all parties to a transaction] the party proposing such a revision and, if accepted, by the other party to the transaction.**

2. Where a licensee records the terms of an offer or counter-offer on a writing which is not intended to be binding upon either party, and which so states on its face, in the event that the licensee secures the signature and/or initials of any party on such a writing, the licensee shall provide to the signing and/or initialling party a clear copy of the writing as signed and/or initialled by them.

3. For the purposes of this rule, the term "instrument" means any complete and fully executed written contract of sale, lease, option agreement, or other writing affecting an interest in real estate property, or any complete and fully executed addendum or amendment to any such contract, lease, option agreement or writing.

4. Licensees shall immediately deliver to all parties to any fully executed instrument a clear copy with original signatures of any such fully executed instrument.

5. Licensee-prepared revisions or additions reflected on the instrument itself shall be initialled by all parties to the transaction. Licensee-prepared revisions or additions to an instrument not memorialized by changes on the instrument itself shall be reflected on amendments or addenda to the instrument signed by all parties to the transaction.

i. Licensees shall immediately deliver to the party proposing a revision or addition to an instrument a clear copy of any proposed revised instrument initialled by that party and a clear copy of any proposed amendment or addendum signed by that party.

ii. All revisions, amendments and addenda to any fully executed instrument which are prepared by licensees must comply with New Jersey law as it pertains to the attorney review of contract and lease documents prepared by real estate licensees.

6. This rule is to ensure prompt communication of the executed evidence of a transaction to all interested parties.

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

(a)

**DIVISION OF THE REAL ESTATE COMMISSION
Obligations of Licensees to the Public and to Each Other**

Proposed Amendment: N.J.A.C. 11:5-1.23

Authorized By: New Jersey Real Estate Commission,

Micki Greco Shillito, Executive Director.

Authority: N.J.S.A. 45:15-6.

Proposal Number: PRN 1992-430.

Submit comments by November 4, 1992 to:

Robert J. Melillo

Special Assistant to the Director

New Jersey Real Estate Commission

20 West State Street, CN 328

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Real Estate Commission proposes to amend N.J.A.C. 11:5-1.23 which pertains to the obligations of licensees to the public and to each other. The purpose of the amendment is to clarify the language in the current rule which requires licensees to transmit forthwith every written offer received on any real property or interest therein to the owner or their authorized representative. The current rule is silent as to when if ever that obligation to transmit all written offers received terminates. The absence of any indication as to when, if ever, that obligation terminates has created confusion among the licensee community on the question of whether licensees are required to transmit written offers received after a contract has been fully executed, but certain contingencies have not yet been fulfilled, or after all contingencies have been fulfilled but no closing has yet occurred. The proposed

amendment clarifies this uncertainty by specifying that unless the owner provides otherwise in a writing containing or confirming the terms of the listing agreement, all written offers received during the term of the listing agreement must be presented. The term of the listing agreement is defined as either the termination date established in the listing agreement or upon the closing of any sale or rental agreement entered into during the term of the listing. The amendment also provides that whenever an offer is presented by a licensee to an owner subsequent to a written contract having been signed but prior to a closing, the licensee must advise the owner in writing to consult an attorney before taking any action with respect to the offer presented, and that the licensee must retain a copy of such written notification as a business record.

In addition, the revised rule imposes upon licensees who are presented with a post-contract offer the obligation of notifying the offeror in writing that the property to which the offer pertains is the subject of a previously signed and pending contract and to retain a copy of such written notice as a business record. In cases where post-contract offers are presented to licensees who are not affiliated with the listing broker on the property involved, a copy of the written notice provided to the offeror must be delivered to the listing broker within five business days of the unaffiliated licensee's receipt of the offer.

Social Impact

The proposed amendment will have a beneficial impact upon real estate licensees and the parties to real estate transactions. Based upon legal advice received by the Commission after extensive research had been performed, it is the understanding of the Commission that real estate licensees, as the agents of their principals, are under a continuing and pervasive obligation to promptly convey to their principals pertinent information they receive regarding the property of the principal. Certainly, the submission of a written offer to purchase or lease the property is pertinent information. Thus requiring licensees to present such offers to their principals unless otherwise instructed by the principal will assist licensees in fulfilling their obligations under the laws of agency, and will assist principals in obtaining all pertinent information about their property. Furthermore, the requirement that licensees must advise such principals in writing to consult an attorney before taking any action with respect to an offer submitted after a contract has been executed will assist principals in properly reacting to such offers and benefit licensees by insulating them from claims that they improperly advised a principal on what action to take with regard to a subsequent offer. The requirement that licensees provide written notice to persons who present post-contract offers to them confirming that the property to which the offer pertains is presently under contract, will also have a beneficial social impact as it will reduce instances of miscommunication between such offerors and licensees and assure that such offers are only presented by persons who are fully aware of the legal status of the property they are submitting their offer on.

Economic Impact

The proposed amendment will have a beneficial economic impact upon real estate licensees and parties to real estate transactions. The clarification of a licensee's obligations regarding offers received subsequent to the execution of contracts will assist the licensees in avoiding litigation from disgruntled owners who might claim that the licensee had breached their obligations as a fiduciary and agent of the owner by failing to transmit information regarding a subsequently tendered offer. The amendment will also assist licensees in avoiding allegations of tortious interference with the contractual rights of parties to executed contracts because at the time of submitting any subsequently tendered offer, the licensee will also be advising their principal to consult with an attorney before taking any action with respect to the offer.

Owners of real estate will also be benefited by the enactment of this amendment because it will ensure that, unless the owners instruct otherwise, all pertinent information regarding their property will promptly be conveyed to them by the real estate licensees involved in their sale or rental transaction. Prospective purchasers will be benefited because they will have assurance that either the seller has instructed a licensee not to present subsequently tendered offers or that such offers will promptly be presented to owners. Contract purchasers will also benefit because they will have the assurance that owners will at least be advised to consult with an attorney before taking any action on an offer submitted subsequent to the execution of their contract with such persons.

The economic interests of individuals who present post-contract offers will also be protected by the notification requirement imposed by this amendment because the possibility that they may misunderstand the

status of the property on which they are making an offer and that, on the basis of such an erroneous understanding, they might incur expenses such as mortgage application fees will be reduced.

Regulatory Flexibility Analysis

The proposed amendment affects real estate brokers, most of which are small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq. While the amendment imposes no reporting requirements, recordkeeping and compliance requirements are imposed on brokers.

Brokers are required to promptly transmit all written offers received on properties or interests therein which are presented to or obtained by them during the term of a listing, unless otherwise directed in writing by the property owner. When presenting such offers after a contract has been fully executed, licensees are required to advise the owner in writing to consult an attorney before taking any action with respect to such an offer and to retain a copy of that written notice to the owner as a business record. The Commission is concerned that, absent this requirement that written notice be provided to owners of properties on which post-contract offers are received, unsophisticated property owners may take some action with regard to the subsequent offer without fully understanding the implications of such actions and the rights of the parties to the previously executed contract. Consequently, such owners could be unnecessarily exposed to liability for breach of the original contract resulting from a lack of counsel concerning their legal obligations under that contract. It is anticipated that the written notice required by this amended rule will serve to emphasize the importance of obtaining legal advice when the property owner considers any offer presented after a contract of sale has been executed. Similarly, the requirement that licensees provide written notice to persons desirous of submitting post-contract offers confirming that the property they are interested in is presently the subject of a pending contract will serve to memorialize the fact that such offerors were aware of the legal status of the property at the time they submitted their offers. Confirmation that offerors were equipped with that knowledge at that time will, it is anticipated, minimize disputes. In addition, instances where tortious interference with the contract rights of the parties to the previously signed contract might be alleged will be reduced.

Pursuant to the proposed amended rule, licensees will be required to keep copies of the notices to be provided to owners and offerors as business records. The Commission considers that the substantial benefits to the public and to licensees which will be achieved outweigh the relatively slight burdens imposed on licensees by the additional compliance and recordkeeping requirements imposed by this amendment.

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

11:5-1.23 Obligations of licensees to the public and to each other

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

(d) If any offer on any real property or interest therein is made orally, the licensee shall advise the offeror that he is not obligated to present to the owner or his authorized representative any offer unless the offer is in writing, and the licensee shall secure forthwith the offer in writing. **[The] Unless a writing containing or confirming the terms of the listing agreement otherwise provides, the licensee shall transmit forthwith every written offer on any real property or interest therein presented to or obtained by the licensee during the term of the listing to the owner or his authorized representative. For the purposes of this section, the term of a listing shall be deemed to expire either on the termination date established in the listing agreement, or where a contract of sale or a rental agreement has been signed, upon the closing of such transaction.** If any acceptance of an offer is given orally, the licensee shall secure forthwith the acceptance in writing.

(e) Post-contract offers shall be handled as follows:

1. Whenever a licensee transmits a written offer to buy or lease a property to an owner after a contract for the sale or lease of that property has gone into effect, the licensee shall notify the owner in writing to consult an attorney before taking any action on the subsequently transmitted offer, and shall retain a copy of such written notice as a business record in accordance with N.J.A.C. 11:5-1.12.

2. Whenever a licensee has presented to him or her a written offer to purchase or lease a property on which a contract of sale or lease

has already gone into effect, the licensee shall notify the offeror in writing that the property in which the offer pertains is the subject of a contract of sale or lease which is then in effect, but shall not disclose in such notice the price and terms of the contract or lease then in effect. A copy of such written notice shall be retained by the licensee as a business record in accordance with N.J.A.C. 11:5-1.12. Where the licensee to whom the offer was first presented is not affiliated with the listing broker, a copy of the written notice from that licensee to the offeror shall be delivered to the listing broker within five business days of the offer having been presented to the licensee.

3. For the purposes of this section, a contract or lease shall be deemed in effect upon the expiration of any attorney review period which the contract or lease is subject to or, if the contract or lease is not subject to attorney review, upon delivery of the fully executed final contract or lease to all parties.

[(e)]4. It shall be the duty of the licensee to recommend that legal counsel be obtained [where] whenever the interests of any party to the transaction seem to require it.

(f)-(g) (No change.)

(a)

DIVISION OF THE REAL ESTATE COMMISSION

Approved Schools; Requirements

Proposed Amendment: N.J.A.C. 11:5-1.28

Authorized By: New Jersey Real Estate Commission,
Micki Greco Shillito, Executive Director.

Authority: N.J.S.A. 45:15-6.

Proposal Number: PRN 1992-431.

Submit comments by November 4, 1992 to:

Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
20 West State Street, CN 328
Trenton, NJ 08625

The agency proposal follows:

Summary

The New Jersey Real Estate Commission is proposing to delete N.J.A.C. 11:5-1.28(e). This subsection requires that private applicants for approval by the Commission to operate preclicensure education schools must post a surety bond to protect the contractual rights of students enrolled in that school. In recent years, the Commission has received many indications that such bonds are extremely difficult for small businesses to secure. In addition, the Commission has never experienced a problem with a school operator ceasing operations in the midst of a preclicensure course and failing to provide refunds of previously paid tuition payments to students. A survey taken by the Commission of surrounding states confirmed that only one of the seven neighboring states surveyed also imposes a financial assurance requirement on the operators of its real estate preclicensure education schools. Furthermore, the Department of Insurance in which the Real Estate Commission is housed dropped its financial assurance requirement upon insurance preclicensure schools several years ago.

For these reasons, the Commission has determined that the regulatory burden imposed by the bonding requirement upon school operators far exceeds the level of protection of the public interest afforded by this requirement. The Commission has therefore determined to delete the rule provision imposing that bonding requirement upon applicants for initial and renewed school approval.

Social Impact

It is anticipated that the deletion of the N.J.A.C. 11:5-1.28(e) requirement will have a favorable social impact upon candidates for real estate licenses. This is true because the current bonding requirement imposes a substantial burden upon persons wishing to enter the field of real estate preclicensure education. By removing that requirement, it is possible that new school operators will enter the field, thereby increasing competition and possibly lowering the cost of preclicensure education courses and increasing the quality of preclicensure education.

Economic Impact

The deletion of this requirement will have a significant economic impact upon current operators of real estate preclicensure schools and upon future applicants for school approval. The substantial costs of securing surety bonds will be eliminated. In addition, the substantial expenditure of employee time in attempting to locate a company willing to issue a surety bond to a small business such as a preclicensure school will also be eliminated. Based upon the absence of any problems in the past with schools defaulting on their obligations to students, it is not anticipated that this deletion will result in any measurable adverse economic impact upon students at preclicensure education schools.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose any reporting, recordkeeping or other compliance requirements on small business, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment deletes the current requirement that, as a condition for approval as a preclicensure school, such small businesses post a surety bond to secure their financial obligations to students.

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

11:5-1.28 Approved schools; requirements

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

(e) [Applications for school approval, except from accredited colleges and universities, and schools operated by boards of education, shall be accompanied by a surety bond (Form F suggested) as issued by an insurance company authorized to do business in this State, conditioned for the protection of the contractual rights of real estate students enrolled in such school in an amount computed in accordance with the following formula:

1. The sum of:

i. The maximum number of students to be enrolled in the school's broker courses at any one time during the calendar year as set forth in the certification submitted pursuant to (f) below, multiplied by the amount of tuition for brokers' course; plus

ii. The maximum number of students to be enrolled in the school's salesperson courses at any one time during the calendar year as set forth in the certification submitted pursuant to (f) below, multiplied by the amount of tuition for salespersons' course.

2. However, if the amount computed in accordance with the prescribed formula is less than \$10,000, the amount of the bond shall be not less than \$10,000.] (Reserved.)

(f)-(x) (No change.)

(b)

DIVISION OF THE REAL ESTATE COMMISSION

Notice of Pre-Proposal

Buyer Brokers

Authorized By: The New Jersey Real Estate Commission,
Micki Greco Shillito, Executive Director.

Authority: N.J.S.A. 45:15-6 and N.J.S.A. 52:14B-4(e).

Pre-Proposal Number: PPR 1992-8.

Take notice that the New Jersey Real Estate Commission, pursuant to its authority to promulgate rules in accordance with the New Jersey Real Estate Brokers and Salesmen Act, N.J.S.A. 45:15-1, et seq., will receive preliminary comments with respect to the possible promulgation by the Commission of rules regulating the conduct of licensees who act as agents of buyers or lessees, and the conduct of licensees involved in transactions with such "buyer brokers."

Issues on which the Commission is soliciting input from interested parties include:

1. Should any disclosure requirements in addition to those established by N.J.A.C. 11:5-1.38(d) and (e) be imposed upon buyer-brokers, and if so, what must be disclosed, in what form must the disclosure(s) be made, and when and to whom must the disclosure(s) be made?

2. Should all buyer-brokerage agreements be in writing and what, if any, information should be required to be included in such agreements (that is, termination dates, compensation arrangements, provisions addressing the sale of an in-house listing to the buyer-client, etc.)?

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3. What restrictions, disclosure requirement, etc., if any, should be imposed upon licensees who attempt to sell (or rent) one of their own listings to a client they represent as a buyer-broker?

3a. Should licensees be required to provide in their listing agreements for the possibility that an offer will be procured by the listing broker, acting as buyer's broker, and if so, what provisions must be included in listing agreements with regard thereto?

4. Should licensees be required to provide in their listing agreements for the possibility that offers will be procured from buyer-brokers who seek to have all or a portion of their compensation paid by the seller or the listing broker, and if so, what provisions must be included in listing agreements with regard thereto?

5. Should a rule be adopted to clarify that a licensee, when dealing with a buyer, can act as a sub-agent if sub-agency has been offered, or as a buyer-broker, if they have entered into an agency relationship with the buyer, or as a "facilitator" or "transaction broker" where the buyer is considered a customer and the licensee does not deal with either party as a client or principal to whom fiduciary obligations are owed?

5a. What requirements, if any, should be imposed upon licensees to disclose whom they represent as an agent or subagent or that they do not represent either party as an agent?

6. What specific restrictions or requirements if any, should be imposed by rule upon licensees who act as an agent or sub-agent of a seller and who then subsequently seek to represent a buyer as their broker or to act as a "facilitator" or "transaction broker" with regard to that seller's property?

The Commission has determined to solicit comments from the public prior to taking action on these issues.

Interested persons may submit written comments on the issues raised herein.

Submit comments by November 6, 1992 to:
 Robert J. Melillo
 Special Assistant to the Director
 New Jersey Real Estate Commission
 20 West State Street, CN 328
 Trenton, New Jersey 08625

In addition, or alternatively, interested parties may submit verbal comments at a **public hearing** to be held on this pre-proposal. The hearing will be held on Tuesday, October 27, 1992 at 10:00 A.M. at the Commission offices at Mary G. Roebling Building, 20 West State Street, Conference Room 219, Second Floor, Trenton, New Jersey.

This is a notice of pre-proposal for a rule (see N.J.A.C. 1:30-3.2). Any rule concerning the subject of this pre-proposal must still comply with the rulemaking provisions of the Administrative Procedures Act, N.J.S.A. 51:14B-1 et seq., as implemented by the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30.

LAW AND PUBLIC SAFETY

(a)

STATE BOARD OF REAL ESTATE APPRAISERS

**Certified Residential Real Estate Appraiser;
 Disclosure of Title and License Numbers; Use of
 Designations and Abbreviations**

**Proposed Amendments: N.J.A.C. 13:40A-1, 2, 3.6 and
 6.1**

Proposed New Rules: N.J.A.C. 13:40A-2A, 6.2 and 6.3

Authorized By: State Board of Real Estate Appraisers, Kevin
 B. Earle, Executive Director.

Authority: N.J.S.A. 45:14F-8n; P.L.1991 c.408.

Proposal Number: PRN 1992-433.

Submit written comments by November 14, 1992 to:
 Kevin Earle, Executive Director
 State Board of Real Estate Appraisers
 Post Office Box 45012
 Newark, New Jersey 07101

The agency proposal follows:

Summary

The Real Estate Appraisers Act (P.L.1991, c.68, the "Act") provides for two classifications of real estate appraisers: certified and licensed.

Effective January 17, 1992, the Act was amended to provide for a third classification, that of certified residential real estate appraiser (see P.L.1991, c.408). The Board of Real Estate Appraisers is therefore proposing to amend N.J.A.C. 13:40A in order to implement the legislation.

As required by the Act and consistent with the standards for the existing two classifications, the standards for the certified residential classification are based upon the Appraisal Qualifications Criteria as adopted by the Appraisal Qualifications Board of the Appraisal Foundation, a not for profit corporation established on November 30, 1987 by several professional appraisal organizations in order to enhance the quality of professional appraisals. Specifically, these standards include successful completion of the Board approved examination; 105 classroom hours of appraisal course work, with particular emphasis on one-to-four family residential units; and 2,000 hours of acceptable appraisal experience in no less than two nor more than four calendar years. Classroom hours may include the 75 classroom hours completed for the licensed classification and must include coverage of the Uniform Standards of Professional Appraisal Practice subsequent to April 27, 1987. Individuals certified as residential real estate appraisers would also be subject to the provisions of existing N.J.A.C. 13:40A-4 and 5 concerning continuing education and standards for appraisals.

Amendments have been made to the sections concerning temporary visiting certificate for a certified general real estate appraiser (N.J.A.C. 13:40A-2.5) and temporary visiting license (N.J.A.C. 13:40A-3.6). The phrase "with requirements . . . substantially similar to those of New Jersey" has been added to clarify that a temporary certificate or license will be issued only if the certification and licensure requirements of the home state of the qualifying visiting appraiser are substantially equivalent to those of New Jersey.

The Board is also proposing amendments to its fee schedule, N.J.A.C. 13:40A-6.1, to include initial, renewal and duplicate certification fees for the new classification.

Finally, two new rules are proposed, N.J.A.C. 13:40A-6.2 and 6.3, requiring licensees to identify themselves in a consistent manner to enable the public to more readily identify members of the profession and the type of certificate or license held.

Social Impact

Although certification and licensure under the Act are voluntary, under Federal law certified or licensed appraisers must be used for certain Federally-related transactions. Federal law currently provides that only certified general or residential appraisers may perform appraisals of one-to-four family units with a value in excess of one million dollars. Accordingly, the proposed new certified residential classification will enable State licensed individuals who have completed 105 classroom hours (30 more than the 75 required for licensure) to move into a classification which, under Federal law, will permit them to perform appraisals of one- to four-family units regardless of transaction value. The requirement of 105 classroom hours for this new classification will ensure that complex residential appraisals are performed competently by individuals who have appropriate training and background. The Board estimates that approximately one-third of its 1,800 currently licensed residential appraisers will presently be qualified to move into the certified residential category.

Use of standardized identifying terms on appraisal reports or in any advertisement or public representation together with the limitation on use of these terms, as required by proposed new rules N.J.A.C. 13:40A-6.2 and 6.3, should alleviate confusion and enable the public to more readily identify members of the appraisal profession. Furthermore, by expressly prohibiting certified or licensed appraisers from using their names and designation on an appraisal in which they did not participate, proposed new rule N.J.A.C. 13:40A-6.3 will notify licensed and certified individuals of their obligation to comply with the Uniform Standards and will strengthen the Board's ability to enforce these rules.

Economic Impact

No economic impact on any group or person is anticipated as a result of proposed new rules N.J.A.C. 13:40A-6.2 and 6.3, which merely advise certified and licensed appraisers of the manner in which they are to identify themselves for professional purposes.

The proposed amendments establishing the certified residential classification will have an economic impact on the estimated 600 individuals who will apply for this certification. Applicants will be required to pay a Federal surcharge and will incur costs in meeting the classroom hour and continuing education requirements, all of which are consistent with

existing Federal and State requirements. Applicants will also be responsible for the credentialing and other certification fees set forth in N.J.A.C. 13:40A-6.1.

The Board cannot estimate whether the expenses created by the rules will be passed on to the public through increased fees for real estate appraisal services. The Board points out, however, that as a business expense the proposed fees are reasonable and that any economic impact upon the public should be more than outweighed by the increased consumer protection which is afforded by the proposed appraisal and competency standards.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., individual real estate appraisal professionals are considered small businesses, the following statements apply:

Because certification under the Real Estate Appraiser Act is voluntary, the Board cannot estimate with any certainty the number of individuals to whom the amended rules will apply. As stated, however, the Board believes that approximately one-third of the 1,800 currently licensed appraisers may seek certification as residential real estate appraisers pursuant to these new rules and amendments. Compliance requirements for these individuals include completing and documenting 105 classroom hours of real estate appraisal courses; 2,000 hours of real estate appraisal experience; and, upon certification renewal, 20 classroom hours of continuing education courses. Professional instructional services will be required in order to comply with these requirements. The new rules also require certified residential real estate appraisers to adhere to detailed appraisal standards. However, the Board does not anticipate that this requirement will create additional expenses because these standards are already part of the regular practice of most professionals.

The initial and continuing costs of compliance cannot be accurately estimated inasmuch as these costs will vary among those seeking certification and will depend upon factors such as the number of additional instructional hours needed to qualify for certification. As stated, the new rules and amendments reflect existing Federal and State law and include what the Board considers to be the minimum necessary requirements for the protection of the public. Accordingly, compliance must be uniformly applicable to all certified individuals, without distinction as to the size of a professional practice.

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

SUBCHAPTER 1. PURPOSE AND SCOPE; DEFINITIONS

13:40A-1.1 Purpose and scope

This chapter, as effective December 16, 1991, is promulgated by the Director, Division of Consumer Affairs, **with subsequent amendments promulgated by the Board of Real Estate Appraisers**. The rules contained in this chapter implement the provisions of the Real Estate Appraisers Act, P.L.1991, c.68 (N.J.S.A. 45:14F-1 et seq.) and provide for the voluntary licensing and certification of real estate appraisers.

13:40A-1.2 Definitions

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

...
"Residential" means one to four residential units.

"State certified general real estate appraiser" ("SCGREA") means an individual who has satisfied the experience and education requirements as set forth in this chapter, has successfully completed the Board sponsored examination, and holds a current, valid certificate [for] as a **certified general real estate [appraisal] appraiser**.

"State certified residential real estate appraiser" ("SCRREA") means an individual who has satisfied the experience and education requirements as set forth in this chapter, has successfully completed the Board sponsored examination, and holds a current, valid certificate as a **certified residential real estate appraiser**.

...
 ["Residential" means one to four residential units.]

SUBCHAPTER 2. CERTIFICATION OF GENERAL REAL ESTATE APPRAISERS

13:40A-2.1 Eligibility for certification as a general real estate appraiser

In order to be eligible for certification as a **general real estate appraiser**, an applicant shall be required to successfully complete the Board approved examination for the certification of **general real estate appraisers**.

13:40A-2.2 Eligibility for admission to examination

(a) An applicant for **certification as a general real estate appraiser** shall present evidence to the satisfaction of the Board that he or she is:

1.-5. (No change.)

13:40A-2.3 Educational requirements for certification as a general real estate appraiser

(a) In order to be eligible to take the Board approved examination for the certification of **general real estate appraisers**, an applicant shall be required to complete 165 classroom hours, as defined in N.J.A.C. 13:40A-1.2, of courses in subjects related to real estate appraisal. The required 165 classroom hours shall include a course on the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation, which the applicant shall have taken subsequent to April 27, 1987. [The 75 classroom hours required for] **Classroom hours completed for the certified residential classification** and the licensed classification may be included within the required 165 classroom hours.

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

13:40A-2.4 Experience requirements for certification as a general real estate appraiser

(a) Each person applying for certification as a **general real estate appraiser** shall furnish documentation satisfactory to the Board that:

1.-2. (No change.)

13:40A-2.5 Temporary visiting certificate; **certified general real estate appraiser**

(a) Upon application to the Board and payment of a registration fee, an appraiser certified as a **general real estate appraiser** in another state may be issued a temporary visiting certificate as a **general real estate appraiser** for a specific appraisal assignment, provided that the individual submits satisfactory proof to the Board that the individual has a current valid certificate to practice as a **general real estate appraiser** in another state which has requirements for certification as a **general real estate appraiser** substantially equivalent to those of New Jersey.

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

SUBCHAPTER 2A. CERTIFICATION OF RESIDENTIAL REAL ESTATE APPRAISERS

13:40A-2A.1 Eligibility for certification as a residential real estate appraiser

In order to be eligible for certification as a **residential real estate appraiser**, an applicant shall be required to successfully complete the Board approved examination for the certification of **residential real estate appraisers**.

13:40A-2A.2 Eligibility for admission to examination

(a) An applicant for certification as a **residential real estate appraiser** shall present evidence to the satisfaction of the Board that he or she is:

1. More than 18 years of age;
2. Of good moral character, as established by references from individuals, schools and other records acceptable to the Board;
3. Has a high school diploma or its equivalent;
4. Has completed the educational requirements described in N.J.A.C. 13:40A-2A.3; and
5. Has real estate appraisal experience as described in N.J.A.C. 13:40A-2A.4.

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

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

(b) The Board shall grant credit toward the classroom hour requirement only where the length of the educational offering is at least 15 classroom hours and where the individual successfully completes an examination pertinent to that educational offering.

(c) The applicant may obtain credit for the classroom hour requirement from the following: colleges, universities, community colleges or junior colleges accredited by the New Jersey Department of Higher Education or any State accrediting agency approved by the Board; real estate appraisal or real estate related organizations as approved by the Board; State or Federal agencies or commissions as approved by the Board; and proprietary schools as approved by the Board.

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

1. Influences on Real Estate Value;
2. Legal Considerations in Appraisal;
3. Types of Value;
4. Economic Principles;
5. Real Estate Markets and Analysis;
6. Valuation Process;
7. Property Description;
8. Highest and Best Use Analysis;
9. Appraisal Math and Statistics;
10. Sales Comparison Approach;
11. Site Value;
12. Cost Approach;
13. Income Approach;
14. Valuation of Partial Interests; and
15. Appraisal Standards and Ethics.

(e) Experience may not be substituted for education.

(f) The Board shall not grant credit for correspondence courses or for video and remote television educational offerings.

13:40A-2A.4 Experience requirements for certification as a residential real estate appraiser

(a) Each person applying for certification as a residential real estate appraiser shall furnish documentation satisfactory to the Board that he or she has accumulated at least 2,000 hours of appraisal experience in no less than two nor more than four calendar years.

(b) Acceptable appraisal experience includes, but is not limited to, the following: fee and staff appraisal; ad valorem tax appraisal; review appraisal; appraisal analysis; real estate counseling; highest and best use analysis; feasibility analysis/study; and teaching of appraisal courses.

(c) The Board shall award experience credit to ad valorem tax appraisers/appraisals when the applicant demonstrates to the satisfaction of the Board that he or she is using similar techniques as appraisers to value properties and that he or she effectively utilizes the appraisal process.

(d) Education may not be substituted for experience.

13:40A-2A.5 Temporary visiting certificate; certified residential real estate appraiser

(a) Upon application to the Board and payment of a registration fee, an appraiser certified as a residential real estate appraiser in another state may be issued a temporary visiting certificate as a

residential real estate appraiser for a specific appraisal assignment, provided that the individual submits satisfactory proof to the Board that the individual has a current valid certificate to practice as a residential real estate appraiser in another state which has requirements for certification as a residential real estate appraiser substantially equivalent to those of New Jersey.

(b) An appraiser certified by another state may apply for no more than three temporary certificates within one calendar year, except as provided in (c) below.

(c) The Board may, in its discretion, waive the requirements of (b) above for good cause shown.

13:40A-3.6 Temporary visiting licenses

(a) Upon application to the Board and payment of a registration fee, an appraiser licensed in another state may be issued a temporary visiting license for a specific appraisal assignment, provided that the individual submits satisfactory proof to the Board that the individual has a current valid license to practice in another state which has requirements for licensure as a real estate appraiser substantially equivalent to those of New Jersey.

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

SUBCHAPTER 6. GENERAL PROVISIONS

13:40A-6.1 Fee schedule

(a) Charges for credentialing, certification, licensure and other services are as follows:

1.-2. (No change.)

3. Initial certification fee, general real estate appraiser:

i.-ii. (No change.)

4. Initial certification fee, residential real estate appraiser:

i. During the first year of a biennial renewal period: \$200.00

ii. During the second year of a biennial renewal period: \$100.00

[4.]5. Initial license fee:

i.-ii. (No change.)

[5.]6. Certification renewal fee for general real estate appraiser, biennial: \$240.00

7. Certification renewal fee for residential real estate appraiser, biennial: \$200.00

[6.]8. License renewal fee, biennial \$160.00

[7.]9. Late renewal fee \$100.00

[8.]10. Duplicate certification fee, general real estate appraiser: \$120.00

11. Duplicate certification fee, residential real estate appraiser: \$110.00

Recodify existing 9.-18. as 12.-21. (No change in text.)

13:40A-6.2 Disclosure of title and license number

An appraiser shall include on all appraisal reports, wherever his or her signature appears, the appraiser's designation and state license or certification number. The appraiser shall use only the designations permitted pursuant to N.J.A.C. 13:40A-6.3.

13:40A-6.3 Use of designations and abbreviations

(a) The following shall apply in connection with the use of designations and abbreviations on appraisal reports or in any advertisement or public representation:

1. Individuals holding a current valid real estate appraiser certificate or license may use only the following designations and abbreviations to indicate the type of certificate or license held:

Permissible Designation	Permissible Abbreviation
State Certified General Real Estate Appraiser	SCGREA
State Certified Residential Real Estate Appraiser	SCRREA
State Licensed Real Estate Appraiser	SLREA

2. Abbreviations shall appear in capital letters, without a period or space after each letter, and shall not be in type or lettering larger than the individual's name.

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3. A certified or licensed appraiser shall use his or her designation or abbreviation only in conjunction with his or her name and not in conjunction with the name of a firm, corporation or partnership. For example, a firm, corporation or partnership shall not be identified as being certified or licensed.

4. An individual who is not certified or licensed pursuant to the Real Estate Appraisers Act, N.J.S.A. 45:14F-1 et seq., shall not use the designations or abbreviations set forth in (a)1 above or any other designation or abbreviation using similar combinations of words or letters to imply that the individual is state certified or licensed.

5. A certified or licensed appraiser shall not permit his or her name and designation to be used on an appraisal where the appraiser has not participated in the appraisal pursuant to the Uniform Standards of Professional Appraisal Practice.

(a)

STATE ATHLETIC CONTROL BOARD

Boxing Rules

Compensation for Inspector

Proposed New Rule: N.J.A.C. 13:46-9.17

Authorized By: State Athletic Control Board, Larry Hazzard, Commissioner.

Authority: N.J.S.A. 5:2A-4, 5:2A-5b and 5:2A-7c and d.

Proposal Number: PRN 1992-432.

Submit written comments by November 4, 1992 to:

Larry Hazzard, Commissioner
State Athletic Control Board
CN 180
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule would require that two inspectors be assigned to each boxing show. The two inspectors would be responsible for performing all of the duties set forth in N.J.A.C. 13:46-9. The proposed new rule would also set forth a compensation schedule for inspectors, which requires the promoter to pay the inspectors \$70.00 each per boxing show. At the present time, the inspectors are paid with Board funds. Due to budget reductions, these costs will now be borne by the promoter.

Social Impact

The proposed new rule should have a positive social impact in that it will enable two inspectors to continue to be assigned to boxing shows to perform the safety, integrity and fiscal checks needed to ensure that the Board's rules are followed at these events. The new rule, therefore, should improve the ability of the Board to protect the integrity of the sport and the safety and well-being of the participants.

Economic Impact

The proposed new rule would increase the costs of promoting an event by \$140.00, the cost of having two inspectors assigned to the event. It is not anticipated that this slight increase in costs paid by promoters, who already bear the cost of compensating ringside physicians, judges, referees and timekeepers, will be unduly burdensome. At the same time, the new rule would save the State approximately \$25,000 each year.

Regulatory Flexibility Analysis

The proposed new rule does not impose reporting or recordkeeping requirements on boxing promoters, the majority of whom may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The promoters will incur an additional charge of \$140.00 for each boxing show they promote. The method of paying this charge, however, will be identical to the method currently followed by the promoters in paying for the compensation for ringside physicians, judges, referees and timekeepers. This proposed rule is therefore not expected to have a substantial financial impact on promoters. Because inspectors cannot be assigned to shows without promoters paying the cost of their compensation, the rule is necessary to ensure the integrity of the sport and the safety of its participants and, therefore, must be applied to all promoters without differentiation.

Full text of the proposed new rule follows:

13:46-9.17 Compensation for inspectors

(a) Two inspectors shall be assigned by the Commissioner to each boxing show.

(b) The compensation to the inspectors shall be paid by the promoter and the fee for each of the inspectors shall be \$70.00.

(c) Promoters shall not make any payments of compensation directly to inspectors. The promoter shall write a check to the State of New Jersey in an amount authorized and determined by the Commissioner or his authorized representative. The check shall be given to the Commissioner or his authorized representative. The funds will be disbursed by the Board to the inspectors.

TRANSPORTATION

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Parking and Stopping

Route N.J. 38 in Burlington County

Proposed Amendment: N.J.A.C. 16:28A-1.27

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-198.

Proposal Number: PRN 1992-425.

Submit comments by November 4, 1992 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will establish revised "restricted parking and stopping" zones along Route N.J. 38 in the Township of Mount Laurel, Burlington County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon requests from the local governments in the interest of safety, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of the revised "restricted parking and stopping" zones along Route N.J. 38 in Burlington County was warranted.

The proposed amendment at N.J.A.C. 16:28A-1.27 expands the restriction to both sides of the highway; adds an exception for other approved parking restrictions; requires signs notifying the motorists of the restrictions, and recodifies the rule in compliance with the Department's format for clarity by placing the restrictions by municipalities within respective counties. Additionally, the rule is being amended to delete reference to Route 38 in Wall Township, Monmouth County, which was re-designated Route 138 on July 29, 1988.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.27 based upon the request from the local governments and the traffic investigations.

Social Impact

The proposed amendment will establish revised "restricted parking and stopping" along Route N.J. 38 in Burlington County for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "restricted parking and stopping" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method

of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or other compliance requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules. Therefore, a regulatory flexibility analysis is not required.

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

16:28A-1.27 Route 38

(a) The certain parts of State highway Route 38 described in this [section] subsection are designated and established as "no [parking] stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. [39:3-139] **39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.**

[1. No stopping or standing in Wall Township, Monmouth County, along both sides within the entire corporate limits of Wall Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

2. No stopping or standing in Lumberton Township and Mount Holly Township, Burlington County:

i. Along both sides:

(1) From the Hainesport Township-Lumberton Township corporate line to the easterly curb line of South Pemberton Road (end of State jurisdiction), including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation;

3. No stopping or standing in Maple Shade Township, Burlington County:

i. Along Buttonwood Avenue—both sides:

(1) Between Route 38 and Rudderow Avenue.

4. No stopping or standing in Mount Laurel Township, Burlington County:

i. Along both sides:

(1) From the westerly curb line of Ark Road to a point 250 feet westerly therefrom.

(2) From the easterly curb line of Ark Road to a point 650 feet easterly therefrom, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.]

1. No stopping or standing along both sides from the Hainesport Township-Lumberton Township corporate line to the easterly curb line of South Pemberton Road (end of State jurisdiction), including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation, except in areas covered by other parking restrictions adopted in accordance with the Administrative Procedure Act and N.J.A.C. 1:30, in the following municipalities in Burlington County:

i. In Lumberton Township; and

ii. In Mount Holly Township.

2. No stopping or standing along both sides for the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation, except in areas covered by other parking restrictions adopted in accordance with the Administrative Procedures Act and N.J.A.C. 1:30, in the following municipalities in Burlington County:

i. In Maple Shade Township; and

ii. In Mount Laurel Township.

(b) The certain parts of State highway Route 38 described in this [section] subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-2. (No change.)

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS AND BENEFITS

State Health Benefits Commission

Appointive Officer Definition

Proposed Amendments: N.J.A.C. 17:9-4.1 and 4.5

Authorized By: State Health Benefits Commission, Patricia A. Chiacchio, Acting Secretary.

Authority: N.J.S.A. 52:14-17.27 et seq.

Proposal Number: PRN 1992-434.

Submit comments by November 4, 1992 to:

Peter J. Gorman, Esq.

Executive Assistant

Division of Pensions

CN 295

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments clarify the definition of "appointive officer" for both State and local employers and the requirements for such individuals to qualify for health benefits coverage. The amendments require that such appointive officer must be appointed to an office specifically established by law, ordinance or other official action required by law for the establishment of a public office by an appointing authority. A person appointed under a general authorization whose function is merely to appoint other officers is not eligible for health benefits coverage. All eligible appointive officers must also qualify as a full time employee for such coverage.

Social Impact

The proposed amendments may affect present and future appointive officers of public agencies participating in the State Health Benefits Program who seek health benefits coverage, but are not appointed to an office established by law, ordinance, resolution or comparable official action. Such appointive officers would have to qualify for benefits under the program as "full-time employees."

Economic Impact

The proposed amendments may adversely affect some individual appointive officers who do not qualify for health benefits coverage. The taxpayer public may benefit from these amendments, since public employers will not be required to pay for health benefits coverage of some of their appointive officers who do not meet the requirements for such coverage.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the rules of the Division of Pensions and Benefits only impact upon public employers and/or employees, the amendments will not have any effect upon small business or private industry in general.

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

17:9-4.1 State employee defined

(a) (No change.)

(b) **To qualify for coverage as an appointive officer, a person shall be appointed to an office specifically established by law, ordinance, resolution, or such other official action required by law for establishment of a public office by an appointing authority. A person appointed under a general authorization, such as "to appoint officers" or "to appoint such other officers" or similar language, is not eligible to participate in the program as an appointive officer. An officer appointed under a general authorization must qualify for participation as a "full-time employee."**

17:9-4.5 Local; employee defined

(a) For purposes of local coverage, "employee" shall mean an appointive or [elected] elective officer or full-time employee of the

EDUCATION

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local employer, including an employee who is compensated on a fee basis as a convenient method of payment of wages or salary but who is not a self-employed, independent contractor compensated in a like manner.

(b) To qualify for coverage as an appointive officer, a person must be appointed to an office specifically established by law, ordinance, resolution or such other official action required by law for establishment of a public office by an appointing authority. A person appointed under a general authorization, such as "to appoint officers" or "to appoint such other officers" or similar language, is not eligible to participate in the program as an appointive officer. An officer appointed under a general authorization must qualify for participation as a "full-time employee."

EDUCATION

(a)

STATE BOARD OF EDUCATION

Thorough and Efficient System of Free Public Schools

Programs and Services for Pupils at Risk
Proposed Repeal and New Rules: N.J.A.C. 6:8-6

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

Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:7A-1 et
seq., P.L. 1991, c.3 and c.62.

Proposal Number: PRN 1992-437.

Submit written comments by November 4, 1992 to:

Issac R. Bryant, Jr.
Assistant Deputy Commissioner
225 West State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

The rules governing preventive and remedial programs, in reading, writing, and mathematics, N.J.A.C. 6:8-6, are being repealed in their entirety, and replaced by a new subchapter entitled "Programs and Services for Pupils At-Risk." The Quality Education Act (N.J.S.A. 18A:7D et seq.) created new State aid funding to support the development and implementation of district programs for pupils at risk. N.J.S.A. 18A:7D et seq. replaced previous funding for compensatory education; however, as written, it does not define the intent of the new aid category. In the *Abbott v. Burke* decision (119 N.J. 287 (1990)), the New Jersey Supreme Court clearly defines pupils who suffer from the effects of poverty as the disadvantaged pupils who should be targeted for such aid. However, the definition of "pupil at risk" and programs for pupils at risk are discussed in only general terms in the court decision, and are not referenced at all in N.J.S.A. 18A:7D et seq. Thus, there is a need to determine the population of students intended to benefit from this category of aid to fulfill the intent of N.J.S.A. 18A:7D et seq.

The proposed section N.J.A.C. 6:8-6.1, Assessment of pupil needs, recognizes that the definition of pupils at risk is broad in scope, and includes academic, economic, health, and psycho-social conditions which cause some pupils to be less likely than other children to successfully complete school. Pupils at risk manifest a variety of behaviors which allow them to be identified as needing special programs and services.

While school districts must meet the special instructional needs of pupils who fall below established minimum levels of proficiency (MLPs), the complex causes and manifestations of school failure dictate that programs and services for pupils at risk must extend beyond the limitations of traditional remedial instructional strategies. The proposed rules encourage flexibility in school district programs and services for pupils at risk in order to maximize creative and effective management of funding from multiple sources, such as at-risk aid and Federal Chapter 1 and Chapter 2 funds. The flexibility provided for in N.J.A.C. 6:8-6 recognizes also the diversity in size, organization, and demographics of New Jersey's school districts, factors which influence program planning for pupils at risk.

Social Impact

It is expected that these new rules will have a positive impact on the population of public school pupils at risk of school failure by creating a structure for district boards of education to plan for their educational needs on an annual basis. The rules provide a flexible framework for planning programs and services and create mechanisms for review and approval of district plans and fiscal support of the program structure.

Economic Impact

The QEA laws have caused a change in the way programs for pupils at risk are funded in New Jersey. The proposed amendments bring N.J.A.C. 6:8-6 in line with the QEA laws and will affect all New Jersey districts; however, the economic impact is determined entirely by statute. Districts with large numbers of students who meet the statutory economic criteria to be counted for at-risk aid may receive more funds than they received from State compensatory education. However, districts which will get little at-risk aid, that is, which have few students who meet the economic criteria, may still have many students with educational needs. After 1992-93, when "hold harmless" funding for at-risk aid expires pursuant to P.L. 1991, c.62, such districts may need to use local dollars to fund remedial programs which were formerly funded by categorical State dollars.

Regulatory Flexibility Statement

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

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 6:8-6.

Full text of the proposed new rules follows:

SUBCHAPTER 6. PROGRAMS AND SERVICES FOR PUPILS AT RISK

6:8-6.1 Assessment of pupil needs

Each district board of education shall annually identify those needs and conditions which place pupils at risk of not acquiring the knowledge, skills, behaviors and attitudes necessary for school success, school completion, and successful functioning as an adult in society. The assessment shall include, but not be limited to, assessments of pupil achievements as required by N.J.A.C. 6:39, and information contained in the Annual Pupil Assistance Committee Report, N.J.A.C. 6:26-4.

6:8-6.2 Programs and services for pupils at risk

(a) District boards of education shall approve a plan for utilizing at-risk aid generated by the Quality Education Act, P.L. 1990, c. 52, as well as foundation aid and other State and Federal funds for programs and services for pupils at risk, by October 1 each year. The plan shall be submitted to the Department of Education.

(b) The plan shall specify programs and services to address the conditions which place pupils at risk, including assistance to parents and guardians in promoting school success. The plan shall be based on the assessment of pupil needs and address those needs within the framework of the following goals:

1. Prevention: To enhance the health, self-esteem and learning of life skills necessary for age-appropriate development and productive functioning in the school setting and in society;

2. Intervention: To identify and assist pupils who are not meeting standards for behavior and achievement in areas such as attendance, conduct, and mastery of the curriculum, as well as performing below State minimum levels of proficiency; and

3. Improving the learning environment: To improve the school climate so that pupils experience school as a safe, supportive and disciplined place where academic and interpersonal growth and learning can take place.

(c) For each pupil performing below State minimum levels of proficiency after completion of three academic years of instruction beyond kindergarten, the district board of education shall ensure the development, implementation and monitoring of an individual

pupil improvement plan. The district board of education shall ensure that:

1. The pupil and the pupil's parent(s) or guardian(s) are informed of the need for and content of the individual pupil improvement plan in the language or mode of communication which is understood by the pupil and the parent(s) or guardian(s) in accordance with N.J.A.C. 6:3-2.2(k); and

2. Ongoing communication takes place among the regular classroom teacher, and the parent(s) or guardian(s) of the pupil for whom the plan has been developed and those responsible for providing services described in the individual pupil improvement plan.

(d) The district board of education shall provide for the staff training necessary to implement the programs and services for pupils at risk specified in the annual plan.

(e) Programs and services for pupils at risk may be offered during the regular school day, beyond the regular school day or during the summer. To the extent that such programs and services do not fall within the scope of authorized certification pursuant to N.J.A.C. 6:11, or cannot reasonably be provided except outside the school setting, such programs and services may be delivered by qualified individuals who are not necessarily certified but are supervised by appropriately certified school staff members.

6:8-6.3 Budget documentation

The district board of education shall provide documentation to the county offices of education through the annual budget process, pursuant to N.J.S.A. 18A:7D-27, in support of the annual programs and services plan developed in accordance with N.J.A.C. 6:8-6.2.

(a)

STATE BOARD OF EDUCATION

Nonpublic Nursing Services

Reproposed New Rules: N.J.A.C. 6:29-8

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

Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15 and 5, P.L. 1991,
c.226.

Proposal Number: PRN 1992-438.

A **public testimony** session concerning this proposal will be held on:

Wednesday, October 21, 1992 from 4:00 P.M. to 6:00 P.M.
State Board Conference Room
Department of Education
225 West State Street
Trenton, New Jersey

To reserve time to speak call the State Board Office at (609) 292-0739
by 12:00 noon Friday, October 16, 1992.

Submit written comments by November 4, 1992 to:

Isaac R. Bryant, Jr.
Assistant Deputy Commissioner
N.J. Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

On July 6, 1992, new rules were proposed in the New Jersey Register at 24 N.J.R. 2325(b) regarding nursing services to nonpublic schools. Comments were subsequently received from Department staff as well as representatives from the Department's advisory committee for nonpublic schools. Based on these comments, the State Board of Education has decided to repropose these new rules to allow for further deliberation. There will be an additional 30-day public comment period and a public testimony session on October 21, 1992. Except for the following changes, the reproposed new rules are identical to those originally proposed. A summary of the comments and responses received regarding the original proposal will be published with the adoption of this reproposal. The following revisions have been made:

• N.J.A.C. 6:29-8.2(a)1 has been revised to clarify that the registered nurse must be an employee of the school district, an employee of a third-party contractor, or an independent contractor. Independent contractor means an individual whose employment criteria satisfy those require-

ments necessary for treatment as an independent contractor for Federal employment tax purposes.

• N.J.A.C. 6:29-8.3 has been revised to add a new subsection (b). This new subsection provides for consultation with the office of the county superintendent when the chief school administrator and the nonpublic school administrator cannot reach an agreement regarding the services to be provided.

• N.J.A.C. 6:29-8.5(a) has been revised to limit the allocated funds expended for administrative costs by a district board of education to six percent, or the actual cost, whichever is less, of the funds allocated for each participating nonpublic school. The Department does not have the authority to regulate charges between school districts and vendors providing nursing services to nonpublic schools.

• N.J.A.C. 6:29-8.6(a) includes two revisions. "Educational Services Commission" (ESC) has been eliminated, as an ESC is not a local education agency (LEA), except for the purpose of receiving Federal funds. The second revision changes the date by which information must be forwarded by the district board of education from "September 1st" to "October 1," as some boards of education do not meet during the summer months. This will provide time for the board minutes to be forwarded.

• N.J.A.C. 6:29-8.6(a)2 has been changed to require that the administrator of each nonpublic school receives a copy of the contract document and a copy of the board of education meeting minutes submitted for approval. Previous code language required that one of the documents was to be provided to the nonpublic school administrator, but not both. Also, new language has been added which calls for a rationale for the distribution of funds, replacing the more stringent requirement set forth in the original proposed N.J.A.C. 6:29-8.6(a)4.

• N.J.A.C. 6:29-8.6(a)3 has had language added which states the report is to be on a form provided by the Department of Education. A single reporting format is necessary to enable essential data collection.

On July 26, 1991, the New Jersey State Legislature determined that the welfare of the State requires that all school-aged children be assured equal access to appropriate nursing services. To achieve this objective, P.L. 1991, c.226 (N.J.S.A. 18A:40-23 et seq.) was signed into law. This law requires that basic nursing services be provided for children in nonpublic schools. Current State Board of Education rules do not include provisions for providing nonpublic school pupils with access to nursing services. The reproposed new rules will provide Statewide standards for district boards of education to provide nursing services to nonpublic school students.

A review of each of the sections of N.J.A.C. 6:29-8 follows:

N.J.A.C. 6:29-8.1 sets forth the purpose of the subchapter. It is the intent of these rules to establish Statewide standards for district boards of education to provide required nursing services, and additional medical services to nonpublic school pupils, in accordance with N.J.S.A. 18A:40-23 et seq.

N.J.A.C. 6:29-8.2 requires district boards of education to adopt policies and procedures for providing nursing services to nonpublic school pupils. These nursing services include: assistance with medical examinations; conducting screening of hearing examinations; maintenance of student health records; conducting scoliosis examinations of pupils between the ages of 10 and 18; and extending the emergency care provided to public school pupils to those pupils who are enrolled full-time in the nonpublic school who are injured or become ill at school, or during participation on a school team or squad pursuant to N.J.A.C. 6:29-1.3(a)1. This section further requires that such nursing services be provided by a professional registered nurse licensed in the State of New Jersey who is an employee of the school district, an employee of a third-party contractor, or an independent contractor. The authorizing legislation requires equal access to appropriate health care services for nonpublic school students. Within the public schools, the school nurse may also provide classroom instruction which requires the nurse to be certified. Such instructional services are prohibited by N.J.S.A. 18A:40-23 et seq. in the nonpublic school, eliminating the need that services be provided by a certified school nurse.

N.J.A.C. 6:29-8.3 identifies the means through which public school districts will confer with nonpublic schools in establishing nursing services for nonpublic school pupils. This section also specifies the areas to be addressed at the conference between the public school district and the nonpublic school. The rules provide for consultation with the county office of education when agreement can not be reached regarding the services to be provided.

N.J.A.C. 6:29-8.4 establishes the administrative procedures to be followed by both public and nonpublic schools in implementing policies and procedures for nonpublic school nursing services.

N.J.A.C. 6:29-8.5 limits the administrative costs of public school districts for nonpublic school nursing services to six percent of the funds allocated for each participating nonpublic school or the actual costs, whichever is less. This section sets limits on the provision of nursing services, based upon the funds available for this purpose.

N.J.A.C. 6:29-8.6 establishes the procedures to be used by district boards of education in reporting annually on the implementation of nursing services to nonpublic school pupils.

N.J.A.C. 6:29-8.7 requires the district board of education responsible for providing the nursing services to disseminate copies of N.J.S.A. 18A:40-23 et seq. and this subchapter to the nonpublic school which receives nursing services.

Social Impact

The social impact of the proposed new rules will be positive. It will benefit nonpublic school students by providing access to basic nursing services equivalent to those in public schools.

Economic Impact

The proposed new rules will have no significant economic impact on school districts. N.J.S.A. 18A:40-23 et seq. does not require a district to make expenditures for the purposes of the Act in excess of the amount of State aid received. Districts will receive funds annually, based upon the enrollment of the nonpublic schools within their jurisdiction and the amount of State aid appropriated. Ten million dollars was appropriated for FY 1992.

Regulatory Flexibility Statement

The rules impact upon New Jersey school districts and nonpublic schools receiving nursing services as provided for in N.J.S.A. 18A:40-23 et seq. Some nonpublic schools may be considered small businesses. However, these rules do not impose any reporting, recordkeeping, capital or compliance costs, or professional services requirements on nonpublic schools, for these requirements are the responsibility of the public school district. Private schools for the handicapped are not affected by these rules as they are governed by the same standards as public schools which include the provision of nursing services.

These rules will further impact upon independent educational consulting firms and independent nursing services or agencies, some of which may be considered small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and may be eligible to contract with school districts for the provision of nursing services to nonpublic schools. Recordkeeping and reporting requirements would be minimal and would not discourage small businesses from contracting with school districts. It is anticipated that only a small number of school districts will contract for the nursing services with such independent agencies. For the above stated reason, no differing standards based on business size are offered.

Full text of the repropoed new rules follows:

SUBCHAPTER 8. NURSING SERVICES TO NONPUBLIC SCHOOLS

6:29-8.1 Purpose

These rules are designed to provide standards for district boards of education for the provision of required nursing services to nonpublic school pupils and for additional medical services which may be provided to nonpublic school pupils, according to N.J.S.A. 18A:40-23 et seq.

6:29-8.2 Adoption of policies and procedures

(a) District boards of education having nonpublic schools within their district boundaries shall adopt and implement policies and procedures for the following:

1. The extension of nursing services provided to public school pupils to those pupils who are enrolled full-time in the nonpublic school within the limits of funds appropriated or otherwise made available for this purpose. Such services shall be provided by a professional registered nurse licensed in the State of New Jersey who is an employee of the school district, an employee of a third-party contractor, or an independent contractor. Independent contractor means an individual whose employment criteria satisfies those requirements necessary for treatment as an independent contractor for Federal employment tax purposes. The services shall include:

i. Assistance with medical examinations, including dental screening;

ii. Conducting screening of hearing examinations;

iii. The maintenance of student health records, with notification of local or county health officials of any student who has not been properly immunized; and

iv. Conducting scoliosis examinations of pupils between the ages of 10 and 18; and

2. The extension of emergency care provided to public school pupils to those pupils who are enrolled full-time in the nonpublic school who are injured or become ill at school, or during participation on a school team or squad pursuant to N.J.A.C. 6:29-1.3(a)1.

(b) District boards of education having nonpublic schools within their district boundaries may adopt and implement policies and procedures for providing the pupils who are enrolled full-time in the nonpublic school with additional medical services.

1. Such additional medical services may only be provided when all services required in (a)1 and 2 above have been provided for or will be provided to pupils enrolled full-time in the nonpublic school as documented in the reporting procedures required in N.J.A.C. 6:29-8.6(a)2.

6:29-8.3 Conference with nonpublic school

(a) Each chief school administrator of a district in which a nonpublic school is located shall confer annually with the administrator of the nonpublic school for the following purposes:

1. To advise the nonpublic school of the limit of funds appropriated or otherwise made available for the provision of nursing services for the full-time pupils enrolled in the nonpublic schools; and

2. To agree upon the nursing services which shall be provided and additional medical services which may be provided as set forth in N.J.S.A. 18A:40-23 et seq. and within the limit of available funds.

(b) In the event that the chief school administrator and the nonpublic school administrator cannot reach agreement regarding the nursing services and additional medical services to be provided, the county office of education shall be consulted for clarification.

6:29-8.4 Administrative guidelines

(a) The nursing services provided to nonpublic school pupils shall not include instructional services.

(b) District boards of education may provide the necessary equipment, materials and services for immunizing pupils who are enrolled full-time in the nonpublic school from diseases as required by the State Sanitary Code adopted pursuant to N.J.S.A. 26:1A-7 or for diseases against which immunization may be recommended by the State Department of Health.

(c) Equipment and supplies comparable to that in use in the district can be purchased and transportation costs charged to the funds allocated for each participating nonpublic school as long as they are directly related to the provision of the required nursing services and additional medical services which may be provided. Such equipment may be loaned without charge to the nonpublic school for the purpose of providing the services under these provisions. However, such equipment remains the property of the district board of education.

(d) A pupil who is enrolled in a nonpublic school and whose parent or guardian objects to the pupil receiving any services provided under the rules in this subchapter shall not be compelled to receive the services except for a physical or medical examination to determine whether the pupil is ill or infected with a communicable disease.

6:29-8.5 Fiscal responsibilities

(a) The funds expended by a district board of education for administrative costs shall be limited to the actual costs or six percent, whichever is less, of the funds allocated for each participating nonpublic school.

(b) Each participating nonpublic school shall receive nursing services to the limit of funds available based upon its enrollment on the last school day prior to October 16 of the preceding school year.

6:29-8.6 Reporting procedures

(a) Each board of education providing nursing services to nonpublic schools shall submit the following information to the county

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superintendent of schools on or before October 1 and a copy shall be forwarded to the administrator(s) of the nonpublic school(s) within their district boundaries:

1. A written statement verifying that the required conference was held with the nonpublic school(s);
2. A copy of the contract document and minutes of the board of education meeting submitted for approval, which describe the methods by which the nursing services to the nonpublic school pupils will be provided for the ensuing school year, including a rationale for the distribution of funds; and
3. A description of the kind and number of services which were provided during the previous school year on a form provided by the Department of Education.

6:29-8.7 Authorizing statutes and regulations

Each nonpublic school which receives nursing services shall be provided with a copy of N.J.S.A. 18A:40-23 et seq. and this subchapter, by the board of education which is responsible for such services.

(a)

STATE BOARD OF EDUCATION

Bilingual Education

Multiple Indicators for Exit from Bilingual Programs

Proposed Amendments: N.J.A.C. 6:31-1.1 through 1.7 and 1.9 through 1.16

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

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:35-15 to 35-26, 18A:7A-1 et seq. and specifically 18A:7A-4 and 5, P.L. 1991, c.12.

Proposal Number: PRN 1992-439.

Submit written comments by November 4, 1992 to:

Isaac R. Bryant, Jr.
Assistant Deputy Commissioner
N.J. Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

The Department of Education proposes to amend its rules governing programs and services for limited English proficient pupils. These amendments will bring N.J.A.C. 6:31 into conformity with P.L. 1991, c.12.

On January 24, 1991, P.L. 1991, c.12 was signed into law. This amendment to the Bilingual Education Act requires that an assessment based on multiple indicators be completed before a student can exit from bilingual, English as a second language (ESL), or English language services programs. Public Law 1991, c.12 also provides for parental notification and an appeal process should parents or teachers disagree with the placement decision of a limited English proficient pupil.

According to current Department of Education Bilingual Education rules, the exit process requires that limited English proficient pupils meet only the State-established cutoff score on an English language proficiency test. Under the proposed amendments to N.J.A.C. 6:31, the exit process for bilingual, ESL, and English language services programs will entail multiple indicators set forth in P.L. 1991, c.12.

Additionally, throughout the text, the term "bilingual and ESL program" has been changed to "bilingual, ESL, or English language services program." This change was made to reflect all of the mandated programs for limited English proficient students.

A review of the proposed amendments follows:

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

Two new definitions have been added—"developmental bilingual education programs" and "review process." As defined in these rules, "developmental bilingual education programs" means full-time programs of instruction in elementary and secondary schools which provide structured English language instruction and instruction in a second language.

"Review process" has been defined to mean the district-established process to assess limited English proficient students for exit from bilingual, ESL or English language services programs. The term "bilingual education program alternative" has been changed to "instructional program alternative" to clearly reflect that the program being provided is an instructional alternative and not necessarily a bilingual program.

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

N.J.A.C. 6:31-1.2(b) has been revised to clarify how district boards of education must determine the English language proficiency of pupils whose native language is other than English.

Reference to Alemany Press has been removed from subsection (d) since Alemany Press no longer publishes the Maculaitis Assessment Test. Reference to pupil scoring on the Maculaitis Assessment has also been removed from this subsection as it refers to a requirement for high school graduation. The scoring requirements on the Maculaitis Assessment program are already contained in N.J.A.C. 6:31-1.3(a)2.

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

N.J.A.C. 6:31-1.5(c), which pertains to voluntary enrollment of pupils whose primary language is English in bilingual education programs, has been revised for clarity and to remove redundant language. N.J.A.C. 6:31-1.5(d) has been eliminated as it is no longer necessary. The requirement contained in subsection (d) is now included in N.J.A.C. 6:31-2.5(c). Throughout this section, the term bilingual education alternative program has been changed to instructional program alternative. Such change more clearly identifies the program being provided. Current subsections (e) through (g) are being recodified as (d) through (f).

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

In N.J.A.C. 6:31-1.6(b), a new paragraph (b)5 has been added to require that district board of education bilingual education programs include a review process for exiting pupils from bilingual, ESL, or English language services programs. N.J.A.C. 6:31-1.6(c) has been revised for clarity.

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

In N.J.A.C. 6:31-1.7(b), the language has been changed to encourage the use of personnel who are familiar with and knowledgeable of the unique needs and background of the limited English proficient pupils and their parents to provide bilingual and ESL supportive services.

N.J.A.C. 6:31-1.10 Bilingual and ESL program participation

The section heading has been revised to include English language services. N.J.A.C. 6:31-1.10(b) has been amended to include the requirement that a pupil may be placed in a monolingual English program after meeting a majority of the exit criteria established by the district. Subsection (c) has been amended to require that limited English proficient pupils annually be assessed for exit from bilingual, ESL, or English language services programs. A new subsection (e) has been added to provide an assessment for exit from bilingual education programs that employs multiple criteria, which is sufficient to determine a student's readiness or inability to function successfully in the monolingual English program.

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

Deletion of the exemption found in subsection (c) is being proposed to benefit parents and program participants and to ensure uniform implementation of the requirement that progress reports be in both English and the native language of the parent(s).

Social Impact

The proposed rule amendments are expected to have a positive social impact. These rules will ensure that an assessment based on multiple indicators is completed before a student can exit from bilingual, ESL or English language services programs. Assessment based on multiple criteria, rather than a single criterion, will more accurately reflect the pupil's readiness or ability to function successfully in an English-only program.

Economic Impact

The proposed amendments have little economic impact on school districts. Boards of education are already required to assess the readiness of the limited English proficient pupil for placement in English-only programs. Compliance with the proposed amendment to include multiple indicators in the limited English proficient pupil's exit placement assessment can be accomplished within existing financial resources.

Regulatory Flexibility Statement

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

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

6:31-1.1 Definitions

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

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

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

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

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

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

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

"Developmental bilingual education programs" means a full-time program of instruction in elementary and secondary schools which provides structured English language instruction and instruction in a second language.

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

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

Language fluency is not the same as language proficiency, which is the full command of language skills.

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

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

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

...
 "Review process" is the process established by the district board of education to assess limited English proficient students for exit from bilingual, ESL, or English language services programs.

6:31-1.2 Identification of eligible participants

(a) (No change.)

(b) The district shall determine the English language proficiency of all pupils whose native language is other than English by [means of the administration of] **administering an English language proficiency test, assessing the level of reading in English, reviewing the previous academic performance of pupils as well as standardized tests in English and reviewing the input of teaching staff members responsible for the educational program for the limited English proficient pupils.** Those pupils who score below the State-established cutoff score on [an English language proficiency test] **the Language Assessment Battery or the Maculaitis Assessment Program as per the "Norming Study of the Language Assessment Battery and the Maculaitis Assessment Program—Practitioner's Report" (1989) and who have at least one other indicator,** are pupils of limited English proficiency.

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

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

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

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

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

2. (No change.)

6:31-1.4 Required programs for limited English proficient pupils

(a) (No change.)

(b) Whenever there are 10 or more pupils of limited English proficiency enrolled within the schools of the district, the district board of education shall establish an ESL program.

1. (No change.)

2. Programs and services designed to meet the special needs of pupils of limited English proficiency shall include, but not be limited

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to, compensatory education, special education and vocational training, and be provided in accordance with N.J.S.A. 18A:7A-4 and 5.
(c) (No change.)

6:31-1.5 Bilingual education program

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

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

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

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

3. Districts implementing [alternative programs] **program alternatives** must [annually] submit **annually**, student enrollment and achievement data that demonstrate the continued need for these programs.

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

(c) A program of bilingual education may make provisions for the voluntary enrollment on a regular basis of pupils whose primary language is English [in order that they may acquire an understanding of the language and the cultural heritage of the pupils of limited English proficiency for whom the particular program of bilingual education is designed, provided that no bilingual class contains a majority of pupils whose native language is English]. **Such programs of developmental bilingual education shall be designed to help pupils achieve proficiency in English and in a second language, while mastering subject matter skills. Instruction shall, to the extent necessary, be in all courses or subjects of study which will allow a pupil to meet grade promotion and graduation standards. Where possible classes in these programs shall be comprised of approximately equal numbers of pupils of limited English proficiency and of pupils whose native language is English.**

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

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

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

6:31-1.6 Approval procedures

(a) (No change.)

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

- 1.-2. (No change.)
3. School information; [and]
4. Evaluation design; and
5. **Review process for exit.**

(c) Districts shall submit annually evaluation data **which shall include achievement information** in reading, writing, mathematics,

and ESL [achievement], and the exit data for the pupils of limited English proficiency enrolled in the district.

(d) (No change.)

6:31-1.7 Supportive services

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

(b) School districts may use **bilingual personnel on a full or part-time basis** [bilingual personnel] to provide supportive services, such as counseling, to pupils of limited English proficiency. **To the extent that is administratively feasible, supportive services should be provided by personnel who are familiar with and knowledgeable of the unique needs and background of the limited English proficient pupils and their parents.**

6:31-1.9 Certification

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

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

6:31-1.10 Bilingual, [and] ESL, and English language services program participation

(a) All school-age pupils of limited English proficiency shall be enrolled in the bilingual, [or] ESL or **English language services** education program established by the school district, as prescribed in N.J.A.C. 6:31-1.4(b) and 6:31-1.5(a).

(b) Pupils enrolled in the bilingual, [or] ESL, or **English Language services** [education] program shall be placed in a monolingual English program when they have [met the exit criterion of the State established cutoff score on an English language proficiency test.] **demonstrated readiness to function successfully in an English-only program. The process to determine the readiness or inability of the individual pupil to function successfully in the English-only program shall be initiated by the pupil's level of English proficiency as measured by a State-established cutoff score on an English language proficiency test, and the readiness of the pupil shall be further assessed on the basis of multiple indicators which shall, at a minimum, include classroom performance, the pupil's reading level in English, the judgment of the teaching staff member or members responsible for the educational program of the pupil, and performance on achievement tests in English (see P.L. 1991, c.12).**

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

(d) (No change.)

(e) **When the review process for exiting a pupil from a bilingual, ESL, or English language services program has been completed, the district board of education shall notify, by mail, the pupil's parent(s) or legal guardian of the determination of placement. If the parent(s), guardian or teaching staff member disagrees with the place, he or she, upon exhausting the local district's appeal process, may appeal the placement before the Commissioner of Education pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6:24.**

6:31-1.11 Location

All bilingual, [and] ESL, and **English language services** programs shall be conducted within classrooms approved by the county superintendent of schools within the regular school buildings of the district.

6:31-1.12 Notification

(a) No later than 10 working days after the enrollment of any pupil in a bilingual, [or] ESL, or **English language services** [education] program, the district shall notify, by mail, the parent(s) or legal guardian that the pupil has been enrolled in a bilingual, [or] ESL, or **English language services** education program. The notice shall contain a simple, non-technical description of the purposes,

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method and content of the program in which the pupil is enrolled. The notice shall also inform the parent(s) if their right to review and discuss with district administrators the procedures and pertinent data used to identify their child as having limited English proficiency. The notice shall also advise the parent(s) of the appeal process to be followed pursuant to N.J.S.A. 18A:6-9, if they wish to challenge the identification of their child. During the pendency of any such appeal before the Commissioner, the child shall remain enrolled in the program. The notice shall be in English and in the language in which the parent(s) possesses a primary speaking ability.

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

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

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

6:31-1.13 Joint programs

A school district may join with any other school district(s), according to procedures prescribed by the Commissioner of Education with the approval of the county superintendent, to provide [programs in] **bilingual, [or] ESL [education] or English language services programs.**

6:31-1.14 Parental involvement

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

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

6:31-1.15 Office of Bilingual Education

(a) (No change.)

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

1. (No change.)

2. Providing technical assistance to school districts in the implementation of their bilingual, [and] ESL, and **English language services** programs[.]; and

3. (No change.)

6:31-1.16 State advisory committee on bilingual education

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

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

1-4. (No change.)

5. A minimum of two, but not more than four, school administrators of bilingual or ESL education programs; and

6. (No change.)

HUMAN SERVICES**(a)****DEPARTMENT OF HUMAN SERVICES
DIVISION OF YOUTH AND FAMILY SERVICES****Manual of Standards for Adoption Agencies****Proposed Readoption with Amendments: N.J.A.C.****10:121A**

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 9:3-37 et seq., 30:1A-1 et seq. and 30:4C-4(b).

Proposal Number: PRN 1992-377.

Submit comments in writing by November 4, 1992 to:

Richard Crane, Acting Chief
Bureau of Licensing
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 9:3-37 et seq., N.J.S.A. 30:1A-1 et seq. and 30:4C-4(b), the Department of Human Services is authorized to certify all private and public adoption agencies, both within New Jersey and outside the State, that are involved in the placement of children for adoption in New Jersey. Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:121A, Manual of Standards for Adoption Agencies, expires on December 7, 1992. As required by the Executive Order, The Division of Youth and Family Services has reviewed the rules and found them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. However, the proposed readoption with amendments constitutes significant changes to the current rules, which were adopted in December 1987 and will expire on December 7, 1992. The proposed readoption also creates some additional new rules. The Division has reviewed these rules and found them to be necessary and reasonable.

The proposed readoption with amendments was developed with extensive input from the community, including representatives from adoption agencies, the legal profession and the Inter-Agency Adoption Council, the professional organization that represents the adoption agency directors in New Jersey. The revised manual represents a consensus among these groups on the rule changes. Over the past several months, an Ad Hoc Citizens' Advisory Committee participated in review meetings, draft reviews and initiated numerous comments and revisions. The final draft of the proposed readoption with amendments was distributed to the members of this Ad Hoc Citizens' Advisory Committee, adoption agencies and the Inter-Agency Adoption Council for review and comment.

The title of the Manual of Standards for Adoption Agencies will be changed to the Manual of Requirements for Adoption Agencies as the term "requirements" more accurately describes the rules contained in the chapter.

Subchapter 1 (N.J.A.C. 10:121A) outlines the scope of the rules (N.J.A.C. 10:121A-1.1), sets forth the purpose of this chapter (N.J.A.C. 10:121A-1.2), specifies the implementation and enforcement responsibility/information of the Division of Youth and Family Services (N.J.A.C. 10:121A-1.4), defines the terms used in this chapter (N.J.A.C. 10:121A-1.5), specifies the State laws with which an adoption agency must comply (N.J.A.C. 10:121A-1.6), outlines the rules of eligibility for a certificate of approval (N.J.A.C. 10:121A-1.7), and specifies the rules for inter-country adoptions (N.J.A.C. 10:121A-1.8).

Subchapter 1 also includes the following proposed amendments: The proposed amendment at N.J.A.C. 10:121A-1.5 removes the word "Standards" in the definition of the Manual of Standards for Adoption Agencies and replaces it with the word "Requirements," for purposes of consistency. The proposed amendments at N.J.A.C. 10:121A-1.7(a)6 and 7 expand the services that define an adoption agency in order to provide adequate safeguards to children, birth mothers and adoptive parents during the adoption process. These services now include adoptive parent recruitment and information services. These services were previously listed at N.J.A.C. 10:121A-1.7(b)2, (which is now deleted), and had not been subject to certification requirements.

Subchapter 2 (N.J.A.C. 10:121A-2) describes the rules for application for a certificate of approval (N.J.A.C. 10:121A-2.1), specifies the rules for issuance of certificates of approval (N.J.A.C. 10:121A-2.2), outlines the criteria for denying, suspending, revoking or refusing to renew a certificate of approval (N.J.A.C. 10:121A-2.3), describes the administrative hearings process (N.J.A.C. 10:121A-2.4), indicates court action that may be taken by the Division (N.J.A.C. 10:121A-2.5), specifies the actions the Bureau will follow in the event complaints are received (N.J.A.C. 10:121A-2.6) and outlines the rules for public access to the Division's records that are maintained on the adoption agencies (N.J.A.C. 10:121A-2.7).

Subchapter 2 also includes the following proposed amendments: The proposed amendment at N.J.A.C. 10:121A-2.1(c)10 clarifies that when applying for a new certificate, out-of-State agencies must submit to the Division a copy of their home state's most current licensing/approval inspection report and the license or certificate that reflects their licensing or approval status in their home state and that indicates that their agency has been in operation for at least two years. The proposed amendment at N.J.A.C. 10:121A-2.2(b) states that the Division's Bureau of Licensing will issue a temporary certificate of approval for a maximum of six months, after it conducts an initial inspection of a new agency and finds the agency to be in substantial compliance with the chapter. The proposed new text at N.J.A.C. 10:121A-2.2(i) states that the Bureau of Licensing will not issue a certificate to an out-of-State agency unless the agency has received a license or approval from their home state's licensing or regulatory agency and has been in operation for at least two years. The proposed amendment at N.J.A.C. 10:121A-2.3(a)6 adds violations by an agency of N.J.S.A. 9:23-5 et seq., the Interstate Compact on the Placement of Children and N.J.S.A. 9:6-8.9, 8.10, 8.13 and 8.14, State child abuse laws, as a reason to deny, suspend, revoke, or refuse to renew a certificate of approval. The proposed new text at N.J.A.C. 10:121A-2.3(a)8 states that a certificate of approval may be denied, suspended, revoked or not renewed if an agency fails to employ the necessary qualified professional staff, as specified in the chapter at N.J.A.C. 10:121A-4.4.

Subchapter 3 (N.J.A.C. 10:121A-3) specifies the rules for the governing boards for the private adoption agencies (N.J.A.C. 10:121A-3.1), describes the requirements for advisory boards for public adoption agencies (N.J.A.C. 10:121A-3.2), outlines the legal responsibilities of adoption agencies (N.J.A.C. 10:121A-3.3), specifies that agencies must provide specific kinds of information to parents and adoption applicants (N.J.A.C. 10:121A-3.4), describes the reporting requirements an agency must follow when they learn of abuse/neglect situations that children under their supervision or care as well as other changes or events in the operations of the agency (N.J.A.C. 10:121A-3.5), specifies the recordkeeping requirements an agency must follow (N.J.A.C. 10:121A-3.6), and specifies that agencies must provide appropriate office space and equipment in order to provide services (N.J.A.C. 10:121A-3.7).

Subchapter 3 also includes the following proposed amendments: The proposed amendment at N.J.A.C. 10:121A-3.1(e) changes the requirement that governing boards must meet annually to a requirement that they meet at least every six months. The proposed new text at N.J.A.C. 10:121A-3.1(f)6 clarifies that agency personnel and members of their families cannot serve as voting members of the board. The proposed amendment at N.J.A.C. 10:121A-3.3(c)1 clarifies that a New Jersey-certified agency may provide services for an out-of-State agency, under certain conditions. The new condition stipulates that, in addition to other criteria, the out-of-State agency must be a non-profit agency if it places children in New Jersey for adoption. The proposed amendment at N.J.A.C. 10:121A-3.6(a)3 clarifies that entries made in child, adoptive family, birth family and personnel records must indicate the name of the person making the entry and that person's signature. The proposed amendment at N.J.A.C. 10:121A-3.6(f)5 requires that the adoption home study be signed and dated by both the social worker who conducted the study and social work supervisor. The proposed amendment at N.J.A.C. 10:121A-3.6(j)3 clarifies that State-operated agencies must follow policies and guidelines established by the Department of Human Services and the Division of Youth and Family Services regarding the personnel information that is maintained on contracted paid consultants.

Subchapter 4 (N.J.A.C. 10:121A-4) outlines the general requirements for agency personnel (N.J.A.C. 10:121A-4.1), specifies the personnel policies that an agency must follow (N.J.A.C. 10:121A-4.2), describes the rules for staff development (N.J.A.C. 10:121A-4.3) and specifies staff qualifications and duties (N.J.A.C. 10:121A-4.4).

Subchapter 4 also includes the following proposed amendments: The proposed amendment at N.J.A.C. 10:121A-4.1(b) expands the number of required full-time agency staff from two to three staff members. The proposed amendment at N.J.A.C. 10:121A-4.1(b)2 prohibits the executive director of an agency from serving as the social work supervisor. New text is proposed at N.J.A.C. 10:121A-4.2(c) through (h) to address staff qualifications and credentials that are consistent with the provisions of N.J.S.A. 45:15BB-1 et seq., the Social Workers Licensing Act of 1991; the staff must meet such qualifications within the timeframes specified in the law. The proposed amendments at N.J.A.C. 10:121A-4.4(a) through (c) establish the number of hours per week a staff member must work at an agency and the number of years of professional experience required for the executive director, social work supervisor and the social worker. These proposed amendments will help ensure that consistent services are provided to the consumer, but at the same time permit an agency to utilize part-time staff to fill the social worker functions, as indicated in the proposed amendment to subsection (c) allowing for the agency to choose to utilize part-time staff members in lieu of one full-time staff member.

Subchapter 5 (N.J.A.C. 10:121A-5) specifies the scope of services that an agency may provide (N.J.A.C. 10:121A-5.1), outlines the general requirements an agency must follow when providing services to clients (N.J.A.C. 10:121A-5.2), describes the fees and fiscal practices an agency must follow (N.J.A.C. 10:121A-5.3), specifies the rules for services that are provided to birth parents (N.J.A.C. 10:121A-5.4), specifies the pre-placement services to children that must be completed by the agency (N.J.A.C. 10:121A-5.5), outlines the rules for home study services (N.J.A.C. 10:121A-5.6), specifies the rules an agency must follow for placement services (N.J.A.C. 10:121A-5.7), specifies the rules for post-placement services (N.J.A.C. 10:121A-5.8) and describes the post-adoption services that an agency provides to clients (N.J.A.C. 10:121A-5.9).

Subchapter 5 also includes the following proposed amendments: The proposed amendments at N.J.A.C. 10:121A-5.4(c) specify that the agency provide the birth parents with face-to-face counseling sessions, that the agency have the birth parents sign a statement that the agency explained relevant information to them, and that the agency document those cases when they requested birth parents to sign a statement that the birth parents refused to participate in the counseling sessions. New rule text is proposed at N.J.A.C. 10:121A-5.4(h) through (l) to set forth provisions regarding services or payments for birth mothers. The proposed new rule text specifies the types of services or payments for birth mothers and the extent to which an agency may provide medical services or payments for medical services to birth mothers in order to curtail possible inducements to utilize a particular agency. The proposed new rule text addresses such areas as: private medical insurance benefits, cash payments, unpaid medical bills, documentation requirements and the termination of services. The proposed amendments at N.J.A.C. 10:121A-5.6(e) address the in-person contacts and home study groups that are needed as part of a home study, as well as the number of adoptive parents that can participate in a home study group and the staff qualifications of the person who facilitates the group. The proposed amendment at N.J.A.C. 10:121A-5.6(f)11 expands the health requirement for applicants to include medical reports on all persons living in the applicant's home to ensure the health and safety of the child being considered for adoption. The proposed amendments at N.J.A.C. 10:121A-5.6(g) clarify that a home study must be reevaluated by the agency when an applicant seeks to adopt a child different from the type of child initially recommended by the agency to prevent persons seeking to adopt a child, from "shopping" around from agency to agency. The proposed amendment at N.J.A.C. 10:121A-5.6(i) changes the length of time (from one year to 18 months) that applicants can be on a waiting list before a home study must be updated. The proposed amendment at N.J.A.C. 10:121A-5.7(a) adds the word "approved" to describe adopted parents and other clarifying language in order to ensure that a home study is completed on the adoptive parents prior to their selection. The proposed amendments at N.J.A.C. 10:121A-5.8(a)2 and 3 clarify the timeframes for bi-monthly home visits until the adoption has been finalized. At N.J.A.C. 10:121A-5.8(b), the current text has been deleted as the rule is unnecessary as there is no distinction between agency placements and foster parent adoptions regarding post-placement services. The proposed new rule text at N.J.A.C. 10:121A-5.8(b) states that a consent cannot be signed before the completion of the sixth month supervision.

The proposed amendment at N.J.A.C. 10:121A-5.8(d) specifies that when a child under two years of age is in an adoptive home for more than one year without the adoption being finalized, the agency must

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notify the Division as to the reasons why the adoption has not been finalized. New text is proposed at N.J.A.C. 10:121A-5.8(e) that specifies that when a child over two years of age is in placement in an adoptive home for more than two years without the adoption being finalized, the agency must notify the Division as to the reasons why the adoption has not been finalized. Specific time frames are set forth in the new rule text. Also, new rule text is proposed at N.J.A.C. 10:121A-5.9(b)2 to clarify the types of non-identifying information on an adoption that can be given to adoptive parents, birth parents and adult adoptees as the original rule was too vague and did not include specific information. The new rule text identifies the types of non-identifying information which may be provided by an adoption agency.

Finally, N.J.A.C. 10:121A-5.10 is a proposed new rule setting forth procedures for those adoption agencies that choose to conduct searches on behalf of an adult adoptee, birth parent or adoptive parent. This section, Searches, includes what a search must include, fee schedules, documentation requirements and a requirement that the agency give each adult adoptee, birth parent or adoptive parent a handbook or pamphlet that outlines the range of services, confidentiality issues and costs. These new rules are being proposed to assist consumers in obtaining relevant and complete information.

Social Impact

The Division anticipates that the readoption with amendments of this chapter will have a positive impact on adoption agencies and the constituencies they serve. The existing rules address such areas as: the legal authority, certification procedures, administration requirements (governing boards, legal responsibilities, reporting requirements and records), personnel policies, staff development, staff qualifications/duties, range of adoption services, fees/fiscal practices, services to birth parents, pre-placement services to the child, home study services, placement services, post-placement services and post-adoption services. The existing rules help to ensure that adoption agencies provide appropriate services to children, birth parents and adoptive parents during the adoption process. These rules ensure the health, safety and well-being of the children who are being considered for adoption as well as protecting the rights of the birth parents and the adoptive parents. The proposed amendments strengthen and clarify many of the guidelines, policies and procedures that adoption agencies utilize in the services that they provide to children, birth mothers, adoptive families and adult adoptees.

There is a new requirement proposed at N.J.A.C. 10:121A-1.7 that expands the services that define an adoption agency. In the existing rules agencies that provided only parent recruitment and/or information services were not subject to certification requirements. However, the Division has encountered some agencies that stated that they provided only these services and were also arranging/completing adoptions. As such, the Division needs to regulate any agency that provides parent recruitment and/or information services in order to ensure that children, birth mothers and adoptive parents are afforded adequate safeguards during the adoption process.

The proposed readoption with amendments includes requirements that outline the medical services or payments for medical services an agency can provide to a birth mother. These amendments, as proposed at N.J.A.C. 10:121A-5.4(h) through (l) clarify the level of financial assistance that an agency may provide to birth mothers. They reduce the possibility of confusion on the part of the birth mother as to the level of medical services or payments that an agency can provide. The proposed amendments help set the framework for agencies that restricts the level of medical services or payments that can be provided to birth mothers. The proposed amendments aim to ensure that birth mothers first utilize existing health insurance resources to pay for outstanding medical bills to avoid unnecessary costs that may be passed on to adoptive parents.

The proposed readoption with amendments includes requirements that specify the non-identifying information on adoptions that an agency can provide to adult adoptees, and to birth parents and adoptive parents (N.J.A.C. 10:121A-5.9(b)2). And, there is a proposed new rule at N.J.A.C. 10:121A-5.10 that delineates the aspects of searches that an agency may provide as one of its services. This new rule helps to make the adoption process and searches more comprehensive and understandable to those involved.

Economic Impact

The Division does not anticipate that the proposed readoption with amendments will result in any negative economic impact for the 67 (30 in-State) adoptions agencies that are regulated by the Division. The

existing rules and proposed amendments provide baseline requirements that any adoption agency must follow in order to adequately process adoptions. While compliance with the chapter has certain administrative and operational costs attached, it is not anticipated that such costs place any unreasonable burden on the regulated agencies.

While an agency must obtain a certificate of approval in order to operate, there is no fee charged for the certificate of approval or the inspection process. The proposed amendments clarify existing rules and in some cases create new rules and do not require any additional capital improvements, or expenditures for staff or equipment on the part of the adoption agencies. Consumers requesting adoption searches will have a clear understanding of the information they can expect to receive when they pay for such a service.

There would be an economic impact on an organization that is not an adoption agency but provides only adoptive parent recruitment services or information services as specified in N.J.A.C. 10:121A-1.7(a)6 and 7, as they would have to meet all the requirements contained in the chapter once these proposed amendments are adopted. However, as previously mentioned in the Social Impact Statement, the proposed amendments help to ensure that children, birth mothers and adoptive parents are afforded adequate safeguards during the adoption process.

The proposed amendment at N.J.A.C. 10:121A-3.6(j)3 which eliminated the option that an agency may use a consultant contract that contained the same personnel information as specified in N.J.A.C. 10:121A-3.6(j)1 and 2 will not have an economic impact on the adoption agencies since the agencies utilize only a few consultants and this would not necessitate the hiring of additional staff to maintain this information.

There may be a minimal economic impact for adoptive parents who will need to obtain a medical report for all persons living in their home to ensure the health and safety of the child being considered for adoption, as a result of the proposed amendment at N.J.A.C. 10:121A-5.6(f)11.

Regulatory Flexibility Analysis

The 30 in-State adoption agencies regulated by the Division are considered small businesses as defined under N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. It is not appropriate or necessary to establish differential rules that would apply to larger or smaller entities, as all regulated entities are considered small businesses. Therefore, compliance with the rules proposed for readoption with amendments is required, without variation, in order to ensure that the standards contained within the chapter are consistently met.

The existing rules and proposed amendments do not place any unnecessary or overly stringent requirements on the agencies. The chapter sets forth the compliance requirements for the certification and operation of adoption agencies. Compliance requirements include: requirements for the certificate of approval, general administration of the agencies, personnel and staff requirements and duties, and service provision requirements, including new rules on the conducting of searches. The existing rules and proposed amendments also establish minimum baseline reporting and record keeping requirements, as outlined in the Summary, with which these agencies must comply in order to ensure the health, safety and well-being of the children who will be adopted. These baseline requirements are derived from routine expectations that any agency should meet as part of its daily operation.

While some of the proposed amendments impact on the reporting and record keeping requirements that adoption agencies must meet, the Division does not believe them to be unduly burdensome. They include: signing and dating the entries in records; documenting the reasons that a birth mother does not use her medical benefits; signing and dating home studies; and developing handbooks/pamphlets by those agencies that choose to conduct searches. The other proposed amendments will not impact on reporting, record keeping or other requirements. There are no anticipated capital costs to agencies associated with the current rules or proposed amendments and it is unlikely that any adoption agency will need to engage professional services in order to comply with these rules. As mentioned previously, the Division received extensive input from the community, adoption agencies and the Inter-Agency Adoption Council in the development of these rules and much attention was given by all concerned to minimize costs.

Full text of the proposed readoption can be found at N.J.A.C. 10:121A.

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

CHAPTER 121A
MANUAL OF [STANDARDS] REQUIREMENTS
FOR ADOPTION AGENCIES

10:121A-1.5 Definitions

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

...
"Manual of [Standards] Requirements for Adoption Agencies" or "Manual of [Standards] Requirements" means the rules promulgated in this chapter, which constitute minimum requirements for adoption agencies placing children for adoption in New Jersey.
...

10:121A-1.7 Eligibility for a certificate of approval

(a) Any public agency or private non-profit firm, partnership, corporation, association, or agency located within or outside the State of New Jersey that provides adoption services to families in New Jersey or to children from New Jersey, whether as part or all of its function, shall secure and maintain a certificate. Adoption services shall include any one or combination of the following:

- 1.-3. (No change.)
4. Post-placement services; [and/or]
5. Post-adoption services[.];
- 6. Adoptive parent recruitment; and/or**
- 7. Information services, unless these services are provided by Planned Parenthood, public social services agencies or private non-profit social services agencies.**

(b) The following are not subject to certification requirements [under the law]:

1. (No change.)
2. [Agencies or organizations that provide adoptive parent recruitment and/or information services only;]

Recodify existing 3. through 5. as **2. through 4.** (No change in text.)

10:121A-1.8 Inter-country adoption

(a)-(b) (No change.)
(c) Agencies performing inter-country adoptions shall comply with the record keeping requirements of the Manual of [Standards] Requirements for Adoption Agencies, as specified in N.J.A.C. 10:121A-3.6(e).

10:121A-2.1 Application for a certificate of approval

(a)-(b) (No change.)
(c) Applicants for a new certificate shall submit to the Bureau a written plan for the agency's operation that includes the following:

- 1.-7. (No change.)
8. A copy of the agency's non-discrimination policy, as specified in N.J.A.C. 10:121A-1.6(b), and approved by the agency's governing board, [and]
9. A copy of an audit or financial statement, if requested by the Bureau[.]; and

10. **For agencies located outside of New Jersey, a copy of that agency's most current licensing or approval inspection report and the license or certificate that reflects the agency's licensing or approval status in that state and documentation that indicates that the agency has been in operation for at least two years.**

(d) An agency applying for a renewal of a certificate of approval shall submit those items listed in (c)2, 3, 4 and 5 above, and 10 above, if applicable. An agency shall submit the item listed in (c)9 above upon request of the Bureau.

10:121A-2.2 Issuance of a certificate of approval

(a) (No change.)
(b) **After the Bureau conducts an initial inspection of a new agency and finds the agency to be in substantial compliance with this chapter, the Bureau shall issue a temporary certificate of approval for a maximum of six months.**

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

(i) **The Bureau will not issue a certificate to an out-of-State agency unless the agency has received a license or approval from that state's authorized licensing or regulatory agency and has been in operation for at least two years.**

10:121A-2.3 Denying, suspending, revoking or refusing to renew a certificate of approval

(a) The Bureau may deny, suspend, revoke, or refuse to renew an adoption agency's certificate for good cause, including, but not limited to the following:

- 1.-5. (No change.)
6. Any activity, policy or conduct that adversely affects or is deemed by the Bureau to be detrimental to the families and children being served, including, but not limited to, violations of the requirements of N.J.S.A. 9:3-37 et seq., the State Adoption Law, [the State Child Abuse Law] N.J.S.A. 9:23-5 et seq., the Interstate Compact on the Placement of Children, N.J.S.A. 9:6-8.9, 8.10, 8.13, and 8.14, State child abuse laws, and this chapter; [and]

7. Failure of an out-of-state agency to maintain a license, approval or certificate in its own state[.]; and

8. Failure to employ the necessary qualified professional staff, as specified in N.J.A.C. 10:121A-4.4.

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

10:121A-2.7 Public access to Bureau records

(a) (No change.)
(b) The Bureau shall make the following items in the files open to public review:

- 1.-4. (No change.)
5. Forms and other standard documents used to collect routine data on the agency and its program as part of its record of compliance with the Manual of [Standards] Requirements;
6. Enforcement letters from the Bureau requiring abatement of violations of the Manual of [Standards] Requirements;
- 7.-10. (No change.)
- (c)-(d) (No change.)

10:121A-3.1 Governing board requirements for private agencies

(a)-(d) (No change.)
(e) The governing board shall meet at least [annually] every six months and make records of attendance and minutes of each meeting available for inspection by the Bureau.

(f) The governing board shall have a written policy covering conflict of interest, which shall include the following provisions:

- 1.-5. (No change.)
- 6. Agency personnel and members of their families shall not serve as voting members of the board.**
- (g) (No change.)

10:121A-3.3 Legal responsibilities

(a)-(b) (No change.)
(c) A New Jersey-certified agency may provide services for an out-of-state agency only if:

1. The New Jersey-certified agency verifies that the out-of-state agency is licensed, certified or approved in the state where the agency's principal office is located and is a non-profit agency if it places children in New Jersey for adoption;
- 2.-3. (No change.)

10:121A-3.4 Information to parents and adoption applicants

(a) (No change.)
(b) The written statement or pamphlet shall contain the following information:

- 1.-2. (No change.)
3. That the agency shall make a current copy of the Manual of [Standards] Requirements for Adoption Agencies available for review by the parents of children served by the agency;

4. That any parents who believe or suspect that the agency is in violation of any requirements of the Manual of [Standards] Requirements for Adoption Agencies may report such alleged violations to the Bureau of Licensing;

5. That any parent may secure a copy of the Manual of [Standards] Requirements for Adoption Agencies by contacting the Bureau of Licensing, Division of Youth and Family Services and that the Bureau will charge a nominal fee for the manual, in keeping with Department policy;

- 6.-9. (No change.)
- (c) (No change.)

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10:121A-3.6 Agency records

(a) The agency shall ensure that the following general requirements are met:

1.-2. (No change.)

3. The agency shall ensure that all entries in the child, adoptive family, birth family and personnel records indicate the name of the individual making the entry, [and] the date of the entry, and that all entries are signed by that individual.

4. (No change.)

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

(f) The agency shall maintain records of home studies of adoptive applicants, who have had a child placed for adoption, for 99 years. These records shall include:

1.-4. (No change.)

5. Summary documents of the adoption home study of the family which shall be signed and dated by both the social worker who conducted the study and social work supervisor, including any autobiographical or other self-assessment material provided by the family, the basis for the decision to accept or reject the family or to impose any qualifying conditions, an indication that the decision was made jointly by the social worker and social work supervisor, and a record that the family was informed in writing of the decision within 30 calendar days of the last contact with the family;

6.-7. (No change.)

(g) (No change.)

(h) The agency shall maintain the following administrative records in its files:

1. (No change.)

2. A current copy of the Manual of [Standards] Requirements for Adoption Agencies;

3.-4. (No change.)

5. Copies of general and [or] comprehensive insurance coverage.

(i) (No change.)

(j) The agency shall maintain personnel records on all agency personnel, including paid staff members employed by the agency, paid consultants who provide contracted services and volunteers and students who have direct contact with clients.

1.-2. (No change.)

[3. The agency may use a consultant contract that contains the information specified above as a personnel record.]

3. State-operated agencies shall follow policies and guidelines established by the Department and the Division for personnel information of paid consultants in lieu of the information specified in (j)1 and 2 above.

10:121A-4.1 General requirements

(a) (No change.)

(b) An agency shall have at least [two] three full-time staff members or their equivalents in part-time staff members.

1. (No change.)

2. The executive director or administrator [may also] shall not serve as the social work supervisor.

10:121A-4.2 Personnel policies

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

(c) The agency shall ensure that any staff member or consultant that utilizes the title or designation of social worker, licensed clinical social worker, licensed social worker, certified social worker, medical social worker, social work technician or any other title or designation which includes the words social worker or social work, or any abbreviations such as SW, LCSW, LSW, CSW or SWT, is certified or licensed pursuant to N.J.S.A. 45:15BB-1 et seq., the Social Workers Licensing Act of 1991.

(d) All new in-State agencies prior to receiving a temporary or regular certificate shall ensure that social work staff and social work supervisors are certified or licensed pursuant to (c) above.

(e) All new out-of-State agencies shall ensure that social work staff and social work supervisors are certified or licensed pursuant to that state's laws or requirements, if applicable.

(f) An existing in-State agency shall ensure that staff members who function as social workers or social work supervisors and can meet the educational and experiential requirements to be licensed

or certified, but are not currently licensed or certified, obtain the appropriate license or certificate within the time frames prescribed by N.J.S.A. 45:15BB-1 et seq.

(g) An in-State agency may require existing staff members who function as social workers or social work supervisors and who do not currently meet the educational and experiential requirements to be licensed or certified pursuant to (c) above, to obtain the appropriate certificate or license as a condition of continued employment; or it may retain such staff members in the same capacity so long as these staff members are not utilizing titles specified in (c) above.

(h) Existing in-State agencies shall ensure that all new staff members that are hired for the positions of social worker and social work supervisor are licensed or certified pursuant to (c) above.

10:121A-4.4 Staff qualifications and duties

(a) The executive director or administrator shall work for the agency on a full-time basis (at least 30 hours per week) and have the qualifications and responsibilities as specified below.

1. The executive director or administrator of the agency shall:

i. Have a bachelor's degree from an accredited college or university and [two] three years of professional experience in the human services field, [one year] two years of which shall have been in a supervisory or administrative position; or

ii. Have a master's or doctorate degree from an accredited graduate school in business or public administration or in one of the areas of study in the human services field and [one year] two years of professional experience in the human services field; or

iii. (No change.)

2. (No change.)

(b) The social work supervisor shall work for the agency on a full-time basis (at least 30 hours per week) and have the qualifications and responsibilities as specified below.

1. A social work supervisor shall:

i. (No change.)

ii. Have a master's degree in social work or other human services field from an accredited college or university and a minimum of two years of professional experience in services to children and families, one year of which shall be in adoption services; or

iii. (No change.)

2. (No change.)

(c) A social worker shall work for the agency on a full-time basis (at least 30 hours per week) and have the qualifications and responsibilities as specified below. The agency may choose to utilize part-time staff members in lieu of one full-time staff member, provided that these staff have the qualifications and responsibilities as specified in (c)1 and 2 below.

1.-2. (No change.)

(d)-(g) (No change.)

10:121A-5.4 Services to birth parents

(a) An agency shall accept the surrender of a child only after determining that the birth parents or legal guardians are not acting under duress.

1. The agency shall not require the prospective birth [mother] parents to sign a statement committing [her] them to any definite plan for the unborn child in order to obtain services.

2. (No change.)

(b) (No change.)

(c) Before taking a surrender, the agency shall document that the birth parents were:

1. Provided at least three face-to-face counseling sessions by qualified social work staff on separate days and that the birth parents were:

Recodify existing 1.-7. as i.-vii. (No change in text.)

2. Requested to sign a statement that indicates that the agency explained the information in (c)1 above to them; or

3. Requested to sign a statement when they refuse to participate in the counseling sessions.

(d)-(g) (No change.)

(h) An agency that provides services or payments on behalf of a birth mother who is considering adoption services for her born

or unborn child(ren) to assist her in meeting the expenses associated with the birth or illness of the child shall comply with all the appropriate provisions of N.J.S.A. 9:3-37 et seq., the State Adoption Law.

(i) An agency that provides services or payments for medical or hospital care shall ensure that the birth mother receives such medical or hospital care from:

1. The agency's own staff of licensed medical or health care professionals;
2. A state-approved or state-licensed hospital, health care facility or medical clinic; or
3. A private physician licensed to practice in the state where their practice is located.

(j) An agency shall not make any cash payments for medical or hospital care unless all public and private medical insurance benefits to which the birth mother is entitled have been exhausted for such care, except that:

1. An agency may make cash payments for medical or hospital care when all public and private medical insurance benefits to which the birth mother is entitled have not been exhausted, if:

i. There are compelling reasons why the birth mother can not utilize such medical insurance benefits and the agency can adequately document these reasons in the case record; and

ii. The birth mother signs a statement attesting to these reasons.

2. The agency shall notify the Bureau in writing within 15 calendar days when the birth mother chooses not to utilize all public and private medical insurance benefits to which she is entitled and the agency chooses to make cash payments.

i. The Bureau will review the reasons to determine if the agency can make cash payments for medical or hospital care on behalf of the birth mother.

ii. The Bureau will notify the agency in writing of its decision whether or not to permit the agency to make cash payments for medical or hospital care on behalf of the birth mother within 15 calendar days of receiving the written notification from the agency.

(k) An agency may provide payment to a medical facility, hospital, physician or birth mother for medical bills previously incurred by the birth mother prior to her involvement with the agency for medical services that were associated with her pregnancy or birth of her child. An agency shall provide payment in these instances only when the birth mother provides written documentation that these medical services were provided.

(l) An agency that arranges for, provides directly, finances or subsidizes the costs of medical expenses, as specified in (i) through (k) above, of a birth mother shall comply with all of the following:

1. The agency shall maintain in a file a written policy that governs payments for medical or hospital care on behalf of birth mothers.

i. A copy of this policy shall be given to each birth mother and prospective adoptive couples at the time of initial inquiry or application; and

ii. The birth mothers shall be advised in writing, that any services or payments that she may be granted will be made to her without regard to her present or future decision to surrender her child(ren) for adoption and that the agency will not require or request reimbursement from her for such services and/or payments.

2. Unless the birth mother terminates her relationship with the agency, the agency shall notify the birth mother in writing at least 30 calendar days prior to the date of its last services or payments for medical or hospital care that services and/or payments will be terminated by the 30th calendar day following the birth of the child or after the 30th calendar day following the signed release for termination of parental rights for whom adoption services were sought. The agency shall also notify the birth mother in writing within 30 days when the agency documents that the need for such services or payments no longer exists.

3. The agency shall maintain in its case files any receipts, cancelled checks and/or invoices or photocopies of such receipts, cancelled checks and/or invoices as a record of all cash payments that were made on behalf of the birth mother. The agency may utilize a case ledger to record this information provided that copies or actual receipts, cancelled checks and/or invoices are made available to the Bureau upon request.

10:121A-5.6 Home study services

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

(e) The agency shall advise the applicants of the home study process, including the length of time involved. The home study process shall [consist of at least three in-person contacts and] include the following:

1. At least three in-person contacts that are held on separate days to conduct [Joint] joint and individual interviews with married applicants. Individual interviews with spouses may be counted as separate in-person contacts [;]. Home study groups may be utilized and counted as one separate in-person contact with married applicants provided that:

i. No more than 10 adoptive parents per each group facilitator are in the group;

ii. The person facilitating the group meets the education and experience requirements for the social worker as specified in N.J.A.C. 10:121A-4.4(c); and

iii. The person facilitating the group maintains a record/notes of the discussions that occurred during group;

2. At least one in-person contact to conduct joint and individual [Interviews] interviews with all members of the applicant's household [by individual or group interview process;]. These contacts may be held on the same day as the contacts for the married applicants;

3.-5. (No change.)

(f) The agency shall obtain information on the applicants. Such information shall include, but not be limited to:

1.-10. (No change.)

11. Written medical reports on each applicant and all other persons living in the home that include health, results of laboratory test or X-rays if ordered by the physician, and the physician's recommendation on the applicant's health status as it relates to the applicant's capacity to be an adoptive parent.

12.-18. (No change.)

(g) After the home study has been conducted, the social worker who conducted the study and the social work supervisor shall co-sign a letter to the adoptive parents or otherwise indicate in writing that the approval or rejection decision was made jointly.

1. (No change.)

2. The agency shall inform the applicant(s) of its decision in writing within 30 calendar days after the last contact with the applicant(s).

i. When an applicant is approved, the agency shall [describe] recommend to the applicant the type(s) of [children] child(ren) who can best adjust to the family and to whom the family can best adjust. [If] When the agency's recommendation of the type(s) of child(ren) to be considered for adoption is different from the applicant's [choice] initial preference for a certain type(s) of child(ren), the agency shall document in the adoptive family record the results of the discussion between the social worker and the applicant on this point.

ii. When the applicant pursues a child(ren) different from the type(s) of child(ren) recommended by the agency, the agency shall reevaluate the home study to determine if the applicant can be approved for the type of child they are seeking.

Recodify existing ii. as iii. (No change in text.)

(h) (No change.)

(i) For applicants who have been studied, approved and placed on a waiting list for longer than [one year] 18 months from the time their home study was approved, the agency shall update the home study before a child is placed into the home. The updated home study shall include:

1.-2. (No change.)

(j) (No change.)

10:121A-5.7 Placement services

(a) The agency shall have responsibility for the selection of approved adoptive parents for a child.

1.-5. (No change.)

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

10:121A-5.8 Post-placement services

(a) For [non-foster parent] agency placements, the agency shall:

1. (No change.)
2. For children under five years of age, the agency shall:
 - i. Conduct bi-monthly home visits after the first visit [until the adoption is finalized;] for at least six months, except when the adoption is delayed past the six month supervisory period because the court has a backlog of cases. In these instances, the agency may conduct office visits on a quarterly basis instead of home visits until the adoption has been finalized.

ii.-iii. (No change.)

3. For children age five or older, the agency shall:

- i. Conduct monthly home visits during the minimum supervisory six-month period, and then bi-monthly home or office visits until the adoption is finalized, if the court has a backlog of cases.

ii.-iii. (No change.)

[(b) For foster parent adoptions, the agency shall conduct home visits at least every two months from the time legal consent for adoption has been signed until the finalization of adoption.

1. The agency shall interview a child five years of age or older privately to discuss the child's feelings about the adoption before the consent is signed and during each supervisory visit. The agency shall document these interviews in the child's record.

2. The agency shall document in the child's record that all members of the adoptive family's household were interviewed before the consent was signed.]

(b) The agency shall ensure that consents are not signed before the completion of the six month supervision, as specified in (a)2i above, unless the child's placement has been at least six months and the agency ensures the completion of the fourth supervision visit as scheduled.

(c) (No change.)

(d) If a child under two years of age is in an adoptive home for [two or more years] more than one year without the adoption being finalized, the agency shall document to the Bureau in writing the reason(s) that the adoption has not been finalized. Such information shall be provided no later than 30 calendar days after the [two] one-year adoptive placement supervision period has ended.

(e) If a child over two years of age is in an adoptive home for more than two years without the adoption being finalized, the agency shall document to the Bureau in writing the reason(s) that the adoption has not been finalized. Such information shall be provided no later than 30 calendar days after the two-year adoptive placement supervision period has ended.

Recodify existing (e)-(i) as (f)-(j). (No change in text.)

10:121A-5.9 Post-adoption services

(a) (No change.)

(b) An agency shall provide the following post-adoption services:

1. (No change.)
2. [Providing non-identifying information to clients upon request;] Upon request and if available, adoptive parents, birth parents and adult adoptees shall be provided with written information on the non-identifying characteristics and background of the adoptee and the adoptee's birth family. This information shall include, but not be limited to:

- i. Age or date of birth;
- ii. Circumstances surrounding the placement;
- iii. Religion;
- iv. Education;
- v. Nationality/ethnic background;
- vi. Employment history;
- vii. Medical history; and
- viii. Talents or hobbies.

3. (No change.)

(c) (No change.)

10:121A-5.10 Searches

(a) An agency that conducts searches on behalf of adult adoptees, birth parents when the adopted child is 18 years of age or older, or adoptive parents when the child is under 18 years of age, shall establish a written policy that outlines the procedures regarding

confidentiality as specified in N.J.A.C. 10:121A-3.6(a) 1 through 4 and the extent to which searches are conducted. This policy shall also include a fee schedule for conducting the search and time frames for completing a search.

(b) A search shall include, but not be limited to:

1. A review of the agency record for background information on the birth or adoptive family, including:
 - i. The last known address;
 - ii. Names of the male/female members;
 - iii. Social Security numbers;
 - iv. Occupations and addresses of places of employment;
 - v. Military services, if known;
 - vi. Clubs or union affiliations, if known;
 - vii. Names of schools and/or colleges that were attended, if known; and
 - viii. Dates and places of marriages and deaths.

(c) When the information in the agency record is sufficient to complete a search, the search shall also include:

1. A review of current telephone books on a Statewide basis, and a review of previously published telephone books on a Statewide basis, if accessible, or utilization of a telephone information service provided that the adult adoptee, birth parents or adoptive parents agree to such a service;
2. Sending a "blind" letter to the Social Security Administration for subsequent mailing to family members;
3. Contacting military, union, employment and/or club affiliation;
4. Contacting high school or college alumni offices;
5. Contacting professional licensing boards;
6. Contacting the church where the adopted child was christened/baptized;
7. Contacting the local post office to check old addresses;
8. Contacting cemeteries, when the records indicate a deceased family member;
9. Contacting the local library or town hall to check on voter registration information;
10. Checking tax or real estate records; and
11. Sending letters to the last known addresses of all family members.

(d) The agency shall document and maintain on file all the aspects of a search as specified in (b) above that were undertaken on behalf of the adult adoptees, birth parents or adoptive parents.

(e) The agency shall provide a handbook or pamphlet to each adult adoptee, birth parent and adoptive parent that outlines the range of services that may be included in a search, the confidentiality rights/responsibilities of all parties that are involved in the search and the costs associated with the search.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES
Department of Human Services Child Death and
Critical Incident Review Board

Reproposed New Rules: N.J.A.C. 10:16

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 9:6-8.10a and b, 9:6-8.21 and 30:4C-4(h).

Proposal Number: PRN 1992-375.

Submit comments by November 4, 1992 to:

Kathryn A. Clark, Esq.
 Administrative Practice Officer
 Division of Youth and Family Services
 CN 717
 Trenton, New Jersey 08625-0717

The agency proposal follows:

Summary

These reproposed new rules establish the Department of Human Services Child Death and Critical Incident Review Board, in the New

Jersey State Department of Human Services, and describe the organization, functions and activities of the Board.

Proposed rules were previously published on November 18, 1991 at 23 N.J.R. 3417(a). As a result of comments received and a further review of the rules as proposed by members of the Board itself, the Department of Human Services has developed repropoed rules that incorporate significant changes, primarily in the number and type of reports to be prepared and released by the Board.

In this reproposal, as in the original proposal, the Department recognizes the value of an objective review of situations involving children currently or formerly (within the past 12 months) under the supervision of the Division of Youth and Family Services (DYFS):

1. Who are alleged to have died due to child abuse or neglect;
2. Who have died, and whose death is not alleged to be due to child abuse or neglect, but who died under circumstances that have been identified by the Deputy Commissioner or by the Director as presenting issues which could result, through Board review, in recommendations for systems, policy, legislative/regulatory changes or other broad-based revisions in Departmental or Divisional operations, and/or community remedies; or
3. Who were the subject of a critical incident (not resulting in death) that was:
 - a. Alleged to have been due to child abuse or neglect, and
 - b. Has been identified by the Deputy Commissioner or by the Director as presenting issues that could result, through Board review, in recommendations for systems, policy, legislative/regulatory changes or other broad-based revisions in Departmental or Divisional operations, and/or community remedies.

For this purpose, the Department created the Department of Human Services Child Death and Critical Incident Review Board, as a public-private body to review such cases and to develop such recommendations. This Board is already operational in the Department, under Administrative Order 1:82. Following adoption of the Administrative Order in 1990, the five-member Board was developed and its members participated in an initial orientation and organizational meeting in the fall of 1990. The Board began reviewing and meeting to discuss actual case situations in January, 1991.

These rules incorporate Administrative Order 1:82 into the New Jersey Administrative Code and provide a legal basis for the Board's review of child abuse and neglect records, which are otherwise confidential under the provisions of N.J.S.A. 9:6-8.10a and b. Through these rules, the Board is duly constituted and established as a public child protective agency authorized to investigate child abuse and neglect, pursuant to the above-cited statute. The Office of the Attorney General suggested that Administrative Order 1:82 be put into rules so as to give the Board the authorization it needs to review DYFS child abuse and neglect records, under the provisions of N.J.S.A. 9:6-8.10b(1).

As of the close of the comment period following publication of the original proposal, two comments were received: one from the Association for Children of New Jersey (ACNJ) and one from Lorraine Gormley, Assistant Deputy Public Advocate, Department of the Public Advocate.

COMMENT: ACNJ commended the Department and the Division for their initiative in creating an external system to review critical incidents and child deaths, calling it a very important mechanism to ensure that Division practice is scrutinized when such incidents occur so that problems can be addressed to prevent further incidents. Specifically, ACNJ supported the provisions of the proposal that require membership on the Board from outside the Division and Department, to provide both expertise as well as objectivity in assessing case handling. ACNJ also supported the scope of the Board's review, saying that the Board's authority to review not only individual case handling but also systemic issues is essential to bring about any needed changes.

RESPONSE: The Division appreciates the comments and the support of the Association for Children of New Jersey.

COMMENT: The original proposal allowed the Division or the Department to release the recommendations of the Board and the annual review to the public but did not require such release. ACNJ recommended that release of such reports be mandatory, not discretionary.

RESPONSE: The repropoed rules require the release of periodic summary reports, which consolidate and replace the recommendations of the Board and the annual review, no later than 60 days after such reports are submitted to the Commissioner. Such release is not discretionary.

COMMENT: Lorraine Gormley, Assistant Deputy Public Advocate, said that the creation of the Review Board is a positive step toward

the goal of achieving objective reviews of the circumstances of deaths and critical incidents involving children under DYFS supervision, and suggested three changes. The first suggestion was that the scope of the Review Board's jurisdiction be expanded to allow investigation and review of deaths and critical incidents involving children residing in facilities operated by the Department of Human Services, even when those children are not under the supervision of DYFS.

RESPONSE: The Division appreciates the support for the proposed rules. Since review systems do exist in the other divisions of the Department of Human Services, the suggestion to expand the scope of the Board is not accepted at this time.

COMMENT: Ms. Gormley's second suggestion was that the limitations on the release of information imposed by the proposed rules were unduly restrictive and improperly deprived the public and other governmental, regulatory, and licensing agencies of information pertaining to matters of legitimate public concern.

RESPONSE: The Division's position on the release of information, as expressed in both the original rule proposal and in this reproposal, is in conformance with guidance received from the Attorney General's Office.

COMMENT: Lastly, Ms. Gormley said that the documents referred to in proposed N.J.A.C. 10:16-3.3(a) (that is, child's case record, police, physician and hospital records, autopsy and death certificate) should be reviewed or be available for review by the Board in all cases where such documents exist, and should not be limited to review when appropriate or permissible.

RESPONSE: The Division has revised N.J.A.C. 10:16-3.3(a) to provide for review "if applicable," rather than "if appropriate" or "where appropriate." These revisions are within the guidance received from the Attorney General's Office on the release of information, and are clearer in expressing the intent.

In this reproposal, the Division has made several changes, as detailed below.

N.J.A.C. 10:16-1.1, Purpose, has been restated. The previously proposed section has duplicated much of the language that was in the prior N.J.A.C. 10:16-1.2, Scope. As the new Scope statement has been made more comprehensive, the Purpose statement has been simplified.

N.J.A.C. 10:16-1.2, Scope, has been restated to include situations involving children currently or formerly (within the past 12 months) under the supervision of the Division of Youth and Family Services (DYFS) who are alleged to have died due to child abuse or neglect; or who have died, and whose death is not alleged to be due to child abuse or neglect, but who died under circumstances that have been identified by the Deputy Commissioner or by the Director as presenting issues which could result, through Board review, in recommendations for systems, policy, legislative/regulatory changes or other broad-based revisions in Departmental or Divisional operations, and/or community remedies; or who were the subject of a critical incident (not resulting in death) that was alleged to have been due to child abuse or neglect, and that has been identified by the Deputy Commissioner or by the Director as presenting issues that could result, through Board review, in recommendations as described above. The previously proposed section limited the scope of Board review to all deaths and all critical incidents (not resulting in death) that were alleged to have been due to child abuse or neglect. Expanding the universe of cases to be reviewed by the Board to include certain child deaths not alleged to be due to child abuse or neglect will permit the Board greater flexibility. Additionally, requiring review by the Board of every critical incident (not resulting in death) that was alleged to have been due to child abuse or neglect would be too voluminous to be either possible or practical; however, focusing the Board's attention to the review of those critical incidents that may have systemic impact not only would be beneficial, but also would be an efficient use of the time of the volunteer members of the Board.

In N.J.A.C. 10:16-1.3, Definitions the definition of "serious injury" has been revised to include injuries to the eye, not just the eyeball. The definition of "serious injury" has also been revised to include injury causing multiple hematomas, instead of large hematomas. Both of these changes reflect current DYFS policy.

In N.J.A.C. 10:16-2.2, Functions of the Board, the Board's functions have been restated to reflect the language of N.J.A.C. 10:16-1.2, Scope.

The previous N.J.A.C. 10:16-2.3, Responsibilities of Board, has been revised to reflect the language of N.J.A.C. 10:16-1.2, Scope.

In N.J.A.C. 10:16-2.5, Composition of the Board, the membership of the Board has been expanded, from five members to at least five members, to allow for broader participation in the Board. The additional

member or members are to come from outside of the Department of Human Services.

In N.J.A.C. 10:16-2.7, Quorum, the quorum requirement has been adjusted to allow for the appointment of additional member(s) under the new N.J.A.C. 10:16-2.5. The quorum requirement has been kept at three members, of which at least two must be members who were appointed under N.J.A.C. 10:16-2.5(a)3 or 4, that is, not employees of the Department of Human Services. This is to eliminate confusion as to whether "public" means "members of the public" or "public employee."

A revision to N.J.A.C. 10:16-3.1, Reporting of child death and critical incidents, has been made to reflect the provisions of N.J.A.C. 10:16-1.2, Scope.

N.J.A.C. 10:16-3.2, Internal review, has been revised to clarify that the internal review will be completed within 30 days after DYFS receives knowledge of the incident or death.

The previously proposed N.J.A.C. 10:16-3.4, Recommendations of the Board, N.J.A.C. 10:16-3.5, Director's response, and N.J.A.C. 10:16-3.6 Annual review, have been consolidated and replaced by the new N.J.A.C. 10:16-3.4, Periodic summary report. The purpose of the reporting is to produce a swift, complete, and comprehensive response. The number and variety of the different reports required by the earlier proposal were unnecessarily duplicative. They would have taken additional staff time to complete, slowing the response time, and the transfer of responses and reviews back and forth would bureaucratize the process too much. It is clearer to present a consolidated, periodic summary report. Additionally, it is now required that a periodic summary report be released to the press and public by the Commissioner no later than 60 days after he or she receives it, thus answering concerns raised by commenters.

The previously proposed N.J.A.C. 10:16-3.7, Confidentiality, has been recodified as N.J.A.C. 10:16-3.6, and has been amended to reflect the correct new cross-references.

The previously proposed N.J.A.C. 10:16-3.8, Release of recommendations of the Board and annual review, has been eliminated. The elimination of N.J.A.C. 10:16-3.4, Recommendations of the Board, N.J.A.C. 10:16-3.5, Director's response, and N.J.A.C. 10:16-3.6, Annual review, and the insertion of the new N.J.A.C. 10:16-3.5, Release of periodic summary report, has made this section superfluous.

A summary of the repropoed new rules follows:

Proposed N.J.A.C. 10:16-1.1 states the purpose of these rules.

Proposed N.J.A.C. 10:16-1.2 states the scope of these rules.

Proposed N.J.A.C. 10:16-1.3 gives the definitions used in this chapter.

Proposed N.J.A.C. 10:16-2.1 defines the authority of the Board and states that the Board shall be duly constituted and recognized as an agency authorized to investigate child abuse and neglect, in accordance with the provisions of N.J.S.A. 9:6-8.10a and b.

Proposed N.J.A.C. 10:16-2.2 describes the functions of the Board.

Proposed N.J.A.C. 10:16-2.3 states the responsibilities of the Board and provides that the Board shall not participate in any determination regarding employee disciplinary action.

Proposed N.J.A.C. 10:16-2.4 describes the scope of review of the Board.

Proposed N.J.A.C. 10:16-2.5 describes the membership of the Board.

Proposed N.J.A.C. 10:16-2.6 gives the standards regarding conflict of interest.

Proposed N.J.A.C. 10:16-2.7 states the quorum requirements for the Board.

Proposed N.J.A.C. 10:16-3.1 provides the mechanism for reporting of each incident of child death alleged to have been caused by abuse or neglect and certain critical incidents to the Deputy Commissioner, who is the chairperson of the Board.

Proposed N.J.A.C. 10:16-3.2 provides the standards for the internal DYFS review of cases of child death and critical incidents.

Proposed N.J.A.C. 10:16-3.3 describes the case materials that are to be reviewed by the Board.

Proposed N.J.A.C. 10:16-3.4 describes the procedures regarding the periodic summary reports.

Proposed N.J.A.C. 10:16-3.5 describes the procedures regarding the public release by the Commissioner of the periodic summary reports.

Proposed N.J.A.C. 10:16-3.6 describes the confidentiality requirements for the Board and for the consultants and staff assigned to work with the Board.

Social Impact

A positive social impact is anticipated from these repropoed rules. The intent of the original proposal is maintained in that the public can

be assured of review by a Departmental public-private body with the power to see all pertinent information and make recommendations regarding situations pursuant to the provisions of N.J.A.C. 10:16-1.2, Scope.

Restating the Board's scope to allow review of selected critical incidents not only will be beneficial, but also will be an efficient use of the time of the volunteer members of the Board. The previously proposed requirement, that is, that the Board review every critical incident (not resulting in death) that was alleged to have been due to child abuse or neglect, is neither possible nor practical. The previously proposed section limited the scope of Board review to deaths that were alleged to have been due to child abuse or neglect. Expanding the universe of cases to be reviewed by the Board to include certain child deaths not alleged to be due to child abuse or neglect that may have systemic impact will allow the Board to review other cases which might be valuable to their deliberations.

Additionally, the release of periodic summary reports is now made mandatory. The previously proposed language regarding release of reports was permissive, allowing release at the discretion of either the DYFS Director or the Deputy Commissioner.

Economic Impact

The economic impact of these repropoed new rules will be negligible. Board members and consultants are not to be compensated, and no additional staff will be required to provide staff support for the Board. Some of the time of a few staff members currently employed by the Division will be devoted, on an as-needed basis, to the support of the Board, but it is not possible to provide an estimate of the cost of such staff support.

Regulatory Flexibility Statement

The proposed new rules do not impose any reporting, recordkeeping, or other compliance requirements on small businesses, as the term is defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required. The proposed rules are intended to establish the Department of Human Services Child Death and Critical Incident Review Board as a public child protective agency authorized to investigate reports of child abuse and neglect, under the provisions of N.J.S.A. 9:6-8.10b(1), and to describe the purpose, scope, organization, function and procedures of the Board.

Full text of the proposal follows.

CHAPTER 16

DEPARTMENT OF HUMAN SERVICES CHILD DEATH AND CRITICAL INCIDENT REVIEW BOARD

SUBCHAPTER 1. GENERAL PROVISIONS

10:16-1.1 Purpose

This chapter establishes the Department of Human Services Child Death and Critical Incident Review Board and describes its organization, scope, membership, functions, and procedures.

10:16-1.2 Scope

(a) The scope of this chapter applies to situations involving children currently or formerly (within the past 12 months) under the supervision of the Division of Youth and Family Services (DYFS):

1. Who are alleged to have died due to child abuse or neglect;
2. Who have died, and whose death is not alleged to be due to child abuse or neglect, but who died under circumstances that have been identified by the Deputy Commissioner or by the Director as presenting issues which could result, through Board review, in recommendations for systems, policy, legislative or regulatory changes or other broad-based revisions in Departmental or Divisional operations, and/or community remedies; or
3. Who were the subject of a critical incident (not resulting in death) that was:
 - i. Alleged to have been due to child abuse or neglect, and
 - ii. Has been identified by the Deputy Commissioner or by the Director as presenting issues that could result, through Board review, in recommendations for systems, policy, legislative/regulatory changes or other broad-based revisions in Departmental or Divisional operations, and/or community remedies.

(b) This chapter applies regardless of where the child involved in the situation described in (a) above is residing or of which State

government agency, Division of this Department or non-government provider is or was responsible for caring for the child.

10:16-1.3 Definitions

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

"Abused or neglected child" means a child:

1. Less than 18 years of age:

i. Whose parent or guardian inflicts, or allows to be inflicted upon such child, physical injury by other than accidental means, which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ;

ii. Whose parent or guardian creates or allows to be created a substantial or continuing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ;

iii. Whose parent or guardian commits or allows to be committed an act of sexual abuse against the child;

iv. Whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his or her parent or guardian to exercise a minimum degree of care:

(1) In supplying the child with adequate food, clothing, shelter, education, medical or surgical care, though financially able to do so, or though offered financial or other reasonable means to do so; or

(2) In providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court;

v. Who has been willfully abandoned by his or her parent or guardian;

vi. Upon whom excessive physical restraint has been used under circumstances which do not indicate that the child's behavior is harmful to herself or himself, others or property; or

vii. Who is in an institution other than a day school, and:

(1) Has been placed there inappropriately for a continued period of time with the knowledge that the placement has resulted or may continue to result in harm to the child's mental or physical well-being; or

(2) Has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.

2. No child who in good faith is under treatment by spiritual means alone, through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof, shall for this reason alone be considered to be abused or neglected.

"Board" means the Department of Human Services Child Death and Critical Incident Review Board.

"Child" means any child less than 18 years of age who has been alleged to have been abused or neglected.

"Child abuse death" or "death due to child abuse or neglect" means the death of a child as a result of acts or omissions by a parent or guardian that constitute child abuse or neglect, as these terms are defined in N.J.S.A. 9:6-8.21a, b and c.

"Critical incident" means a serious injury, a life-threatening condition, or a newsworthy event occurring to a child currently or formerly (within the past 12 months) under DYFS supervision and alleged to have been due to abuse or neglect.

"Day school" means a public or private school which provides general or special educational services to day students in grades kindergarten through 12. Day school does not include a residential facility, whether public or private, which provides care on a 24-hour basis.

"Deputy Commissioner" means the Deputy Commissioner of the Department of Human Services.

"Director" means the Director of the Division of Youth and Family Services in the Department of Human Services.

"DYFS" means the Division of Youth and Family Services in the Department of Human Services.

"Formerly under DYFS supervision" means that the child's case was closed and was not actively receiving DYFS services on the day the injury or death occurred, but had been actively receiving services within the past 12 months.

"Life-threatening condition" means any condition caused by exceptional or extraordinary occurrences which creates a high probability of death within the reasonably foreseeable future.

"Newsworthy event" means any incident which has attracted media (television, newspaper or radio) interest.

"Parent" or "guardian" means any natural parent, adoptive parent, foster parent, stepparent, or any person, who has assumed responsibility for the care, custody or control of a child or upon whom there is a legal duty for such care. Parent or guardian includes a teacher, employee or volunteer, whether compensated or uncompensated, of an institution who is responsible for the child's welfare and any other staff person of an institution, regardless of whether or not the person is responsible for the care or supervision of the child. Parent or guardian also includes a teaching staff member or other employee, whether compensated or uncompensated, of a day school.

"Serious injury" includes, but is not limited to, any fracture of the skull or long bones, ribs, spine or pelvis; head injury, such as concussion; human bites puncturing the skin or wounds requiring extensive suturing; extensive burns; bodily injury resulting in gastrointestinal symptoms or genital-urinary symptoms; teeth knocked out; injury to the eye; injury causing multiple hematomas; choking injury leaving marks; and any injury requiring hospitalization.

"Under DYFS supervision" means that the child is registered on the DYFS Service Information System as being actively under investigation or receiving DYFS services on the day the injuries or death occurred.

SUBCHAPTER 2. ORGANIZATION OF THE BOARD

10:16-2.1 Authority of the Board

The Board shall be duly constituted and recognized as an agency authorized to investigate child abuse and neglect, in accordance with the provisions of N.J.S.A. 9:6-8.10a and b.

10:16-2.2 Functions of the Board

(a) The Board shall be multidisciplinary in nature and shall serve to give an objective review of the case circumstances and to develop recommendations, for those situations described in N.J.A.C. 10:16-1.2, Scope.

(b) The Board shall examine ways to achieve better coordination of effort on child welfare and child protective services cases to promote prevention of serious incidents or deaths of vulnerable children and shall seek the involvement of many different professionals and agencies that provide services to children.

10:16-2.3 Responsibilities of the Board

(a) The Board is responsible for reviewing those situations described in N.J.A.C. 10:16-1.2, Scope.

(b) The Board shall not participate in any discussion or determination regarding employee disciplinary action.

10:16-2.4 Review by the Board

Board members shall have the authority to review all case materials pertinent to the situation and to interview DYFS and other Department of Human Services staff, as appropriate.

10:16-2.5 Composition of the Board

(a) The Board shall consist of at least five members, in accordance with the following:

1. The Deputy Commissioner, who shall act as chairperson of the Board;

2. The Director of the Division of Youth and Family Services;

3. At least one State government-employed person from within or outside the Department of Human Services, as chosen by the Deputy Commissioner; and

4. At least one non-State government-employed person, who shall participate on a case-by-case basis. This member or members shall be chosen by the Deputy Commissioner from the fields of medicine, child welfare, law enforcement, judiciary, courts, social work or other related fields, including voluntary or child advocacy agencies. The Deputy Commissioner is authorized to choose different persons to serve as Board members in this category on a rotational basis, as necessary and appropriate.

(b) No designee may attend in a member's stead.

(c) The Board may seek the advice of the following persons within or outside State government in a consulting capacity in specific cases: persons skilled in the disciplines of pediatric medicine, forensic medicine, nursing, psychiatry, psychology, social work, child welfare practice or education, law enforcement, judiciary, child or human care advocacy or other related fields, when facts or circumstances of a particular case warrant such additional expertise. The chairperson of the Board may also invite representatives of other public agencies authorized to investigate child abuse and neglect within the provisions of the law (N.J.S.A 9:6-8.10a) to join the Board in its review of a case.

10:16-2.6 Conflicts of interest

(a) If, in reviewing a child death or critical incident case, a Board member becomes aware of a potential conflict involving a personal or family involvement in the case or of any other issue that would or could jeopardize the objectivity of the review, the member shall discuss his or her concerns with the Deputy Commissioner regarding his or her participation in the review of that case.

(b) If the Deputy Commissioner concludes that there is a conflict that would impede the review's objectivity, the Deputy Commissioner shall require the affected Board member to withdraw from participation in the case under review and select an alternate to serve in his or her place.

10:16-2.7 Quorum

A quorum of the Board shall be not less than three members, or a majority of the current membership of the Board, whichever is greater. Of this quorum, at least two, or a majority of the quorum, whichever is greater, must be members who were appointed under either N.J.A.C. 10:16-2.5(a)3 or (a)4.

SUBCHAPTER 3. PROCEDURES OF THE BOARD

10:16-3.1 Reporting of child death and critical incidents

(a) The Director shall ensure that the chairperson of the Board is kept advised of each situation as described in N.J.A.C. 10:16-1.2, Scope.

(b) The Director shall cause an immediate verbal communication to be transmitted to the chairperson of each occurrence of a situation described in N.J.A.C. 10:16-1.2, Scope, followed by a brief written report within no more than 10 working days after the Director receives knowledge of the incident or death.

10:16-3.2 Internal review

(a) The appropriate local, regional and central offices of DYFS shall complete an internal review of the case no later than 30 working days after receiving knowledge of the incident or death, or sooner if requested by the chairperson of the Board. The internal review may take longer than 30 working days if the delay is caused by circumstances beyond the control of the Division.

(b) After DYFS has completed the internal review of the case, the Director shall inform the chairperson of the status of the case and shall forward to the chairperson and to each Board member a copy of the case materials and the internal review summary.

(c) The chairperson shall schedule a meeting of the Board to discuss the case within 30 working days of receiving the case materials and internal review summary, such meeting to be held

within 30 working days after the notice of the meeting is received by the Board members.

10:16-3.3 Case materials

(a) Case materials shall include, as applicable, the following documents:

1. The child's case record;
2. Copies of DYFS Service Information System data;
3. Police, prosecutor, fire, physician, psychologist, psychiatric and hospital records, as applicable and permissible; and

4. Autopsy results and death certificate, when available.

(b) Case materials shall also include information about:

1. The child and his or her family and household;
2. The nature and circumstances of the incident;
3. The nature of DYFS or Department of Human Services involvement with the child, family, or household;

4. A summary of Department of Human Services or other agency responses to the death or incident;

5. A summary of the circumstances leading to the child's death or the incident; and

6. Recommendations regarding the family, the alleged perpetrator, and DYFS or Department of Human Services operations.

10:16-3.4 Periodic summary report

(a) The Board shall periodically, but no less frequently than every two years, prepare for the Commissioner and the Director a summary report of recommendations, for those situations described in N.J.A.C. 10:16-1.2, Scope.

(b) The periodic summary report may include the Department's and/or the Division's comments or corrective or follow-up actions that have been or will be taken by the Department of Human Services or by the Division of Youth and Family Services regarding reported situations.

10:16-3.5 Release of periodic summary report

(a) The Commissioner shall release to the public the periodic summary report provided under N.J.A.C. 10:16-3.4 no later than 60 days after he or she receives it.

(b) Any such information released shall in no way contain any direct or indirect personally identifying information about the child or children or their families whose deaths or critical incidents are the basis of the periodic summary report.

10:16-3.6 Confidentiality

(a) All proceedings and records, including reports of the Board's discussions and recommendations, of the Board are confidential, except as herein provided under N.J.A.C. 10:16-3.5, Release of periodic summary report, and are subject to applicable Federal and State laws and regulations governing access to and confidentiality of records. Also, information and materials obtained by Board members and consulting persons are confidential and shall be treated as confidential by Board members and consulting persons.

(b) Upon joining the Board, each member shall complete and sign a sworn statement agreeing to abide by all applicable State confidentiality laws and rules concerning child abuse and neglect. Consulting persons shall complete and sign a similar sworn confidentiality statement when they participate in a Board review. Any persons supplying clerical support to the Board shall also complete and sign a sworn confidentiality statement.

(c) The report of the Board's discussion shall be limited to internal use by the Department and the Division and are not to be released outside of the Department or the Division.

(d) The periodic summary report shall omit any direct or indirect client identifying information.

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF REGULATORY SERVICES

New Jersey Commercial Fertilizer and Soil Conditioners

Plant Food Nutrient Values

Adopted Amendment: N.J.A.C. 2:69-1.11

Proposed: July 6, 1992 at 24 N.J.R. 2318(a).

Adopted: September 2, 1992 by the State Board of Agriculture, and Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Filed: September 3, 1992 as R.1992 d.373, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 4:9-15.26.

Effective Date: October 5, 1992.

Expiration Date: November 7, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Summary of Agency Change upon Adoption:

The effective date of this rule was originally proposed to be September 8, 1992. However, due to a later filing of the adoption notice, the rule must now have an effective date of October 5, 1992, the date of promulgation and publication in the New Jersey Register. Therefore, the proposed date of September 8, 1992 in N.J.A.C. 2:69-1.11(b) is changed upon adoption to October 5, 1992.

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

2:69-1.11 Commercial values

(a) (No change.)

(b) These values shall be effective from *[September 8,]* ***October 5,*** 1992 through June 30, 1993.

(b)

DIVISION OF REGULATORY SERVICES

Jersey Fresh Quality Grading Program Products and Manner of Use

Adopted Amendments: N.J.A.C. 2:71-2.2, 2.4, 2.5 and 2.6

Proposed: July 6, 1992 at 24 N.J.R. 2318(b).

Adopted: September 2, 1992 by the State Board of Agriculture, and Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Filed: September 3, 1992 as R.1992 d.374, **without change.**

Authority: N.J.S.A. 4:10-3, 4:10-13 and 4:10-20.

Effective Date: October 5, 1992.

Expiration Date: July 8, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

2:71-2.2 Use of "Jersey Fresh" as the logo for the "Jersey Fresh Quality Grading Program" and "Jersey Fresh Quality Premium Program" (referred to as the "logos") on containers of certain fresh fruits and vegetables and shell eggs

(a) The New Jersey Department of Agriculture approves the use of Jersey Fresh in conjunction with the New Jersey map symbol under provisions of N.J.S.A. 4:10-5 as an official emblem for identifying New Jersey produced agricultural commodities.

(b) The configuration of the Jersey Fresh Quality Grading Program Logos and the Jersey Fresh Quality Grading Program Premium Logo are as follows:



(c)-(e) (No change.)

2:71-2.4 Agricultural commodities intended to be marketed under the Jersey Fresh Quality Grading Program and Premium Program

(a) Only the following products may be packed in the Quality Grading Program: Sweet anise (fennel), apples, alfalfa sprouts, asparagus, beets (bunched), beets (topped), beet greens, blueberries, broccoli greens, broccoli rabe (rapini), bunched Italian sprouting broccoli, cabbage (domestic, savoy and red), cabbage (Chinese), cantaloupes, cauliflower, celery root, collard greens, green corn, cubanelle peppers, cubanelle peppers (red), cucumbers, cucumbers (cukes), cucumbers (pickling type), cucumbers (slicing type), dandelion greens, eggplants, endive, escarole, herbs (fresh), horseradish roots, kale, kohlrabi, leeks, bibb lettuce, big Boston lettuce, iceberg lettuce, lettuce (green leaf and red leaf), mustard greens, nectarines, okra, common green onions, parsley, parsnips, peaches, fresh peas, cheese peppers, hot peppers (green or red), sweet peppers (green and red, bell type), sweet peppers (yellow, bell type), sweet potatoes, white potatoes, pumpkins, radishes (bunched), raspberries, rhubarb, romaine, rutabagas, shallots (topped), snap beans, spinach (bunched), spinach plants, strawberries, summer squash (yellow or green), fall and winter type squash (butternut, acorn and spaghetti), swiss chard, tomatoes (fresh market), cherry tomatoes, plum tomatoes, turnips (topped), turnip greens, watermelons (sugar baby), and shell eggs.

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

2:71-2.5 Commodity Grades, packing requirements, packer identification and containers

(a) Each container bearing the "logo" shall have the name and address of the packer in letters not less than three-eighths inches in height. All imprinted containers must also have "Produce of U.S.A. (NJ)" imprinted no less than three-eighths inch in height. All containers, packages and packaging materials shall be new.

(b) Commodities shall be graded, packed, identified and contained as follows:

1. (No change.)

2. Alfalfa Sprouts shall consist of sprouts which are fresh, young and tender, clean and which are free from decay and not materially affected by overmaturity of leaf buds, discoloration, freezing, foreign material, disease, insects, mechanical or other means. All containers shall have a fairly tight pack. In order to allow for variations incident to proper grading and handling, the following tolerances, by weight are provided. Not more than a total of five percent in any lot may fail to meet the required specifications, including not more than one-half on one percent for decay. For application of tolerances, see N.J.A.C. 2:71-2.6.

AGRICULTURE

ADOPTIONS

3. (No change in text.)

4.-5. (No change.)

6. Beet greens shall be U.S. No. 1 grade, consisting of either plants (with or without attached roots) or cut leaves. In the case of beet greens with roots attached, the maximum diameter of the root shall not be larger than five-eighths inch. The leaf blades shall not be larger than six and one-half (6-1/2) inches. The pack shall be for 12 or 24 bunches per container. All containers shall have at least a fairly tight pack.

7. Blueberries shall be U.S. No. 1 grade. Size shall meet the requirements of at least Large with a maximum of 129 berries per standard two gill cup. Individual cups shall be well filled.

8. (No change in text.)

9. Broccoli rabe (rapini) shall consist of leaves and buds of similar varietal characteristics which are fresh, clean and which are free from decay and not materially affected by overmaturity of buds, discoloration of buds or leaves, freezing, foreign material, disease, insects, mechanical or other means. The pack shall be for 12 to 14 bunches per container. All containers shall have a tight pack. Tolerance for defects—In order to allow for variations incident to proper grading and handling, not more than a total of ten percent, by weight, for bunches or individual shoots when packed loose in any lot which fails to meet the required specifications, including not more than two percent for bunches or individual shoots when packed loose which are affected by decay. For application of tolerances, see N.J.A.C. 2:72-2.6.

10. Bunched Italian sprouting broccoli shall be U.S. Fancy grade. Each bunch shall be neatly and fairly evenly cut off at the base, and closely trimmed. All containers shall have at least a tight pack.

11. (No change in text.)

Recodify existing 8. and 9. as 12. and 13. (No change in text.)

14. Cantaloupes shall be U.S. No. 1 except for very good internal quality. Shall be fairly uniform in size. All container shall have a tight pack.

15. Cauliflower shall be U.S. No. 1 grade. All containers shall have at least a tight pack.

16. Celery root (celeriac) with tops or topped, shall consist of root crowns of similar varietal characteristics. If packed with tops, tops shall not be wilted and be free from decay and not materially affected by discoloration, disease, insects and other injury. If topped, tops shall be cut so that they extend no more than one-half inch beyond the point of attachment. Roots or root crown shall be free from decay and not materially affected by discoloration, growth cracks, dirt, freezing, disease, insects, mechanical or other injury. Each root crown shall have a minimum of two inches in diameter. All containers shall have at least a fairly tight pack. In order to allow for variations incident to proper grading and handling, the following tolerances, by weight are provided. Not more than a total of 10 percent in any lot may fail to meet the required specifications, including not more than five percent for defects seriously affecting the lot including not more than one percent for decay. In order to allow for variations incident to proper sizing not more than a total of five percent by weight of root crowns in any lot may be undersize. For application of tolerances, see N.J.A.C. 2:71-2.6.

Recodify existing 10.-22. as 17.-29. (No change in text.)

30. Horseradish roots shall be U.S. No. 1 grade. All containers shall have a tight pack.

Recodify existing 23.-27. as 31.-35. (No change in text.)

36. Bibb lettuce shall be U.S. No. 1 grade. The heads shall be fairly uniform in size. The pack shall be of 24 heads per container. All containers shall have a tight pack.

Recodify existing 28.-34. as 37.-43. (No change in text.)

44. Parsnips shall be U.S. No. 1 grade. Minimum diameter of each root shall not be less than one and one-half inches. All containers shall have at least a fairly tight pack.

Recodify existing 35. as 45. (No change in text.)

46. Fresh peas shall be U.S. No. 1 grade. All containers shall be at least well filled.

47. Cheese peppers (green or red) shall be U.S. No. 1 grade as specified by the U.S. Standard for sweet peppers, for defects and tolerances. Minimum diameter shall be not less than two and one-half inches. Minimum length shall be not less than two inches. In

lots designated as red shall have 100 percent of the peppers showing full red color. All containers shall be at least fairly well filled.

48. Hot peppers (green or red) shall consist of peppers of similar varietal characteristics which are firm; long hot peppers may have curved shape; all other varieties must be fairly well shaped for the variety and free from sunscald and decay, and not materially affected by freezing injury, hail, scars, sunburn, discoloration, disease, insects, mechanical or other injury. In lots designated as green shall be full green color for the variety; in lots designated as red, 100 percent of the peppers shall show full red color. In order to allow for variations incident to proper grading and handling, the following tolerance, by count, are provided. Ten percent in any lot which fails to meet the requirements, but not more than one-half of this amount, or five percent, shall be allowed for peppers which are seriously affected, including therein not more than two percent for peppers affected by decay. All containers shall be fairly well filled. For application of tolerance, see N.J.A.C. 2:71-2.6.

Recodify existing 37.-38. as 49.-50. (No change in text.)

51. Sweet potatoes shall be U.S. No. 1 grade. Maximum diameter shall not be more than three and one-half inches. Maximum weight shall not be more than 20 ounces. Length shall not be less than three or more than nine inches. Minimum diameter shall not be less than one and three-quarter inches. All containers shall be at least fairly well filled.

52. (No change in text.)

53. Pumpkins shall be U.S. No. 1 grade, and shall be fairly uniform in size. All containers shall have at least a tight pack.

Recodify existing 41.-42. as 54.-55. (No change in text.)

56. Rhubarb shall be U.S. Fancy grade. The diameter of each stalk is not less than one inch, and the length not less than 10 inches. All containers shall be at least tight.

57. (No change in text.)

58. Rutabagas shall be U.S. No. 1 grade with a minimum diameter of one and three-quarter inches. All containers, except for sacks, shall be at least fairly well filled.

Recodify existing 44.-45. as 59.-60. (No change in text.)

61. Spinach (bunched) shall be U.S. No. 1 grade. Pack shall be for 24 bunches per container. All containers shall have at least a fairly tight pack.

62. (No change in text.)

63. Squash, Fall and Winter (acorn, butternut and spaghetti) shall be U.S. No. 1 grade and shall meet the following size specifications: acorn shall be a minimum of one pound and a maximum of three pounds in weight. Butternut shall be minimum of one and one-half pounds and a maximum of four pounds in weight. Spaghetti must have a creamy yellow color, pack shall be for 12 to 16 squash per container. All containers shall be well filled.

Recodify existing 48.-50. as 64.-66. (No change in text.)

67. Tomatoes (fresh market) shall be U.S. No. 1 grade "Mixed Colors." Containers shall be marked with either "Maximum Large" or "Extra Large" or "Large" in accordance with the following size specifications: "Maximum Large" shall have a three and fifteen thirty-second inch minimum diameter; "Extra Large" shall have a two and twenty-eight thirty-second inch minimum diameter and three and fifteen thirty-second inch maximum diameter; "Large" shall have a two and seventeen thirty-second inch minimum diameter and two and twenty-eight thirty-second inch maximum diameter. Containers shall also be marked as follows, in accordance with the facts, "Large to Extra Large" or "Extra Large and Larger". Containers shall be at least fairly well filled. Cherry tomatoes shall be U.S. No. 1 grade, color turning to full color. All containers shall be at least well filled.

68. Plum tomatoes shall be U.S. No. 1 grade. Minimum diameter shall not be less than one and one-quarter inches. Color turning to full color. All containers shall be at least fairly well filled.

Recodify existing 52.-54. as 69.-71. (No change in text.)

72. Shell eggs shall be consumer grade A and shall consist of eggs which are at least 87 percent A quality or better. Within the maximum tolerance of 13 percent which may be below A quality, not more than one percent may be B quality due to air cells over three-eighths (3/8) inch, blood spots (aggregating not more than one-eighths (1/8) inch in diameter), or serious yolk defects. Not more than five

percent checks are permitted and not more than 0.50 percent leakers, dirties, or loss (due to meat or blood spots) in any combination, except that such loss may not exceed 0.30 percent. Other types of loss are not permitted. Only weight classes listed below may be packed with the Jersey Fresh Quality logo:

- i. Extra large—minimum net weight per dozen 27 ounces, minimum net weight for individual eggs at rate per dozen 26 ounces;
- ii. Large—minimum net weight per dozen 24 ounces, minimum net weight for individual eggs at rate per dozen 23 ounces; and
- iii. Medium—minimum net weight per dozen 21 ounces, minimum net weight for individual eggs at rate per dozen 20 ounces.

2:71-2.6 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

“Application of tolerances” means, in the case of alfalfa sprouts, broccoli rabe (Rapini), cabbage (Chinese), celery root, kohlrabi, hot peppers (green and red), shallots (topped), swiss chard, leeks and herbs (fresh), that the contents of individual packages in the lot are subject to the following limitations:

1.-2. (No change.)

“Closely trimmed” means, in the case of Italian sprouting broccoli (bunched), when not more than a total of five percent by weight, of the bunches, consists of attached stems and leaves longer than the average length of the bunch, regardless of point attachment or loose leaves and stems.

“Fairly tight” means, in the case of alfalfa sprouts, eggplants, beets (bunched), beet greens, broccoli greens, collard greens, celery root, dandelion greens, endives, escarole, herbs, kale, kohlrabi, lettuce (green and red leaf), mustard greens, common green onions, parsnips, radishes (bunched), spinach (bunched), spinach plants, swiss chard and turnip greens, that the package is sufficiently filled to prevent any appreciable movement of the product and that they are in contact with the lid or cover. In the case of apples, that the apples are of the proper size for molds or cell compartments in which they are packed, and that the molds or cells are filled in such a way that no more than slight movement of apples within molds or cells is possible. The pad over the top layer of apples shall be not more than three-quarter inch below the top edge of the carton. In the case nectarines and peaches packed in mold or cell compartments, that they are of the proper size for the mold or cell compartments in which they are packed and that the molds or cells are filled in such a way that there is no more than slight movement within the mold or cells and that the pad or tray over the top layer must be in contact with the lid.

“Fairly uniform in size” means, in the case of bibb lettuce, big Boston lettuce and iceberg lettuce, that not more than 10 percent of the heads in a container may vary appreciably from the standard size head for the count pack. In the case of cantaloups and pumpkins, one size above or one size below the size of most of the cantaloups or pumpkins in the container.

“Fairly well filled” means that in the case of beets (topped), cucumbers, okra, cheese peppers (green or red), cubanelle peppers (green or red), hot peppers (green or red), sweet peppers (green, red or yellow, bell type), sweet potatoes, squash (summer), shallots (topped), tomatoes (fresh market), turnips (topped), and rutabagas, except in sacks, are not in contact with the lid or cover, but not more than one-half inch below the lid or cover. In the case of nectarines and peaches, the container is level full and there is practically no movement of the fruit when the container is closed. In the case of nectarines, the contents of the container may be slightly below the top edge but not more than one-half inch.

“Over maturity” means, in the case of alfalfa sprouts, that leaf buds (head) are on the verge of opening. In the case of broccoli rabe (rapini), bunched or individual shoots when packed loose would be materially affected if it has more than two open buds or most buds are on the verge of opening.

“Tight” means, in the case of bibb lettuce, iceberg lettuce and Big Boston lettuce, that the layers are completely and tightly filled without injury to the heads. In the case of green corn, when packed in crates, the package is filled sufficiently to prevent any movement of the product within the package and it has the proper bulge without causing bruised kernels. In the case of asparagus (loose), Italian sprouting broccoli (bunched), broccoli rabe (rapini), cabbage (domestic, savoy, red and chinese), cantaloups, cauliflower, fennel, horseradish roots, leeks, parsley, pumpkins, romaine and rhubarb, that the packages are sufficiently well filled so as to prevent the product from moving in the container but not overly filled so that injury to the product results.

“Well filled” means, in the case of blueberries, cherry tomatoes, raspberries and strawberries, that the fruit be one-quarter to one-half inch above the rim of the cup. In the case of peas, snap beans and fall and winter squash (acorn, butternut and spaghetti), they shall be in contact with the cover.

“Well trimmed” means, in the case of asparagus, that at least two-thirds of the butt of the stalk is smoothly trimmed in a plane approximately parallel to the bottom of the container and that the butt is not stringy or frayed. In the case of endive and escarole, that the roots are neatly cut near the point of attachment of the outer leaf stems. In the case of romaine, that the stem is trimmed off close to the point of attachment of the outer leaves. In the case of cabbage, that the head shall not have more than four wrapper leaves. In the case of Sweet Anise (Fennel) that not more than one coarse outer branch is left on each side of the bulb to protect the tender inside portion, and the portion of the root remaining is not more than one-half inch in length. Tops may be either full length or cut back to not less than 10 inches except that not more than five of the outer branches may be cut back to less than 10 inches if necessary to facilitate proper packing, but not more than three of these may be on the same side of the bulb. In the case of shallots, that the tops are no longer than one-quarter inch.

(a)

DIVISION OF REGULATORY SERVICES

Grades and Standards

Fruit and Vegetable Fees and Charges

Adopted Amendments: N.J.A.C. 2:71-2.28 and 2.29

Proposed: July 6, 1992 at 24 N.J.R. 2321(a).

Adopted: September 2, 1992 by the State Board of Agriculture, and Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Filed: September 3, 1992 as R.1992 d.375, **without change**.

Authority: N.J.S.A. 4:10-6.

Effective Date: October 5, 1992.

Expiration Date: July 8, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

2:71-2.28 Charges for inspection or grading and certification services; written agreements for single commodity inspection

(a) Charges for inspection or grading and certification services of five or more consecutive days duration, performed pursuant to a written agreement between the New Jersey Department of Agriculture and the requestor of the services, shall be made according to the following schedule:

1. Basic schedule for all products:

- i. A charge of \$400.00 per five day week (Monday through Friday) or 40 hours or less for each inspector;
- ii. A charge of \$15.00 per hour, or portion thereof, for all hours worked over 40 in the five day week (Monday through Friday), or for all hours over eight hours per day;

iii. There will be at least a four hour minimum charge of \$60.00 assessed for each inspector assigned work on Saturday and/or Sunday; and a charge of \$15.00 per hour, or portion thereof, for the actual hours worked by each inspector on Saturday and/or Sunday in excess of four hours.

iv. There will be at least a four hour minimum charge of \$60.00 assessed for each inspector assigned work on legal State holidays occurring Monday through Friday; and a charge of \$15.00 per hour, or portion thereof, for the actual hours worked by each inspector on legal State holidays occurring Monday through Friday in excess of four hours; and

v. (No change.)

2. Charges for inspection or grading and certification of fruit and vegetables other than potatoes for fresh market:

i. A charge of \$0.06 will be made for all packages (other than potatoes) inspected or graded and certified in excess of 3,334 packages during the seven day week (Saturday through Friday).

3. (No change.)

2:71-2:29 Written agreements for multiple commodity inspection

(a) Charges for written agreements shall be made according to the following schedule:

i. A charge of \$800.00 per five day week (Monday through Friday) of 40 hours or less for each inspector for the inspection and/or grading of more than one commodity.

ii. A charge of \$30.00 per hour, or portion thereof, for all hours worked over 40 in the five day week (Monday through Friday), or for all hours over eight hours per day;

iii. There will be at least a four hour minimum charge of \$120.00 assessed for each inspector assigned work on Saturday and/or Sunday;

iv. A charge of \$30.00 per hour, or portion thereof, for the hours worked by each inspector on legal State holidays occurring Monday through Friday;

v. There will be at least a four hour minimum charge of \$120.00 assessed for each inspector assigned work on legal State holidays occurring Monday through Friday; and

vi. A charge of \$0.06 will be made for all packages (other than potatoes) inspected or graded and certified in excess of 6,667 packages during the seven day week (Saturday through Friday).

BANKING

(a)

DIVISION OF REGULATORY SERVICES

Mortgage Bankers and Mortgage Brokers

Readoption with Amendments: N.J.A.C. 3:38

Proposed: August 3, 1992 at 24 N.J.R. 2653(a).

Adopted: September 8, 1992 by Jeff Connor, Commissioner, Department of Banking.

Filed: September 11, 1992 as R.1992 d.387, **without change**.

Authority: N.J.S.A. 17:1-8 and 8.1; 17:11B-5 and -13.

Effective Date: September 11, 1992, Readoption;
October 5, 1992, Amendments.

Expiration Date: September 11, 1997.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:38.

Full text of the adopted amendments follows.

3:38-1.9 Office requirements

(a) (No change.)

(b) A licensee shall obtain a branch office license from the Commissioner for each branch office located in this State.

(c) A licensee shall also obtain a branch office license for each branch office located outside this State where, on a regular basis:

1. Mortgage loan applications are distributed to and/or received from New Jersey consumers in person;

2. Lock-in or commitment agreements are signed in person by New Jersey consumers;

3. The licensee or its solicitors communicates with New Jersey consumers in person regarding available loan products; and/or

4. The licensee collects fees in person from New Jersey consumers.

Recodify 1.-3. as (d)-(f) (No change in text.)

Recodify (c)-(f) as (g)-(j) (No change in text.)

3:38-2.1 Methods and accounting

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

(e) A licensee may keep its mortgage banker or broker records at either:

1. A licensed branch office in this State; or

2. An unlicensed site in or out of this State, or a licensed branch office outside of this State, provided that, in either instance, the licensee secures the prior approval of the Department of Banking. The approval of the Department will be given only if the licensee enters into an agreement with the Department governing the maintenance and production of records at the site. The provisions of the agreement shall include, but shall not be limited to, the designation of the site where the records will be maintained, the fees and expenses chargeable by the Department for conducting examinations, and the right of the Department to rescind the agreement.

3:38-4.1 Fees permitted

(a) No licensee shall charge a borrower any fees incident to the origination, processing or closing of a mortgage loan other than the following, except as otherwise authorized by State or Federal law, either explicitly or as interpreted by the appropriate regulator in official staff commentary, regulatory bulletins, or memoranda.

1. Application fee;

2. Credit report fee;

3. Appraisal fee;

4. Commitment fee;

5. Warehouse fee;

6. Reimbursement for third party fees paid or actually incurred by a lender on behalf of a borrower;

7. Discount points or fractions thereof; and

8. Lock-in fees.

(b) (No change.)

(c) No broker shall charge or collect from a borrower on its own behalf any fees other than an application fee and discount points or fractions thereof.

(d) The terms application fee, credit report fee, appraisal fee, commitment fee, warehouse fee, third party charge, discount point and lock-in fee are defined by reference according to N.J.A.C. 3:1-16.2. In addition, the restrictions and limitations on the ability of a licensee to collect these fees set forth in N.J.A.C. 3:1-16.2 are also incorporated by reference.

(b)

DIVISION OF REGULATORY AFFAIRS

Notice of Administrative Correction

Mortgage Bankers and Mortgage Brokers

Surety Bonds

N.J.A.C. 3:38-1.6

Take notice that the Department of Banking has discovered an error in the text of N.J.A.C. 3:38-1.6. The second subsection (c) beginning, "The bond shall run to the State, . . ." was inadvertently included in this rule in the production of the December, 1990 Code update. That update correctly incorporated the text of subsection (d), which was proposed and adopted at 22 N.J.R. 2868(a) and 3619(b), respectively. As part of the same proposal and adoption, N.J.A.C. 3:18-10.5(c) was also incorporated into the Code. It is the duplicate text of that subsection which now appears erroneously as the second subsection (c) in N.J.A.C.

ADOPTIONS

COMMUNITY AFFAIRS

3:38-1.6. That error is rectified through this notice of administrative correction, published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (deletion indicated in brackets [thus]):

3:38-1.6 Bonds

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

[(c) The bond shall run to the State, pro rata, for the benefit of the Department and for the benefit of all consumers injured by the wrongful act, omission, default, fraud or misrepresentation of a licensee, or a person acting on behalf of the licensee, in the course of activity as a licensee. The bond shall not be payable for claims made by business creditors.]

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

COMMUNITY AFFAIRS

(a)

OFFICE OF THE COMMISSIONER

Department Contracts

Readoption with Amendments: N.J.A.C. 5:4

Proposed: July 6, 1992 at 24 N.J.R. 2322(a).

Adopted: September 9, 1992 by Melvin R. Primas, Jr.,

Commissioner, Department of Community Affairs.

Filed: September 11, 1992 as R.1992 d.389, **without change.**

Authority: N.J.S.A. 52:27D-3.

Effective Date: September 11, 1992, Readoption;

October 5, 1992, Amendments.

Expiration Date: September 1, 1997.

Summary of Public Comments and Agency Responses:

No public comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:4.

Full text of the adopted amendments follows.

**CHAPTER 4
DEPARTMENT CONTRACTS**

5:4-1 and 2 (No change.)

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Maintenance of Hotels and Multiple Dwellings;

Uniform Construction Code

Methods, Devices and Systems for Indirect

Apportionment of Heating Costs in Multiple

Dwellings; Approval of Nonconforming Materials;

Departmental Fees

Adopted New Rule: N.J.A.C. 5:10-25

Adopted Amendments: N.J.A.C. 5:23-3.7, 3.8 and 4.20

Proposed: May 18, 1992 at 24 N.J.R. 1844(a).

Adopted: September 11, 1992 by Melvin R. Primas, Jr.,

Commissioner, Department of Community Affairs.

Filed: September 14, 1992 as R.1992 d.390, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 55:13A-7.10 (P.L.1991, c.453, section 3) and 52:27D-124.

Effective Date: October 5, 1992.

Expiration Date: November 17, 1993, N.J.A.C. 5:10; March 1, 1993, N.J.A.C. 5:23.

Summary of Public Comments and Agency Responses:

Comments were received from the following individuals and organizations:

Jacque Eaker, Executive Vice President, New Jersey Council of the Multi-Housing Industry;

Roger L. Freischlag, President, National Utilities Allocation Association and President, Energy Billing Systems, Inc.;

Martha J. Hewett, Senior Research Analyst, Center for Energy and the Urban Environment (CEUE), Chair ASHRAE Committee on Energy Cost Allocation of Comfort HVAC Systems for Multiple Occupancy Residential Buildings;

Kenneth Hoberman, President, GRH Electronics, Inc.;

Martin S. Kenwood, Franklin Associates;

John C. McGuigan, Vice-President Lower County Property Management, Inc.;

Thomas K. McHugh, President Monitor Data Corporation;

William Vinal, Vice-President Monitor Data Corporation; and

Roxanne Wiebe, GRH Electronics, Inc. and the National Utilities Allocation Association.

Charles Decker, Assistant Director for Construction Code Enforcement, conducted the public hearing on June 8, 1992, which was attended by four members of the public. Mr. Decker recommended that the Department evaluate the comments further and provide responses in the notice of adoption. These responses follow the list of articles and reports.

In addition to these comments, the Department received copies of the following articles and reports. Persons who wish to review them may contact the Department at (609) 530-8789 to make arrangements to do so.

BTU Meter Technology Review, Talbert, Flanigan, Lando and Orban, Gas Research Institute, Chicago, Illinois, final report, July, 1987-December, 1990;

Journal Official de la Republique Francaise—March 16, 1982, Department of Industry, "Evaporation and Heating Cost Allocation Units"; *German Standards*:

DIN 4713 Part 1—"Heating Costs Based on Consumption: Generalities, Definitions"

DIN 4713 Part 2—December, 1980—"Heating Cost Calculation Based on Consumption: Heating Cost Based on the Evaporation Principle"

DIN 4713 Part 3—December, 1980—"Heating Cost Calculation Based on Consumption: Heating Cost Distributors with Electrical Reading of Measurement Quantities"

DIN 4713 Part 4—December, 1980—"Heating Cost Calculation Based on Consumption: Heat Counters and Water Counters"

DIN 4713 Part 5—December, 1980—"Heating Cost Calculation Based on Consumption: Operating Cost for Distribution Accounting"

DIN 4714 Part 2—December, 1980—"Construction of Instruments Registering Heating and Warm Water Consumption: Heating Cost Distributors Based on the Evaporation Principle"

DIN 4714 Part 3—December, 1980—"Construction of Heating Cost Distributors with Electrical Registration of Measurement Quantities";

"Tenant-Paid Energy Costs in Multi-family Rental Housing: Effects on Energy Use, Owner Investment, and the Market Value of Energy" McClelland, Lou, University of Colorado, Boulder, December, 1983 (Report DOE/CS-20050-1).

"Legal Foundation of Consumption-Dependent Heating Cost Allocation in German-speaking Countries," Zluwa, Bruno, *Electrotechnik und Maschinenbau*, Vol. 99, No. 8 (submitted 5/5/82).

"Heating Cost Allocation in Multi-family Buildings: Energy Savings and Implementation Standards," Hewett, M.J., H.L. Emstander and M.J. Koehler, *ASHRAE Transactions* 1989, Vol. 95, Pt. 1.

"The Ordeal of Electric Heat" Basler, Stephens, *The Neighborhood Works* Vol. 6, No. 12 December, 1983.

District Heating Yearbook—1989, General Reports, 24th Unichal Congress, Graz, Austria June 13-15, 1989.

"Energy Conservation from Individual Heat Use Monitoring in Multi-family Properties," Scott, W.L. *ASHRAE Transactions* 1991, Vol. 97, Pt. 1.

"Heating Cost Allocation in Multi-family Housing," Goettling, D.R. and J.R. Zaworski, *ASHRAE Transactions* 1983, Vol. 89.

"Latest European Developments in the Field of Electronic Allocation of Costs by Hydronic Systems," Goettling, Dieter R. and Friedemann, H. Kuppler, *ASHRAE Transactions* 1981, Vol. 87, Pt. 2.

"The Comparative Accuracy of Various Measurements in Calculating the BTU Output of Hot Water Heating or Chilled Water Cooling," Sampson, Walt, P.E. (February 20, 1985).

"Metering and Allocation of Gas Costs for Apartments—A Case Study," Maher, R.K., *ASHRAE Transactions* 1991, Vol. 97, Part 1.

Encouraging Energy Conservation in Multi-family Housing: Rules and Other Methods of Allocating Energy Costs to Residents," October, 1980 (DOE/CS/20050-T2).

Summaries of the comments received, and the agency responses to those comments, follow:

COMMENT: An ASHRAE committee has been working on a draft standard for these devices, but the draft is in a preliminary stage. The Department should wait and use the standard when it is completed.

RESPONSE: The Uniform Construction Code is based upon model codes and standards. The Department always prefers to adopt model standards, when they have received all necessary reviews and approvals. The ASHRAE standard in question is in a very preliminary form and cannot be used, quoted or referenced at this time. The statute requires the Department to act by October 17, 1992. At this time, the Department seeks to use the best standards available to it.

COMMENT: The Department should not require very accurate devices. Current German standards for BTU meters (which are rarely installed in this country because of their cost and the difficulty installing them) require them to be with \pm eight percent accuracy in laboratory tests and within \pm 16 percent as installed in apartment buildings.

RESPONSE: Some evidence was submitted concerning the various accuracy levels of some devices. However, the Department has not been able to verify these figures, and cannot, therefore, fully evaluate the comment at this time.

COMMENT: Any apportionment devices are more accurate than merely dividing a common utility bill by the number of tenants or by the square footage area of each tenant's space.

RESPONSE: A system which accurately reflects the usage of some tenants may routinely over- or under-charge others. The statute requires that the Department review and approve installed devices to insure that each tenant's usage is accurately measured by the installed devices.

COMMENT: Apportioned charges are affected by two types of inherent differences between tenant spaces:

1. "Building differences" such as size and shape of space, whether it has solar or wind exposure due to exterior walls or common areas, whether it is close to or remote from other heat sources in the building (for example, the boiler); and

2. "Other tenant differences" such as neighbors who heat extensively or are absent and/or heat minimally, the impact of these differences depending upon the amount of insulation between units.

RESPONSE: While the Department does not dispute that these effects exist, its authority under this statute provides for apportionment among units based upon actual use, regardless of why different amounts of heat may be used in different units.

COMMENT: In some European countries where heat apportionment is mandatory, there are mandatory insulation and energy upgrades which must be accomplished to insure that the heating system itself has some minimum level of efficiency.

RESPONSE: While the Department does not dispute the existence of these requirements in other countries, the establishment of such requirements for existing buildings in this State is beyond the scope of the legislation that these rules are intended to implement.

COMMENT: The use of heat meters with a natural gas energy source would conserve societal resources better than the gradual conversion of multi-family housing stock to electrical resistance heat, which is always individually metered. Typically, it takes 2.7 BTUs of source energy to deliver one BTU of electricity to a building when losses in extraction, processing, transportation, conversion and distribution are taken into account. In comparison, it takes only 1.1 BTU of source energy to deliver one BTU of natural gas to a building.

RESPONSE: The Department does not dispute this point. It does not, however, believe that inequitable and inaccurate apportionment systems must be accepted to prevent wholesale conversion from gas to electric energy. Inequitable billing, which the statute seeks to prohibit, cannot be the basis for any real savings. Overall societal goals do not necessitate or justify trampling upon the right of an individual consumer, who may be a low-income individual, to fair and accurate utility bills. These rules, and the statute that they implement, are neutral on broad policy questions regarding energy source. Accurate cost allocation systems are technically feasible. As with anything else, there is no doubt that systems that are designed and installed to work properly are more costly than those that are not. Neither the statute nor elementary fairness would

permit approval or acceptance of allocation systems that do not accurately allocate, simply because they encourage energy saving.

COMMENT: Energy cost allocation is less costly for tenants than is conversion to electric heat. Given current New Jersey energy rates, it is 1.4 to 2.8 times as expensive to heat an apartment with electricity as with a central gas heating system.

RESPONSE: The commenter has not demonstrated that fair allocation necessarily forecloses the continued use of gas energy. (See also previous response.)

COMMENT: Sensors used for measuring apportioned heat must be responsive enough to accurately measure the heating cycles of the boiler or furnace, that is, the sensor must measure when heat levels rise and fall in response to fuel use. (In an extreme example, measuring a temperature only once a day would not accurately show the temperature over a 24-hour period.)

RESPONSE: A system that does not measure actual usage will not be approved. Timing is one factor which the Department will consider in approving devices.

COMMENT: The National Committee on Weights and Measures (NCWM) Task Force Recommendation (October 1988), used as the basis of Department's proposal, is very different from the final version (adopted July, 1989). Substantively different are Appendix G, Chapter 2: Sections 2.02, 2.03; Chapter 3: Sections 3.01, 3.02 and Chapter 4. (These sections cover: charges; billing procedures including "substitute billing" for malfunctioning or inoperative devices; disclosure to prospective tenants concerning heating system, apportionment devices, probable costs; procedures for filing and resolving complaints; procedures for initiating repairs and billing procedures during that time period.)

RESPONSE: While these differences are not relevant to technical requirements, they are key to providing information to tenants and to providing fair billing statements. Changes are being proposed for N.J.A.C. 5:10-25.2(c)7 and 8 which will incorporate the essence of these requirements.

COMMENT: Heat apportionment systems save energy and money. One commenter reported a routine savings of 10 percent after installation of apportionment systems, and often savings of 15 to 25 percent.

RESPONSE: The Department is all in favor of apportionment systems that are fair and accurate and otherwise meet the requirements of the statute and the rules and that actually result in energy conservation. However, a "savings" realized by allocating costs to tenants without actually reducing costs or overall usage would be neither in the public interest, nor in accord with the Department's statutory mandate.

COMMENT: The rules as proposed apply only to heat; there is no mention of charges for domestic hot water or heat for common areas.

RESPONSE: The statute that these rules are intended to implement deals with "equitable distribution of heating costs among the dwelling units of the multiple dwelling upon the basis of actual usage" and must "incorporate a provision of individual thermostatic controls permitting heat usage in each dwelling unit to be varied by the tenants thereof." It is the Department's understanding that "heat usage" refers to space heating, not to use of hot water, although the Department would regard these rules as applicable to any system in which hot water and space heating were combined and subject to control by the tenant. It is also the Department's understanding that the costs being apportioned are those for the dwelling units, over which the tenants have control if they have thermostats, and not those for the common areas, over which they have no control. Clarification in this regard is provided by the addition of N.J.A.C. 5:10-25.1(d) upon adoption.

COMMENT: The rules as proposed focus too much on a level of accuracy that is unattainable and that will act to unreasonably ban most devices, such as elapsed time monitors and time/temperature monitors.

RESPONSE: Methods and devices that do not meet the standards of the statute, as implemented by the rules, will indeed be prohibited. It is clearly the intention of the statute that inequitable systems and methods be disapproved, not that systems be approved merely because they are less inequitable than other methods and systems that may be available.

COMMENT: The proposed rules do not allow the charging of an administrative or "billing" fee.

RESPONSE: Neither does the statute.

COMMENT: The cost of metering is a major factor for building owners; they want a one- or two-year pay-back period for equipment. Time/temperature monitors typically cost \$200.00 to \$250.00 per unit. A BTU meter is in the range of \$400.00 to \$600.00.

RESPONSE: The Department is not requiring the use of these meters. It is up to each owner to decide whether or not it pays to install them.

COMMENT: Building owners should be encouraged or mandated to install devices such as flue dampers and temperature set back controls on boilers. Use of these low cost energy conservation devices can save 10 to 30 percent on energy consumption in a typical apartment building.

RESPONSE: While the Department approves energy saving measures, these are beyond the scope of this proposal and beyond the Department's statutory mandate.

COMMENT: Do the proposed rules apply to condominiums?

RESPONSE: Since the legislation supplements the Hotel and Multiple Dwelling Law, these rules apply to any multiple dwelling that is otherwise subject to that law, pursuant to N.J.A.C. 5:10-2.2 and N.J.S.A. 55:13A-3(k), regardless of whether or not it is under a condominium form of ownership. N.J.A.C. 5:10-25.1(e) has been added upon adoption to clarify the rules in this regard.

COMMENT: Research shows that BTU meters are unduly expensive and inaccurate.

RESPONSE: Most information supplied to the Department shows these systems to be the most accurate of those discussed, though costs submitted have been greater.

COMMENT: The Department should allow unapproved devices to be "shut out-of-service" instead of removed.

RESPONSE: The Department agrees, in that the statute says "not employed", and removal will not be required. However, any owner who charges tenants for heating costs based upon an unapproved system or method will be subject to penalty.

COMMENT: The aggregate of all tenant billings in a given month should never exceed the total energy-related costs paid by the owner to deliver that energy to the tenants. The information regarding the total energy costs for the complex should be available to the tenants through monthly billing summary reports.

RESPONSE: The statute provides that, for each billing period, the tenant be provided with a statement giving both the total heating cost of the building and the proportion apportioned to each dwelling unit. Clearly, the total of the apportioned costs may not exceed the total cost for the building; indeed, it should be less, since the tenants should not be required to pay for the heating of the common areas. Changes being proposed to N.J.A.C. 5:10-25.2(c)7 and 8 will clarify what shall be provided in billing statements.

COMMENT: Bills to tenants should show the following:

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

RESPONSE: The proposal cannot be expanded upon adoption. However, the Department, partially in response to the NCWM's final report, and to this comment, is proposing changes to N.J.A.C. 5:10-25.2(c)7 and 8 which will, in essence, require items 1 to 6, or the equivalent, and 8 to 10. Allocation of "additional charges" through a system or method approved under these rules, as per item 7, is not allowed (see previous responses).

COMMENT: There should be interim approvals for devices, pending a final determination by the Department.

RESPONSE: The Department has read the statute, along with its usual six-month grace period extended to construction projects (see N.J.A.C. 5:23-1.6(b)), to allow the submission of applications for existing systems until January 19, 1993, with approvals to be granted prior to April 19, 1992. This is necessary because application and plan review cannot be accomplished instantaneously and it would be unreasonable to summarily disrupt the use of existing equipment and the contract agreements existing between owners and tenants. No new systems shall be installed after October 17, 1992, unless the systems are approved by the Department. This cannot be waived by rule. Changes reflecting these interpretations have been made in the text of this adoption.

COMMENT: The Department should publish a fee schedule for review.

RESPONSE: Publication of a fee schedule is impractical at this time because to date the Department has received no detailed information on any systems installed or proposed to be installed in the State. It is impossible to foresee the number of plan reviewer hours, or special consultant hours that will be necessary to review systems of unknown size and complexity. For example, it is unknown whether some systems might contain parts or materials nowhere previously approved for use in the United States. The review and approval of such parts or materials could be time-consuming and/or costly. Similarly, it is impractical to guess at inspection fees for systems of unknown size and complexity.

COMMENT: A schematic of the equipment is proprietary information.

RESPONSE: The information in a schematic is similar to the information contained in a wiring diagram or other detail drawing which the Department ordinarily reviews before issuing a construction period. Most proprietary design information should be protected by patents. For information which is not so protected, applicants will have to be more specific in explaining what is proprietary and what sort of protections would be required to safeguard the applicant's interest. If an applicant has genuine concerns, steps can be taken by the Department to limit access to submitted documents.

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 25. METHODS, DEVICES AND SYSTEMS FOR INDIRECT APPORTIONMENT OF HEATING COSTS IN MULTIPLE DWELLINGS

5:10-25.1 Scope

(a) This subchapter establishes standards and procedures for the Bureau of Housing Inspection's approval of methods and devices for indirect apportionment of heating costs in multiple dwellings, in accordance with P.L. 1991, c.453.

(b) No method, device or system of devices for apportionment of heating costs in multiple family dwellings shall be used without prior approval of the Bureau pursuant to this subchapter, except that methods or devices in use on April 17, 1992 may continue in use pending application for and issuance of approval by the Bureau, until not later than October 17, 1992, *[after which date they must be removed and their use discontinued]* ***unless an application for approval is filed by January 19, 1993. Any system not approved by the Department by April 19, 1993, or undergoing testing or other procedures required by the Department as part of the approval process as of that date, shall be removed or permanently shut out of service*.**

(c) This subchapter shall not apply to devices for direct apportionment of heating costs that are approved by the Board of Regulatory Commissioners.

*** (d) This subchapter shall not apply to any charges for the separate heating of domestic hot water, charges for cooking fuel or charges for the heating of common areas in buildings. Charges for any such energy uses are not covered by this subchapter.**

(e) This subchapter shall apply to all multiple dwellings, including, without limitation, condominiums, cooperatives and mutual housing corporations that are not excluded from jurisdiction under the act in accordance with N.J.S.A. 55:13A-3(k).*

5:10-25.2 Application to the Department

(a) Any manufacturer, distributor or other person seeking approval for use of a device or system of devices for indirect apportionment of heating costs in a multiple dwelling shall submit two copies of the following information, as well as the appropriate fee, at such time as the fee shall be determined in accordance with N.J.A.C. 5:23-4.20(d), to the Construction Code Element, CN 805, Trenton, NJ 08625. The Construction Code Element will forward one copy of the information document to the Bureau:

1. The name and address and social security or taxpayer identification number of the applicant for approval;
2. The name and address of the general partner(s) or corporate officer(s), if applicable;
3. A description of the device or system of devices, including a narrative description, schematics, and any test certifications or listings of components;

4. A description of the method for computing energy consumption based on measurements recorded by the device or system of devices, using commonly recognized standard American units;

5. A description of any calculations used to convert standard units and any subsequent calculations used to arrive at occupant usage; and

6. A description of any calculations used to arrive at a unit cost charged occupants.

(b) Approved devices and systems shall be placed on a list to be maintained by the Construction Code Element. The list shall be made available to any interested party on request.

1. An owner of a multiple dwelling shall not submit an application for use of such a device or system to the Bureau unless the device or system is on the Department's list of approved devices and systems.

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

1. The make and identifying number of the device or system for indirect apportionment of heating costs that is proposed to be installed;

2. The name, address and social security or taxpayer identification number of the owner of the building;

3. The name and address of the building manager, if applicable;

4. The address and registration number of the multiple dwelling;

5. The number of dwelling units;

6. A copy of all written information related to heating costs that is provided to existing or prospective occupants, including applicable lease terms;

7. A copy of the billing format used or proposed to be used to bill for apportioned heating costs;

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

9. A proposed schedule of inspection and maintenance of the indirect apportionment system.

5:10-25.3 Criteria for acceptance

(a) Before accepting a device or system of devices for indirect apportionment of heating costs for use in multiple dwellings, the Bureau, after consultation with the Construction Code Element, shall be satisfied that it is:

1. Reliable and accurate;

2. Subject to an appropriate inspection and maintenance schedule;

3. Capable of equitably measuring distribution of energy to all occupancies based on actual usage;

4. Equipped with individual thermostats for each dwelling unit;

5. Designed to produce itemized billing statements, or to produce data for itemized billing statements, based on actual use in each dwelling unit; and,

6. Not designed so as to include additional costs or usages, whether apportioned or not, in the data or billings for individual dwelling units.

(b) The Bureau, in consultation with the Construction Code Element, shall review testing records for all devices and systems, inspection and maintenance records for devices and systems previously in use and proposed schedules for inspection and maintenance.

(c) The following general classes of systems may be approved:

1. Gas, oil, or electric-fired furnace systems that monitor time of delivery of gas, or electricity or oil consumed, rate of consumption and accuracy of timer activation;

2. Hydronic heated/cooled systems that monitor changes in water temperature, volume of water, and time period of usage; and

3. Any other type of system that the Department approves in accordance with these rules.

(d) The following general classes of methods, devices and systems shall not be approved because of inherent inaccuracy:

1. Elapsed time monitors for hydronic systems;

2. Time/temperature monitors for hydronic systems which do not measure flow rate;

3. Systems for any heat source based solely on thermostat settings in individual dwelling units; and

4. Methods that rely on any means of calculation other than the use of approved devices or systems.

(e) The Bureau shall not reject, on technical grounds, any device or system that is approved by the Construction Code Element.

5:10-25.4 Approval of methods, devices and systems

(a) When the Construction Code Element is satisfied that a device or system proposed to be used complies with N.J.A.C. 5:10-25.3, it shall issue a letter of technical adequacy to the Bureau and shall place such device or system on the list that it maintains. When the Bureau has determined that all requirements of P.L. 1991, c.453 and of this subchapter are met, it shall issue to the applicant a notice of approval of the method, device or system; provided, however, that any such notice of approval shall be subject to, and contingent upon, receipt by the Bureau of a copy of the certificate of approval issued by the local construction official for the installation of the device or system.

(b) The Bureau, with the assistance of the Construction Code Element or of local construction officials, may make such inquiries and inspections regarding the use and installation of methods, devices and systems for indirect apportionment of heating costs in multiple dwellings as it may deem necessary in order to properly enforce P.L. 1991, c.453 and this subchapter.

(c) The Bureau shall revoke any notice of approval of a method, device or system for the indirect apportionment of heating costs if the use, installation or operation of such method, device or system is in violation of P.L. 1991, c.453 or of this subchapter.

5:10-25.5 Maintenance requirements

(a) The owner of a multiple dwelling in which a device or system for indirect apportionment of heating costs has been installed shall maintain the device or system, and cause it to be inspected, in accordance with the inspection and maintenance schedule filed as part of the application for approval and approved by the Bureau.

(b) The owner shall at all times have available for examination by the Bureau's representatives documentation evidencing the maintenance and inspection of the device or system in accordance with the approved schedule.

(c) Complaints concerning methods, devices or systems for indirect apportionment of heating costs in multiple dwellings may be filed with the Bureau. Any such complaint shall include all available relevant information.

5:23-3.7 Municipal approvals of nonconforming materials

(a) Approvals: Except as otherwise provided in N.J.A.C. 5:23-3.8, the appropriate subcode official may approve the use of fixtures, appurtenance, materials and methods of a type not conforming with the requirements of, nor expressly prohibited by, the regulations after determination that such fixture, appurtenance, material or method is of such design or quality, or both, as to appear to be suitable and safe for the use for which it is intended. A record of such approvals shall be maintained and shall be available to the public.

1. Any person desiring to install or use a fixture, appurtenance, material or method of a type not conforming with the requirements of, nor expressly prohibited by, the regulations shall, prior to such installation or use, submit to the appropriate subcode official such proof as may be required to determine whether such fixture, appurtenance, material or method is of such design or quality, or both, as to appear to be suitable and safe for the use for which it is intended.

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

5:23-3.8 Departmental approval of nonconforming materials

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

(d) The Department shall have exclusive authority to approve systems for indirect apportionment of heating costs in multiple dwellings.

ADOPTIONS**COMMUNITY AFFAIRS**

5:23-4.20 Departmental fees

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

(d) The fee for an application by a manufacturer, distributor, owner or any other person for approval of any fixture, appurtenance, material or method, pursuant to N.J.A.C. 5:23-3.8, shall be an amount equal to the cost incurred, or to be incurred, by the Department for such tests as the Department may require, plus an administrative surcharge in the amount of 10 percent of such cost.

(a)**DIVISION OF HOUSING AND DEVELOPMENT****Uniform Fire Code****Definitions; Life Hazard Uses; Permits****Adopted Amendments: N.J.A.C. 5:18-1.5, 2.4A, 2.4B, 2.7 and 2.8**

Proposed: August 3, 1992 at 24 N.J.R. 2654(a).

Adopted: September 8, 1992 by Melvin R. Primas, Jr.,

Commissioner, Department of Community Affairs.

Filed: September 10, 1992 as R.1992 d.385, **without change**.

Authority: N.J.S.A. 52:27D-198 and 201.

Effective Date: October 5, 1992.

Expiration Date: January 4, 1995.

Summary of Public Comments and Agency Responses:

Comments were received from Cynthia Maahs, Fire Inspector, and William Ruggiano, Fire Official, of the Bureau of Fire Prevention of Fire District No. 2, Moorestown, New Jersey; from Ronald N. Murdza, Fire Marshal of the Fire Prevention Bureau of Hamilton Township Fire District No. 9; and from Alexander L. Ellwood, Coordinator, Federal and International Affairs, of the New Jersey Business and Industry Association.

COMMENT: The establishment of new categories of life hazard uses takes control of inspection of these facilities away from local enforcing agencies. It would be better to require their enforcement on the local level so that local enforcing agencies could collect fees directly and not be dependent upon quarterly disbursements by the Department.

RESPONSE: It is only by designating certain facilities and uses as life hazard uses that the Department can ensure that they will be subject to inspection everywhere in the State. The fees charged for the registration of life hazard uses include fair and reasonable compensation to local enforcing agencies that is sufficient to cover the cost of inspection, so the change from an inspection that may be required locally in some places to a uniform State-required inspection should not have a detrimental effect on local enforcing agencies.

COMMENT: The proposed amendment to N.J.A.C. 5:18-2.8(c)4i would exempt a business that is registered as a life hazard use from having to obtain a type 4 permit. This only makes sense if the life hazard use registration and the permit are for the same thing. For example, a building registered as a life hazard use because flammable and/or combustible liquids are dispensed to motor vehicles should not have to have a permit to store the liquids. However, a type of life hazard use that does not involve the use of such liquids should have to have a permit to store any such liquids on the premises.

RESPONSE: The commentator's point is well taken. However, this issue will have to be dealt with in future rulemaking since the provision that is objected to is simply being transferred from N.J.A.C. 5:18-2.7(b)1. The effect of limiting the exemption from permit fees would be to make some businesses that are now exempt from fees subject to them. This cannot be done in an adoption when it was not included in the proposal.

COMMENT: Under the Uniform Fire Code, New Jersey businesses are forced to bear a disproportionate burden for fire safety in the State. This has a negative effect on the businesses themselves and upon the State's economy. The categories of life hazard uses should not be expanded to include small hardware stores or other commercial uses not previously included, particularly in view of the consistently low number of lives lost in fires in commercial facilities.

RESPONSE: Life hazard uses are so designated because of their potential for life or property loss, not because they necessarily have bad fire safety records. Hardware stores, as defined in this proposal, are places where materials are stored that pose a potential fire hazard that is serious enough to merit regular periodic inspection. It should be noted

that most types of retail and mercantile uses are not classified as life hazard uses if they occupy an area of less than 12,000 square feet, so the burden of paying the cost of the fire safety program is not being placed upon businesses regardless of their size or nature, and that various types of noncommercial uses and facilities are also classified as life hazard uses.

Full text of the adoption follows.

5:18-1.5 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise. All definitions found in the Uniform Fire Safety Act, P.L. 1983, c.383, N.J.S.A. 52:27D-192 et seq., shall be applicable to this chapter. Where a term is not defined in this section or in the Uniform Fire Safety Act, then the definition of that term found in the Uniform Construction Code at N.J.A.C. 5:23-1.4 shall govern.

...

"Hardware store" means a building or location of less than 12,000 square feet offering for sale a variety of merchandise including, but not restricted to, limited amounts of tools and associated equipment, garden supplies and paints, and also offering limited quantities of building materials including, but not limited to, plumbing, electrical and carpentry supplies. The establishment may also provide services such as glazing, sharpening and repairs.

...

"Use" or "Use Group" means the use to which a building, portion of a building, or premises, is put as follows. It shall also mean and include any place, whether constructed, manufactured or naturally occurring, whether fixed or mobile, that is used for human purpose or occupancy, which use would subject it to the provisions of this Code if it were a building or premises.

1.-8. (No change.)

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

i. "Use Group F-1": Factory and industrial uses which are not otherwise classified as low-hazard Use Group F-2, shall be classified as a moderate-hazard factory and industrial use, Use Group F-1.

ii. "Use Group F-2": Factory and industrial uses which involve the fabrication or manufacturing of noncombustible materials that, during finishing, packing or processing, do not contribute to a significant fire hazard, shall be classified as Use Group F-2. The following manufacturing processes are indicative of, and shall be classified as, Use Group F-2: beverages, nonalcoholic; brick and masonry; ceramic products; foundries; glass products; gypsum; ice; metal fabrication and assembly; and water pumping plants.

10.-19. (No change.)

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

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

(i) Type Ai life hazard uses are as follows:

1. (No change.)

2. Hardware stores and home improvement centers of 3,000 or more but less than 12,000 square feet of gross floor area.

5:18-2.4B Type Ba through Bo life hazard uses

(a) (No change.)

(b) Type Bb life hazard uses are as follows:

1.-3. (No change.)

4. Transfer from one container to another of liquefied petroleum gas or liquefied natural gas at any location, other than motor vehicle or marine motor craft service stations, not registered for storage and use.

5. Spraying or dipping operations, as regulated by N.J.A.C. 5:18-3.7(a), in all approved areas of less than 100 square feet, as defined in N.J.A.C. 5:18-3.7(c)1 or 3.7(d)1.

(c) (No change.)

(d) Type Bd life hazard uses are as follows:

1.-6. (No change.)

7. Spraying or dipping operations, as regulated by N.J.A.C. 5:18-3.7(a), in all approved areas of 100 or more but less than 250 square feet, as defined in N.J.A.C. 5:18-3.7(c)1 or 3.7(d)1.

(e) (No change.)

(f) Type Bf life hazard uses are as follows:

1.-20. (No change.)

21. Factories and other industrial uses of Use Group F-1, not otherwise classified, of 12,000 or more but less than 24,000 square feet in gross floor area.

22. Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials, not otherwise classified, of 12,000 or more, but less than 24,000 square feet in gross floor area.

23. Any installation of liquefied petroleum gas or liquefied natural gas utilizing storage containers of over 1,000 gallons individual water capacity or with an aggregate water capacity exceeding 2,000, but not more than 4,000, gallons.

(g) Type Bg life hazard uses are as follows:

1.-9. (No change.)

10. Spraying or dipping operations, as regulated by N.J.A.C. 5:18-3.7(a), in all approved areas of 250 or more but less than 500 square feet, as defined in N.J.A.C. 5:18-3.7(c)1 or 3.7(d)1;

11.-29. (No change.)

30. Factories and other industrial uses of Use Group F-1, not otherwise classified, of 24,000 or more, but less than 50,000 square feet, in gross floor area;

31. Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials, not otherwise classified, of 24,000 or more, but less than 50,000, square feet in gross floor area.

(h) Type Bh life hazard uses are as follows:

1.-3. (No change.)

4. Any installation of liquefied petroleum gas or liquefied natural gas utilizing storage containers of over 4,000 gallons aggregate water capacity.

(i) Type Bi life hazard uses are as follows:

1. (No change.)

2. Factories and other industrial uses of Use Group F-1, not otherwise classified, of 50,000 or more, but less than 100,000 square feet in gross floor area.

3. Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials, not otherwise classified, of 50,000 or more, but less than 100,000 square feet in gross floor area.

(j) Type Bj life hazard uses are as follows:

1.-5. (No change.)

6. Spraying or dipping operations, as regulated by N.J.A.C. 5:18-3.7(a), in all approved areas of 500 square feet or more, as defined in N.J.A.C. 5:18-3.7(c)1 or 3.7(d)1.

7.-21. (No change.)

(k) Type Bk life hazard uses are as follows:

1.-4. (No change.)

5. Factories and other industrial uses of Use Group F-1, not otherwise classified, of 100,000 or more, but less than 150,000 square feet in gross floor area.

6. Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials, not otherwise classified, of 100,000 or more, but less than 150,000 square feet in gross floor area.

(l) Type Bl life hazard uses are as follows:

1.-2. (No change.)

3. Factories and other industrial uses of Use Group F-1, not otherwise classified, of 150,000 or more, but less than 200,000 square feet in gross floor area.

4. Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials, not otherwise classified, of 150,000 or more, but less than 200,000 square feet in gross floor area.

(m) Type Bm life hazard uses are as follows:

1.-3. (No change.)

4. Factories and other industrial uses of Use Group F-1, not otherwise classified, of 200,000 or more square feet in gross floor area;

5. Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials, not otherwise classified, of 200,000 or more square feet in gross floor area.

(n)-(o) (No change.)

5:18-2.7 Permits required:

(a) (No change.)

(b) Permits shall be required, and shall be obtained from the fire official, for any of the activities specified in this section except where they are an integral part of a process by reason of which a use is required to be registered and regulated as a life hazard use. Permits shall at all times be kept in the premises designated therein and shall at all times be subject to inspection by the fire official.

1. Type 4 permits shall not be required when the storage or activity is incidental or auxiliary to the agricultural use of a farm property.

2. (No change.)

3. Type 1 permit:

i.-ii. (No change.)

iii. Tents and temporary tensioned membrane structures without appurtenances, such as platforms and special electrical equipment, which exceed 900 square feet or 30 feet in any dimension (excluding canopies), whether single or made up of multiple smaller units when used for purposes which would constitute a life hazard use if found in a building;

iv. (No change.)

v. The use of any open flame or flame producing device, in connection with any public gathering, for purposes of entertainment, amusement, or recreation;

vi.-ix. (No change.)

x. The storage or handling of class I flammable liquids in closed containers of aggregate amounts of more than 10 gallons, but not more than 660 gallons inside a building, or more than 60 gallons, but not more than 660 gallons outside a building.

xi. The storage or handling of class II or IIIA combustible liquids in closed containers of aggregate amounts of more than 25 gallons, but not more than 660 gallons inside a building, or more than 60 gallons, but not more than 660 gallons outside a building.

4. (No change.)

5. Type 3 permit:

i. (No change.)

ii. Wrecking yards, junk yards, outdoor used tire storage, waste material handling plants, and outside storage of forest products not otherwise classified; or

iii. (No change.)

6. Type 4 permit:

i.-ii. (No change.)

iii. The storage, handling, and processing of flammable, combustible, and unstable liquids in closed containers and portable tanks in aggregate amounts of more than 660 gallons;

iv. (No change.)

Recodify existing vi.-vii. as v.-vi. (No change in text.)

7. (No change.)

(c)-(k) (No change.)

5:18-2.8 Fees: registration, certificate of smoke detector compliance and permit

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

(c) The application fee for a permit shall be as follows:

1.-3. (No change.)

4. Type 4—\$414.00;

i. Exception: There shall be no fee for Type 4 permits for storage or activity at a premises registered as a life hazard use in accordance with this subchapter.

5. (No change.)

(d)-(e) (No change.)

ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

**Uniform Construction Code
Tent Permits**

Adopted Amendment: N.J.A.C. 5:23-3.14

Proposed: August 3, 1992 at 24 N.J.R. 2656(a).
 Adopted: September 10, 1992 by Melvin R. Primas, Jr.,
 Commissioner, Department of Community Affairs.
 Filed: September 14, 1992 as R.1992 d.391, **without change**.
 Authority: N.J.S.A. 52:27D-124.
 Effective Date: October 5, 1992.
 Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

- 5:23-3.14 Building subcode
 (a) (No change.)
 (b) Articles or sections of the subcode are modified as follows:
 1.-4. (No change.)
 5. The following amendments are made to Article 6 of the building subcode entitled "Special Use and Occupancy Requirements":
 i.-xi. (No change.)
 xii. Section 626.1.1 is deleted in its entirety and the following language is substituted in lieu thereof:
 (1)-(2) (No change.)
 (3) Tents without appurtenances: No construction permit is required for the erection, operation or maintenance of any tent or tensioned membrane without appurtenances. If the tent or structure is more than 900 square feet in area or more than 30 feet in any dimension (excluding canopies), whether it is one unit or composed of multiple units, the requirements of the Uniform Fire Code, N.J.A.C. 5:18, shall be enforced by the appropriate officials. Tents used exclusively for recreational camping purposes shall be exempt from construction permit requirements.

(b)

**DIVISION OF HOUSING AND DEVELOPMENT
Uniform Construction Code; Planned Real Estate
Development Full Disclosure
Fees; Reports**

**Adopted Amendments: N.J.A.C. 5:23-4.5, 4.19, 4.20,
4.21, 4.22, 4A.12, 5.21, 5.22, 8.6, 8.10, 8.18, 8.19,
12.5 and 12.6; 5:26-2.3 and 2.4**

Proposed: August 3, 1992 at 24 N.J.R. 2657(a).
 Adopted: September 10, 1992 by Melvin R. Primas, Jr.,
 Commissioner, Department of Community Affairs.
 Filed: September 14, 1992 as R.1992 d.392, **without change**.
 Authority: N.J.S.A. 52:27D-124 and 45:22A-35.
 Effective Date: October 5, 1992.
 Expiration Date: March 1, 1993, N.J.A.C. 5:23;
 February 7, 1996, N.J.A.C. 5:26.

Summary of Public Comments and Agency Responses:
 Comments were received from Charles A. Buckman, President of the Elevator Safety Inspectors Association of New Jersey; from Gerald M. Garafalow, Construction Official of the Village of Ridgfield Park; and from Patricia M. Daub, Manager of Middle Department Inspection Agency, Inc.

COMMENT: Fee adjustments should be made using an index for similar work developed by the U.S. Department of Labor, not by an "arbitrary adjustment" by the Community Affairs Department.

RESPONSE: The fee increase is based upon a calculation of the amount of money required in order to maintain a satisfactory level of service in the budgetary policy decisions made by the Legislature and the Department of the Treasury. A wage index prepared by the U.S. Department of Labor would not take these factors into account.

COMMENT: Increased fees will result in increased resistance by building owners to the implementation of elevator inspection requirements.

RESPONSE: Increases in elevator fees are proportionate to increases in other U.C.C. fees. The Department is aware that no owners have any great desire to pay higher fees. However, until some other source of funding is made available, or Treasury once again assumes the cost of various central services, the Department has no alternative but to raise fees if it is to maintain the same level of code enforcement services.

COMMENT: The "all other construction" for which the training fee is now to be charged at the rate of \$0.80 per \$1,000 of value of construction should be defined. There may be a lack of uniformity in enforcement as between municipalities that are on the UCCARS system and those that are not.

RESPONSE: The training fee for new buildings and additions is to be charged the basis of volume. "All other construction" means every type of work that is not a new building or an addition. The Department will take necessary steps to inform all construction officials as to how this rule is to be implemented, thereby ensuring uniformity.

COMMENT: The rate of increase in Department fees is far in excess of the rate of inflation. The high fees will result in property owners doing work without getting permits, thereby creating hazardous conditions. Private enforcing agencies are performing timely and professional construction code services without seeking fee increases during the current period of depressed economic conditions. The Department should make more efficient use of its current revenue base and make reductions within its structure instead of raising fees.

RESPONSE: As has been indicated, the Department requires increased fee revenue to replace other funds that have been withdrawn by the Legislature and Treasury as a result of their decision to require the construction code enforcement program to be wholly fee-supported. The Department has worked to reduce its costs and has eliminated positions. However, it must have sufficient revenue to provide services in a professional and timely manner. Property owners are not well-served if they have to wait longer for inspections. For builders in particular, the cost of waiting is greater than the cost of any fees the Department charges. Unfortunately for the private enforcing agencies, they are required by law to charge the same fees as the Department, even though the economics of a private business are quite different from those of a State agency. For years, the Department has been urging that this linkage, which was written into the law at the request of a lobbyist for the private agencies, be rescinded. Builders and municipalities have complained about the consequences of this linkage, while the private agencies now realize how detrimental it is to them. The issue, however, is one that must be addressed by the Legislature; the Department has no choice but to raise the fee revenue that it needs for the program.

Full text of the adoption follows.

5:23-4.5 Municipal enforcing agencies; administration and enforcement

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

(e) Quarterly reports: The following standardized report established by the Commissioner is required to be completed by the municipal enforcing agency for State of New Jersey training fees and must be submitted quarterly, with the accompanying fees, pursuant to N.J.A.C. 5:23-4.19:

Report No.	Name
R-840B	State Training Fee Report

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

5:23-4.19 State of New Jersey training fees

(a) (No change.)

(b) Amount: This fee shall be in the amount of \$0.0016 per cubic foot volume of new buildings and additions. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28. The fee for all other construction shall be \$0.80 per \$1,000 of value of construction.

1. (No change.)

(c) Remitting and reporting:

1. The municipality shall remit fees to the Bureau on a quarterly basis, in conjunction with report number R-840B (State Training Fee Report) in accordance with N.J.A.C. 5:23-4.5(e). Fees remitted shall be for the quarter. Checks shall be made payable to "Treasurer, State of New Jersey."

COMMUNITY AFFAIRS**ADOPTIONS****5:23-4.20 Departmental fees**

(a) (No change.)

(b) Departmental plan review fee: The fees listed in (c) below shall be in addition to a Departmental plan review surcharge in the amount of 40 percent of each listed fee. When the Department performs plan review only, the plan review fee shall be in the amount of 25 percent of the new construction permit fee which would be charged by the Department pursuant to these rules. The minimum fee shall be \$46.00.

(c) Departmental (enforcing agency) fees:

1. (No change.)

2. The basic construction fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and pieces of equipment, the number of electrical fixtures and devices, and the number of sprinklers, standpipes, and detectors (smoke and heat) at the unit rates provided herein, plus any special fees. The minimum fee for a basic construction permit covering any or all of building, plumbing, electrical, or fire protection work shall be \$46.00.

i. Building volume or cost: The fees for new construction or alteration are as follows:

(1) Fees for new construction shall be based upon the volume of the structure. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28. The new construction fee shall be in the amount of \$0.027 per cubic foot of volume for buildings and structures of all use groups and types of construction as classified and defined in articles 3 and 4 of the building subcode; except that the fee shall be \$0.015 per cubic foot of volume for use groups A-1, A-2, A-3, A-4, F-1, F-2, S-1 and S-2, and the fee shall be \$0.0008 per cubic foot for structures on farms, including commercial farm buildings under N.J.A.C. 5:23-3.2(d), with the maximum fee for such structures on farms not to exceed \$1,145.

(2) Fees for renovations, alterations and repairs shall be based upon the estimated cost of the work. The fee shall be in the amount of \$24.00 per \$1,000. From \$50,001 to and including \$100,000, the additional fee shall be in the amount of \$18.00 per \$1,000 of estimated cost above \$50,000. Above \$100,000, the additional fee shall be in the amount of \$15.00 per \$1,000 of estimated cost above \$100,000. For the purpose of determining estimated cost, the applicant shall submit to the Department such cost data as may be available produced by the architect or engineer of record, or by a recognized estimating firm, or by the contractor. A bona fide contractor's bid, if available, shall be submitted. The Department shall make the final decision regarding estimated cost.

(3)-(4) (No change.)

ii. Plumbing fixtures and equipment: The fees shall be as follows:

(1) The fee shall be in the amount of \$10.00 per fixture connected to the plumbing system for all fixtures and appliances except as listed in (c)2ii(2) below.

(2) The fee shall be \$65.00 per special device for the following: grease traps, oil separators, water-cooled air conditioning units, refrigeration units, utility service connections, back flow preventers, steam boilers, hot water boilers (excluding those for domestic water heating), gas piping, active solar systems, sewer pumps, interceptors and fuel oil piping. There shall be no inspection fee charged for gas service entrances.

iii. Electrical fixtures and devices: The fees shall be as follows:

(1) For from one to 50 receptacles or fixtures, the fee shall be in the amount of \$36.00; for each 25 receptacles or fixtures in addition to this, the fee shall be in the amount of \$6.00; for the purpose of computing this fee, receptacles or fixtures shall include lighting outlets, wall switches, fluorescent fixtures, convenience receptacles or similar fixtures, and motors or devices of one horsepower or one kilowatt or less.

(2) For each motor or electrical device greater than one horsepower and less than or equal to 10 horsepower, and for transformers and generators greater than one kilowatt and less than or equal to 10 kilowatts, the fees shall be \$10.00.

(3) For each motor or electrical device greater than 10 horsepower and less than or equal to 50 horsepower; for each service panel, service entrance or sub panel less than or equal to 200

amperes; and for all transformers and generators greater than 10 kilowatts and less than or equal to 45 kilowatts, the fee shall be \$46.00.

(4) For each motor or electrical device greater than 50 horsepower and less than or equal to 100 horsepower; for each service panel, service entrance or sub panel greater than 200 amperes and less than or equal to 1,000 amperes; and for each transformer or generator greater than 45 kilowatts and less than or equal to 112.5 kilowatts, the fee shall be \$92.00.

(5) For each motor or electrical device greater than 100 horsepower; for each service panel, service entrance or sub panel greater than 1,000 amperes; and for each transformer or generator greater than 112.5 kilowatts, the fee shall be \$457.00.

(6) (No change.)

iv. Fire protection and other hazardous equipment: sprinklers, standpipes, detectors (smoke and heat), pre-engineered suppression systems, gas and oil fired appliances not connected to the plumbing system, kitchen exhaust systems, incinerators and crematoriums:

(1) The fee for 20 or fewer heads or detectors shall be \$65.00; for 21 to and including 100 heads or detectors, the fee shall be \$120.00; for 101 to and including 200 heads or detectors, the fee shall be \$229.00; for 201 to and including 400 heads or detectors, the fee shall be \$594.00; for 401 to and including 1,000 heads or detectors, the fee shall be \$822.00; for over 1,000 heads or detectors, the fee shall be \$1,050. In computing fees for heads and detectors, the number of each shall be counted separately and two fees, one for heads and one for detectors, shall be charged.

(2) The fee for each standpipe shall be \$229.00.

(3) The fee for each independent pre-engineered system shall be \$92.00.

(4) The fee for each gas or oil fired appliance that is not connected to the plumbing system shall be \$46.00.

(5) The fee for each kitchen exhaust system shall be \$46.00.

(6) The fee for each incinerator shall be \$365.00.

(7) The fee for each crematorium shall be \$365.00.

3. Certificates and other permits: The fees are as follows:

i. The fee for a demolition or removal permit shall be \$65.00 for a structure of less than 5,000 square feet in area and less than 30 feet in height, for one or two-family residences (use group R-3 of the building code), and structures on farms, including commercial farm buildings under N.J.A.C. 5:23-3.2(d), and \$120.00 for all other use groups.

ii. The fee for a permit to construct a sign shall be in the amount of \$1.20 per square foot surface area of the sign, computed on one side only for double-faced signs. The minimum fee shall be \$46.00.

iii. The fee for a certificate of occupancy shall be in the amount of 10 percent of the new construction permit fee that would be charged by the Department pursuant to these regulations. The minimum fee shall be \$120.00, except for one or two-family (use group R-3 of the building subcode) structures of less than 5,000 square feet in area and less than 30 feet in height, and structures on farms, including commercial farm buildings subject to N.J.A.C. 5:23-3.2(d), for which the minimum fee shall be \$65.00.

iv. The fee for a certificate of occupancy granted pursuant to a change of use group shall be \$174.00.

v. The fee for a certificate of continued occupancy shall be \$120.00.

vi. (No change.)

vii. The fee for a certificate of approval certifying that work done under a construction permit has been satisfactorily completed shall be \$28.00.

viii. The fee for plan review of a building for compliance under the alternate systems and non-depletable energy source provisions of the energy subcode shall be \$274.00 for one and two-family homes (use group R-3 of the building subcode), and for light commercial structures having the indoor temperature controlled from a single point, and \$1,369 for all other structures.

ix. The fee for an application for a variation in accordance with N.J.A.C. 5:23-2.10 shall be \$594.00 for class I structures and \$120.00 for class II and class III structures. The fee for resubmission of an application for a variation shall be \$229.00 for class I structures and \$65.00 for class II and class III structures.

4. For cross connections and backflow preventers that are subject to testing, requiring reinspection every three months, the fee shall be \$46.00 for each such device when they are tested (thrice annually) and \$120.00 for each device when they are broken down and tested (once annually).

5. Annual permit requirements are as follows:

i. (No change.)

ii. Fees for annual permits shall be as follows:

(1) One to 25 workers (including foremen) \$667.00/worker; each additional worker over 25, \$232.00/worker.

(2) Prior to the issuance of the annual permit, a training registration fee of \$140.00 per subcode shall be submitted by the applicant to the Department of Community Affairs, Bureau of Technical Assistance, Training Section along with a copy of the construction permit (Form F-170c). Checks shall be made payable to "Treasurer, State of New Jersey."

6.-8. (No change.)

5:23-4.21 Private enforcing agency authorization and reauthorization fees

(a) Authorization fee: Any onsite inspection agency submitting an application to the Department under N.J.A.C. 5:23-4.12 for approval as an inspection agency shall pay a fee of \$2,800 for each subcode for which authorization is sought.

(b) Reauthorization fee: Any onsite inspection agency submitting an application to the Department under N.J.A.C. 5:23-4.12 for reapproval as an inspection agency shall pay a fee of \$1,400 for each subcode for which authorization is sought plus an amount equal to five percent of the gross revenue earned from State Uniform Construction Code enforcement activities during the previous 12-month period. This fee shall be paid to the Department in 12 equal installments, beginning with the month immediately following the end of the 12-month period from which the fee is calculated. Payment shall be made prior to the last business day of each month.

5:23-4.22 Building element and manufactured home add-on unit insignia of certification fees

(a) Building element insignia of certification fee: An inplant inspection agency requesting the Department to issue component insignia(s) of certification for building elements shall pay a fee of \$70.00 for each such insignia.

(b) Manufactured (Mobile) Home add-on unit insignia of certification fee: An inplant inspection agency requesting the Department to issue insignia(s) of certification for manufactured (mobile) home add-on units shall pay a fee of \$70.00 for each such insignia.

5:23-4A.12 Fees for labels; labels

(a) Fees for labels shall be as follows:

1. An approved evaluation and inspection agency requesting the Department to issue labels of certification for industrialized/modular buildings shall pay a fee of \$140.00 for each label.

2. An approved evaluation and inspection agency requesting the Department to issue component labels of certification for building components shall pay a fee of \$70.00 for each label.

3. (No change.)

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

5:23-5.21 Renewal of license

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

(e) Lapsed license renewal requirements are as follows:

1. (No change.)

2. The late renewal application shall be accompanied by the appropriate renewal fee and an additional late fee of \$43.00 per year or fraction thereof.

3.-4. (No change.)

(f)-(g) (No change.)

5:23-5.22 Fees

(a) No application for a license shall be acted upon unless said application is accompanied by a non-refundable fee as specified herein.

1. A non-refundable application fee of \$43.00 shall be charged in each of the following instances:

i.-iii. (No change.)

2. A non-refundable application fee of \$22.00 shall be charged for each administrative license applied for separately from a technical license.

3. (No change.)

4. Renewal fee: The two-year renewal application fee shall be \$43.00.

5. Persons who have become ineligible to retain their administrative license by reason of failure to remove the provisional status of such license within the prescribed two-year period must submit a non-refundable application fee of \$22.00 in order to reapply for said administrative license without recourse to any further provisional status privilege.

6. (No change.)

5:23-8.6 Variations

(a) No variations from the requirements of this subchapter shall be made except upon written approval from the administrative authority having jurisdiction, after receiving a recommendation in writing from the asbestos safety control monitor firm. Any variation shall be consistent with N.J.A.C. 5:23-2.

1. Exception: When a building or part of a building is required to be occupied during an asbestos hazard abatement project, a written release shall be requested from the Department, and obtained by the authorized asbestos safety control monitor firm. The Department of Community Affairs shall review the application and approve or deny it within 20 business days of receipt of it. A copy of the plans and specifications must accompany the variation request from the authorized asbestos safety control monitor firm, in the Department along with the number of intended occupants and their purpose, location within the building and the time of day the occupants will be in the building. A variation for occupancy shall not be required for maintenance or security personnel. In addition, a variation request for occupancy is not required for a cleared area in a multi-phase project that has received a Temporary Certificate of Occupancy from the administrative authority having jurisdiction when such occupancy applies to contractors or related personnel involved with post-abatement activity.

i. The fee for an application for a variation for occupancy shall be \$467.00 and shall be paid by check or money order, payable to the "Treasurer, State of New Jersey".

(b) (No change.)

5:23-8.10 Fees

(a) The administrative authority having jurisdiction who issues the construction permit and the certificate of occupancy for an asbestos hazard abatement project shall establish by regulation or ordinance the following flat fee schedule:

1. An administrative fee of \$70.00 for each construction permit issued for an asbestos hazard abatement project.

2. An administrative fee of \$14.00 for each certificate of occupancy issued following the successful completion of an asbestos hazard abatement project.

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

5:23-8.18 Asbestos safety control monitor

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

(h) Authorization and reauthorization fees are as follows:

1. Authorization fee: Any asbestos safety control monitor submitting an application to the Department under this subcode for approval as an asbestos safety control monitor shall pay a fee of \$3,500 for the authorization that is sought, plus an amount equal to eight percent of the gross revenue earned from asbestos safety control monitor activities, payable quarterly. The monies obtained from the preparation of plans and specifications shall not be included in the calculation of this quarterly fee.

2. Reauthorization fee: Any asbestos safety control monitor submitting an application to the Department under this subcode for reapproval as an asbestos safety control monitor shall pay a fee of \$1,750 plus an amount equal to six percent of the gross revenue of four consecutive quarters starting with the previous year's last quarter. The fee shall be paid quarterly with the first quarter due with the application. The monies obtained from the preparation of

plans and specifications shall not be included in the calculation of this quarterly fee.

5:23-8.19 Asbestos safety technician: certification requirements

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

(i) No application for certification shall be acted upon unless said application is accompanied by a fee as follows:

1. An application fee shall be \$43.00;
2. A renewal application fee shall be \$43.00.

5:23-12.5 Registration fee

The initial registration fee for each elevator device in any structure that is not in Use Group R-3 or R-4 or that is not in an exempted R-2 structure shall be \$54.00. A re-registration fee of \$54.00 shall be required for each structure containing one or more elevator devices, upon change of ownership.

5:23-12.6 Test and inspection fees

(a) The Department fees for witnessing acceptance tests and performing inspections shall be as follows:

1. The basic fees for elevator devices in structures not in Use Group R-3 or R-4, or in an exempted R-2 structures, shall be as follows:

- i. Traction and winding drum elevators:
 - (1) One to 10 floors \$243.00;
 - (2) Over 10 floors \$405.00;
- ii. Hydraulic elevators \$216.00;
- iii. Roped hydraulic elevators \$243.00;
- iv. Escalators, moving walks \$216.00;
- v. Dumbwaiters \$ 54.00;
- vi. Stairway chairlifts, inclined and vertical wheelchair lifts and manlifts \$ 54.00.

2. Additional charges for devices equipped with the following features shall be as follows:

- i. Oil buffers (charge per oil buffer) \$ 43.00;
- ii. Counterweight governor and safeties \$108.00;
- iii. Auxiliary power generator \$ 81.00.

3. The Department fee for elevator devices in structures in Use Group R-3 or R-4, or otherwise exempt devices in R-2 structures, shall be \$162.00. This fee shall be waived when signed statements and supportive inspection and acceptance test reports are filed by an approved qualified agent or agency in accordance with N.J.A.C. 5:23-2.19 and 2.20.

4. The fee for witnessing acceptance tests of, and performing inspections of, alterations shall be \$54.00.

(b) The Department fees for routine and periodic tests and inspections for elevator devices in structures not in Use Group R-3 or R-4, or otherwise exempt devices in R-2 structures, shall be as follows:

1. The fee for the six month routine inspection of elevator devices shall be as follows:

- i. Traction and winding drum elevators:
 - (1) One to 10 floors \$151.00;
 - (2) Over 10 floors \$194.00;
- ii. Hydraulic elevators \$108.00;
- iii. Roped hydraulic elevators \$151.00;
- iv. Escalators, moving walks \$151.00.

2. The fee for the one year periodic inspection and witnessing of elevator devices, which shall include a six month routine inspection, shall be as follows:

- i. Traction and winding drum elevators:
 - (1) One to 10 floors \$216.00;
 - (2) Over 10 floors \$259.00;
- ii. Hydraulic elevators \$162.00;
- iii. Roped hydraulic elevators \$216.00;
- iv. Escalators, moving walks \$346.00;
- v. Dumbwaiters \$ 86.00;
- vi. Manlifts, stairway chairlifts, inclined and vertical wheelchair lifts \$130.00.

3. Additional yearly periodic inspection charges for elevator devices equipped with the following features shall be as follows:

- i. Oil buffers (charge per oil buffer) 43.00;
 - ii. Counterweight governor and safeties \$ 86.00;
 - iii. Auxiliary power generator \$ 54.00.
4. The fee for the three year or five year inspection of elevator devices shall be as follows:

- i. Traction and winding drum elevators:
 - (1) One to 10 floors (five year inspection) \$367.00;
 - (2) Over 10 floors (five year inspection) \$410.00;
- ii. Hydraulic and roped hydraulic elevators:
 - (1) Three-year inspection \$270.00;
 - (2) Five-year inspection \$162.00.

(c) When the Department is the enforcing agency, the fees set forth in (b) above shall be paid annually in accordance with the following schedule, which is based on the average of the fees to be collected over a five year period:

1. Basic annual fee as follows:
 - i. Traction and winding drum elevators
 - (1) One to 10 floors \$400.00;
 - (2) Over 10 floors \$486.00;
 - ii. Hydraulic elevators \$292.00;
 - iii. Roped hydraulic elevators \$324.00;
 - iv. Escalators, moving walks \$497.00;
 - v. Dumbwaiters \$ 86.00;
 - vi. Stairway chairlifts, inclined and vertical wheelchair lifts, manlifts \$130.00.

2. Additional charges for devices equipped with the following features as follows:

- i. Oil buffers (charge per oil buffer) \$ 43.00;
- ii. Counterweight governor and safeties \$ 86.00;
- iii. Auxiliary power generator \$ 54.00.

5:26-2.3 Request for exemptions

(a) Any person who believes that a planned real estate development or retirement community may be exempt from the provisions of the Act, or who is contemplating a planned real estate development or retirement community that he believes may be exempt, may apply to the Director for a Letter of Exemption.

1. Such application shall be in writing and shall list the reasons why such planned real estate development or retirement community, or proposed planned real estate development or proposed retirement community, may be exempt from the Act.

2. An application for exemption pursuant to N.J.A.C. 5:26-2.2(a) shall be accompanied by a fee of \$112.00.

- i. (No change in text.)
- (b)-(e) (No change.)

5:26-2.4 Applications for registrations; submission and fees

(a) An application for registration shall consist of a statement containing the items set forth in N.J.A.C. 5:26-3 and shall be submitted in the manner and form as provided therein, together with the filing fee in the amount of \$1,080 plus \$108.00 per lot, parcel, unit or interest, made payable to the Treasurer, State of New Jersey. In the event lots, parcels, units or interests are added during registration, an additional fee of \$108.00 per lot, parcel, unit or interest shall be paid. There shall be no refunds for deletions.

1. (No change.)
- (b) (No change.)

1. Whenever the seller of a new home is not the builder who constructed it, or a builder taking from the builder who constructed it, such as a mortgagee in possession, receiver in bankruptcy, or executor of an estate, such person shall not be excused from payment of premiums or from taking corrective action on complaints, dispute settlement, or the like in the same manner as would any builder. Such person may contract with a builder for follow-up services that may be required pursuant to the warranty, or may, at his option, pay 0.8 of one percent of the purchase price of the new home and be relieved of the obligation to provide such follow-up services. The State plan shall then stand in his place with regard to any claims made pursuant to this subchapter, but shall not stand in his place if the homeowner elects not to file a claim in accordance with this subchapter and elects, rather, to pursue any other remedy against the seller. The claims procedure established by this subchapter shall be the exclusive remedy whereby the State plan shall stand in the place of the seller. The Department shall inspect the new home for any defects. The list of defects shall be attached to the Certificate of Participation. Uncompleted portions shall be excluded from the warranty coverage until completed, in accordance with N.J.A.C. 5:25-3.4(a)1. The additional amount paid shall not be passed through the owner.

2.-4. (No change.)

(b) The contribution percentage to be paid for each new home by a builder not participating in an approved private plan shall be determined as follows:

1. If, for at least 10 years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.2;

2. If, for at least seven years but less than 10 years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.25;

3. If, for at least five years but less than seven years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.3;

4. If, for at least two years but less than five years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.35;

5. If a builder has not previously been registered, or has been registered for less than two years and there has been no payment made, and no final determination that a payment must be made, under either the State Plan or approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.375;

6. If, within the previous two years, there has been any payment made, or any final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.5.

7. If, at any time while a builder's contribution percentage is 0.5 by reason of the builder's having been responsible for a payment having to be made on a claim under either the State Plan or an approved private plan, there is any further payment made, or any final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of another claim against the builder or a major structural defect, or if a petition in bankruptcy filed by or against a builder and the builder has not yet been discharged or is under the supervision of the court, the contribution percentage shall be 0.7.

8. Whenever a builder is or has been a builder designee, officer, or stockholder or partner with at least a 10 percent ownership interest, of any builder entity, the claim and payment record of that other entity, shall, if less favorable than that of the builder individually, be attributable to the builder for purposes of this subsection.

9. Whenever a builder is a corporation, partnership or subsidiary, the claim and payment record of any builder designee, officer, or stockholder or partner with at least a ten percent ownership interest, or of any corporation, partnership or subsidiary, having any builder designee, officer, or stockholder or partner with at least a 10 percent ownership interest, in common with the builder, shall, if less favorable than that of the builder, be attributable to the builder for purposes of this subsection.

10. If a builder is an individual or group of individuals who is or are the sole owner(s) of another builder that is a corporation, partnership or subsidiary, or if a builder is a corporation, partnership or subsidiary having the same builder designee, officers, and stockholders or partners with at least a ten percent ownership interest, as another builder, the claim and payment record of the one builder shall be attributable to the other for purposes of this subsection.

11. For purposes of this subsection, "10 years" shall mean the 120 month period immediately prior to the date of enrollment of a new home under the State Plan, "seven years" shall mean the 84 month period immediately prior to such date, "five years" shall mean the 60 month period immediately prior to such date, and "two years" shall mean the 24 month period immediately prior to such date; exclusive, in all cases, of any consecutive 12 month period in which no new homes were enrolled in the State Plan or in any approved private plan. Thus, for example, a builder who had no payments or adverse final determinations for 10 years but enrolled no homes during one of those years would not be eligible for the 10 year rate until another year had passed in which he both enrolled at least one new home and had no payments or adverse final determinations.

(c) The establishment of a contribution percentage for a builder that is in excess of the minimum amount shall be in addition to, and not in lieu of, any punitive action taken pursuant to N.J.A.C. 5:25-2.5 or 2.6 or any surcharge levied pursuant to (a)4 above.

(d) The initial contribution percentage for each builder shall be established as of *[the effective date]* *January 1, 1993* of this subsection. Thereafter, the contribution percentage rate for each builder shall be reviewed by the Division, and revised if necessary, when the builder's registration is renewed. The Department may change the contribution percentage, and make the change effective at a time prior to renewal at any time that a payment is made or there is a final determination that a payment must be made.

(e) There shall be no appeal from the establishment of a contribution percentage except upon the grounds that the record used by the Division for that purpose is either incorrect or incomplete. In any case in which a determination of builder responsibility for a payment was not appealed as required in this chapter or was unsuccessfully appealed, the builder shall not have the right to appeal a contribution percentage determination based on any such prior determination of builder responsibility.

(f) "Claim against the builder" shall include any claim covered by the one-year, two-year, and/or 10-year warranty, as set forth in N.J.A.C. 5:25-3.2. No major structural defect that a builder is not obligated to repair shall be charged against a builder for purposes of determining the builder's contribution percentage, if the Department finds that such major structural defect was entirely attributable to a product failure that was not known to the builder at the time of construction and was caused by factors beyond the builder's control.

(a)

**DIVISION OF HOUSING AND DEVELOPMENT
Uniform Construction Code
Licensing
Subcode Official Requirements**

Adopted Amendment: N.J.A.C. 5:23-5.7

Proposed: August 3, 1992 at 24 N.J.R. 2661(a).
Adopted: September 10, 1992 by Melvin R. Primas, Jr.,
Commissioner, Department of Community Affairs.
Filed: September 14, 1992 as R.1992 d.393, **without change**.
Authority: N.J.S.A. 52:27D-124.
Effective Date: October 5, 1992.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
A comment was received from Renee Gast, Director of Government Affairs of the New Jersey Association of Plumbing-Heating-Cooling Contractors, Inc.

COMMENT: Inspectors seeking subcode licensure whose experience is in another subcode area lack the experience necessary to make decisions in the field. This proposed amendment lowers the standards even further.

RESPONSE: The commenter is misreading the proposal. At present, experience in the specific subcode area is not required. This amendment, which was a response to precisely the concerns that the commenter raises, establishes such requirements.

Full text of the adoption follows.

5:23-5.7 Subcode official requirement

(a) A candidate for a license as a building, electrical, fire protection, plumbing or elevator subcode official shall meet the following qualifications:

- 1.-3. (No change.)
- 4. Exceptions to experience requirements follow:
 - i. A candidate for a license as a fire protection subcode official shall possess at least the following experience:
 - (1) Three years of experience as a fire prevention official; or
 - (2) Three years of experience as a fire protection official; or
 - (3) Three years of experience as a firefighter.
 - ii. A candidate for a license as a building, plumbing or electrical subcode official who obtained the technical license in that subcode area under the provisions of N.J.A.C. 5:23-5.5(d)5 shall possess the following experience:
 - (1) Three years of experience as an inspector in that specific subcode area; or
 - (2) Three years of experience in a skilled trade directly related to that specific subcode area; or
 - (3) Two years of experience in that specific subcode area as an inspector or in construction, design or supervision with at least a bachelor's degree from an accredited institution of higher education in architecture or engineering or in architecture or engineering technology or in a major area of study directly related to building construction; or
 - (4) One year of experience in that specific subcode area as an inspector or in construction, design or supervision as a licensed engineer or registered architect, provided that such person possesses a license as an engineer or architect issued by the State of New Jersey at the time of application.
- 5. (No change.)
- 6. (No change in text.)

(b)

**DIVISION OF HOUSING AND DEVELOPMENT
Uniform Construction Code
Licensing
Elevator Inspector H.H.S. requirements**

Adopted Amendment: N.J.A.C. 5:23-5.19

Proposed: August 3, 1992 at 24 N.J.R. 2662(a).
Adopted: September 10, 1992 by Melvin R. Primas, Jr.,
Commissioner, Department of Community Affairs.
Filed: September 14, 1992 as R.1992 d.394, **without change**.
Authority: N.J.S.A. 52:27D-124.
Effective Date: October 5, 1992.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:23-5.19 Elevator inspector H.H.S. requirements

(a) A candidate for a license as an elevator inspector of high-rise and hazardous structures (H.H.S.) shall meet the following educational and/or experience requirements:

- 1. Seven years of experience consisting of one of the following, or combination thereof:
 - i. (No change.)
 - ii. Experience as an elevator inspector; or,
 - iii. (No change.)
- 2.-4. (No change.)
- (b) (No change.)

(c)

**DIVISION OF HOUSING AND DEVELOPMENT
New Home Warranty and Builders' Registration
State New Home Warranty Security Plan Warranty
Contributions**

Adopted Amendment: N.J.A.C. 5:25-5.4

Proposed: August 3, 1992 at 24 N.J.R. 2663(a).
Adopted: September 10, 1992 by Melvin R. Primas, Jr.,
Commissioner, Department of Community Affairs.
Filed: September 14, 1992 as R.1992 d.395, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 46:3B-10.
Effective Date: October 5, 1992.
Operative Date: January 1, 1993.
Expiration Date: February 19, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

N.J.A.C. 5:25-5.4(d) has been revised upon adoption to include the actual operative date of the subsection.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

5:25-5.4 Warranty contributions, amount, date due

(a) Each builder not participating in an approved private plan shall contribute to the State plan in an amount equal to a percentage of the purchase price of the home, or of the fair market value of the home on its completion date if there is no good faith arms' length sale, determined in accordance with (b) below, each time he sells a home. When the cost of land is not included in the sale, the purchase price shall be deemed to be 125 percent of the contract amount and shall be the basis for calculating the premium and the dollar value placed on the Certificate of Participation.

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES
Property Tax and Mortgage Escrow Account
Transactions

Adopted New Rules: N.J.A.C. 5:33

Proposed: August 3, 1992 at 24 N.J.R. 2664(a).

Adopted: September 14, 1992 by Melvin R. Primar, Jr.,

Commissioner, Department of Community Affairs.

Filed: September 14, 1992 as R.1992 d.400, **without change**.

Authority: N.J.S.A. 17:16F-15.

Effective Date: October 5, 1992.

Expiration Date: August 6, 1995.

Summary of Public Comments and Agency Responses:

Two letters with comments were received from the public.

The first, from John M. Pellechia, Esq., representing First American Real Estate Tax Services, a large real estate tax processor that would be affected by the rules, posed three concerns. The first comment suggested that the rules should require transmittal of tax bills to a requesting servicer in timely fashion. The commenter is correct in its observation that the rule does not address this point. However, N.J.S.A. 54:4-64(c) provides that tax collectors shall take the actions to which the commenter refer. Placing the same requirement in the rules would be redundant and potentially confusing. However, the Division of Local Government Services, in disseminating the rules to tax collectors, will highlight this statutory requirement.

The second concern is a request that escrow account transactions need only be reported to tax collectors on a Department approved form, prepared by selling servicing organizations. The comment notes that this requirement goes beyond the statutory authorization.

The Department disagrees with this conclusion. N.J.S.A. 17:16F-17 requires that both seller and purchaser report information to the tax collector. The proposed rules, at N.J.A.C. 5:33-4.5(a)3 and 5:33-4.5(b), permit the seller and the purchaser to use their own forms in lieu of the DCA forms, and to use a procedure where the seller prepares and signs the form, and sends it to the purchaser to countersign and forward to the tax collector. Both these procedures respond to the concerns expressed in the comment.

Finally, the commenter suggests that procedures for making tax payments when tax bills are late should be addressed by Department regulations. This comment is outside the purview of these rules and their statutory authorization. However, the Department is acutely aware of this problem, and has commenced discussions with interested parties to develop legislation to rectify it.

The final comment was from Stephen Arthur, Chief Financial Officer, Township of Mendham, who noted support of the rule proposal.

Full text of the adoption follows.

SUBCHAPTER 4. MORTGAGE ESCROW ACCOUNT
TRANSACTIONS

5:33-4.1 Authority

This subchapter is adopted under the authority of P.L. 1990, c.69, section 16, N.J.S.A. 17:16F-15 et seq.

5:33-4.2 Definitions

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

"Director" means the Director of the Division of Local Government Services.

"Duplicate copy" shall have the meaning defined in N.J.S.A. 17:16F-15.

"Mortgagee" means the holder of a mortgage loan.

"Mortgage escrow account or escrow account" means an account maintained under a mortgage loan agreement, whether incorporated into the agreement or as part of a separately executed document, whereby: the mortgagor is obligated to make periodic payment to the mortgagee, or the mortgagee's agent, for taxes, insurance premiums, or other charges with respect to the real property which secures the mortgage loan, and the mortgagee or the mortgagee's

agent is obligated to make payments for taxes, insurance premiums, or other charges with respect to the real property which secures the mortgage loan.

"Mortgage loan" shall have the meaning defined in N.J.S.A. 17:16F-15.

"Mortgagor" shall have the meaning defined in N.J.S.A. 17:16F-15.

"Property identification information" means the information necessary to identify a specific parcel of land and includes the following elements: name of municipality, county, block number, lot number, qualification code, property address or location, name and mailing address of the property owner.

"Property tax processing organization" shall have the meaning defined in N.J.S.A. 17:16F-15.

"Purchasing servicing organization" shall have the meaning defined in N.J.S.A. 17:16F-15.

"RESPA" means the Real Estate Settlement Procedures Act and the related regulations in the Code of Federal Regulations, Title 12, Chapter 27.

"Selling servicing organization and servicing organization" shall have the meaning defined in N.J.S.A. 17:16F-15.

"Substitute form" means a form required by these rules different in layout and appearance from the ones promulgated herein, but containing the same information.

"Tax delinquency" or "delinquency" shall mean delinquency as defined in N.J.S.A. 54:4-67.

"Tax sale" shall mean a tax sale as defined in N.J.S.A. 54:5-19 et seq.

"Tax collector" means the properly designated tax collector of the taxing district in which the mortgagor's property is located.

"Tax bill" means the original form issued by the tax collector with the appropriate itemization and payment information for local property taxes as required by law. It shall include the information section itemizing the taxes due, and payment stubs containing property identification information and amount due for each of the quarters.

5:33-4.3 Forms for mortgage escrow account transactions

(a) The following forms shall be used in compliance with this subchapter:

<u>Form Title</u>	<u>Form No.</u>
Initial Tax Authorization Notice	ME-1
Escrow Account Transaction Notice	ME-2
N.J. Request for Duplicate Tax Bill	ME-3
Notice Regarding Sale of Municipal Lien	ME-4
Request for Review	ME-5

(b) Single, reproducible copies of forms ME-1 through ME-5 are available to interested parties at no cost. They may be obtained from the Mortgage Escrow Program, Division of Local Government Services, CN 803, Trenton, N.J. 08625-0803.

(c) Users may reproduce these forms. A company name may be inserted in lieu of the "New Jersey Department of Community Affairs, Division of Local Government Services" block in the upper left hand corner on the Initial Tax Authorization Notice, and Escrow Account Transaction Notice. Users are urged to preprint appropriate information on all forms.

(d) Where specifically authorized herein, substitute forms may be used to comply with the requirements of this rule. Substitute forms must contain all necessary information for transactions to be properly recorded or executed by the tax collector.

5:33-4.4 Use of initial tax authorization notice

(a) An Initial Tax Authorization Notice (ME-1) shall be used by all mortgagees, servicing organizations, or property tax processing organizations establishing or maintaining mortgage escrow accounts as the initial authorization by a mortgagor to the tax collector to send the original tax bill to the mortgagee or the mortgagee's servicing organization pursuant to N.J.S.A. 54:4-64.

(b) The notice, with original signatures of the mortgagor, shall be mailed or otherwise delivered to the tax collector.

5:33-4.5 Escrow account transactions

(a) A selling servicing organization or mortgagee and a purchasing servicing organization shall both notify the tax collector not more than 45 days after the actual date, or not less than 10 days prior to the date, the next payment of property taxes is due, whichever is earlier, of a sale, assignment, satisfaction, or transfer of a mortgage escrow account by filing an Escrow Account Transaction Notice (ME-2) or substitute. The form shall be used as follows:

1. The original of the notice prepared by the current mortgage holder or the selling servicing organization shall be mailed or otherwise delivered to the tax collector;

2. The original of the notice prepared by the new servicing organization shall be mailed or otherwise delivered to the tax collector. This shall be supplemented with the purchaser's procedure for responding to questions regarding a mortgage escrow account it manages;

3. In lieu of separate forms filed by both the seller and purchaser, the seller may forward the documentation directly to the new servicing organization for confirmation and approval. The new servicing organization shall then forward the completed form to the tax collector on behalf of both parties;

4. In the case of a property owner making final satisfaction of a mortgage, the section noted "Property Sold or Property Owner Satisfaction of Mortgage" shall be completed, and sent to the municipal tax collector;

5. In the case of a property sale, the section noted "Property Sold or Property Owner Satisfaction of Mortgage" shall be completed, and sent to the municipal tax collector; and

6. In addition, in accordance with N.J.S.A. 17:16F-17(a), copies of all initial sale, transfer, and assignment transactions shall also be sent to the borrower.

(b) A substitute form may be used in lieu of the ME-2 form. A substitute form shall not describe more than one property, and must include the following elements:

1. Property identification information;
2. Date of transaction;
3. Type of transaction;
4. Any internal loan identifying number or code;
5. For the originator or seller of a mortgage, servicing organization or property tax processor change; the name, address, internal identifying number, bank code number, contact person and phone number related to the organization(s) being changed;

6. For the recipient or buyer of a mortgage, servicing organization or property tax processor change, the name, address, internal identifying number, bank code number, contact person and phone number related to the new organization(s);

7. If the transaction is a sale or owner satisfaction of a mortgage, indication of which action and the effective date;

8. If the recipient or buyer is to receive notice of foreclosure pursuant to N.J.S.A. 54:5-104.48, indication of same and signature of mortgagee representative, typed name and title; and

9. Name, signature, and phone number of the individual preparing the notice, date the form was prepared, and the name of the organization submitting the notice; if the form is being sent to the recipient or buyer organization for confirmation pursuant to (a)3 above, this same information for the buying organization.

(c) To ensure that original tax bills are properly forwarded, the following procedures shall be followed:

1. In the case of a mortgage sale, the holder of the tax bill shall forward the original tax bill to the new mortgagee or property tax servicing organization.

2. In the case of a property sale, the holder of the tax bill shall forward the tax bill to the municipal tax collector. Upon receipt of a ME-1 notice, the tax collector shall forward the tax bill to the new servicer of property tax processing organization.

5:33-4.6 Notice regarding the sale of municipal liens

A tax collector shall include the Notice Regarding the Sale of Municipal Liens (ME-4) with tax sale notices when property taxes are paid through a mortgage escrow account.

5:33-4.7 Request for duplicate tax bills

(a) Requests for a duplicate tax bill, other than those requested through submission of an Initial Tax Authorization Notice (ME-1), shall be sent to the municipal tax collector on the N.J. Request for Duplicate Tax Bill form (ME-3) or a substitute form.

(b) If a request from a mortgagee, servicing organization, or property tax processing organization is accompanied by the correct fee and necessary information, a tax collector shall deliver an original or duplicate bill within 15 days.

(c) The time limit for response to written or other requests made for a duplicate tax bill made within the 10 calendar days prior to the established due dates for payment of taxes, or during a grace period approved by the municipality, shall be suspended until the conclusion of this time period.

(d) A substitute form may be used in lieu of the ME-3 form. A substitute form shall not list more than one property and shall contain the following elements:

1. Property identification information;
2. Date of request;
3. Bank Tax Code number;
4. Any internal loan identifying number or code;
5. Printed or typed name, address and phone number of the individual and organization preparing the notice; and
6. Name, address and phone number of the individual and organization of where the duplicate bill is to be mailed.

5:33-4.8 Duplicate tax bill fees; appeals for reimbursement of fee charged; freezing of duplicate fee charges

(a) The maximum charge for an individual, mortgagee, servicing organization, or property tax processing organization requesting an initial duplicate copy of a tax bill is \$5.00. The fee for each subsequent copy of the tax bill for the same tax year requested by the same person or organization shall not exceed \$25.00. The actual amount shall be set by municipal ordinance.

(b) Duplicate bill fees set by the governing body that are in effect as of March 1 of each year shall remain in effect until June first of the succeeding year. Fees may be changed during the year, but shall not take effect until the following June 1.

(c) If a mortgagee, servicing organization, or property tax processing organization wishes to appeal the charges required for a duplicate copy of a tax bill, it may request the Director to direct the tax collector to make a refund of an amount paid for a duplicate copy of a tax bill in accordance with the following procedure:

1. The requestor shall make the request on the Request for Review form (ME-5).

2. The submission shall include all necessary explanations and documentation, including correspondence and the reasons why the charges are believed to be improper. A copy of the form and documentation shall be sent to the tax collector.

3. The tax collector shall have the right to submit, in writing, any correspondence or other materials disputing the requestors reasons and justifying why the charges should be sustained within 30 days of receipt of the Request for Review.

4. Upon receipt of all documentation, the Director will make a determination or will conduct a formal review prior to deciding this matter. A written decision will be rendered by the Director to the appropriate parties within 45 days of the initial request.

(d) The Director may authorize a refund of charges for a duplicate copy of a tax bill from the municipality for any reason described below:

1. No tax bill was mailed by the tax collector to either the property owner or his authorized agent.

2. The tax collector or staff lost or destroyed bills previously submitted during the payment and did not return the same when the proper self-addressed stamped envelope was provided.

3. The tax collector fails or refuses to provide information regarding the duplicate copy of the tax bill to the Director within 30 days of a request for the same.

4. By error of the tax office personnel, the bank code was removed.

5. The tax collector did not mail the duplicate bill within 15 days of receipt of a written request.

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6. Other circumstances under control of the municipality that prevented the tax collector from meeting the statutory or regulatory requirements for delivering tax bills, as determined to be appropriate by the Director.

5:33-4.9 Requests to deliver a mortgagor's tax bill to a property tax processing organization

(a) If a tax collector determines that a request to mail or otherwise deliver a mortgagor's tax bill to a property tax processing organization is inappropriate, the tax collector shall first attempt good faith efforts to resolve the matter with the organization. If the matter is unresolved, the tax collector shall then request the Director to review the appropriateness of the request. If a tax collector fails to request the review, the organization requesting the tax bills may file on its own behalf by following the procedure below as if it were the tax collector.

(b) The procedures for such a review shall be as follows:

1. The tax collector shall make the request on the Request for Review form (ME-5).

2. The submission shall include all necessary explanations and documentation, including correspondence and the reasons why the request is inappropriate. A copy of the form and documentation shall be sent to the property tax processing organization requesting the action.

3. The property tax processing organization shall have the right to submit, in writing, any correspondence or other materials disputing the tax collector's reasons and justifying why the tax bill should be delivered within 30 days of receipt of the Request for Review.

4. Upon receipt of all documentation, the Director will make a determination or conduct a formal review prior to deciding this matter. A written decision will be rendered by the Director to the appropriate parties within 45 days of the initial request.

5:33-4.10 Effect of RESPA

In the event of any conflict between any provisions of this subchapter and the Federal Real Estate Settlement Practices Act (RESPA), the latter shall govern. All individuals and organizations should make themselves familiar with the provisions of RESPA and the associated Federal rules.

(a)

**DIVISION OF LOCAL GOVERNMENT SERVICES
Local Government Financial Regulation
Cooperative Pricing and Joint Purchasing Systems
Adopted Repeal and New Rules: N.J.A.C. 5:34-7**

Proposed: August 3, 1992 at 24 N.J.R. 2667(a).
Adopted: September 14, 1992 by Barry Skokowski, Sr., Director,
Division of Local Government Services.
Filed: September 14, 1992 as R.1992 d.401, **without change**.
Authority: N.J.S.A. 40A:11-11.
Effective Date: October 5, 1992.
Expiration Date: December 3, 1995.

Summary of Public Comments and Agency Responses:

Two letters with comments were received regarding the proposed rules.

One commenter, Richard McMahon, Bergen County Purchasing Agent, raised the question as to whether the lead agency of a cooperative purchasing system can conduct bidding for commodities for members, when the lead agency does not need the commodity in question.

The rules permit this situation. If the lead agency is going out for bids and the lead agency does not want to participate, its "requirement" or quantity is stated as zero (0). A master contract would be executed between the lead agency and the contractor on behalf of the participating members. The bid specifications and the master contract would contain language clearly indicating the quantity of the commodity for the lead agency as zero. The purpose of the "zero sum" in the master contract is to fix the commodity price for the participating units.

The other commenter, Raymond Lawson, Jr., Assistant General Manager, City of Vineland, Electric Utility Division, noted that the "... proposed revisions make the above [rules] easier to understand and use."

Full text of the adoption follows.

SUBCHAPTER 7. COOPERATIVE PRICING AND JOINT PURCHASING SYSTEMS

5:34-7.1 Applicability and authority

(a) These rules shall apply to contracting units as defined in N.J.A.C. 5:34-7.2.

(b) These rules shall not extend to joint purchasing systems comprised only of boards of education covered under N.J.S.A. 18A:18A-11.

(c) This subchapter is adopted under the authority of P.L. 1979, c.420 (N.J.S.A. 40A:11-11(5)).

(d) Copies of Cooperative Purchasing Form CP-2001, Request For Registration Or Modification of a Cooperative Purchasing System, are available from the Division of Local Government Services at CN 803, Trenton, New Jersey 08625-0803.

5:34-7.2 Definitions

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

"Application" means the forms and all supporting documents for creation of a cooperative purchasing system (N.J.A.C. 5:34-7.3); system registration (N.J.A.C. 5:34-7.5); membership registration (N.J.A.C. 5:34-7.6); system renewal (N.J.A.C. 5:34-7.8); or member renewal (N.J.A.C. 5:34-7.9).

"Contracting unit" means a unit of local government as defined in N.J.S.A. 40A:11-2(1) and boards of education authorized under N.J.A.C. 6:20-8.7 by the Commissioner of Education.

"Cooperative pricing system" means a purchasing system in which the lead agency advertises for bids, awards a master contract to the vendor providing for its own needs and for the prices to be extended to registered members, and notifies them of the bid prices awarded. The registered members then contract directly with the vendor for their own needs, subject to the specifications in the master contract.

"Cooperative purchasing system" means either joint purchasing or cooperative pricing systems.

"Director" means the Director of the Division of Local Government Services in the Department of Community Affairs.

"Form CP-2001" means Request For Registration Or Modification of a Cooperative Purchasing System which contains the following information: action requested; name of cooperative purchasing system; name of contact, address, and phone number of lead agency; name of participating contracting units affected by request; and certification of compliance with N.J.S.A. 40A:11-11.

"Joint purchasing system" means a cooperative purchasing system in which the lead agency has complete purchasing responsibility for the registered members, and the only contractual relationship is between the lead agency and the vendor.

"Lead agency" means the contracting unit which is responsible for the management of the cooperative purchasing system.

"Registered member" means a contracting unit which has been approved by the Director for participation in a cooperative purchasing system.

5:34-7.3 Creation of a cooperative purchasing system

(a) Two or more contracting units may join together to form a cooperative purchasing system for the purchase of work, services, materials or supplies.

(b) The contracting unit designated as the lead agency must authorize the creation of the system by resolution or ordinance as appropriate. The authorizing ordinance or resolution shall identify the system established as either a joint purchasing system or a cooperative pricing system.

(c) Motions made, carried, and recorded in the written minutes of a business meeting of a board of education may be substituted for a resolution.

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5:34-7.4 Formal agreement

(a) A cooperative purchasing system shall be based on a formal agreement entered into between the lead agency and each contracting unit. Each agreement shall be authorized by resolution or ordinance, as appropriate.

(b) At a minimum, the formal agreement shall include the following:

1. Reference to the authorizing statute;
2. Identification of the type of cooperative purchasing system;
3. Description of the items of work, materials or supplies to be purchased;
4. The manner of advertising for bids and of awarding contracts;
5. Clear and specific assignment of responsibilities, duties and rights of all contracting units;
6. Provision for any sharing of administrative costs and/or payment for items purchased, together with any necessary standards of performance;
7. Length of the agreement not to exceed 5 years pursuant to N.J.A.C. 5:34-7.5(f);
8. The name of lead agency for the system;
 - i. As an option, the responsibility of lead agency may rotate, at the most once a year, among the registered members. Provision for this rotation shall be included in the agreement;
 - ii. Rotation of lead agency responsibilities among registered members shall not invalidate contracts or purchase orders with contractors that are in effect at the time of rotation;
 - iii. The Director shall be notified in writing within 30 days of any change in the lead agency; and
9. A requirement that the identification code shall appear on all documentation related to purchases made through the system, including bidding documents, purchase orders, vouchers and contracts.

5:34-7.5 System registration

(a) All cooperative purchasing systems shall be subject to registration with and approval by the Director.

(b) The lead agency of a proposed system shall apply to the Director on behalf of the system's participating contracting units.

(c) Applications shall be made on Form CP-2001.

(d) The Director shall act upon the application within the time provided for review pursuant to N.J.A.C. 5:34-7.10.

(e) In reviewing the application, the Director shall utilize the following criteria, as established by N.J.S.A. 40A:11-11(5):

1. Provision for maintaining adequate records and orderly procedures to facilitate audit and efficient administration;
2. Adequacy of public disclosure of such actions as are taken by the participants;
3. Adequacy of procedures to facilitate compliance with all provisions of the Local Public Contracts Law and corresponding rules; and
4. Clarity of provisions to assure that the responsibilities of the respective parties are understood.

(f) Approval shall be for a period not to exceed five years, and shall be limited to the terms, participants and scope presented for approval. Any subsequent changes shall be submitted to the Director on Form CP-2001.

(g) The lead agency shall notify the Director in writing within 30 days of a decision to terminate the registration of the system prior to its approved expiration date.

5:34-7.6 Membership registration

(a) A contracting unit may apply for membership in an approved cooperative purchasing system by passage of an ordinance or resolution, as appropriate, and executing a formal agreement with the lead agency.

(b) The lead agency shall apply to the Director for approval on behalf of the proposed new member on Form CP-2001.

(c) The Director shall act upon the application within the time provided for review pursuant to N.J.A.C. 5:34-7.10.

(d) Participation in the system for all registered members terminates on the system expiration date assigned by the Director.

(e) The lead agency shall notify the Director in writing within 30 days of the withdrawal of any registered member from an approved cooperative purchasing system.

(f) A registered member which has formally terminated its participation in an approved cooperative purchasing system, may renew its membership by following the procedure defined in this section.

5:34-7.7 Identification code

(a) The Director shall assign an alpha-numeric identification code to each cooperative purchasing system at the time of its approval.

(b) The identification code shall be included on all contracts, purchase orders, bidding documents, vouchers and records relating to the operations of the approved cooperative purchasing system.

5:34-7.8 System renewal

(a) Documents requesting the renewal of the registration of a cooperative purchasing system shall be submitted to the Director for review and approval within the 120 day period prior to the date set by the Director for the expiration of the system's registration.

(b) The lead agency shall authorize the renewal of the system by resolution or ordinance, as appropriate.

(c) The lead agency shall apply to the Director on behalf of its membership for system renewal for a period not to exceed five years.

(d) The renewal application package shall, at a minimum, include the following:

1. Form CP-2001.
2. Lead agency resolution or ordinance, as appropriate, reauthorizing the system;
3. Copies of new formal agreements with the registered members including, at a minimum:
 - i. The new expiration date of the system; and
 - ii. The date of execution of the agreement; and
4. Copies of each registered member's resolution or ordinance, pursuant to N.J.A.C. 5:34-7.9.

(e) The time for the review-approval period shall commence only upon the determination by the Director that the application for system renewal is complete.

(f) The lead agency shall notify the Director in writing of a decision not to renew the system's registration within 120 days of the expiration of a system's registration.

5:34-7.9 Registered member renewal

(a) A registered member may apply for renewal of its membership in an approved cooperative purchasing system by passage of an ordinance or resolution, as appropriate, and executing a new formal agreement with the lead agency.

1. If an ordinance adopted by a municipality or county needs to be revised for reasons such as, but not limited to, a specified expiration date for the system, change(s) in the form of government, and change(s) in title of the local official(s) authorized to execute the agreement, then said ordinance shall only be amended by adoption of another ordinance.

2. If a resolution needs to be revised for reasons described in (a)1 above, then said resolution shall only be amended by adoption of another resolution by the registered member.

3. If no provisions in an ordinance or resolution of a registered member seeking to renew membership needs to be revised for reasons described in (a)1 and 2 above, then an agreement between the lead agency and the registered member shall be executed. The agreement shall be affirmed by resolution of the governing body of a municipality or county, or by motions made and carried in minutes of a meeting of a board of education.

(b) A registered member of a cooperative purchasing system who has not renewed its membership prior to the expiration of the system's registration shall not be a registered member and shall not participate in any new contract until such time as its membership has been formally approved pursuant to N.J.A.C. 5:34-7.6.

5:34-7.10 Time for review

(a) The Director shall approve or reject all applications within 45 days.

(b) The 45 day review period shall commence only upon the determination by the Director that the application is complete.

(c) Failure of the Director to act upon an application within 45 days shall constitute a default approval of the application for a period

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of five years or in the case of new membership, until the date previously approved by the Director for the termination of system registration pursuant to N.J.A.C. 5:34-7.5(f).

5:34-7.11 Use of pre-existing contracts

(a) A registered member of a cooperative pricing system which has not submitted estimates to the lead agency before the advertisement for bids may participate in the resulting contract for that particular item only with the prior written approval of the lead agency and the contractor.

(b) A contracting unit which is not a registered member of a cooperative pricing system at the time of the awarding of a contract may participate in the contract once it has become a registered member of the system and has received the written approval of the lead agency and the contractor.

(c) This section shall not apply to joint purchasing systems.

5:34-7.12 Administrative responsibilities

(a) Upon approval of system registration and annually thereafter either on the anniversary of the registration of the system or in January of each succeeding year, the lead agency shall publish in its official newspaper a notice similar in content to the following:

Notice of Cooperative Purchasing

(Name of lead agency) acts as lead agency in a cooperative purchasing agreement in cooperation with (list number) registered members. Under this system, the (name of lead agency) solicits competitive bids for certain items purchased by registered members. This is a (specify, joint purchasing system or cooperative pricing system) as defined and regulated by N.J.A.C. 5:34-7. Interested citizens or vendors may obtain information regarding the manner of operation of this system by contacting (name, address and phone number of lead agency). System Number _____ (State ID Code), approved by the New Jersey Division of Local Government Services through (expiration date of the system).

(b) The lead agency shall review the bid specifications with the registered members.

(c) Before seeking bids, the lead agency shall obtain from the registered members:

1. In the case of a joint purchasing system, the exact quantity of items that the lead agency shall purchase for the registered members; or

2. In the case of a cooperative pricing system, the estimated quantities that each registered member proposes to contract for during the life of the master contract.

(d) The lead agency of a joint purchasing system shall disclose in the specifications, the quantities and details of delivery required.

(e) The lead agency of a cooperative pricing system shall include in the specifications lead agency requirements, stated in definite quantities; and registered member requirements, stated as individual estimated needs.

1. The specification shall list the registered members who have submitted estimates, their delivery address, their estimated maximum quantities and other relevant information to permit the bidder to understand what is potentially involved.

(f) The lead agency in a joint purchasing system and the individual registered members in a cooperative pricing system shall be responsible for compliance with the change order requirements of N.J.A.C. 5:34-4.

(g) Pursuant to the provisions of N.J.S.A. 40A:5-16.3, each registered member may, by resolution, provide for and authorize payment in advance for estimated administrative costs to be paid to the lead agency for a joint purchasing or cooperative pricing system. Such administrative costs shall be budgeted by the lead agency as a Special Item of Revenue offset with appropriations.

(h) No purchase or contract shall be made by any registered member for a price which exceeds any other price available to the registered member.

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(a) Each request for bids shall contain the following:

1. Language requiring uniform bid price(s) for both the lead agency and registered members. A provision with respect to the registered members shall be included substantially as follows:

REQUIREMENTS OF REGISTERED MEMBERS

Check here if willing to provide the item(s) herein bid upon to registered members of the (System Name and ID Code) who have submitted estimates, without substitution or deviation from specifications, size, features, quality, price or availability as herein set forth. It is understood that orders will be placed directly by the registered members identified herein by separate contract, subject to the overall terms of the master contract to be awarded by the (name of the lead agency), and that no additional service or delivery charges will be allowed except as permitted by these specifications.

Check here if not willing to extend prices to registered members of the (System Name and ID Number) who have submitted estimates as described above. It is understood that this will not adversely affect consideration of this bid with respect to the needs of (name of the lead agency).

2. A statement as to the procedure to be followed in the event that the lowest responsible bidder, in the bid document, declines to extend prices to the registered members who submitted estimates. Examples of such procedures include:

i. The contract for the stated needs of the lead agency will be awarded to the lowest responsible bidder, and new bids will be sought and a master contract subsequently awarded with respect to the needs of the registered members who have submitted estimates;

ii. The contract for the needs of the lead agency will be awarded to the lowest responsible bidder, and a master contract for the registered members who have submitted estimates will be awarded to the next lowest bidder whose bid agrees to extend prices; or

iii. The contract for the needs of the lead agency will be awarded, all other bids shall be rejected and no further bids will be sought by the lead agency on behalf of the registered members who have submitted estimates.

(b) The master contract shall state that the bid prices may be extended to registered members who have not submitted estimates prior to the advertisement for bids with the written approval of the lead agency and the contractor.

(c) A statement as to whether or not insurance certificates and/or performance bonds are necessary.

5:34-7.14 Financial and contractual details for joint purchasing systems

(a) In the case of a joint purchasing system, the lead agency shall comply with the certification of funds requirement of N.J.A.C. 5:34-5 with respect to the full amount of the contract and Division of Local Government Services' requirements for Encumbrance Accounting Systems.

(b) The funds of the lead agency applicable to its own share of the contract to be awarded shall be charged to regular appropriations in its budget.

(c) Prior to handling the funds of the other registered members, the lead agency shall request approval of the Director for a Dedication by Rider pursuant to N.J.S.A. 40A:4-39, entitled "Receipts from Other Agencies participating in the (Name of System) Joint Purchasing System, ID Number _____." In order to meet the statutory requirement that expenditures under a Rider may be made only in accordance with the availability of funds, the following steps shall be taken:

1. Prior to the award of contract, the chief financial officer of each registered member (other than the lead agency) shall issue a certificate of available funds, in accordance with N.J.A.C. 5:34-5.

2. The contracting agent of each registered member, with authorization by resolution of the governing body if over the statutory bid limit, shall issue a purchase order to the lead agency together with a copy of its certification of available funds.

3. The lead agency shall, in accordance with N.J.A.C. 5:34-5, issue its own certificate, covering the full amount of the proposed contract including both its own share and those of the registered members.

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The certificate shall be conditional with respect to the amounts due from the registered members so that the certificate shall read in part as in the following example:

\$5,000 From (Lead Agency) appropriation number 207, Road Department, Other Expenses.

\$2,000 Due from (Name of registered member) pursuant to its purchase order number 70243 and Certification of Available Funds dated _____, (Lead Agency) Dedication by Rider Account Number 7.

\$1,000 Due from (Name of registered member) per its purchase order Number A-402 and Certification of Available Funds dated _____, (Lead Agency) Dedication by Rider Account Number 7.

\$8,000 Total Certified.

4. The lead agency shall then award the total contract to the successful bidder.

5. The lead agency shall not advance funds of its own to cover the purchase on behalf of the registered members but shall make payments only upon receipt of the funds. Payments to the lead agency shall be made promptly in accordance with an agreed-upon schedule, which may include making payment to the lead agency in advance of receipt of goods. The voucher providing for the advance payment shall indicate:

"Transfer of funds to (name of lead agency) as cash advance to enable it to purchase the following on behalf of (name of registered member) as Lead Agency in (name of joint purchasing system), ID Number _____." "(Then list what is to be purchased.)"

6. Funds received by the lead agency as advances from registered members shall be:

i. Placed in a separate bank account established within the Rider and held in trust for the purpose of permitting the lead agency to serve as contracting agent for the awarding of joint purchasing contracts;

ii. Used only for the payment of actual bills to the contractors pursuant to the overall joint purchasing agreement; and

iii. Returned immediately to the registered member upon any determination that the full amount is not needed for payments as initially expected.

5:34-7.15 Financial and contractual details for cooperative pricing systems

(a) The lead agency shall certify the funds available for its own needs.

(b) The master contract executed shall provide for the following:

1. The quantities ordered for the lead agency's own needs; and
2. The estimated aggregate quantities to be ordered by the registered members who submitted estimates, subject to the specifications and prices set forth in the master contract.

(c) The lead agency shall supply the registered members of the cooperative pricing system who have submitted estimates, copies of the specifications, name of the successful bidder, prices awarded and the contract identification number. Each registered member who submitted estimates may then order directly from the vendor. If the cost of the order is under the bid threshold, and if the contracting agent is authorized to do so, then the contracting agent may issue a purchase order, pursuant to N.J.S.A. 40A:11-3. If the cost of the order exceeds the bid threshold, then the contract must be awarded by resolution of the governing body in accordance with N.J.A.C. 5:34-5. The identification code shall be affixed to each purchase order or contract and shown on all forms pertaining thereto.

(d) Registered members who submit estimates shall not issue orders and contractors shall not make deliveries, that deviate from the specifications or price as set forth in the master contract.

5:34-7.16 The State of New Jersey's cooperative purchasing (pricing) program

(a) The standard identification code of 1-NJCP shall represent the State of New Jersey Cooperative Purchasing Program administered by the Division of Purchase and Property within the Department of the Treasury. This identification code shall be used by all contracting units purchasing under the Division of Purchase and Property's Cooperative Purchasing (Pricing) Program.

(b) Participation in the State Cooperative Purchasing (Pricing) Program does not require a formal agreement with the Division of Purchase and Property, nor is approval of the Director required.

(c) Contracting units, except for boards of education, shall purchase from the State Cooperative Purchasing Program in accordance with N.J.A.C. 5:34-1.2.

5:34-7.17 Authority of Director

(a) The Director shall take whatever additional action deemed advisable to assure the orderly conduct of cooperative purchasing systems in light of sound financial administration in accordance with statutory responsibilities.

(b) The Director shall prepare such guidelines as determined necessary to assist local contracting units in the creation and administration of cooperative purchasing systems.

5:34-7.18 Enforcement

(a) All cooperative purchasing systems shall comply with the provisions of these rules at all times. The lead agency of any cooperative purchasing system deemed by the Director to be in non-compliance shall be notified by certified mail. The lead agency shall explain in writing within 10 working days the steps being taken to correct the noncompliance. Failure of the lead agency to respond within the time provided shall result in the notification to the lead agency by the Director by certified mail to appear before the Director, or his or her designee. Notice shall be given at least 10 working days prior to the date of appearance and shall detail the nature of the alleged noncompliance. Failure to appear may result in the suspension or termination of the registration of the system.

(b) No later than five days after an appearance required herein, the Director shall issue a written determination on the issue of regulatory compliance. A copy of the determination shall be forwarded by certified mail to the lead agency.

(c) A determination of noncompliance shall result in the immediate commencement of a 15 day grace period. During this time, the lead agency shall rectify all items of noncompliance, to the satisfaction of the Director.

(d) Failure of the lead agency to undertake such action as required by the Director to resolve the issue of noncompliance may result in the suspension or termination of the registration of the system.

HEALTH

(a)

**DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICES
CONSUMER HEALTH SERVICES**

Sanitation, Handling, Shipping, and Shucking of Shellfish

Depuration of Hard Shell and Soft Shell Clams

Readoption: N.J.A.C. 8:13

Proposed: July 20, 1992 at 24 N.J.R. 2504(a).

Adopted: September 4, 1992 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.

Filed: September 8, 1992 as R.1992 d.384, **without change**.

Authority: N.J.S.A. 24:2-1.

Effective Date: September 8, 1992.

Expiration Date: September 8, 1997.

**Summary of Public Comments and Agency Responses:
No comments received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:13.

ADOPTIONS

TREASURY-GENERAL

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS

State Board of Marriage Counselor Examiners
Annual License Fees and Charges

Adopted Amendment: N.J.A.C. 13:34-1.1

Proposed: July 20, 1992 at 24 N.J.R. 2522(b).
Adopted: August 27, 1992 by the State Board of Marriage
Counselor Examiners, Edward Haldeman, Chairperson.
Filed: September 10, 1992 as R.1992 d.386, **without change**.
Authority: N.J.S.A. 45:1-3.2 and 45:8B-13.
Effective Date: October 5, 1992.
Expiration Date: October 26, 1993.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows.

13:34-1.1 Annual license fees and charges

(a) There shall be paid to the State Board of Marriage Counselor Examiners the following fees:

- 1. Application fee \$ 75.00
- 2. Initial license fee
- i. If paid during the first year of a
 biennial renewal period \$200.00
- ii. If paid during the second year of a
 biennial renewal period \$100.00
- 3. Examination fee \$225.00
- 4. Verification of licensure \$ 25.00
- 5. Temporary permit \$ 75.00
- 6. License renewal fee, biennial \$200.00
- 7. Reinstatement fee \$125.00
- 8. Late renewal fee \$ 50.00
- 9. Replacement wall certificate \$ 40.00
- 10. Duplicate license fee \$ 25.00
- 11. Change of address \$ 25.00

(b)

NEW JERSEY RACING COMMISSION

Harness Rules
Programmed Trainer

Adopted New Rule: N.J.A.C. 13:71-10.5

Proposed: July 6, 1992 at 24 N.J.R. 2340(a).
Adopted: September 8, 1992 by the New Jersey Racing
Commission, Frank Zanzuccki, Executive Director.
Filed: September 11, 1992 as R.1992 d.388, **without change**.
Authority: N.J.S.A. 5:5-30.
Effective Date: October 5, 1992.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:71-10.5 Programmed Trainer

(a) The principal trainer of a training stable must be listed as the trainer in the official program and in good standing with the Racing Commission. In the event a training stable requests to list an individual in addition to or other than the principal trainer in the official program, this request must be approved by the State steward. If a person other than the principal trainer is listed in the official program, no change may be made to this status without prior approval of the State steward. The State steward will utilize the following criteria in determining the identity of the principal trainer

or need to list someone other than or in addition to the principal trainer in the official program:

- 1. The identity of the person who is responsible for the business decisions of the training stable including, but not limited to, business arrangements with and any payments to or from owners, veterinarians, feed companies, hiring and firing of employees, obtaining workers' compensation insurance, payroll, horsemen's bookkeeper, etc.;
 - 2. The identity of the person responsible for communicating with the race secretaries office, stall manager, Racing Commission, owners regarding racing schedules, etc.;
 - 3. The identity of the person responsible for the conditioning of the horses on a daily basis;
 - 4. The identity of the person responsible for race day preparation including, but not limited to, accompanying horses to the paddock, selection of equipment, authority to warm up horses before the public, discussions of driving strategy, etc.;
 - 5. The total number of horses in the control of the training stable. Before any requests to list someone other than the principal trainer in the official program are considered, the training stable shall contain a minimum of 20 horses currently in a race mode at any one location;
 - 6. The number of active licensed trainers on the payroll of the training stable; and
 - 7. The number of different stabling locations.
- (b) Programmed trainers and principal trainers shall be held equally liable for all rule violations.

TREASURY-GENERAL

(c)

DIVISION OF STATE LOTTERY

Training and Background Checks of Key Personnel
Adopted Amendments: N.J.A.C. 17:20-2.1, 4.3 and
4.4

Proposed: June 15, 1992 at 24 N.J.R. 2238(a).
Adopted: August 20, 1992 by New Jersey State Lottery
Commission, Eugene McNany, Chairman.
Filed: September 3, 1992 as R.1992 d.376, **without change**.
Authority: N.J.S.A. 5:9-7
Effective Date: October 5, 1992.
Expiration Date: September 26, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

17:20-2.1 Definitions

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

...
"Key personnel" means and includes any person operating a lottery ticket sales terminal, engaging in sales or redemptions of lottery tickets, preparing settlements, making bank deposits or in any other way handling lottery transactions. It also includes any person managing, or otherwise in charge of, a licensed business in the absence of the owner.

17:20-4.3 Review

- (a) Upon receipt of an application which appears to be complete and in order, the Director shall subject it to a thorough review, including:
 - 1.-3. (No change.)
 - 4. Such other procedures as may be needed to substantiate the moral character of the applicant and key personnel and the ability of the applicant to satisfy the other licensing criteria as set forth in the Act and in this chapter.
- (b)-(c) (No change.)

OTHER AGENCIES

ADOPTIONS

17:20-4.4 Issuance of license; conditions

(a) The Director may license an applicant to be a manual agent or a machine agent as the facts and circumstances may warrant. Before issuing a license, the Director shall provide training to all applicants and key personnel to the extent the Director deems appropriate, and shall require that training be administered to such persons as will best preserve the integrity and most effective operation of the Lottery. Training shall cover machine operations, handling of instant tickets, redemption and settlement procedures and all other aspects of transacting business as an agent of the Lottery.

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

(a)

DIVISION OF STATE LOTTERY

Sale and Redemption of Lottery Tickets

Adopted Amendment: N.J.A.C. 17:20-6.2.

Proposed: June 15, 1992 at 24 N.J.R. 2239(b).

Adopted: August 20, 1992 by New Jersey State Lottery

Commission, Eugene McNany, Chairman.

Filed: September 3, 1992 as R.1992 d.378, **without change.**

Authority: N.J.S.A. 5:9-7.

Effective Date: October 5, 1992.

Expiration Date: September 26, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:20-6.2 Sale and redemption of lottery tickets

(a) At all times during normal business hours, agents shall make current lottery tickets available for sale to the public, and shall, within the limits set forth by law and these rules, redeem all winning tickets by payment of cash or check to the holder.

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

(b)

DIVISION OF STATE LOTTERY

Sale of Lottery Tickets at Specific Locations Licensed

Adopted Amendment: N.J.A.C. 17:20-4.8

Proposed: June 15, 1992 at 24 N.J.R. 2239(a).

Adopted: August 20, 1992 by New Jersey State Lottery

Commission, Eugene McNany, Chairman.

Filed: September 3, 1992 as R.1992 d.377, **without change.**

Authority: N.J.S.A. 5:9-7.

Effective Date: October 5, 1992.

Expiration Date: September 26, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:20-4.8 Sale of lottery tickets at specific locations licensed

An agent shall not sell tickets at any location other than that which is specified in the license. All transactions involved in the sale of said tickets shall occur at the licensed location, and not elsewhere, but the holder of a winning ticket need not redeem such ticket at the place of purchase.

(c)

OFFICE OF THE TREASURER

Notice of Administrative Change

State Employee Charitable Fund-Raising Campaign Application Form for Charitable Fund-Raising Organizations

N.J.A.C. 17:28-2.8

Take notice that the Department of the Treasury has requested, and the Office of Administrative Law has agreed to permit, an administrative change to N.J.A.C. 17:28-2.8(d). The change will delete the specific listing of address and telephone number from which application forms for charitable fund raising organizations can be obtained. In its place will be added a reference to the address and telephone number as published in the New Jersey Register in the annual Public Notice for Applications for the State Employee Charitable Campaign (see such notice published elsewhere in this issue of the New Jersey Register). This administrative change will relieve the Department of the necessity to change the address and telephone number in the rule as circumstances change, by incorporating instead a reference to an annually published notice which also contains this information. This notice of administrative change is published pursuant to N.J.A.C. 1:30-2.7(c).

Full text of the changed rule follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

17:28-2.8 Application form for charitable fund-raising organizations

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

(d) Those wishing to receive an application can do so by making a request either orally or in writing [to Charities Registration, Division of Consumer Affairs, P.O. Box 254, Newark, New Jersey 07101, (201) 648-4704] **to the address and telephone number as published in the New Jersey Register in the annual Public Notice for Applications for the State Employee Charitable Campaign.**

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

OTHER AGENCIES

(d)

NEW JERSEY TURNPIKE AUTHORITY

Definitions

Adopted Amendment: N.J.A.C. 19:9-1.1

Proposed: August 3, 1992 at 24 N.J.R. 2692(a).

Adopted: September 3, 1992 by the New Jersey Turnpike

Authority, Herbert I. Olarsch, Administrative Procedures Officer, Director of Law.

Filed: September 4, 1992 as R.1992 d.379, **without change.**

Authority: N.J.S.A. 27:23-1 et seq., specifically 27:23-29.

Effective Date: September 3, 1992.

Expiration Date: October 17, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

19:9-1.1 Definitions

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

...
"New Jersey Turnpike" means any express highway, superhighway or motorway at such locations and between such termini as may hereafter be established by law, and owned and/or operated under the provisions of N.J.S.A. 27:23-1 et seq. by the Authority, and shall include, but not be limited to, all bridges, tunnels, underpasses, interchanges, entrance plazas, approaches, toll houses, service areas, service stations, service facilities, communication facilities, and ad-

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ministration, storage and other buildings which the Authority may deem necessary for the operation of such project, together with all property, rights, easements and interests which may be acquired by the Authority for the construction or the operation of such project and all other property within the Turnpike right-of-way.

(a)

CASINO REINVESTMENT DEVELOPMENT AUTHORITY

Project Eligibility, Contracts with Casino Licensees, Affirmative Action, Investment, Fees, Debarment and Waivers

Adopted New Rules: N.J.A.C. 19:65

Adopted Recodification: N.J.A.C. 19:65-2.6 through 2.11 as 2.5 through 2.10

Proposed: May 4, 1992 at 24 N.J.R. 1692(b).

Adopted: July 7, 1992 by the Casino Redevelopment Investment Authority, Nicholas R. Amato, Executive Director.

Filed: September 8, 1992 as R.1992 d.383, **without change**.

Authority: N.J.S.A. 5:12-144.1 and 161(f).

Effective Date: October 5, 1992.

Expiration Date: October 5, 1997.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adopted new rules proposed for re-adoption (see N.J.A.C. 1:30-4.4(f)) can be found in the New Jersey Administrative Code at N.J.A.C. 19:65.

Full text of adopted new rules N.J.A.C. 19:65-4.1 and 6.2 follows.

SUBCHAPTER 4. FEMALE AND MINORITY BUSINESS TARGETS IN AUTHORITY FINANCED CONSTRUCTION PROJECTS AND LICENSEES' DIRECT INVESTMENT CONSTRUCTION PROJECTS

19:65-4.1 Subcontracting targets

(a) The Authority, in connection with approved projects financed each year by or through bonds issued by the Authority or direct investments by licensees, shall require the following in its relevant contracts relating to the approved project:

1. Each applicant, its respective contractors and subcontractors shall seek to provide that construction contracts comprising at least 20 percent of the aggregate total expenditures on an approved project will be awarded to female or minority businesses as defined in and qualified under N.J.A.C. 17:14-1 et seq.

2. Upon request by the applicant and a determination by the Authority that there are not sufficient, relevant or qualified female or minority business enterprises whose market areas include the project location, the Authority may decrease the target requirement.

3. If the above levels are satisfied, the applicant, contractor or subcontractor, as the case may be, will be presumed not to be engaging in unlawful race or sex discrimination in the selection of contractors or subcontractors.

4. If the above target levels are not satisfied, the Authority shall review the contracting and subcontracting practices to determine if there has been unlawful race or sex discrimination.

5. If the Authority determines, after such review, that an applicant, contractor or subcontractor has engaged in unlawful race or sex discrimination, the Authority may begin debarment procedures pursuant to N.J.A.C. 19:65-7.1.

6. In determining whether the targets in N.J.A.C. 19:65-4.2(a) have been satisfied, a business may only be treated once as a female or minority business.

7. Each applicant, contractor and subcontractor shall provide such information as is deemed necessary by the Authority to permit the

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Authority to make a determination as to the number of contracts awarded to female or minority businesses.

19:65-6.2 Administrative fees

(a) Initial Fees.

1. With respect to approved projects for which the Authority will make a loan or loans to a participant, the Authority will charge an initial fee equal to two percent of the initial amount of the loan.

2. With respect to approved projects in which the Authority is a participant (alone or with other participants), the Authority will charge an initial fee equal to two percent of the sum of the total costs of the project and administrative and other expenses related to the project.

3. With respect to approved projects for which a licensee is making an equivalent investment in accordance with N.J.A.C. 19:65-2.8, the Authority will charge an initial fee equal to one percent of the amount of the equivalent investment.

(b) Annual Fees.

1. With respect to approved projects for which the Authority will make a loan or loans to a participant, the Authority will charge a fee payable monthly in advance equal to 1/12 of one-half of one percent of the outstanding amount of the loan on the date of payment.

2. With respect to approved projects for which a licensee is making an equivalent investment in accordance with N.J.A.C. 19:65-2.8, the Authority will charge a fee payable monthly in arrears equal to 1/12 of one-quarter of one percent of the amount of the equivalent investment made as of such date of payment.

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(b)

STATE BOARD OF EDUCATION

Educational Improvement Plans in the Special Needs Districts

Adopted New Rules: N.J.A.C. 6:8-9

Proposed: July 6, 1992 at 24 N.J.R. 2323(a).

Adopted: September 2, 1992 by the State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: September 14, 1992 as R.1992 d.396, **with technical and substantive changes** not requiring additional public notice and comment (see: N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:7D-3.27, 28, 32 and 35.

Effective Date: October 5, 1992.

Expiration Date: December 11, 1996.

Summary of Comments and Agency Responses:

No one spoke regarding the above captioned rules at the public testimony session provided by the State Board of Education held on June 17, 1992. Written comments were received from Ms. Jean Paashaus, Summit, N.J.; Edwina M. Lee, Assistant Executive Director/Advocacy, New Jersey School Boards Association and William H. Lewis, Jr., Associate Director, Government Relations, New Jersey Education Association. The comments and the Department's responses are as follows:

COMMENT: A commenter suggested that the proposed rules did not make reference to who was responsible for setting the guidelines for membership on the school planning teams.

RESPONSE: The commenter was referring to an earlier draft. The code was revised at proposed level to include requirements for membership on the school planning team. The code specifies in N.J.A.C. 6:8-9.2(b)3 that the board of education establish policies and procedures for selection of teachers and parents by their respective constituencies.

COMMENT: The same commenter recognized that the district boards need to be involved in the development of the educational improvement plans prior to the review and acceptance of the plans.

RESPONSE: N.J.A.C. 6:8-9.13(a) specifies that the process for the development of district and school plans shall be a collaborative one which involves broad-based representation from different parts of the

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educational community. The local board is an important part of the educational community and is expected to maintain an active role in all aspects of collaborative school and district level planning processes. The rules provide the board with the flexibility to make local decisions concerning their role.

COMMENT: The same commenter was concerned that the waiver provision of the code was not specific enough.

RESPONSE: The waiver provision was significantly revised at proposal level to include language which is much more specific and addressed this concern.

COMMENT: The same commenter remarked that monthly visits by a liaison from the Division of Urban Education to the special needs district would be burdensome on division staff.

RESPONSE: No change was made because the benefits of such visits outweigh the difficulties involved in meeting the requirement. Regular, monthly contacts ensure that the division liaison can help the district solve problems and identify resources needed to successfully implement the educational improvement plan.

COMMENT: Another concern of the same commenter was that N.J.A.C. 6:8-9.5(c) requires verification of progress of school EIPs which is an additional area of oversight to the special needs districts.

RESPONSE: It is the view of the Department that the verification of school progress in improving outcomes for students is legitimate work for school- and district-level staff. Every effort will be made to assist districts in developing processes which integrate the EIP requirements into other management activities in the district.

COMMENT: Another commenter was concerned that the role of the school board was being usurped by the rules because N.J.A.C. 6:8-9.1(e) gives the Commissioner the right to reallocate funds from any line item in the district budget to ensure that the approved plan is carried out.

RESPONSE: The Commissioner has the authority by statute (N.J.S.A. 18A:7D-27) to determine the adequacy of each special needs district budget with regard to the EIPs. The rules merely clarify the meaning of the statute with regard to the EIPs.

COMMENT: Another commenter disagreed with the waiver provision, arguing that blanket waivers of rules should not be permitted.

RESPONSE: The waiver provision in N.J.A.C. 6:8-9.6 allows districts to request waivers on a case by case basis when such rules interfere with district ability to implement demonstrably effective programs. The code does not authorize blanket waivers.

COMMENT: The same commenter maintained that any waiver process must include a provision requiring the consent of the majority representative in the special needs district making the application.

RESPONSE: N.J.A.C. 6:8-9.6 requires that the written request for a waiver must include supporting documentation that the affected parties were notified of the waiver request. The population of affected parties includes, but is not limited to, local bargaining units, parents, students, parent organizations, and community groups. The local board of education has authority to establish education policy for the district, including the submission of a waiver request, without the consent of the majority representative, provided that such policy does not violate an existing collective bargaining agreement.

COMMENT: The same commenter was concerned that the public wouldn't have an opportunity to be heard by the State Board of Education when it decides whether or not to grant a waiver.

RESPONSE: The consideration of any matter related to the supervision and control of the state's public schools by the State Board requires the opportunity for public comment. The public would have an opportunity for oral testimony at the monthly public hearing on State Board agenda items.

Summary of the Agency Initiated Changes Upon Adoption:

Language, which is overly specific, is being deleted at N.J.A.C. 6:8-9.5(a). Although an amendment to the educational improvement plan requires approval of both the district board of education and the Commissioner, the process to be used must be on a case by case basis to accommodate particular circumstances. By removing the two sentences indicated, flexibility is maintained without compromising the intent of the rule.

Also, punctuation and typographical errors are being corrected upon adoption.

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

ADOPTIONS

SUBCHAPTER 9. EDUCATIONAL IMPROVEMENT PLANS IN SPECIAL NEEDS DISTRICTS

6:8-9.1 District educational improvement plans

(a) Each board of education in a special needs district shall submit annually as part of the annual school district budget an educational improvement plan for the district. The plan shall be:

1. Based on student outcome goals consistent with State educational goals pursuant to N.J.A.C. 6:8;
2. Responsive to recommendations made by the Department of Education, analysis of student performance, and other evaluation reports and studies of district, school and student needs, including recommendations of external review teams;
3. Consistent with the elements and indicators required for district certification through the monitoring process pursuant to N.J.A.C. 6:8-4;
4. Designed to support comprehensive district-level planning to improve student outcomes through improvement of management, governance, finance and facilities;
5. Designed to support and coordinate school-level planning and other reform efforts;
6. Developed collaboratively by staff, parents, community members, and students, where appropriate;
7. Adequately funded; and
8. Formally adopted by the district board of education.

(b) The chief school administrator shall be responsible for developing, implementing and evaluating the district educational improvement plan.

(c) The plan shall be reviewed by the director of the urban assistance center and the county superintendent and approved by the Commissioner based on the requirements specified in (a) above and N.J.A.C. 6:8-9.3.

(d) In the case of State-operated school districts, the corrective action plan, required pursuant to N.J.A.C. 6:8-5.2, shall substitute for the district educational improvement plan.

(e) The Commissioner shall review each line item in the district budget to determine if the expenditure is appropriate. The Commissioner shall reallocate funds from any line item to ensure that demonstrably effective programs which will improve specific educational outcomes for students are implemented in the district.

(f) For special needs districts, the district educational improvement plan shall substitute for required district-level planning objectives required pursuant to N.J.A.C. 6:8-4.2.

6:8-9.2 School educational improvement plans

(a) Beginning with the 1993-94 school year, an educational improvement plan shall be developed for each school in a special needs district.

(b) Each school shall establish and maintain a planning team to coordinate the development, implementation and evaluation of the plan.

1. The district shall ensure that time and resources are allocated to support planning team activities.
2. Membership on the planning team shall include, but not be limited to, the principal, teachers and parents. A majority of the planning team shall be composed of classroom teachers and 25 percent of the team shall be composed of parents.
3. The board of education shall establish fair and reasonable policies and procedures by which teachers shall select their representatives and parents shall select their representatives.

(c) School educational improvement plans shall be approved at the district level before the beginning of the school year.

(d) Beginning with the 1994-95 school year, the district shall submit for Department approval, a review and approval process, consistent with N.J.A.C. 6:8-9.3 and with other State-mandated local planning requirements as per N.J.A.C. 6:8.

(e) The Division of Urban Education shall conduct an on-site review of selected school plans each year.

(f) For schools where students are not meeting minimum State requirements on student performance as per N.J.A.C. 6:8, objectives in the areas of deficiency shall be integrated into the school educational improvement plan.

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6:8-9.3 District and school educational improvement plan development

(a) District and school educational improvement plans shall be developed using a process which includes the following components:

1. Involvement of broad-based representation from different parts of the educational community, including administrators, supervisors, teachers, parents, community members, and students, where appropriate, in the development and implementation of the plan;
2. Input from parents and community members at a public meeting;
3. Analysis of student performance at the district and school levels;
4. Identification of specific student outcomes goals, indicators for the outcomes, and measurable objectives based on these indicators;
5. Development of a school-level data base which allows analysis of needs and evaluation of success of all students in reaching targeted student outcomes;
6. Selection of demonstrably effective improvement strategies and programs which could reasonably be expected to result in improvements in student learning based on research results. Such demonstrably effective strategies and programs include, but are not limited to, the following areas:
 - i. Early childhood;
 - ii. Instructional uses of technology;
 - iii. Drop-out prevention;
 - iv. School-based management;
 - v. Staff development;
 - vi. Enriched curricula;
 - vii. Increased instructional time;
 - viii. Interagency collaboration; and
 - ix. Student/family support services; and
7. Specification of activities, needed resources, staff responsibility, timelines, costs, and evaluation strategies.

6:8-9.4 Assistance by the Division of Urban Education

(a) Staff from the Division of Urban Education shall assist district and school staff in developing, implementing and evaluating the district and *[and]* school *[board]* educational improvement plans by:

1. Providing technical assistance to school planning teams, task forces, and district facilitators;
2. Identifying exemplary programs and practices;
3. Providing training on school-based planning to district and school staff and parents; and
4. Linking districts and schools to resources.

6:8-9.5 Verification and evaluation of educational improvement plans in the special needs districts

(a) The district educational improvement plan shall be implemented as approved. The educational improvement plan can be formally amended only upon approval of the district board of education and the Department. *[The district, with the approval of the district board of education, requests substantive amendments to the plan, such as changes in response to budget adjustments, by writing to the director of the urban assistance center and the county superintendent. The Assistant Commissioners of the Divisions of County and Regional Services and Urban Education shall approve the amendments prior to their implementation.]*

(b) Staff from the Division of Urban Education are responsible for verifying the implementation of district educational improvement plans as follows:

1. Each special needs district shall be visited monthly by a Division liaison to assess progress and identify needs in implementing the district educational improvement plan. Each visit shall be documented by a written progress report completed by the liaison and sent to the district*[,]* chief school administrator and the county superintendent.
2. An annual verification visit shall be conducted in each special needs district. Within two weeks of completion of the visit, a findings letter shall be sent by the director of the urban assistance center to the chief school administrator. This letter shall analyze the extent to which the district is successfully implementing each objective in

the district educational improvement plan and shall include commendations, and recommendations which must be acted upon within a designated time frame.

3. A special needs district which fails to satisfactorily implement the district educational improvement plan shall be subject to appropriate sanctions, including, but not limited to, the withholding of State aid.

(c) The district shall develop and implement a process to verify the progress of each school educational improvement plan, beginning with the 1993-94 school year. The verification process shall include the use of the school planning team in tracking and reporting progress at the school to the chief school administrator. During the verification visits for the district educational improvement plans, the Division of Urban Education shall review the process and shall visit schools to ensure that the process is being implemented.

(d) Each district and each school shall communicate with the parents and community on a quarterly basis to report on the implementation and evaluation of the educational improvement plan.

(e) The district shall submit to the director of the urban assistance center on August 15 of each year an evaluation report which:

1. Assesses district and school progress in meeting the student outcomes targeted in the educational improvement plan;
2. Identifies specific accomplishments; and
3. Addresses progress in implementing recommendations from the external review team, where appropriate.

(f) The evaluation report shall be distributed to parents, staff and communities in September of each year.

(g) The Department shall collect annually the data which is necessary to create comprehensive school-level profiles of each school in the special needs districts. These school profiles shall include data on:

1. Student performance, including assessed knowledge, student attainment and participation;
2. Student population characteristics;
3. Programs and services; and
4. Staff characteristics.

6:8-9.6 Waivers to rules

(a) Under no circumstances will waiver be allowed of this title or any of its subchapters in their entirety. The Commissioner may, however, on a case by case basis, recommend the approval of waivers of specific rules contained in Title 6, Education to the State Board of Education, if the application of those rules interferes with the ability of a special needs district to implement demonstrably effective programs to improve educational outcomes, as specified in the educational improvement plan.

1. The district may request a waiver by submitting a written request signed by the chief school administrator and approved by the district board of education. Such requests shall include:

- i. Conditions or reasons for the waiver of the specific rule(s);
- ii. Duration of the waiver; and
- iii. Supporting documentation, including, where appropriate, notice to affected parties.

2. Upon recommendation from the Commissioner, the State Board of Education may act to relax or waive, with or without conditions, such rules in the specific circumstance presented, if the State Board is satisfied that:

- i. The spirit and intent of Title 18A and applicable Federal laws and regulations are served by the granting of such waiver;
- ii. The provision of a thorough and efficient education to the pupils in the district is not compromised as a result of the waiver; and
- iii. There will be no risk to pupil welfare and safety by granting such waiver.

3. Waivers shall not be granted for a duration of more than three years.

(a)

STATE BOARD OF EDUCATION

Attendance at School by Pupils or Adults Infected by Human Immunodeficiency Virus (HIV)

Adopted Amendment: N.J.A.C. 6:29-2.4

Proposed: June 15, 1992 at 24 N.J.R. 2124(a).

Adopted: September 2, 1992 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: September 14, 1992 as R.1992 d.398, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:36-19, 26:1A-15, and 42 CFR 2.

Effective Date: October 5, 1992.

Expiration Date: February 8, 1995.

Summary of Public Comments and Agency Responses:

The Department received only one comment from Ms. Jean Paashous. No one commented at the public testimony session held by the State Board of Education on June 17, 1992.

COMMENT: The commenter recommended that the present conditions for exclusion of HIV infected pupils and the Medical Advisory Panel, currently in the Department of Education's code should be retained. A lower standard of protection could result from the proposed changes, making it difficult for schools to exercise good judgment and result in possible court cases.

RESPONSE: The Department disagrees. The Department proposed the amendments to the code after consultation with the New Jersey State Department of Health. The Department of Health worked closely with medical experts and utilized research reports supplied by the Centers for Disease Control (CDC). The Medical Advisory Panel concluded that the exceptions, which potentially allowed for the exclusion from school of HIV infected pupils, were no longer considered routes of transmitting the AIDS virus. Without the exclusionary conditions, there is no role for the Medical Advisory Panel.

Summary of Agency-Initiated Changes Upon Adoption:

The agency corrected a typographical error of the word "pupil".

Full text of the adopted amendments follows (additions to the proposal are indicated in boldface with asterisks ***thus***; deletions from the proposal are indicated in brackets with asterisks ***[thus]***).

6:29-2.4 Attendance at school by pupils or adults infected by Human Immunodeficiency Virus(HIV)

(a) The following words when used in this section shall have the following meanings unless the context clearly indicates otherwise:

1. "Adult" means a teacher, administrator, food service employee or other school staff member compensated or uncompensated; and
2. "Pupil" means an individual who is entitled to attendance at school in grades K through 12, as well as a pre-kindergarten child who is entitled to attendance at school.

(b) For ***[pupils]*** ***pupils*** with HIV infection who are enrolled or seeking enrollment in a school program, the regulations and procedures in this section shall apply.

1. All information about the identity of a pupil with HIV infection shall be kept confidential and shall comply with the provisions of N.J.A.C. 6:3-2.

(c) Pupils with HIV infection shall not be excluded from attending school for reason of the HIV infection in accordance with N.J.A.C. 8:61-1.1.

1.-2. (No change.)

(d) Pupils with HIV infection who are symptomatic and/or diagnosed with AIDS shall not be excluded by virtue of the diagnosis. The only medical grounds for exclusion from school shall be those established in N.J.S.A. 18A:40-7 and 8 and N.J.A.C. 8:61-1.1(e). Pursuant to N.J.A.C. 8:57-2.5, AIDS or HIV infection shall not be considered a communicable disease for purposes of admission to or attendance in an education facility, or eligibility for educational transportation.

(e) In accordance with N.J.A.C. 8:61-1.1:

1. Adults with HIV infection in all school settings shall not be restricted from their normal employment for reason of HIV infection unless they have another illness which would restrict that employment;

2. No pupil or adult shall be excluded from school solely by virtue of the fact of living with or being related to an HIV-infected individual;

3. Any pupil or adult, with or without HIV infection, shall be removed from school if and when the individual has weeping skin lesions that cannot be covered, in accordance with N.J.A.C. 8:61-1.1;

4. It is not necessary that anyone in the school be specially notified that an HIV infected individual is registered to attend school or is an employee of the school. Therefore, HIV/AIDS status is an exception to records required pursuant to student physical examinations, N.J.A.C. 6:29-2.1 and school employee examinations, N.J.A.C. 6:29-7. If school officials receive notification of the presence of an HIV infected individual, records containing identifying information regarding the HIV status of the individual shall be kept confidential as required by N.J.S.A. 26:5C-5 et seq. Information regarding an HIV infected pupil can be shared, only with the written consent of the pupil's parent or guardian, with those who need to know the status to determine the educational program for the pupil, N.J.A.C. 8:61-1.1.

(f) District boards of education shall annually provide pupils and their parents/guardians and district employees and/or volunteers with HIV/AIDS awareness information.

(g) District boards of education shall provide HIV/AIDS awareness information to their school communities. This may be accomplished in cooperation with State and local agencies, and in consultation with the county superintendent of schools, and may include utilization of district newsletters, bulletins or other media.

(b)

STATE BOARD OF EDUCATION

Public, School and College Libraries

Readoption with Amendments: N.J.A.C. 6:64

Proposed: June 15, 1992 at 24 N.J.R. 2126(a).

Adopted: September 2, 1992 by the State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: September 14, 1992 as R.1992 d.399, **without change**.

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 40:9A-4 and 40:33-13.2d through 40:33-13.2n.

Effective Date: September 14, 1992, Readoption;
October 5, 1992, Amendments.

Expiration Date: September 14, 1997.

Summary of Public Comments and Agency Responses:

No one spoke regarding the above captioned rules at the public testimony session provided by the State Board of Education held on June 15, 1992.

No comments received.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 6:64.

Full text of the adopted amendments follows.

6:64-1.2 Duties of advisory council of federation of free public libraries

(a) (No change.)

(b) Such recommendations shall be delivered to the appointing authorities at least three months before the fiscal year for which the proposed contract is designed.

6:64-1.3 Employees of federation of free public libraries

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

6:64-1.5 Other cooperative operations of federation of free public libraries

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ENVIRONMENTAL PROTECTION

(a) Provision shall be made for any or all, but not fewer than two, of the following cooperative or joint services:

- 1.-5. (No change.)
- 6. The joint employment of personnel for specialized library services; and
- 7. (No change.)

6:64-2.2 Definitions

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

“Branch library” means an auxiliary outlet of a county library which has all of the following, but which is administered from a central unit:

- 1. Separate quarters from the central unit;
- 2. A permanent basic collection of library materials;
- 3. A permanent paid staff; and
- 4. A regular schedule for opening to the public.

“Service contract” means an agreement for library services negotiated among a county library commission, the governing body of a county and the governing body of a municipality.

6:64-2.3 General provision

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

(c) A county branch library and a county joint branch library must meet the quantitative State aid criteria for a public library serving the population of the municipality(ies) (see N.J.A.C. 6:68-2.4 to 2.6). Consideration will be given to an adjustment of these requirements if it can be shown that equivalent centralized services are provided.

(d) (No change.)

(e) After the adoption of a service contract, the county library must submit annually to the State Librarian a copy of the service contract with a statement certifying that the services provided to a municipality are as specified in N.J.A.C. 6:68-2.4 to 2.6. The county library may request from the State Librarian a waiver from the requirements of N.J.A.C. 6:68-2.4 to 2.6 if it can be established that equivalent centralized services are provided.

(f) After the adoption of the tax base sharing option, the county library must submit annually to the State Librarian a report certifying that it complies with N.J.A.C. 6:68-2.4 to 2.6.

6:64-2.4 Appeal procedure

Appeals from any action of the State Librarian regarding the rules in this subchapter may be requested, and opportunity given for an informal fair hearing before the State Librarian. In the event of an adverse decision after such informal hearing, a formal hearing may be requested pursuant to N.J.S.A. 18A:6-9. Such hearings shall be governed by the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

OFFICE OF ENERGY

Control and Prohibition of Air Pollution by Vehicular Fuels

Adopted Amendments: N.J.A.C. 7:27-25.2, 25.3, 25.4, 25.7, 25.8; and 7:27A-3.10

Adopted New Rules: N.J.A.C. 7:27-25.3, 25.9, 25.10, 25.11, and 25.12

Adopted Repeal: N.J.A.C. 7:27-25.1

Proposed: July 6, 1992 at 24 N.J.R. 2386(a).

Adopted: September 1, 1992 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: September 8, 1992 as R.1992 d.382, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., specifically 26:2C-8.

DEPE Docket Number: 42-92-09.

Effective Date: October 5, 1992.

Operative Date: November 1, 1992, except for N.J.A.C. 7:27-25.9 which shall be operative May 1, 1993 (see N.J.A.C. 7:27-25.9(a)).

Expiration Date: Exempt, N.J.A.C. 7:27

December 4, 1994, N.J.A.C. 7:27A.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection and Energy (the Department) is adopting amendments and new rules at N.J.A.C. 7:27-25, entitled, “Control and Prohibition of Air Pollution by Vehicular Fuels” hereinafter referred to as “Subchapter 25,” to reduce emissions of carbon monoxide from motor vehicles. The adopted amendments and new rules establish the oxygenated fuels program pursuant to the Federal Clean Air Act Amendments of 1990 as part of an effort to attain the National Ambient Air Quality Standard (NAAQS) for carbon monoxide. The adopted amendments and new rules set standards for the oxygen content of motor vehicle fuel. These standards apply only during the time of year when areas of New Jersey are prone to exceed the NAAQS for carbon monoxide.

All sections of the adopted rules shall be operative on November 1, 1992 with the exception of N.J.A.C. 7:27-25.9, Variance for contemporaneous averaging, which shall have an operative date of May 1, 1993. The Department has chosen to delay the operative date of the contemporaneous averaging program in order to further consider the effect of adopting this section. Specifically, **the Department invites comment** on or before January 30, 1993, on the following:

1. One company has testified in support of the contemporaneous averaging provisions. The Department would like to know if there are other persons who find these provisions advantageous as well.

2. Certain commenters have described the contemporaneous averaging provisions as containing built-in discrimination or as providing an unfair competitive advantage to a few persons. (See specific comments under heading “Variance for contemporaneous averaging” later in this notice of adoption.) The Department would appreciate specific clarification as to how this is so.

Submit written comments on N.J.A.C. 7:27-25.9 by January 30, 1993 to:

Richard J. McManus, Director
Office of Legal Affairs
New Jersey Department of Environmental Protection
and Energy
CN 402
Trenton, New Jersey 08625

If the Department determines after reviewing the comment received that N.J.A.C. 7:27-25.9 shall become operative as scheduled, the Department will place a miscellaneous notice in the New Jersey Register on

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or about May 1, 1993 advising the regulated community and all other interested persons that the operative date established in this adoption for that section shall be the binding operative date for the contemporaneous averaging program. In that notice, the Department will also explain its decision and respond to the comments received.

Should the Department determine after reviewing the comment received that it does not wish N.J.A.C. 7:27-25.9 to become operative as scheduled, the Department will propose a repeal or amendment of that section of the rule, as appropriate, on or about May 1, 1993. At the same time, the Department will give notice in the New Jersey Register further extending the operative date of N.J.A.C. 7:27-25.9 until the proposed repeal or amendment of that section is promulgated and operative.

A public hearing was held on August 5, 1992 to provide interested parties adequate opportunity to present testimony on the proposed amendments and new rules. The comment period closed August 12, 1992. The Department received written testimony from 17 persons, six persons presented both written and oral comments and one person presented only oral testimony at the public hearing. The commenters were as follows:

1. Fred Anderson, Exxon Company
 2. James Benton, New Jersey Petroleum Council
 3. Dr. Brian C. Davis, Sun Company, Inc.
 4. John R. Galloway, The Chevron Companies
 5. Patrick B. Henretty, Mobil Oil Corporation
 6. Wendy L. Hileman, British Petroleum
 7. Donald L. Hoven, Hackensack Water Company
 8. Stanley R. Lane, M.D., Medical Society of New Jersey
 9. Edward Lloyd, Esq., Rutgers Environmental Law Clinic
 10. Curt Macysyn, Fuel Merchants Association
 11. Matthew Mara, GATX Terminals Corporation
 12. Mike Ranshaw, Citgo Petroleum Corporation
 13. Peter H. Rodgers, Varet, Marcus & Fink P.C.
 14. Joseph Salomon, Department of Human Resources, Paterson, NJ
 15. William Sullivan, Esq., Rutgers Environmental Law Clinic
 16. Patrick Thompson, New York Merchantile Exchange
 17. Lauren Warner, Manchester Township Environmental Commission
 18. Dr. Elaine B. Winshell, Fair Lawn Environmental Commission
- The number(s) in parentheses after each comment corresponds to the commenter numbers above.

N.J.A.C. 7:27-25 General Comments

1. COMMENT: The Chairman and Board of Trustees of the Environmental Committee of the Medical Society of New Jersey (MSNJ) support the Department's rule development objective on oxygenated fuels. MSNJ states that from a medical viewpoint the case for oxygenated fuels is very strong. In New Jersey, at times, there are very high levels of carbon monoxide which directly relate to vehicular pollution. MSNJ is very concerned about the health effects of carbon monoxide as this substance causes respiratory, circulatory, cardiovascular, and neurological problems.(8)

RESPONSE: The Department appreciates the support of MSNJ for the oxygenated fuels rule proposal.

2. COMMENT: The Fairlawn Environmental Commission requests that the Department conduct periodic (at least annual) meetings within each of the two control areas of the State. Implementation of this fuels regulation will occur over several years, and its effectiveness should be evaluated on an annual basis.(18)

RESPONSE: The purpose of the oxygenated fuels program is to enable the State to make progress toward attainment of the NAAQS for carbon monoxide (CO). The Department, through its network of ambient air quality monitors, measures air quality on a continuing basis. This data will be used to determine how effectively progress is being made toward attainment of the NAAQS for CO. The Department issues annual Air Quality Reports which will reflect the effectiveness of this program in the context of the State's overall progress in meeting the NAAQS for CO. The Department would be glad to meet with the Fairlawn Environmental Commission or other concerned agencies on this. Such a meeting can be arranged by contacting the Department's public outreach program at 609-292-3225 or by writing to:

Director, Communications
Department of Environmental Protection
and Energy
CN 402
401 East State Street
Trenton, NJ 08625-0402

3. COMMENT: Based on the data provided, there appears to be a downward trend in CO in New Jersey. This may be due to greater combustion efficiency of newer cars. To what extent has the Department factored this trend into its proposed regulation?(18)

RESPONSE: New technology vehicles have indeed helped to reduce the number of CO violations in New Jersey. However, CO violations still occur, due primarily to the fact that the reduced per-vehicle emissions from the cleaner vehicles have been offset by an increased number of vehicle miles traveled (VMT) per year, per vehicle, by an increase in the number of vehicles registered and operated, and by the congested areas in New Jersey. To respond to the persistence of CO violations, and as a contingency against increases in VMT overtaking the benefits of cleaner vehicles, this oxygenated fuels program is part of an overall strategy designed to lower the CO emissions inventory from motor vehicles.

4. COMMENT: We would like to see a much greater commitment on the part of the State concerning the availability of public transportation as a means of reducing CO levels, given that New Jersey has a higher vehicular use than many states, and since the Department estimates that 80 percent of the CO is derived from automobiles.(18)

RESPONSE: The Department, in coordination with the Department of Transportation, is currently developing and implementing other control strategies to reduce New Jersey's CO and ozone levels, including strategies that facilitate expanded reliance on public transportation.

5. COMMENT: Use of ethanol and methyl tertiary butyl ether (MTBE) as fuel additives in order to reduce CO levels may result in trading a reduction in one pollutant (CO), for increases in two others (ozone and oxides of nitrogen) due to increased fuel volatility caused by ethanol.(18)

RESPONSE: The oxygenated fuels program is a winter-time carbon monoxide control strategy. The use of oxygenates such as ethanol blends in gasoline during the program months, October 1 through April 31, should not adversely impact the attainment of the NAAQS standards established for other criteria pollutants.

6. COMMENT: The City of Paterson commends the State for its efforts in trying to reduce ambient CO fuels. Cities such as Paterson, that are classified as being in nonattainment by the EPA for CO levels which exceed 12.7 ppm, will greatly benefit from this program in the long run as air pollution (mainly in the form of CO) will be reduced in the City from vehicular sources. A study conducted in 1982 by the Passaic County Planning Board identified 20 potential "hotspots" in Paterson where one could find elevated levels of CO. Paterson, with a population of 140,891 (1990 Census) will possibly see a 15 percent to 20 percent reduction of ambient CO levels as a result of these proposed rule reductions.(14)

RESPONSE: The Department appreciates the support of the City of Paterson for the oxygenated fuels rule proposal.

7. COMMENT: Two commenters commended the Department for proposing the oxygenated fuels rule in a timely manner and urged the Department to proceed with all reasonable haste, to make sure that the rules are adopted by September 2 and effective on November 1. Consistent with Clean Air Act Section 211(m) and EPA's proposed guidance, the effective date of this regulation should be November 1 in 1992. Delays and uncertainty impose costs on the market. It requires from six weeks to three months for suppliers to have the new fuel available at retail outlets. Not having the rules in place could result in confusion and inadequate planning which could bring about supply shortages late in the season.(3, 16)

RESPONSE: The Department appreciates this support and acknowledges the importance of timely adoption of these rules.

8. COMMENT: Two commenters expressed concern in regard to the New York Department of Environmental Conservation's recent announcement that oxygenate regulations for New York will not be complete until early in 1993. Since New York, New Jersey and Connecticut share a CMSA, this situation has the potential to cause severe financial hardship on many marketers in the area. Suppliers in New Jersey will be marketing a more expensive oxygenated fuel in the face of lower fuel prices in neighboring New York. This situation increases the incentive for bootlegging non-oxygenated product into New Jersey. In ad-

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dition, the commenter states that drivers who have the opportunity to purchase gas in either state will consider not only the cost differential but the miles per gallon reduction imposed by oxygenated fuel. Thus tax revenues will be cut and New Jersey's efforts to reduce CO will be less effective than planned. It is to New Jersey's benefit to have the CMSA function as a unit.(6, 16)

RESPONSE: The Department has conveyed these concerns to the New York State Department of Environmental Conservation (NYSDEC). NYSDEC is looking into expediting their rulemaking process.

9. COMMENT: Two commenters urged the Department to work with its counterparts in New York and Connecticut to ensure that the oxygenated fuels program is introduced in the entire New York CMSA at the same time.(2, 16)

RESPONSE: The Department has been working very closely with NYSDEC and the Connecticut Department of Environmental Protection (CTDEP) in the development of the oxygenated fuels program. The agencies in all three states are cognizant of the advantages of initiating the oxygenated fuels program throughout the CMSA within the same time frame.

10. COMMENT: Three commenters commended the Department for providing the opportunity for informal discussion of the rule, as well as for formal comment at the public hearing. Not only does this practice provide a way of bringing information into the rulemaking process during the developmental period, but it also helps industry prepare to meet the requirements for compliance. They encouraged the Department to continue the practice with other rules.(2, 3, 10)

RESPONSE: The Department views public participation and input crucial in the development and implementation of new rules. The Department appreciates the input it received from the regulated community and others during the development of this rule proposal and looks forward to continuing this practice in the future.

11. COMMENT: Failure to meet the EPA requirements for carbon monoxide may result in the imposition by the Federal government of sanctions which could result in the loss of Federal Highway Funds. This loss would be felt not only by the State, but also by local governments who, in turn, receive funding from the State and who also may have highways in need of repair.(14)

RESPONSE: The Department is proceeding in good faith to implement the carbon monoxide program requirements of the Clean Air Act. A state is subject to sanctions only if it fails to comply with the submission and implementation requirements of the Act. See 42 U.S.C.A. 7509.

12. COMMENT: Ethanol represents, during this initial period of the oxygenated fuels program, as much as half of the available oxygenate in the United States. Whatever can be done to ensure that ethanol reasonably could be used as an oxygenate would be very helpful in ensuring an adequate supply of oxygenate.(3)

RESPONSE: In order to minimize costs incurred by the oxygenated gasoline program and at the same time allow for an adequate supply of oxygenates, the Department has allowed for the use of oxygenate blends containing a minimum of 2.7 percent by weight and up to 3.5 percent by weight oxygen content in gasoline. Gasoline blended with ethanol at a level of up to 10 percent by volume or maximum 3.5 percent by weight oxygen content is allowed for use in New Jersey.

13. COMMENT: If ethanol cannot compete as an oxygenate unless it enjoys year-round demand and qualifies for a Federal excise tax credit, then the Department should not make a judgement that MTBE is a more expensive oxygenate than ethanol. MTBE prices typically are as much as one-third lower than ethanol prices. Ethanol prices reflect a Federal subsidy to which we all contribute, and therefore ethanol does not compete with MTBE on a level playing field.(5)

RESPONSE: The 1991 oxygenated fuels program report published by the Colorado Department of Health documents that wholesale MTBE prices were significantly higher than wholesale ethanol prices. Ethanol does enjoy a Federal excise tax credit. The lower cost of ethanol relative to MTBE may well be a consequence of this tax credit. The end result for the oxygenate consumer, however, is that ethanol is a less expensive oxygenate.

14. COMMENT: One commenter expressed a preference for the use of ethanol whenever possible over the use of MTBE. MTBE production is a petrochemical based process, whereas ethanol is a biologically based process. Aside from promoting a less polluting manufacturing process, ethanol production would be exclusively a domestic product with the potential of bettering the lot of many farmers who produce corn crops used in the production of ethanol.(17)

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RESPONSE: While individual gasoline producers or consumers may, for a variety of reasons, prefer the use of one oxygenate over others, the Department does not, through these rules, dictate which oxygenate should be used.

15. COMMENT: One commenter asked if the processing of MTBE is safe and what the by-products of the MTBE manufacturing process are.(17)

RESPONSE: MTBE, which stands for methyl tertiary butyl ether, is produced from isobutylene and methanol. It is the Department's understanding that the manufacturing processes of MTBE are not different from any other oil refining processes. EPA has approved the use of MTBE as an oxygenate and MTBE is not expected to have a deleterious effect on the environment or on human welfare at the levels mandated by the CAA.

16. COMMENT: Many published studies have shown that the use of oxygenates in gasoline can degrade cold-start driveability performance, particularly in older vehicles; the extra oxygen produces a leaner air/fuel mixture, which reduces CO emissions, but can also result in driveability problems such as stalling, hesitation, stumble and backfire. The extent of such problems is highly dependent on specific engine design, gasoline volatility properties, and oxygenate type (that is, MTBE or ethanol). At best, an oxygenated gasoline, refinery-blended, using MTBE (with volatility characteristics matched to typical wintertime hydrocarbon gasoline) will provide driveability comparable to a hydrocarbon fuel. At worst, an oxygenated gasoline, terminal rack-blended, using ethanol may experience poorer cold-start driveability than a typical hydrocarbon or MTBE blended fuel.(5)

RESPONSE: The use of oxygenates in motor vehicle fuels is designed to make the fuel/air mixture more lean (that is, adding more oxygen to the fuel), thus reducing the CO emissions. At the levels required by the proposed amendments and new rules, this enleanment should have no adverse affect on the driveability of most motor vehicles. It is conceivable, though, that in some leanburn technology engines from model years 1975-1980, excessive enleanment during warm-up could occur if the carburetor is not properly adjusted. Proper adjustment should eliminate this effect. But it is this very class of vehicles which will benefit the most from the use of oxygenates in reducing CO emissions, compared to later technology closed-loop (feedback) vehicles.

N.J.A.C. 7:27-25.1 Definitions

1. COMMENT: In respect to the definition of "distributor" at N.J.A.C. 7:27-25.1, one commenter recommended that "any person who is an employee of, or merely serves as a common carrier or private trucking entity providing transportation service for, such supplier" be excluded from the term.(5)

RESPONSE: The Department has determined not to exempt common carriers, including trucking firms and their employees, from the rules. These individuals are also responsible for ensuring that all the gasoline leaving the refinery, import facility, blending facility or distribution facility during a control period meets the applicable standards and is accompanied by appropriate documentation.

2. COMMENT: In respect to definitions pertaining to persons involved in the petroleum marketplace in N.J.A.C. 7:27-25.1, one commenter advocated, for consistency, using the definitions used in the Motor Fuels Tax statute. This commenter provided the Department with a copy of these Motor Fuels Tax statute definitions for the following terms: distributor, gasoline jobber, wholesale dealer, retail dealer, importer, storage facility operator, exporter, and transporter.(10)

RESPONSE: The Department believes that using the definitions contained in the Motor Fuels Tax (MFT) Statutes would broaden the terms contained in the proposed rules and cause the substance of the provisions to exceed the intended scope of the rules. The definitions contained in the MFT Statutes address all fuels, not just gasoline. Use of the terms would require the Department not only to incorporate the terms but also to rewrite the sections located throughout the text in which the terms are used to indicate the more limited application intended in these rules. Such extensive rewriting is not practical nor is it necessary to accomplish the purposes of these rules particularly since these rules do not relate to the tax determinations involved in the MTF statutes.

3. COMMENT: In respect to the definition of "oxygenate blend" at N.J.A.C. 7:27-25.1, one commenter recommended specifying a minimum oxygen content of 2.0 percent in the definition of the term. The commenter pointed out that this minimum oxygen content specification would be consistent with that specified at N.J.A.C. 7:27-25.9, Variance for contemporaneous averaging.(5)

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RESPONSE: The Department believes specifying a minimum oxygen content of two percent in the definition of oxygenated blend is inappropriate. Different minimum oxygenate levels apply within different contexts. These are best specified in the context in which the term is used.

4. **COMMENT:** One commenter advised against the use of the acronym "OPRG" in the term "oxygen program (OPRG) control period" as proposed at N.J.A.C. 7:27-25.1. This commenter pointed out that "OPRG" as used in the Clean Air Act refers to the Federal "Oxygenated Fuels Program Reformulated Gasoline," not to the state "oxygenated fuels program." The Federal reformulated gasoline program will be implemented starting in January, 1995, during the winter in areas which are nonattainment for both ozone and CO.(5)

RESPONSE: The Department agrees that EPA developed the acronym "OPRG" for use in its reformulated gasoline rules. Use of the acronym in a state oxygenated fuels rule could convey unintended connotations, could cause confusion, and therefore is inadvisable. The Department has therefore deleted this acronym from the adopted rule.

N.J.A.C. 7:27-25.3 General provisions

1. **COMMENT:** The Fuel Merchants Association (FMA) states that a single control period for the entire State makes sense from an environmental standpoint. Because the Department is regulating the type of fuel which is placed into mobile sources, the impact of the oxygenated fuels program will be felt on both sides of the dividing line between the northern and southern control areas. The control period in the northern control area is three months longer than the control period in the southern control area. During those three months, price is expected to be the overriding factor in determining where someone would buy gasoline. The likely scenario is that motorists will fill up their tanks in the southern control areas where gas prices would be less expensive and drive up to the northern part of the State where the impact of their emissions will be felt. The environmental integrity of the program would be compromised. The FMA advocates a single control period for the entire State in order to eliminate confusion and bring uniformity to enforcement.(10)

2. **COMMENT:** Chevron U.S.A. Products Co. sees no problem in having two different control areas and control periods in the State.(4)

3. **COMMENT:** One commenter supported having different control periods for different non-attainment areas of the State, although he recognized that it might be administratively more convenient to have the same rules for the whole State. Treating the northern and southern control areas distinctly will not only aid in keeping costs down for the citizens of New Jersey, but it will also aid in conserving oxygenate. The two different control areas fit, geographically, existing gasoline distribution patterns reasonably well. His company's analysis suggests that during the first year or two of the program and perhaps again in 1995, the supply and demand for oxygenate, locally, nationally, even worldwide, will be very close to being in imbalance. And so the conservation of oxygenates becomes a very real issue in terms of having enough supply. Having two different control periods is a very real help in this regard.(3)

RESPONSE TO COMMENTS 1, 2, AND 3: The Department recognizes that having two different control areas, each with a control period of a different length, imposes additional cost and inconvenience on certain affected individuals. Furthermore, it is generally the Department's preference to have Statewide regulations that impose a uniform set of standards and requirements throughout the State. However, because parts of New Jersey are in two different Consolidated Metropolitan Statistical Areas (CMSAs), and because these two CMSAs are prone to high CO concentrations for different portions of the year, Clean Air Act mandates compel New Jersey to have two different oxygenated gasoline control areas, each with a control period of a different length.

The Clean Air Act at Section 211(m) requires that, for CO nonattainment areas located in a CMSA, the oxygenated gasoline control areas must include the entire CMSA. Because northern New Jersey counties are included in the New York-Northern New Jersey-Long Island CMSA and southern New Jersey counties are included in the Philadelphia-Wilmington-Trenton CMSA, New Jersey must have two oxygenated gasoline control areas, one for each of these CMSAs.

The length of the control period for a given CMSA is established by EPA. The Clean Air Act at Section 211(m) mandates that EPA include in the control period "the portion of the year in which the area is prone to high ambient concentrations of carbon monoxide." As the New York-Northern New Jersey-Long Island CMSA is prone to high ambient concentrations of carbon monoxide during more of the year than is the Philadelphia-Wilmington-Trenton CMSA. EPA has established a control

period of seven months for the New York-Northern New Jersey-Long Island CMSA and a control period of four months for the Philadelphia-Wilmington-Trenton CMSA.

4. **COMMENT:** The Department has argued that "extending the control period in the Southern oxygen program control area for three months could likely subject gasoline consumers in the southern part of the state to higher gasoline prices for those three months."

This is inconsistent with the Department's intent to include counties that are in attainment for CO in the regulated control areas. Why are Sussex, Hunterdon and Warren Counties included in the Northern Control Region, thereby subjecting residents of those counties to higher gasoline prices for seven months; and why leave Cape May and Cumberland Counties included in the Southern Control Region, causing the residents there to pay higher gas prices during a four month period? No portion of these counties are considered "nonattainment" areas. Cost calculations using estimates from stations supplied by Fuel Merchant Association members show the increased cost to consumers to be over \$9 million. This does not include dealer direct or company operated stations in these five counties, so the cost would far exceed this number.(10)

5. **COMMENT:** One commenter questioned whether it is appropriate to include Bergen County (which had a single CO exceedance in 1991 in the municipality of North Bergen, none in 1990, and either slight or no exceedances in 1989 and 1988, and no exceedances in 1987) with New York City (classified as a high moderate CO non-attainment area). As a consequence, oxygenated fuel is required in Bergen County for the full seven months of the year that it is required in New York City. In view of the economic impact to our residents and businesses, we believe that placing Bergen County (and perhaps even each of the remaining counties included in this NYC region) in the four month program is more reasonable. The effectiveness of this could be evaluated over time and the annual fuel additive period could be extended if necessary, in view of the 1995 deadline for New Jersey to achieve the national ambient air quality standard for CO.(18)

6. **COMMENT:** Due to the adverse impacts on consumers and on vehicle emissions of nitrogen oxides and toxics, New Jersey should not require oxygenated gasolines in locations where they are not required under Clean Air Act Section 211(m). Section 211(m)(2) requires oxygenated gasoline only in CMSAs containing certain CO non-attainment areas, and Section 211(m)(6) states that nothing in Section 211 shall be interpreted as requiring an oxygenated gasoline program in CO attainment areas. Clean Air Act Section 211(c)(4) prohibits state regulation of fuels which are different than EPA's requirements except where EPA finds that such a state control is "necessary to achieve the national primary or secondary ambient air quality standard which the plan implements." EPA may not find that oxygenated gasoline is necessary to meet the national ambient air quality standard for carbon monoxide in a CO attainment area. Oxygenated gasolines have adverse effects on consumers and on vehicle emissions of nitrogen oxides and toxics. Therefore, oxygenates should not be required in a location where they are not necessary or during any period of time when an area does not exceed the ambient air quality standard for carbon monoxide. Congress made the geographic scope of the program very clear in Clean Air Act Section 211(m)(2). All states containing CO non-attainment areas should follow this guidance and not extend the program statewide when it is unnecessary or require oxygenated gasoline when an area does not exceed the CO standard. Extensive experience in the seven areas which already have oxygenated gasoline programs shows that gasoline suppliers are capable of insuring that oxygenated gasoline can be supplied during the control period in a control area while providing conventional gasoline in areas which do not have a carbon monoxide air quality problem.

In summary, the State of New Jersey should not require oxygenated gasolines to be used outside of those areas where it is necessary under Clean Air Act Section 211(m).(4)

7. **COMMENT:** Both the proposed control areas and control periods are essentially consistent with pending EPA guidance. The only exception is the addition of Warren, Atlantic and Cape May counties to the program, which by EPA definition are in attainment. Mobil supports the additions, as it makes the entire State require oxygenated fuels, thus simplifying supply and pricing concerns.(5)

RESPONSE TO COMMENTS 4, 5, 6, AND 7: These commenters have raised the issue of whether Sussex, Bergen, Cumberland, Warren, Atlantic, and Cape May Counties should be subject to the oxygenated fuels program.

Sussex and Bergen Counties lie within the New York-Northern New Jersey-Long Island CMSA, and Cumberland County lies within the

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Philadelphia-Wilmington-Trenton CMSA. Both CMSA's were delineated by EPA in accordance with 42 U.S.C.A. 7545(m). The Clean Air Act at Section 211(m) requires that if any part of an applicable CMSA or Metropolitan Statistical Area (MSA) is subject to the oxygenated fuel program, then the oxygenated gasoline control areas shall include the entire CMSA or MSA. As areas within both the New York-Northern New Jersey-Long Island CMSA and the Philadelphia-Wilmington-Trenton CMSA are classified respectively as high moderate and low moderate nonattainment areas, all of the counties within each of these CMSAs, including Sussex, Bergen, and Cumberland, must be included in the oxygenated fuels program.

Although Warren County is not part of the New York-Northern New Jersey-Long Island CMSA, these rules treat Warren County as if it were part of that CMSA. To a significant degree, the major roads and highways of Warren County serve as a corridor system which feeds commuter and commercial traffic into the northern oxygen program control area on a daily basis. The Department has determined, therefore, that to ensure achievement of the NAAQS for CO in the northern oxygen program control area, Warren County should also be included in the oxygenated fuels control area. In reaching this determination, the Department was satisfied that inclusion of Warren County in the northern oxygen program control area was generally compatible with the fuel distribution system in northern New Jersey. It also recognizes that inclusion of Warren County was advisable for the purposes of administrative and enforcement simplicity and regulatory uniformity throughout northern New Jersey, as well as for the beneficial effects use of oxygenated fuels would have on air quality in the region.

Atlantic and Cape May Counties are not part of the Philadelphia-Wilmington-Trenton CMSA, but instead comprise a separate Metropolitan Statistical Area (MSA). One area within this MSA, the City of Atlantic City, is designated by EPA as nonattainment for the CO standard. The Clean Air Act therefore mandates that the Department develop a the State Implementation Plan which includes control measures for CO that will ensure the attainment and maintenance of the CO standard for this MSA. Although adequate ambient air quality data has not been available for EPA to classify Atlantic City as to the degree of its nonattainment, modeling studies performed as part of permit applications in 1989 and 1990 have identified locations within Atlantic City where the CO standard may well be in danger of being exceeded. Furthermore, the Department recognizes that this MSA is a growth area of the State. In view of these factors, and after due deliberation, the Department has determined that inclusion of Atlantic and Cape May Counties in the oxygenated fuels program is necessary to ensure attainment and maintenance of the CO standard in this MSA.

8. COMMENT: One commenter questioned why only urban areas of Passaic County were singled out for these new controls, whereas Bergen County was included in its entirety.(18)

RESPONSE: Although, based on the ambient air quality data available to EPA, all of Bergen County and only urban areas within Passaic County have been designated nonattainment for CO, both counties in their entirety are subject to the oxygenated fuels program. Both counties are geographically part of the New York-Northern New Jersey-Long Island CMSA. The Clean Air Act at Section 211(m) specifies that, if any CO nonattainment area is located within a CMSA, the oxygenated gasoline control area must include the entire CMSA.

9. COMMENT: Two oxygen program control areas in the State may be a disadvantage to the people in the northern half of the State. These people could possibly be paying higher prices for gasoline, for a longer period of time. The State as a whole should share the whole price of fighting air pollution.(14)

RESPONSE: If, as anticipated, oxygenated fuels prove to be more expensive, consumers in the northern control area will pay the higher price for oxygenated fuels for three more months per year than consumers in the southern control area. The Clean Air Act specifies that the duration of the control period must be based on the period of the year when the area is prone to unacceptably high ambient CO levels. As the duration of the CO problem is greater in the northern control area, oxygenated fuel must be sold for a greater period of the year in the northern control area.

10. COMMENT: Gasoline in the Southern CMSA should not be required to be oxygenated in October, March and April if it is not necessary. However, to prevent the negative effects of having significantly less expensive gasoline prices in the Southern CMSA, a \$.03 surcharge should be added to gasoline sold at facilities in the Southern CMSA during October, March and April. This fund (approximately \$8 million) could be used to purchase Open Space in the Southern CMSA,

particularly in areas where CO levels are highest, such as Atlantic City, Burlington City, Penns Grove, Camden and Trenton.(17)

RESPONSE: The purpose of this rulemaking is to establish an oxygenated fuels program to enable CO nonattainment areas in the State to make progress toward attainment of the national ambient air quality standard for CO. Establishing a fund for any purpose, including the purchase of Open Space, is, therefore, outside the scope of this rulemaking.

11. COMMENT: Six southern New Jersey counties are included in the Consolidated Metropolitan Statistical Area which includes the Philadelphia-Camden County, PA-NJ, carbon monoxide (CO) nonattainment area. The Pennsylvania Environmental Quality Board has asked EPA whether the control period for the Pennsylvania portion of this CMSA could be no longer than two months in duration.

Under Clean Air Act Section 211(m)(2)(B), states must require oxygenated gasoline only "during the portion of the year in which the area is prone to high concentrations of carbon monoxide." EPA is required to establish guidance on a control period of "not less than four months," but can reduce it at the request of a state if the "state can demonstrate that because of meteorological conditions, a reduced period will assure that there will be no exceedances of the carbon monoxide standard outside of such reduced period." EPA's proposed guidance for a four-month control period extends from November 1 through February 29. However, due to meteorological conditions, the Philadelphia-Camden area had exceedances only during the month of January 1989. No exceedances have occurred in November, December or February.

EPA's Aerometric Information Retrieval System Violation Day Count for the period of January 1, 1988 through September 30, 1991 indicates that exceedances of the air quality standard for CO have occurred only on two days in January 1989 in Philadelphia and Camden as follows:

Location	Date	Maximum 8-Hr. Running Avg, ppm
Camden	1/23/89	13.1
	1/24/89	14.7
Philadelphia	1/23/89	9.7 & 11.9
	1/24/89	13.0 & 13.9

These EPA data also show that there have not been any exceedances in either Philadelphia or Camden since January, 1989.

In view of the above information, a commenter recommended that the State of New Jersey adopt a control period for the six southern counties which is consistent with the Pennsylvania portion of the CMSA and make an identical request to EPA for a two-month control period. A reduced control period will help reduce:

1. The demand on a tight national supply of oxygenates;
2. The adverse gasoline cost and fuel economy impacts of an oxygenated gasoline program on the consumers of New Jersey; and
3. The increased emissions of nitrogen oxides and toxics associated with oxygenated chemicals.

Oxygenated gasoline should not be required at times of the year when an area is not prone to exceedances of the air quality standard for carbon monoxide. This will unnecessarily increase the consumer cost of gasoline by five to 10 cents per gallon due to:

- A two to five cents per gallon increase in the cost of supplying gasoline, and
- A three to four percent reduction in vehicle fuel economy, which represents a three to five cents per gallon consumer cost increase based on the 1990-91 national average retail cost of gasoline of about \$1.20 per gallon.

Requiring oxygenated gasoline when it is not needed would represent a benefit-free cost to the consumers of New Jersey. It also would increase vehicle emissions of nitrogen oxides and aldehydes. In the case of ethanol blends, total benzene emissions from the vehicle also are increased.(4)

RESPONSE: The EPA may approve a request from a state for a control period of less than four months only if the state can demonstrate that, because of meteorological conditions, a reduced period will assure that there will be no exceedances of the carbon monoxide standard outside of such reduced period. EPA has responded to Pennsylvania's inquiry regarding a two month control period and has determined, after reviewing the air quality data and other factors, that the control period for the southeast Pennsylvania area should be November 1 through February 29 and not a two month period. As the EPA has considered this issue and reached a final determination, the Department sees no justification for reopening this matter again and will therefore retain the four month control period for the Southern control area.

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12. COMMENT: One commenter urged New Jersey to harmonize its regulations with those of all States sharing the same CO non-attainment areas since all efforts to minimize differences are helpful.(3)

RESPONSE: The Department is committed to working with its neighboring states in developing regulations. New Jersey has worked closely in the development of the oxygenated fuels program with the states that are part of the Philadelphia CMSA and the New York City CMSA. In many respects, the Department's oxygenated fuels program is similar to those being developed in these neighboring states. There are some differences among the various states' rules. For example, Maryland, part of the Philadelphia CMSA, and New York and Connecticut, are proposing a rule requiring every gallon of gasoline sold to meet the 2.7 percent oxygen content standard (a "per-gallon" program). While New Jersey's rule is fundamentally a per-gallon program, it does contain contemporaneous averaging provisions that allow compliance with the standard through averaging at the retail or wholesale purchaser-consumer level. Pennsylvania, however, is planning to adopt into a broad credit averaging program where the 2.7 percent standard is met by averaging at the terminal level.

13. COMMENT: The Department has properly established a seven-month control period in the Northern CMSA and a four-month control period in the Southern CMSA. However, in its modeling and measurement of the effectiveness of the oxygenated fuels program, the Department should consider the effect of emissions produced by vehicles which regularly cross the control region boundary. Without the recognition of this actuality, an inaccurate picture will be drawn of the effect of oxygenated fuels on attainment.(9)

RESPONSE: The Department recognizes that the mobility within the region may dilute the effectiveness of the oxygenated fuels program, as vehicles using non-oxygenated fuels pass through control areas. However, progress toward the CO standard will be measured by monitors that sample the actual ambient air. Because the method used is based on actual concentrations, an accurate picture will be obtained which will take into full account the effects of vehicles from outside the control area.

14. COMMENT: EPA recently proposed that the oxygenated gasoline programs in all areas begin on November 1, 1992. For subsequent winter seasons, the oxygenated gasoline programs could begin earlier than November 1. The American Petroleum Institute (API), in written comments to EPA, supports EPA's November 1, 1992 start date proposal for all programs.(2)

RESPONSE: New Jersey's oxygenated fuels program will become operative on November 1, 1992. In subsequent years of the program, the individual control periods set forth at N.J.A.C. 7:27-25.3(c)1 will be fully effective.

15. COMMENT: N.J.A.C. 7:27-25.3(e) is the EPA "substantially similar" rule. For purposes of better clarification and highlighting of this rule one commenter recommended that it be moved to subsection (c) and recodified as (c)3i and ii.(1)

RESPONSE: The Department has considered the suggested recodification but has found the suggested alternative no clearer than the proposed organization of the rule. The provision has therefore been adopted as proposed.

16. COMMENT: Four commenters pointed out that N.J.A.C. 7:27-25.3(c) and 25.3(e) could be interpreted to prohibit the storage or transportation of non-oxygenated gasoline within New Jersey during control periods. They recommended that wording be added which would allow the transportation and storage of non-conforming fuels which may either (1) be intended for the further addition of oxygenates at a facility before delivery to a retail store or wholesale purchaser-consumer, or (2) be intended for further transportation or distribution to facilities outside of the control area. EPA's guidelines to the states on oxygenated fuels programs provide for enforcement of the oxygen standard when gasoline leaves a terminal. Non-conforming gasoline could, therefore, be received into a terminal in a non-attainment area with that product being designated as non-conforming. This would allow the non-conforming product to be (1) blended with oxygenate to produce oxygenated gasoline, or (2) shipped as non-conforming gasoline to attainment area locations.

The commenters argue that the rule, as proposed by the Department, would not allow this flexibility and would adversely affect the supply of gasoline to New Jersey as follows:

1) Since only oxygenated gasoline could be delivered into New Jersey, the number of sources for gasoline supply would be reduced. (Non-oxygenated gasoline could not be delivered into the State and have

oxygenate added to it to produce oxygenated gasoline). This would reduce competitive pressures in the State with the attendant risk of higher cost to New Jersey consumers.

2) Gasoline suppliers have stored MTBE in New Jersey during the last year based on drafts of the EPA guidelines to states and in anticipation of blending oxygenated gasoline during the control period. If non-conforming gasoline is not allowed in New Jersey, the stored oxygenate cannot be utilized as planned to meet the oxygenated gasoline demand.

3) As currently proposed, the rule would prohibit blending of ethanol at the terminal level, and therefore eliminate a significant source of oxygenate which may be necessary to meet oxygenated gasoline demand.

4) During October, March and April, oxygenated gasoline will be required in the northern New Jersey control area but not in the southern New Jersey control area. Non-oxygenated gasoline must be allowed in New Jersey to supply the southern area, while the northern gasoline is still controlled.

In order to avoid these reductions in gasoline supply to consumers in New Jersey, N.J.A.C. 7:27-25.3(c) should be revised to allow refiners, importers, blenders and distributors to import, store, transport, offer for sale, sell, or exchange in trade non-conforming gasoline in New Jersey if the non-conforming gasoline is properly segregated and marked and the non-conforming gasoline is either (1) intended for sale in a non-controlled area, (2) intended for sale outside of the control period, or (3) intended for blending with oxygenate to meet oxygenated gasoline requirements.(5, 12, 13, 16)

RESPONSE: The Department agrees that N.J.A.C. 7:27-25.3 as proposed does not convey with adequate clarity the occasions on which non-conforming fuel may be stored or transported in New Jersey. Since it was never the Department's intent to have the oxygen content requirements of the rule apply on these occasions, subsection (f) has been added in the adopted rule to provide this clarification.

17. COMMENT: In respect to N.J.A.C. 7:27-25.3(c), the commenter argues that the terms "provide" and "store" be replaced with the word "purchase." This commenter argues that when a wholesale purchaser-consumer purchases gasoline in September and does not use all of it by the end of the month it is too expensive and inefficient to dispose of as "waste."

"Except as provided for at N.J.A.C. 7:27-25.9 and 25.10, no refiner, importer, blender, distributor, wholesale purchaser-consumer, or retailer shall purchase, offer for sale, sell, transport, import, or exchange in trade gasoline for use in New Jersey, unless . . ." (7)

RESPONSE: It is the responsibility of persons subject to the rule to plan ahead so that as of the first day of the control period gasoline "provided, stored, offered for sale, sold, transported, imported, or exchanged in trade for use in New Jersey" meets the oxygen content standards set forth in this rule. For a person to fail to do so is a violation of the provisions of this rule, and such person is subject to the applicable penalties set forth at N.J.A.C. 7:27A-3.

N.J.A.C. 7:27-25.4 Recordkeeping and compliance

1. COMMENT: N.J.A.C. 7:27-25.4(a) may be interpreted to mean that every truckload of gasoline leaving a terminal must be tested prior to its release for use in a control area. This would be unreasonable and impractical. It is quite common for more than 200 trucks to be loaded daily at each terminal. Each truck has four compartments, and is likely to carry three grades of gasoline. Laboratory testing of at least three samples per truck would likely require at least 24 hours to complete and would cost about \$100.00 per sample. At \$300.00 per 9,000 gallon truck, this would add over three cents per gallon for testing alone!

In addition, this commenter argues that product movements would virtually stop if each truck had to wait about 24 hours for lab results and only be able to deliver one load per day versus 12 to 20 loads today. Mobil recommends the language in this section be revised to reflect certification testing at the refinery with an adequate paper trail to document oxygen content downstream to the terminals, distributors and retail outlets.(5)

2. COMMENT: Does N.J.A.C. 7:27-25.4(a)1 mean that the gasoline must be tested prior to release from the refinery and then tested again prior to release from the terminal?

If so, the language needs to be changed so that it requires testing only when it leaves the refinery for the following reasons:

Some terminals have only one storage tank for each grade of motor fuel. During product receipts, the tank is feeding to the leading rack at the same time product is being loaded into the tank.

Furthermore, lab test ASTM D4815 will take a minimum of 48 hours turnaround from the time a sample is delivered to the laboratory. This

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would be on a premium price basis. At regular, normal price, the turnaround time is six to seven days.

Finally, the testing is redundant; the refinery test should be sufficient.(1)

RESPONSE TO COMMENTS 1 AND 2: Each specified type of facility is responsible for testing the gasoline leaving its premises. However, N.J.A.C. 7:27-25.4(a) does not require that each shipment or truckload be separately tested. The Department would accept testing done for a tank or other batch, provided that the documentation showed that testing was performed prior to release from a facility provided that the gasoline tested was not altered between the time of the testing and the time of shipment by the addition, subtraction or alteration of fuel components such as commingling, chemical or physical processing or storage prior to its release. In these instances the Department would require that the gasoline be retested.

3. COMMENT: GATX suggests that the Department allow distributors to use a "recipe" to determine oxygen content rather than testing every shipment in every compartment of every truck, and that the proportions of the blend be listed on the bill of lading to serve as a certificate of analysis.

GATX, which operates a 24 hour automated gasoline truck loading rack, was considering inline blending in accordance with an approved "recipe," wherein a metered amount of MTBE would be pumped into a gasoline line used to load gasoline trucks and blended with a gasoline blend stock. GATX intends to rely on what the distributor or the refiner sent regarding that gasoline, to determine the oxygen content of the gasoline blend stock. GATX proposes a totally automated system wherein a computer Accu-Load System meters in and automatically prints out the bill of lading. GATX notes that each gasoline truck usually has about five compartments, and that it is not feasible to test the gasoline in each of the five compartments in a hundred or so gasoline trucks which load out of the GATX facility everyday. In addition, in order to test each compartment GATX would have to open up the dome lids, thus releasing VOC's into the atmosphere.(11, 18)

RESPONSE: The Department requires testing or retesting of gasoline if the oxygen content of the gasoline could have been altered by the addition, subtraction or alteration of the fuel components by commingling, chemical or physical processing or storage prior to the release of the motor fuel to retail outlets or wholesale purchaser consumers. The Department has no basis for concluding that the inline blending described could assure reliably that the oxygen content standards are consistently met. Therefore, it would appear that the Department could not accept the "recipe" approach of inline blending in a gasoline blend stock feed line without requiring testing of each compartment in the delivery vessel prior to its release from the facility. The Department does recognize that process methods, such as the "recipe" approach, may be able to be designed, built, and operated in a manner that assures the reliability of achieving oxygen content which conforms with the standard. Therefore, a provision has been added at N.J.A.C. 7:27-25.4(h) which allows refiners, importers, blenders, and distributors to apply to the Department for approval to use such alternative method.

4. COMMENT: At N.J.A.C. 7:27-25.4(a)3, delete the requirement to maintain records which document the type and volume of each oxygenate added to gasoline leaving a facility. In cases of use of fungible grade product, exchange agreements, and/or situations where a terminal receives product from other than normal sources, this information may not be readily available. The critical data, for documentation, is that the product contains at least 2.7 percent oxygenate. It should not matter what type or volume of oxygenate is in the gasoline. This requirement is overly burdensome and unnecessary. Documentation of the total weight percent oxygen and the type(s) of oxygenate should be sufficient.(1, 5, 12)

RESPONSE: The requirement for a facility to maintain records which document type and volume of each oxygenate are consistent with the draft recordkeeping guidance provided to the Department by EPA. This information will facilitate the Department's ability to verify compliance with this rule.

The type of oxygenate present in the fuel must be specified. The Department must ensure that any additive blended in as an oxygenate is one allowed pursuant to federal rules. Furthermore, each retailer must be able to inform any consumer who asks what oxygenates are present in the fuels being dispensed. Therefore, this information must be made available.

The requirement in respect to volume of each oxygenate should read "percent by volume" of each oxygenate. This change has been made

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in the adopted rule. Also in the adopted rule, to ensure that these reporting requirements are not overly burdensome, the recordkeeping requirement is clarified to apply to oxygenates that comprise at least one percent by volume of the gasoline.

5. COMMENT: N.J.A.C. 7:27-25.4(a)3 and (b) requires certification and documentation of the type and volume of each oxygenate added to gasoline. This presents a potential problem in that different companies will be using different oxygenates but most companies utilize common pipelines and common truck carriers to distribute product from the refineries and terminals. The movement of product through these common facilities will pick up "de minimus" or "trace" amounts of various oxygenates. Therefore, the potential exists that if the trace amounts are detected by ASTM 4815, a company would be required to certify and document on invoices, bills of lading or other transfer documents up to 12 different oxygenates even though each is only de minimus or trace amounts. We do not believe this is beneficial to us or the agency and is not the intention of the rule. The labeling requirements in N.J.A.C. 7:27-25.8(b)2 clearly specify that any oxygenate has to be included on the label "if an oxygenate or any combination of oxygenates comprises at least one percent by volume." This same one percent exclusion should also be incorporated in N.J.A.C. 7:27-25.4(a)3 and (b).(1)

RESPONSE: The Department agrees that it was not the intent to include any detectable trace amounts of oxygenates on the documents required pursuant to N.J.A.C. 7:27-25.4(a)3 and (b). The Department has therefore clarified the adopted rule by exempting from these requirements any oxygenate that comprises less than one percent by volume of the fuel.

6. COMMENT: It is not reasonable for the Department to impose a standard variation range other than that of the reproducibility of the test. The standard variation range proposed at N.J.A.C. 7:27-25.4(f) is overly restrictive and not consistently achievable.(5)

RESPONSE: The concern that compliance be within test method reproducibility rather than 10 percent of the standard was considered. However, after discussion with practicing chemists and members of the ASTM-D4815 committee, a 10 percent testing tolerance was deemed appropriate. Reference: Basis & Background memorandum To: Tony McMahon, From: John Jenks.

7. COMMENT: The Clean Air Act states that the 2.7 percent oxygen content standard is "subject to a testing tolerance established by the Administrator" (42 U.S.C. 7545(m)(2)). To date, a testing tolerance has not been adopted by the EPA Administrator. Hence, the Department cannot adopt this variation allowance proposed at N.J.A.C. 7:27-25.4(f) prior to action by the EPA Administrator. After the EPA Administrator acts, the Department may adopt a regulation consistent with the EPA regulation; or the Department could adopt a provision in these regulations which automatically adopts the testing tolerance which ultimately is adopted by the EPA Administrator.(9)

RESPONSE: The commenter's suggestion that the Department cannot adopt a testing tolerance in the absence of the EPA Administrator adopting a testing tolerance is rejected by the Department. The Department shall make specifications in regulations when guidance from the EPA is lacking, and shall review the EPA recommended specifications to insure they are consistent, achievable, practical, and meet New Jersey's needs.

8. COMMENT: Many oxygenates can be utilized in gasoline. These proposed regulations list 11 possible oxygenates at N.J.A.C. 7:27-25.4(f). However, it is apparent that the Department expects two oxygenates, ethanol and MTBE, to be the primary oxygenates marketed for blending into fuels in New Jersey. See, for example, page 11 of the Summary (24 N.J.R. 2390), to wit: "The Department anticipates that the majority of the oxygenates marketed for the blending to produce oxygenated fuels in New Jersey will be one of two types: ethanol . . . or . . . MTBE . . ." The Department should provide the basis for the exclusion of the other oxygenates, since opportunities should be created for any additives which improve air quality. In addition, the Department should ensure that distributors who wish to use oxygenates other than ethanol or MTBE are placed on equal footing, at least as far as environmental regulation is concerned, with the ethanol and MTBE industries, so long as the other oxygenates meet the requirements of the oxygenated fuels program.(9)

RESPONSE: The Department is not excluding the use of any oxygenate that meets the Federal requirements for fuel additives. The Department has expressed the opinion that it expects that ethanol and MTBE will be the two oxygenates most commonly selected by fuel suppliers.

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9. COMMENT: The proposed rule allows a ± 10 percent test tolerance. Under the "substantially similar" rule for MTBE, the EPA allows an additional 0.2 tolerance (at the refinery level only) to compensate for "dilution" of the oxygenate while in transit to the control terminal, that is, at the refinery one may blend 2.7 MTBE plus 0.2 for a total of 2.9. This rule should allow such a blending tolerance in addition to any testing tolerance.(1)

10. COMMENT: For enforcement purposes, is the legal limit for gasoline containing MTBE 2.43 to 3.19, that is, 2.7 to 2.9 ± 10 percent? or is it 2.43 to 2.97, that is, 2.7 ± 10 percent? We believe the answer should be 2.43 to 3.19. We recommend that appropriate language be added in this section to clarify the allowable test tolerance. Also, enforcement limits should be specified, comprehending both testing tolerance and specification limits.(1, 5)

RESPONSE TO COMMENTS 9 AND 10: Two commenters asked for clarification on the issue of blending tolerance versus testing tolerance. The two are separate and distinct. Testing tolerance refers to variability allowed due to the impression of the test method for the stated (reported) value of the product. Blending tolerance is a range permitted (by regulation) due to mixing and transportation considerations. For example: the testing tolerance for gasoline that has a regulatory permitted oxygen content value of between 2.7 percent and 2.9 percent is 2.43 percent and 3.19 percent. Enforcement limits are not based solely on testing tolerances and specification limits, but also on documentation records.

11. COMMENT: In view of the very tight tolerance proposed at N.J.A.C. 7:27-25.4(f), is the Department confident of the statistical analysis, as outlined in the memo from John Jenks to Anthony McMahon dated 4/8/92, on which the tolerance range is based?(1)

RESPONSE: The Department has developed the test tolerance requirements contained in this rule with deliberation and care and is confident that the tolerance is appropriate.

12. COMMENT: While the definition of "oxygenate" is satisfactory, Mobil requests that Diisopropyl Ether (DIPE) be added to Table 1 in N.J.A.C. 7:27-25.4, given EPA's allowance of substantially similar oxygenates in the pending EPA guidance. DIPE has the following properties:

Weight fraction oxygen	0.1566
Specific gravity @ 60F	0.7300(5)

RESPONSE: The Department agrees that DIPE is substantially similar and will include DIPE in Table 1.

13. COMMENT: The Department should not limit the testing to the ASTM D4815 method. Any EPA approved test method should be allowed.(5)

RESPONSE: The commenter is concerned that the wording in N.J.A.C. 7:27-25.4(f) is overly restrictive and does not allow the use of other ASTM approved methods. Currently the only approved testing method is ASTM-D4815. Language that permits other test methods to be approved in advance by the Department and/or the EPA is included in the proposed rule (see N.J.A.C. 7:27-25.4(c)2ii).

14. COMMENT: In respect to N.J.A.C. 7:27-25.4(c)2ii and (e)1ii, Mobil recommends that the Department allow implicit approval of any oxygen content test methods as approved by the EPA. This will permit the regulated community to adapt to changes in testing technology as advances occur. These subparagraphs should be amended to read: "Any other method approved in advance by the Department and/or the EPA."(5)

RESPONSE: The Department agrees with this comment and has adopted this language at N.J.A.C. 7:27-25.4(h); however, the method must be approved by both the Department and the EPA.

15. COMMENT: N.J.A.C. 7:27-25.4(g) requires that records and documentation be available for review by the Department or its authorized representative. Due to service station storage limitations and the prevalent use of accountants for daily record keeping, Mobil recommends that the words "within 48 hours" be added to this provision. This time allowance should be made to permit off site record storage.(5)

RESPONSE: The Department believes that is absolutely necessary to have current records and documentation made immediately available for review by its inspectors or authorized representatives. This information is essential in determining whether the gasoline being dispensed during the control period is meeting the oxygenate requirements of this subchapter.

The Department will, however, accept that records of previous years' control periods be made available within five business days from the time of the request.

16. COMMENT: The American Petroleum Institute (API) recommends that registration, reporting and special compliance requirements not be included in oxygenated gasoline programs in "per gallon" areas. These requirements may be applicable in areas with averaging and/or credit trading programs, but should not be required in "per gallon" areas. In addition, if a company decides to comply with the oxygenated gasoline program on a "per gallon" basis in an area that permits averaging and/or credit trading, then reporting and special compliance requirements should not be applicable. When complying on a "per gallon" basis, the API believes that oxygen content compliance can be enforced in a manner that is similar to current RVP and octane procedures.(2)

RESPONSE: The Department has determined that the recordkeeping and reporting requirements in this rule are essential for verifying compliance with its requirements.

N.J.A.C. 7:27-25.8 Labeling

1. COMMENT: A State requirement mandating the labeling of fuel pumps with the name and actual content of each oxygenate in the commercial fuels would be nearly impossible to comply with at the service station level, especially during oxygenate build-up or reduction before or after the control period. Even if each delivery's content is known, complete mixing in winter is not assured. Therefore, concentration by calculation would be unreliable making the labeling of ascending or descending oxygenate levels impossible. New Jersey's compromise requiring the posting of the maximum only is a good one. However, a strange result of this approach of posting the maximum oxygenate content is that if, for reasons of exchange or necessity of supply, a company would need to switch between two oxygenates, in posting the maximum for both of those two oxygenates, the sum of the two maximums may well indeed come above the maximum amount allowed by the Federal provisions. The Department should realize, that although both maximums would be posted, the content of the fuel that would come from the nozzle would be adjusted by a company to make sure it was in compliance with the national standard. That is, the sum on the face of the pump might appear to exceed the maximum allowable oxygen content. From the viewpoint of the average consumer, labeling gasoline pumps with both the oxygenate type and with the maximum oxygen content amounts to putting two labels on the pump one that indicates oxygenated, and another that indicates the type.(3)

RESPONSE: Realizing the potential confusion that could result from posting two maximums (percent by volume) for two oxygenates and having the sum of the two maximums exceed the Federal blending allowance, the Department has reconsidered its position and removed any requirement to label fuel pumps with the type(s) of oxygenate(s) present in gasoline sold during the control periods. N.J.A.C. 7:27-25.8, Labeling, has been revised to address this concern.

2. COMMENT: The value to the consumer of labeling specific oxygenates is questionable.(3, 12)

RESPONSE: The proposed oxygenated fuels rule, as adopted, does not require the labeling of specific oxygenate(s) present in gasoline, as was originally proposed. However, in lieu of this requirement the Department has added a new provision on adoption at N.J.A.C. 7:27-25.3(g) that requires the retail facility or wholesale purchaser-consumer to inform the consumer regarding the type(s) of oxygenate(s) present in gasoline upon the consumer's request. The Department considers this requirement vital to enabling concerned members of the motoring public to have means to find out about the "clean air" characteristics of the fuel and to make an informed purchase of gasoline, should they have preferences as to the type of oxygenate they wish to use.

3. COMMENT: N.J.A.C. 7:27-25.8(b) and (c) mandate labeling requirements which include minimum oxygen content in percent by weight, maximum oxygenate content in percent by volume and identification of oxygenate type, all of which are well beyond the EPA proposed requirements. Displaying higher than 2.7 percent oxygen content by weight on a pump might steer a consumer to purchase the higher oxygenate content gasoline which is not the intent of contemporaneous averaging provisions. Also, the EPA deems there to be no difference among oxygenates based on the "substantially similar provisions." Oxygenate content may be out of a service station's control, since it may receive ethanol blended product one day and MTBE blended product the next. In addition, due to widespread industry use of fungible grade product, information regarding type and volume of each oxygenate present may not be readily available. Minimum oxygen content does nothing to further the consumer's knowledge, and is already specified in the regulations. Two commenters recommended that the Department follow the proposed EPA label

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regulations without adding additional requirements. Another commenter concluded that it should be sufficient for the pump label to show the type(s) of oxygenate present with wording such as "containing" or "with," instead of showing percentages.(1, 5, 12)

RESPONSE: To be consistent with EPA draft guidance, the Department has omitted the requirements to identify in a label on the fuel pump the type of oxygenate in the fuel dispensed, the minimum oxygen content of the fuel, and the maximum oxygenate content of the fuel.

4. COMMENT: The EPA held a workshop on July 30, 1992 regarding the EPA's pump labeling requirements. The EPA advised that the labels must read "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles." EPA indicated that this statement cannot be altered with the insertion of the control period dates within this text. The EPA explained that if the states wish to add information regarding the control dates, the additional language must be added to the beginning or end of the sentence. EPA advised that if the dates were inserted in the middle of the sentence, it would not meet EPA requirements and a second label would be required. Inclusion of control period dates was recommended by the American Petroleum Institute and several refineries; dealers should not have to put on labels and take off labels whenever the control periods change, year after year. A pump label could specify the control period so the label could be permanent and left on the pump all year. One commenter recommended that the Department amend the language at N.J.A.C. 25.8(d) to read "From October through April (north), or from November through February (south), the gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles." This would permit the labels to be in compliance with EPA requirements and remain on the dispenser year round.(1, 2, 5)

RESPONSE: The Department does not require that the control period dates be included as part of the labeling requirements. However, the Department has added language to the adopted rule indicating that individual retailers or wholesale purchaser-consumers may include this information as part of their labels should they wish to. The control period dates, if given, must appear before or after the specified text, as the required language must appear in its entirety, without alteration or addition. However, if an individual retailer or wholesale purchaser-consumer does not wish to include the control period dates on its label, then the label must be removed from the pump at the end of the applicable control period so that fuel purchasers are not misled about the oxygen content of the motor vehicle fuel dispensed from that pump during the "off-control period." This latter requirement is consistent with the proposed rule which established labeling requirements "(d)uring any oxygen control period . . ."

5. COMMENT: At the EPA workshop held on July 30, 1992, the EPA advised that the required print size for the labeling of gasoline pumps has been reduced from 36 point to 20 point. The Department should adopt this revised requirement.(5)

RESPONSE: The Department has accepted EPA's revised guidance on the print size for the labeling of gasoline pumps and has revised its language accordingly.

6. COMMENT: At EPA's July 30, 1992, workshop, EPA agreed that labels can be placed on the upper two-thirds, not just the upper one-third of a gasoline pump. Placing the label on the upper one-third of some types of pumps would actually cover up the displays of the actual price and the gallons dispensed. We recommend that the Department adopt this revised EPA requirement and extend the label area to the upper two-thirds of the dispenser.(5)

7. COMMENT: Item N.J.A.C. 7:27-25.8(f) requires the location of the label to be in the upper one-third of the dispenser. Mobil requests that the Department consider (and has requested the same of the EPA during the appropriate comment period) extension of the label area to the upper one-half to two-thirds of the dispenser, rather than the upper one-third. In some instances, the label would interfere with the customer's view of the pump meters, which on some models cover the upper one-half of the dispenser.(5)

RESPONSE TO COMMENTS 6 AND 7: The Department has accepted EPA's revised labeling guidance and has changed its language to allow labels to be placed in the upper two-thirds of a gasoline pump.

8. COMMENT: The American Petroleum Institute (API) suggests that a sign be allowed to be posted at the retail station or on the pump island rather than requiring a label on each pump.(2)

RESPONSE: Labeling on the vertical surface of each gasoline dispensing device on each side of the device from which gasoline can be

dispensed is a Federal requirement for the oxygenated fuels program and is included also in this rule.

9. COMMENT: Although the FMA is concerned about the requirement regarding signs, it believes that the public should be made aware of the product they are buying. Signs are an effective way of letting the motoring public know that increased gasoline costs are part and parcel of the Clean Air Act of 1990. The FMA, however, urges the Department to be as flexible as possible. The sign requirement attached with the Oxygenated Fuels Program will be in addition to that of the proposed Used Oil Recycling requirements, if applicable. FMA would like to avoid a carnival like atmosphere surrounding these requirements and their impact on the appearance of service stations.(10)

10. COMMENT: The requirement for each wholesale purchaser-consumer to label each gasoline pump or dispensing device in accordance with N.J.A.C. 7:27-25.8 is unnecessary. The burden of this regulation should fall upon the manufacturers and distributors to supply the approved gasoline. The wholesale purchaser-consumer should only have to ensure that the gasoline is legal when purchased, which could be proved by maintaining the required records.(7)

RESPONSE TO COMMENTS 9 AND 10: The labeling requirement for the oxygenated fuels program is a Clean Air Act mandate and the labeling of fuel pumps is a Federal requirement. The Department, in an attempt to provide retailers and wholesale purchaser-consumers flexibility in complying with the regulations, has adopted the minimum EPA labeling requirements as set forth in the draft final labeling regulations dated August 13, 1992.

The used oil recycling rules proposed by the Department on July 6, 1992 at 24 N.J.R. 2383(a) do contain requirements for the posting of signs regarding the collection of used motor oil. See 24 N.J.R. 2385-86, N.J.A.C. 7:26A-6.5. That proposed rule requires that every used oil collection center, which includes every retail service station that "has an active used oil collection tank on its premises," must post a specified sign identifying that location as a used oil collection center. However, that sign is to be posted on "an outside wall of the collection center, or other appropriate location" where it is easily visible and is not required to be placed on each fuel pump. As a result, the Department does not foresee any interference between the used motor oil recycling sign and the individual pump signs required by the oxygenated fuels program.

11. COMMENT: Where non-conforming fuel is being dispensed in accordance with a variance due to a supply shortage, pursuant to N.J.A.C. 7:27-25.10, the label on the pumps dispensing non-conforming fuel, a variance notwithstanding, should clearly inform the consumer that the fuel dispensed from the pump does not meet the requirements under the carbon monoxide reduction program. Therefore, the non-conforming fuel label should state:

"The fuel dispensed from this pump does not meet the requirements of the Clean Air Act but has been permitted to be temporarily distributed due to shortages of fuel which meets Clean Air Act requirements."(9)

RESPONSE: The Department agrees that the language for the fuel pump label should be clarified and has amended the language at N.J.A.C. 7:27-25.10(e) accordingly in the adopted rule amendments.

N.J.A.C. 7:27-25.9 Variance for contemporaneous averaging

1. COMMENT: Mobil states that it will not participate in contemporaneous averaging. Mobil is opposed to the concept of contemporaneous averaging for the following reasons. First, Mobil argues that this is a convoluted averaging methodology which is not consistent with EPA's intentions in allowing flexibility to suppliers. The requirement to average on a monthly basis at the retail outlet level is not workable to the vast majority of service stations.

Second, contemporaneous averaging can only be applied if ethanol blending is used in at least one grade product. Since this only provides an advantage to a small segment of the industry and is not oxygenate-neutral, it does not provide a level playing field.

Third, the addition of the variance for contemporaneous averaging unnecessarily complicates both the regulations and enforcement, thereby adding cost to the State.

Finally, one justification for the contemporaneous averaging provision is that parties choosing to use the variance would ensure compliance by using slightly more oxygen in each grade of gasoline, thus providing incremental clean air benefits. It should be noted that while the addition of extra oxygen may slightly reduce carbon monoxide emissions, NO_x emissions may actually increase as a result. Based on the very small segment of the industry who might find a way to use this methodology, any potential incremental air quality benefit would be small indeed.(5)

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2. COMMENT: Sun supports the inclusion of the proposed option for contemporaneous averaging. As a modification to unlimited averaging and trading, it minimizes the need for additional enforcement requirements. This proposal was drafted at industry's request to accommodate refining and distribution flexibility. However, Sun is aware that much of the local petroleum industry does not support this provision, although it is consistent with the National Petroleum Industry Policy to maximize flexibility. This provision is potentially important to Sun specifically. Adopting this element of the proposed rules as final will allow Sun to seek this same flexibility from other non-attainment states so it can be applied to an entire distribution area. This initial year of the program is important to demonstrate its application and to address any necessary public issues. The first year will also hold the greatest uncertainties. With unresolved situations in New York and Boston in the East and California in the West, some suppliers may reduce oxygen purchases and inventory to minimize financial exposure. If this occurs, all possible flexibility may be needed near the end of the CO control period to insure adequate supply of oxygenated fuels. Sun urges the Department to retain this provision.(3)

3. COMMENT: By allowing contemporaneous averaging at the retail level, the Department is going to be condoning price "inversions" which take place in the petroleum marketplace every so often. An inversion takes place when a major oil-company-operated station posts a pump price that is lower than what a "wholesale dealer" or "gasoline jobber" can buy at the terminal. Through contractual arrangements, a retailer, gasoline jobber or wholesale dealer may not have the ability to demand from his or her supplier 2.0 percent oxygenate gasoline, so he or she can use contemporaneous averaging. Yet company-direct-supplied or operated stations may be able to use the contemporaneous averaging to undercut competitors' prices at certain points during the month. This is a built in discrimination within the program and as such its legality may come into question.(10)

4. COMMENT: In regard to contemporaneous averaging, the proposed new rules allow the Department to issue a variance allowing such averaging to "retailers" and "wholesale purchaser-consumers" who may then solicit their supplier to provide a certain mix of oxygenate levels by grade. This system might have a chance of working smoothly if all refiners sold all of their product through their own controlled outlets. This is not the case, however. British Petroleum (BP), while a refiner, markets no product at the retail level in New Jersey; all sales are at the wholesale level to jobbers and others. Since waivers can only be applied for at the retail level, BP is in effect forced to have each and every gallon at the 2.7 percent level. Thus, BP argues that it is denied the economic benefits its competitors could reap through averaging. An unfair competitive advantage is, therefore, given to those refiners who market the majority of their product at the retail level.(6)

5. COMMENT: The FMA believes that many retail outlets will not have the ability to participate in the program due to contractual obligations with their suppliers, so there are built in discriminations with this provision.(10)

RESPONSE TO COMMENTS 1, 2, 3, 4, AND 5: The intent of the variance for contemporaneous averaging is to provide an alternative approach to complying with the oxygen content standards of these rules. EPA has encouraged states to incorporate market-based mechanisms in their oxygenated fuels programs to provide persons subject to the rule flexibility regarding how they achieve compliance. The contemporaneous averaging provisions provide retailers and wholesale purchaser-consumers choice in how they will comply, so that they may select the alternative that is least-cost for them.

In order to provide guidance to states regarding appropriate market-based mechanisms, EPA has proposed (56 FR 13.1; July 9, 1991) guidelines for oxygenated gasoline credit trading programs. New Jersey's neighboring states have responded differently to EPA's proposal. Pennsylvania, following EPA's guidance, has proposed a credit trading program. New York Department of Environmental Conservation staff have questioned the enforceability of the EPA credit trading program, and New York has refrained from incorporating market-based mechanisms in their proposed oxygenated fuels program.

The Department shares New York's concerns in respect to the enforceability of the broad credit trading program developed by EPA. The Department also is concerned that, as the credit trading program allows the standard to be met on the average in fuel distributed over a broad geographical area, the credit trading program can not ensure that the gasoline sold in the areas with more severe CO nonattainment problems will in fact be gasoline with an oxygen content of 2.7 percent or greater.

The contemporaneous averaging program included in this rule constitutes an intermediate response to EPA's guidance. It provides flexibility to the regulated community, but the flexibility it offers is not as broad as that proposed by EPA in its credit trading guidance. It also contains strong enforcement provisions to ensure that the State will have the ability to verify compliance with the rule.

The general concept of contemporaneous averaging was originally proposed by one of the oil companies at one of the many meetings and workshops the Department held during the development of these regulations. The Department recognizes not all persons eligible to apply for this variance will find it advantageous to do so. The advantage of the New Jersey averaging system is that industry is provided with flexibility while at the same time the Department believes that air quality considerations will not be compromised.

Mobile has asserted that contemporaneous averaging can only be applied if ethanol blending is used in at least one grade of product. This is not the case. Any oxygenate can be used in any grade of product. The Department presumes that the oxygenate selected for use in a given grade will be the oxygenate most economically available to the gasoline supplier.

The suggestion that only those marketers who control the retail outlets can participate in this program is not convincing. Although independent marketers may not have the ability to control the retail outlet, it is possible for an independent marketer to develop contractual relationships with any number of independent retailers for the purposes of taking part in the averaging program, if the marketer finds it economically advantageous to do so.

In order for the averaging program to work, it will take commitment on both the retailer's and the supplier's part. The retailer must have a clear picture of how much of each grade of gasoline is sold at his facility. The supplier, on the other hand, must supply the necessary oxygenated gasoline in order for the retailer to meet his contemporaneous averaging commitments. The Department believes that if the economic incentives are sufficient, the market, and those participating in the market, will in fact develop mechanisms (contractual arrangements) to take advantage of those economic benefits.

6. COMMENT: The FMA advocates the elimination of contemporaneous averaging in the final adoption of the rules. It believes the contemporaneous averaging found in N.J.A.C. 7:27-25.9 will be difficult if not impossible to enforce. On page 23 of the proposal Summary (24 N.J.R. 2393) the Department concedes that the variances will cause an additional workload on the staff. FMA believes the benefits do not outweigh the cost and other considerations.(10)

7. COMMENT: The Department should reassess the contemporaneous averaging program and place it at the refiner level if the flexibility is necessary.(10)

8. COMMENT: The Department should amend the regulations to allow sales at a terminal to be subject to the averaging guidelines.(6)

9. COMMENT: The Fuel Merchants Association of New Jersey (FMA/NJ) recommends that the rule make the variance for contemporaneous averaging available to distributors or importers, rather than to gasoline retailers and wholesale purchaser consumers.(10)

10. COMMENT: British Petroleum (BP) contends that the current proposal allows financial advantage to those refiners who market a retail, as they can apply for an averaging waiver. BP would instead support a program which would allow each seller of oxygenated product in a control area to have a 2.7 percent average on that product. This requirement would be the same whether the seller is a refiner, a wholesaler or an independent service station owner. For example, BP may sell, in a one month period, to 60 customers who specify that two million gallons is destined for use in the control area. The average oxygenate content of those two million gallons must be 2.7 percent. A jobber who purchases from multiple suppliers for his four service stations must be able to demonstrate that the 200,000 sold at his four stations averaged 2.7 percent oxygenate.

BP notes that the State may be concerned that a program such as this might cause temporary distortions of a uniform dispersion pattern—that is, for the first half of the month, gallons sold would average 2.3 percent thus resulting in less CO reduction than targeted. BP notes that this is highly unlikely as suppliers who choose to use averaging will tend to vary oxygenate level by grade of gasoline (that is, premium at 2.0, regular at 2.9) rather than by time of month over all grades. Since the ratio of premium to regular sales is relatively constant, the 2.7 average would be seen in any portion of the market at any time. Also, oxygenate contracts tend to be rateable, encouraging a stable usage pattern.

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BP also notes that the State would also be concerned as to the efficacy of the compliance testing program as required by the Clean Air Act Amendments. With a straight 2.7 percent gallon for gallon program, any test at the service station or terminal that turns up 2.5 percent gasoline shows a violation. This would not be true under an averaging program. If the service station paperwork indicates 2.7 percent fuel, the State would then have to backtrack the investigation to the supplier level. Or, if the 2.5 percent fuel is found at a terminal, it may have been intended for additional treatment before sale—mere possession of 2.5 percent fuel would not be a violation. Thus most examinations would have to end up at the supplier level. Allowing these suppliers to average their product sales with validated attestation methodology would make the State's work easier.(6)

RESPONSE TO COMMENTS 6, 7, 8, 9 and 10: An advantage of the Department's contemporaneous averaging provisions is that there is a reasonable degree of certainty that the amount of oxygenate sold and used at a particular time and in a particular location will be sufficient to ensure that the desired 2.7 percent oxygenate level will be achieved. The commenters' suggestions that the Department allow averaging to occur at the refinery, terminal, or import facility would not provide this level of certainty. For example, if the averaging were allowed to occur at the terminal, it is possible that one marketer would sell only low oxygenate gasoline at its facility, perhaps in an urban area where in fact the greater level of oxygenate is needed to reduce carbon monoxide levels. The offsetting higher level of oxygenate could be sold at rural locations within the required control area where the need for the higher oxygenate is not as great. The Department's averaging program balances the concerns over the temporal and spatial distribution of oxygenate while providing the industry with reasonable flexibility to take advantage of the different sources of oxygenate. The Department sees reasonable mechanisms available for all parties who wish to participate in an averaging program. Therefore, the Department rejects the commenters' suggestion of amending the rule to allow averaging to occur at other points in the gasoline distribution chain.

The Department rejects these arguments to allow averaging at other levels within the distribution chain at this time, but welcomes continued dialogue on the issue. If other reasonable and protective averaging mechanisms can be developed, the Department would be interested and would consider revising its regulations in the future.

11. COMMENT: When the averaging is performed over grades of gasoline versus over time periods (that is, all grades at 2.0 for two weeks, than at 3.5 for two weeks), the State loses nothing by extending the averaging period from one month to two (or even three in the case of a six month control period). Fewer control periods present less administrative burden for the State.(6)

RESPONSE: The Department believes that regular, conscientious oversight, both on the part of the gasoline retailer or wholesale purchaser-consumer to whom the variance is issued and on the part of the Department, will ensure that the oxygen content standards are attained. Monthly review of compliance status is intended as a mechanism to achieve this oversight.

12. COMMENT: N.J.A.C. 7:27-25.9 permits gasoline retailers to comply with the 2.7 percent oxygen content standard by using a formula which involves averaging the percentages of oxygenates in each different fuel grade for any given month. This system would not assure any greater carbon monoxide reduction than simply requiring that all fuels meet the 2.7 percent oxygenate content. In fact, since averaging will only allow a retailer to determine compliance at the end of the averaging period, when it is too late to do anything about a violation, averaging will probably lead to more exceedances of the standard.

The Department attempts to justify averaging by stating that averaging is more cost-effective and that EPA "has strongly recommended that market-based provisions be incorporated in states' oxygenated fuels programs . . ." However, the Clean Air Act states that gasolines subject to the requirements of this program must "contain not less than 2.7 percent oxygen by weight . . ." 42 U.S.C. 7545(m)(2). The Act sets a minimum allowable content for oxygenates and does not allow compliance to be based on the averaging of lower values which violate the minimum requirements of the Act.

If the Department intends to promote a greater carbon monoxide reduction, it should consider raising the 2.7 percent standard, if this can be done without jeopardizing attainment of the National Ambient Air Quality Standards (NAAQS) for NO_x and ozone. In any event, averaging should not be permitted.(5, 9)

RESPONSE: The intent of the contemporaneous averaging variance is to provide an alternative, and for some a more cost-effective, means

of achieving the oxygen content standard. This alternative would achieve, in the aggregate, no less carbon monoxide reductions than if the 2.7 percent oxygen content standard were applied to every gallon sold. The contemporaneous averaging provisions contain recordkeeping and reporting provisions to ensure that compliance with the standard is maintained.

The Clean Air Act requires that gasoline sold or dispensed "in the carbon monoxide nonattainment area" contain not less than 2.7 percent oxygen by weight. The Act does not state that each gallon sold must meet this standard. EPA's proposed credit trading program itself is predicted on conforming with the standard on an averaging basis. The Department finds no basis for the commenter's assertion that the Act does not allow compliance to be based on averaging. As long as the gasoline sold in the carbon monoxide nonattainment area, in the aggregate, meets the 2.7 percent oxygen standard, the requirements of the Act are being met.

N.J.A.C. 7:27-25.10 Variance for shortage of supply

1. COMMENT: It seems reasonable that these regulations allow for shortages of fuels, as long as said shortages are beyond the control of gasoline suppliers. However, N.J.A.C. 7:27-25.10(a) states that "the Department may issue to a . . . distributor who has . . . an insufficient supply of conforming gasoline, a temporary variance . . ." The term "insufficient supply" is not defined. Without a specific definition, suppliers may use this section as an easy way to avoid compliance with the content standard. The Department should define this phrase so that suppliers are only allowed to substitute non-conforming fuel to the extent of a documented shortage. Furthermore, suppliers should not receive a variance simply because the cost of the additive has risen due to a reduced supply. Rather, at a minimum, actual shortage of the oxygenate as well as the cost of oxygenate should be required elements of a successful variance application.(9)

RESPONSE: The term "insufficient supply" does not need to be defined by the Department. "Insufficient supply" in the context of the particular rule section is determined by the individual refiner, importer, blender, or distributor supplying gasoline to a control area. The burden of proof is on the applicant to justify to the Department that there exists an "insufficient supply" of conforming fuel. The applicant must meet each and every criteria outlined in this section in order to receive this variance. In addition, the applicant must also submit a service fee with their application. Any person receiving a variance must within 60 days pay a monetary penalty along with the variance. The penalty is an economic benefit penalty to ensure that there is no net economic advantage gained by the refiner, importer, blender, or distributor in avoiding compliance with the oxygen content standards.

2. COMMENT: N.J.A.C. 7:27-25.10, Variance for shortage of supply, does not include all the requirements contained on Page 7, Section IV of the negotiated rulemaking Agreement in Principle. Two commenters recommended that the Department amend N.J.A.C. 7:27-10(c) through (f) to include the five components in the "reg neg agreement" which the EPA is obligated to uphold. This language ensures that a variance is not "easy" to obtain for a supplier who does not plan carefully to meet oxygenate requirements. The commenters propose the following amendments:

(c) A refiner, importer, blender, or distributor seeking a variance pursuant to this section shall submit a written application to the Department, containing the following information:

1. Documentation that there is or may be an inadequate supply of conforming gasoline to the general public as a whole due to extreme and unusual circumstances, for example, a natural disaster or "Act of God" and that the shortage cannot be filled by other refiners thus causing a hardship to the State;

2. A statement of the cause(s) of the shortage of conforming gasoline and an explanation of how the cause(s) are beyond the control of the applicant and could not have been avoided by the applicant by the exercise of prudence, diligence and due care through prior planning;

3. (No change.)

4. The refiner, importer, blender or distributor agrees to make up air quality detriment associated with the nonconforming gasoline where practicable.

Recodify 4-6 as 5-7 (No change in text.)

(d) Any application for a variance submitted to the Department pursuant to this subchapter shall include a service fee in accordance with N.J.A.C. 7:27-25.12(c), a penalty equal to the economic benefit less the cost of complying with item 4 above and shall be certified in accordance with N.J.A.C. 7:27-8.24.

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(f)2i There is or may be an inadequate supply of conforming gasoline to the general public as a whole due to extreme and unusual circumstances, for example, a natural disaster or "Act of God" and that the shortage cannot be filled by other refiners thus causing a hardship to the state;

(f)2ii The cause(s) of the shortage of conforming gasoline and an explanation of how the cause(s) are beyond the control of the applicant and could not have been avoided by the applicant by the exercise of prudence, diligence and due care through prior planning; (additional language indicated in boldface thus)(4, 5)

RESPONSE: The Department disagrees that N.J.A.C. 7:27-25.10(c)2 and (f)2ii need additional clarification. In drafting language for the variance for shortage of supply provision, the Department did consider the requirements as outlined on page 7, Section IV of the negotiated rulemaking Agreement in Principle. The Department felt that a requirement that the applicant somehow make up the air quality detriment associated with the non-conforming fuel sold in the control area was unenforceable. To ensure that no person would have an economic incentive to seek this variance, the economic benefit penalty is set for the amount of non-conforming gasoline for use in the control area.

In proposing this variance the Department did not intend its use to be confined to instances where there is inadequate supply of conforming fuel for the "general public as a whole." The Clean Air Act gives EPA the authority to waive or delay the oxygenated fuels program for an entire CMSA based on the finding that there exists an inadequate supply of conforming fuel. The EPA would act in the case where there was a general shortage. This variance instead is intended to address the needs of a specific refiner, importer, blender, or distributor who has specific market obligations (contracts or other supply obligations) and who is not able to comply with the oxygen content standards due to extreme and unusual circumstances such as a natural disaster or an "Act of God." The conditions for obtaining such a variance are rigorous and specific; and the variance will not be "easy" to obtain. The Department anticipates receiving few applications for such a variance.

3. COMMENT: The word "or" at the end of N.J.A.C. 7:27-25.10(f)2iii should be changed to "and." In accordance with the negotiated rulemaking agreement, each of these conditions must be satisfied by the applicant—not only one of them.(5)

RESPONSE: The proposed rule is correct as written. Within the cited context, the use of "or" results in the requirement to have each of the requirements satisfied for the Department to approve any application for a variance.

4. COMMENT: N.J.A.C. 7:27-25.10(f)1 allows the Department to deny an application for a variance if approval of the variance "may result in the presence in the outdoor atmosphere of any air contaminant in such quantity and duration which is or tends to be injurious to human health . . ." Since any exceedance of the National Ambient Air Quality Standards (NAAQS), 40 CFR 50, (1991) is, by definition, injurious to human health, variances should not be permitted where there is any reasonable or prudent alternative to allowing the additional non-conforming fuel distribution.(9)

RESPONSE: It is not the intent of the Department to allow persons to obtain a variance for shortage of supply of conforming fuel where there is any reasonable or prudent alternative to allowing the supply or distribution of nonconforming fuel. The variance would only be issued under extraordinary and unusual circumstances such as a natural disaster or an "Act of God" and then only for a maximum duration of 45 days.

N.J.A.C. 7:27A-3.10 Civil administrative penalties

1. COMMENT: The penalty for supplying non-conforming gasoline under N.J.A.C. 7:27-25.9 and 25.10 should not be fixed at five, 10, etc. cents per gallon, but should be based on the market driven differential between oxygenated gasoline and non-oxygenated gasoline. Motivation for supplying non-conforming gasoline could very well be tied to oxygenate shortages, which could also result in market price differentials greater than the cents per gallon penalty.(5)

RESPONSE: In developing these penalties the Department used the expected price differential between oxygenated and nonoxygenated gasoline. The Department used industry estimates that the increased cost of oxygenated fuels averages \$0.03 to \$0.05 per gallon. If the Department determines that there is an increased economic benefit to using nonconforming fuel which exceeds \$0.05 per gallon it may assess additional penalties in accordance with the economic benefit provisions contained at N.J.A.C. 7:27A-3:12.

2. COMMENT: The FMA is vitally concerned that the Department has not included a good faith exclusion under the penalty provision of

this rule. For example, wholesale and retail customers are reliant upon their suppliers for product. If that product does not meet the Department's specifications, the Department cannot hold wholesale and retail consumers responsible. That responsibility must fall back on the supplier of fuel.(10)

RESPONSE: The Department's goal in enforcing these rules, as with all of the Department's rules, is to ensure compliance to the maximum level possible. In developing these rules the Department included provisions which are intended to ensure compliance and ensure that the appropriate parties are accountable for compliance. However, the responsibility for improving New Jersey's air quality and ensuring compliance with these rules does not rest solely with the Department. Any party who is selling, transporting, or storing gasoline in New Jersey bears responsibility for ensuring compliance with these rules. Some of the measures that have been included in these rules to encourage compliance include recordkeeping, certification that testing has been performed and the fuel is complying, and labeling. Although these measures will help to ensure compliance, the wholesaler and retailer must also exercise due diligence to ensure that the products they are receiving from their suppliers meet the regulatory requirements. This is especially true when retailers purchase products from more than one supplier during the carbon monoxide control period.

In structuring the penalty provisions associated with the proposed rules, the Department based the penalty amount on the capacity of the supplier. Thus, there is a substantially higher disincentive for suppliers, whose capacity is larger, than for retailers to fail to comply with the rules. In addition, the Department's existing penalty rules provide substantial penalties for falsification of documentation and the New Jersey Air Pollution Control Act also provides criminal penalties for persons who purposely, knowingly, or recklessly violate the provisions of any code, rule, regulation, administrative order, or court order promulgated or issued pursuant to the statute. The Department will therefore not include a "good faith exclusion" in the rule.

RVP Issues

1. COMMENT: Winter control of RVP is not a significant contributor to winter CO reduction. This will be especially true when enhanced inspection and maintenance programs will require purge tests on on-board vapor collection canisters. The evidence, which indicates little air quality benefit from reducing winter RVP, supports the State's current position of not regulating winter RVP reductions. Further, we would be happy to provide to the Department the data developed on a small car fleet that demonstrates the lack of correlation between RVP specifications and CO emissions at lower temperatures.(3)

RESPONSE: The Department has not included the control of RVP of gasoline in the wintertime as a CO control strategy. Should this strategy be considered in the future, the Department would appreciate information about the data the commenter has collected.

2. COMMENT: In an attempt to reduce CO levels throughout the State, these regulations should not jeopardize efforts to comply with the National Ambient Air Quality Standards (NAAQS) for ozone. This situation could arise if the EPA allows distributors, who manufacture and sell gasoline to sell fuel that does not conform with the RVP standard (9.0 psi) during the RVP control period (May 1 to September 15).(14, 17)

3. COMMENT: The use of ethanol as an oxygenate should not be encouraged by raising the allowable RVP level to 10 psi. It does not make any sense to raise our ozone level in order to attain safe CO levels.(1, 3, 6)

RESPONSE TO COMMENTS 2 AND 3: Consistent with its continuing efforts to reduce ambient ozone concentrations and to attain the NAAQS for ozone throughout the State by November 15, 2007, the Department has not relaxed the RVP standards in these new rules and amendments. A 1.0 psi RVP tolerance for ethanol blended gasoline has not been adopted. This standard has been retained, although the EPA, upon consideration of a petition from the Renewable Fuels Association (RFA), has proposed to partially disapprove New Jersey's State Implementation Plan (SIP) to the extent that New Jersey does not allow a 1.0 psi RVP tolerance for ethanol blended gasoline. The Department has outlined its argument and the reasons for disallowing a RVP tolerance at the public hearing, which was held in New York on May 5, 1992, on EPA's proposed action. As of September 2, 1992, EPA has not taken final action.

4. COMMENT: It appears that the proposed regulations favor the use of MTBE over ethanol. The Department's basis for this position is that the upper limit of 9.0 Reid Vapor Pressure (RVP) precludes the

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use of ethanol all year round, such use being necessary for profitability. However, since the study upon which the proposed regulations are based was performed by the Auto/Oil Industry Research Program, additional studies should be researched or undertaken to corroborate the findings of that study.(15)

RESPONSE: The Department's proposed rulemaking does not discriminate against the use of any oxygenate to meet the regulatory requirements. In fact, the success of the program will rely heavily on the use of oxygenates, including ethanol, which can be blended at levels which will produce oxygen content at or above 2.7 percent by weight during the wintertime oxygen program control periods.

However, the Department is concerned with the potential effect of ethanol blends on summertime ozone formation. EPA's analysis showed up to a one percent increase in RVP when ethanol blends are used in gasoline. To ensure that the use of ethanol does not exacerbate the summertime ozone problem, the Department has subjected ethanol blends to the same RVP requirements as other fuels during the summer ozone season (May 1 to September 15).

Summary of Hearing Officer's Recommendations and Agency Response:

Nancy Wittenberg, Director for the Department's Office of Energy, served as the hearing officer at the August 5, 1992, public hearing held at the Department of Environmental Protection and Energy Building in Trenton, New Jersey. After reviewing the oral testimony presented at the public hearing, Director Wittenberg recommends that the Department make the following changes upon adoption.

N.J.A.C. 7:27-25.3(c) and 25.3(e) should be modified to include language that allows for the transportation and storage of non-oxygenated gasoline within New Jersey during the control periods (1) for the purposes of further blending prior to being delivered to a retailer or wholesale purchaser-consumer or (2) for further transportation or distribution to facilities that are outside of the control area.

The fuel pump labeling requirements at N.J.A.C. 7:27-25.8 should be revised to be consistent with EPA's revised labeling requirements. That is, labels should be placed within the upper two-thirds of the pump and the minimum type size for the label should be 20-point. Also, a statement of the type of oxygenate in the fuel, the minimum oxygen content of the fuel, and the maximum oxygenate in percent by volume should not be required to be included in the label.

Labels on fuel pumps dispensing gasoline pursuant to a variance for shortage of supply should state specifically that the fuel being dispensed does not meet the oxygen content standards.

The rule should be revised to allow the Department, in lieu of the testing requirements at N.J.A.C. 7:27-25.4, to approve alternative methods for determining the oxygen content of fuels, if the alternative methods are as reliable as testing for such a determination.

The Department has modified the rules accordingly upon adoption. Director Wittenberg's recommendations are set forth in more detail in the hearing officer's report. A copy of the record of public hearing, which includes the hearing officer's report, is available upon payment of the Department's normal charges for copying (\$0.75 per page for the first 10 pages, \$0.50 per page for the following 10 pages, and \$0.25 per page for additional pages). The record of the public hearing is 56 pages. The Department will charge \$21.50 for one copy. Persons requesting copies should contact:

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Notice of Typographic Errors in the Notice of Proposal.

At 24 N.J.R. 2392, in Table 3, Subsection c, the "division sign" was omitted from the equation to be used to convert test results from percent volume to percent weight oxygen content in gasoline. The equation should have appeared as follows:

$$(15\%) \times \frac{(0.7460)}{(0.7426)} \times (0.1815) = 2.73\% \text{ oxygen}$$

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At 24 N.J.R. 2393, in Table 4, Subsection c, the "division sign" was omitted from the contemporaneous averaging equation. The equation should have appeared as follows:

$$\frac{(30,000 \text{ gallons}) (2.3\%) + (40,000 \text{ gallons}) (3.1\%)}{30,000 \text{ gallons} + 40,000 \text{ gallons}} = 2.76\% \text{ oxygen}$$

Summary of Agency-Initiated Changes:

Additional changes have been made on adoption to clarify the requirements as follows:

At N.J.A.C. 7:27-25.4(a)2ii, the word "documents" was incorrectly proposed to be plural. It has been changed to the singular form "document" in the adopted rule.

At N.J.A.C. 7:27-25.4(c)2, a semi-colon at the end of the line is grammatically incorrect. It has been changed to a colon in the adopted rule.

At N.J.A.C. 7:27-25.8(e), the citation as proposed, "N.J.A.C. 7:25-25.10" is incorrect. It has been changed to "N.J.A.C. 7:27-25.10".

At N.J.A.C. 7:27A-3.10(e)25, the citation, "N.J.A.C. 7:27-25.4(a)(b)" is incorrect as published. The citation should be "N.J.A.C. 7:27-25.4(b)" as currently in the rule and is corrected through this notice.

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

7:27-25.1 Definitions

Words and terms, when used in this subchapter, have meanings as defined at N.J.A.C. 7:27-1.4 or as follows, unless the context clearly indicates otherwise:

...

"Carbon monoxide (CO)" means a gas having a molecular composition of one carbon atom and one oxygen atom.

"Control area" means a geographic area within which gasoline to be used, sold, or dispensed as vehicular fuel in New Jersey is subject to the applicable standards set forth at N.J.A.C. 7:27-25.3 during the specified control period.

"Control period" means the applicable period each year during which gasoline within a control area is subject to the oxygen content or RVP standards set forth at N.J.A.C. 7:27-25.3.

...

"Distribution capacity" means capacity for transportation, storage and blending.

"Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.

...

"Gasoline" means any petroleum distillate or petroleum distillate/oxygenate blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) absolute or greater, sold for use or used in a motor vehicle or motor vehicle engine, and commonly or commercially known or sold as gasoline.

...

"Nitrogen dioxide (NO₂)" means a gaseous compound at standard conditions, having a molecular composition of one nitrogen atom and two oxygen atoms.

"Nitrogen oxide (NO)" means a gaseous compound at standard conditions, having a molecular composition of one nitrogen atom and one oxygen atom.

"Nonconforming gasoline" means any gasoline the RVP or oxygen content of which does not during the applicable control period conform with the standards set forth in N.J.A.C. 7:27-25.3.

"Northern oxygen program control area" *[or "northern OPRG control area"]* means the control area which includes the counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren.

"Oxides of nitrogen (NO_x)" means any of the oxides of nitrogen including, but not limited to, nitrogen oxide and nitrogen dioxide.

"Oxygen content" means, in respect to the composition of gasoline, the percentage of oxygen by weight (unless specified as being by volume) contained in the gasoline. The percentage of oxygen by weight of the gasoline shall be based upon its percentage oxygenate by volume excluding denaturants and other non-oxygen-

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containing components. All volume measurements are adjusted to 60 degrees Fahrenheit.

"Oxygen program *[(OPRG)]* control period" means a control period in New Jersey during which oxygen content standards set forth at N.J.A.C. 7:27-25.3 are applicable to gasoline.

"Oxygenate" means any substance which, when blended into gasoline, increases the amount of oxygen in that gasoline blend and which is allowed to be used as a gasoline additive pursuant to 42 USC 7545.

"Oxygenate blend" means a gasoline produced by blending one or more oxygenates into a base gasoline.

"Person" means any individual or entity and includes, without limitation, corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, and shall also include all political subdivisions of the State or any agencies or instrumentalities thereof.

...

"Refining process" means the combination of physical and chemical operations including, but not limited to, distillation, cracking, and reformulation, performed on crude oil in order to produce petroleum products, including gasoline.

...

"RVP control area" means the entire geographic area within the State of New Jersey.

"RVP control period" means the period from May 1 through and including September 15 of each year during which the RVP standard set forth at N.J.A.C. 7:27-25.3 is applicable to gasoline to be used in New Jersey as vehicular fuel.

"Southern oxygen program control area" or *["southern OPRG control area"]* means the control area which includes the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer and Salem.

...

7:27-25.2 Scope and applicability

(a) This subchapter prescribes the rules of the Department for the control and prohibition of air pollution by vehicular fuels. This subchapter governs the standards for fuels used as motor vehicle fuels and provided for use as motor vehicle fuels in the State and the methods to be followed by refiners, importers, blenders, distributors, wholesaler purchaser-consumers and retailers to assure these standards are met.

(b) Any refiner, importer, blender, distributor, wholesale purchaser-consumer or retailer of gasoline for use as motor vehicle fuel in the State is subject to the provisions of this subchapter.

7:27-25.3 General provisions

(a) Except as provided for use in (b) below, no refiner, importer, blender, distributor, wholesale purchaser-consumer, or retailer shall provide, store, offer for sale, sell, transport, import, or exchange in trade for use in New Jersey during the RVP control period each year, starting in 1989, gasoline having a RVP greater than 9.0 pounds per square inch.

(b) (No change.)

(c) Except as provided for at N.J.A.C. 7:27-25.9 and 25.10, no refiner, importer, blender, distributor, wholesale purchaser-consumer, or retailer shall provide, store, offer for sale, sell, transport, import, or exchange in trade gasoline for use in New Jersey, unless:

1. The oxygen content of the gasoline equals or exceeds 2.7 percent:

i. For the Northern *[(OPRG)]* ***oxygen program*** control area, from October 1 through and including the following April 30;

ii. For the Southern *[(OPRG)]* ***oxygen program*** control area, from November 1 through and including the last day of the following February; and

2. The oxygen content of the gasoline equals or is less than 3.5 percent.

(d) The standards set forth in (c) above shall become operative on *[(date which is 60 days after the adoption of these proposed amendments and new rules)]* ***November 1, 1992*** or on such delayed effective date as EPA establishes, pursuant to 42 USC 7545 (m)(3)(C), due to a determination that there is or is likely to be,

for any control area, an inadequate domestic supply of or distribution capacity for:

1. Oxygenated gasoline that meets the standard set forth in (c) above; or

2. The oxygenates needed to blend into gasoline to make fuel that conforms with (c) above.

(e) At no time shall a refiner, importer, blender, distributor, wholesale purchaser-consumer or retailer provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey gasoline unless, pursuant to 42 USC 7545, the EPA has:

1. Determined to its satisfaction that the gasoline and any oxygenate or a combination of oxygenates blended into the gasoline are substantially similar to any gasoline and any concentration of an oxygenate or a combination of oxygenates utilized, pursuant to 42 USC 7525, in the certification of any model year 1975, or subsequent model year, vehicle or engine; or

2. Waived the requirement for the gasoline and any oxygenate or a combination of oxygenates blended into the gasoline to be substantially similar to any fuel or fuel additive utilized, pursuant to 42 USC 7525, in the certification of any model year 1975, or subsequent model year, vehicle or engine.

***(f) Notwithstanding the provisions of (c) above, a refiner, importer, blender, or distributor may provide, store, offer for sale, sell, transport, import, or exchange in trade gasoline which has an oxygen content less than 2.7 percent, provided that:**

1. The gasoline is destined for one of the following uses:

i. Provision, sale, or exchange in trade to a retailer or wholesale purchaser-consumer at a facility located outside the northern oxygen program control area and the southern oxygen program control area;

ii. Provision, sale, or exchange in trade to a retailer or wholesale purchaser-consumer at a time which is outside the oxygen program control period applicable to that retailer or wholesale purchaser-consumer;

iii. Provision, sale, or exchange in trade to another refiner, importer, blender, or distributor; or

iv. Blending with oxygenate so that the gasoline has an oxygen content which equals or exceeds 2.7 percent prior to providing, selling, or otherwise exchanging in trade the gasoline to a retailer or wholesale purchaser-consumer;

2. Documents associated with the gasoline, including, but not limited to, any record, invoice, or bill of lading, specify which one of the uses given in (f)1 above applies to the gasoline; and

3. The refiner, importer, blender or distributor ensures that gasoline is provided, sold, stored, transported, imported, or exchanged in trade in accordance with the use specified in (f)2 above.

(g) Upon the request of any consumer, a retailer shall inform the consumer as to the type of oxygenate(s) being dispensed from any of the gasoline dispensing devices at the facility.*

7:27-25.4 Recordkeeping and compliance determinations

(a) Each refiner, importer, blender or distributor shall:

1. During any applicable control period established pursuant to N.J.A.C. 7:27-25.3, test all gasoline prior to its release from a refinery, import facility, blending facility or distribution facility for use in a control area within the State to determine its RVP or oxygen content, as applicable, and for each test prepare a test report which documents the RVP or oxygen content, as applicable, of the gasoline;

2. Certify to the distributor, retailer or wholesale purchaser-consumer to whom gasoline is delivered that the gasoline has been tested in accordance with this section; that, during the RVP control period, the gasoline has an RVP of 9.0 pounds per square inch or less; that, during any applicable oxygen content control period, the gasoline conforms with the oxygen content requirements of this subchapter; and that the gasoline is in compliance with all applicable State and Federal regulations, by providing:

i. A copy of the test report prepared pursuant to (a)1 above with the certification contained therein; or

ii. The certification in writing on the invoice, bill of lading, or other transfer document*[s]*; and

3. Maintain records on all gasoline leaving the refinery, import facility, blending facility, or distribution facility, which document the

RVP and the oxygen content of the gasoline, the type and ***percent by*** volume of each oxygenate ***[added]*** ***which comprises one percent or greater by volume of the gasoline***, shipment quantity, shipment date, and other such information as the Department may prescribe. Documentation may include, but is not limited to, bills of lading, invoice delivery tickets, and loading tickets.

(b) Each retailer or wholesale purchaser-consumer shall maintain records on each delivery of gasoline, including RVP, oxygen content, type and ***percent by*** volume of each oxygenate ***[added]*** ***which comprises one percent or greater by volume of the gasoline***, delivery quantity, date of delivery, and other such information as the Department may require. Documentation may include, but is not limited to, bills of lading and other transfer documents, invoice delivery tickets and loading tickets, and invoices and test reports certified pursuant to (a)2 above.

(c) Any sampling of gasoline required pursuant to the provisions of this subchapter shall be conducted in accordance with the following methods:

1. For determining the RVP of gasoline:
 - i. For manual sampling: ASTM D4057; or
 - ii. For continuous sampling and nozzle sampling: California Administrative Code Title 14, R.2261(R)(3) and (k)(4)(1987); and
2. For determining the oxygen content of gasoline^{[;]*}:
 - i. The methods set forth at 40 CFR 80, Appendix D; or
 - ii. Any other method approved in writing in advance by the Department and EPA.

(d) All testing for RVP required pursuant to the provisions of this subchapter shall be conducted using one of the following methods:

- 1.-3. (No change.)

(e) Any determination of the oxygen content of any sample of gasoline required pursuant to the provisions of this subchapter shall be conducted as follows:

1. The sample of gasoline shall be tested to determine the concentration, in percent by volume, of each oxygenate in the gasoline. All volume measurements used in the testing shall be adjusted to 60 degrees Fahrenheit. Only the oxygen-containing components of the oxygenate shall be taken into consideration in determining the concentration; any denaturant or other non-oxygen-containing components shall be excluded from the determination of the concentration. The testing of the sample of gasoline shall be conducted using one of the following test methods:
 - i. ASTM D4815; or
 - ii. Any other equivalent test method approved in writing in advance by the Department and EPA;
2. The densities (or specific gravities) of each oxygenate and of the oxygenate blend shall be established as follows:
 - i. The density of each oxygenate is given in Table 1 at N.J.A.C. 7:27-25.4; and
 - ii. The density of the oxygenate blend shall be calculated as follows:
 - (1) The density of the base gasoline into which the oxygenate(s) are blended is assumed to be 0.7420; and
 - (2) The density of the oxygenate blend obtained when the oxygenate(s) are blended into the base gasoline shall be calculated by determining the weighted average of the densities of the oxygenate(s) and the base gasoline. In determining this weighted average, the density of each component shall be weighted in proportion to the volumetric fraction of that component in the oxygenate blend;

[(3)]**3. The mass concentration of the oxygen-containing components of each oxygenate in the gasoline shall be obtained by multiplying the concentration of each oxygenate in the gasoline, determined in (e)1 above, by the following ratio: the specific gravity (or density) given for the oxygenate in Table 1 below to the specific gravity (or density) of the oxygenate blend, determined in (e)2ii above;
 - (3) The contribution of the oxygenate to the oxygen content of the gasoline, in percent by weight, shall be determined by multiplying the mass concentration of the oxygenate in the gasoline determined in (e)3 above by the oxygen molecular weight fraction of the oxygenate, obtained from Table 1 below; and

5. The total oxygen content in percent by weight of the gasoline shall be obtained by summing the oxygen content contribution of each oxygenate in the gasoline.

(f) In order to provide allowance for test method variation, the Department shall consider any gasoline which is tested using ASTM D4815, pursuant to (e)1i above, to comply with the standards of N.J.A.C. 7:27-25.3 if its oxygen content, calculated pursuant to (e) above, is within 10 percent of the standard.

TABLE 1

Specific Gravity and Oxygen Molecular Weight Fraction of Common Oxygenates

Oxygenate	Oxygen Molecular Weight Fraction	Specific Gravity at 60 degrees F
methyl alcohol	0.4993	0.7963
ethyl alcohol	0.3473	0.7939
normal propyl alcohol	0.2662	0.8080
isopropyl alcohol	0.2662	0.7899
normal butyl alcohol	0.2158	0.8137
isobutyl alcohol	0.2158	0.8058
secondary butyl alcohol	0.2158	0.8114
tertiary butyl alcohol	0.2158	0.7922
methyl tertiary butyl ether (MTBE)	0.1815	0.7460
tertiary amyl methyl ether (TAME)	0.1566	0.7752
[Ethyl Tertiary Butyl Ether] *ethyl tertiary butyl ether* (ETBE)	0.1566	0.7452
diisopropyl ether (DIPE)	0.1566	0.7300

(g) All records and documentation required to be made or maintained in accordance with this section, including any calculations performed, shall be maintained by each refiner, importer, blender, distributor, retailer, and wholesale purchaser-consumer, as applicable, for not less than three years from the date the record is made^{[, and]*}. **Records made within the past year (the previous 12 months)*** shall, upon request of the Department or its authorized representatives, be ***immediately*** available for review. ***Records made in previous years shall, upon the request of the Department or its authorized representatives, be available for review within five business days.**

(h) **Notwithstanding the requirements in this section for testing to determine the oxygen content of gasoline, a refiner, importer, blender or distributor may apply to the Department for approval to use an alternative method of determining the oxygen content of gasoline. The application shall be certified in accordance with N.J.A.C. 7:27-8.24. The Department shall not approve such an application unless the alternative method proposed would ensure that the oxygen content of the fuel would be determined with no less accuracy and reliability than would be achieved through testing in accordance with this section.***

7:27-25.8 Labeling

(a) During any oxygen content control period in which the gasoline provided, offered for sale, sold, or otherwise exchanged in trade at a facility owned or operated by any retailer or wholesale purchaser-consumer is subject to the oxygen content standards set forth at N.J.A.C. 7:27-25.3, the retailer or wholesale purchaser-consumer shall label as specified in (b) through ^[(f)] ***[(f)]* *[(d)]*** below each fuel pump or other gasoline dispensing device.

***[(b)]** The label shall:

1. Specify the minimum oxygen content, in percent by weight, of the gasoline dispensed by that fuel pump or other gasoline dispensing device;
2. Identify any oxygenate present in the gasoline, if an oxygenate or any combination of oxygenates comprises at least one percent by volume of the gasoline; and
3. Specify the maximum percent by volume, to the nearest whole percent, of each oxygenate present in the gasoline.

(c) If identification of oxygenate(s) is required pursuant to (b)2 above, each oxygenate present in the gasoline shall be identified as

“with” or “containing” (or similar wording) the specific type of oxygenate(s) in the gasoline. For example, the label may read “contains ethanol” or “with MTBE.”*

*[(d)]***(b)* The label shall ***[also]***, except as provided in ***[(e)]*** ***[(c)]*** below, ***contain the text given below. This statement shall not be altered and no additional language shall be inserted within the text. However, a phrase indicating the dates of the applicable control period may be added before or after this text. If a label does not contain the dates of the applicable control period then that label shall be removed from the fuel pump or other gasoline dispensing device at the end of the applicable control period. This label shall*** state the following:

The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles.

*[(e)]***(c)* If the fuel pump or other gasoline dispensing device is dispensing nonconforming fuel in accordance with a variance issued by the Department pursuant to N.J.A.C. ***[7:25-25.10]*** ***7:27-25.10***, the label shall state the following:

The fuel dispensed from this pump ***[meets the requirements of the Clean Air Act as part of a program]*** ***does not meet standards established*** to reduce carbon monoxide pollution from motor vehicles ***but is temporarily authorized to be distributed due to a shortage of supply of fuel that meets the standard***.

*[(f)]***(d)* Any label required pursuant to this section shall be:

1. Posted on the vertical surface of the gasoline dispensing device on each side of the device from which gasoline can be dispensed, on the upper ***[one-third]*** ***two-thirds*** of the surface, in a position clear, conspicuous, and easily readable from the position of the driver in the vehicle to which gasoline is being dispensed; and
2. Clearly legible and in block letters that are:
 - i. No less than ***[36-point]*** ***20-point*** bold type; and
 - ii. In a color that contrasts with the background on which they are placed.

7:27-25.9 Variance for contemporaneous averaging

(a) ***[The]*** ***On or after May 1, 1993, the*** Department may issue a variance from the oxygen content standards set forth at N.J.A.C. 7:27-25.3 which allows a retailer or a wholesale purchaser-consumer to comply through contemporaneous averaging. Such a variance would allow a retailer to provide, offer for sale, sell, or otherwise exchange in trade or a wholesale purchaser-consumer to use one or more grades of gasoline whose oxygen content is less than 2.7 percent, provided that the oxygen content of each grade of gasoline is no less than the minimum content level approved in the variance for that grade of gasoline and the contemporaneous average of the oxygen content of all the gasoline provided, sold, or used at the facility for which the variance is issued, as determined on a monthly basis pursuant to (d) below, equals or exceeds 2.7 percent. Such a variance would also allow a refiner, importer, blender, or distributor to provide to the facility gasoline whose oxygen content is less than 2.7 percent.

(b) Any variance issued by the Department pursuant to this section, and any application therefore, shall pertain to a single retail gasoline dispensing facility or to a single facility operated by a wholesale purchaser-consumer.

(c) No retailer or wholesale purchaser-consumer shall provide, offer for sale, sell or otherwise exchange in trade, or use gasoline which has a minimum oxygen content less than 2.0 percent or a maximum oxygen content greater than 3.5 percent.

(d) The contemporaneous average of the oxygen content of the gasoline is an average of the oxygen content approved in the variance for each grade of gasoline, weighted by the volume of the gasoline in a given month provided, sold or otherwise exchanged in trade at a retail gasoline dispensing facility or used by any wholesale purchaser-consumer. For the purpose of determining compliance with the contemporaneous average requirement set forth in (a) above, a contemporaneous average shall be determined as follows:

1. For each grade of gasoline, the minimum oxygen content allowed in the approved variance for that grade of gasoline shall be multiplied by the actual monthly volume of that grade of gasoline

provided, sold or otherwise exchanged in trade, or used during the month;

2. The products obtained in (d)1 above shall be summed; and

3. This sum shall be divided by the total actual volume of all grades of gasoline provided, sold or otherwise exchanged in trade, or used during the month. The result obtained is the contemporaneous average for that month.

(e) Any retailer or wholesale purchaser-consumer seeking the Department's approval of a variance pursuant to this section shall apply on forms obtained from the Department. Any person may request an application form from:

Assistant Director of Air and
Environmental Quality Enforcement
Division of Facility Wide Enforcement
Department of Environmental Protection and Energy
CN 027
Trenton, New Jersey 08625-0027

(f) An application for a variance pursuant to this section shall include the following information:

1. The name and address of the retail gasoline dispensing facility or the wholesale purchaser-consumer's facility to which the variance will apply and each refiner, importer, blender, or distributor who will supply nonconforming gasoline to the retail gasoline dispensing facility or the wholesale purchaser-consumer's facility; also the name and phone number of a contact person for the retail gasoline dispensing facility or the wholesale purchaser-consumer's facility to which the variance will apply and for each refiner, importer, blender, or distributor named;

2. For each of the 12 calendar months preceding the variance application, the volume of each grade of gasoline and the total volume of gasoline provided, offered for sale, sold or otherwise exchanged in trade at the retail gasoline dispensing facility or used by the wholesale purchaser-consumer;

3. For the retail gasoline dispensing facility or wholesale purchaser-consumer, the proposed minimum oxygen content of each grade of gasoline to be sold. These proposed minimums shall be established so as to assure that the contemporaneous average of the oxygen content of all grades of gasoline at the facility will be not less than 2.7 percent oxygen on a monthly basis during the period the variance is in effect;

4. The type(s) of oxygenates to be used in each grade of gasoline;

5. A description of the proposed system for distributing gasoline to the retail gasoline dispensing facility or wholesale purchaser-consumer's facility to which the variance applies;

6. A demonstration, satisfactory to the Department, that the contemporaneous average of the oxygen content of the gasoline at the facility to which the variance applies will equal or exceed 2.7 percent throughout the applicable oxygen program control period. For the purpose of demonstrating in the application that the proposed minimum oxygen content limits for each grade of gasoline are adequate to ensure that the contemporaneous average of the gasoline sold or used at the facility will not be less than 2.7 percent, the contemporaneous average shall be calculated in accordance with (d) above, except that the volume for each grade of gasoline used in accordance with (d)1 above shall be based on the preceding year's actual monthly gasoline volumes provided pursuant to (f)3 above; and

7. Such other information as the Department determines is necessary to ensure compliance with this subchapter and to evaluate the potential effect of approval of the variance on public health, welfare and the environment.

(g) Any application for a variance submitted to the Department pursuant to this subchapter shall include a service fee in accordance with N.J.A.C. 7:27-25.12(c) and shall be certified in accordance with N.J.A.C. 7:27-8.24.

(h) No retailer, refiner, importer, blender, distributor, or wholesale purchaser-consumer included in an application for a variance submitted to the Department pursuant to this section may supply, provide, offer for sale, sell or otherwise exchange in trade or use any nonconforming gasoline before the Department approves the variance in writing.

(i) The Department shall deny an application for a variance if:

1. The Department determines that approval of the variance may result in the presence in the outdoor atmosphere of any air contaminant in such quantity and duration which is or tends to be injurious to human health or welfare, animal or plant life or property, or may unreasonably interfere with the enjoyment of life or property. This does not include an air contaminant which occurs only in areas over which the applicant has exclusive use or occupancy; or

2. The applicant fails to demonstrate, to the satisfaction of the Department, the capability and intent to ensure that throughout the applicable oxygen program control period at the retail gasoline dispensing facility or wholesale purchaser-consumer's facility:

i. The contemporaneous average of the oxygen content of the gasoline will equal or exceed 2.7 percent; and

ii. The oxygen content of any grade of gasoline does not exceed 3.5 percent and is not less than 2.0 percent.

(j) The Department may deny an application for a variance if the applicant fails to provide all information requested by the Department within 30 days after the request is received by the applicant, or within a longer period if such a response period is approved in writing by the Department.

(k) A variance issued by the Department pursuant to this section shall be valid for the period stated in the written approval of the variance. The period shall be no longer than one year from the date of approval.

(l) Any retailer or wholesale purchaser-consumer to whom the Department issues a variance pursuant to this section shall provide a copy of the variance to each refiner, importer, blender, and distributor named as a supplier of nonconforming gasoline in the variance.

(m) Any person holding a variance issued by the Department pursuant to this section shall:

1. Allow lawful entry by the Department or its authorized representatives to the facility for which the variance is issued;

2. Make said variance readily available for inspection on the operating premises to the Department or its authorized representatives;

3. Pay any penalty assessed pursuant to a final order issued by the Department or any court of competent jurisdiction; and

4. Pay any outstanding service fees, charged in accordance with N.J.A.C. 7:27-25.12(d), within 60 days after receipt of a fee invoice.

(n) The person to whom the Department has issued a variance pursuant to this section shall ensure that:

1. Sufficient volume of each grade of gasoline is sold such that the contemporaneous average of the oxygen content of all grades of gasoline at that facility, determined in accordance with (d) above, equals or exceeds 2.7 percent in every calendar month during which the variance is in effect; and

2. The oxygen content of each grade of gasoline provided, offered for sale, sold or otherwise exchanged in trade or used at that facility at all times equals or exceeds the minimum oxygen content approved for that grade of gasoline in the variance but does not exceed 3.5 percent.

(o) No refiner, importer, blender, or distributor named in a variance pursuant to (f)1 above may provide, sell, transport, or supply gasoline to the facility to which the variance applies unless the oxygen content of the gasoline provided, sold or transported meets or exceeds the minimum oxygen content approved in the variance for that grade of gasoline at that facility.

(p) Any person to whom the Department has issued a variance pursuant to this section shall:

1. Record each day during the applicable oxygen content control period:

i. The volume in gallons of each grade of gasoline provided, sold or otherwise exchanged in trade at the retail gasoline dispensing facility or used by the wholesale purchaser-consumer's facility to which the variance applies; and

ii. The volume in gallons and the oxygen content in percent by weight of, and the type(s) of oxygenate in, each shipment of each grade of gasoline received from any refiner, importer, blender, or distributor at the facility;

2. Calculate for each month, in accordance with (d) above, the contemporaneous average of the oxygen content of the gasoline for the retail gasoline dispensing facility or wholesale purchaser-consumer to which the variance applies;

3. For each month in the applicable oxygen program control period, within 30 days after the end of the month, submit to the Department a report of the contemporaneous average determined in accordance with (p)2 above for the retail gasoline dispensing facility or wholesale purchaser-consumer facility. The report shall be submitted in a format acceptable to the Department and shall be certified in accordance with N.J.A.C. 7:27-8.24; and

4. Maintain for a period no less than three years from the date that they were made the following:

i. Records required to be kept pursuant to (p)1 above;

ii. Calculations required to be made pursuant to (p)2 above; and

iii. Reports required to be prepared pursuant to (p)3 above;

5. Make the records, calculations, and reports required to be maintained pursuant to (p)4 above available, upon request, for review by the Department or its authorized representatives;

6. Upon the request of the Department, submit to the Department all or any part of the information contained in the records, calculations, and reports required to be maintained pursuant to (p)4 above; and

7. Carry out any additional requirements specified by the Department in its conditions of approval of the variance in order to assure compliance by the facility with the requirements of this subchapter.

(q) If a report to be submitted to the Department pursuant to (p)3 above indicates that the contemporaneous average at any retail gasoline dispensing facility or wholesale purchaser-consumer's facility does not equal or exceed 2.7 percent oxygen by weight, the person to whom the variance is issued shall remit to the Department with the report penalties pursuant to N.J.A.C. 7:27A-3.10(e)25. Any penalty due shall be submitted to the Department with the report. The Department will not consider any submission of a report for which a penalty is required acceptable unless the penalty is remitted with the report.

(r) The Department may revoke any approval of any variance granted pursuant to this section if the Department determines that:

1. A refiner, importer, blender, or distributor included in a variance has provided, sold, or transported nonconforming gasoline to the facility to which the variance applies that fails to meet the minimum oxygen content approved in the variance for that grade of gasoline at that facility;

2. The retailer has provided, offered for sale, sold or otherwise exchanged in trade or the wholesale purchaser-consumer has used at the facility to which the variance applies nonconforming gasoline which does not meet the minimum oxygen content approved in the variance for that grade of gasoline at that facility;

3. The person to whom the Department has issued the variance has failed to ensure that the contemporaneous average of the gasoline sold at the facility to which the variance applies equals or exceeds 2.7 percent;

4. The person to whom the Department has issued the variance has failed to comply with any requirement of this subchapter or any condition set forth in the variance approved by the Department; or

5. The person to whom the Department has issued the variance has failed to:

i. Allow lawful entry by the Department or its authorized representatives to the facility for which the variance is issued;

ii. Pay any penalty assessed pursuant to a final order issued by the Department or any court of competent jurisdiction; or

iii. Pay any outstanding service fees, charged in accordance with N.J.A.C. 7:27-25.12(d), within 60 days after receipt of a fee invoice.

(s) If the Department seeks to revoke a variance during the term of that variance, the Department shall provide the opportunity to request a hearing pursuant to the procedures set forth at N.J.A.C. 7:27-8.12. Such request shall be filed with the Department at the following address:

Office of Legal Affairs
 ATTENTION: Adjudicatory Hearing Requests
 Department of Environmental Protection and Energy
 401 E. State Street
 CN 402
 Trenton, New Jersey 08625-0402

7:27-25.10 Variance for shortage of supply

(a) The Department may issue to a refiner, importer, blender, or distributor who has or may have an insufficient supply of conforming gasoline, a temporary variance from the oxygen content standards set forth at N.J.A.C. 7:27-25.3 which would allow the refiner, importer, blender, or distributor to provide, offer for sale, sell, transfer, import, or exchange in trade gasoline that does not conform with the oxygen content requirements of this subchapter.

(b) Application for a temporary variance pursuant to this section shall be made on forms obtained from the Department. Any person may request an application form from:

Assistant Director of Air and
 Environmental Quality Enforcement
 Division of Facility Wide Enforcement
 Department of Environmental Protection and Energy
 CN 027
 Trenton, New Jersey 08625-0027

(c) A refiner, importer, blender, or distributor seeking a variance pursuant to this section shall submit a written application to the Department, containing the following information:

1. Documentation that there is or may be an inadequate supply of conforming gasoline due to extreme and unusual circumstances, for example, a natural disaster or "Act of God";

2. A statement of the cause(s) of the shortage of conforming gasoline and an explanation of how the cause(s) are beyond the control of the applicant and could not have been avoided by the applicant by the exercise of prudence, diligence and due care;

3. A statement of how an adequate supply of conforming fuel will be expeditiously obtained;

4. A comprehensive listing of all facilities to which the applicant would, pursuant to the variance, provide or sell the nonconforming gasoline. This listing shall include the name and address of each facility and the name and phone number of a contact person at each facility;

5. Specification of the minimum oxygen content of the nonconforming gasoline which will be provided or sold, during the period in which the variance is in effect; and

6. Such other information as the Department determines is necessary to ensure compliance with this subchapter and to evaluate the potential effect of approval of the variance on public health, welfare and the environment.

(d) Any application for a variance submitted to the Department pursuant to this subchapter shall include a service fee in accordance with N.J.A.C. 7:27-25.12(c) and shall be certified in accordance with N.J.A.C. 7:27-8.24.

(e) No applicant for a variance pursuant to this section may provide, offer for sale, sell or otherwise exchange in trade any nonconforming gasoline before the Department approves the variance in writing.

(f) The Department shall deny any application for a variance if:

1. The Department determines that approval of the variance may result in the presence in the outdoor atmosphere of any air contaminant in such quantity and duration which is or tends to be injurious to human health or welfare, animal or plant life or property, or may unreasonably interfere with the enjoyment of life or property. This does not include an air contaminant which occurs only in areas over which the applicant has exclusive use or occupancy; or

2. The applicant fails to demonstrate to the satisfaction of the Department, that:

i. There is or may be an inadequate supply of conforming gasoline due to extreme and unusual circumstances, for example, natural disaster or "Act of God";

ii. The cause(s) of the shortage of conforming gasoline are beyond the control of the applicant and could not have been avoided by the applicant by the exercise of prudence, diligence and due care;

iii. The applicant has taken all reasonable steps to minimize the extent and duration of the inadequate supply of conforming gasoline; or

iv. The applicant has taken all reasonable steps to obtain an adequate supply of gasoline.

(g) The Department may deny an application for a variance if the applicant fails to provide all information requested by the Department within 30 days after the request is received by the applicant, or within a longer period if such a response period is approved in writing by the Department.

(h) Any variance issued by the Department under this section shall be valid for a period stated in the variance. The period shall be no longer than 45 days.

(i) Any refiner, importer, blender, and distributor to whom the Department issues a variance pursuant to this section shall provide a copy of the variance to each distributor, retailer or wholesale purchaser-consumer named in the variance in accordance with (c)4 above.

(j) No retailer who provides or sells nonconforming gasoline and no wholesale purchaser-consumer who uses nonconforming gasoline shall be deemed by the Department to have violated the provisions of this subchapter if:

1. The retailer or wholesale purchaser-consumer is named, in accordance with (c)4 above, in a variance issued by the Department pursuant to this section; and

2. The retailer or wholesale purchaser-consumer demonstrates, to the satisfaction of the Department, that the nonconforming gasoline was provided to the retail gasoline dispensing facility or the wholesale purchaser-consumer's facility pursuant to that variance.

(k) Any person holding a variance issued by the Department pursuant to this section shall:

1. Allow lawful entry by the Department or its authorized representatives to the facility for which the variance is issued;

2. Make said variance readily available for inspection on the operating premises to the Department or its authorized representatives;

3. Pay any penalty assessed pursuant to a final order issued by the Department or any court of competent jurisdiction; and

4. Pay any outstanding service fees, charged in accordance with N.J.A.C. 7:27-25.12(d), within 60 days after receipt of a fee invoice.

(l) Any person to whom the Department has issued a variance pursuant to this section shall:

1. Maintain records, on a daily basis, showing the actual oxygen content and the volume in gallons of each shipment of nonconforming gasoline provided or sold or otherwise exchanged in trade during the period that the variance was in effect. Such records shall be maintained on the operating premises for no less than three years from the date the record was made;

2. Submit to the Department, within 60 days of the Department's issuance of the variance, a report indicating the total number of gallons of nonconforming gasoline provided, sold or otherwise exchanged in trade, or used during the period the variance was valid and the actual oxygen content of that gasoline. The report shall be submitted in a format acceptable to the Department and shall be certified in accordance with N.J.A.C. 7:27-8.24;

3. Remit to the Department with the report specified in (l)2 above penalties pursuant to N.J.A.C. 7:27A-3.10(e)25. Any penalties due shall be submitted to the Department with the report. The Department will not consider any submission of a report for which penalties are required acceptable, unless the penalties are remitted with the report;

4. Make the records required to be kept pursuant to (l)1 above available, upon request, for review by the Department or its authorized representatives; and

5. Upon the request of the Department, submit to the Department all or any part of the information contained in the records required to be kept pursuant to (l)1 above.

(m) The Department may revoke any approval of any variance granted pursuant to this section if the Department determines that the person to whom the Department has issued the variance has failed to:

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1. Allow lawful entry by the Department or its authorized representatives to the facility for which the variance is issued;
2. Pay any penalty assessed pursuant to a final order issued by the Department or any court of competent jurisdiction;
3. Pay any outstanding service fees, charged in accordance with N.J.A.C. 7:27-25.12(d), within 60 days after receipt of a fee invoice; or
4. Comply with any requirement of this subchapter or any condition set forth in the variance approved by the Department.

(n) If the Department seeks to revoke a variance during the term of that variance, the Department shall provide the opportunity to request a hearing pursuant to the procedures set forth at N.J.A.C. 7:27-8.12. Such request shall be filed with the Department at the following address:

Office of Legal Affairs
 ATTENTION: Adjudicatory Hearing Requests
 Department of Environmental Protection and Energy
 401 E. State Street
 CN 402
 Trenton, New Jersey 08625-0402

7:27-25.11 Owner and operator responsibility

The owner and operator of any facility subject to this subchapter shall be responsible for ensuring compliance with all requirements of this subchapter. Failure to comply with any provision of this subchapter may subject the owner and operator to civil penalties in accordance with N.J.A.C. 7:27A-3 and criminal penalties pursuant to N.J.S.A. 26:2C-19(f)1 and 2. If there is more than one owner or operator of a facility, all owners and operators are jointly and severally liable for such civil and criminal penalties.

7:27-25.12 Service fees

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

(c) Any person who applies for a variance pursuant to N.J.A.C. 7:27-25.9 or 25.10 shall submit with the application a non-refundable

service fee of \$500.00. No application shall be deemed complete without the required fee.

(d) Any person to whom the Department has issued a variance pursuant to N.J.A.C. 7:27-25.9 or 25.10 shall remit to the Department within 60 days after receipt of an invoice, a compliance inspection fee of \$200.00. Such person is subject to a compliance inspection fee only if the Department conducts at the facility one or more compliance inspections pursuant to the variance during any year, or part thereof, that the variance is in effect. The Department shall not charge such person a compliance inspection fee more frequently than once per year.

7:27A-3.10 Civil Administrative Penalties for Violations of Rules Adopted Pursuant to the Act

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

(e) The Department shall determine the amount of civil administrative penalty for offenses described in this section on the basis of the provision violated and the frequency of the violation. Footnotes 3, 4, and 8 set forth in this subsection and (f) below are intended solely to put violators on notice that in addition to any civil administrative penalty assessed the Department may also revoke the violator's operating certificate or variance. These footnotes are not intended to limit the Department's discretion in determining whether or not to revoke an operating certificate or variance, but merely indicate the situations in which the Department is most likely to seek revocation. The number of the following subsections corresponds to the number of the corresponding subchapter in N.J.A.C. 7:27.

1.-24. (No change.)

25. The violations of N.J.A.C. 7:27-25, Control and Prohibition of Air Pollution by Vehicular Fuels, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-25.3(a)	Less than 15,000 gallon tank capacity.	\$ 2,000	\$ 4,000	\$10,000	\$30,000
	From 15,000 up to 50,000 gallon tank capacity.	\$ 4,000	\$ 8,000	\$20,000	\$50,000
	From 50,000 up to 500,000 gallon tank capacity.	\$ 8,000	\$16,000	\$40,000	\$50,000
	Greater than 500,000 gallon tank capacity.	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-25.3(b)	Less than 15,000 gallon tank capacity.	\$ 2,000	\$ 4,000	\$10,000	\$30,000
	From 15,000 up to 50,000 gallon tank capacity.	\$ 4,000	\$ 8,000	\$20,000	\$50,000
	From 50,000 up to 500,000 gallon tank capacity.	\$ 8,000	\$16,000	\$40,000	\$50,000
	Greater than 500,000 gallon tank capacity.	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-25.3(c)	Less than 15,000 gallon tank capacity.	\$ 2,000	\$ 4,000	\$10,000	\$30,000
	From 15,000 up to 50,000 gallon tank capacity.	\$ 4,000	\$ 8,000	\$20,000	\$50,000

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	From 50,000 up to to 500,000 gallon tank capacity.	\$ 8,000	\$16,000	\$40,000	\$50,000
	Greater than 500,000 gallon tank capacity.	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-25.4(a)1	Test/Document	\$ 1,000	\$ 2,000	\$ 5,000	\$15,000
N.J.A.C. 7:27-25.4(a)2	Certify/Document	\$ 1,000	\$ 2,000	\$ 5,000	\$15,000
N.J.A.C. 7:27-25.4(a)3	Records	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-25.4*[(a)]*(b)	Records	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-25.7(g)	Readily Available	\$ 100	\$ 200	\$ 500	\$ 1,500
N.J.A.C. 7:27-25.7(h)1-2	Records	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-25.7(h)3	Readily Available	\$ 100	\$ 200	\$ 500	\$ 1,500
N.J.A.C. 7:27-25.7(h)4	Submittal	\$ 300	\$ 600	\$ 1,500	\$ 4,500
N.J.A.C. 7:27-25.8	Labeling (per pump)	\$ 100	\$ 200	\$ 500	\$ 1,500
N.J.A.C. 7:27-25.9(l)	Records	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-25.9(m)2	Readily Available	\$ 100	\$ 200	\$ 500	\$ 1,500
N.J.A.C. 7:27-25.9(o)	Less than 15,000 gallon tank capacity.	\$ 2,000	\$ 4,000	\$10,000	\$30,000
	From 15,000 up to 50,000 gallon tank capacity.	\$ 4,000	\$ 8,000	\$20,000	\$50,000
	From 50,000 up to to 500,000 gallon tank capacity.	\$ 8,000	\$16,000	\$40,000	\$50,000
	Greater than 500,000 gallon tank capacity.	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-25.9(p)1-3	Records Calculation/ Report	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-25.9(p)4	Records	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-25.9(p)5	Readily Available	\$ 100	\$ 200	\$ 500	\$ 1,500
N.J.A.C. 7:27-25.9(p)6	Submittal	\$ 300	\$ 600	\$ 1,500	\$ 4,500
N.J.A.C. 7:27-25.9(p)7	Conditions of approval	\$ 800	\$ 1,600	\$ 4,000	\$12,000
N.J.A.C. 7:27-25.9(q)	Non-conforming gasoline & economic benefit	\$ 800 + \$.05 per gallon ¹	\$ 1,600 + \$.05 per gallon ¹	\$ 4,000 + \$.05 per gallon ¹	\$12,000 + \$.05 per gallon ¹
N.J.A.C. 7:27-25.10(i)	Records	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-25.10(k)2	Readily Available	\$ 100	\$ 200	\$ 500	\$ 1,500
N.J.A.C. 7:27-25.10(l)1	Records	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-25.10(l)2	Reports	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-25.10(l)3	Non-conforming gasoline & economic benefit	\$.05 per gallon ²			
N.J.A.C. 7:27-25.10(l)4	All	\$ 100	\$ 200	\$ 500	\$ 1,500
N.J.A.C. 7:27-25.10(l)5	Submittal	\$ 300	\$ 600	\$ 1,500	\$ 4,500

¹To determine the penalty due, multiply the per-gallon penalty amount by the number of additional gallons of the grade of gasoline with the highest oxygen content that were needed to be used, sold or otherwise exchanged in trade to have achieved a contemporaneous average of 2.7 percent oxygen.

²To determine the penalty due, multiply the per-gallon penalty amount by gasoline sold.

PUBLIC NOTICES

EDUCATION

(a)

THE COMMISSIONER

Public Notice of Receipt of Continued Conditional Approval of the State Plan for Special Education and Receipt of an IDEA-B Grant Award

Take notice that the New Jersey Department of Education has received continued conditional approval of the State Plan for Special Education under Part B of the Individuals with Disabilities Education Act for fiscal years 1992 through 1994 by the Federal Office of Special Education and Rehabilitative Services (OSERS) in the United States Department of Education. Approval of the Plan entitles New Jersey to receive an IDEA-B grant award of \$73 million for fiscal year 1992-93. The Department of Education also has received approvals of two Preschool Grant Applications under Section 619 of the Individuals with Disabilities Education Act. In conjunction with the conditional approval of the Part B State Plan, these approvals entitle New Jersey to two preschool grants. The first grant is for fiscal year 1991-92 for \$11.4 million, and the second is for fiscal year 1992-93 for \$11.8 million. Eligible agencies receive notice of grant application procedures through the Department of Education.

Copies of the approved 1992-1994 State Plan and the Preschool Grant are available to interested parties through the Division of Special Education, 225 West State Street, CN 500, Trenton, New Jersey 08625.

For further information regarding the State Plan, contact Erin Hillary Leff at (609) 984-1286. For further information regarding the Preschool Grant, contact Arlene Roth at (609) 292-4692.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

OFFICE OF ENERGY

Notice of Revisions of the State Implementation Plan for Ozone and Carbon Monoxide

Take notice that the New Jersey Department of Environmental Protection and Energy (the Department) is developing two submittals which provide for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS) for ozone and carbon monoxide. These submittals, which will revise New Jersey's State Implementation Plan (SIP), are required pursuant to the Federal Clean Air Act, as amended November 15, 1990 (the CAA). The CAA requires that these revisions to the SIP be submitted by the State to the United States Environmental Protection Agency (USEPA) by November 15, 1992. The Department is seeking comment from the public on these two draft SIP submittals prior to their finalization and submission to USEPA.

One of the submittals pertains to actions the Department is taking to attain the National Ambient Air Quality Standards (NAAQS) for ozone within the State, and the other submittal pertains to actions the State is taking to attain and maintain the NAAQS for carbon monoxide within the State. Both submittals contain a copy of this legal announcement, an executive summary, a summary of the relevant CAA requirements, a demonstration of the reductions needed for attainment, a number of specific submittals detailing actions taken or committed to be taken, a summary of future submittals to be made, a description of the State Certified Organization (SCO) formed to oversee implementation of the SIP, and attachments. The specific submittals included in the ozone submittal include an emission inventory; a program to provide assistance to small businesses; revisions to New Jersey's air pollution control code, including reasonably available control techniques (RACT) requirements for categories of sources which emit volatile organic compounds (VOC) or oxides of nitrogen (NO_x); and a commitment for the Department of Transportation to adopt further revisions to the code to

establish an employer trip reduction program. The specific submittals included in the carbon monoxide submittal include an emissions inventory; revisions to New Jersey's air pollution control code, including the oxygenated fuels rule and the New Source Review (emission offset) rule; and a commitment to adopt further revisions to the code for an enhanced inspection/maintenance program.

Any person who wishes to receive a copy of either or both of these two draft SIP submittals may request them from:

Linda Nowicki, Supervisor
Bureau of Air Quality Planning
New Jersey Department of Environmental Protection and Energy
CN 418
Trenton, New Jersey 08625-0418
(Fax number: 609-633-6198)

Two public hearings will be held on the draft SIP submittal pertaining to ozone, and one public hearing will be held on the draft SIP submittal pertaining to carbon monoxide. The public hearings on the ozone SIP submittal will be held as follows:

October 27, 1992
1:00 to 4:30 P.M. and 6:00 P.M. to close of public comment
First Floor Hearing Room
Department of Environmental Protection and Energy
401 East State Street
Trenton, New Jersey; and
October 29, 1992
1:30 P.M. until close of public comment
Louis Hermann Labor Education Center
Rutgers, the State University
Ryder's Lane and Clifton Avenue
New Brunswick, New Jersey

The public hearing on the carbon monoxide SIP submittals will be held as follows:

October 30, 1992
1:00 to 4:30 P.M. and 6:00 P.M. to close of public comment
Jersey City Council Chambers, 2nd Floor
Jersey City City Hall
280 Grove Street
Jersey City, New Jersey

All persons are invited to attend these public hearings. Any person who wishes to submit verbal or written comment at any of these public hearings on the draft SIP submittals is invited to do so. Persons who wish to present verbal comment will be asked to indicate their desire to do so when they register at the door of the public hearing. Persons who wish to present written comment at a public hearing shall hand the written comment to the Hearing Officer.

In addition, any person may submit written comments directly to the Department on the draft ozone and carbon monoxide SIP submittals. Such written comments must be received by the Department by November 4, 1992. The written comments should be submitted to:

Richard J. McManus, Director
Office of Legal Affairs
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

Although the public hearings announced herein constitute the formal opportunity for the public to comment on the two SIP submittals due November 15, 1992, the Department has previously afforded the public a number of opportunities to provide comment on components of these submittals. On October 8, 1991, the Department held a public workshop that provided an overview on the "Implementation of the 1990 Clean Air Act Amendments in New Jersey." On October 24 and December 4, 1991, the Department held public workshops on "Stationary Source Rules Under Development" pursuant to the CAA. On November 7, 1991 the Department held a public workshop on "Mobile Source Rules Under Development" pursuant to the CAA. The Department completed rulemaking for oxygenated fuels effective October 5, 1992 (see notice of adoption elsewhere in this issue of the New Jersey Register).

There will be future opportunities to comment on components of these two submittals. The Department has scheduled a formal public hearing on the proposed emission statement rules on October 9, 1992. The Department has scheduled a formal public hearing on the proposed revisions to the emission offset rules on November 5, 1992. Other public comment opportunities will include public hearings on the Department's emissions inventory for volatile organic compounds (VOC), oxides of nitrogen (NO_x), and carbon monoxide (CO); rule proposals for reasonably available control techniques (RACT) requirements for categories of sources which emit volatile organic compounds (VOC) or oxides of nitrogen (NO_x); a rule proposal for an enhanced inspection/maintenance (I/M) program; New Jersey's planned small business assistance program; and the Department of Transportation's rule proposal for employer trip reduction.

The ozone and carbon monoxide SIPs constitute the State's comprehensive program to attain the NAAQS for ozone and carbon monoxide, respectively. The CAA requires New Jersey to attain the NAAQS for ozone in Warren County by November 15, 1993; in Atlantic and Cape May Counties by November 15, 1995; in Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem Counties by November 15, 2005; and in Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union Counties by November 15, 2007. The CAA requires New Jersey to attain the NAAQS for carbon monoxide in all areas of the State by December 31, 1995.

The USEPA established the NAAQS for ozone and carbon monoxide pursuant to the 1970 amendments of the CAA. These standards are set at a level that ensures that air quality, in areas that attain these standards, is protective of public health.

The primary NAAQS for ozone established by the USEPA is a maximum one-hour average of 0.12 parts per million, not to be exceeded more than once per year, averaged over a three-year period. New Jersey has not yet attained this standard. Between May and September of 1988, 1989, 1990, 1991, and 1992, this standard was exceeded in New Jersey 45, 18, 23, 26, and nine times (as of September 11, 1992), respectively.

The primary NAAQS for carbon monoxide established by the USEPA is a maximum eight-hour average of nine parts per million and a maximum one-hour average of 35 parts per million, not to be exceeded more than once per year. There have been no exceedances of the one-hour average standard in the State. In 1989 New Jersey had four exceedances of the eight hour standard, one was recorded in Elizabeth, two in East Orange, and one in Hackensack. In 1990 New Jersey had only one exceedance which was recorded in Elizabeth. In 1991 New Jersey had four exceedances, two were recorded in Elizabeth, one in East Orange, and one in North Bergen. To date in 1992, New Jersey has had two exceedances, both recorded in North Bergen.

In addition to the two SIP submittals due November 15, 1992, the CAA mandates that New Jersey provide to USEPA additional submittals on November 15, 1993, and November 15, 1994. The November 15, 1993 submittal will include a demonstration of how the State intends to achieve a 15 percent reduction in emissions of volatile organic compounds (VOC) by November 15, 1996. The November 15, 1994 submittal will include a demonstration of how the State intends to attain the NAAQS for ozone in Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem counties by November 15, 2005, and in Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union counties by November 15, 2007. Prior to each of these submittals, the Department will provide opportunity for public comment.

(a)

POLICY AND PLANNING AIR QUALITY REGULATION

Notice Seeking Public Comment on the Preliminary Report of the Task Force On Mercury Emissions Standard Setting

Take notice that the Department of Environmental Protection and Energy will hold a public meeting for the purpose of receiving comments from the regulated community, the environmental community and any other interested party on the preliminary report of the task force on mercury emissions standard setting.

The public meeting will be held on Monday, October 26, 1992 from 1:00 P.M. to 5:00 P.M. and 6:00 to 9:00 P.M. at the New Jersey Depart-

ment of Environmental Protection and Energy, First Floor, Hearing Room, 401 East State Street, Trenton, New Jersey. Copies of the report may be obtained by contacting Diane Yarson at 609-984-3023. Anyone wishing to participate in this meeting should register in advance with Diane Yarson.

Submit written comments by November 13, 1992 to:

Richard J. McManus, Esq.
New Jersey Department of Environmental Protection
and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

(b)

DELAWARE AND RARITAN CANAL COMMISSION

Permit Extension Act Notice

Take notice that, pursuant to the Permit Extension Act (Act), P.L. 1992, c.82, approval as defined in section 3 of the Act, any Certificate of Approval issued by the Delaware and Raritan Canal Commission, as authorized under P.L. 1974, c.118 (N.J.S.A. 13:13A-1 et seq.), which expires during the period of January 1, 1989 through December 31, 1994, is hereby extended through December 31, 1994.

Any person wishing a written confirmation of the extension of a specific permit may write to the Canal Commission. The applicant's request should include the DRCC number, expiration date of the permit and location.

Any questions regarding the applicability of this law should be submitted in writing to:

D&R Canal Commission
P.O. Box 539
Stockton, NJ 08559

(c)

Notice of Pinelands Commission Actions Affected by the Permit Extension Act

Take notice that, pursuant to P.L. 1992, c.82 (the Permit Extension Act), any government approval which had expired or is scheduled to expire between January 1, 1989 and December 31, 1994 is extended until December 31, 1994. Pursuant to Section 4c of the Permit Extension Act, its provisions do not extend any permit or approval issued pursuant to the "Pinelands Protection Act," P.L. 1979, c.111 (N.J.S.A. 13:18A-1 et seq.) if the extension would result in a violation of Federal law, or any State rule or regulation requiring approval by the Secretary of the Interior pursuant to P.L. 95-625 (16 U.S.C. section 471(i)).

A list of those approvals issued pursuant to the provisions of the Pinelands Comprehensive Management Plan which are subject to extension under the Permit Extension Act follows. These comprise over 90 percent of the actions on applications in the Pinelands Area.

a. Approvals issued to public agencies in accordance with N.J.A.C. 7:50-4.51 et seq.

b. Waivers whose approval was based upon the inability of a parcel to have a beneficial use. These waiver approvals were referred to as "A-1" waivers which were issued under former N.J.A.C. 7:50-4.55(a)1i, repealed effective November 2, 1987, and the former N.J.A.C. 7:50-4.66(a)1i repealed effective March 2, 1992.

c. Waivers of Strict Compliance issued upon the basis of a compelling public need in accordance with N.J.A.C. 7:50-4.64 and the former N.J.A.C. 7:50-4.66(a)2.

d. Any municipal or county approvals which were allowed to take effect either as a result of a determination by the Pinelands Commission that the local approval did not raise substantial issues with respect to the conformance of the proposed development with the standards of the Pinelands Comprehensive Management Plan or which were reviewed and approved or approved with conditions by the Pinelands Commission following a review of the local approval except as noted in (g) and (h) below. Unlike those noted above, the following approvals issued pursuant

PUBLIC NOTICES**ENVIRONMENTAL PROTECTION**

to the provisions of the Pinelands Comprehensive Management Plan by the Pinelands Commission are not subject to the provisions of P.L. 1992, c.82 because their extension would violate provisions of the rules and regulations contained in the Comprehensive Management Plan (N.J.A.C. 7:50) which were required to be approved by the Secretary of Interior:

a. All approvals granted by the Pinelands Development Review Board between February 8, 1979 and June 28, 1979 and all approvals granted under the Pinelands Commission's Interim Rules and Regulations between June 28, 1979 and January 14, 1981. These approvals expired on January 14, 1991, unless the development had received all other necessary approvals from the municipal planning board and board of adjustment by that date or, where no such approval was required, construction permits had been issued prior to that date and no renewal or extension of any other approval was necessary after that date. Said approvals by the Pinelands Commission and the Pinelands Development Review Board were null and void as of January 14, 1991.

b. All waiver approvals issued upon the basis of an applicant having secured any valid municipal development approval prior to February 8, 1979 and documenting expenditures made in reliance thereon. These were referred to as "A-2" waivers and they were issued under the former N.J.A.C. 7:50-4.66(a)1ii, repealed effective November 2, 1987.

c. All waiver approvals issued in response to an application meeting all environmental standards of the Pinelands Comprehensive Management Plan for which a valid final subdivision approval was secured prior to February 8, 1979, for development located in the Pinelands Protection Area as opposed to the Pinelands Preservation Area. These were referred to "A-3" waiver approvals which expired within a two year period unless substantial construction of improvements had begun or if greater than 10 percent of the homes or lots had been built upon or sold. Those waiver approvals also expired if in any subsequent 12 month period fewer than 10 percent of the total number of lots in the subdivision were sold or built upon. The provisions for these waivers were issued under the former N.J.A.C. 7:50-4.55(a)1iii which expired as of January 14, 1983.

d. All letters of interpretation issued under N.J.A.C. 7:50-4.71 et seq. which are valid for a period no longer than one year from the date issued, unless a final approval pursuant to the Comprehensive Management Plan was granted within that period (N.J.A.C. 7:50-4.76(b)).

e. Approvals for forestry operations, issued in accordance with N.J.A.C. 7:50-6.41 et seq., which pursuant to N.J.A.C. 7:50-6.43 are valid for a period of no more than two years.

f. Approvals for resource extraction operations, issued in accordance with N.J.A.C. 7:50-6.61 et seq., which pursuant to N.J.A.C. 7:50-6.64 are valid for a period of no more than two years.

g. Any municipal or county approvals which were allowed to take effect either as a result of a determination by the Pinelands Commission that the local approval did not raise substantial issues with respect to the conformance of the proposed development with the standards of the Pinelands Comprehensive Management Plan or which were reviewed and approved or approved with conditions by the Pinelands Commission following a review of the local approval, where the proposed development is no longer consistent with the provisions of the local ordinance certified by the Pinelands Commission, where the inconsistent local ordinance provisions were mandated by a provision of the Comprehensive Management Plan which required approval by the Secretary of Interior, unless a waiver of Strict Compliance granted by the Pinelands Commission which is in effect has been granted from the inconsistent provision or provisions, unless an unexpired waiver of strict compliance from the inconsistent provision or provisions was approved by the Pinelands Commission.

h. Any municipal or county approvals in a municipality whose master plan and land use ordinances have not been certified by the Pinelands Commission, which were allowed to take effect either as a result of a determination by the Pinelands Commission that the local approval did not raise substantial issues with respect to the conformance of the proposed development with the standards of the Pinelands Comprehensive Management Plan or which were reviewed and approved or approved with conditions by the Pinelands Commission following a review of the local approval, where the proposed development is no longer consistent with the provisions of the Pinelands Commission and approved by the Secretary of Interior, unless an unexpired waiver of strict compliance from the inconsistent provision or provisions was approved by the Pinelands Commission.

i. Waivers granted pursuant to current N.J.A.C. 7:50-4.63(a) or (b) effective March 2, 1992. These waivers expire after five years pursuant

to N.J.A.C. 7:50-4.70(c), (the earliest expirations of these waivers is in 1997).

Any person wishing to obtain a written confirmation of the extension of a specific approval issued pursuant to the Pinelands Comprehensive Management Plan may write to the Pinelands Commission. The applicant's request should include the application number and the project location.

Any questions regarding the applicability of the Permit Extension Act should be submitted in writing to:

New Jersey Pinelands Commission
P.O. Box 7
New Lisbon, New Jersey 08064

(a)**GREEN ACRES PROGRAM****Notice of Public Hearing****Proposed Sale of Lands in the Vicinity of Spruce Run Reservoir**

Take notice that the State of New Jersey, Department of Environmental Protection and Energy, will hold a **public hearing** to seek comments on the proposed sale of the following State owned land:

All of that certain land located on Spruce Run Reservoir (Block 9, Lot 5, 1.5 acres) as shown on the current tax map of the Township of Union, Hunterdon County.

This land was acquired at the time of construction of Spruce Run Reservoir and has been declared surplus to its needs.

The Hunterdon County Park System seeks to acquire the parcel for inclusion in its Union Forge Nature Preserve.

Because the land will be deed restricted from future development the consideration for this property was established at \$30,000.

The **public hearing** will be held on:

Friday, November 6, 1992 at 10:00 A.M. at the
New Jersey Water Authority offices on Route 31 in
Clinton, New Jersey

Persons wishing to make oral presentation are asked to limit their comments to a five minute time period. Presenters should bring a copy of their comments to the hearing for use by the Department. The hearing records will be kept open for a period of seven days following the date of the public hearing so that additional written comments can be received.

Interested persons may submit written comments until November 13, 1992 to:

Thomas Wells, Administrator
Green Acres Program
Department of Environmental Protection and Energy
CN 412
Trenton, New Jersey 08625

(b)**GREEN ACRES PROGRAM****Notice of Public Hearing****Proposed Easement on Lands Located within Rancocas State Park**

Take notice that the State of New Jersey, Department of Environmental Protection and Energy, will hold a **public hearing** to seek comments on the proposed easement on the following State owned land:

Lands located within the Rancocas State Park (Block 501, Lot 3) as shown on the current tax map of the Township of Westampton, Burlington County.

This land was acquired with Green Acres Bond Funds.

The Colonial Pipeline Company seeks the easement for the installation of a cathodic protection system which will prevent corrosion due to stray electrical current in the surrounding soil. The proposed easement will be 15 feet in width, and be roughly perpendicular to the existing 50 foot pipeline right of way. A portion of the new easement lies within the existing right of way. The part that is outside is approximately 6,200 square feet.

The **public hearing** will be held on:

Monday, November 16, 1992 at 10:00 A.M. at the Westampton Township Municipal Court Building at 1444 Rancocas Road, Mt. Holly, New Jersey

Persons wishing to make oral presentation are asked to limit their comments to a five minute time period. Presenters should bring a copy of their comments to the hearing for use by the Department. The hearing records will be kept open for a period of seven days following the date of the public hearing so that additional written comments can be received.

Interested persons may submit written comments until November 23, 1992 to:

Thomas Wells, Administrator
Green Acres Program
Department of Environmental Protection
and Energy
CN 412
Trenton, New Jersey 08625

(a)

**OFFICE OF REGULATORY POLICY
Amendment to the Sussex County Water Quality
Management Plan
Public Notice**

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Sussex County Water Quality Management (WQM) Plan. The amendment proposal has been submitted by the Sussex County Department of Planning and Development. The proposed amendment would amend the Sparta Township Wastewater Management Plan (WMP) to allow for an expansion of the sewer service area to the Sparta Plaza sewage treatment plant (STP) to serve additional residential and commercial areas surrounding the existing service areas. The design capacity of the Sparta Plaza STP will remain at 125,000 gallons per day. In addition, Plate V-1, the service area map within the Sparta Township WMP, is revised to delineate the entire service area of the Sussex County Vo-Tech High School in Sparta Township.

This notice is being given to inform the public that a plan amendment has been proposed for the Sussex County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the Sussex County Department of Planning and Development, Division of Environmental Resource Planning, County Administration Building, P.O. Box 709, Newton, New Jersey 07860; and the NJDEPE, Office of Regulatory Policy, CN-029, Third Floor, 401 East State Street, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling either the Office of Regulatory Policy at (609) 633-7021 or the Sussex County Department of Planning and Development at (201) 579-0500.

The Sussex County Board of Chosen Freeholders will hold a **public meeting** on the proposed Sussex County WQM Plan amendment at which time all interested persons may appear and shall be given an opportunity to be heard. The public meeting will be held on Wednesday, November 11, 1992 at 2:10 P.M. in the Freeholder meeting room, County Administration Building, Plotts Road, Newton, New Jersey. **Interested persons** may submit written comments on the amendment to Ms. Lyn Halliday, Sussex County Department of Planning and Development, at the address cited above, with a copy sent to Mr. Ed Frankel, Office of Regulatory Policy, at the NJDEPE address cited above. All comments must be submitted within 15 days following the public meeting. **All comments** submitted by interested persons in response to this notice, within the time limit, shall be considered by the Sussex County Board of Chosen Freeholders with respect to the amendment request. In addition, if the amendment is adopted by Sussex County, the NJDEPE must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the NJDEPE during its review. Sussex County and the NJDEPE thereafter may approve and adopt this amendment without further notice.

(b)

**OFFICE OF REGULATORY POLICY
Amendment to the Northeast Water Quality
Management Plan
Public Notice**

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Northeast Water Quality Management (WQM) Plan. This amendment proposal was submitted by Chatham Township. This proposed amendment is for the Chatham Township Wastewater Management Plan (WMP). The WMP proposes expansion of the Chatham Township sewage treatment plant (STP) from a design capacity of 0.75 million gallons per day (mgd) to 1.0 mgd and delineates the expanded sewer service area to this STP. The WMP delineates the expanded sewer service area to the Chatham Glen STP and specifies expansion of the STP to 0.155 mgd. In addition, the WMP delineates the expanded sewer service area to the Madison-Chatham Joint Meeting STP located in Chatham Borough.

A **public hearing** on this proposed amendment was held on July 23, 1992. **This notice** is being given to inform the public that in order to provide additional opportunity for public comment, a **second nonadversarial public hearing** will be held by the NJDEPE on the above mentioned plan amendment. The hearing will be held on Thursday, November 12, 1992 at 8:00 P.M. in the Chatham Middle School, 480 Main Street, Chatham Borough, N.J. 07928. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, CN-029, 401 East State Street, 3rd Floor, Trenton, New Jersey 08625 and at the Office of Municipal Clerk, Chatham Municipal Building, 58 Meyersville Road, Chatham, New Jersey. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021 or the Chatham Municipal Building at (201) 635-4600.

Interested persons may submit written comments on the proposed amendment to Mr. Edward Frankel, at the NJDEPE address cited above with a copy sent to Mr. Kenneth Hetrick, Chatham Township Administrator, at the Chatham Township address cited above. All comments must be submitted by Friday, November 27, 1992. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

(c)

**OFFICE OF REGULATORY POLICY
Amendment to the Northeast Water Quality
Management Plan
Public Notice**

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Northeast Water Quality Management (WQM) Plan. This amendment proposal was submitted by Camp Dresser and McKee Inc. on behalf of the Florham Park Sewerage Authority (FPSA) and would amend adopted FPSA Wastewater Management Plan (WMP). The amendment proposes expansion of the sewer service area to the FPSA sewage treatment plant, as delineated in the FPSA WMP, to include the proposed Triumph Office Park development in East Hanover Township. This additional sewer service area includes 175,000 square feet of office space.

This notice is being given to inform the public that a plan amendment has been proposed for the Northeast WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, CN-029, 401 East State Street, 3rd Floor, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

Interested persons may submit written comments on the proposed amendment to Mr. Edward Frankel, at the NJDEPE address cited above with a copy sent to Mr. Charles Bien, Florham Park Sewerage Authority, P.O. Box 131, Florham Park, New Jersey 07932. All comments must be

PUBLIC NOTICES

HUMAN SERVICES

submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

Any interested persons may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEPE address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

HUMAN SERVICES

(a)

OFFICE FOR PREVENTION OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

Public Notice of Available Grant Funds OPMRDD Public Information Project (FY94)

Take notice that in compliance with N.J.S.A. 52:14-34.4 et seq., the Department of Human Services anticipates the following availability of funds.

A. Name of the grant program that has funds available: OPMRDD Public Information Project (FY94).

B. Purpose for which the grant program funds shall be used: The Department of Human Services, Office for Prevention of Mental Retardation and Developmental Disabilities (OPMRDD), anticipates the availability of State funds specific to the goal of public information relative to prevention of mental retardation and other developmental disabilities. The intent of this program is to increase the public and professional awareness of the preventability of many forms of disabilities, and to modify conditions of life, professional practices, or personal behaviors in such a way as to reduce the risk, and hence the incidence, of various kinds of mental and physical disabilities originating in early life.

C. Amount of money in the grant program: Approximately 15 grants will be awarded between the amounts of \$5,000 and \$25,000. The grants will be planned for initiation and completion between July 1, 1993 and June 30, 1994.

D. Groups or entities (citizens, counties, municipalities of a certain class, etc.) which may apply for the grant program: Agencies must be New Jersey based organizations, or corporate bodies; non-profit or public entities, which have demonstrated the capacity to carry out the proposed project.

E. Qualifications needed by applicant to be considered for the grant program: Agencies must have demonstrated experience in designing and implementing public education prevention projects.

F. Procedure for eligible organizations to apply for grant funds: Proposal packages may be requested from:

Deborah E. Cohen, Director
Office for Prevention of Mental Retardation
and Developmental Disabilities
Department of Human Services
222 South Warren Street, CN 700
Trenton, New Jersey 08625
609-984-3351

G. Address of division, office or official receiving application: Same as above.

H. Deadline by which applications must be submitted to the office: Proposals must be submitted by February 19, 1993.

I. Date by which applicants shall be notified whether they will receive funds under the grant program: Applicants shall receive notice of approval or disapproval by April 30, 1993.

(b)

OFFICE FOR PREVENTION OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

Public Notice of Available Grant Funds Advanced Research Fellowship Program (FY94)

Take notice that in compliance with N.J.S.A. 52:14-34.4 et seq. and P.L. 1987, c.5, the Department of Human Services anticipates the following availability of funds:

A. Name of the grant program that has funds available: Advanced Research Fellowship Program (FY94).

B. Purpose for which the grant program funds shall be used: Department of Human Services, Office for Prevention of Mental Retardation and Developmental Disabilities (OPMRDD), anticipates the availability of funds to encourage and stimulate cooperative programs of research among State governmental departments and agencies, universities and private agencies. The purpose of the Advanced Research Fellowship Program is to attract and retain in New Jersey talented scientists who wish to pursue a career in research related to the prevention of mental retardation and other developmental disabilities. Fields of possible research include, but are not limited to, genetics, embryology, biochemistry, immunology, endocrinology, teratology, epidemiology, morphology, environmental, or other areas related to the causes of developmental disabilities.

C. Amount of money in the grant program: A maximum of four fellowships in the amount of \$25,000 per fellowship will be awarded. These funds can be used for stipend support only. Research costs for experimentation, data collection, fieldwork, computer searches and analyses, and equipment cannot be supported by these fellowships. Candidates must be prepared to begin their research on July 1, 1993 and to end on June 30, 1994.

D. Groups or entities (citizens, counties, municipalities of a certain class, etc.) which may apply for the grant program: Candidates must be residents of New Jersey and must be prepared to conduct their research in New Jersey-based institutions of higher learning or other non-profit or public research entities.

E. Qualifications needed by an applicant to be considered for the grant program: Candidates must have been awarded their doctorate or medical degree or a master's degree in a related field such as public health. Candidates must demonstrate established institutional relationships and support for the proposed research within the application process.

F. Procedure for eligible entities to apply for fellowships: Proposal packages may be requested from:

Deborah E. Cohen, Director
Office for Prevention of Mental Retardation
and Developmental Disabilities
Department of Human Services
222 South Warren Street, CN 700
Trenton, New Jersey 08625
609-984-3351

G. Address of division, office or official receiving application: Same as above.

H. Deadline by which applications must be submitted to the office: Proposals must be submitted by February 5, 1993.

I. Date by which applicants shall be notified whether they will receive funds under the grant program: Applicants shall receive notice of approval or disapproval by May 3, 1993.

TREASURY-GENERAL

(a)

STATE EMPLOYEES CHARITABLE CAMPAIGN

Notice of Acceptance of Applications from Charitable Fund-Raising Organizations and Agencies for Participation in the State Employees Charitable Fund-Raising Campaign for Fall of 1993

Take notice that Samuel Crane, Treasurer, State of New Jersey, pursuant to the Public Employee Charitable Fund-Raising Act, P.L. 1985, c. 140 (N.J.S.A. 52:14-15.9(c)1 et seq.) and State Employees Charitable Fund-Raising Rules (N.J.A.C. 17:28-3.2(b)1), announces that the Department of the Treasury will be accepting applications via the Division of Consumer Affairs, Anne Mallett, State Coordinator, P.O. Box 45025, Newark, NJ 07101 until December 1, 1992 from the charitable fund-raising organizations and agencies for participation in State Employees Charitable Fund-Raising Campaign for Fall of 1993.

For the purposes of this notice, "Charitable Fund-Raising Organization" shall mean a voluntary not-for-profit organization which receives and distributes voluntary charitable contributions. A charitable fund-raising organization, if eligible, shall participate on the Steering Committee. "Charitable Fund-Raising Agency" shall mean a voluntary not-for-profit organization which provides health, welfare, or human care services to individuals. A charitable organization or agency shall be eligible to participate in the 1993 Campaign if it meets the following requirements and submits the required documents listed in the Rules:

a. The organization/agency is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code;

b. The organization/agency qualifies for tax deductible contributions under Section 170(b)(1)(a)(vi) or (viii) of the Internal Revenue Code;

c. The organization/agency is not a private foundation as described in Section 509 of the Internal Revenue Code;

d. The organization/agency is incorporated under or subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund-Raising Act of 1971, "P.L. 1971, c. 469 (N.J.S.A. 45:17A-1 et seq.);

e. The organization/agency demonstrates to the satisfaction of the State Treasurer that a significant portion of funds raised in each of its two fiscal years preceding its application to participate in a campaign consist of individual contributions from citizens of the State;

f. If an organization, it shall have raised at least \$60,000 and distributed that sum among at least 15 charitable agencies in each of its two fiscal years preceding its application to participate in a State Campaign; if an agency shall have raised at least \$15,000 from individual citizens of New Jersey in each of its two fiscal years preceding its application to participate in a State campaign.

Copies of the application may be obtained from the Division of Consumer Affairs at the address listed below and submitted with:

1. A cover letter;
2. Verification that the organization/agency meets the requirements as spelled out in a through f above;
3. A copy of the IRS form 990 for the preceding two years;
4. A copy of the independent auditor's report for the two preceding years;
5. A statement that the governing body has no conflict of interest in their service;
6. A list of the current governing body and identification of its officers;
7. A list of agencies to which the organization gave its funds in the two fiscal years prior to application and a list of agencies to which it anticipates giving funds received in this campaign, and a description of the health, welfare, or human care services that each provides, if applicable; and
8. Verification that each agency is registered under the Charitable Fund-raising Act of 1971 except for those that are exempt under the law.

Additional information may be requested by the Treasurer.

Requests for application forms should be addressed to:

Anne Mallett
State Coordinator
New Jersey State Employees Charitable Campaign
PO Box 45025
Newark, NJ 07101

Applications can also be requested by calling (201) 504-6200.

OTHER AGENCIES

(b)

ELECTION LAW ENFORCEMENT COMMISSION

Notice of the Availability of the Quarterly Report of Legislative Agents for the Second Quarter of 1992, Ending June 30, 1992.

Take notice that Frederick M. Herrmann, Executive Director of the Election Law Enforcement Commission, in compliance with N.J.S.A. 52:13C-23, hereby publishes Notice of the Availability of the Quarterly Report of Legislative Agents for the second quarter of 1992, accompanied by a Summary of the Quarterly Report.

At the conclusion of the second quarter of 1992, the Notices of Representation filed with this office reflect that 619 individuals are registered as Legislative Agents. Legislative Agents are required by law to submit in writing a Quarterly Report of their activity in attempting to influence legislation and regulation during each calendar quarter. The aforesaid report shall be filed between the first and tenth days of each calendar quarter.

A complete Quarterly Report of Legislative Agents, consisting of the summary and copies of all Quarterly Reports filed by Legislative Agents for the second calendar quarter of 1992, has been filed separately for reference with the following offices: the Office of the Governor, the Office of the Election Law Enforcement Commission, the Office of Legislative Services, and the State Library. Each is available for inspection in accordance with the practices of those offices.

The Summary Report includes the following information:

- The names of registered Agents, their registration numbers, their business addresses and whom they represent.
- A list of Agents who have filed Quarterly Reports by statutory and compilation deadlines for this quarter.
- A list of Agents whose Quarterly Reports were not received by the compilation deadline for this quarter.

Following is a listing of all new Legislative Agents who have filed Notices of Representation during the second calendar quarter of 1992:

- | | |
|-----------|--|
| No. 770-1 | Walter Peters representing Sheriff's Association of NJ |
| No. 583-7 | Sidney Ytkin representing Public Policy Advisors, Inc. |
| No. 767-1 | George Otlowski, Independent Agent |
| No. 768-1 | John Tiene, Independent Agent |
| No. 436-2 | Thomas Gleason representing International Longshoreman's Association, AFL-CIO |
| No. 771-2 | Albert Cernadas representing International Longshoreman's Association, AFL-CIO |
| No. 772-1 | John Ross, Independent Agent |
| No. 22-5 | Lorraine Gauli-Rufo representing LeBoeuf, Lamb, Leiby, MacRae |
| No. 340-2 | Richard Fryling representing Public Service Electric & Gas Co. |
| No. 771-1 | Robert Gleason representing International Longshoreman's Association, AFL-CIO |
| No. 773-1 | Diane Sterner representing Non-Profit Affordable Housing Network of NJ |
| No. 773-2 | Richard Sauer representing Non-Profit Affordable Housing Network of NJ |
| No. 774-1 | Nicholas Casiello representing Horn, Goldberg, Gorny, Daniels, Paarz, Plackter & Weiss |
| No. 775-1 | James Chappelle representing Brotherhood of Locomotive Engineers |
| No. 10-2 | Kenneth Andrew Becker representing NJ Hospital Association |
| No. 401-2 | Shawn Leyden representing Public Service Electric & Gas Co. |

PUBLIC NOTICES

- No. 776-1 Robert Levinson representing Association of Trial Lawyers of America, NJ Branch
- No. 747-2 Victoria Wicks representing HIP/Rutgers Health Plan
- No. 777-1 Lee Goldsmith representing Association of Trial Lawyers of America, NJ Branch
- No. 486-2 Donald Esch representing Exxon Corporation, USA
- No. 774-2 John Walker Daniels representing Horn, Goldberg, Gorny, Daniels, Paarz, Plackter & Weiss
- No. 778-1 Joseph DiNicola representing E.I. DuPont de Nemours & Co., Inc.
- No. 779-1 Bradley Kading representing Reinsurance Association of America
- No. 602-6 Rob Stuart representing NJ Public Interest Research Group/Citizen Lobby
- No. 641-2 Jeffrey Stoller representing New Jersey Business and Industry Association
- No. 765-2 William Bareford representing E.I. DuPont de Nemours & Co., Inc.
- No. 780-1 Jeffrey Gelsinger representing E.I. DuPont de Nemours & Co., Inc.
- No. 780-2 Albert Boettler representing E.I. DuPont de Nemours & Co., Inc.
- No. 781-1 John Hnat representing E.I. DuPont de Nemours & Co., Inc.
- No. 782-1 Clark Hoffman representing E.I. DuPont de Nemours & Co., Inc.
- No. 782-2 Alfred Pagano representing E.I. DuPont de Nemours & Co., Inc.
- No. 781-2 Bradley Martin representing E.I. DuPont de Nemours & Co., Inc.
- No. 783-1 Patrick Hughes representing American Re-Insurance Co.
- No. 784-1 Ivan Punctatz representing Cohen, Shapiro, Polisher, Shiekman & Cohen
- No. 53-10 Andrew Cattano representing NJ Builders Association
- No. 53-11 Michael McGuinness representing NJ Builders Association
- No. 53-12 Joanne Harkins representing NJ Builders Association
- No. 785-1 James Carey representing Ciba-Geigy Corporation, Pharmaceutical Division
- No. 786-1 Edward Hogan representing Ponzio, Bromberg & Newman
- No. 787-1 Sharon Naeole representing Educational Broadcasting Corporation (13/WNET)
- No. 788-1 Sharon Gordon representing NJ CARES
- No. 789-1 Sondra Ayres representing Schwartz, Tobia & Stanziale

OTHER AGENCIES

- No. 790-1 Emily Crandall representing The Guardian Life Insurance Co.
- No. 232-2 James Morford representing NJ Food Council
- No. 791-1 George Gill representing United NJ Auto Salvage Association
- No. 792-1 Dominick Bompensa representing United Auto Salvage Association
- No. 793-1 Robert Saypol representing NJ League of Mortgage Lenders
- No. 22-6 Richard Wolf representing LeBoeuf, Lamb, Leiby, MacRae

Following is a listing of all Legislative Agents who have filed Notices of Termination during the second calendar quarter of 1992.

Legislative Agent	Registration Number
Beverly Ballard	238-1
Laura Bowne Barry	671-1
Caren Bibbo-Freyer	455-1
John Degnan	124-1
Eugene Deutsch	223-1
Gerald Kaufman	414-1
Jennifer Leigh Kohn	602-4
Lynn Maher	291-2
John Malone	720-1
George Martin	621-1
William McDonnell	607-5
Susan Covais McGuinness	435-1
Joseph Milanowycz	631-1
Catherine Miller	291-5
James Morford	28-1
Augustus Nasmith	38-1
Joan O'Brien	689-1
Katie Pollinger	549-2
Philip Roberts	707-1
John Ross	715-1
Robert Rubino	146-1
Leonard Ruppert	70-2
Charles Steinel	730-1
Michael David Underwood	529-1
Donald Weir	656-1
Marion Wise	602-3

For further information, contact the staff of the Commission at (609) 292-8700.

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the August 3, 1992 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1992 d.1 means the first rule adopted in 1992.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT JULY 20, 1992

NEXT UPDATE: SUPPLEMENT AUGUST 17, 1992

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
23 N.J.R. 2899 and 3060	October 7, 1991	24 N.J.R. 1417 and 1658	April 20, 1992
23 N.J.R. 3061 and 3192	October 21, 1991	24 N.J.R. 1659 and 1840	May 4, 1992
23 N.J.R. 3193 and 3402	November 4, 1991	24 N.J.R. 1841 and 1932	May 18, 1992
23 N.J.R. 3403 and 3548	November 18, 1991	24 N.J.R. 1933 and 2102	June 1, 1992
23 N.J.R. 3549 and 3678	December 2, 1991	24 N.J.R. 2103 and 2314	June 15, 1992
23 N.J.R. 3679 and 3840	December 16, 1991	24 N.J.R. 2315 and 2486	July 6, 1992
24 N.J.R. 1 and 164	January 6, 1992	24 N.J.R. 2487 and 2650	July 20, 1992
24 N.J.R. 165 and 318	January 21, 1992	24 N.J.R. 2651 and 2752	August 3, 1992
24 N.J.R. 319 and 508	February 3, 1992	24 N.J.R. 2753 and 2970	August 17, 1992
24 N.J.R. 509 and 672	February 18, 1992	24 N.J.R. 2971 and 3202	September 8, 1992
24 N.J.R. 673 and 888	March 2, 1992	24 N.J.R. 3203 and 3454	September 21, 1992
24 N.J.R. 889 and 1138	March 16, 1992	24 N.J.R. 3455 and 3578	October 5, 1992
24 N.J.R. 1139 and 1416	April 6, 1992		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1			
1:1-1.5, App. A	Conduct of administrative law judges	24 N.J.R. 2755(a)	
1:6A-9.2, 14.1, 14.4, 18.1, 18.3, 18.5	Special Education Program	24 N.J.R. 1936(a)	R.1992 d.331 24 N.J.R. 3091(a)
1:13A-1.2, 18.1, 18.2	Lemon Law hearings: exceptions to initial decision	24 N.J.R. 1843(a)	
1:31-3.1	Conduct of administrative law judges	24 N.J.R. 2755(a)	

Most recent update to Title 1: TRANSMITTAL 1992-3 (supplement May 18, 1992)

AGRICULTURE—TITLE 2			
2:5-1	Equine entry restriction	Emergency (expired 9-18-92)	R.1992 d.321 24 N.J.R. 2737(a)
2:6	Animal health: biological products for diagnostic or therapeutic purposes	24 N.J.R. 2974(a)	
2:69-1.11	Commercial values of primary plant nutrients	24 N.J.R. 2318(a)	R.1992 d.373 24 N.J.R. 3511(a)
2:71-2.2, 2.4, 2.5, 2.6	Jersey Fresh Quality Grading Program	24 N.J.R. 2318(b)	R.1992 d.374 24 N.J.R. 3511(b)
2:71-2.28, 2.29	Inspection and grading charges for fruits and vegetables	24 N.J.R. 2321(a)	R.1992 d.375 24 N.J.R. 3513(a)
2:76-3.12, 4.11	Farmland Preservation Program: pre-existing nonagricultural uses of enrolled lands	24 N.J.R. 893(b)	R.1992 d.325 24 N.J.R. 2831(a)
2:76-3.12, 4.11	Farmland Preservation Program: pre-existing uses of enrolled lands	24 N.J.R. 2831(a)	
2:76-6.15	Farmland Preservation Program: pre-existing nonagricultural uses on lands permanently deed restricted	24 N.J.R. 896(a)	R.1992 d.324 24 N.J.R. 2833(a)
2:76-6.15	Farmland Preservation Program: pre-existing uses on lands permanently deed restricted	24 N.J.R. 2833(a)	

Most recent update to Title 2: TRANSMITTAL 1992-3 (supplement July 20, 1992)

BANKING—TITLE 3			
3:1-2.1-2.9, 2.18, 2.20, 2.21	Branch and charter application procedures for banks, savings banks, and savings and loan associations	24 N.J.R. 3034(a)	
3:1-19	Consumer checking accounts	24 N.J.R. 1662(b)	R.1992 d.305 24 N.J.R. 2710(a)
3:4-1	Capital requirements for depository institutions	24 N.J.R. 1665(a)	R.1992 d.326 24 N.J.R. 2834(a)
3:18-1, 2.1, 3, 4.1, 4.2, 5.1, 5.2, 5.3, 7.4, 7.5, 8.1, 8.2, 9, 10.5, 10.7, 10.8, 11	Secondary Mortgage Loan Act rules	24 N.J.R. 2760(a)	
3:23	Department license fees	24 N.J.R. 1667(a)	R.1992 d.303 24 N.J.R. 2712(a)
3:25	Debt adjustment and credit counseling	24 N.J.R. 2106(a)	R.1992 d.323 24 N.J.R. 2836(a)
3:38	Mortgage bankers and brokers	24 N.J.R. 2653(a)	R.1992 d.378 24 N.J.R. 3514(a)
3:38-1.6	Mortgage bankers and brokers: administrative correction regarding surety bonds		24 N.J.R. 3514(b)
3:38-1.9, 5.2, 5.3	Branch offices; mortgage services licensure exemption; solicitor registration	24 N.J.R. 1937(a)	

Most recent update to Title 3: TRANSMITTAL 1992-5 (supplement June 15, 1992)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PERSONNEL—TITLE 4A				
4A:1	General rules and Department organization	24 N.J.R. 2490(a)		
4A:2	Appeals, discipline, separations	24 N.J.R. 2491(a)		
4A:2-2.13	Expungement from personnel files of references to disciplinary action	23 N.J.R. 2906(a)		
4A:4-3.7, 7.10, 7.12	Reinstatement of permanent employee following disability retirement	24 N.J.R. 2107(a)	R.1992 d.338	24 N.J.R. 3091(b)
4A:4-7.11	Transfers and retention of employee rights in a consolidation	24 N.J.R. 2494(a)		
4A:5	Veterans and disabled veterans preference	24 N.J.R. 2495(a)		
4A:6-1, 2, 3, 4, 5	Leaves, hours of work, and employee development: preproposed readoption	24 N.J.R. 2496(b)		
4A:6-6	Awards program: preproposed readoption	24 N.J.R. 2496(a)		
4A:6-16	Sick leave injury (SLI) benefits: carpal tunnel syndrome and asbestosis	24 N.J.R. 2108(a)		
4A:7	Equal employment opportunity and affirmative action	24 N.J.R. 2496(c)		
4A:9-1	Political subdivision	24 N.J.R. 2498(a)		
4A:10	Violations and penalties	24 N.J.R. 2499(a)		

Most recent update to Title 4A: TRANSMITTAL 1992-1 (supplement January 21, 1992)

COMMUNITY AFFAIRS—TITLE 5				
5:4-2	Debarment and suspension from Department contracting	24 N.J.R. 2322(a)	R.1992 d.389	24 N.J.R. 3515(a)
5:10-25	Indirect apportionment of heating costs in multiple dwellings: methods, devices, and systems	24 N.J.R. 1844(a)	R.1992 d.390	24 N.J.R. 3515(b)
5:12-2.1	Homelessness Prevention Program: eligibility	23 N.J.R. 3439(a)		
5:14-1.6, 2.2, 3.1, 4.1, 4.5, 4.6, 4.7	Neighborhood Preservation Balanced Housing Program: per unit developer fees and costs; other revisions	24 N.J.R. 1144(a)		
5:18-1.5, 2.4A, 2.4B, 2.7, 2.8	Uniform Fire Code: life hazard uses and permits	24 N.J.R. 2654(a)	R.1992 d.385	24 N.J.R. 3519(a)
5:18-1.5, 4.7	Uniform Fire Code: eating and drinking establishments; exemption from fire suppression system requirement	24 N.J.R. 1938(a)		
5:18-2.4A, 2.4B, 2.7	Uniform Fire Code: life hazard uses; permits	23 N.J.R. 2999(a)		
5:19	Continuing care retirement communities	24 N.J.R. 1146(a)		
5:23	Uniform Construction Code	24 N.J.R. 1420(b)		
5:23-2.1, 2.15	Uniform Construction Code: licensing disputes	24 N.J.R. 4(a)		
5:23-2.5	UCC: increase in building size	24 N.J.R. 1421(a)		
5:23-2.17, 8	Asbestos Hazard Abatement Subcode	24 N.J.R. 1422(a)		
5:23-3.7, 3.8, 4.20	Indirect apportionment of heating costs in multiple dwellings: methods, devices, and systems	24 N.J.R. 1844(a)	R.1992 d.390	24 N.J.R. 3515(b)
5:23-3.14	Uniform Construction Code: tent permits	24 N.J.R. 2656(a)	R.1992 d.391	24 N.J.R. 3521(a)
5:23-3.21	UCC: one and two family dwelling subcode	23 N.J.R. 3444(b)		
5:23-4.5, 4.19-4.22, 4A.12, 5.21, 5.22, 8.6, 8.10, 8.18, 8.19, 12.5, 12.6	UCC: State Training Fee Report; fees	24 N.J.R. 2657(a)	R.1992 d.392	24 N.J.R. 3521(b)
5:23-4.18, 4.20	UCC enforcing agencies: minimum fees	24 N.J.R. 169(b)		
5:23-4.18, 4.20	Uniform Construction Code: gas service entrances	24 N.J.R. 1846(a)	R.1992 d.313	24 N.J.R. 2712(b)
5:23-5.7	UCC: subcode official requirements	24 N.J.R. 2661(a)	R.1992 d.393	24 N.J.R. 3525(a)
5:23-5.19	UCC: elevator inspector H.H.S. requirements	24 N.J.R. 2662(a)	R.1992 d.394	24 N.J.R. 3525(b)
5:25-5.4	State new home warranty plan contributions	24 N.J.R. 2663(a)	R.1992 d.395	24 N.J.R. 3525(c)
5:26-2.3, 2.4	Planned real estate development full disclosure: fees	24 N.J.R. 2657(a)	R.1992 d.392	24 N.J.R. 3521(b)
5:30-8.2	Unbudgeted school aid	24 N.J.R. 2766(a)		
5:33-1.2, 1.3, 1.5-1.8	Municipal tax collection procedures	24 N.J.R. 2766(a)		
5:33-3.2, 3.3, 3.6, 3.8-3.11	Tenant Property Tax Rebate Program	24 N.J.R. 3205(a)		
5:33-4	Property tax and mortgage escrow account transactions	24 N.J.R. 2664(a)	R.1992 d.400	24 N.J.R. 3527(a)
5:34-7	Cooperative purchasing by local contracting units	24 N.J.R. 2667(a)	R.1992 d.401	24 N.J.R. 3529(a)
5:80-32	Housing and Mortgage Finance Agency: project cost certification	24 N.J.R. 2208(a)		
5:91	Council on Affordable Housing: procedural rules	24 N.J.R. 2671(a)		

Most recent update to Title 5: TRANSMITTAL 1992-7 (supplement July 20, 1992)

MILITARY AND VETERANS' AFFAIRS—TITLE 5A				
5A:5	State veterans' facilities: admission criteria, care maintenance fee, transfer or discharge	24 N.J.R. 2499(b)	R.1992 d.372	24 N.J.R. 3311(a)

Most recent update to Title 5A: TRANSMITTAL 1992-1 (supplement February 18, 1992)

EDUCATION—TITLE 6				
6:3-2.6	Conditions for access to pupil records	24 N.J.R. 3038(a)		
6:8	Thorough and efficient system of public schools	24 N.J.R. 3039(a)		
6:8-9	Educational improvement plans in special needs districts	24 N.J.R. 2323(a)	R.1992 d.396	24 N.J.R. 3535(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:12-1.2, 1.7-1.10, 1.14	Governor's Teaching Scholars Program	24 N.J.R. 3050(a)		
6:20-9.2	Policy and agreement for School Nutrition Programs: administrative correction	_____	_____	24 N.J.R. 2712(c)
6:21-5, 6, 6A, 6B, 6C, 8, 9	Pupil transportation: school bus and small vehicle standards	24 N.J.R. 2109(a)		
6:21-6A.6	Pupil transportation: administrative correction to N.J.A.C. 6:21-6A.6 regarding school bus color	24 N.J.R. 2325(a)		
6:26	Establishment of pupil assistance committees	24 N.J.R. 1670(a)	R.1992 d.307	24 N.J.R. 2713(a)
6:29-2.4	Attendance at school by pupils or adults infected by HIV	24 N.J.R. 2124(a)	R.1992 d.398	24 N.J.R. 3538(a)
6:29-8	Nonpublic school nursing services	24 N.J.R. 2325(b)		
6:64	Public, school, and college libraries	24 N.J.R. 2126(a)	R.1992 d.399	24 N.J.R. 3538(b)

Most recent update to Title 6: TRANSMITTAL 1992-3 (supplement July 20, 1992)

ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7

7:0	Well construction and sealing: request for public comment regarding comprehensive rules	24 N.J.R. 3286(a)		
7:1-1.3, 1.4	Delegations of authority within the Department	23 N.J.R. 3276(a)		
7:1-2	Third-party appeals of permit decisions	23 N.J.R. 3278(a)		
7:1C-1.5, 1.6, 1.7	Ninety-day construction permit fees	24 N.J.R. 2768(a)		
7:1J	Spill Compensation and Control Act: processing of damage claims (repeal 17:26)	24 N.J.R. 1255(a)		
7:1K	Pollution prevention program requirements: preproposed new rules	24 N.J.R. 1968(a)		
7:4	New Jersey Register of Historic Places: procedures for listing of historic places	23 N.J.R. 2103(b)	R.1992 d.318	24 N.J.R. 2926(a)
7:6-1.24, 9.2	Boating rules: rotating lights; "personal watercraft"	24 N.J.R. 1694(a)		
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7:7A-1.4, 2.7, 8.10	Freshwater wetlands protection: project permit exemptions; hearings on contested letters of interpretation	24 N.J.R. 912(b)		
7:7A-16.1	Freshwater wetlands permit fees	24 N.J.R. 2768(a)		
7:7E-7.5	Alternative traffic reduction programs in Atlantic City	24 N.J.R. 1986(a)		
7:9-6	Ground water quality standards	24 N.J.R. 181(a)		
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7:14B	Underground storage tanks: public hearing	24 N.J.R. 3286(b)		
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7:19-6.8	Water supply interconnections: administrative correction	_____	_____	24 N.J.R. 2715(a)
7:25-5	1992-93 Game Code	24 N.J.R. 1847(b)	R.1992 d.315	24 N.J.R. 2715(b)
7:25-5.13	1992-93 Game Code: hunting prohibition in Monmouth County	24 N.J.R. 2773(a)		
7:25-6	1993-94 Fish Code	24 N.J.R. 2539(a)		
7:25-16.1	Defining freshwater fishing lines	24 N.J.R. 204(a)		
7:25-16.1	Freshwater fishing line for Rahway River in Union County	24 N.J.R. 2977(a)		
7:25-18.1	Filleting of flatfish at sea	24 N.J.R. 1456(a)		
7:25-18.1, 18.5	Atlantic sturgeon management	24 N.J.R. 205(a)		
7:25-18.5	Haul seining and fyke netting regulation	24 N.J.R. 207(a)		
7:25-18.16	Taking of horseshoe crabs	24 N.J.R. 2978(a)		
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7:26-4.3	Thermal destruction facilities: compliance monitoring fees and postponed operative date	24 N.J.R. 1999(a)		
7:26-4.3	Thermal destruction facilities: extension of comment period regarding compliance monitoring fees	24 N.J.R. 2687(a)		
7:26-4.6	Solid waste program fees	23 N.J.R. 3690(a)	R.1992 d.311	24 N.J.R. 2726(a)
7:26-4.6	Solid waste program fees: extension of comment period	24 N.J.R. 1458(a)		
7:26-4A.6	Hazardous waste program fees: annual adjustment	24 N.J.R. 2001(a)		
7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies	23 N.J.R. 3607(a)		
7:26-6.5, 6.6	Interdistrict and intradistrict solid waste flow	24 N.J.R. 3291(a)		
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7:26-8.2	Hazardous waste exclusions: household waste	23 N.J.R. 3410(a)		
7:26-8.2	Hazardous waste exclusions: used chlorofluorocarbon refrigerants	23 N.J.R. 3692(a)		
7:26-8.16	Hazardous constituents in waste streams	23 N.J.R. 3093(b)		
7:26-8.16	Hazardous constituents in waste streams: reopening of comment period	24 N.J.R. 2003(a)		
7:26-8.20	Used motor oil recycling	24 N.J.R. 2383(a)		
7:26A-6	Used motor oil recycling	24 N.J.R. 2383(a)		
7:26B	Environmental Cleanup Responsibility Act rules	24 N.J.R. 2773(b)		
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7:26B-1.3, 1.5, 1.6, 1.8, 1.9, 1.10, 1.13, 5.4, 13.1, App. 1	ECRA rules: extension of comment period	24 N.J.R. 1281(a)		
7:26B-7, 9.3	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26C	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26D	Cleanup standards for contaminated sites	24 N.J.R. 373(a)		
7:26D	Cleanup standards for contaminated sites: additional public hearing and extension of comment period	24 N.J.R. 1458(b)		
7:26D	Cleanup standards for contaminated sites: additional public hearing and extension of comment period	24 N.J.R. 2003(b)		
7:26E	Technical requirements for contaminated site remediation	24 N.J.R. 1695(a)		
7:27-1.4, 1.6-1.30, 8.4, 8.14-8.24, 16.9, 21	Air contaminant emission statements from stationary sources	24 N.J.R. 2979(a)		
7:27-25	Control and prohibition of air pollution by vehicular fuels: public meeting and hearing on oxygenated fuels program	24 N.J.R. 2128(a)		
7:27-25.1-25.4, 25.7-25.12	Control and prohibition of air pollution by vehicular fuels	24 N.J.R. 2386(a)	R.1992 d.382	24 N.J.R. 3539(a)
7:27-26	Low Emissions Vehicle Program	24 N.J.R. 1315(a)		
7:27-26	Low Emissions Vehicle Program: correction to proposal	24 N.J.R. 1458(c)		
7:27A-3.10	Civil administrative penalties for violations of Air Pollution Control Act	24 N.J.R. 2386(a)	R.1992 d.382	24 N.J.R. 3539(a)
7:27A-3.10	Civil administrative penalties for violations of emission statement requirements	24 N.J.R. 2979(a)		
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8:13	Shellfish handling and shipping; hard and soft shell clam depuration	24 N.J.R. 2504(a)	R.1992 d.384	24 N.J.R. 3532(a)
8:21-3.13	Repeal (see 8:21-3A)	24 N.J.R. 3100(a)		
8:21-3A	Registration of manufacturers and wholesale distributors of non-prescription drugs, and manufacturers and wholesale distributors of devices	24 N.J.R. 3100(a)		
8:21-3A	Registration of wholesale distributors of prescription drugs	24 N.J.R. 2410(b)	R.1992 d.354	24 N.J.R. 3100(a)
8:21A	Good drug manufacturing practices; tamper-resistant packaging for over-the-counter products	24 N.J.R. 2003(c)	R.1992 d.316	24 N.J.R. 2729(a)
8:31A-1.5, 7.4, 7.5, App. D	SHARE Manual: per diem add-on fee assessment	24 N.J.R. 2810(a)		
8:31A-App. A	SHARE Manual: administrative correction regarding Cost Center Record	_____	_____	24 N.J.R. 3103(a)
8:31B-4.40	Uncompensated care collection procedures	24 N.J.R. 1124(c)		

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8:33	Health care facilities and services: Certificate of Need application and review process	24 N.J.R. 2222(a)	R.1992 d.342	24 N.J.R. 3104(a)
8:33-3.11	Certificate of Need process for demonstration and research projects	24 N.J.R. 3104(a)		
8:33C	Regionalized perinatal services: Certificate of Need criteria and standards	24 N.J.R. 2005(a)	R.1992 d.343	24 N.J.R. 3131(a)
8:33H	Long-term care services: Certificate of Need policy manual	24 N.J.R. 2014(a)	R.1992 d.344	24 N.J.R. 3144(a)
8:34-1.7	Licensure examination fee for nursing home administrator	24 N.J.R. 2414(a)	R.1992 d.345	24 N.J.R. 3161(a)
8:34-1.7	Nursing home administrator licensure: examination fee			24 N.J.R. 3179(a)
8:35A	Maternal and child health consortia: licensing standards	24 N.J.R. 2027(a)	R.1992 d.346	24 N.J.R. 3162(a)
8:41	Mobile intensive care programs	24 N.J.R. 3255(b)		
8:42	Home health agencies: standards for licensure	24 N.J.R. 2031(a)	R.1992 d.322	24 N.J.R. 2941(a)
8:43	Residential health care facilities: standards for licensure	24 N.J.R. 2506(a)		
8:43G-19	Hospital licensing standards: obstetrics	24 N.J.R. 2045(a)	R.1992 d.347	24 N.J.R. 3165(a)
8:43I	Hospital Policy Manual	24 N.J.R. 3280(a)		
8:45-1.3, 2.1	Blood bank licensure fees and Department laboratory services charges	24 N.J.R. 2508(a)		
8:65-2.5	Controlled dangerous substances: physical security controls	24 N.J.R. 174(a)		
8:71	Interchangeable drug products (see 23 N.J.R. 3334(b); 24 N.J.R. 144(b), 948(a), 2558(a))	23 N.J.R. 2610(a)	R.1992 d.351	24 N.J.R. 3174(b)
8:71	Interchangeable drug products (see 24 N.J.R. 145(b))	23 N.J.R. 3258(a)	R.1992 d.136	24 N.J.R. 948(b)
8:71	Interchangeable drug products	24 N.J.R. 59(b)	R.1992 d.137	24 N.J.R. 949(a)
8:71	Interchangeable drug products (see 24 N.J.R. 947(b), 1897(a), 2560(a))	24 N.J.R. 61(a)	R.1992 d.349	24 N.J.R. 3173(b)
8:71	Interchangeable drug products (see 24 N.J.R. 1896(a), 2560(b))	24 N.J.R. 735(a)	R.1992 d.350	24 N.J.R. 3174(a)
8:71	Interchangeable drug products	24 N.J.R. 1673(a)	R.1992 d.296	24 N.J.R. 2559(a)
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8:71	Interchangeable drug products	24 N.J.R. 2997(a)		
8:100	State Health Plan	24 N.J.R. 1164(a)	R.1992 d.299	24 N.J.R. 2561(a)
8:100-14.8, 14.13	State Health Plan: hospital inpatient services	24 N.J.R. 2704(a)		
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9:6A	State college personnel system	24 N.J.R. 3052(a)		
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9:9-7.6, 7.7	NJCLASS program: student loan interest rates			24 N.J.R. 3180(a)
9:11-1.5	Educational Opportunity Fund Program: financial eligibility for undergraduate grants	24 N.J.R. 1859(a)	R.1992 d.353	24 N.J.R. 3091(c)
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10:35	County psychiatric facilities	24 N.J.R. 208(a)	R.1992 d.339	24 N.J.R. 3339(a)
10:36	Patient supervision at State psychiatric hospitals	24 N.J.R. 1728(a)	R.1992 d.302	24 N.J.R. 2730(b)
10:46-1.3, 2.1, 3.2, 4.1, 5	Developmental Disabilities: determination of eligibility for division services	24 N.J.R. 211(a)		
10:49	New Jersey Medicaid Program: basic requirements for recipients and providers	24 N.J.R. 1728(b)	R.1992 d.317	24 N.J.R. 2837(a)
10:50-1.1-1.4, 1.6, 1.7, 2.1, 2.2	Livery services: Medicaid reimbursement, age of vehicles, workers' compensation coverage; invalid coach services	24 N.J.R. 2517(a)		
10:51	Pharmaceutical Services Manual	24 N.J.R. 3053(a)		
10:52-1.6, 4	Medicaid reimbursement for outpatient laboratory services	24 N.J.R. 917(a)	R.1992 d.327	24 N.J.R. 2898(a)

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10:53-1.5	Medicaid reimbursement for outpatient laboratory services	24 N.J.R. 917(a)	R.1992 d.327	24 N.J.R. 2898(a)
10:53A	Hospice Services Manual	24 N.J.R. 2778(a)		
10:60-2.3, 3.15, 4.2	Home Care Services: personal care assistant services; eligibility for Home Care Expansion Program	24 N.J.R. 2687(c)		
10:71-5.6	Medicaid Only income eligibility standards for hospice care	24 N.J.R. 2778(a)		
10:72	New Jersey Care: Special Medicaid Programs Manual	24 N.J.R. 2145(a)	R.1992 d.364	24 N.J.R. 3343(a)
10:72-1.1, 3.4, 4.1	New Jersey Care: Medicaid eligibility of children	24 N.J.R. 1860(a)		
10:81-1.6, 1.11, 1.12, 2.1, 2.2, 2.4, 2.7, 2.8, 3.8, 3.9, 3.18, 3.19, 4.2, 4.23, 5.2, 5.7, 5.8, 7.1, 7.4, 7.20, 8.22, 8.24, 9.1, 14.1, 14.18, 14.20, 14.21	Public Assistance Manual: Family Development Program and REACH/JOBS provisions	24 N.J.R. 2147(a)	R.1992 d.366	24 N.J.R. 3345(a)
10:81-11.4, 11.9	Public Assistance Manual: provision of information regarding services to AFDC clients; legal representation in child support matters	24 N.J.R. 2327(a)		
10:81-11.5, 11.7, 11.9, 11.20, 11.21	Public Assistance Manual: child support and paternity services	24 N.J.R. 2328(a)		
10:82-1.2-1.5, 1.11, 2.7-2.11, 4.4, 4.8	Assistance Standards Handbook: AFDC program requirements	24 N.J.R. 2155(a)	R.1992 d.367	24 N.J.R. 3352(a)
10:82-4.9	Assistance Standards Handbook: DYFS monthly foster care rates	24 N.J.R. 2160(a)	R.1992 d.340	24 N.J.R. 3092(a)
10:83	Service Programs for Aged, Blind or Disabled Persons	24 N.J.R. 3074(a)		
10:83-1.2	Emergency Assistance benefits for SSI recipients	24 N.J.R. 326(a)		
10:83-1.2	Emergency Assistance benefits for SSI recipients: public hearing and extension of comment period	24 N.J.R. 1204(a)		
10:85-1.1, 2.1, 3.1-3.5, 4.1, 4.2, 5.1-5.8, 6.8, 7.2, App. D	General Assistance program: time-limited eligibility for employable persons; alien eligibility; payment of hospital medical services	24 N.J.R. 3075(a)		
10:85-3.2, 10.1	General Assistance Manual: Family Development Program and work training requirements	24 N.J.R. 2160(b)	R.1992 d.368	24 N.J.R. 3356(a)
10:86	Family Development Program Manual	24 N.J.R. 2161(a)	R.1992 d.369	24 N.J.R. 3357(a)
10:87-2.4, 2.6, 2.31, 2.39, 3.8, 3.14, 4.1, 4.8, 5.1, 5.9, 5.10, 6.9, 6.20, 10.3, 10.6, 10.18, 11.26, 11.29, 12.1	Food Stamp Program revisions	24 N.J.R. 3207(b)		
10:97-1.3, 7.3	Business Enterprise Program for the blind and visually impaired: promotion and transfer	24 N.J.R. 2798(a)		
10:120-1.2	Youth and Family Services: scope of responsibilities and services	23 N.J.R. 3420(b)		
10:122B	Division of Youth and Family Services: requirements for foster care	23 N.J.R. 3693(a)		
10:122C	DYFS: approval of foster homes	23 N.J.R. 3696(a)		
10:122D	DYFS: foster care services	23 N.J.R. 3703(a)		
10:122E	DYFS: removal of foster children and closure of foster homes	23 N.J.R. 3708(a)		
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10:123A	Youth and Family Services: Personal Attendant Services Program	23 N.J.R. 2091(b)	R.1992 d.314	24 N.J.R. 2914(a)
10:124	Children's Shelter Facilities and Homes: manual of standards	24 N.J.R. 3089(a)		
10:131	DYFS: Adoption Assistance and Child Welfare Act of 1980 requirements	24 N.J.R. 2522(a)		
10:133	DYFS: initial response and service delivery	23 N.J.R. 3714(a)		
10:133A	DYFS: initial response and screening	23 N.J.R. 3717(a)		
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10A:4-4.1	Prohibited inmate acts: administrative correction	_____	_____	24 N.J.R. 2731(a)
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10A:6	Inmate access to courts	24 N.J.R. 2799(a)		
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11:1-32.4	Workers' compensation self-insurance	24 N.J.R. 1944(a)		
11:1-32.4	Workers' compensation self-insurance: extension of comment period	24 N.J.R. 2708(b)		
11:1-33	Public Advocate reimbursement disputes	24 N.J.R. 2706(a)		
11:2-17.7	Payment of health insurance claims	23 N.J.R. 3196(c)		
11:2-17.11	Payment of third-party claims: written notice to claimant	24 N.J.R. 522(a)		
11:2-26	Insurer's annual audited financial report	24 N.J.R. 1940(a)		
11:2-26	Insurer's annual audited financial report: extension of comment period	24 N.J.R. 2708(a)		
11:2-33	Workers' compensation self-insurance	24 N.J.R. 1944(a)		
11:2-33	Workers' compensation self-insurance: extension of comment period	24 N.J.R. 2708(b)		
11:2-35.1–35.6	Insurer relief from FAIR Act obligations	24 N.J.R. 3212(a)		
11:3-2	Personal automobile insurance plan	24 N.J.R. 331(a)	R.1992 d.370	24 N.J.R. 3400(a)
11:3-3	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)	R.1992 d.371	24 N.J.R. 3414(a)
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11:3-28.8	Reimbursement of excess medical expense benefits paid by insurers	24 N.J.R. 3215(a)		
11:3-29.6	Automobile PIP coverage: physical therapy services	24 N.J.R. 2998(a)		
11:3-33.2	Appeals from denial of automobile insurance: failure to act timely on written application for coverage	24 N.J.R. 2128(b)		
11:3-34.4	Automobile insurance coverage: eligible person qualifications	Emergency (expires 11-3-92)	R.1992 d.380	24 N.J.R. 3420(a)
11:3-35.5	Automobile insurance rating: eligibility points of principal driver	24 N.J.R. 2331(a)		
11:3-36.12	Automobile physical damage inspection procedures: operative date	24 N.J.R. 2708(c)		
11:3-42	Producer Assignment Program	Emergency (expires 11-3-92)	R.1992 d.381	24 N.J.R. 3421(a)
11:3-43	Private passenger automobile insurance: personal lines rating plans	23 N.J.R. 3221(a)		
11:4-14.1, 15.1, 16.2, 19.2, 28.3, 36	BASIC health care coverage	24 N.J.R. 1205(a)		
11:4-16.5	Individual health insurance: disability income benefits riders	24 N.J.R. 338(a)		
11:4-16.8, 23, 25	Medicare supplement coverage: minimum standards	24 N.J.R. 12(a)		
11:5-1.9, 1.38	Real Estate Commission: fee cap for mortgage services; transmittal of funds to lenders	24 N.J.R. 1957(a)		
11:5-1.9, 1.38	Real Estate Commission: extension of comment period regarding fee cap for mortgage services; transmittal of funds to lenders	24 N.J.R. 2129(a)		
11:7	Insurance of municipal bonds	24 N.J.R. 1958(a)		
11:13	Commercial lines insurance	24 N.J.R. 2830(a)		
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11:17A-1.2, 1.7	Appeals from denial of automobile insurance: failure to act timely on written application for coverage; premium quotation	24 N.J.R. 2128(b)		
11:17A-1.3	Licensure as insurance producer or registration as limited insurance representative: compliance deadline	24 N.J.R. 3220(a)		
11:19-2	Financial Examination Monitoring System: data submission by domestic insurers	24 N.J.R. 2999(a)		
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