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THE JOURNAL OF STATE AGENCY RULEMAKING

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: DECEMBER 17, 1990
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JANUARY 22, 1991

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **April 3, 1991.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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NEW JERSEY REGISTER

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RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules
Special Hearing Rules
Return of Cases; Failure to Appear; Sanctions
Reproposed Amendments: N.J.A.C. 1:1-3.3 and 14.4; 1:13-14.4; and 1:13A-14.1
Reproposed New Rule: N.J.A.C. 1:1-14.14

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Proposal Number: PRN 1991-110.

Submit comments by April 3, 1991 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9
CN 049
Trenton, NJ 08625

The agency proposal follows:

Summary

The Office of Administrative Law (OAL) proposed amending these rules on November 5, 1990, at 22 N.J.R. 3278(b) as part of a group of proposed amendments. These proposed amendments and new rule were not adopted along with the other proposed amendments. Instead, they are now being reproposed with modifications.

As originally proposed, the rules called for the OAL to return cases immediately to transmitting agencies whenever parties failed to appear at hearings. The OAL rules currently require an administrative law judge to hold a matter for 10 days after a failure to appear in order to give the nonappearing party an opportunity to explain. If an explanation is received, the judge must reschedule the proceeding. If no explanation is received, the judge must issue an initial decision dismissing the matter or granting the requested relief. The OAL believes the current process should be changed so that cases in which a party does not appear can be concluded more quickly and so that less of a judge's time is required to dispose of such cases. Therefore, the OAL seeks to amend the process so that failure to appear cases are returned to transmitting agencies sooner and judges are not required to issue initial decisions in most cases.

The OAL received three comments on the original proposal. The Department of Human Services commented that returning cases to transmitting agencies for disposition would result in lack of uniformity in handling such cases. It would also be burdensome to staffs of transmitting agencies. The Department of Personnel suggested continuing to issue initial decisions when cases are returned, even if a form decision is used. This format would enable parties seeking retransmission of cases to the OAL for hearing to request retransmission in the form of exceptions to the initial decision. Middlesex Water Company suggested that some discretion be added to the rule so that a judge could reschedule a matter after a failure to appear if the nonappearance was caused by an emergency or other unforeseen circumstances.

After reviewing these comments, the OAL decided to repropose the rules related to the failure to appear process with modifications. As the rule is reproposed, the judge would hold a failure to appear case for one day to give nonappearing parties an opportunity to offer an explanation. If an explanation is forthcoming, the judge may reschedule the hearing. If no explanation is received, the judge may direct the Clerk to return the case to the transmitting agency. However, if the party who appeared at the hearing requests an initial decision on the merits, the judge may take ex parte proofs and issue an initial decision, provided the failure to appear is memorialized in the decision.

The OAL believes that the reproposed procedure addresses most of the concerns raised by the commenters and achieves the results the OAL is seeking, while giving the administrative law judge more flexibility in failure to appear situations. Returning failure to appear cases to transmitting agencies may somewhat increase the burden on agency staffs and will require agencies to develop procedures for resolving or retransmitting these cases to the OAL, but the OAL believes the transmitting agencies should be responsible for these cases. Also, by holding the case for one day, true emergencies will be processed by the OAL and not shifted to the agencies. Furthermore, the reproposed amendments and new rule provides that parties may request an initial decision on the merits based on ex parte proofs. This permits the judge to conclude a case despite a failure to appear when the judge determines that this action would be appropriate. Accordingly, additional matters will be handled by the OAL and not the agencies.

The OAL's major function, however, is to conduct contested case hearings which are transmitted by State agencies. If a party fails to appear for a hearing, the hearing cannot be conducted, and the case should be returned informally to the transmitting agency. If the agency determines that the case is once again ready for hearing, the matter can be retransmitted to the OAL.

The OAL prefers not to require initial decisions in all failure to appear cases because producing and issuing initial decisions—even form decisions—involves OAL resources which should instead be devoted to active cases. However, to insure that parties are aware that the case has been returned to the transmitting agency and that they may request retransmission, reproposed N.J.A.C. 1:1-3.3(c) requires the OAL Clerk to send a notice to parties.

The reproposal involves N.J.A.C. 1:1-3.3 (Return of transmitted cases) and N.J.A.C. 1:1-14.4 (Sanctions; failure to appear). As in the original proposal, subsection (c) of 1:1-14.4 has been recodified as a separate new rule, N.J.A.C. 1:1-14.14, to deal solely with sanctions. A separate rule makes it more clear that sanctions may be imposed for misconduct other than failure to appear. The purpose of reproposed amendments of N.J.A.C. 1:13-14.4 and 1:13A-14.1 is to conform these Special Hearing Rules to the reproposed amendment of N.J.A.C. 1:1-14.4.

Social Impact

The primary benefit of the reproposed amendments is to enable the OAL to concentrate its resources on contested cases which can be heard and concluded. Cases in which the parties are not ready or willing to actively participate will be returned to the transmitting agencies. This will enable the OAL to more quickly handle cases which are ready to be concluded.

There should be no adverse impact on parties to contested cases provided the parties appear at scheduled proceedings. As reproposed, the rule gives the judge discretion to reschedule a hearing if a party fails to appear and offers an adequate explanation for the nonappearance. This should prevent any injustice caused by failures to appear because of emergencies. In addition, since the reproposed amendments permit a party to request an initial decision on the merits if another party fails to appear, a party would not be able to delay the conclusion of a case by failing to appear.

Economic Impact

The reproposed amendments and new rule are not expected to have any economic impact on parties to contested cases provided parties appear at scheduled proceedings. Parties who fail to appear may have their cases returned to transmitting agencies and economic consequences may result. The reproposed amendments may have an economic impact on transmitting agencies as a result of being required to manage returned cases. However, any additional expenditures would be minimal because the added duties would be related to the agencies' existing responsibilities and, in addition, the number of cases returned to any particular agency would probably not be large.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the reproposed amendments and new rule 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 reproposed amendments and new rule alter the way the OAL handles contested cases when a party fails to appear at a scheduled proceeding.

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

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1:1-3.3 Return of transmitted cases

(a) A case that has been transmitted to the Office of Administrative Law shall be returned to the transmitting agency if the transmitting agency so requests in written notice to the Office of Administrative Law and all parties. The notice shall state the reason for returning the case. Upon receipt of the notice, the Office of Administrative Law shall return the case.

(b) A case shall be returned to the transmitting agency by the Clerk of the Office of Administrative Law if, after appropriate notice, neither a party nor a representative of the party appears at a proceeding scheduled by the Clerk or a judge (see N.J.A.C. 1:1-14.4). Any explanations regarding the failure to appear may be addressed to the transmitting agency head after the case is returned. If, based on such explanations, the agency head believes the matter should be rescheduled for hearing, the agency head may re-transmit the case to the Office of Administrative Law, pursuant to N.J.A.C. 1:1-8.2.

(c) Upon returning any matter to the transmitting agency, the Clerk shall issue an appropriate notice to the parties.

1:1-14.4 [Sanctions; failure] **Failure** to appear; [failure to comply with orders or requirements of this chapter] **sanctions for failure to appear**

(a) If, **after appropriate notice, neither** a party [or] **nor a** representative [fails to] appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for [10 days] **one day** before taking any action. If the judge does not receive an explanation for the nonappearance within [10 days] **one day**, the judge may [dismiss the matter or grant the requested relief. The initial decision shall note that the dismissal or relief is granted because the party failed to appear], **pursuant to N.J.A.C. 1:1-3.3(b) and (c), direct the Clerk to return the matter to the transmitting agency for appropriate disposition.**

(b) If the nonappearing party submits an explanation in writing, a copy must be served on all other parties and the other parties shall be given an opportunity to respond.

1. If the judge receives an explanation, the judge shall reschedule the matter and may, at his or her discretion, order any of the following:

i. The payment by the delinquent representative or party of costs in such amount as the judge shall fix, to the State of New Jersey or the aggrieved person;

ii. The payment by the delinquent representative or party of reasonable expenses, including attorney's fees, to an aggrieved representative or party; or

iii. Such other case-related action as the judge deems appropriate.

2. If the judge concludes from the explanation received that the nonappearing party or representative is intentionally attempting to delay the proceeding, the judge may refuse to reschedule the matter and shall [grant the requested relief or dismiss the claim] **issue an initial decision explaining the basis for the conclusion that there has been an intentional delay**.

[(b) If the judge dismisses the matter or grants the requested relief, the party who failed to appear at the hearing may request a remand in an exception to the initial decision.

(c) For unreasonable failure to comply with any order of a judge or with any requirements of this chapter, the judge may:

1. Dismiss or grant the motion or application;
2. Suppress a defense or claim;
3. Exclude evidence;
4. Continue the proceeding and consider sanctions under (a)1i or ii above; or
5. Take other appropriate case-related action.]

(c) If the appearing party requires an initial decision on the merits because of the failure to appear, the party shall ask the judge for permission to present ex parte proofs. If no explanation for the failure to appear is received, and the circumstances require a decision on the merits, the judge may enter an initial decision on the merits based on the ex parte proofs, provided the failure to appear is memorialized in the decision.

1:1-14.14 Sanctions; failure to comply with orders or requirements of this chapter

(a) For unreasonable failure to comply with any order of a judge or with any requirements of this chapter, the judge may:

1. Dismiss or grant the motion or application;
2. Suppress a defense or claim;
3. Exclude evidence;
4. Order costs or reasonable expenses, including attorney's fees, to be paid to the State of New Jersey or an aggrieved representative or party; or
5. Take other appropriate case-related action.

1:13-14.4 Failure to appear

If the licensee fails to appear at the hearing and fails to submit the certification required by N.J.A.C. 1:13-14.2, [the judge shall hold the matter for 10 days before taking any action. If the judge does not receive an explanation for the nonappearance within 10 days, the judge shall impose the full penalty proposed by DMV in the notice of proposed suspension] **the provisions of N.J.A.C. 1:1-14.4 shall apply**.

1:13A-14.1 Failure to appear

[(a)] If a party fails to appear at any proceeding scheduled by the Clerk or judge, the [judge shall hold the matter for 10 days before taking action. If the judge does not receive an explanation for the non-appearance within 10 days, the judge may take any of the following actions depending on the circumstances:

1. If the consumer failed to appear, the judge shall issue an initial decision dismissing the matter and denying the requested relief.

2. If both parties failed to appear, the judge shall issue an initial decision dismissing the matter and denying the requested relief.

3. If the manufacturer failed to appear, the judge shall issue an initial decision granting appropriate relief after reviewing the documents and, if necessary, requiring further proof to determine the amount due.

(b) If the judge receives an explanation for either party's non-appearance, the provisions of N.J.A.C. 1:1-14.4(a) shall apply] **provisions of N.J.A.C. 1:1-14.4 shall apply**.

(a)

OFFICE OF ADMINISTRATIVE LAW

Special Hearing Rules
Board of Public Utility Hearings
Proposed New Rules: N.J.A.C. 1:14

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Proposal Number: 1991-129.

Submit comments by April 3, 1991 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9, CN 049
Quakerbridge Road
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These proposed new rules set forth special procedures applying to contested case hearings arising before the Board of Public Utilities (BPU) and transmitted to the Office of Administrative Law (OAL). These rules codify procedures that have been used in BPU hearings and which have proven to be effective in these types of cases.

The proposed new rules include a definition of "judge" that explicitly states that a single commissioner of the BPU may preside over a contested case as is authorized by N.J.S.A. 48:2-32. The proposed new rules also make clear that the Board may be represented by a deputy attorney general or by a nonlawyer, pursuant to the requirements and procedures of the nonlawyer representation rule, N.J.A.C. 1:1-5.4(a). The BPU must indicate in the transmittal form whether a deputy attorney general or a nonlawyer will represent it in the proceedings.

The proposed new rules also include special notice provisions. As required by statute, petitioners in eminent domain cases must notify each respondent of the hearing and must file proof of the notice with the judge at least five days before the hearing. In other cases, the judge may order a party to give notice of the hearing, including public notice. Past ex-

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perience has shown that a party is often in the best position to know all other possible parties and to effectively give notice.

The proposed new rules also set forth the procedure for public hearings. While public hearings have been held in these matters, the procedures have not been set forth in rule form. The proposed new rules incorporate the procedures that have been used. The utility may be directed by the judge to secure a location for the hearing and to accomplish any mandated public notice. Public hearings shall be conducted during the evening or at some other convenient time unless a statute requires otherwise or there is good cause for some other scheduling and the judge so orders. The Clerk will notify the parties of a public hearing and will also make sure that a court stenographer is present. Finally, persons opposing petitions or tariff schedules may testify at the public hearing. The judge may permit cross-examination of the objectors. However, objectors are not entitled to notice of any subsequent proceeding, including the evidentiary hearing, unless they qualify as either participants or intervenors under the Office of Administrative Law (OAL) rules, N.J.A.C. 1:1-16.

Subject to the judge's discretion, parties may file direct testimony in writing in accordance with a schedule established by the judge. The prefiled testimony must also be sworn, certified or verified and must be filed no later than 10 days before the hearing. In the past, adjournments or delays in the hearing have resulted from problems concerning prefiled direct testimony. Therefore, the rules specify that the discovery schedule shall be adjusted to facilitate the timely filing of that testimony.

Cross-examination may be restricted by the judge if its primary purpose is discovery. While a judge is authorized to restrict such cross-examination in any case, experience has demonstrated that cross-examination has been used as a discovery mechanism in these proceedings. As with all other cases, parties to a BPU case should utilize the various discovery mechanisms to obtain all necessary information prior to the commencement of the hearing since discovery of information during the hearing often results in requests for delay in the case.

The proposed new rules require a party to purchase and provide the judge with a copy of the transcript. In orders to show cause, the respondent is obligated to provide the transcript; in all other cases, it is the petitioner's responsibility. The purchasing party must also pay the court reporter's daily appearance fee and associated costs. This requirement may be waived by the judge for good cause shown. These requirements are a continuation of long-existing practice which has proven effective in BPU cases.

The evidence rules permit the admission of sworn, certified or verified written prefiled testimony, but require that the witness appear at the hearing for cross-examination unless all parties agree that the appearance is not necessary. If the prefiled testimony has not been timely filed, the judge may preclude such testimony.

Social Impact

The proposed new rules codify and clarify existing procedures involving contested case hearings arising before the Board of Public Utilities (BPU). These procedures are either statutorily required or have proven to be efficient and effective through past practice between BPU and the Office of Administrative Law. The proposed new rules should make it simpler for parties to locate and utilize the appropriate procedures for BPU cases.

Economic Impact

The proposed new rules continue existing or statutorily required procedures; therefore, no new administrative costs are imposed. There are no changes foreseen in the economic impact anticipated by the proposed new rules. By providing an efficient method of handling the cases and by permitting prefiled testimony, the proposed new rules should minimize the costs to the parties. Parties are required to assume the costs of providing a transcript, as they always have in BPU proceedings.

Regulatory Flexibility Analysis

The proposed new rules impose no reporting or recordkeeping requirements. A small business, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., may be a party to a BPU contested case hearing. As such, the small business, as a petitioner, or as a respondent in cases involving an order to show cause or an investigative order initiated by the BPU, may have to bear certain costs, including providing a court reporter for and a transcript of the hearing. Because these requirements are of long standing, some are subject to waiver, and appropriately allocate costs to the party precipitating the hearing, no lesser requirements are provided for small businesses.

Full text of the proposed new rules follows:

CHAPTER 14
BOARD OF PUBLIC UTILITY HEARINGS

SUBCHAPTER 1. GENERAL PROVISIONS

1:14-1.1 Applicability

The special rules in this chapter shall apply to contested case hearings arising before the Board of Public Utilities (BPU). Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these special rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTER 2. DEFINITIONS

1:14-2.1 Definitions

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

"Judge" means an administrative law judge, the BPU or a single Commissioner of the BPU who presides over a contested case under N.J.S.A. 48:2-32.

SUBCHAPTERS 3 through 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:14-5.1 Appearance by the BPU

The BPU may be represented by a deputy attorney general or a non-lawyer agency employee pursuant to N.J.A.C. 1:1-5.4(a).

SUBCHAPTERS 6 through 7. (RESERVED)

SUBCHAPTER 8. TRANSMISSION OF CONTESTED CASES TO THE OFFICE OF ADMINISTRATIVE LAW

1:14-8.1 Transmittal to the OAL

In the transmittal form, as required by N.J.A.C. 1:1-8.2, the BPU shall indicate whether it will be a party to the proceeding and whether it will be represented by an agency employee pursuant to N.J.A.C. 1:1-5.4(a) or a deputy attorney general.

SUBCHAPTER 9. SCHEDULING; NOTICES

1:14-9.1 Notice of hearing

(a) Upon receiving notice of the time, date and place of hearing from the Clerk, in accordance with N.J.S.A. 48:3-17.7 a petitioner who has filed for authority to exercise the power of eminent domain shall give each respondent whose name and address is known at least 20 days notice of the hearing. At least five days prior to the hearing date, the petitioner shall file with the judge proof of such notice pursuant to N.J.A.C. 1:1-7.2.

(b) In any proceeding, the judge may require a party to give notice of the hearing and its scope to persons who may be affected by the proceeding, which may include publication and posting of notice of hearing, at such party's expense, in such manner and for such time and in such newspapers as the judge may designate.

1:14-9.2 Public hearings

(a) Whenever a public hearing is required by statute or rule the judge may instruct the utility to secure an appropriate location for the hearing and to accomplish whatever public notice may be required by statute or rule.

(b) Unless a statute requires otherwise or the judge directs otherwise for good cause shown, public hearings shall be conducted during the evening after regular business hours or at some other time which would be convenient to those persons interested in the subject matter of the public hearing.

(c) The Clerk shall notify the parties to the proceeding of any public hearing and shall ensure that the proceeding is stenographically transcribed.

(d) Persons opposing petitions or tariff schedules may testify at public hearings. The judge may permit the utility or other parties to cross-examine these objectors. Objectors shall not be entitled to

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notice of any subsequent proceedings unless they qualify as a participant or intervenor under N.J.A.C. 1:1-16.

SUBCHAPTERS 10 through 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:14-14.1 Prefiled testimony

(a) The judge may require that all parties prefile their direct testimony in writing, certified, verified or sworn to under oath, not later than 10 days prior to commencement of the hearing. The schedule for the submission of this testimony shall be discretionary with the judge.

(b) The judge shall adjust the discovery schedule to facilitate the timely filing of prefiled direct testimony.

1:14-14.2 Cross-examination

The judge may restrict any cross-examination whose purpose appears to be primarily for discovery.

1:14-14.3 Transcripts

(a) In cases involving an order to show cause or an investigative order initiated by the BPU, respondents shall purchase an original and one copy of the transcript and shall provide the judge with a copy of the hearing transcript within 15 working days of the date of hearing. In all other cases, the petitioner shall provide the judge with a copy of the hearing transcript within 15 days of the hearing date.

(b) The party responsible for providing the judge with a copy of the transcript is responsible for the cost of the original and one copy of the transcript, the daily appearance fee of the court reporter and, when applicable, any costs associated with complying with N.J.A.C. 1:1-14.11(j).

(c) The judge may waive or modify the application of this rule at any time for good cause shown.

SUBCHAPTER 15. EVIDENCE RULES

1:14-15.1 Witnesses and prefiled testimony

(a) Sworn, certified or verified written prefiled testimony of a witness may be admitted by the judge. Unless the parties consent to the admissibility of this written testimony without the necessity of an appearance, the witness shall appear at the hearing and be available for cross-examination on the prefiled written testimony.

(b) The judge may preclude any witness from testifying in a party's direct case when the witnesses' written testimony has not been filed in accordance with a schedule for such submissions established by the judge.

SUBCHAPTERS 16 through 21. (RESERVED)

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Communication Terminal Branch Offices; Automated Teller Machines

Proposed Amendments: N.J.A.C. 3:1-2.25 and 2.26
Proposed New Rules: N.J.A.C. 3:1-17
Proposed Repeal: N.J.A.C. 3:6-13

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

Authority: N.J.S.A. 17:1-8 and 8.1; 17:9A-1, 20D, 316 and 333; 17:12B-8, 37.1 and 226.

Proposal Number: PRN 1991-107.

Submit comments by April 3, 1991 to:
Robert M. Jaworski
Assistant Commissioner
Department of Banking
CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department of Banking proposes to amend the rules regarding automated teller machines (ATMs) established by depository institutions. These machines permit consumers to conveniently conduct banking business while not at a full branch of their depository, and after business hours. Experience with automated teller machines has proven that they are, in general, of benefit to both consumers and the financial community.

The proposed rules define an ATM as an automated facility or terminal owned or rented by a bank, savings bank or savings and loan association at which a customer may: (1) make deposits; (2) obtain disbursements from a deposit or loan account; and/or (3) transfer money from a deposit or loan account. Included within this definition is a communication terminal branch office as defined in N.J.S.A. 17:9A-1(17), and a remote service unit as defined in N.J.S.A. 17:12B-8(e).

Current rules require a bank or savings bank to file a notice with the Department, along with a filing fee, before establishing an on-site automated teller machine. In addition, an annual notice must be sent to the Department indicating any change in access. Because of the proliferation of ATM machines and because access has become so widespread, the Department no longer deems these reports necessary, and proposes to repeal this filing requirement.

The proposed rules require an application before a financial institution establishes an automated teller machine more than 200 feet from the premises of the principal office or branch of the institution. The application must be accompanied by a filing fee of $500.00 and a certified copy of a resolution of the board of the applying institution authorizing the application. This requirement is similar to that in place for banks and savings banks, and facilitates the process for savings and loan associations which are now required to file a full branch application.

Current rules prohibit a foreign financial institution from accessing a New Jersey ATM unless a New Jersey institution can access an ATM in that state. This requirement of reciprocity is no longer deemed necessary, and is repealed in the proposal. In addition, the prohibition against interstate deposit taking is removed.

Social Impact

These proposed rules and amendments are intended to facilitate the establishment, maintenance and use of ATM machines. This will have the beneficial social impact of providing the public with easier access to these machines.

Economic Impact

The proposed amendments eliminate the fee previously charged by the Department when a bank or savings bank established an ATM on the premises of the principal office or branch. In addition, the proposed amendments eliminate the fee charged when shared access is changed. The amount of these fees collected, however, has been negligible. The proposed amendments will therefore have a positive economic impact on depositories, and a minimal negative economic impact upon the Department.

Currently, savings and loan associations must file a branch application to establish an ATM not on the premises of an office, and the application fee is $1,500. These proposed rules reduce this fee to $500.00. Since very few of these applications are filed, this change will have a negligible effect on State revenues.

Regulatory Flexibility Analysis

About one-half of all depositories are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Regarding banks and savings banks, the proposed rules and amendments remove the filing requirements currently in effect for those depositories establishing an ATM on site, or changing access to the ATM. In addition, the filing process for associations will be facilitated, since they will no longer need to file full branch applications.

The result of the proposed changes will be an easing of requirements for both large and small institutions. The amended and new rules are viewed as minimally necessary for the maintenance of sound banking practice and the protection of the banking public. Therefore, no differing requirements based on business size are offered.

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

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 3:6-13.

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3:1-2.25 Fees; banks and savings banks

(a) A bank or savings bank shall pay to the Commissioner for use of the State the following fees:

1.-3. (No change.)

4. For filing an application for approval of the establishment of [a communication terminal branch office] **an automated teller machine** $500.00

5.-22. (No change.)

(b) (No change.)

3:1-2.26 Fees; State Associations

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

1.-5. (No change.)

6. Application to establish a branch office, not pursuant to a merger or bulk purchase $1,500

7. Application to establish an automated teller machine $500.00

Recodify 7.-20. as **8.-21.** (No change in text.)

(b) (No change.)

SUBCHAPTER 17. AUTOMATED TELLER MACHINES (ATM)

3:1-17.1 Definitions

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

"Automated teller machine" means an automated facility or terminal owned or rented by a bank, savings bank or savings and loan association at which a customer may do one or more of the following:

1. Make deposits;

2. Obtain disbursements from a deposit or loan account; or

3. Transfer money from a deposit or loan account.

Included within this definition is a communication terminal branch office as defined in N.J.S.A. 17:9A-1(17), and a remote service unit as defined in N.J.S.A. 17:12B-8(e).

"Bank," "savings bank," "savings and loan association" and "credit union" means State chartered institutions having their principal offices in New Jersey, unless otherwise indicated.

"Foreign financial institution" means a State or Federally chartered bank, savings bank, savings and loan association or credit union with principal offices outside of New Jersey.

"Sharing access" means the ability of financial institutions, other than the institution owning or renting the automated teller machine, to allow their customers to use the machine to consummate transactions, make deposits, initiate inquiries or otherwise conduct business with such financial institutions.

3:1-17-2 On site location

A bank, savings bank or savings and loan association may establish, maintain or operate an automated teller machine or machines on the premises, or within 200 feet of the premises, of its principal office or any of its branch or auxiliary offices, without filing an application with the Department. The 200 feet shall be measured from the portion of the property line of the office or branch closest to the automated teller machine.

3:1-17.3 Off site location

(a) Before establishing an automated teller machine more than 200 feet from its premises, a bank, savings bank or savings and loan association must file an application with the Commissioner containing the following:

1. The proposed location of the automated teller machine or machines;

2. A listing of all other New Jersey institutions which will share access to the machine or machines, or all state, regional and national networks with which the machine or machines will be associated;

3. The anticipated charges to be made for access to the unit;

4. The number of machines to be established at the location; and

5. Such other information as required by the Commissioner.

(b) The following items must accompany each application:

1. The filing fee of $500.00; and

2. A certified copy of a resolution of the board of the applying institution authorizing the application.

3:1-17.4 Shared ownership

If any bank, savings bank or savings and loan association shares in the ownership, costs of installation or maintenance of an automated teller machine, either directly or indirectly (on other than a transactional fee basis), then this shall be indicated in the application. In addition, the application shall include a certified board resolution from each financial institution sharing in the ownership, costs of installation or maintenance. The application fee shall only be paid by the applying institution, but the machine shall be a branch of every institution sharing the ownership or costs of installation or maintenance.

3:1-17.5 Interstate access

(a) No foreign financial institution shall establish, operate, maintain or share ownership of an automated teller machine anywhere within the State of New Jersey, except that a foreign financial institution may share access to such a machine.

(b) No automated teller machine in this State shall bear any identification of a foreign financial institution, except that a generic name or display identifying or associated with a regional or national network of automated teller machines is not prohibited.

(c) A customer having an account in a foreign financial institution may make deposits to that account from an automated teller machine located in New Jersey.

(a)

DIVISION OF LEGISLATIVE AND REGULATORY AFFAIRS

Mortgage Bankers and Brokers; Net Worth, Insolvency; Examination

Proposed Amendment: N.J.A.C. 3:38-1.2
Proposed Repeal: N.J.A.C. 3:38-1.4
Proposed New Rule: N.J.A.C. 3:38-1.9

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

Authority: N.J.S.A. 17:11B-13(a).

Proposal Number: PRN 1991-106.

Submit comments by April 3, 1991 to:
Robert M. Jaworski
Assistant Commissioner
Division of Legislative and Regulatory Affairs
Department of Banking
CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department of Banking proposes the following new rule and amendment which would define and set minimum net worth requirements for mortgage bankers and brokers. Pursuant to the proposal, each applicant for a license as a mortgage banker must demonstrate that it has a tangible net worth of at least $300,000 and each applicant for a license as a mortgage broker must demonstrate that it has a tangible net worth of at least $50,000. Tangible net worth is defined to exclude goodwill and organizational costs, among other assets. Mortgage bankers and brokers licensed when this new rule becomes effective will also be required to comply with these net worth standards but shall have two years and one year, respectively, within which to do so. The requirements do not apply to individual licensees or applicants, except those operating or intending to operate as sole proprietors.

The Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq., was promulgated by the Legislature to regulate the primary market in first mortgages in New Jersey. It was a response to the proliferation of "fly-by-night companies" in the mortgage business which were engaging in practices harmful to borrowers. The Legislature addressed this problem by requiring that any person wishing to engage in the mortgage business in this State be licensed by the Department (see: N.J.S.A. 17:11B-3). A license is available only to those whose "financial responsibility . . . and

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general fitness . . . justify the belief that the business will be operated honestly, fairly, and efficiently within the purposes of this act" as stated in N.J.S.A. 17:11B-4c.

To fulfill the legislative mandate of requiring that only persons with sufficient financial responsibility and general fitness engage in the mortgage banking business, the Department deems it necessary to restrict licensure to those persons with sufficient resources.

To supervise compliance with the net worth requirements and to assure that licensees have adequate assets to engage in mortgage banking and brokering activities, the Department will also require that mortgage bankers and brokers file semi-annual reports of their net worth. So that the Department may also monitor existing licensees not yet subject to the net worth requirements, the Department requires that they immediately comply with the reporting requirements as well. The proposed rules also require that the reports be accompanied by a $50.00 filing fee and impose a possible fine of $50.00 for late filing of semi-annual reports.

The proposed new rule would also define when an institution is considered to be "insolvent" within the meaning of the statute which specifies insolvency as a ground for suspension. Insolvent is defined as a negative tangible net worth, or the inability to pay debts when due.

The Department also proposes to amend N.J.A.C. 3:38-1.2, which prescribes the information applicants must provide to the Department to qualify for a license, to include a requirement for an unqualified certified financial statement demonstrating that the applicant possesses the required net worth. Also, the Department proposes to repeal N.J.A.C. 3:38-1.4, which permits the Department to waive the competency examination requirement for licensure based upon qualifying expertise in the industry prior to passage of the Act in 1981. Such expertise, the Department believes, is now so remote as to be no longer indicative of a competency to presently engage in the mortgage banking or brokering business.

Social Impact

This proposed new rule will reduce the number of persons eligible to engage in the mortgage banking business. It will have the beneficial social impact of excluding "fly-by-night" companies. During times of adverse economic conditions and rising interest rates, these companies have insufficient resources to stay in business. This endangers fees paid by consumers to such lenders prior to closing, such as lock-in fees. By limiting entry into the field to companies with sufficient resources, this rule will protect these consumers who have entrusted fees with the broker or banker. It will have the additional beneficial social impact of increasing consumer confidence in mortgage lenders in particular and financial institutions in general.

Economic Impact

The proposed rule will have no economic impact on the vast majority of mortgage bankers and brokers, since most licensed institutions satisfy these net worth requirements. Those few institutions now licensed which do not have sufficient net worth to satisfy the requirements of this rule will be able to continue operations for one year or two years, depending upon whether they hold mortgage broker or mortgage banker licenses. Should the net worth of these institutions not satisfy the requirements at that time, the Department is given the authority under the rule to prohibit such licensee from transacting new business.

To the extent that "fly-by-night companies" are excluded, the proposed rule will tend to reduce competition in the mortgage banking field. However, mortgage bankers and brokers compete in the home lending business with State and Federally chartered banks, savings and loans and savings banks, among other financial institutions. The presence of these institutions ensures that mortgage rates and other terms will be set on a competitive basis to the benefit of the borrower.

The proposed new rule also imposes a $50.00 filing fee and possible $50.00 penalty for late filing on the biannual report. This will have a marginal negative impact on licensees.

Regulatory Flexibility Analysis

Most licensed mortgage bankers and brokers are small businesses for purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rule imposes reporting requirements on these businesses. In particular, licensed bankers and brokers will be required to file semi-annual reports with the Department. Compiling these reports may require professional assistance. However, since much of the required information is readily available to licensees, the cost of compliance will be minimal.

To the extent that compliance requirements are imposed, the proposed rule is necessary to provide for the safety and soundness of State-licensed mortgage bankers and brokers. For that reason, no exemptions or requirement differentiation may be made based upon business size.

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

3:38-1.2 Applications

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

(e) All applications [for a corporate license, and all applications for an individual license for a sole proprietor or partner or officer in an unincorporated entity,] **on behalf of a corporation, partnership, association or other entity and all applications on behalf of an individual sole proprietor** shall include [a] **an unqualified certified** financial statement [for] **of** the applicant **as of the close of its most recent fiscal year end, financial statements for the previous two years** and such additional information as shall be required by the Commissioner for a newly organized corporation. [An individual applicant who will not operate as a sole proprietor or partner or officer in an unincorporated entity] **All other applications on behalf of individuals** shall not be required to [submit] **include** a financial statement [with his application].

(f) (No change.)

3:38-1.4 [Waiver of examination] **(Reserved)**

[(a) An individual applicant shall notify the Department of Banking whether he requests a waiver of the examination requirement. The request for a waiver shall be made at the time of making application and shall be made in a manner prescribed by the Commissioner.

(b) If an applicant seeks a waiver based upon a claim that he has been principally engaged in the business of mortgage banker or mortgage broker for five years prior to the effective date of the statute, he shall provide with his application a list of all employers and places of employment during that period including addresses, names of immediate supervisors, and a description of the duties of the employment.

(c) If an applicant seeks a waiver based upon a claim that he has been principally engaged in the business of mortgage banker or mortgage broker for more than two years but less than five years and is otherwise qualified, he shall provide with his application a list of all employers and places of employment for the preceding 10 years including addresses, names of immediate supervisors, and a detailed description of the duties involved, as well as detailed basis of the qualifications on which the request is based.

(d) All requests for waivers from the examination requirement shall be acted upon by the Commissioner within 60 days of receipt of the application by the Department of Banking or such additional information as may be requested by the Department.]

3:38-1.9 Net worth/insolvency

(a) Tangible net worth is defined as net worth less the following assets:

1. That portion of any assets pledged to secure obligations of any person or entity other than that of the applicant;

2. Any asset (except construction loans receivable secured by first mortgages from related companies) due from officers or stockholders of the applicant or related companies in which the applicant's officers and/or stockholders have an interest;

3. That portion of the value of any marketable security (listed or unlisted) not shown at lower of cost or market, except for any shares of FNMA stock required to be held under a servicing agreement, which should be carried at cost;

4. Any amount in excess of the lower of the cost or market value of mortgages in foreclosure, construction loans, or foreclosed property acquired by the applicant through foreclosure;

5. Any investment shown on the balance sheet in the applicant's joint ventures, subsidiaries, affiliates and/or related companies which is greater than the value of said assets at equity;

6. Goodwill;

7. Value placed on insurance renewals or property management contract renewals or other similar intangibles of the applicant;

8. Organization costs of the applicant;

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9. The value of any servicing contracts held by the applicant not determined in accordance with AICPA Statement of Position 76-2, dated August 25, 1976, or subsequent revision thereto;

10. Any real estate held for investment where development will not start within two years from the date of its initial acquisition;

11. Any leasehold improvements not being amortized over the lesser of the expected life of the asset or the remaining term of the lease; and

12. Any commitment fees paid/collected which are not recoverable through the closing or selling of loans.

(b) "Insolvent" is defined as negative tangible net worth, or the inability to pay debts when due.

(c) Each applicant for a license as a mortgage banker must demonstrate that it has a tangible net worth of at least $300,000. Each applicant for a license as a mortgage broker must demonstrate that it has a tangible net worth of at least $50,000.

(d) Each licensed mortgage banker shall at all times maintain a tangible net worth equal to or greater than $300,000. Each licensed mortgage broker shall at all times maintain a tangible net worth equal to or greater than $50,000.

(e) All mortgage bankers and brokers shall file semi-annual reports on forms provided by the Department indicating the tangible net worth of the licensee, the warehousing lines available and outstanding and any other relevant information the Department may require. The reports are due within 60 days following the end of the period. The licensee shall remit with each such report a $50.00 filing fee. The Department shall assess a $50.00 penalty against any licensee for each semi-annual report the licensee files late.

(f) The requirements in (c), (d) and (e) above apply to each applicant or licensee which is a corporation, partnership, association or other entity and each individual applicant or licensee seeking to operate or operating as a sole proprietor. The requirements do not apply to other individual applicants or licensees.

(g) When the net worth of a mortgage banker or broker falls below the required amount or the mortgage banker or broker is insolvent, the Department may suspend the licensee from transacting new business, or may take other action as the Department deems necessary to protect the public.

(h) Those mortgage bankers licensed when this rule becomes effective shall be exempt from the net worth requirements in (d) above until two years following adoption of this rule. Those mortgage brokers licensed when the regulation becomes effective shall be exempt from the net worth requirements in (d) above until one year following adoption of this regulation. However, all mortgage bankers and all mortgage brokers shall immediately be subject to the reporting requirements in (e) above.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Condominium, Fee Simple and Cooperative Conversion and Mobile Home Park Retirement Senior Citizens and Disabled Protected Tenancy

Proposed Amendments: N.J.A.C. 5:24-2.3 and 2.5

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

Authority: N.J.S.A. 2A:18-61.12 and 61.38.

Proposal Number: PRN 1991-126.

Submit comments by April 3, 1991 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

Two amendments to the "Senior Citizens and Disabled Protected Tenancy Act," P.L. 1981, c.226, were signed into law on November 16, 1990. P.L. 1990, c.110 changed the building residency requirement from two years to one and made it inapplicable in any case in which the tenant leased the unit for a period of more than one year. P.L. 1990, c.111 included within the definition of "disabled tenant" those persons who have been honorably discharged, or released under honorable circumstances, from active service in any branch of the United States Armed Forces and who are rated as having a 60 percent disability or higher as a result of that service pursuant to any federal law administered by the Veterans' Administration.

The proposed amendments would bring the Department's rules into conformity with the statutory changes.

Social Impact

By conforming the rules to the statutory amendments, the Department expects to avoid confusion as to eligibility requirements and to reduce the likelihood that persons who are eligible as a result of the amendments will be incorrectly determined to be ineligible.

Economic Impact

To the extent that any tenants are spared being incorrectly deemed to be ineligible, there will be an economic benefit to those tenants, since protected tenancy will allow them to retain, at a lower cost, units that they would otherwise have to purchase or leave. Since units occupied by protected tenants cannot, as a practical matter, be sold except at a discount, any change that facilitates tenants' availing themselves of the statutory protection will have an adverse economic effect upon building owners.

Regulatory Flexibility Statement

The proposed amendment creates no rights or obligations not already created by statute. The statute makes no special provision for units in buildings owned by entities qualifying as "small businesses" under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and there is, therefore, no basis for any such special provision in the rules.

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

5:24-2.3 Application procedure

(a) (No change.)

(b) Upon request of the administrative agency or officer, a tenant seeking protected tenancy status shall supplement the form with such documentation as the administrative agency or officer shall deem necessary in order to make a determination as to eligibility.

1. An application may be deemed incomplete, and may be rejected, if supplementary documentation is not provided to the administrative agency or officer within 10 days of request [therefore] **therefor**; provided, however, that this provision shall not be construed as precluding timely reapplication.

i.-ii. (No change.)

iii. Proof of disability shall be in the form of certification of entitlement to Social Security or SSI disability benefits, **or of proof that the applicant has been honorably discharged, or released under honorable circumstances, from active service in any branch of the United States Armed Forces and is rated as having a 60 percent disability or higher as a result of that service by the Veterans' Administration,** or, if the applicant does not receive such disability benefits **or have such rated disability**, of such evidence as the administrative agency or officer shall deem to be equivalent.

2. (No change.)

(c) (No change.)

5:24-2.5 Determination of eligibility

(a) (No change.)

(b) The administrative agency or officer shall determine each applicant to be eligible, conditionally eligible or ineligible.

1. (No change.)

2. A tenant shall be determined to be conditionally eligible only if he or she has established to the reasonable satisfaction of the administrative agency or officer, that he or she meets all requirements established by the Act as of the date of application, except the [two]

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one-year residency requirement or the 62-year age requirement, or both; **provided, however, that the one-year residency requirement shall not apply to a tenant who is occupying the unit as his or her principal residence under a lease with a term of more than one year.**

i. A conditionally eligible tenant shall automatically become eligible if the conversion recording, as defined in the Act, occurs after the tenant's [second] **first** anniversary of establishing a principal residence in the building, **if applicable,** or 62nd birthday, whichever is later.

ii. If the conversion recording precedes either such [second] **first** anniversary, **in the case of a tenant not having a lease with a term of more than one year,** or such 62nd birthday, the tenant shall automatically become ineligible.

iii. (No change.)

3. (No change.)

(c) (No change.)

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Rent Increases
Jersey Urban Multi-Family Production Program (JUMPP)
Proposed Amendment: N.J.A.C. 5:80-9.9

Authorized By: New Jersey Housing and Mortgage Finance Agency, Kevin Quince, Executive Director.

Authority: N.J.S.A. 55:14K-5g.

Proposal Number: PRN 1991-112.

Submit comments by April 3, 1991 to:
Anthony W. Tozzi
New Jersey Housing and Mortgage Finance Agency
3625 Quakerbridge Road
CN 18550
Trenton, New Jersey 08650-2085

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency (the "Agency"), pursuant to its statutory authority, serves as an advocate for increasing the supply of adequate, safe and affordable housing in the State. To fulfill its statutory objective, the Agency acts as a mortgage lender by providing financing to housing sponsors who wish to construct, rehabilitate or improve housing for low and moderate income families.

As a condition of receiving Agency financing, housing sponsors must apply to and obtain approval from the Agency to implement a rent increase. N.J.A.C. 5:80-9, Rent Increases, governs the procedure and sets criteria for implementing rent increases at Agency financed projects.

The Agency proposed amendments to N.J.A.C. 5:80-9 on August 20, 1990 at 22 N.J.R. 2389(b). The majority of the amendments are reorganizational and technical changes designed to clarify the rules. Prior to finalizing the proposed amendments, the Agency is proposing an additional amendment in order to clarify how the rent rules will apply to a recent housing program known as the Jersey Urban Multi-Family Production Program (JUMPP). Upon adoption the earlier proposed amendments, N.J.A.C. 5:80-9.9(b) proposed therein will be recodified as subsection (c).

Under JUMPP, project owners are provided with subsidies in order to offset projected operating deficits of the project in the early years of operating the project. These subsidies are designed to decrease on an annual basis and eventually phase out, as annual increases in project income should enable the project to operate, at some point, without the need for the subsidy. The amendment at N.J.A.C. 5:80-9.9(b) makes it clear that the Agency will consider the annual decrease in the JUMPP subsidy, as well as any operating deficits existing after distribution of the subsidy, when determining the amount of rent increase that is needed.

Social Impact

The proposed amendment clarifies how the rules for implementing a rent increase apply to JUMPP projects. In actuality, the amendment is not a substantive change, since the rules, as currently promulgated and administered, permit both the reduction in subsidy and any operating deficits existing after distribution of subsidy to be considered when determining the need for a rent increase. However, the Agency is sensitive to the impact that any rent increase has upon the tenants and is, therefore, publishing the proposed amendment in order to eliminate any question or ambiguity in its rules.

Economic Impact

The proposed amendment will help ensure that a rent increase approved by the Agency will be commensurate with the actual need for the increase and will thereby assist in maintaining the economic viability of the project.

Regulatory Flexibility Analysis

The proposed amendment applies to housing sponsors, 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. No additional reporting or recordkeeping requirements will be imposed by the proposed amendment. As to compliance requirements, the Agency foresees no increase in capital costs or the need for professional services in meeting the requirements of the proposed amendment. Because housing sponsors are predominantly small businesses and due to the absence of additional reporting or compliance requirements, no differentiation in the compliance requirement based upon business size is proposed.

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

5:80-9.9 Increases approved by Agency

(a) (No change.)

(b) For housing projects receiving subsidies under the New Jersey Urban Multi-Family Production Program (JUMPP), the Agency shall consider the amount by which the JUMPP subsidy decreases annually, as well as any operating deficits existing after distribution of the annual JUMPP subsidy, in determining the amount of rent increase needed pursuant to (a) above.

(b)

COUNCIL ON AFFORDABLE HOUSING

Notice of Pre-Proposal
Mandatory Developer Fee Regulations

Authorized By: Council on Affordable Housing, Charles Griffiths, Chairman.

Authority: N.J.S.A. 52:27D-301 et seq.

Pre-Proposal Number: PPR 1991-5.

Submit written comments by April 3, 1991 to:
Douglas V. Opalski, Executive Director
Council on Affordable Housing
CN 813
Trenton, NJ 08625-0813

Take notice that the Council on Affordable Housing (COAH), intends to adopt rules to implement the New Jersey Supreme Court's decision in *Holmdel Builders Assn. v. Holmdel Tp.,* ____ *N.J.* ____, Dkt. Nos. A-103/104/105/106/107/108/109-89 (December 13, 1990). That decision held that the Fair Housing Act, the zoning power conferred under the Municipal Land Use Law and the police power authorized municipalities to establish mandatory developers' fees on commercial and non-inclusionary residential property to fund low and moderate income housing but that municipalities could not exercise that authority until COAH adopted rules establishing the circumstances under which such fees may be permissibly collected and spent. Accordingly, COAH intends to promulgate rules that will address the standards and criteria municipalities will be expected to impose mandatory fees assessed on developers for affordable housing. COAH has formed a Task Force that consists of COAH and COAH staff members to aid in the development of these rules. In addition, COAH will solicit comments from various interest groups, such as representatives of municipalities, developers and low and moderate income households, in an effort to assure as much participation as possible from those groups that will be most affected by these rules. In accord with COAH's desire to receive comments as an aid to its development of these rules, COAH has published this pre-proposal so that any interested person may submit its views to COAH.

Accordingly, COAH invites comments on: the overall wisdom of mandatory developers' fees in the overall context of the State's affordable

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housing policy; the type of developments that should be subject to fees; the amount of the fees imposed and the nature of its assessment; the relationship of fees to other inclusionary-zoning measures such as mandatory set-asides and density bonuses, the conditions for the creation and administration of affordable housing trust funds; the requirements for the use and application of such funds, whether a system of development fees should include counterbalancing density bonuses; and any other relevant concerns. Also, COAH has issued an Administrative Order authorizing municipalities to retain fees collected prior to the *Holmdel* decision pending promulgation of comprehensive rules. Accordingly, the rules will address the appropriate disposition of any fees collected prior to the Supreme Court's *Holmdel* decision.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Redelineation of Coles Brook

Proposed Amendment: N.J.A.C. 7:13-7.1

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3, 58:16A-50 et seq. and 58:10A-1 et seq.

DEP Docket Number: 003-91-01.

Proposal Number: PRN 1991-122.

A **public hearing** concerning this proposal will be held on March 20, 1991 at 11:00 A.M. at:

Division of Coastal Resources
5 Station Plaza, First Floor
501 East State Street
Trenton, New Jersey 08609

Submit written comments by April 3, 1991 to:

John Scordato, Hearing Officer
Division of Coastal Resources
Department of Environmental Protection
Flood Plain Management Section
CN 401
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated Floodways, by revising the present floodway limits, flood delineations and flood profiles of Coles Brook from approximately Kinderkamack Road upstream to Grand Street near Route 4 and Madison Street in the City of Hackensack and the Borough of River Edge, Bergen County.

This proposal to redelineate the aforementioned portion of Coles Brook is based on a removal of an existing concrete bridge and an optimization of the State's hydraulic model used for the present State adopted delineation. The reanalysis was performed by Werner Mueller, P.E. of ENTEC Engineering Technologies, Inc. on behalf of 270 Johnson Ave., Associates for a proposed office building located on Lots 1, 2, 3 and 4 of Block 1418 in the Borough of River Edge and Lots 3, 4, 5 and 10 of Block 534 in the City of Hackensack, Bergen County. The proposed office building is not addressed on this delineation map since a separate State stream encroachment application will be necessary for any construction or development within the New Jersey Flood Hazard Area. Review of the above mentioned hydraulic model indicates that if the existing concrete bridge between stream stations 30+51 and 30+66 was removed and a cross section of the stream was added in the model, the 100-year flood and the New Jersey Flood Hazard Area Design Flood profiles would decrease about one foot and the floodway limit on the right bank looking upstream on the site could be located closer to the stream, while causing no floodway limit change on the opposite overbank. Regulations delineating flood hazard areas are designed to preserve the flood carrying capacity and to minimize the threat to the public safety, health and general welfare.

The proposed redelineation will require no change in the text of N.J.A.C. 7:13-7.1, since only a revision of the flood hazard area delineation maps are required. Review of the maps and profiles associated with this revision is recommended.

Social Impact

Regulation of delineated flood hazard areas is intended to preserve the flood carrying capacity of the waterway and their surroundings, while minimizing the threat to the public safety, health and general welfare. By delineating streams and rivers, the Department identifies the area(s) subject to the New Jersey Flood Hazard Area Control Act (FHACA), N.J.S.A. 58:16A-50 et seq. and the rules promulgated pursuant thereto at N.J.A.C. 7:13. The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., is also enforced through N.J.A.C. 7:13. The proposed redelineation will reduce the total area regulated by those rules, in the City of Hackensack and the Borough of River Edge.

Economic Impact

The proposed redelineation is the result of the application of the existing delineation and a hydraulic analysis based on the removal of a concrete bridge along the stream leading to site. A positive economic impact will result in favor of the property owner of the site from this amendment since a more narrow floodway and lower flood levels along the site would make the site more favorable for development. In areas where the proposed floodway limits are shown to be located closer to the stream, additional construction or development may be allowed where it was previously prohibited. Property located outside of the proposed floodway will have the potential to be developed.

Environmental Impact

The purpose of this proposed redelineation is to accurately define the floodway limits and flood hazard area, based on a removal of a bridge and a hydraulic reanalysis of a portion of Coles Brook in River Edge Borough and the City of Hackensack. The scope of permissible development is restricted within the delineated area, thereby preventing and minimizing potential flood damage. Regulated development is permissible within the flood fringe portion of the flood hazard area, provided all necessary applications are obtained. This amendment is not expected to have any adverse environmental impact, since the area on which development may now be permitted is not considered environmentally sensitive or significant.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this rule would not impose reporting, recordkeeping or compliance requirements on small businesses. Any small business in the redelineated area may be economically impacted as previously discussed.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Hamilton Township, New Jersey; and at the Department of Environmental Protection, Flood Plain Management Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey. In addition, maps of the proposed redelineation have been sent to the clerks of the Borough of River Edge and the City of Hackensack.

The revised flood plain delineation and flood profiles are shown on the plates specifically identified:

State of New Jersey
Department of Environmental Protection
Division of Water Resources
Delineation of Floodway and Flood Hazard Area
Coles Brook
Plates CB-1, and CB-2

(b)

DIVISION OF COASTAL RESOURCES

Redelineation of the South Branch Raritan River

Proposed Amendment: N.J.A.C. 7:13-7.1

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A.13:1B-3, 58:16A-50 et seq. and 58:10A-1 et seq.

DEP Docket Number: 004-91-01.

Proposal Number: PRN 1991-123.

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A **public hearing** concerning this proposal will be held on March 20, 1991 at 1:30 P.M. at:

Division of Coastal Resources
5 Station Plaza, First Floor
501 East State Street
Trenton, New Jersey 08609

Submit written comments by April 3, 1991 to:

John Scordato, Hearing Officer
Division of Coastal Resources
Department of Environmental Protection
Flood Plain Management Section
CN 401
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated Floodways, by revising the present floodway and flood fringe area delineation along the South Branch Raritan River, from approximately 3,050 feet downstream of Flemington-Whitehouse Road (Route 523), upstream 19,150 feet to the Lehigh Valley Railroad Bridge, within Raritan and Readington Townships, Hunterdon County.

This proposal would amend the original floodway and flood hazard area delineations of the aforementioned portion of the South Branch Raritan River, prepared by Anderson-Nichols & Co. dated April 1973 and September 1982. The proposed redelineation is based on a hydraulic analysis reflecting existing conditions, performed by Goodkind & O'Dea, Inc. on behalf of the New Jersey Department of Transportation. The hydraulic analysis utilized the U.S. Army Corps of Engineers HEC-2 program. The HEC-2 model contains current cross sectional survey data of the stream, performed by Goodkind & O'Dea, Inc., and adopted State and Federal discharges and corresponding starting water surface elevations. Plans and hydraulic data, submitted by Goodkind & O'Dea, Inc., indicate that the State adopted 100-year flood level and the New Jersey Flood Hazard Area Design Flood level should be vertically increased generally 3.5 feet and 4.4 feet respectively. The increase in water levels is attributed to the above mentioned increased updated discharges which agree with the Raritan and Readington Townships Federal Flood Insurance Studies.

The proposed floodway and flood hazard area changes are too numerous to describe in this proposal to amend the existing State adopted delineation maps for the affected portion of the South Branch Raritan River. The following paragraph only highlights major proposed changes to the adopted delineation maps. It is recommended that interested parties review the proposed delineation maps to determine how this proposal would affect them.

The proposed floodway is approximately 200 feet further from the stream along the right bank looking upstream at a location 1,000 feet upstream of New Darts Mill Road; 80 feet further away from the stream along the right bank at a location 2,900 feet upstream of New Darts Mill Road; 380 feet closer to the stream along the right bank at a location 1,300 feet downstream of Route 31; 200 feet closer to the stream immediately downstream of Route 31 along the right bank; 100 feet further away from the stream along the right bank 850 feet upstream of Route 31; and 40 feet further away from the stream along the right bank at a location 1,300 feet downstream of the Lehigh Valley Rail Road. Along the left bank looking upstream, the proposed floodway is 150 feet closer to the stream along the left bank at Route 31; 50 feet closer to the stream along the left bank at locations 2,400 feet and 3,420 feet upstream of Route 31; and 100 feet closer to the stream along the left bank at locations 2,000 feet and 350 feet downstream of the Lehigh Valley Rail Road. The proposed flood fringe area is 400 feet larger or further away from the stream along the right bank looking upstream, due to the increase in water levels at a location 1,900 feet upstream of New Darts Mill Road; 150 feet larger upstream and downstream of Route 31 along the right bank; and 75 feet larger along the right bank looking upstream at a location 400 feet downstream of the Lehigh Valley Rail Road. The flood fringe area along the left bank abutting the Flemington-Whitehouse Road and the Lehigh Valley Rail Road generally remains unchanged; however, due to flood waters backing up through the culvert along the Assiscong Creek under the railroad tracks located 650 feet northerly of the Flemington-Whitehouse Road and the overtopping of the railroad tracks under Route 31, a large ponding area will form on the north side of Burgess Road and extend to the south side of Burgess Road along the Assiscong Creek.

The proposed redelineation will require no change in the text of N.J.A.C. 7:13-7.1, since only revisions of the flood hazard area delineation maps are required. Review of the maps and profiles associated with these revisions is recommended.

Social Impact

Regulation of delineated flood hazard areas is intended to preserve the flood carrying capacity of the waterway and their surroundings, while minimizing the threat to the public safety, health and general welfare. By delineating streams and rivers, the Department identifies the area(s) subject to the New Jersey Flood Hazard Area Control Act (FHACA), N.J.S.A. 58:16A-50 et seq. and the rules promulgated pursuant thereto at N.J.A.C. 7:13. The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., is also enforced through N.J.A.C. 7:13. The proposed redelineation will increase the total area regulated by those rules, within Raritan and Readington Townships.

Economic Impact

The proposed redelineation is the result of the application of existing field conditions in an updated hydraulic model used to calculate floodway limits and flood profiles. As a result of this amendment there may be an adverse economic impact to property owners in the delineated flood hazard area since the scope of permissible development is restricted within most of the newly defined delineated area.

Environmental Impact

The purpose of this amendment is to more accurately define the floodway and flood hazard area of the South Branch Raritan River. The scope of permissible development is restricted within the delineated flood hazard area, thereby preventing and minimizing potential flood damage. Regulated development is permissible within the flood fringe portion of the flood hazard area, provided all necessary permits are obtained. This amendment is not expected to have any adverse environmental impact, since it will result in greater restriction on development over most of the area subject to these changes.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this amendment will not impose reporting, recordkeeping or compliance requirements on small businesses. Any small business in the redelineated area may be economically impacted as previously discussed.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Hamilton Township, Mercer County, New Jersey; and at the Department of Environmental Protection, Flood Plain Management Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey. In addition, maps of the proposed redelineation and flood profiles have been sent to Raritan and Readington Townships clerks and to the Hunterdon County Engineering Department.

The revised flood plain delineations and flood profiles are shown on the plates specifically identified:

State of New Jersey
Department of Conservation and Economic Development
Division of Water Policy and Supply
Delineation of Floodway and Flood Hazard Area
South Branch Raritan River
Plates SB-10, 11 and 12

(a)

DIVISION OF COASTAL RESOURCES

Redelineation of the Passaic River

Proposed Amendment: N.J.A.C. 7:13-7.1

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3, 58:16A-50 et seq. and 58:10A-1 et seq.

DEP Docket Number: 005-91-01.

Proposal Number: PRN 1991-124.

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A **public hearing** concerning this proposal will be held on March 20, 1991 at 10:00 A.M. at:

Division of Coastal Resources
5 Station Plaza, Second Floor
501 East State Street
Trenton, New Jersey 08609

Submit written comments by April 3, 1991 to:

John Scordato, Hearing Officer
Department of Environmental Protection
Division of Coastal Resources
Flood Plain Management Section
CN 401
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated Floodways, by revising the floodway limits of the Passaic River from approximately 1500 feet upstream of Passaic Avenue to a location 2400 feet upstream in the Borough of Florham Park, Morris County.

This proposal to redelineate the aforementioned portion of the Passaic River is based on a reanalysis of the hydraulic model and the existing topography, performed by Thonet Associates on behalf of Mr. Robert Jacobus. This proposal reflects changes to the floodway limits in the vicinity of Mr. Jacobus's property. As part of the redelineation, Thonet Associates inserted additional surveyed cross sections into the Department's hydraulic model to provide a more accurate model. There are no proposed discharge changes in the reanalysis. The new information indicates that there are no changes to the adopted 100-year and New Jersey Flood Hazard Area Design Flood water surface profiles. However, the new hydraulic analyses and the proposed flood plain delineation map indicates that the floodway limits can be located approximately 600 feet closer to the stream at the most downstream portion of Mr. Jacobus's property and approximately 280 feet closer to the stream at the most upstream portion of his property. The proposed 100-year and the New Jersey Flood Hazard Area Design Flood delineations more accurately reflect the existing topography on Mr. Jacobus's property. Regulations of delineated flood hazard areas are designed to preserve the flood carrying capacity and to minimize the threat to the public safety, health and general welfare.

The proposed redelineation will require no change in the text of N.J.A.C. 7:13-7.1, since only a revision of the flood hazard area map is required. Review of the map and profiles associated with this revision is recommended.

Social Impact

Regulation of delineated flood hazard areas is intended to preserve the flood carrying capacity of the waterway and their surroundings, while minimizing the threat to the public safety, health and general welfare. By delineating streams and rivers, the Department identifies the area(s) subject to the New Jersey Flood Hazard Area Control Act (FHACA), N.J.S.A. 58:16A-50 et seq. and the rules promulgated pursuant thereto at N.J.A.C. 7:13. The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., is also enforced through N.J.A.C. 7:13. The proposed redelineation will not increase or reduce the total area regulated by those rules, since only the type of regulation on affected areas will be changed by this redelineation.

Economic Impact

The proposed amendment is the result of the application of the existing delineation and a hydraulic analyses which indicates a more accurate floodway and flood hazard area delineation. A positive economic impact will result in favor of property owners along the portion of the Passaic River affected from this amendment. In areas where the proposed floodway limits are shown to be located closer to the stream, additional construction or development may be allowed in areas where it was previously prohibited. Property located outside of the proposed floodway may have the potential to be developed.

Environmental Impact

The purpose of this proposed redelineation is to more accurately define the floodway limits and flood hazard area of a portion of the Passaic River in Florham Park. The scope of permissible development is restricted within the delineated area, thereby preventing and minimizing potential flood damage. This amendment is not expected to have any adverse environmental impact, since the change involved is minor and the area involved is not environmentally sensitive.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this amendment would not impose reporting, recordkeeping or compliance requirements on small businesses. Any small business in the redelineated area may be economically impacted as previously discussed.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Hamilton, New Jersey; and at the Department of Environmental Protection, Flood Plain Management Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey. In addition, maps of the proposed redelineation have been sent to the Florham Park Borough Clerk and to the Morris County Engineering Department.

The revised flood plain delineation and flood profiles are shown on the plates specifically identified:

State of New Jersey
Department of Environmental Protection
PASSAIC RIVER
Supplemental Flood Hazard Studies & Mapping
Plate Nos. 10 & 11 & 11B

(a)

DIVISION OF COASTAL RESOURCES

Redelineation of the Lawrence and Heathcote Brooks

Proposed Amendment: N.J.A.C. 7:13-7.1

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3, 58:16A-50 et seq. and 58:10A-1 et seq.

DEP Docket Number: 006-91-01.

Proposal Number: PRN 1991-125.

A **public hearing** concerning this proposal will be held on March 20, 1991 at 2:30 P.M. at:

Division of Coastal Resources
5 Station Plaza, First Floor
501 East State Street
Trenton, New Jersey 08609

Submit written comments by April 3, 1991 to:

John Scordato, Hearing Officer
Division of Coastal Resources
Department of Environmental Protection
Flood Plain Management Section
CN 401
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated Floodways, by revising the existing floodway and flood hazard area delineation to a portion of Lawrence and Heathcote Brooks. The proposed amendment provides for the application of rules concerning the development and use of land in designated floodways and flood hazard areas to a portion of Lawrence Brook from Major Road upstream to a location approximately 500 feet upstream of Dayton Road, from station 1165+70 to station 1230+87 and Heathcote Brook from New Bridge Road downstream approximately 3,500 feet to a dam, from station 248+83 to station 266+50, in South Brunswick Township. The following paragraph highlights major proposed changes to the adopted delineation maps. It is recommended that interested parties review the proposed changes in those maps to determine how this amendment would affect them.

The proposed delineation affects the Township of South Brunswick, Middlesex County and State agencies. The proposed delineation is based on New Jersey Department of Transportation (NJDOT) plans, hydrologic and HEC-2 hydraulic analyses for Lawrence and Heathcote Brooks along the proposed Route 522, prepared by Goodkind & O'Dea,

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Inc. Review of the proposed stream profiles and delineations indicated that along Lawrence Brook, the proposed New Jersey Flood Hazard Area Design Flood stream profile is approximately 1.7 feet lower than the previously adopted stream profile and the floodway and flood hazard areas are reduced or more narrow. Along Heathcote Brook the flood profiles are approximately .4 feet lower and the floodway and flood hazard area can be reduced in the vicinity of the proposed roadway. More specifically, starting from the most downstream area of Lawrence Brook to the upstream portion of the proposed reach, the New Jersey Flood Hazard Area and the 100-year flood plain will be reduced or become smaller by an average of about 50 feet along the right overbank from Major Road upstream to West New Road. The most significant flood plain reductions are located 500 feet downstream and upstream of Dayton Road, where the flood plains are reduced by an average of approximately 150 feet along each side of the stream. The left overbank flood plain will be reduced by an average of approximately 50 feet from a location approximately 1,000 feet downstream of the proposed Route 522 upstream to Dayton Road. The floodway will be reduced on an average of approximately 100 feet from a location 850 feet upstream of Major Road, upstream to the railroad tracks located 1,200 feet upstream of the proposed Route 522. The floodway, as indicated in this proposal, is drastically reduced in the vicinity of Dayton Road. From the railroad tracks located 400 feet downstream of Dayton Road upstream to the railroad tracks located 500 feet upstream of Dayton Road, the floodway limits are within 20 feet of the stream banks. The proposed flood plain and floodway along Lawrence Brook are attributed to lower acceptable discharges calculated by Goodkind & O'Dea, Inc. for NJDOT.

The New Jersey Flood Hazard Area and the 100-year flood plain along Heathcote Brook remain essentially unchanged except in the vicinity of the proposed Route 522. For the reach located from Route 522 downstream to location approximately 300 feet along the right overbank, the New Jersey Flood Hazard Area and 100-year flood plains are significantly smaller by an average of approximately 300 feet.

Regulation of delineated flood hazard areas is designed to preserve the flood carrying capacity of streams and to minimize any threat to the public safety, health and general welfare. Review of the proposed redelineation maps is recommended.

Social Impact

Regulation of delineated flood hazard areas is intended to preserve the flood carrying capacity of waterways and their surroundings, while minimizing any threat to the public safety, health and general welfare. By delineating streams and rivers, the Department identifies the area(s) subject to the New Jersey Flood Hazard Area Control Act (FHACA), N.J.S.A. 58:16A-50 et seq. and the rules promulgated pursuant thereto at N.J.A.C. 7:13. The Water Pollution Control Act, N.J.S.A. 58:10A-1, is also enforced through N.J.A.C. 7:13. The proposed redelineation will reduce the total area regulated by those rules.

Economic Impact

The proposed amendment is the result of the application of proposed field conditions in a HEC-2 hydraulic computer model which calculates floodway limits and flood profiles. There is a favorable economic impact to property owners along Lawrence and Heathcote Brooks resulting from this amendment. In areas where the proposed floodway limits are shown to be located closer to the stream, additional construction or development may be allowed in areas where it was previously prohibited.

Environmental Impact

The proposed amendment provides for the legal revision of State adopted flood plain delineation mapping to a portion of Lawrence and Heathcote Brooks. The proposed map revision shows the NJDOT proposed Route 522 and revised floodway limits and flood plain delineations. Wetland areas may be destroyed as a result of the proposed construction of Route 522 along Lawrence and Heathcote Brooks; however, wetlands, water quality and other environmental concerns will be addressed by NJDOT as permit requirements imposed by the NJDEP Stream Encroachment Section and the Office of Freshwater Wetlands.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this proposed amendment would not impose reporting, recordkeeping or other compliance requirements on small businesses. Any small business in the redelineated area may be economically impacted as previously discussed.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Hamilton Township, Mercer County, New Jersey; and at the Department of Environmental Protection, Flood Plain Management Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey. In addition, maps of the proposed redelineation and flood profiles have been sent to the South Brunswick Township clerk and to the Middlesex County Engineering Department.

The revised flood plain delineation and flood profiles are shown on the plates specifically identified:

Delineation of Floodway and Flood Hazard Area
of
Lawrence Brook and Heathcote Brook
Middlesex County, New Jersey

Prepared By:
O'Brien & Gere
Dated: 12-4-84

Sheet Nos. 15, 16, 17, 17A, 18, 19, 21 & 22 of 54
Profile Plates 02P & 29P

(a)

DIVISION OF COASTAL RESOURCES

Dam Restoration Grant Regulations

Proposed Readoption With Amendments: N.J.A.C. 7:24

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: 13:1D-9, 13:1D-15, 58:4-1 et seq. and P.L. 1980 c.70.

DEP Docket Number: 008-91-02.

Proposal Number: PRN 1991-128.

Submit written comments by April 3, 1991 to:
John H. Moyle
Division of Coastal Resources—Dam Safety Section
Department of Environmental Protection
CN 401
Trenton, N.J. 08625

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66(1978), N.J.A.C. 7:24 expires on May 19, 1991. As required by the Executive Order, the Department of Environmental Protection (Department) has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. Therefore, N.J.A.C. 7:24 is proposed for readoption with certain technical amendments.

The Dam Restoration Grant Regulations set forth procedures for distribution of funds, made available under the Natural Resources Bond Act, P.L.1980 c.70, for grants to municipalities and counties for the construction, rehabilitation and maintenance of dams. The Department is authorized to grant up to 50 percent of the cost of a dam restoration project. Grants have previously been made for 18 projects, nine of which have been completed. Approximately $2,500,000 of the original sum remains to be committed to eligible projects.

The regulations establish the basic eligibility criteria for receiving a dam restoration grant, the priority system for ranking eligible applicants, the procedure for awarding a grant, the conditions grantees must satisfy before receiving funds under a grant and the Department's remedies when a grantee fails to comply with these rules or the grant agreement.

A summary of N.J.A.C. 7:24 follows:

N.J.A.C. 7:24-1 contains general provisions concerning the rules. This subchapter also outlines the three distinct phases of the program.

N.J.A.C. 7:24-2.1 sets forth the scope of subchapter 2.

N.J.A.C. 7:24-2.2 defines terms used throughout the chapter.

N.J.A.C. 7:24-2.3 sets forth the eligibility criteria an applicant must meet to receive a grant.

N.J.A.C. 7:24-2.4 describes the requirements of a preapplication conference between the Department and the applicant.

N.J.A.C. 7:24-2.5 sets forth the application procedures and describes the documentation and information that must be submitted to the Department for the type of project proposed.

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N.J.A.C. 7:24-2.6 to 2.8 provide notice that applications are public records, set forth the procedure by which each application will be evaluated by the Department, and the manner by which applicants will be notified of the approval or disapproval of their application.

N.J.A.C. 7:24-2.9 sets forth the priority point system. The priority point system establishes a ranking of those projects that meet basic eligibility requirements.

N.J.A.C. 7:24-2.10 sets forth the spillway design flood for each project based upon the dam height and storage capacity.

N.J.A.C. 7:24-2.11 describes the documentation and information that must be submitted to the Department as part of the Project Development Phase.

N.J.A.C. 7:24-2.12 to 2.15 describes when the amount and terms of a grant are determined, the manner in which the State's share of a project is to be determined, the preparation and transmission of grant award documents, and the effect of a grant award.

N.J.A.C. 7:24-2.16 sets forth allowable project costs, particularly land acquisition costs, and indicates the basis upon which payment of allowable costs shall be made.

N.J.A.C. 7:24-2.17 to 2.18 set forth how unused funds will be managed by the State, and how the grantee shall administer the funds to ensure against fraud and other unlawful or corrupt practices.

N.J.A.C. 7:24-2.19 sets forth general grant conditions, including project scheduling, required hazard insurance, accounting procedures, affirmative action requirements, performance bonds, and the letting of construction contracts.

N.J.A.C. 7:24-2.20 to 2.35 set forth administration and performance requirements under the grant, including termination procedures.

Social Impact

The Dam Restoration Grant Regulations set forth procedures for distribution of funds made available under the Natural Resources Bond Act for repair of dams in New Jersey which have deteriorated to a degree that substantial remedial construction has become necessary. The Department is presently reviewing several dam restoration project proposals, and the rules governing distribution of the funds remain necessary. The proposed readoption allows the Department to continue in full force and effect the program of dam restoration funding, which will contribute to the safety and well being of those who live and work near such deteriorated structures.

Economic Impact

The proposed readoption will result in a continuation of orderly distribution of dam restoration funds under the Natural Resources Bond Act. Consequently, the Department foresees no additional economic impact. Expiration of the rules could interfere with the Department's ability to manage the grant program which is contemplated under the Act.

Environmental Impact

The grant procedures in N.J.A.C. 7:24 do not generate any direct environmental impact, though the grant program which they govern provides for increased safety and flood control capabilities at the dams which have and will receive funds. Were these rules not readopted, the absence of effective procedures could delay the distribution of funds under the program and, thereby, increase the possiblity of dam failure. At, worst, however, this effect would be minimal.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this rule will not impose reporting, recordkeeping, or other compliance requirements on small business because the rules establish policies and procedures for the distribution of funds to local governmental agencies.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:24.

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

7:24-2.4 Pre-application procedure

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

(c) Questions concerning the grant program and requests for a preapplication conference should be directed to:

[John H. O'Dowd, P.E.]
Chief [Bureau of Flood Plain Management]
Dam Safety Section
Division of [Water] **Coastal** Resources
[1474 Prospect Street]
[CN 029] **CN 401**
Trenton, N.J. 08625

7:24-2.5 Application procedures

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

(f) Applications shall be sent to:

[John H. O'Dowd, P.E.]
Chief [Bureau of Flood Plain Management]
Dam Safety Section
Division of [Water] **Coastal** Resources
[1474 Prospect Street]
[CN 029] **CN 401**
Trenton, N.J. 08625

(g)-(h) (No change.)

7:24-2.11 Project Development Phase of Dam Restoration Program

(a) Each applicant receiving a Notice of Conditional Grant Award shall arrange to have a pre-design conference, within 30 days after receipt of the notice, with personnel of [the Bureau Flood Plain Management in] the Department and shall submit all materials required by this section to the [Bureau of Flood Plain Management] **Department** within six months after receipt of the notice [of] **or** within the time limits of any extension granted pursuant to [7:24-2.11(9) of this action] **(g) below**.

(b) During the pre-design conference the [Bureau personnel] **Department** shall identify and explain the requirements of this section including design criteria and review the requirements of the Environmental Assessment specified in (d) below.

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

7:24-2.18 Fraud and other unlawful or corrupt practices

(a) (No change.)

(b) The grantee shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. [the] **The** grantee shall notify the [Chief, Bureau of Floodplain Management of the] Department immediately when such allegation or evidence comes to its attention and shall periodically advise the [Chief, Bureau of Floodplain Management] **Department** of the status and ultimate disposition of any matter.

HEALTH

(a)

DIVISION OF EPIDEMIOLOGY AND COMMUNICABLE DISEASE CONTROL

Youth Camp Safety Act Standards

Proposed Amendments: N.J.A.C. 8:25

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.

Authority: N.J.S.A. 26:12-1 et seq., specifically 26:12-5.

Proposal Number: PRN 1991-121.

Submit written comments by April 3, 1991 to:
Anthony T. Monaco, Chief
Public Health Sanitation and Safety Program
New Jersey Department of Health
Consumer Health Services
CN 364
Trenton, New Jersey 08625-0364

The agency proposal follows:

Summary

N.J.S.A. 26:12-1 et seq., entitled "The Youth Camp Safety Act," was approved on January 9, 1974. This mandated that the Commissioner of Health develop and by rule and regulation promulgate and modify as

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necessary youth camp safety standards. Pursuant to this legislative mandate, N.J.A.C. 8:25, entitled "Youth Camp Safety Act Standards," was originally promulgated and became effective on June 19, 1974.

Effective May 19, 1988, the New Jersey Department of Health, pursuant to Executive Order 66(1978), readopted N.J.A.C. 8:25, which governs both day and residential youth camps. The intent of these rules is to promote, protect, and safeguard the health and well-being of the youth of the State who attend day and resident camps by providing standards for the safe operation of these camps. Also, these rules provide assurance to parents or guardians and concerned citizens that youth camps meet minimum safety standards. Since that time, the Department has determined through fact finding, experience, and input from industry and professional organizations that issues pertaining to aquatics, health, transportation, and child abuse were raised which were not clearly or adequately addressed in the current standards. Therefore, a comprehensive review of these rules has been completed by the Department of Health, with input from the Advisory Council on Youth Camp Safety and a committee comprised of representatives of various State agencies, professional camping associations, academic authorities on aquatic programs, and national professional health organizations. The proposed amendments will update N.J.A.C. 8:25 by addressing many of the current changes in aquatic certification programs and clearly defining the responsibilities of the youth camp operator in regard to health, transportation, and safety issues.

The following summarizes the major provisions of N.J.A.C. 8:25 which are being amended:

N.J.A.C. 8:25-1.1 is being proposed to define the purpose of these standards.

N.J.A.C. 8:25-1.2 is being proposed to define the types of camps which are required to comply with these standards. Also, the authority to enforce these standards, as established by N.J.S.A. 26:12-1 et seq., is cited in this rule.

N.J.A.C. 8:25-1.3 is being proposed to insure that should a standard be declared invalid in a court of law, the court decision would not affect the validity of other provisions of N.J.A.C. 8:25.

N.J.A.C. 8:25-1.4 is being recodified. This section establishes definitions of terms used in this chapter. The proposed amendments are as follows:

- The name of "aquatics supervisor" has been changed to "lifeguard supervisor." This change in terminology is being made to keep current with nationally recognized aquatics certification programs.
- The definition for "assistant aquatics supervisor" is being deleted from the standards. The proposed amendments under subchapter 5, Waterfront Safety, define aquatic supervision and responsibilities of lifeguards for the various aquatics programs offered by youth camps and, therefore, the term and definition are no longer necessary.
- The name "aquatic guard," is being changed to "lifeguard" which reflects changes in terminology made by nationally recognized aquatic certification programs.
- The definition for "vehicle" is being deleted, since it is also being proposed that detailed definitions for passenger vehicle, Type I School Bus, and Type II School Bus, be included, to define the types of vehicles used to transport children to and from youth camps.

N.J.A.C. 8:25-2.4 establishes policies for the care of children. Amendatory language is being added to inform youth camp owners, operators, and counselors that they have a legal responsibility to report any kind of child abuse or neglect to the Department of Human Services, Division of Youth and Family Services. Additionally, amendments are being proposed to ensure that camp staff are provided with a preseason orientation which will include both verbal and written policies and procedures, and to require the youth camp operator to verify a prospective staff's background and character through reasonable inquiries. The Department of Health and the Division of Youth and Family Services support the addition of these rules as a means of preventing child abuse. Background and character checks of camp staff will ensure that employees are capable of handling the needs and activities of the camp population served.

N.J.A.C. 8:25-3.1 provides for the use of trained and qualified health directors, written arrangements for emergency medical treatment, medical injury logs, health surveillance procedure, and the reporting of injuries. The Department is proposing amendments to this section, which are further summarized as follows:

—Expansion of the certification eligibility for a health director of a resident camp to include the First Responder/C.I.M. and an Athletic Trainer accredited by the National Athletic Trainer's Association to the existing list of recognized certification programs. The American Camping Association's (ACA) Certification is being deleted because the ACA does not offer a certification course for camp health directors.

—Inclusion of explanatory language listing the organizations recognized by the Department in certifying health directors in cardiopulmonary resuscitation certification (CPR).

—Amendment of the requirement to include the name of the person who administered medical treatment to the camp's medical log. Documentation of treatment will ensure that qualified personnel are administering treatment.

—Language is being added to ensure that all deaths and serious injuries involving campers are reported to the Department of Health within 24 hours. Notification of serious accidents within a reasonable time frame will allow the Department to respond to and investigate possible causes of the accident with the intention of identifying high risk areas or activities.

N.J.A.C. 8:25-3.2 is being proposed to establish standards for camps that choose to administer prescription and/or nonprescription medication to campers. Authorization, labeling, recordkeeping, administration, storage, and disposal of unused medications are addressed in these standards. These standards were developed to ensure proper and safe practices for administering medications. Additionally, amendments are being proposed to define the contents of first aid kits maintained in camp and to ensure that first aid kits, approved by the health director or physician, are available for all camp trips. Since the activities and associated risks involved with camp trips are diverse in nature, it is impractical to require specific first aid equipment for each type of activity offered. The health director or consulting physician will be responsible for establishing the contents of the first aid kit used on camp trips.

N.J.A.C. 8:25-3.2 is being recodified to N.J.A.C. 8:25-3.3. The title of this section is being changed from "Physical examinations" to "Health history records." Physical examinations are not required for campers or staff members and, therefore, the existing title is misleading. Additionally, amendments are being proposed to require that parents submit a camper health history prior to enrollment and requires staff members to submit a health history at the time of employment. Health history records shall also include immunization records against diphtheria, tetanus, poliomyelitis, measles, pertussis, mumps, and rubella. Additionally, an amendment is being proposed to address situations where immunizations are contraindicated for medical reasons or religious objection to immunization.

N.J.A.C. 8:25-3.3 is being recodified to N.J.A.C. 8:25-3.4. This section provides for sufficient quantity and nutritional quality of foods to meet dietary needs for each child. A proposed amendment requires the camp to maintain potentially hazardous foods brought into camp at or below 45 degrees Fahrenheit. If the foods cannot be maintained at this temperature, the camp is responsible to notify the camper's parents to limit the child's meal to foods that do not need refrigeration.

N.J.A.C. 8:25-4.3 provides for standards governing fire extinguishers. The proposed amendment renames the title of the subsection to "Fire fighting equipment."

N.J.A.C. 8:25-4.4 provides for the establishment of fire safety standards. The proposed amendment references the corrected language of the Forest Fire Laws of New Jersey, N.J.S.A. 13:9-19.

N.J.A.C. 8:25-4.5, entitled "Vehicles and drivers," is being deleted to allow the Department to readdress transportation issues which are presently governed through existing State statutes pertaining to transporting children. Amendments to N.J.A.C. 8:25-4.5 through 4.8 are being proposed which provide for vehicle transportation, vehicle safety practices, vehicle insurance and records, and special requirements for physically handicapped nonambulatory children. These amendments are further summarized as follows.

N.J.A.C. 8:25-4.5 entitled "Vehicle transportation" is being proposed to clarify the existing statutory requirements regarding transportation of children to and from camp. N.J.S.A. 39:1-1 clearly states: "School vehicle I and II . . . means any vehicle used to transport enrolled children and/or adults only when serving as chaperones, to or from a school, school connected activity, day camp, summer day camp, nursery school, child care center, preschool center or other similar places of education." Applying this law and its intent, children can only be transported to and from youth camps in a school vehicle or bus. However, a statutory exemption is provided in N.J.S.A. 39:3-19.3, which permits buses and vehicles with a seating capacity of 16 or less, which is solely used to transport children to or from summer day or resident camps from May 15 to September 15, to be exempt from specific school bus standards.

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N.J.A.C. 8:25-4.6 entitled "Vehicle-related safety practices" establishes provisions for vehicle safety procedures. These proposed amendments include: supervision ratios of children to adults, vehicle maintenance, child restraint systems, general safety practices, and the development of agreement between parents and the camp operator regarding discharge of preschool aged children to ensure the child is safely returned home.

N.J.A.C. 8:25-4.7 entitled "Vehicle insurance and records" is being proposed to establish minimum vehicle liability insurance coverage, records of children being transported, and documentation of emergency evacuation drills for all Type I and Type II school buses.

N.J.A.C. 8:25-4.8 entitled "Special requirements for physically handicapped, nonambulatory children" is being proposed to establish vehicle specifications for wheelchair lifts and ramps.

N.J.A.C. 8:25-5.1 provides safety standards regarding removing known hazards from the swimming area and provisions for lifesaving equipment. Subsections (a) and (c) are being deleted and amendatory language is being proposed since the youth camp operator is responsible for conforming to N.J.A.C. 8:26, Chapter IX of the State Sanitary Code, entitled "Public Recreational Bathing," municipal ordinances and State statutes regarding health, safety, and maintenance of a bathing place. N.J.A.C. 8:26 specifies lifesaving equipment and safety standards for all public recreational bathing places, including youth camps, making the standards currently at N.J.A.C. 8:25-5.1(a) and (c) unnecessary.

N.J.A.C. 8:25-5.2 defines the lifeguarding credentials for waterfront staff and specifies the ratio of lifeguards to campers. The proposed amendment updates lifeguard certifications currently issued by the American Red Cross, YMCA, and Boy Scouts of America. Additionally, amendments are being proposed to relax the requirements governing the supervision of instructional and offsite swimming activities. During instructional swim periods, one lifeguard shall be on deck for every 2,000 square feet of surface area in use. Instructional swim periods are controlled by the swimming instructor giving the lifeguard present the ability to observe and respond to a distressed swimmer. Off-site swim trips would only be permitted at a designated public recreational bathing place, and notification must be given to the operator of the public recreational bathing place as to the size of the group, age, and any physical handicaps of the campers. If the public bathing place provides lifeguards to supervise the waterfront, then the youth camp must provide one adult lifeguard for the first 30 children and one lifeguard for every additional 30 children in the water. The camp's lifeguarding staff are responsible for supervision of campers, conducting buddy checks, and coordinating rescue activities with the lifeguards employed by the operator of the bathing place. If the public bathing place does not provide lifeguards then the camp is responsible for providing a lifeguard supervisor and a lifeguard for the first 30 or fewer children in the water. One additional lifeguard shall be on duty for every additional 30 children or portion thereof.

N.J.A.C. 8:25-5.3 is being amended to establish a standardized test to determine a child's swimming ability. This revision is based upon recommendations made by representatives of the American Red Cross, YMCA, and Boy Scouts of America, which petitioned the Department to delete the current standard and develop a uniform swim test.

N.J.A.C. 8:25-5.4 provides standards for watercraft activities. The proposed amendments require lifeboats to be equipped with a ring buoy or similar device and to allow paddle boards to be used as an alternative to lifeboats for patrolling watercraft activities. Additionally, an amendment is being proposed to allow only a personal flotation device approved by the United States Coast Guard to be used during boating activities.

N.J.A.C. 8:25-6.9 entitled "Swimming and bathing" is being deleted since safety standards pertaining to swimming pools and natural bathing waters are addressed in subchapter 5, Waterfront Safety.

N.J.A.C. 8:25-6.10 is being recodified to N.J.A.C. 8:25-6.9, with no change in text.

N.J.A.C. 8:25-6.11 is being recodified to N.J.A.C. 8:25-6.10. This section provides general maintenance standards for campsites and buildings. One amendment is being proposed which requires that playground equipment be inspected weekly for any defects.

N.J.A.C. 8:25-6.12 is being recodified to N.J.A.C. 8:25-6.11. This section established the annual certification fee to operate a day and resident camp. The Department is proposing to increase the certification fee for a day camp from $20.00 to $50.00 and for a resident camp an increase from $50.00 to $100.00 which is in accordance with the statutory limits as set forth in the Youth Camp Safety Act (N.J.S.A. 26:12-1 et seq.). The Department believes that the fee increases that will be produced through restructuring the fee schedules are justified, in that current fees do not approach the true cost to the Department associated with processing certifications and conducting safety and sanitary inspections. Due to the complexity of processing certifications to operate a youth camp, the Department is proposing to not make the fee increases operative until January 1, 1992. It is impracticable to delay the certification process for the 1991 camping season until final adoption of this proposed revision.

Social Impact

The Advisory Council on Youth Camp Safety and the Department believes that the proposed amendments to the existing rules will have a positive social impact, which is, to ensure the health and safety of the children attending summer youth camps. The public benefits that would be derived from these proposed rule revisions are the protection of children during transportation, additional safeguards pertaining to hiring and training of camp staff, safe handling and dispensing of medications, and prevention of serious injury or death through water related accidents.

The effects of these rules as proposed will impact on all day and resident youth camps. These camps are required to comply with this comprehensive set of rules which the Advisory Council on Youth Camp Safety and the Department consider reasonable, necessary, understandable, and responsive for the purposes for which they were promulgated.

Economic Impact

The economic impact of the proposed amendments primarily falls on the owners and operators of day and resident youth camps. Increased administrative costs associated with conducting background checks on potential employees and developing training programs for camp staff are the major costs associated with the proposed amendments. These activities may require more time and labor prior to operation of the summer camp. These additional administrative costs, however, may have a potential cost savings during the operation of the camp, in that qualified staff which are properly trained will result in a more efficient and safe camp environment. In addition, the relaxation of the lifeguarding standards for instructional swim and offsite camp trips may reduce costs in salaries and penalties for noncompliance.

The fee increases are expected to have a positive impact on the Department, since current fees of $20.00 for day camps and $50.00 for residential camps do not approach the true costs incurred by the Department for processing certifications and conducting safety and sanitary inspections. The new fees, $50.00 for day camps and $100.00 for residential camps, the maximum allowed by statute, while not covering the costs completely, will contribute more toward the costs than has been received in the past. These fee increases will not become operative until January 1, 1992, since the certification process for the 1991 camping season has already begun.

Regulatory Flexibility Analysis

The proposed amendments primarily impact on all day and resident youth camps, many of which can be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14b-16 et seq. The proposed amendments impose transportation, health, waterfront safety, and staffing requirements on all youth camps and do not establish differential compliance requirements for small businesses, since public health and safety may be compromised should the standards not be followed. Requirements for professional staff needed to comply with these rules were not increased. For example, changes to qualifications for lifeguards were made to reflect only terminology changes made by nationally recognized training programs. Also, additional certifications for resident camp health directors are being recognized to give youth camp operators more flexibility in hiring a professional who meets the needs of the camp population served.

The impact of complying with existing State standards depends on the types of activities offered by the camp. Staffing requirements are dependent on the number of hazardous activities offered by the smaller camps. For example, a camp program that offers aquatics, archery, horseback riding, and riflery would need an adult activity specialist with a current certification from a recognized organization in the specialized field. This activity specialist could also function as a camp couselor to fulfill camper supervision requirements when the activity is not in progress. It would be inappropriate to exempt from the requirements any of the youth camps which may be considered small businesses under N.J.S.A. 52:14b-16 et seq., due to the overriding concern for public health and safety.

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

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SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

8:25-1.1 Purpose

The purpose of this chapter is to promote, protect, and safeguard the health and well-being of the youth of the state attending day and resident youth camps as provided for in N.J.S.A. 26:12-1 et seq.

8:25-1.2 Scope

These rules shall govern all day and resident youth camps in the State of New Jersey as defined in N.J.A.C. 8:25-1.4. The provisions are enforceable by the Commissioner of Health or any of the Commissioner's authorized deputies, representatives, agents or employees.

8:25-1.3 Separability

If any provision or applications of any provision of this chapter is held invalid, that invalidity shall not affect other provisions or applications of this chapter.

8:25-[1.1]**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.

. . .

["Aquatics guard" means a person aged 16 years or older on duty at a waterfront for guarding or rescue purposes.

"Aquatics supervisor" means adult in charge at a waterfront supervising swimming, watercraft activities and related staff.

"Assistant aquatics supervisor" means adult in charge at a waterfront supervising swimming, watercraft activities in the absence of the aquatics supervisor.]

. . .

"Lifeguard" means a person aged 16 years or older on duty at a waterfront for guarding or rescue purposes.

"Lifeguard supervisor" means adult in charge at a waterfront, supervising swimming, watercraft activities, and related staff.

. . .

"Passenger vehicle" means a vehicle that has a capacity of nine or fewer persons.

"Type I school bus" means a bus with a capacity of 17 to 58 passengers, as indicated by the vehicle manufacturer.

"Type II school bus" means a bus with a capacity of 10 to 16 passengers, as indicated by the vehicle manufacturer.

["Vehicle" means a carrier used in transporting children on public highways to and from camp or other places incidental to the camp program.]

. . .

8:25-2.2 Site, plans, facilities, and equipment:

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

(e) A room, tent, or building to serve as a health center shall be maintained on the campsite for the temporary isolation and treatment of sick or injured members of the camp community. This facility shall be protected from flies and insects; be located to insure privacy and quiet; [and] not located in or directly off the kitchen[. It] **; and** shall include [first aid equipment and] medical equipment **and** supplies deemed necessary by the directing physician for the health and welfare of the camp. Hot water shall be available at this location.

(f) (No change.)

8:25-2.4 General care of children

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

(c) Any person who has reasonable cause to believe that a child has been or is being subjected to any form of hitting, corporal punishment, abusive language or ridicule; or harsh, humiliating, or frightening treatment; or any kind of child abuse or neglect by any person is required by State law to immediately report such allegations to the Department of Human Services, Division of Youth and Family Services, Office of Child Abuse Control at 1-800-792-8610 or 1-609-292-0617.

(d) The camp shall conduct and document pre-season orientation and training for the staff which shall include verbal and printed materials on policies and procedures required in this chapter, including, but not limited to: personnel policies and practices, job descriptions, disciplinary policies, emergency procedures, daily health surveillance procedures, lost camper policies, lost swimmer policies, and, if appropriate, any other expectations of the camp director.

(e) It shall be the responsibility of the youth camp operator to verify a prospective staff's background and character through reasonable inquiries including, but not limited to, character reference, personal or phone interviews, and prior employment records. Documentation shall be available to verify staff's background and character checks.

8:25-3.1 Health records and supervision:

(a) (No change.)

(b) Rules concerning health staff include:

1. A resident camp shall have on duty in residence an adult health director who is a licensed physician; or a registered nurse or licensed practical nurse complying with the rules of the State Board of Nursing; or [a camp] **an adult** health director certified [by the American Camping Association; or] **as a** Paramedic or Emergency Medical Technician **or First Responder/C.I.M.** accredited by the State Department of Health[;] or [an individual certified] by the American Red Cross in Advanced First Aid; or **an athletic trainer accredited by the National Athletic Trainers' Association or** an equivalent certification approved by the Department.

2. (No change.)

3. All camp health directors, in both day and resident camps, shall be certified **by the American Red Cross or American Heart Association** in cardiopulmonary resuscitation (CPR).

4. (No change.)

(c) A bound medical log listing date, name of patient, ailment [and], treatment [prescribed] **and the name of the person who administered treatment** shall be maintained at the health center. If an injury or illness is serious, the camp physician shall be consulted immediately, and the parents or guardians[, when the patient is a child,] **shall be** notified as soon as possible.

(d)-(e) (No change.)

(f) All deaths; head, neck, or spinal cord injuries; and any injury which renders a person unconscious shall be reported to the Department within 24 hours.

8:25-3.2 Medications and supplies

(a) Youth camps that do not administer medication shall inform the parents or guardians of this policy prior to the time of the enrollment.

(b) Youth camps that administer medication to a child shall adhere to the following:

1. Prescription medication shall be administered only after receipt of written authorization from the child's parent, guardian, or the directing physician.

2. Prescription medication shall be stored in the original prescription container.

3. Nonprescription medication shall be administered only after receipt of written authorization from the child's parent or guardian, or in accordance with the camp's standing orders. The standing order shall be established by the directing physician.

4. All nonprescription medication shall be labeled and stored in the original container.

5. The health director shall only administer medications authorized by parents, guardians, the attending physician, or the camp physician in the case of standing orders.

6. The health director shall insure that the staff members are informed as to the medication needs of each child under their direct supervision, and any limitations commonly associated with the medication.

7. All medications shall be properly stored in a secured area that is inaccessible to the children.

8. Whenever practical, unused personal medication shall be returned to the parents or guardians when no longer being administered. Within three days after the campers stay at camp, any unclaimed medication shall be destroyed.

(c) When any medications are administered to a child, the camp shall maintain on file a record of:

1. The child's name and parental authorization;

2. The name of the medication administered;

3. The condition for which the medication is being used;

4. The instruction for administration, including the dosage and frequency; and

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5. The date, time, and name of the person administering the medication to a child.

(d) First aid equipment shall be available at all times and shall be fully restocked within 24 hours of use. The minimum content for the first aid equipment shall include the following items or equivalent items:

1. 48—one inch adhesive compress;
2. 24—two inch adhesive compress;
3. 24—three inch adhesive compress;
4. 12—four inch adhesive compress;
5. 24—three inch by three inch plain sterile gauze pads;
6. Two—two inch gauze roller bandages;
7. Six triangular bandages;
8. Two—one inch rolls adhesive tape;
9. Two sterile eye dressing packets; and
10. One scissors and tweezers.

(e) First aid kits shall be available for all camp trips and shall be supplied with the appropriate contents deemed necessary by the health director or directing physician for the activities of that trip.

[8:25-3.2 Physical examinations] **8:25-3.3 Health history records**

[(a) A camper or staff member at the time of admission to a day or resident camp shall submit a written health history which specifies all known physical and mental conditions. All campers shall also have protection against diphtheria, tetanus, poliomyelitis, measles, mumps, and rubella, or a statement from a physician that immunization is in progress. If there is a religious objection to physical examinations or immunizations a child shall submit a written statement signed by the parents or legal guardians to the effect that the child is in good health and they assume the health responsibility for the child while in camp with the understanding they will be notified immediately if anything unforeseen occurs.

(b) Required health history records shall be on file in the camp for review by the staff of the Department. According to the schedule specified in N.J.A.C. 8:57-4.1 et seq.]

(a) A written health history for campers, which specifies all known physical and mental conditions, shall be completed and submitted by a parent, guardian or physician at the time of admission to a day or resident camp.

(b) A written health history for staff members, which specifies all known physical and mental conditions, shall be submitted at the time of employment. Staff members under the age of 18 shall have the health history completed by a parent, or legal guardian.

(c) The written health history documents shall be maintained on file at the camp when in session.

(d) All campers shall be immunized, according to the immunization schedule specified in N.J.A.C. 8:57-4, against diphtheria, tetanus, poliomyelitis, measles, pertussis, mumps, and rubella or shall provide a statement from a physician that immunization is in progress.

1. If there is a religious objection to immunization of a child, a written statement shall be signed and submitted by the parents or guardians, and kept by the camp, which states that the child is in good health and that the parents or guardians assume the health responsibility for the child while in camp, with the understanding that they will be notified immediately if anything unforeseen occurs.

2. If an immunization of a child is contraindicated for medical reasons, the parent or guardian shall submit to the camp, and the camp shall keep on file, a written statement signed by a licensed physician, indicating both the reason and length of the medical contraindication, pursuant to N.J.A.C. 8:57-4.3.

8:25-[3.3]**3.4** Nutrition and meal service

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

(e) Facilities shall be provided to maintain potentially hazardous food, as defined in N.J.A.C. 8:24-1.3, at or below 45 degrees Fahrenheit for storage when foods are brought into camp by a child or staff member. If such facilities are not provided, notification shall be made to the parents or guardian to limit the child's meal to exclude potentially hazardous foods.

8:25-4.3 Fire-fighting equipment

Regularly serviced fire extinguishers meeting the requirements of the Fire Underwriters Association shall be **strategically** placed [at strategic] and easily accessible [locations]. Each fire extinguisher shall be inspected prior to the opening of camp and at periodic intervals thereafter for proper care and maintenance.

8:25-4.4 Fire safety

(a) (No change.)

(b) The camp shall also conform to the [New Jersey] Forest Fire Laws **of New Jersey,** N.J.S.A. 13:9-19, which states:

["13:9-19. Burning waste or other materials; permits. In any district for which firewardens have been appointed under the provisions of this chapter, no person shall set fire to or cause to be burned waste, fallows, stumps, logs, brush, dry grass, fallen timber or anything that may cause a forest fire, without first obtaining the written permission of the state firewarden, or a division, section or district firewarden. No such permission shall be granted by any firewarden, if, in his opinion, any forest or woodland will be endangered thereby; nor shall any such permission, if granted, relieve or exonerate any person from any penalties provided by this chapter if, by reason of such fire, any forest, brush land or salt marsh be burned. Permits shall not be necessary for burning any of the above enumerated materials when the fire is set a distance of not less than two hundred feet from any forest, brush land, salt marsh, or field containing dry grass or the inflammable material from which fire may be transmitted to any forest, brush land or salt marsh."]

"In any district for which firewardens have been appointed under provisions of this chapter, no person shall set fire to or cause to be set on fire in any manner whatsoever; or to start fires anywhere and permit them to spread to forests, thereby causing damage to or threat to life or property, either accidentally or otherwise, directly or indirectly, in person or by agent, or cause to be burned, waste, fallows, stumps, logs, brush, dry grass, fallen timber or any property, material, or vegetation being grown thereon, or anything that may cause a forest fire, without first obtaining the written permission of the department (New Jersey Department of Environmental Protection, Division of Parks and Forestry). Within the designated protection area this requirement supersedes any law, rule, regulation or ordinance inconsistent therewith. No such permission shall be granted if, in the department's opinion, any forest will be endangered thereby; or if it violates the air pollution statutes; nor shall any such permission, if granted, relieve or exonerate any person from any penalties provided by this chapter, if by reason of such wildfire, any forest be burned."

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

8:25-4.5 [Vehicles and drivers] **Vehicle transportation**

[(a) All vehicles used for the transportation of children shall be registered in accordance with the applicable regulations of the New Jersey Division of Motor Vehicles and shall be capable of passing the appropriate motor vehicle inspection. Operators of motor vehicles shall be properly licensed for the type of vehicle being operated. In addition, the following standards shall be met:

1. A vehicle in good running condition and a licensed driver shall be available at all times to provide emergency transportation.

2. At least one adult or counselor, in addition to the driver, shall ride with the children being transported when more than 20 children are transported in any one vehicle.]

(a) Any youth camp that provides, or arranges for the provision of, transportation for children to or from their homes and other prearranged sites and the youth camp; and/or in connection with an activity (such as a field trip) conducted by or through the auspices of the youth camp; and any person or agency other than the youth camp that provides or arranges for the provision of transporting children to or from their homes and a youth camp for compensation shall adhere to the following provisions:

1. All vehicles used for the transportation of children shall be registered in accordance with the applicable rules of the New Jersey Division of Motor Vehicles (DMV) and shall be capable of passing the appropriate motor vehicle inspection. Operators of motor vehicles shall be properly licensed for the type of vehicle being operated.

2. Any youth camp, person, or agency, as defined in (a) above, also shall comply with all applicable provisions of the New Jersey Division of Motor Vehicles (DMV) law, N.J.S.A. 39:1-1 et seq. and the rules promulgated thereunder, as specified in N.J.A.C. 13.

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3. The youth camp may authorize staff members and/or parents of enrolled children to utilize their own private passenger vehicles to transport children from the youth camp to and from scheduled field trips, outings, or any off site trips; however, staff members and/or parents may be authorized to do so only if:

i. The driver possesses a valid automobile driver's license recognized by DMV;

ii. The vehicle has a valid motor vehicle inspection sticker recognized by DMV;

iii. The vehicle owner possesses vehicle liability insurance at least at the minimum amounts required by New Jersey State insurance laws and rules, specifically, N.J.A.C. 8:25-4.7;

iv. The youth camp maintains transportation records on every vehicle utilized for the above, as specified in N.J.A.C. 8:25-4.7; and

v. The youth camp ensures that the driver and/or additional adults comply with established safety practices, as specified in N.J.A.C. 8:25-4.6.

4. Type I school buses shall meet specifications prescribed by New Jersey Department of Education rules, as specified in N.J.A.C. 6:21-5, and that were applicable at the time the bus was manufactured.

5. Type II school buses manufactured prior to April 1, 1977 shall meet the specifications prescribed by New Jersey Department of Human Services rules that were applicable at the time the bus was manufactured.

6. Type II school buses manufactured after April 1, 1977 shall be painted in the color of uniform national school bus yellow and meet the specifications prescribed by New Jersey Department of Education rules, as specified in N.J.A.C. 6:21-5.

(b) Exemption: Buses or any vehicle with a seating capacity of 15 or less, including the driver, which is solely used to transport children to or from summer camp from May 15 to September 15 of any year, are exempt from the "S2" designated license plates, color of uniform national school bus yellow, and warning lights, pursuant to N.J.A.C. 39:3-19.3.

8:25-4.6 Vehicle-related safety practices

(a) Any vehicle used in the transportation of children as specified in N.J.S.A. 8:25-4.5 shall be maintained and operated as follows:

1. Children shall never be left unattended in a vehicle.

2. Children shall be accepted and discharged from the curbside of the vehicle.

3. The interior and exterior of each vehicle shall be maintained in a clean and safe condition, with clear passage to operable doors.

4. All vehicles that are utilized to transport children under 18 months of age shall be equipped with car seats (child passenger restraint systems) that meet Federal motor vehicle safety standards, in accordance with provisions of DMV, pursuant to N.J.S.A. 39:3-76.2a, and shall be secured in the restraint system when the vehicle is in motion.

5. The driver shall not transport more persons, including children and adults, than the designed occupancy of the vehicle as indicated by the manufacturer.

6. All passengers shall be seated and shall remain seated when the bus or vehicle is in motion.

7. All passengers shall be secured in an operable seat belt, if provided, or proper restraint system, as specified in 5 above, when the vehicle is in motion.

8. At least one adult in addition to the driver shall ride with the 10 or more children being transported in any one vehicle to and from off site trips. At least one adult or counselor in addition to the driver shall ride with seven or more children under the age of six.

9. The driver shall conduct a daily check of the vehicle, which shall include all safety equipment, to ensure that the vehicle is in sound operating condition.

10. The driver shall conduct a check of the vehicle, after each run is complete, to ensure that no child remains in the vehicle.

11. A written policy between the parents or guardians and the youth camp shall be established to ensure that preschool children are discharged from the vehicle to a parent, guardian, or a designated person.

12. Emergency evacuation drills for Type I and Type II school buses shall be conducted at least once during each camping session.

8:25-4.7 Vehicle insurance and records

(a) Each youth camp or person providing transportation services, as specified in N.J.A.C. 8:25-4.5, shall secure and maintain vehicle liability insurance for bodily injury or death in minimum amounts of $300,000 per person and $500,000 per accident except for private vehicle specified in 8:25-4.5.

(b) The youth camp shall establish and maintain on file records of transportation routes to include the names of children transported, the name and address of each driver, a photostatic copy of his or her valid school bus driver's license, and also the name of contractor, if applicable.

(c) The youth camp shall maintain on file the name and address of the person(s) designated as the additional adult(s) and the license numbers of the school bus or vehicles(s) to which they are assigned.

(d) Documentation of emergency evacuation drills for all passengers who ride the Type I or Type II school buses shall be maintained in a log book containing the following information:

1. The date of the drill;

2. The number of passengers;

3. The time to evacuate the bus; and

4. The signature of the person conducting the drill.

8:25-4.8 Special requirements for physically handicapped, nonambulatory children

(a) For youth camps providing or arranging for transportation services for physically handicapped children who are nonambulatory, the following additional vehicle requirements shall be met:

1. A ramp device or a hydraulic lift shall be provided with a lift minimum pay load of 600 pounds.

2. Wheelchairs shall be securely fastened and face forward.

3. The arrangements of the wheelchairs shall not impede access to the emergency or exit door.

4. If a ramp device is installed, it shall have a nonskid surface, be securely stored and protected from the elements when not in use, and have at least three feet of length for each foot of incline.

5. Seat belts or other restraints approved by DMV shall be installed for each passenger, including those seated in wheelchairs.

6. Any aisle leading from a wheelchair position to the emergency or exit door shall be a minimum width of 30 inches.

SUBCHAPTER 5. WATERFRONT SAFETY

8:25-5.1 Swimming areas

[(a) A swimming area shall be maintained in a clean and safe condition, free from rocks, holes, and hidden dangers. Any known hazard in the vicinity shall be properly safeguarded and posted.]

(a) Swimming pools and bathing beaches shall conform to municipal ordinances, state statutes, and Chapter IX of the State Sanitary Code, entitled, "Public Recreational Bathing" (N.J.A.C. 8:26), except as where otherwise specified in this subchapter.

(b) (No change.)

[(c) Lifesaving equipment shall be provided at a swimming area and placed so it is immediately available in case of an emergency. The equipment shall be kept in good working order and at a minimum shall include a bell or whistle, two assist poles, and a ring buoy firmly attached to sufficient line to reach the perimeter of the swimming area.]

8:25-5.2 Waterfront staff

(a) The [aquatics] **lifeguard** supervisor [and assistant aquatic supervisor] in any camp or any place where camp activities are conducted, who supervise swimming or watercraft programs shall be currently certified [as an] **in** American Red Cross [water safety instructor] **Lifeguard training or** [a] **in** YMCA [aquatics instructor] **Lifeguarding** or Boy Scouts of America [National Aquatics Instructor] **Lifeguarding** or its equivalent[,] [and as an American Red Cross Advanced Lifesaver or its equivalent].

(b) The [aquatics guard] **lifeguard** in any camp or in any place where camp activities are conducted who supervise wading, swimming or watercraft programs shall be currently certified [as an] **in** American Red Cross **lifeguard training or in** YMCA [Advanced Lifesavers] **lifeguarding or in Boy Scouts of America lifeguarding** or its equivalent.

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(c) When **non-instructional** swimming activities are in progress, the [aquatics] **lifeguard** supervisor shall be in attendance supervising the program. Watercraft activities shall be supervised in accordance with the provisions of N.J.A.C. 8:25-5.4(b).

(d) The [aquatics] **lifeguard** supervisor and one [aquatics guard] **lifeguard** shall be on duty for 30 or fewer children in the water. One additional [aquatics guard] **lifeguard** shall be on duty for every additional 30 children or fraction thereof.

[(e) The aquatics supervisor and one aquatics guard shall be on duty for 20 or less children in the water. One additional aquatics guard shall be on duty for every additional 20 children or fraction thereof.]

(e) During instructional swim, one lifeguard shall be on the deck for every 2,000 square feet of surface area of the pool in use at all times. One additional guard shall be on deck for every additional 2,000 square feet of surface area or fraction thereof.

(f) Swimming pools having a maximum depth of 36 inches and having a maximum swimming area of 500 square feet shall be supervised by one [aquatics guard] **lifeguard** with the assistance of two adult leaders for 20 or less campers in the water. One additional [aquatics guard] **lifeguard** and one additional adult leader shall be on duty for each additional 20 campers or fraction thereof.

(g) Off site swimming activities shall only be permitted at designated public bathing facilities provided that prior notification is given to the operator of the designated bathing facility. Upon arrival, the camp shall notify the waterfront supervisors of the facility as to the size of the group, age range, and any physical handicaps of the campers.

1. If lifeguards are provided at the designated public bathing facility, the camp shall provide one adult lifeguard for the first 30 children in the water. One additional lifeguard shall be on duty for every additional 30 children in the water or portion thereof.

2. If lifeguards are not provided at the designated public bathing facility, the camp shall provide all lifesaving personnel as specified in (d) above.

8:25-5.3 Swimming procedures

[(a) American Red Cross, YMCA, or Boy Scouts of America, tests shall be used to determine each child's swimming ability. Children shall be confined to the area established in N.J.A.C. 8:25-5.1(b) which is equal to the limits of their swimming skills or an area requiring lesser skills for which they have been classified.]

(a) Each camp shall develop a classification system to determine the swimming ability of each child arriving in camp as a nonswimmer, beginner or swimmer. Children shall be confined to the areas commensurate with the limits of their swimming ability or an area requiring lesser skills for which they have been classified. As a minimum, a child shall not be classified a swimmer unless the following skills are demonstrated:

1. Child is to jump in feet first, in water over the head, come to the surface, swim a distance of 25 feet, change directions, using different strokes, swim a distance of 25 feet, stop and float or tread water for one minute. Any child who fails to meet this requirement must be restricted to chest deep water. This requirement does not apply during swim instructional session.

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

8:25-5.4 Watercraft [and waterskiing]

(a) Watercraft activities shall be conducted during daylight hours. A Type I, II or III foam-filled Personal Flotation Device (PFD) **approved by the United States Coast Guard** shall be provided for and worn by each occupant of a watercraft. [A nonswimmer shall not be permitted in a sailboat unless accompanied by an aquatics guard.]

1. A nonswimmer shall not be permitted in a sailboat or canoe unless accompanied by a lifeguard.

(b) Watercraft activities shall be supervised as follows:

1. For camp boating on lakes**, tidal waters** and ponds [a certified aquatics guard]**, a lifeguard** shall patrol the areas **on a paddle-board capable of supporting two adults or** in a lifeboat **equipped with a ring buoy or similar device with a minimum of 25 feet of rope that shall be attached.** [and an] **An** adult shall observe the activity from a vantage point on the shore or on the water.

2. Boating activities on rivers and streams shall be supervised by an adult with demonstrated boating experience. [and a certified aquatics guard] **A lifeguard** shall also [accompany] **patrol** the trip **in a boat equipped with ring buoy or similar device with a minimum of 25 feet of rope that shall be attached.**

[(c) A watercraft docking area shall not be in the swimming area.

(d) The swimming area shall not be used for the launching or stopping of waterskiers.]

SUBCHAPTER 6. SANITATION

8:25-6.7 Food service, milk supply and water supply:

(a) Rules concerning food service, milk and water supply include:

1. (No change.)

2. The water supply shall comply with the provisions of the New Jersey Safe Drinking Water Act (N.J.S.A. 58:12A-1 et seq.) [Copies can be obtained by writing to the Department of Environmental Protection, Bureau of Potable Water, 1474 Prospect Street, Trenton, NJ 08625.]

(b) (No change.)

[8:25-6.9 Swimming and bathing]

[(a) Swimming pools shall conform to municipal ordinances, statutes and applicable regulations governing their construction and operation. In the absence of the same they shall conform to the provisions of the Swimming Pool Code of New Jersey (1970) as approved by the State Department of Health for adoption by reference by local boards of health.

(b) Rules concerning natural bathing waters include:

1. Natural bathing waters, such as rivers, lakes and inland waterways shall not exceed a fecal coliform density indicating a most probable number of 200 per 100 ml as a geometric average.

2. Bathing waters shall be sampled and evaluated at least once each two weeks while camp is in session or at any other frequency determined by the Department or by local ordinance. The bathing waters shall also be in conformance with the provisions of the Surface Water Quality Standards (N.J.A.C. 7:9-4) promulgated by the Department of Environmental Protection and any other applicable rules and regulations.

3. Toilet facilities shall be provided within a reasonable distance of the bathing area.]

8:25-[6.10]**6.9** (No change in text.)

8:25-[6.11]**6.10** Maintenance

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

(f) Recreational equipment, including playground devices, shall be inspected [periodically for defects.] **not less than once per week during the use season for defects and a permanent record of the inspection shall be maintained. Equipment shall be maintained in safe operating condition at all times.** [Proper maintenance shall be carried out to keep it in a safe operating condition.]

8:25-[6.12]**6.11** Certification fees

Under the authority of N.J.S.A. 26:12-6, the Commissioner of Health hereby establishes the annual certificate fee of youth camps at [$20.00] **$50.00** for a day camp and [$50.00] **$100.00** for a resident camp. Upon receipt of the appropriate fee, a provisional certificate or certificate of approval shall be issued by the Commissioner which shall be valid for a period of one year.

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CORRECTIONS

(a)

THE COMMISSIONER

Inmate Discipline

Proposed Readoption with Amendments: N.J.A.C. 10A:4

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1991-108.

Submit comments by April 3, 1991 to:
Elaine W. Ballai, Esq.
Regulatory Officer, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10A:4, Inmate Discipline, expires on July 21, 1991. The Department of Corrections has reviewed these rules and, with the following exceptions, has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by the Executive Order. Amendments have been made to sections within subchapters 1, 2, 4, 5, 7, 9, and 10. Subchapter 1 provides the purpose and scope of the chapter, definitions of words and terms used and a list of forms that are utilized in the disciplinary process. The proposed amendments add definitions for "Administrative Close Supervision Unit," "Capital Sentence Unit," "counsel substitute" and an amended definition for "Superintendent."

Subchapter 2 requires a correctional facility to notify inmates of the rules, regulations and disciplinary process within the facility by providing them with a booklet as a part of the admission and orientation process. The proposed amendment to N.J.A.C. 10A:4-2.1(a) deletes the citation N.J.A.C. 10A:7, Inmate Handbooks and replaces it with N.J.A.C. 10A:8, Inmate Orientation and Handbook.

Subchapter 3 provides a listing of the inmate's rights and responsibilities that are published in the inmate handbook which is issued to the inmate as a part of the admission and orientation process.

Subchapter 4 provides a listing of prohibited acts which make an inmate subject to disciplinary action when a violation of one or more of these acts have been committed. The proposed amendments add tampering with fire alarms, fire equipment or fire suppressant equipment and attempting to set a fire to the list of prohibited acts.

Subchapter 5 provides a schedule of sanctions which may be imposed, by the Disciplinary Hearing Officer or Adjustment Committee, on inmates who have committed prohibited acts. The proposed amendments add sanctions up to 14 hours extra duty and up to two weeks confinement to a room or housing area to the list of sanctions which may be imposed on inmates assigned to the Prison Complex, the Adult Diagnostic and Treatment Center and the Edna Mahan Correctional Facility for Women. A proposed amendment will permit the Disciplinary Hearing Officer or Adjustment Committee to recommend the loss of privileges, such as contact visits, for up to one year for inmates assigned to the Youth Complex.

Subchapter 6 provides the criteria for designating an inmate as a chronic violator, the procedure for designating an inmate as a chronic violator and the procedure whereby an inmate can appeal his or her designation as a chronic violator.

Subchapter 7 provides a schedule of sanctions which may be imposed on inmates when they have violated prohibited acts that are considered to be minor. The proposed amendment adds the sanction of confiscation to the list of sanctions which may be imposed for the violation of minor prohibited acts.

Subchapter 8 requires the use of an Adjustment Committee or a Disciplinary Hearing Officer to conduct disciplinary hearings for inmates who have received disciplinary charges for the violation of prohibited acts. This subchapter also outlines the procedure for establishing an Adjustment Committee, the composition and decision making of the committee, and the extent of the authority of the Committee and Disciplinary Hearing Officer.

Subchapter 9 provides procedures for the disciplinary process which is initiated when an inmate violates a prohibited act. This process includes the preparation of the disciplinary report, the notification of the inmate that the disciplinary report has been prepared, the investigation of the violation, the conduct of a hearing and the decision on the imposition of a sanction. The proposed amendments add minor changes in language for the purpose of clarification, and the requirement that the decision of guilty, where rendered by the Disciplinary Hearing Officer or Adjustment Committee, shall be entered on the inmate's progress notes and included in reports to the Parole Board.

Subchapter 10 provides the factors to be considered when determining whether to place an inmate in prehearing detention or disciplinary detention areas. Proposed amendments suggest rather than mandate factors to be considered when determining whether to place an inmate in prehearing detention, suggest the use of Form 255-I and suggest that a request to place an inmate in prehearing detention should be reviewed by a Superintendent, Assistant Superintendent or Director of Custody, where possible. These proposed amendments have been made to provide greater flexibility to prison administrators.

Subchapter 11 provides the process by which an inmate can appeal the disciplinary decisions of the Disciplinary Hearing Officer or Adjustment Committee, which include the time limit for filing an appeal and the investigation, review and disposition of an appeal.

Social Impact

In the day-to-day management of correctional facilities, the disciplinary procedures and sanctions imposed for violations of rules are among the most important tools by which the correctional facility administration is able to maintain institutional stability, safety and order. The fact that these rules are mandated by both State and Federal courts, and that as a result of inmate appeals to these courts, the courts continue to monitor the legal sufficiency of disciplinary procedures, insures that due process is afforded and that the process is fair and equitable. The disciplinary rules provide a swift and certain means by which an inmate who commits an infraction, whether major such as assault, or minor, such as playing one's radio too loud, will receive notice of the infraction, a hearing before an impartial hearing officer who is not an employee of the institution, an appropriate punishment if found guilty, and an opportunity to appeal to the Superintendent. The proposed readoption of N.J.A.C. 10A:4 with the proposed amendments will provide Disciplinary Hearing Officers and Adjustment Committees with greater flexibility in the types of sanctions which may be imposed on inmates for violations of prohibited acts. This added flexibility will enhance the maintenance of discipline and further contribute to the safe and orderly operation of the correctional facility.

Economic Impact

Disciplinary rules, while requiring no additional line-item funds over and above those funds allocated in the yearly budget, are important from a financial standpoint. Destructive behavior by inmates such as damage to plumbing fixtures, arson or even theft of clothing can lead to unwarranted and unnecessary expenditure of State funds. That disciplinary rules and procedures assist the institution in deterring such behavior is of economic benefit to the Department of Corrections. Other than the economic benefit described above, no additional funds or additions to the year's budget are required in connection with the readoption of this chapter.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed readoption with amendments does not impose reporting, record keeping or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed readoption with amendments impacts on inmates and the New Jersey Department of Corrections and has no effect on small businesses.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:4.

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

10A:4-1.1 Introduction

(a) The purpose of this [subchapter] **chapter** is to:

1.-6. (No change.)

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10A:4-1.3 Definitions

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

. . .

"Administrative Close Supervision Unit" means a long term close custody unit to which an inmate may be assigned because of one or more disciplinary infractions or other administrative considerations.

. . .

"Capital Sentence Unit" means the close custody unit to which inmates sentenced to death pursuant to N.J.S.A. 2C:11-3 are assigned until such time that the execution is carried out, or the sentence is commuted or changed to a lesser penalty.

. . .

"Counsel substitute" means an individual, such as an inmate paralegal, teacher or social worker, who represents and defends an inmate at a disciplinary hearing proceeding which is conducted within a correctional facility under the jurisdiction of the Department of Corrections.

. . .

"Superintendent" [shall mean the chief executive officer of any State correctional facility in the Department of Corrections] **means a superintendent or an administrator who serves as the Chief Executive Officer of any State correctional facility within the New Jersey Department of Corrections.**

. . .

10A:4-2.1 Notification of inmates about rules and regulations

(a) At the time of arrival at a correctional facility, each inmate shall be advised in writing of his/her rights and responsibilities, the acts and activities which are prohibited, the rules which must be followed and the disciplinary process within the facility. This information shall be provided in a booklet as part of the admission-orientation program. (See N.J.A.C. [10A:7, Inmate Handbooks] **10A:8 Inmate Orientation and Handbook**.) Each inmate shall be required to sign a form acknowledging receipt of the Handbook on Discipline. A refusal by the inmate to sign shall be noted on the form by the issuing staff member.

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

10A:4-4.1 Prohibited acts

(a) An inmate who commits one or more of the following numbered prohibited acts shall be subject to disciplinary action and a sanction that is imposed by a Disciplinary Hearing Officer or Adjustment Committee. Prohibited [Acts] **acts** preceded by an asterisk are considered the most serious and result in the most severe sanctions (See N.J.A.C. 10A:4-5, Schedule of Sanctions for Prohibited Acts).

*.001-.103 (No change.)

.150 Tampering with fire alarms, fire equipment or fire suppressant equipment

*.151 Setting a fire **or attempting to set a fire**

.152-.803 (No change.)

(b) (No change.)

10A:4-5.1 Schedule of sanctions for prohibited acts committed at the Prison Complex, Adult Diagnostic and Treatment Center (ADTC) and Edna Mahan Correctional Facility for Women (EMCF)

(a) A finding of guilt for any offense preceded by an asterisk (*) shall render the offender subject to one or more of the following sanctions:

1.-6. (No change.)

7. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7); [and/or]

8. Confiscation[.];

9. Up to 14 hours extra duty, to be performed within a maximum of two weeks; and/or

10. Up to two weeks confinement to room or housing area.

(b) A finding of guilt in the case of all other offenses shall render the offender subject to one or more of the following sanctions:

1.-6. (No change.)

7. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7); [and/or,]

8. Confiscation[.];

9. Up to 14 hours extra duty, to be performed within a maximum of two weeks; and/or

10. Up to two weeks confinement to room or housing area.

(c) In addition to the sanctions in (a) and (b) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent. Such administrative action shall include, but not be limited to, the following:

1.-5. (No change.)

6. Recommending loss of privileges such as contact visits for up to one year[; and/or]. **Loss of visit privileges shall be imposed only for visit-related disciplinary infractions; and/or**

7. (No change.)

10A:4-5.2 Schedule of sanctions for prohibited acts committed at the Youth Complex

(a) A finding of guilt for prohibited acts preceded by an asterisk (*) shall render the offender subject to one or more of the following sanctions:

1.-6. (No change.)

7. Loss of commutation time up to 365 days, subject to confirmation by the Superintendent (Inmates serving indeterminate sentences are not subject to this sanction, **but inmates housed in the youth complex who are serving prison terms are subject to this sanction**); and/or

8. (No change.)

(b) (No change.)

(c) In addition to the sanctions in (a) and (b) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent. Such administrative action shall include, but not be limited to, the following:

1.-2. (No change.)

3. Recommending transfer to a more appropriate correctional facility (subject to confirmation by the Special Classification Committee or the Reception Classification Committee; [and/or,]

4. Increasing custody status[.]; **and/or**

5. Recommending loss of privileges such as contact visits for up to one year. Loss of visit privileges shall be imposed only for visit-related disciplinary infractions.

10A:4-7.3 Sanctions

(a) The following are authorized sanctions for ON-THE-SPOT CORRECTIONS:

1.-3. (No change.)

4. Up to four hours confinement to the [tier, room or cell; and/or] **room or housing area;**

5. Loss of radio or television privileges for a period of no more than five days[.]; **and/or**

6. Confiscation.

10A:4-9.3 Notification of use immunity

(a) In all cases, the inmate shall be advised of his/her right to use immunity at any investigative interview and at the disciplinary hearing. This warning shall consist of a statement that any statements made in connection with the disciplinary hearing or any evidence derived directly or indirectly from those statements shall not be used in any subsequent criminal proceeding. The failure to give this warning by the investigating officer shall not be grounds for dismissing the disciplinary report. The Disciplinary Hearing Officer at his/her discretion **or the Adjustment Committee at its discretion** may grant a postponement if it is determined that such failure has precluded the inmate from adequately preparing his/her defense at the hearing.

10A:4-9.21 Emergency intra-complex transfer

(a) When it shall appear that an inmate has committed a disciplinary infraction which requires his/her immediate transfer to [a Prehearing Detention] **the general population** of another correctional facility or unit within the complex or **the Prehearing Detention Unit of** another correctional facility or unit within the complex, the notice and disciplinary hearing shall be granted after the transfer.

(b)-(h) (No change.)

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10A:4-9.22 Emergency inter-complex transfer

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

(g) Transfers of juveniles from the Division of Juvenile Services to the Youth Correctional Institution Complex in the Division of Adult Institutions can only be effected by an approved [variance] **rule exemption** signed by the Superintendent, Assistant Commissioner and Commissioner. (See N.J.A.C. [10A:1, ADMINISTRATION, ORGANIZATION AND MANAGEMENT] **10A:1-2, General Provisions**.)

10A:4-9.24 Disciplinary decision

(a) After the hearing has been completed, a written statement of the fact-findings shall be given to the inmate by the Disciplinary Hearing Officer or [the the] Adjustment Committee Chairperson. This statement shall include evidence relied upon, the decision and the reason for the disciplinary action taken, unless doing so would, **in the discretionary opinion of the Disciplinary Hearing Officer or Adjustment Committee Chairperson,** jeopardize correctional facility security. The written statement shall also indicate the reason for refusing to call a witness or to disclose items of evidence whether it be for irrelevance, lack of necessity or [the hazards] **other special circumstances** presented in individual cases. When an inmate has been denied the opportunity for confrontation and cross-examination, the reason for such denial shall be entered in the record and made available to the inmate.

(b) A copy of the disciplinary decision shall be kept in the Disciplinary Hearing Officer's/Adjustment Committee's records and in the inmate's **classification** folder unless it has been decided that the inmate has been found not guilty of the charge(s), in which case, the records of the charge(s) shall be expunged from the inmate's **classification** folder.

(c) If the inmate is adjudicated guilty, the decision shall be entered on the inmate's progress notes and included in reports submitted to the State Parole Board.

10A:4-10.1 Confinement in Prehearing Detention

(a) An inmate [shall be confined] **may be placed** in Prehearing Detention in those instances where it appears necessary to remove or isolate him/her from the general population until an investigation into his/her alleged misconduct can be completed and a disciplinary hearing can be held pursuant to N.J.A.C. 10A:4-9, Disciplinary Procedures. Confinement in Prehearing Detention shall be deemed necessary only where it appears that, if the inmate remained in his/her existing housing unit, he/she would constitute a threat to other inmates, staff member, himself/herself or to the orderly operations of the correctional facility.

(b) (No change.)

(c) [The following factors shall be considered in determining whether retention of the inmate in his/her present housing unit would constitute a threat to other inmates, staff members, himself/herself or to the orderly operations of the correctional facility] **Factors which may be considered in determining whether confinement in Prehearing Detention is warranted include**:

1.-4. (No change.)

5. The inmate has been charged with arson or serious destruction of property and, in the opinion of the correctional staff, there is a substantial likelihood that he/she may engage in additional arson or destruction of property. (Whenever the destruction to property consists of flooding the cell or damaging plumbing fixtures, the inmate may be placed in Prehearing Detention in a "DRY" cell—[Trenton State Prison] **New Jersey State Prison** only);

6.-8. (No change.)

(d) If an inmate is confined in Prehearing Detention as a result of any of the factors in (c) above, such confinement must be authorized, in writing, by the shift supervisor. Form 255-I Authorization for Prehearing Detention, [shall be utilized for this purpose] **should be utilized when placing an inmate in Prehearing Detention**. A separate form must be completed for each inmate and, wherever possible, the form should be completed prior to placing the inmate in Prehearing Detention. When an emergency exists which precludes completion of the form prior to placement, the form must be completed immediately following placement. After all appropriate parties have signed the form, it should be placed in the inmate's folder. Additional copies of the completed form may be kept on file, for record keeping purposes, in areas designated by the Superintendent and the Director of Custody Operations.

(e) [Each such confinement in Prehearing Detention shall be reviewed, and approved or disapproved, by either the Superintendent, Assistant Superintendent or Director of Custody within 24 hours of the placement. When none of these individuals are in the correctional facility during the 24 hour period, one of them shall be contacted by telephone to review the placement.] **Where possible, a Superintendent, Assistant Superintendent or Director of Custody should review and approve or disapprove a request to place an inmate in Prehearing Detention.**

(f) (No change.)

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Relief from Insurer Obligations Under the Fair Automobile Insurance Reform Act of 1990 (FAIR Act)

Proposed New Rules: N.J.A.C. 11:2-35

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

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

Proposal Number: PRN 1991-113.

Submit comments by April 3, 1991 to:
Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN-325
Trenton, NJ 08625

The agency proposal follows:

Summary

The Fair Automobile Insurance Reform Act of 1990 (N.J.S.A. 17:33B-1 et seq.) ("FAIR Act") was enacted to resolve the myriad problems associated with, among other things, the private passenger automobile insurance market in the State of New Jersey. To that end, the FAIR Act imposes certain obligations on insurers licensed to write and doing the business of property/casualty insurance in this State, and additional obligations on those insurers transacting the business of private passenger automobile insurance in New Jersey. Nevertheless, the FAIR Act also authorizes the Commissioner to provide relief from these obligations in appropriate circumstances. These new rules set forth the procedures by which insurers may request relief.

Pursuant to section 27 of the FAIR Act, every insurer licensed to write private passenger automobile business in this State must provide automobile insurance coverage for eligible persons as that term is defined. However, pursuant to sections 31 and 32 of the FAIR Act the Commissioner of Insurance ("Commissioner") shall or may approve the suspension of an insurer's obligation do so if he determines that the insurer is in an "unsafe or unsound" financial condition or the fulfillment of the obligation will result in the financial condition of the insurer being or becoming "unsafe or unsound."

"Unsafe or unsound" is defined throughout the FAIR Act as having a ratio of annual net premiums written to surplus as to policyholders that threatens the financial health of the insurer.

Pursuant to section 39 of the FAIR Act, an insurer transacting automobile insurance in this State must issue or renew any private passenger automobile insurance policy in this State if the residual market is not accepting applications. However, pursuant to sections 93 and 94 this obligation must or may be suspended by the Commissioner under the same circumstances and using the same standard as mentioned previously for sections 31 and 32 of the FAIR Act.

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Pursuant to section 24 of the FAIR Act, those persons who do not qualify as eligible persons but who are in good faith and entitled to but are unable to procure automobile insurance coverage shall be provided automobile insurance pursuant to N.J.S.A. 17:29D-1 as amended by section 34 thereof. However, once again, this obligation must or may be suspended pursuant to sections 91 and 92 under the circumstances and using the standards set forth above.

Pursuant to section 74 of the FAIR Act, the New Jersey Property-Liability Insurance Guaranty Association shall assess member insurers in amounts necessary to make loans in the amount of $160 million dollars per calendar year for eight consecutive years beginning in 1990 to the New Jersey Automobile Insurance Guaranty Fund created pursuant to section 23 thereof. However, pursuant to sections 95 and 96 of the FAIR Act the obligation to pay such assessment must or may be exempted, abated, or deferred by the Commissioner if he or she determines that the insurer is in an unsafe or unsound financial condition or the fulfillment of the obligation will result in the financial condition of the insurer being or becoming unsafe or unsound.

Pursuant to section 76 of the FAIR Act, each private passenger automobile insurer shall pay, in addition to the tax on premiums paid pursuant to N.J.S.A. 15:18A-1, an annual surtax at a maximum rate of five percent, on all taxable premiums collected in this State in calendar years 1990, 1991 and 1992 for contracts of automobile insurance. However, pursuant to section 98 and 99 of the FAIR Act, the obligation to pay this surtax may or must be exempted, abated or deferred under the same circumstances and using the same standards as mentioned for sections 95 and 96 thereof.

Pursuant to section 88(c) of the FAIR Act, every insurer authorized to transact automobile insurance in this State shall be a member of the Market Transition Facility created pursuant to section 88 thereof and shall share in its profits and losses as provided by the Commissioner. However, the Commissioner may excuse a member from meeting its obligations if he or she determines that compliance would place the insurer in an unsafe or unsound financial condition.

As explained above, the criteria to determine whether an insurer is entitled to relief from these various obligations is essentially the same. These proposed new rules set informational and procedural requirements for insurers who wish to request relief from the obligations imposed by the FAIR Act so as to ensure a thorough and expeditious review of such requests.

Proposed N.J.A.C. 11:2-35.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:2-35.2 provides the definitions of words and terms used throughout this subchapter.

Proposed N.J.A.C. 11:2-35.3 provides general application procedures and the filing format for requests for relief from obligations under the FAIR Act.

Proposed N.J.A.C. 11:2-35.4 sets forth the information to be filed and application procedures to be used by insurers when applying for relief from each applicable obligation.

Social Impact

The proposed new rules will establish formalized requirements for insurers to apply for an exemption, abatement, deferral or suspension of or from its statutory obligations. The proposed new rules provide such insurer with procedures to file an application for relief. These proposed rules assist in maintaining the financial stability of an insurer and its ability to pay its existing claims liabilities, thereby protecting current policyholders and satisfying the needs of the insurance buying public.

Economic Impact

The proposed new rules will not result in an adverse economic impact upon insurers. These proposed new rules seek to implement the FAIR Act by providing adequate procedures and informational requirements in order to assist insurers in protecting their financial stability while remaining in compliance with the FAIR Act. This promulgation of Department policy will aid insurers' administrative, financial and legal staff in initiating and executing an application for exemption, abatement, deferral or suspension of applicable obligations, as the case may be, under the FAIR Act.

Regulatory Flexibility Analysis

The proposed new rules are applicable to all insurers as herein defined. It is believed that some insurers to whom the proposed new rules apply are "small businesses" within the meaning found in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The Department does not anticipate that the notification and compliance requirements contained in the proposed new rules will necessarily require the addition of any permanent staff to insurer payrolls or any new capital requirements. The rules do not impose any procedural requirements that would impact, economically, any insurers contemplating a request for relief from its obligations under the FAIR Act, let alone small businesses.

Therefore, to further uniformity and consistency in their application, the proposed new rules do not provide an exemption for "small businesses."

Full text of the proposal follows:

SUBCHAPTER 35. RELIEF FROM INSURER OBLIGATIONS UNDER THE FAIR AUTOMOBILE INSURANCE REFORM ACT OF 1990

11:2-35.1 Purpose and scope

(a) The purpose of this subchapter is to establish the informational and procedural requirements for insurer requests for exemption, abatement, deferral or suspension of an insurer's obligation, as the case may be, under the Fair Automobile Insurance Reform Act of 1990, N.J.S.A. 17:33B-1 et seq.

(b) This subchapter applies to all insurers licensed to transact the business of property/casualty insurance in this State and all insurers licensed to transact and writing the business of private passenger automobile insurance in this State, as the case may be.

11:2-35.2 Definitions

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

"Applicant" means the insurer seeking an exemption, abatement, deferral or suspension of or from its obligations pursuant to the FAIR Act.

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

"FAIR Act" means the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8 (N.J.S.A. 17:33B-1 et seq.).

"Insurer" means any person, corporation, association, partnership, company or interinsurance exchange authorized or admitted by the laws of this State to transact the business of insurance in this State.

"Relief" means an exemption, abatement, deferral or suspension of the obligations imposed pursuant to the FAIR Act.

"Unsafe or unsound financial condition" is as defined in N.J.S.A. 17:33B-19, 17:33B-20, 17:33B-23, 17:33B-24, 17:33B-27, 17:33B-28, 17:33B-53 and 17:33B-56, as applicable.

11:2-35.3 Application procedures and filing format

(a) Any insurer seeking immediate relief from any FAIR Act obligation pursuant to N.J.S.A. 17:33B-19, 17:33B-23, 17:33B-27, 17:33B-53 or 17:33B-55 shall submit a request for such relief no more than 45 days and not less than 15 days prior to the due date for payment or fulfillment of such obligation.

(b) Any insurer seeking discretionary relief from any FAIR Act obligation pursuant to N.J.S.A. 17:33B-20, 17:33B-24, 17:33B-28, 17:33B-53 or 17:33B-56 shall submit a request for such relief no later than the due date of such obligation.

(c) All requests outlined in this subchapter shall be accompanied by a statement averring a need for immediate or discretionary relief from such obligation, as the case may be, including supporting documentation, as set forth in N.J.A.C. 11:2-35.4.

(d) Each request shall be in loose leaf form inserted into standard two-ring or three-ring binders tabbed or otherwise indexed to correspond to the exhibits set forth in N.J.A.C. 11:2-25.4. The loose leaf sheets used in the request shall be eight and one-half inches wide and 11 inches long and punched for two-ring or three-ring binders, as appropriate.

(e) All insurers requesting relief pursuant to this subchapter shall submit 10 copies of each request in the format set forth in (d) above.

(f) A request which is untimely, which is not submitted in the proper format, or which does not contain all of the information

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required by N.J.A.C. 11:2-35.4, may be rejected on such grounds by the Commissioner.

(g) If a request fails to contain all of the information required by N.J.A.C. 11:2-35.4, the Department shall notify the insurer that its request for relief is deficient and is denied for inadequate documentation. The notice shall also set forth the information required to cure the deficiency. The insurer shall submit the additional information within 30 days of receipt of the Department's notice of deficiency. Failure to submit within 30 days the information necessary to cure the deficiency may result in the insurer's request being rejected as untimely.

11:2-35.4 Informational filing requirements

(a) When requesting immediate or discretionary relief pursuant to the FAIR Act, an insurer shall provide with its request the following information in a clear, concise and complete manner.

1. A cover letter stating:

i. The name of the applicant;

ii. The form and specific amount/percentage of relief which the insurer is requesting and a statement of facts relied upon as the basis under which relief is sought; and

iii. A name, telephone number and telefax number of a contact person familiar with the filing to whom the Department may direct any additional questions;

2. Exhibits for the latest preceding calendar quarter, and, unless otherwise indicated, on a statutory accounting basis that show:

i. Balance sheet;

ii. Profit and loss statement;

iii. Cash flow page;

iv. All investment changes since the last annual statement was prepared;

v. Statutory annual statement Schedule F, all Parts and Sections; and

vi. Loss and loss adjustment expense reserve development schedule on a summary basis as required in the annual statement Schedule P;

3. Exhibits by each line of business written in New Jersey that show:

i. Profit and loss statements by line of business for 10 calendar years prior to the date of filing, in order to cover an entire business cycle;

ii. Profit and loss statements by line of business from the period beginning January 1 in the year of filing to date of filing; and

iii. Detailed description of the method of allocation of expenses by line of business;

4. Five-year projections beginning with the calendar year of the date of filing (including a detailed description of all underlying assumptions) assuming the relief is denied and assuming the relief is granted. The projections shall assume the same rate of assessment as in the first year for the subsequent years, and shall include:

i. Worldwide business by line of business:

(1) Profit and loss projection; and

(2) Gross and net premium written projection; and

ii. New Jersey business by line of business:

(1) Profit and loss projection; and

(2) Gross and net premium written projection;

5. A detailed explanation of the projected effect that fulfillment of the obligation would have on the immediate and long term financial condition of the company unless relief is granted as requested;

6. The most recent financial examination report conducted by the state of domicile;

7. The most recent market conduct report by any jurisdiction other than the State of New Jersey;

8. If a publicly-held company, a copy of the annual report and all 10K and 10Q and other SEC filings for the past three years; if a nonpublicly-held company, a copy of the annual report and all reports of audits conducted by an independent certified public accountant for the past three years;

9. A statement that summarizes any pending New Jersey rate filing requests, including any New Jersey flex rate filings projected to be made on or after July 1 of the year in which relief was requested. The Department of Insurance filing number, the amount of the rate request, and the requested effective date of the change shall be included;

10. A statement addressing whether the company is planning to modify its method of doing business in any way including, but not limited to, new acquisitions or new restructuring;

11. If the company is a member of a holding company system, the following shall be provided:

i. A list of all members of the holding company system;

ii. A list of all intercompany transactions for the period noted in (a)3i and ii above;

iii. A balance sheet and profit and loss statement for the ultimate parent company on a consolidated basis for the periods noted in (a)3i and ii above; and

iv. A balance sheet and profit and loss statement for the ultimate parent company on an unconsolidated basis for the periods noted in (a)3i and ii above;

12. A certification of reserves for unearned premiums, losses and loss adjustment expense, such certification to be attested to by a qualified actuary as defined in N.J.A.C. 11:1-21.1;

13. A report signed by the certifying actuary referred to in (a)12 above, which includes in summary form, if necessary, all data utilized by him or her, a complete explanation of methods and assumptions and sufficient additional narrative to account for any features of the data or circumstances necessary for proper interpretation;

i. All data shall be presented as hard copy and on 5¼ inch floppy diskettes as Lotus 1-2-3 worksheet files or the equivalent thereof with page breaks omitted (submitting, in total, one copy of the diskettes for each filing). The data shall include, at a minimum, relevant loss and loss expense triangles both on paid and incurred bases for sufficient numbers of accident years and maturities such that, on a paid basis, at least five accident years are developed to within 90 percent of ultimate. If only a lesser amount of data is available, state the reason for this deficiency.

ii. In the event that paid or incurred loss developments have been distorted by changes in the rate of settlements, in the relative adequacy of reserving, in the mix of business, or in other relevant factors, such distortions shall be fully explained in the narrative. To include the impact of these distortions, appropriate adjusted triangles shall also be supplied plus corresponding triangles of reported, paid and outstanding claim counts.

iii. Annual earned premiums shall be shown as the first column of each triangle; and

14. Any other information the Commissioner may deem relevant to the consideration of the request.

(b) If the applicant is a member of a pooling operation among affiliates, all information requested in items (a)2, 3 and 4 above shall be provided on a pre-pooled and post-pooled basis. Which other members in the pool are also filing for exemption, abatement or deferral shall be indicated.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Commercial Drivers' Schools Licensing Rules

Proposed Amendments: N.J.A.C. 13:23-1.1, 2.1 through 2.10, 2.13, 2.15, 2.16, 2.18, 2.19, 2.28, 2.30, 2.32 through 2.37, 3.1 through 3.9, 3.12, 4.1 and 4.2

Proposed Repeals and New Rules: N.J.A.C. 13:23-2.12, 2.20, 2.21, 2.22, 2.23 and 2.24

Proposed Repeals: N.J.A.C. 13:23-2.14, 2.17, 2.25, 2.26, 2.27, 2.31, 2.38, 3.10, 4.3 and 4.4

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Authorized By: Col. Clinton L. Pagano, Director, Division of Motor Vehicles.
Authority: N.J.S.A. 39:12-4.
Proposal Number: PRN 1991-114.

Submit written comments by April 3, 1991 to:
Col. Clinton L. Pagano, Director
Division of Motor Vehicles
25 South Montgomery St., 7th Floor
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The Division of Motor Vehicles proposes to amend N.J.A.C. 13:23 relating to driving schools and driving school instructors licensed in accordance with N.J.S.A. 39:12-1 et seq. The proposal is intended in part to bring Division rules pertaining to this subject into conformity with Division policies and procedures. Certain provisions which are no longer deemed necessary are proposed for repeal, while other provisions are modified to reflect changes which the Division perceives to be appropriate.

N.J.A.C. 13:23-1.1, Definitions, is amended to include definitions of the terms "authorized agent" and "driving school instructor."

N.J.A.C. 13:23-2.2, Applications; contents, is amended to provide that driving school license renewal applications be submitted to the Division at least 30 days prior to the expiration date of the current license. The current rule specifies that a renewal application must be submitted at least 10 days prior to expiration. The amendments to this section also provide for (1) the submission of authorization to conduct a name search through the Division of State Police together with the payment for such search; and (2) the elimination of the surety bond previously required to be filed with the application.

N.J.A.C. 13:23-2.5, Change of business ownership or interest, is amended to provide for the application for a new license upon any sale or transfer of five percent or more of the capital stock of a corporation.

N.J.A.C. 13:23-2.8, Location of business is amended to delete the requirement that the driving school location be in an area zoned for commercial or business use.

N.J.A.C. 13:23-2.9, as amended provides that a change of driving school business location or business name requires prior approval of the Director.

N.J.A.C. 13:23-2.12 is repealed and a new rule proposed to pertain to specific standards for the denial, suspension or revocation of a driving school license by the Director; language previously contained in that section which pertained to driving school sign requirements is being deleted.

N.J.A.C. 13:23-2.13, Business hours, as amended provides that a driving school must be accessible to the public during normal business hours, and further provides that this requirement may be satisfied by having office personnel available or having a telephone answering service or telephone answering machine.

N.J.A.C. 13:23-2.14 (Office personnel) is proposed for repeal.

N.J.A.C. 13:23-2.15, Branch office application, is amended to provide that the branch office must comply with the licensing requirements for the principal place of business.

N.J.A.C. 13:23-2.16, Branch office relocation or discontinuance, as amended provides that in the event the use of a driving school branch office is discontinued, the branch office license must be surrendered within seven days to the Division of Motor Vehicles. The requirements for branch offices contained in N.J.A.C. 13:23-2.17 are repealed.

N.J.A.C. 13:23-2.18, Changes in addresses of officers; notice, as amended provides that the Director must be notified within seven days, in writing, if a change occurs in the residence address of any proprietor, partner, officer, director, authorized agent or instructor of any driving school.

N.J.A.C. 13:23-2.19 is amended to specify that a file shall be maintained by a driving school containing the service record and the service agreement, if used, between the driving school and every person receiving lessons, lectures, tutoring, instructions or other services relating to the acquisition of a license or endorsement in the operation of motor vehicles or motorcycles. N.J.A.C. 13:23-2.19 is also amended to specify that the service record shall include the student's name, driver license number, instructor's name, the date, type and duration of all lessons, lectures, tutoring, instruction or other services relating to the acquisition of a license or endorsement to operate motor vehicles or motorcycles. N.J.A.C. 13:23-2.19 is also amended to permit business records to be electronically stored.

N.J.A.C. 13:23-2.20 is repealed and a new rule proposed to pertain to the loss, mutilation or destruction of records required to be kept by a driving school; language previously contained in that section which pertained to the maintenance of a permanently bound record book by a driving school is being deleted.

N.J.A.C. 13:23-2.21 is repealed and a new rule proposed to pertain to the retention of records by a driving school. The records required to be maintained must be kept for a period of three years as specified in proposed new N.J.A.C. 13:23-2.21.

N.J.A.C. 13:23-2.22, which previously pertained to a driving school contract file, is repealed and a new rule proposed to pertain to driving school service agreements and the conditions to be set forth therein. All driving school service agreements must contain at a minimum all information contained in the sample service agreement set forth in the proposal. Proposed new N.J.A.C. 13:23-2.22 extends the time limit for rescission of a student agreement. A student may rescind an agreement within 72 hours of the first lesson and is entitled to a refund for any lesson or service not provided. Proposed new N.J.A.C. 13:23-2.22 also requires driving schools to provide to all students a statement of services to be rendered and fees to be charged, and requires driving schools to provide to all students a receipt for payments made to the driving school.

N.J.A.C. 13:23-2.23, which pertained to the maintenance of a receipts file by a driving school for monies paid to it by its students is being deleted by the proposal, is repealed and a new rule proposed to pertain to agreements between driving schools and secondary schools.

The proposed repeal and new rule at N.J.A.C. 13:23-2.24 rescinds the present requirement that fees charged by a driving school be posted with the Division and not be changed by the school without prior notification to the Division of Motor Vehicles. Proposed new N.J.A.C. 13:23-2.24 pertains to driving school student requirements.

N.J.A.C. 13:23-2.25 is proposed for repeal because the subject matter which it dealt with (loss, mutilation or destruction of records) is now dealt with in proposed new N.J.A.C. 13:23-2.20.

N.J.A.C. 13:23-2.26 is proposed for repeal because the subject matter which it dealt with (retention of records) is now dealt with in proposed new N.J.A.C. 13:23-2.21.

The proposed repeal of N.J.A.C. 13:23-2.27 eliminates the school vehicle identification certificate requirement and the $5.00 fee for such certificate.

N.J.A.C. 13:23-2.28, Insurance and vehicle equipment requirements, is amended to delete a reference in the rule to a school vehicle identification certificate, and to specify the types of vehicles to which the various equipment requirements pertain.

N.J.A.C. 13:23-2.30 is amended to modify the advertising standards to which driving schools must conform.

The driving school contract requirements contained in N.J.A.C. 13:23-2.31 are proposed for repeal.

N.J.A.C. 13:23-2.35 as amended provides that a driving school shall not knowingly employ any person as an instructor or agent who has been convicted of any of the offenses enumerated in N.J.A.C. 13:23-2.12(a)3 unless the Director has determined that such person may serve in such capacity.

The proposed amendments to N.J.A.C. 13:23-2.36, Authorized agents; certificates; denial, suspension or revocation of certificate, modify the duties of driving school authorized agents; modify the requirements which an applicant for an authorized agent identification certificate must meet; change the period of validity of such certificate from two years to one year; and provide specific standards for the denial, suspension or revocation of an authorized agent identification certificate by the Director.

N.J.A.C. 13:23-2.38 is proposed for repeal because the subject matter which it dealt with (revocation, suspension and refusal to renew driving school license) is now dealt with in proposed new N.J.A.C. 13:23-2.12.

N.J.A.C. 13:23-3.2 as amended provides that instructors' licenses shall be valid for use only in connection with the business of the driving school or schools listed thereon and only for lessons authorized by those schools.

The proposed amendment to N.J.A.C. 13:23-3.3 modifies the standards for issuance of a driving school instructors' license by deleting the requirement that such instructors be in possession of a New Jersey driver's license.

N.J.A.C. 13:23-3.3 as amended provides that instructors' licenses shall not be issued to any person unless that person is the possessor of a valid driver's license; has held a license permitting him to drive for at least

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the last three consecutive years; and has complied with various other requirements contained in these rules.

The proposed amendment to N.J.A.C. 13:23-3.4, Application for instructor license, deletes the requirement that an applicant submit photographs with his or her application. Applicants are required by the amendatory provision to submit an authorization to conduct a name check and pay the appropriate fee charged by the State Police for conducting said search. N.J.A.C. 13:23-3.4 is further amended to provide that instructor license renewal applications be submitted at least 30 days prior to the expiration date of the current license; and to provide that an applicant for such license who has been licensed to drive by another state or states during the past three years must submit a certified abstract of his or her driving record from the state or states in which he or she is or was licensed to drive with the initial application and all renewals thereof.

N.J.A.C. 13:23-3.6 as amended provides that a driving school instructor's license must be in the possession of the instructor at all times while giving driving instructions, or when accompanying a student.

N.J.A.C. 13:23-3.7 is amended with regard to the proof which must be submitted by a person seeking a duplicate instructor license to replace a lost, mutilated or destroyed license.

N.J.A.C. 13:23-3.8 is amended to provide that an instructor's license or endorsement shall be surrendered to the Director upon termination of an instructor's services with, or by, any driving school designated on such license and/or endorsement. N.J.A.C. 13:23-3.8 is also amended to provide that when the services of an instructor are terminated by one or more of the schools designated on the instructor's license and/or endorsement, the endorsement certificate from each school so terminating the services of the instructor shall be returned to the Division of Motor Vehicles within seven days. N.J.A.C. 13:23-3.8 is also amended to require the driving school to notify the Division of Motor Vehicles, in writing, of such termination.

N.J.A.C. 13:23-3.9 is amended to provide that if application is made for an instructor's license by a person who was the holder of an instructor's license within a period of three years prior to the date of such application, the Director may waive the testing requirements for such license. N.J.A.C. 13:23-3.9 is also amended to specify that all instructors licensed after July 1, 1984 must complete either the six hour or eight hour National Safety Council Defensive Driving Program; evidence of having completed such program must be submitted to the Director prior to renewal of the initial instructor's license.

N.J.A.C. 13:23-3.10 is proposed for repeal because the subject matter which it dealt with (character of applicant) is now dealt with in N.J.A.C. 13:23-3.12 as amended by this proposal.

The proposed amendments to N.J.A.C. 13:23-3.12, Revocation, suspension and refusal to issue or renew instructor's license, provide specific standards for the denial, suspension or revocation of a driving school instructor's license by the Director.

N.J.A.C. 13:23-4.1 is amended to provide that the facilities of each driving school which provides classroom instruction must include, not necessarily on the immediate premises, sufficient space and equipment to carry on the business of giving classroom instruction for those students enrolled in the driving school. N.J.A.C. 13:23-4.1 is also amended to provide that the facilities maintained for classroom instruction may be used by one or more driving schools; however, when the classroom facilities are used by more than one school, the Director of Motor Vehicles must be notified. N.J.A.C. 13:23-4.2 is amended as to classroom requirements. The classroom equipment and curriculum requirements contained in N.J.A.C. 13:23-4.3 and 4.4 are proposed for repeal.

Social Impact

The proposed amendments, repeals and new rules have a beneficial social impact. The rules promote the public welfare by promoting fairness in dealings between a driving school and prospective students. A prospective student may rescind a contract within 72 hours of the first lesson with a full refund for instructions or other services that have not been provided by the school. The public welfare is also promoted by the licensing standards imposed on prospective applicants for school licenses, agents' identification certificates and instructor's licenses. The licensing standards provide for specific standards for denial, suspension or revocation of a driving school license, an authorized agent identification certificate and a driving school instructor's license. The amendments, repeals and new rules have no social impact upon the Division.

Economic Impact

There is an economic impact on the Division of Motor Vehicles in that its Business License Compliance Unit is responsible for the processing of applications for the various types of licenses and certificates provided for in the regulations. The Unit is also responsible for monitoring compliance of driving schools, driving school instructors and driving school authorized agents with the regulatory provisions and for proposing administrative suspension proceedings against violators. An initial license fee of $250.00 and an annual renewal license fee of $100.00 must be paid to the Division by driving schools pursuant to N.J.S.A. 39:12-2. An initial license fee of $75.00 and an annual renewal license fee of $30.00 must be paid to the Division by driving school instructors pursuant to N.J.S.A. 39:12-5. An annual certificate fee of $5.00 must be paid to the Division by driving school authorized agents pursuant to N.J.A.C. 13:23-2.36 as amended. The aforementioned fees partially offset the administrative expenses incurred by the Division. The $5.00 fee for a school vehicle identification certificate is eliminated as a result of the deletion of the provision (N.J.A.C. 13:23-2.27) which mandated such certificate.

Regulatory Flexibility Analysis

The proposed amendments, repeals and new rules lessen reporting and recordkeeping requirements which are currently provided by State regulation.

Driving schools would be subject to various recordkeeping provisions primarily contained in N.J.A.C. 13:23-2.19 thru 13:23-2.22 as amended. N.J.A.C. 13:23-2.19 is amended to specify that a file shall be maintained by a driving school containing the service record and the service agreement, if used, between the driving school and every person receiving lessons, lectures, tutoring, instructions or other services relating to the acquisition of a license or endorsement in the operation of motor vehicles or motorcycles. N.J.A.C. 13:23-2.19 is also amended to specify that the service record shall include the student's name, driver license number, instructor's name, the date, type and duration of all lessons, lectures, tutoring, instruction or other services relating to the acquisition of a license or endorsement to drive motor vehicles or motorcycles. N.J.A.C. 13:23-2.19 is also amended to permit business records to be electronically stored.

Proposed new N.J.A.C. 13:23-2.20 now pertains to the loss, mutilation or destruction of records required to be kept by a driving school; language previously contained in that section which pertained to the maintenance of a permanently bound record book by a driving school is being deleted by the proposal. Proposed new N.J.A.C. 13:23-2.21 now pertains to the retention of records by a driving school. The records required to be maintained must be kept for a period of three years as specified in proposed new N.J.A.C. 13:23-2.21. N.J.A.C. 13:23-2.22, which previously pertained to a driving school contract file, is repealed and a new rule proposed to pertain to driving school service agreements and the conditions to be set forth therein. All driving school service agreements must contain at a minimum all information contained in the sample service agreement set forth in the rule. Proposed new N.J.A.C. 13:23-2.22 also requires driving schools to provide to all students a statement of services to be rendered and fees to be charged, and requires driving schools to provide to all students a receipt for payments made to the driving school. Language previously contained in N.J.A.C. 13:23-2.23 which pertained to the maintenance of a receipts file by a driving school for monies paid to it by its students is being deleted by the proposal; proposed new N.J.A.C. 13:23-2.23 now pertains to agreements between driving schools and secondary schools.

Approximately 142 entities are currently licensed by the Division to engage in the business of a driving school. Most, if not all, of these schools qualify as small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments, repeals and new rules will not require small businesses to engage additional professional services for compliance therewith. The records are of a kind that would be maintained in the ordinary course of business. Therefore, the rules do not impose additional reporting or recordkeeping burdens on small businesses nor do they necessitate initial capital and annual expenditures for reporting or recordkeeping compliance by small businesses.

The general licensing provisions contained in the rules have uniform application to all entities which engage in the business of driving instruction. It is not feasible to exempt small businesses from these requirements in light of the statutory licensing requirement.

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

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CHAPTER 23
[COMMERCIAL DRIVERS'] **DRIVING** SCHOOLS

SUBCHAPTER 1. DEFINITIONS

13:23-1.1 Words and phrases defined

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

"Authorized agent" means a person who represents or acts on behalf of a driving school in obtaining permits and transporting students to driver testing centers in school vehicles.

"Branch office" means an approved location where the business of the [drivers'] **driving** school is conducted, other than the principal place of business.

"Director" means the Director of **the Division of** Motor Vehicles in the Department of Law and Public Safety in the State of New Jersey.

"[Drivers'] **Driving** school" means the business of giving instruction, for compensation, in the driving of motor vehicles and motorcycles. The words "instruction in the driving of motor vehicles and motorcycles" shall include classroom [and/] or behind the wheel [training] **instruction when given to a person who does not possess a basic driver or motorcycle license**. This definition shall not be taken to include instruction[s] which [are] **is** given [in] **by** public, private, parochial or secondary schools.

"Driving school instructor" means a person who is licensed by the Director to provide instruction in the driving of motor vehicles and motorcycles.

"Fraudulent practices" include, but are not limited to, any conduct or representation tending to give the impression that a license to operate a motor vehicle or motorcycle or any other class of license, registration or service granted by the Director [of Motor Vehicles, in the Department of Law and Public Safety,] may be obtained by any means other than those prescribed by law; the furnishing or obtaining a license of any class, registration or service by illegal or improper means; or the requesting, accepting, exacting or collecting money for furnishing or obtaining a license of any class, registration or service by illegal or improper means.

"Person" means an individual, corporation or partnership.

"Place of business" means a designated location at which the business of a [drivers'] **driving** school is [being] conducted.

"Principal place of business" means the location designated by the applicant, and approved by the Director, as the primary facility of the [drivers'] **driving** school.

"Telephone answering service" means the location of a telephone[:] used only for the purpose of answering telephone inquiries pertaining to the [drivers'] **driving** school services. A telephone answering service is not to be considered a branch office, and the location and/or address [,] of a telephone answering service shall not be advertised if it differs from that of a licensed location.

SUBCHAPTER 2. [DRIVERS'] **DRIVING** SCHOOLS

13:23-2.1 Licenses

(a) Every person proposing to engage in the business of conducting a [drivers'] **driving** school shall be licensed by the Director[,] prior to engaging in such business.

(b) A license [will] **shall** not be issued until at least one instructor has secured an instructor's license, and at least one motor vehicle has been [approved for drivers' school use] **equipped in accordance with the provisions of N.J.A.C. 13:23-2.28 by the driving school**.

(c) A license, either initial or renewal, [will] **shall** not be issued until compliance with the conditions in this subchapter has been effected.

13:23-2.2 Applications; contents

(a) Application is to be made on a form prescribed by the Director. These forms may be obtained from [Bureau of Certificate of Ownership, Title Transfers and Duplicates,] **the** Division of Motor Vehicles[, 137 East State Street, Trenton, New Jersey 08666]. Renewal applications must be submitted for approval and issuance at least [ten] **30** days prior to the expiration date of the current license.

(b) (No change.)

(c) When [an] application is made by an individual[,] it must be signed and sworn to by [each] **said** individual. In the case of **a** partnership, the application [may] **shall** be signed and sworn to by [any one partner] **all partners**. In the case of a corporation, the application must be signed and sworn to by the president and attested to by the secretary.

(d) Individual applicants, partners and corporate officers are required to submit [a] fingerprint [record] **cards** along with an application for an initial license. [The Director, in his discretion, may require fingerprint records to be submitted by applicants for renewal licenses.] **Upon application for renewal of a license, the Director, in his or her discretion, may require the applicant's authorization to conduct a name check. The applicant shall submit authorization for the name check and payment in such amount as established by the Division of State Police.**

(e) Every initial application must be accompanied by the following supplementary documents:

1. In the case of a corporation, a certified copy of a certificate of incorporation, and **a** copy of the [corporation] **corporate** resolution authorizing the corporation to engage in the business of operating a [driver] **driving** school;

2. Samples of each [contract] form to be used by the **driving** school;

3. [Samples of all forms of receipts to be used by the school] **A statement of whether classroom instruction is offered by the driving school;**

[4. A schedule of all services to be performed by the school;

5. Copies of all forms used by the school, which are to be delivered to the students;

6. Three photographs of the applicant or of the partners or principal officers where the applicant is a partnership or corporation taken not more than 30 days prior to the date of the application.

7. A noncancelable surety bond in the amount of $25,000.00;] and

[8.]**4.** Proof of compliance with all State and local zoning ordinances, building codes, fire codes, health codes and any other applicable ordinances and codes[, on a form prescribed by the Director]. **Said proof shall consist of a letter from the zoning board of the municipality in which the school is located or a copy of the certificate of occupancy issued by the municipality.**

13:23-2.3 License fee; term

(a) The annual fee for the initial license [is] **shall be** $250.00; the fee for [the] **a** renewal license [is] **shall be** $100.00.

(b) The license [is] **shall be** valid for the calendar year **for which it is issued**.

(c) The licensee shall be assigned the same license number for the duration of the license.

13:23-2.4 Display of license

(a) The [original] license [is to] **shall** be conspicuously displayed [in] **at** the licensee's principal place of business.

(b) The [license] **licensee** shall not alter, delete from, add to, or in any manner cover any portion of the license.

13:23-2.5 [Nontransferability of license] **Change of business ownership or interest**

(a) In the event of any change of ownership or interest in the business, application for a new license must be filed with the Director **within seven days of such change of ownership or interest**. This shall include any sale **or transfer** of [more than 25 percent] **five percent or more** of capital stock of a corporation. In the event of a sale **or transfer** of less than [25] **five** percent of the capital stock it shall not be necessary for the licensee to pay a new fee to the Director.

(b) [The Director must be notified in writing immediately when agreement is entered into to transfer ownership of the business or any interest therein.] The Director may, in his **or her** discretion, permit continuance of the business by the licensee pending processing of the application made by the person to whom the business, or interest therein, is to be transferred. The licensee shall request in writing the Director's permission to continue the business pending the processing of the application.

(c) [The] **In the event of a name change as a result of a sale or transfer, the** existing license and copies thereof, all instructors'

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certificates issued thereunder, and all other documents issued in connection with the [driver] **driving** school must be surrendered before a license will be issued to the new owner.

13:23-2.6 Lost, mutilated or destroyed licenses

(a) In the event a license, or duplicate thereof, is lost, mutilated or destroyed, a duplicate [will] **shall** be issued upon proof of the facts, and upon payment of $3.00 and, in the case of mutilation, upon surrender of such mutilated license. Such proof shall be submitted in the form of an affidavit indicating:

1. The date the license, or duplicate thereof, was lost, mutilated or destroyed; and[,]

2. The circumstances involving the loss, mutilation or destruction of the license, or duplicate thereof.

13:23-2.7 Surrender of license

(a) A license may be surrendered for cancellation, or [deposit] **deposited** for safekeeping, at the [Bureau of Certificate of Ownership, Title Transfers and Duplicates of the] Division of Motor Vehicles.

(b) (No change.)

13:23-2.8 Location of business

[(a)] No licensee shall conduct his business at such location or in such manner as to give the appearance to the public that the business has some official connection with a Division of Motor Vehicles facility or [the premises of an] authorized motor vehicle [agent] **agency**. In making this determination the Director may consider the proximity of the place of business to any building in which motor vehicle registrations or driver licenses are issued to the public, the proximity of the place of business to the location where driving tests are conducted by the Division of Motor Vehicles, the trade name under which the licensee conducts business, the nature of any signs or advertisements used by the licensee and any other factor which tends to give the impression that the licensee has some official connection with **the Division of Motor Vehicles or** any officer or agent of the Division of Motor Vehicles.

[(b) The location shall be a building, office or portion of a building in an area zoned for commercial or business use and owned or leased for the use of the commercial driving school.]

13:23-2.9 Change of **business** location **or name**

(a) A [drivers'] **driving** school may not change its principal place of business or branch office **or business name** without prior approval of the Director.

(b) Any renewal application which reflects a change of business address shall include proof of compliance with all State and local zoning ordinances, building codes, fire codes, health codes and any other applicable ordinances and codes as set forth in N.J.A.C. 13:23-2.2(e)4.

13:23-2.10 [Locations prohibited, compliance with State and local ordinances and codes] **Prohibited business locations**

[(a)] No license shall be issued for a [drivers'] **driving** school where the place of business is conducted from a liquor store, a bar, tent, temporary stand, temporary address or through the exclusive facilities of a telephone answering service.

[(b) Every applicant for an initial driver school license or a renewal thereof which reflects a change of business address shall submit proof satisfactory to the director that the principal place of business and each branch office complies with all State and local zoning ordinances, building codes, fire codes, health codes and any other applicable ordinances and codes.]

13:23-2.12 [Sign requirements] **Denial, suspension or revocation of license**

[The principal place of business and branch offices must be identified by a permanent sign, clearly readable from a distance of not less than 100 feet, with letters not less than five inches high, and the name of the drivers' school upon it.]

(a) After due notice in writing thereof, in accordance with the provisions of N.J.S.A. 39:12-1 et seq. and the "Administrative Procedure Act," N.J.S.A. 52:14B-1 et seq., the Director may deny issuance or renewal of a driving school license or may suspend or revoke such license on the basis of any of the following criteria:

1. Any reason specified in N.J.S.A. 39:12-1 et seq. or failure of the applicant or licensee to comply with any of the provisions of this chapter;

2. Failure of the applicant or licensee to provide information or documentation required by N.J.S.A. 39:12-1 et seq. or this chapter or requested by the Director, or concealment of a material fact by the applicant or licensee, or the supplying of information which is untrue or misleading as to a material fact;

3. The conviction of any proprietor, partner, officer, director or stockholder of a licensed driving school, or of an entity seeking such licensure, of any offense in any jurisdiction which would be:

i. Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c.95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

All crimes of the first degree;

N.J.S.A. 2C:5-1 (attempt to commit an offense which is listed in this subparagraph);

N.J.S.A. 2C:5-2 (conspiracy to commit an offense which is listed in this subparagraph);

N.J.S.A. 2C:11-4b (manslaughter);

N.J.S.A. 2C:11-5 (death by auto);

N.J.S.A. 2C:12-1b (aggravated assault);

N.J.S.A. 2C:13-1 (kidnapping);

N.J.S.A. 2C:14-1 et seq. (sexual offenses);

N.J.S.A. 2C:15-1 (robberies);

N.J.S.A. 2C:17-1a and b (crimes involving arson and related offenses);

N.J.S.A. 2C:17-2a and b (causing or risking widespread injury or damage);

N.J.S.A. 2C:18-2 (burglary);

N.J.S.A. 2C:20-1 et seq. (theft and related offenses);

N.J.S.A. 2C:21-1 et seq. (forgery and fraudulent practices);

N.J.S.A. 2C:21-4a (falsifying or tampering with records);

N.J.S.A. 2C:27-1 et seq. (bribery and corrupt influence);

N.J.S.A. 2C:28-1 et seq. (perjury and other falsification in official matters);

N.J.S.A. 2C:30-2 and N.J.S.A. 2C:30-3 (misconduct in office and abuse of office);

N.J.S.A. 2C:35-5 (manufacturing, distributing or dispensing a controlled dangerous substance or a controlled dangerous substance analog);

N.J.S.A. 2C:35-6 (employing a juvenile in a drug distribution scheme);

N.J.S.A. 2C:35-7 (distributing, dispensing, or possessing a controlled dangerous substance or controlled substance analog on or within 1,000 feet of school property or bus);

N.J.S.A. 2C:35-10 (possession, use or being under the influence of a controlled dangerous substance or a controlled substance analog, or failure to make lawful disposition of same);

N.J.S.A. 2C:35-11 (distribution, possession or manufacture of imitation controlled dangerous substances);

N.J.S.A. 2C:35-13 (acquisition of controlled dangerous substances by fraud); or

ii. Any other offense under present New Jersey or Federal law which indicates that licensure of the applicant or continued licensure of the licensee would be inimical to the licensing standards set forth in N.J.S.A. 39:12-1 et seq. and this chapter;

4. Current prosecution or indictment in any jurisdiction against any proprietor, partner, officer, director or stockholder of a licensed driving school, or of an entity seeking such licensure, for any of the offenses enumerated in (a)3 above; provided, however, that at the request of an applicant seeking initial licensure as a driving school, the Director shall defer decision upon such application during the pendency of such charge;

5. The failure of any proprietor, partner, officer, director or stockholder of a licensed driving school, or of any entity seeking such licensure, to notify the Division of Motor Vehicles that he or she has been arrested for, charged with, indicted for or convicted of any of the offenses enumerated in (a)3 above within 14 days after the date of such event; or

6. The commission by any proprietor, partner, officer, director or stockholder of a licensed driving school, or of an entity seeking such

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licensure, of any act or acts which would constitute any offense under (a)3 above, even if such conduct has not or may not be prosecuted under the laws of this State.

13:23-2.13 Business hours

(a) The hours during which a [drivers'] **driving** school **office** is open to the public for service[,] must be filed with[, and approved by] the Director [and prominently displayed on the front door or front window of the licensed principal place of business and/or branch offices of the drivers' school].

(b) [Every licensee shall maintain a telephone answering service for each regular working day or any portion of each regular working day during which the principal place of business or branch office is not open to the public.] **A driving school must be accessible to the public during normal business hours of each regular working day. This requirement may be satisfied by having office personnel available or having a telephone answering service or telephone answering machine.**

13:23-2.14 [Office personnel] **(Reserved)**

[(a) The licensed principal place of business and branch offices of a drivers' school shall be managed by responsible personnel having at least two years teaching experience with a commercial driving school.

(b) The names and addresses of such personnel must be filed with the Director.]

13:23-2.15 Branch office application

(a) A [drivers'] **driving** school [desiring to open a branch office] shall make application **for a branch office license** on a form prescribed by the Director.

(b) If **the** application is approved, the Director [will] **shall** issue a [copy of the] license [of the principal place of business, appropriately endorsed,] for use at the branch office.

(c) [This copy must] **The license shall** be conspicuously displayed [in such] **at the** branch office at all times.

(d) A branch office shall meet all of the requirements for a licensed principal place of business.

13:23-2.16 Branch office [removal] **relocation** or discontinuance

(a) (No change.)

(b) Should **use of** a branch office be discontinued, the branch office [copy of the] license must be surrendered [immediately to the Director] **within seven days to the Division of Motor Vehicles.**

13:23-2.17 [Branch office requirements] **(Reserved)**

[(a) A branch office must meet all of the requirements of the licensed principal place of business.

(b) A branch office must be identified as a branch office by a permanent sign, which indicates the location of the licensed principal place of business and which is reasonably visible to the general public.

(c) A branch office must be within 15 miles of the main classroom facility operated by the drivers' school, or within 15 miles of a classroom facility approved for use of the branch office.]

13:23-2.18 Changes in addresses of officers; notice

The Director [of Motor Vehicles] must be notified [immediately] **within seven days**, in writing, if a change occurs in the residence address of any [individual owner] **proprietor,** partner, officer, **director, authorized agent** or [employee] **instructor** of any [drivers'] **driving** school.

13:23-2.19 [Record types, entries and corrections] **Recordkeeping requirements**

(a) A file shall be maintained containing the service record and the service agreement, if used, between the driving school and every person receiving lessons, lectures, tutoring, instructions or other services relating to the acquisition of a license or endorsement in the driving of motor vehicles or motorcycles.

(b) The service record shall include the student's name, driver license number, instructor's name, the date, type and duration of all lessons, lectures, tutoring, instruction or other services relating to the acquisition of a license or endorsement to drive motor vehicles or motorcycles.

(c) [Every licensee shall maintain the] **The** records specified in this subchapter **shall be maintained** in a business-like manner with all entries **on written records** to be made in ink. Corrections **of written records** shall be made by drawing a single line through the error and making a new entry. **The original entry must be legible after the corrections of written records have been made.** Only standard abbreviations are to be used.

(d) Each business shall keep and maintain such other books, records and files necessary for the proper conduct of the business.

(e) The records of the business may be electronically stored.

13:23-2.20 [Permanent record book] **Loss, mutilation or destruction of records**

[A permanently bound book shall be maintained, with pages consecutively numbered, setting forth the name, address, and contract number with respect to every person given lessons, lectures, tutoring of any kind, or any other services relating to instructions in the operation of motor vehicles or motorcycles.]

(a) The loss, mutilation or destruction of any records which a driving school is required to maintain, under this subchapter, shall be reported on the next regular business day to the Division of Motor Vehicles by affidavit, stating:

1. The date such records were lost, destroyed or mutilated;

2. The circumstances involving such loss, destruction or mutilation; and

3. The name of the precinct, police officer or police department to which such loss was reported, and the date of such report.

13:23-2.21 [Services record] **Retention of records**

[A book or other approved record shall be maintained showing the date, type and duration of all lessons, lectures, tutoring, instructions or other services relating to instructions in the operation of motor vehicles or motorcycles, including the name of the instructor giving such lessons and/or instructions.]

All records must be maintained at the principal place of business for a period of three years, during which period they shall be subject to inspection by the Director or his or her designee at any time during driving school business hours.

13:23-2.22 [Contract file] **Statement of services to be rendered and fees to be charged; service agreements**

[(a) A file shall be maintained containing the original contract entered into between the drivers' school and every person receiving lessons, lectures, tutoring, instructions or other service relating to instructions in the operation of motor vehicles or motorcycles.

(b) All contracts shall be consecutively numbered so as to agree with the permanent book of registry, and shall contain the following:

1. The name and address of the school. If the school is conducted under a trade name or is operated by a corporation, partnership or association, the contract must contain the name of the individual owner, or such of the names of the officers of the corporation, association, or members of the partnership as the Director may require.

2. All contracts shall contain the following statement: "This constitutes the entire agreement between the school and the student and no verbal statements or promises will be recognized."

3. Length of each lesson which must be in units of not less than one-half hour each, stated as follows: "One-half-hour lesson shall mean one-half hour of actual instruction." "One hour lesson shall mean one hour of actual instruction."

4. The type of car on which the instruction is to be given, showing clearly whether the student is to be taught in a car equipped with automatic transmission or standard manual gear shift.

5. Whether or not an additional charge is to be made for the use of the school vehicle, and, if so, the fee therefor.

6. The fee charged for each lesson, if fees are charged for individual lesson, and/or the fee for the entire series of lessons agreed upon.

7. All fees charged for every other service agreed to be provided by the drivers' school.]

(a) The driving school shall provide to all students a statement of services to be rendered and fees to be charged and shall advise all students of the availability of a service agreement wherein the services to be rendered are specifically set forth.

(b) The driving school shall comply with the conditions set forth in the sample service agreement in (d) below, specifically including:

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1. To cancel a lesson and reschedule that lesson, 24 hours advance notice is required or the student may be charged for that lesson. Cancellation must be made at the phone number listed for the driving school. Appointments must be mutually agreed upon for date, time and location.

2. The number of minutes per lesson shall be the actual number of minutes of instruction provided to the student.

3. The student may rescind the agreement within 72 hours of the first lesson and upon such rescission shall receive a refund for any lessons or services not provided.

(c) The driving school shall provide to all students a receipt for payments made to the driving school.

(d) All service agreements shall contain at a minimum all information contained in the following sample service agreement:

SAMPLE

Service Agreement

School Information	Student Information
Name _____	Name _____
Address _____	Address _____
License # _____	Permit/License # of Student _____
Phone # _____	Phone # _____

This agreement between (Driving School Name) and (Student Name) will include the following services:

Itemized Account

Services	Total Cost to Student
Purchase Permit at Agency (Paid to School)	_____
Transportation to Law Knowledge and Vision Tests	_____
Road Test Services	_____

Instruction Services	# Lessons	# Min. Per Lesson	Cost Per Lesson	Total Cost of Lessons
Behind The Wheel	_____	_____	_____	_____
Classroom	_____	_____	_____	_____
Grand Total Cost to Student				$_____

This agreement must show an itemized account of any and all services rendered. In order to cancel a lesson and reschedule that lesson, 24 hours advance notice is required or the student may be charged for that lesson. Cancellation must be made at the phone number for the school listed above. Appointments must be mutually agreed upon for date, time and location.

The number of minutes per lesson specified shall be the actual number of minutes of instruction provided to the student.

The vehicle to be used for instruction has: ☐ automatic transmission; ☐ standard manual gear shift; and shall be equipped with, at minimum, a brake for both the instructor and the student.

No fees will be charged other than those specified above.

This constitutes the entire agreement between the school and the student and no verbal statements or promises will be recognized. The student may rescind this agreement within 72 hours of the first lesson and upon such rescission shall receive a refund for any lesson or service not conducted or provided.

Signature Requirement

Date _____ Student Signature or Legal Guardian _____

Date _____ Instructor's Signature _____

13:23-2.23 [Receipts file] **Agreements with secondary schools**

[(a) A file shall be maintained containing a copy of a receipt for any moneys paid to the driver's school by a student.

(b) The receipt form shall contain:

1. The licensed name of the school;

2. The name of the student;

3. The date of payment;

4. The amount of payment;

5. The signature of the student or other person making payment on behalf of the student;

6. The signature of the person receiving the payment from the student.]

A driving school may enter into an agreement where authorized by law with a secondary school for the purpose of teaching the behind-the-wheel driver education portion of a high school driver education program. If any portion of the actual behind-the-wheel instruction is waived by virtue of substituting driver simulator or multiple car instruction, the secondary school principal must sign the permit upon completion of the required actual behind-the-wheel instruction. If the driving school teaches the full six hour course of behind-the-wheel instruction, the permit shall be signed by the driving school owner.

13:23-2.24 [Posting of fees with the Division] **Student requirements**

[A drivers' school shall post with the Division of Motor Vehicles a list of all fees charged by the school in the operation of its business. Any proposed change in established fees shall not take effect until the Division is notified thereof in writing.]

(a) Driving schools, prior to giving behind-the-wheel instruction, shall make certain that each student has:

1. A valid permit;

2. Passed a vision test as evidenced by the signature of the school nurse or representative of the Division of Motor Vehicles; and

3. Passed the law knowledge test as evidenced by either:

i. A certificate from the high school indicating a passing grade of 80 percent or better; or

ii. Certification by a representative of the Division of Motor Vehicles.

13:23-2.25 [Loss, mutilation or destruction of records] **(Reserved)**

[(a) The loss, mutilation or destruction of any records which a drivers' school is required to maintain, under this subchapter, must be reported immediately to the Director by affidavit, stating:

1. The date such records were lost, destroyed or mutilated;

2. The circumstances involving such loss, destruction or mutilation;

3. The name of the precinct, police officer or police department to which such loss was reported, and the date of such report.]

13:23-2.26 [Retention of records] **(Reserved)**

[All records must be maintained at the principal place of business for a period of three years, during which period they shall be subject to the inspection of the Director or any employee of the Division of Motor Vehicles, at any time during reasonable business hours.]

13:23-2.27 [School vehicle identification certificate] **(Reserved)**

[(a) A motor vehicle, owned or controlled by a drivers' school, may not be used for the purpose of giving instructions in driving until the licensee has obtained from the Director a school vehicle identification certificate. This certificate shall be carried in the vehicle for which issued at all times, while such vehicle is being used either for driving instructions or for the driving test.

(b) Application for a school vehicle identification certificate must be made on form prescribed by the Director.

(c) The fee for each school identification certificate shall be $5.00. The certificate shall be valid until suspended or revoked.]

13:23-2.28 [Conditions for issuance of certificate] **Insurance and vehicle equipment requirements**

(a) [A school vehicle identification certificate will not be issued unless and until:

1. Such vehicle is] **Any vehicle, except buses, motorcycles and articulated vehicles, used for instruction by a driving school must be** equipped with dual controls on foot brake and, if any, on clutch, and [is] **must be** otherwise equipped in accordance with the Motor Vehicle and Traffic Laws[; and].

[2.]**(b)** The licensee [has filed] **must file** with the Director evidence of liability insurance[, in] **with** a company authorized to do business in this State, in the amount of at least $250,000 because of bodily injury to, or death of, any one person in any one accident and subject

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to said limit for any one person, to a limit of at least $500,000 because of bodily injury to, **or** death of, two or more persons in any one accident, and to a limit of $50,000 because of damage to, or destruction of, property of others in any one accident. The [drivers'] **driving** school shall furnish evidence of [such] insurance coverage [on a form supplied] **required by this subsection** by **submitting an original certificate of insurance to** the Division of Motor Vehicles. This [form] **certificate of insurance** shall stipulate that such insurance may not be cancelled or terminated, except upon 30 days prior written notice to the Director of Motor Vehicles at Trenton, New Jersey. In the event of cancellation or expiration of such insurance, such vehicle may not thereafter be used for [drivers'] **driving** school purposes[, and the school vehicle identification certificate shall terminate automatically and must be surrendered to the Director].

[3.]**(c)** [Such] **Any** vehicle**, except a motorcycle, used for instruction by a driving school must be** [is] equipped with seat belts for both the student and instructor. [4.] The seat belts shall be used by both the student and instructor[,] when the vehicle is being operated [for instruction purposes].

[5.]**(d)** [Such] **Any** vehicle**, except a motorcycle, used for instruction by a driving school must be** [is] equipped with inside and outside rear view mirrors for both student and instructor.

13:23-2.30 Advertising

(a) Advertising by [drivers'] **driving** schools must conform to the following:

1. Schools must not publish, advertise or intimate that [license] **licensure** is guaranteed or assured upon completion of [instructions] **instruction**.

2. [The display of such signs,] **Advertisements or signs using a phrase such** as "License or Plates Secured Here" [is] **are** prohibited.

3. Advertisements such as "no charge for road test failures" [is] **are** prohibited.

[4. The letters and numerals of any sign, advertisement or combinations of two or more signs, used as part of the same message relating to drivers' school activities, shall be of such size so that the letters and numerals in the name of the drivers' school may not be smaller than the letters and numerals in the remainder of the text.]

[5.]**4.** The [drivers'] **driving** school may use, on forms, [contracts] **agreements** and similar documents, or in advertising, the phrase, "This school is licensed by the State of New Jersey". **No other reference to the State of New Jersey or the Division of Motor Vehicles is permitted.**

[6.]**5.** The use of the word "State", in any sign or other medium of advertising, except as permitted in (a)[5]**4** above, is prohibited.

[7.]**6.** A [drivers'] **driving** school shall not advertise the address of any location other than the licensed principal place of business, or a licensed branch office.

[8.]**7.** The [drivers'] **driving** school shall not advertise any name or combination of names, or abbreviation of name, other than the trade name by which the [driver's] **driving** school is licensed to do business by the Director [of Motor Vehicles] and which appears on the [driver] **driving** school wall license.

[9.]**8.** A [drivers'] **driving** school shall not solicit business, or cause business to be solicited in its behalf, or display or distribute any advertising material in such a manner as to give the impression that the business has some official connection with the Division of Motor Vehicles or an authorized motor vehicle agent. This paragraph shall not be construed to prohibit [drivers'] **driving** schools from appearing at [drivers' test] **driver testing** locations with vehicles which contain the name, address and telephone number of the [drivers'] **driving** school, and any other sign(s) or identification which may be required by this chapter or N.J.S.A. 39:12**-1 et seq.**

(b) (No change.)

(c) Any advertisement through any media which cannot be changed, deleted or withdrawn within a period of [one week] **seven days** or less, including classified telephone directory advertisement, shall require the approval of the Director or his **or her** designee prior to printing. The full copy of such advertisement must be submitted to the Director in writing.

13:23-2.31 [Contracts] **(Reserved)**

[(a) A person shall not be given lessons, lectures, tutoring or any other service relating to instructions in motor vehicle or motorcycle operation, unless and until a written contract, in a form approved by the Director and containing that information as outlined in N.J.A.C. 13:23-2.22 has been signed and executed, both by the drivers' school and by the student contracting for lessons.

(b) The carbon copy of such contract must be given to the student and the original thereof must be retained by the school in its duplicate contract file.

(c) A licensee may not use any contract unless and until the form of such contract has been approved by the Director.

(d) Each school must file and maintain with the Director a list of those persons authorized or empowered to execute contracts on behalf of the school. A completed signature record form must be filed with the Director, for each person authorized to sign contracts for the school. The school must notify the Director in writing whenever any name is removed from the list of those persons empowered to execute contracts on behalf of the school.

(e) A school shall not agree to give unlimited lessons, nor shall any school represent or agree to give instruction until the license is obtained, or give free lessons, or a premium or discount, if a license is not obtained. The student may rescind the contract within 24 hours of execution, and upon such rescission shall receive a refund for any lessons or services not provided.

(f) The term "no refund" is not permitted in contracts. Schools may substitute the following: "This school will not refund any tuition or part of tuition if the school is ready, willing and able to fulfill its part of the agreement prior to the student's being licensed to operate a motor vehicle in New Jersey".

1. Upon such licensure, refunds shall be granted for lessons paid for but not provided.]

13:23-2.32 Practice driving

Practice driving is prohibited on [the] **State** grounds [or roadways] used for State driving tests. [Instructor shall inform students of the prohibition contained in this section.]

13:23-2.33 Learner permits

A licensee **or employee** is required to ascertain, prior to giving behind the wheel instructions or presenting the student for a driving test, that a student is in possession of a valid driver examination permit properly validated for practice driving, or a valid driver's license.

13:23-2.34 Requirements at driving test

(a) Applicants appearing for the driving test[, with vehicles for which vehicle identification certificates have been issued, or vehicles required to have such certificates,] shall be accompanied by[:

1. A New Jersey] **a** licensed driver who has in his or her possession a valid New Jersey instructor's license or a New Jersey authorized agent identification **certificate, a valid registration and a valid insurance identification card**.

[2. Such instructor or agent must be licensed to instruct, or authorized to act, for the school whose name appears on the vehicle identification certificate.]

13:23-2.35 Employees of [drivers'] **driving** schools

A [drivers'] **driving** school shall not knowingly employ any person as an instructor[,] **or** agent [or in any other capacity whatever,] who has been convicted of [a crime] **any of the offenses enumerated in N.J.A.C. 13:23-2.12(a)3 unless the Director has determined that such person may serve in such capacity**.

13:23-2.36 Authorized agents; [cards] **certificates; denial, suspension or revocation of certificate**

(a) The school owner may appoint, with the approval of the Director, authorized agents for the [sole] purpose of [acting as an accompanying driver for] **transporting** the school's students [who are en route] to a driver [qualification] **testing** center [for the purpose of taking] **to take** the driving test portion of the driver examination **or to purchase a permit**.

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(**b**) The Director may issue an "Authorized Agent" identification [card] **certificate** when the following [procedures and] requirements have been [followed and] met:

1. Applicant must be of good moral character;
2. Applicant must be at least 18 years of age;
3. Applicant must hold a valid [New Jersey] driver's license;
4. Applicant must have a driving record [satisfactory to the Director] **devoid of the offenses set forth in (d) below**;
5. **Applicant who has been licensed by another state or states during the past three years must submit a certified abstract of his or her driving record from the state or states in which he or she is or was licensed to drive with the initial application and all renewals thereof; and**
6. **Applicant must submit State Police and FBI fingerprint cards and payment in such amount as may be established by the Division of State Police.**

[(b)](**c**) The fee for the authorized agent certificate shall be $5.00 and the certificate shall be valid for [two calendar years] **the calendar** year **expiring December 31. The certificate shall contain the agent's permanent identification number.** The Director may **deny,** suspend **or revoke** any authorized agent identification [card] **certificate** upon conviction of [a crime,] **any of the offenses enumerated in N.J.A.C. 13:23-2.12(a)3, a** violation of this chapter or other good cause**, after due notice in writing thereof, in accordance with the provisions of the "Administrative Procedure Act", N.J.S.A. 52:14B-1 et seq.**

(d) The Director or his or her designee may deny, suspend or revoke any authorized agent identification certificate if the holder of such certificate or applicant for such certificate has accumulated nine or more points by reason of conviction for violations of the Motor Vehicle Law or has been convicted of a violation of N.J.S.A. 39:4-50, 39:4-50.2 or 39:4-49.1 or has incurred a conviction or administrative determination of a substantially similar offense in any jurisdiction.

[(c)](**e**) Upon severance of employment, the school owner [is to collect the authorized agent identification card and surrender it to the Bureau of Certificate of Ownership, Title Transfers and Duplicates of the Division of Motor Vehicles, Trenton, New Jersey, 08666] **shall notify the Driving School Unit of the Division of Motor Vehicles, in writing, of the date of severance. Upon severance, the agent shall surrender his or her identification certificate to the Division of Motor Vehicles.**

13:23-2.37 Conduct with employees of Division of Motor Vehicles

(a) (No change.)

(b) The owner, operator, partner, officer of any [drivers'] **driving** school, or any employee of any licensee, shall not influence, or attempt to influence, any decision of any employee of the Division of Motor Vehicles, with respect to the licensing of any student of the licensee, or any other person.

13:23-2.38 [Revocation, suspension and refusal to renew license] **(Reserved)**

[The Director, or any employee of the Division of Motor Vehicles deputized by him, may suspend or revoke a drivers' school license, or refuse to issue a renewal of that license, for any reason or reasons as outlined in N.J.S.A. 39:12-1 et seq. or for failure to comply with any of the provisions of this subchapter promulgated by the Director, after due notice in writing thereof, in accordance with the provisions of N.J.S.A. 39:12-1 et seq.]

SUBCHAPTER 3. **DRIVING SCHOOL** INSTRUCTORS [OF DRIVERS' SCHOOLS]

13:23-3.1 Licenses

The owner, operator, partner or any officer of a [drivers'] **driving** school, or any other person, shall not give instructions, for compensation, in the [operation] **driving** of motor vehicles or motorcycles, unless such person is the holder of [an] **a valid** instructor's license issued for such purpose by the Director.

13:23-3.2 Valid use of license

[Instructor's] **Instructors'** licenses shall be valid for use only in connection with the business of the [drivers'] **driving** school or schools listed thereon **and only for lessons authorized by those schools.**

13:23-3.3 Standards for license issuance

[Instructor's] **Instructors'** licenses [will] **shall** not be issued to any person unless that person is the possessor of a [New Jersey] **valid** driver's license, and has held a license permitting him **or her** to drive [within this State] for at least the last three consecutive years, and who has complied with the other requirements contained in this subchapter.

13:23-3.4 Application for instructor's license

(a) Application[s] for **an** initial or renewal license[s] must be made [by the person desiring such license,] on a form prescribed by the Director.

(b) [Renewal] **A renewal** application[s should] **shall** be submitted for approval and issuance at least [ten] **30** days prior to the expiration date of [present] **the current** license.

(c) The Director [will] **shall** issue an instructor's license to the applicant upon approval of an initial or renewal application [thereof]. **The instructor's license shall be assigned the same license number for the duration of the license.**

[(d) Applicants for an initial instructor's license are required to submit three photographs, taken not more than 30 days prior to the date of such application.]

[(e)](**d**) Every applicant for an initial instructor's license is required to submit to fingerprinting. Applicants for renewal licenses may be required to submit to [fingerprinting] **a name check** at the discretion of the Director. **The applicant will be required to submit authorization for a name check and payment in such amount as may be established by the Division of State Police.**

[(f)](**e**) An initial instructor license [will] **shall** not be issued unless the applicant is at least 21 years of age.

(f) An applicant who has been licensed to drive by another state or states during the past three years must submit a certified abstract of his or her driving record from the state or states in which he or she is or was licensed to drive with the initial application and all renewals thereof.

13:23-3.5 Instructor's license fee

The instructor's license is valid for the calendar year [and the]**. The** fee for the initial license shall be $75.00 and the fee for the annual renewal thereof shall be $30.00.

13:23-3.6 [Carrying] **Possession of** instructor's license

The instructor's license must be [carried by] **in the possession of** the instructor at all times while giving driving instructions, or when accompanying [an applicant for a driver's license to the driving test portion of the license examination conducted by the Division of Motor Vehicles] **a student**.

13:23-3.7 Lost, mutilated or destroyed licenses

(a) [Should] **In the event** a license**, or duplicate thereof,** [be] **is** lost, mutilated, or destroyed, a duplicate license [will] **shall** be issued upon proof of the facts and payment of a fee of $3.00 and, in the case of a mutilated license, [the] **upon** surrender of such **mutilated** license. **Such proof shall be submitted in the form of an affidavit indicating:**

1. The date the license, or duplicate thereof, was lost, mutilated or destroyed; and

2. The circumstances involving the loss, mutilation or destruction of the license, or duplicate thereof.

[(b) Proof of facts shall consist of:

1. The date the license was lost, mutilated or destroyed.
2. The circumstances involving such loss, mutilation or destruction.]

13:23-3.8 Surrender of instructor's license

An instructor's license **or endorsement** [must] **shall** be surrendered to the [Division of Motor Vehicles] **Director** [immediately] upon termination of an instructor's services with, or by, any [drivers'] **driving** school designated on such license **and/or endorsement**. [Where] **When** the services of an instructor are terminated by one or more of the schools designated on the instructor's license **and/or endorsement**, the endorsement certificate for each school so terminating the services of the instructor [must] **shall** be returned to the Division of Motor Vehicles [immediately] **within seven days**. It shall be the responsibility of the [drivers'] **driving** school to [return the

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instructor's license or certificate of endorsement to the Bureau of Certificate of Ownership, Title Transfers and Duplicates of the Division of Motor Vehicles upon termination of an instructor's services with the school] **notify the Division of Motor Vehicles, in writing, of such termination**.

13:23-3.9 Special tests

(a) An applicant for an instructor's license [will] **shall** be required to submit to special law-knowledge, driving tests and screening of visual acuity, and may be required to submit additional proof of his **or her** qualifications as an instructor.

(b) If application is made for an instructor's license by a person who was the holder of an instructor's license within a period of [one year] **three years** prior to the date of such application, the Director may waive the [law-knowledge and driving tests and vision screening] **testing**.

(c) All instructors licensed after July 1, 1984 shall be required to complete **either** the **six hour or eight hour** National Safety **Council** Defensive Driving Program. Evidence of having completed such program shall be filed with the [Bureau of Certificate Ownership, Title Transfers and Duplicates of the Division of Motor Vehicles] **Director**. Instructors shall submit such evidence prior to renewal of the initial [instructors] **instructor's** license.

13:23-3.10 [Character of applicant] (**Reserved**)

[An instructor's license will not be issued to any person who is not of good character, or who has been convicted of any crime.]

13:23-3.12 Revocation, suspension and refusal to **issue or** renew instructor's license

(a) The Director[,] or [any employee of the Division of Motor Vehicles deputized by him,] **his or her designee** may **deny,** suspend or revoke an instructor's license, or refuse to issue **an instructor's license or** a renewal thereof, for any of the reasons [outlined] **specified** in N.J.S.A. 39:12-1 et seq. **or N.J.A.C. 13:23-2.12,** or for failure to comply with any of the provisions of this subchapter [promulgated by the Director] **or for other good cause**, after due notice in writing thereof, in accordance with the provisions of N.J.S.A. 39:12-1 et seq. **and the "Administrative Procedure Act," N.J.S.A. 52:14B-1 et seq.**

(b) The Director **or his or her designee** may **deny,** suspend or revoke an instructor's license or may refuse to issue an instructor's license or a renewal thereof, if such instructor or applicant [for instructor's license shall have] **has** accumulated nine or more points by reason of conviction for violations of the Motor Vehicle Law **or has been convicted of a violation of N.J.S.A. 39:4-50, 39:4-50.2 or 39:4-49.1 or has incurred a conviction or administrative determination of a substantially similar offense in any jurisdiction.**

SUBCHAPTER 4. [DRIVERS'] **DRIVING** SCHOOL CLASSROOMS

13:23-4.1 Classroom facilities

(a) The facilities of each [drivers'] **driving** school **which provides classroom instruction** must include, not necessarily on the immediate premises, sufficient space and sufficient equipment to carry on the business of giving classroom instruction for those students enrolled in the [drivers'] **driving** school [who so desire].

[(b) A minimum of six hours of classroom instruction must be offered to each student enrolled in any commercial drivers' school. This offer shall be made to each student at the time a contract is signed for instructions in the operation of motor vehicles or motorcycles.

(c) The primary classroom facility of each drivers' school may not be more than 15 miles from the principal place of business or branch office of the school. A school may establish classrooms farther than 15 miles from the principal place of business or branch office with prior written approval of the Division of Motor Vehicles.]

[(d)](**b**) The facilities maintained for classroom instruction may be used by one or more [drivers'] **driving** schools. Whenever the **classroom** facilities [maintained for classroom instruction] are used by more than one school, [a schedule shall be filed with] the Director [of Motor Vehicles setting forth the day and time each school will provide classroom instructions in the facility] **must be notified**.

13:23-4.2 Classroom [accommodations] **requirements**

(a) The classroom facility [will] **may** be subject to inspection [and approval] by the Director **or his or her designee** and must [have the following accommodations] **meet the following requirements:**

1. **Minimum space required per student is 15 square feet. Existing facilities may apply for and may be granted exemptions from this requirement;**

[1.]**2.** Seating facilities and writing surfaces [for no less than ten students] **must be available for each student**;

[2.]**3.** Adequate lighting, heating, ventilation and toilet facilities [for both men and women];

[3.]**4.** Adequate charts and diagrams or pictures relating to the operation of motor vehicles, and traffic laws;

[4.]**5.** Adequate blackboards which are visible from all seating areas; **and**

[5.]**6.** Textbooks, reference books and pamphlets relating to the proper operation of motor vehicles and traffic laws.

13:23-4.3 [Classroom equipment] (**Reserved**)

[(a) Each classroom must be equipment with a sound projector and traffic safety films, or slide projector and traffic safety slides, and/or a video tape device.

(b) In addition to the foregoing, the classroom facilities must contain any two of the following teaching aides:

1. Reaction time testing device;
2. Depth perception testing device;
3. Peripheral vision testing device;
4. Magnetic traffic board;
5. Such other devices which will help students to acquaint themselves with traffic laws and prepare them to safely operate motor vehicles.

(c) Classroom equipment will be subject to inspection and approval of the Director.]

13:23-4.4 [Classroom curriculum] (**Reserved**)

[(a) The curriculum of classroom instruction must be submitted to the Director.

(b) The offered classroom instruction must be available at least once each calendar month for students currently enrolled in the drivers' school and must include safe driving practices in the operation of motor vehicles.]

(a)

BOARD OF ARCHITECTS AND CERTIFIED LANDSCAPE ARCHITECTS

Licensing Examinations; Fees

Proposed Amendment: N.J.A.C. 13:27-5.8

Authorized By: Board of Architects and Certified Landscape Architects, Barbara Hall, Executive Director.

Authority: N.J.S.A. 45:3-3.

Proposal Number: PRN 1991-127.

Submit written comments by April 3, 1991 to:

Barbara Hall, Executive Director
Board of Architects and Certified Landscape Architects
1207 Raymond Boulevard
Newark, NJ 07102

The agency proposal follows:

Summary

The Board of Architects is proposing to amend its fees schedule to increase the fees charged for the nine-division Architectural Registration Examination. This amendment is necessary because the National Council of Architectural Registration Boards (NCARB), which writes the examination, has raised its prices and because the Board's costs of administering the exam have increased since the examination fee schedule was last amended over three years ago. The fee for each test component except Division B-Site Design (Graphic) and Division C-Building Design represents the NCARB price for that component plus a Board administration fee of $15.00; the Board administration fee for Divisions B (graphic) and C has been set at $25.00 due to the higher costs and activity involved in administering these two test components.

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Amendments are also proposed to redesignate two exam components to reflect the manner in which the exam is currently administered. N.J.A.C. 13:27-5.8(c)ii has been amended to set for the separate sections of the site design component of the exam (graphic and written), and N.J.A.C. 13:27-5.8(c)iv has been amended to combine Divisions D and F.

Social Impact

The proposed fee increases will enable the Board to continue the orderly administration of examinations in order to ensure that truly qualified individuals are licensed to practice architecture. The Board does not anticipate that the ability of applicants to take or pass the exam will be affected by the proposed fee increase.

Economic Impact

The proposed amendment to N.J.A.C. 13:27-5.8(c) will impact on all prospective licensees as it will cost more to take the architectural examination. However, the proposed fee increase is necessary to prevent a fiscal loss to the Board, which by statute is required to cover all its expenses.

Regulatory Flexibility Statement

The rule is proposed for amendment applies exclusively to applicants for the examination and thus does not apply to "businesses" whatsoever. Furthermore, the rule does not involve any reporting, recordkeeping or compliance practices beyond the fee charges nor does it necessitate the retention of any professional services by licensees and/or small businesses in order to comply with the requirements. Therefore, a regulatory flexibility analysis is not required.

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

13:27-5.8 Fees

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

(c) The fees for the licensing examination are as follows:

1. Entire Architectural Registration Examination—

[$350.00] **$545.00**

i. Division A: Pre-Design [$35.00;] **55.00**

ii. Division B: Site Design, **Graphic** [$70.00;] **85.00**

Site Design, Written **40.00**

iii. Division C: Building Design [$90.00;] **115.00**

iv. Division D/F: Structural General **and Long Span** [20.00] **50.00**

v. Division E: Structural Lateral Forces [$15.00;] **35.00**

[vi. Division F: Structural Long Span $15.00;]

[vii.] **vi.** Division G: Mechanical, Plumbing, Electrical and Life Safety Systems [$35.00;] **55.00**

[viii.] **vii.** Division H: Materials and Methods [$35.00;] **55.00**

[ix.] **viii.** Division I: Construction Documents and Services [$35.00;] **55.00**

[x.] **ix.** The fee for retake of any part of the exam is the same as listed above.

2. (No change.)

(d)-(l) (No change.)

(a)

BOARD OF NURSING

Fees; Licensure of Professional and Practical Nurses; Certification of Homemaker-Home Health Aides

Proposed Amendment: N.J.A.C. 13:37-12.1

Authorized By: State Board of Nursing, Sister Teresa Harris, Executive Director.

Authority: N.J.S.A. 45:11-24 and 45:1-3.2.

Proposal Number: PRN 1991-115.

Submit written comments by April 3, 1991 to:
Sister Teresa Harris, Executive Director
Board of Nursing
1207 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

This proposal amends the Board of Nursing fee schedule in connection with the licensure of professional and practical nurses, N.J.A.C. 13:37-12.1(a), and establishes a new fee schedule in connection with the certification of homemaker-home health aides, N.J.A.C. 13:37-12.1(c). These fees are calculated to provide the Board with adequate funding to discharge its statutory obligations to evaluate applicants for licensure and certification and to regulate the practice of nursing and the services of homemaker-home health aides.

With respect to the licensure of professional and practical nurses, the Board is increasing its fees for certification for original examination and licensure, certification for reexamination and licensure, licensure by endorsement, biennial and late license renewals and temporary work permits. The Board has experienced substantial increases both in the costs of the various applications and in personnel costs. The funds generated by the increased fees will enable the Board to defray the costs of issuing and processing these applications; the Board will be able to continue to scrutinize applicants for licensure to ensure that each has obtained a thorough and satisfactory education. The fee for instate verification of licensure has been deleted from the fee schedule since licensure information is now computerized and therefore more readily accessible. Finally, because of the volume of requests for copies of the Nurse Practice Act and the Standards of Practice, the Board has established fees to cover its costs for duplicating these materials.

With regard to the certification of homemaker-home health aides, N.J.S.A. 45:11-23 was amended effective December 16, 1989 to require the Board of Nursing to prescribe standards and requirements for a competency evaluation program resulting in certification of homemaker-home health aides. Pursuant to N.J.S.A. 45:1-3.2, the Board may establish fees for examination, licensure and other services it performs. The proposed new rule sets as the annual program approval fee $100.00 plus $25.00 for each additional location at which the course is offered and establishes fees for biennial and late certificate renewal and certification by endorsement. The fee for competency evaluation has not yet been determined. Also established are fees for student and instructor manuals and for duplicate certificates. The fees for the certification of homemaker-home health aides have been calculated to provide the Board of Nursing with adequate funding without being prohibitive to applicants for certification. The Board has previously proposed, at N.J.A.C. 13:37-12.1(b), an application fee of $5.00 for the homemaker-home health aide certification (see 23 N.J.R. 24(a)).

Social Impact

The funding generated by the increased fees in connection with the licensure of professional and practical nurses will enable the Board to continue to give individualized attention to applicants for licensure; the public will benefit from the assurance that only those qualified will be authorized to practice in this State. The increased fees will also enable the Board to continue to expeditiously address misconduct and to order appropriate corrective measures for nurses identified as incompetent. In so doing, the Board of Nursing will be fulfilling its statutory duty to protect the public health, safety and welfare.

The fees proposed for homemaker-home health aide certification will implement legislation requiring the Board of Nursing to prescribe standards and requirements for a competency evaluation program. The fees will enable the Board to evaluate homemaker-home health aide programs to ensure that all programs in the State maintain high standards of student training, supervision and evaluation. The funding will also enable the Board to test applicants and to establish a data base of relevant information on the provision of homemaker-home health aide services. Certification will be advantageous to the public in that the consumer will be assured that the Board of Nursing is closely monitoring the quality of services being provided Statewide.

Economic Impact

The $6.00 increase in the biennial license renewal fee will apply to all 124,077 licensees of the Board of Nursing, while the remainder of the fees will apply only to applicants or, as with the late renewal of license fees, only in limited circumstances. The Board's fee schedule remains comparable to, and in many instances lower than, the fee schedules of other nursing boards in the Northeast. The increases and new fees are necessary to generate revenues to defray all proper expenses incurred by the Board in fulfilling its statutory obligations to evaluate applicants for licensure and certification and to regulate the practice of nursing and the

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services of homemaker-home health aides. In accordance with N.J.S.A. 45:1-3.2, the sums raised are estimated to not exceed the amount required.

The fees established for the certification of homemaker-home health aides create the economic impact of $100.00 per year (plus $25.00 for each additional location at which the course is offered), in addition to fees for instructor and student manuals, for those seeking program approval. The Board estimates that approximately 100 entities in this State will be affected. Those seeking certification as homemaker-home health aides, approximately 55,000 individuals, will be responsible for the $5.00 biennial certification renewal fee as well as for an as yet undetermined fee for competency evaluation. Those seeking certification by endorsement must pay a $5.00 fee. Miscellaneous fees which may be charged in the appropriate circumstances include $10.00 for late renewal of certification and $5.00 for certificate replacement. As stated, these fees have been calculated to provide the Board with funding to defray its expenses without being prohibitive to applicants for certification.

Regulatory Flexibility Statement

The only proposed fees which may affect small businesses are the homemaker-home health aide program approval fee and instructor and student manual fees. The Board of Nursing estimates that virtually all of the programs subject to these fees are small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-19.

The proposed fees are necessary to enable the Board to fulfill its statutory mandate to protect the public health, safety and welfare. Therefore, no exemption for small businesses is possible. However, as a business expense, the annual program approval fee is reasonable. There are no reporting or recordkeeping requirements related to the fees other than the completion of the application for program approval or other documents which will accompany the annual payment. No professional services will be needed in order to comply.

The remainder of the amendments to the fee schedule affect nursing applicants and licensees and applicants for certification as homemaker-home health aides; therefore, these amendments do not impose any reporting, recordkeeping or compliance requirements on small businesses.

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

13:37-12.1 Fee schedule

(a) The following fees shall be charged by the Board **in connection with licensure of professional and practical nurses.**

1. Certification for original examination and licensure:
   i. Professional nurse[—$40.00;] **$50.00**
   ii. Practical nurse[—$30.00;] **40.00**
2. Certification for reexamination and licensure:
   i. Professional nurse[—$40.00] **50.00**
   ii. Practical nurse[—$30.00] **40.00**
3. Licensure by endorsement:
   i. Professional nurse[—$35.00;] **50.00**
   ii. Practical nurse[—$25.00.] **40.00**
4. Verification[—$30.00] **30.00**
5. Renewal of license (Biennial)[—$24.00] **30.00**
6. Late renewal of license[—$34.00] **40.00**
7. Duplicate license[—$10.00] **10.00**
8. Temporary work permit[—$5.00.] **10.00**
9. Notary Fee[—$5.00] **5.00**

[10. Instate verification—$5.00.]

[11.]**10.** Record duplication[—$5.00.] **5.00**

11. Copy of Nurse Practice Act **3.00**

12. Copy of Standards of Practice **1.00**

(b) (Reserved)

(c) The following additional fees shall be charged by the Board in connection with certification of homemaker-home health aides.

1. Program approval fee (annual) **$100.00**

2. Fee for each additional location at which course is offered (annual) **25.00**

3. Instructor's Manual **10.00**

4. Student Manual **3.00**

5. Renewal of certificate (Biennial) **5.00**

6. Late renewal of certificate **10.00**

7. Duplicate certificate **5.00**

8. Certification by endorsement **5.00**

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Suspension Pending Outcome of Indictment

Proposed New Rule: N.J.A.C. 13:70-14.17

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1991-103.

Submit written comments by April 3, 1991 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton St.
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule would allow the Racing Commission to suspend the license of an individual based on an indictment when the indictment arises from activities which occurred on the grounds of a racetrack or a licensed farm, or when the charges contained in the indictment are directly related to the racing industry. An individual suspended based on an indictment would be entitled to request a hearing with the Racing Commission within 10 days of the date of the written notice of the suspension.

Social Impact

The proposed new rule would have a positive social impact on the racing industry if an individual was suspended based on an indictment which directly related to his or her activities in racing or arose from activity on the grounds of a race association or a licensed farm. This would serve an important public interest by ensuring that an individual would not be allowed to participate in racing activity while facing charges directly relating to the racing industry or conduct that occurred on licensed premises.

The integrity of the racing industry requires a suspension of the license in the circumstances described in the rule until it is determined that the licensee does not pose a threat. Continued licensure pending disposition of the indictment would undermine the public confidence in the integrity of the sport. Public confidence is the cornerstone of the racing industry.

Economic Impact

The proposed new rule could have an economic impact on a licensee if his or her main source of income was derived from the racing industry and he or she was suspended based upon an indictment and would not be eligible to continue participating in the racing industry pending disposition of the indictment.

Regulatory Flexibility Statement

Because the proposed new rule deals with the suspension of an individual based on an indictment, no compliance requirements are imposed upon small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rule follows:

13:70-14.17 Suspension pending outcome of indictment

(a) A licensee may be suspended immediately when the licensee is indicted in this State for a crime of the first, second, third or fourth degree or is indicted for a similar crime under Federal law or the law of another state, or Province of Canada law if:

1. The charge or charges arise from activity or activities occurring on the grounds of a race association or a licensed farm or;

2. The charge or charges are directly related to the racing industry whether in this State or another jurisdiction.

(b) Prior to a suspension under (a) above becoming effective, the licensee must first be apprised in writing of why an immediate suspension is sought, the charges and the general evidence in support of the charges. This notice may be given by personal service or by regular mail or by certified mail, return receipt requested, to the last address for the licensee on record with the Commission.

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(c) The licensee may request a hearing with a representative of the Commission within 10 days of the date of the written notice of suspension. If no request is made within this time, or such additional time as agreed to by a representative of the Commission or as provided in a negotiated agreement, the suspension issued pursuant to this section shall continue until disposition of the criminal indictment.

(d) A suspension pursuant to this section shall not extend beyond the disposition of the criminal complaint or indictment; provided, that where a licensee is convicted of a charge described in (a) above, such suspension shall remain in effect pending further disciplinary action by the Commission.

(e) Where any licensee is suspended pursuant to this section, said penalty may be appealed to the Commission and a hearing requested.

(f) The hearings before both the Commission's representative and the Commission itself shall be *de novo* proceedings.

(g) Where the suspension is immediate under (a) above, the licensee may seek a stay of said suspension pending a resolution of the charge or charges and/or the Final Decision of the Commission. Any such request shall be in writing and shall be addressed to the Executive Director (or his or her designee) and the Commission.

1. Such a request may be denied by the Commission, Executive Director, or his or her designee, where to grant the same would be adverse to the best interests of racing or inimical to the public in preserving the integrity of the sport and in preserving public confidence in the sport.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Administering Medication to Respiratory Bleeders Time on Respiratory List
Proposed Amendment: N.J.A.C. 13:70-14A.9

Authorized By: New Jersey Racing Commission,
Charles K. Bradley, Deputy Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1991-116.

Submit written comments by April 3, 1991 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton St.
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment would reduce the time a horse is placed on the veterinarian's list for bleeding, from 14 days to 10 days, and would also specifically state a third time bleeder must remain on the respiratory list for 90 days rather than three months.

Social Impact

This proposed rule amendment would be beneficial to the racing industry since the amount of time a horse would be placed on a veterinarian's list for bleeding would be consistent with the time that a horse would be placed on the list in the neighboring states of Maryland, Delaware and Pennsylvania. The New Jersey Racing Commission in conjunction with the neighboring states is attempting to reach a regional agreement regarding medications and the availability of horses to compete in races. This is a step in that direction.

Economic Impact

The proposed amendment may have an economic benefit to the horsemen, in that being placed on the list for 10 days rather than 14 days will allow a horse to race sooner and, therefore, may be able to start more often. A horse is entered into a race based upon conditions established by the race secretary and the conditions that are beneficial to a particular horse may not be scheduled to be run for several weeks; therefore, if a horse was ineligible to enter into a race because of being placed on a veterinarian's list he may be afforded the opportunity to enter into that race by the reduction of days.

Regulatory Flexibility Statement

The proposed amendment pertains to the length of time a horse is placed on a veterinarian's list as a result of bleeding. No requirements are imposed upon small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

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

13:70-14A.9 Administering medication to respiratory bleeders

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

(d) A horse placed on the veterinarian's list for bleeding must remain on the list for [14] **10** calendar days; a second time bleeder must remain on the respiratory list for 30 days; and a third time bleeder must remain on the respiratory list for [three months] **90 days**. A bleeder in the above categories is automatically released from the veterinarian's list after these dates; however, a horse which evidences respiratory bleeding a fourth time is barred from further racing in New Jersey.

(e) (No change.)

(b)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Veterinarians During Racing Hours
Proposed New Rule: N.J.A.C. 13:70-19.43

Authorized By: New Jersey Racing Commission,
Charles K. Bradley, Deputy Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1991-120.

Submit written comments by April 3, 1991 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton St.
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule would make it the responsibility of the racing association to provide the service of a licensed veterinarian for the period of time one-half hour prior to post-time of the first race until one-half hour after the conclusion of the last race on the racing program.

Social Impact

The proposed new rule would have a positive benefit to the racing industry. It would insure that a practicing veterinarian would be available through the racing program in the event an emergency situation would arise wherein a horse may have need of a veterinarian.

Economic Impact

The proposed new rule may have an economic impact on the racing association for cost that may be incurred by insuring that the services of a veterinarian are present during the hours in which horse races are conducted.

Regulatory Flexibility Statement

The proposed new rule imposes a compliance requirement on racing associations. These associations are not small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since each employs more than 100 people. Therefore, a regulatory flexibility analysis is not required.

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

13:70-19.43 [(Reserved)] **Veterinarians during racing hours**

The racing association will be responsible to provide the services of a licensed veterinary practitioner for the period of one-half hour prior to the post time of the first race until one-half hour after the conclusion of the last race on the racing program.

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(a)

NEW JERSEY RACING COMMISSION
Harness Rules
Veterinarians (Practicing)
Proposed Amendment: N.J.A.C. 13:71-9.2

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1991-117.

Submit written comments by April 3, 1991 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton St.
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment deletes the phrase "or by an association" from N.J.A.C. 13:71-9.2(c). This amendment would allow a veterinarian employed by an association to treat or prescribe for any horse during the veterinarian's employment by the racing association.

Social Impact

The proposed amendment would have a positive benefit to the racing industry. In conjunction with proposed new rule N.J.A.C. 13:71-9.4 published elsewhere in this issue of the New Jersey Register, the amendment would insure that a practicing veterinarian would be available through the racing program in the event an emergency situation would arise wherein a horse may have need of a veterinarian.

Economic Impact

The proposed amendment may have an economic impact on the racing association for cost that may be incurred by insuring, through proposed new rule N.J.A.C. 13:71-9.4, that the services of a veterinarian are present during the hours in which horse races are conducted.

Regulatory Flexibility Statement

The proposed amendment imposes no requirements. The amendment removes a proscription on a veterinarian employed by a racing association treating or prescribing for horses in non-emergency situations. Therefore, a regulatory flexibility analysis is not required.

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

13:71-9.2 Veterinarian (practicing)
(a)-(b) (No change.)
(c) No veterinarian employed by the Racing Commission [or by an association] shall be permitted, during the period of his employment, to treat or prescribe for any horse, for compensation or otherwise, except in case of emergency, in which case a full and complete report shall be made to the stewards.
(d) (No change.)

(b)

NEW JERSEY RACING COMMISSION
Harness Rules
Veterinarians During Racing Hours
Proposed New Rule: N.J.A.C. 13:71-9.4

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1991-118.

Submit written comments by April 3, 1991 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton St.
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule would make it the responsibility of the racing association to provide the service of a licensed veterinarian for the period of time one-half hour prior to post-time of the first race until one-half hour after the conclusion of the last race on the racing program.

Social Impact

The proposed new rule would have a positive benefit to the racing industry. It would insure that a practicing veterinarian would be available through the racing program in the event an emergency situation would arise wherein a horse may have need of a veterinarian.

Economic Impact

The proposed new rule may have an economic impact on the racing association for cost that may be incurred by insuring that the services of a veterinarian are present during the hours in which horse races are conducted.

Regulatory Flexibility Statement

The proposed new rule imposes a compliance requirement on racing associations. These associations are not small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since each employs more than 100 people. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

13:71-9.4 Veterinarians during racing hours

The racing association will be responsible to provide the services of a licensed veterinary practitioner for the period of one-half hour prior to the post time of the first race until one-half hour after the conclusion of the last race on the racing program.

(c)

NEW JERSEY RACING COMMISSION
Harness Rules
Administering Medication to Respiratory Bleeders
Time on Respiratory List
Proposed Amendment: N.J.A.C. 13:71-23.8

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1991-119.

Submit written comments by April 3, 1991 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton St.
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment would reduce the time a horse is placed on the veterinarian's list for bleeding, from 14 days to 10 days, and would also specifically state a third time bleeder must remain on the respiratory list for 90 days rather than three months.

Social Impact

This proposed rule amendment would be beneficial to the racing industry since the amount of time a horse would be placed on a veterinarian's list for bleeding would be consistent with the time that a horse would be placed on the list in the neighboring states of Maryland, Delaware and Pennsylvania. The New Jersey Racing Commission in conjunction with the neighboring states is attempting to reach a regional agreement regarding medications and the availability of horses to compete in races. This is a step in that direction.

Economic Impact

The proposed amendment may have an economic benefit to the horsemen, in that being placed on the list for 10 days rather than 14 days will allow a horse to race sooner and, therefore, may be able to start more often. A horse is entered into a race based upon conditions established by the race secretary and the conditions that are beneficial to a particular

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horse may not be scheduled to be run for several weeks, therefore, if a horse was ineligible to enter into a race because of being placed on a veterinarian's list he may be afforded the opportunity to enter into that race by the reduction of days.

Regulatory Flexibility Statement

The proposed amendment pertains to the length of time a horse is placed on a veterinarian's list as a result of bleeding. No requirements are imposed upon small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

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

13:71-23.8 Administering medication to respiratory bleeders

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

(d) A horse placed on the veterinarian's list for bleeding must remain on the list for [14] **10** calendar days, a second time bleeder must remain on the respiratory list for 30 days, and a third time bleeder must remain on the respiratory list for [three months] **90 days**. A bleeder in the above categories is automatically released from the veterinarian's list after these dates; however, a horse which evidences respiratory bleeding a fourth time is barred from further racing in New Jersey.

(e) (No change.)

(a)

NEW JERSEY RACING COMMISSION

Harness Rules

Suspension Pending Outcome of Indictment

Proposed New Rule: N.J.A.C. 13:71-26.9

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1991-104.

Submit written comments by April 3, 1991 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton St.
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule would allow the Racing Commission to suspend the license of an individual based on an indictment when the indictment arises from activities which occurred on the grounds of a racetrack or a licensed farm, or when the charges contained in the indictment are directly related to the racing industry. An individual suspended based on an indictment would be entitled to request a hearing with the Racing Commission within 10 days of the date of the written notice of the suspension.

Social Impact

The proposed new rule would have a positive social impact on the racing industry if an individual was suspended based on an indictment which directly related to his or her activities in racing or arose from activity on the grounds of a race association or a licensed farm. This would serve an important public interest by ensuring that an individual would not be allowed to participate in racing activity while facing charges directly relating to the racing industry or conduct that occurred on licensed premises.

The integrity of the racing industry requires a suspension of the license in the circumstances described in the rule until it is determined that the licensee does not pose a threat. Continued licensure pending disposition of the indictment would undermine the public confidence in the integrity of the sport. Public confidence is the cornerstone of the racing industry.

Economic Impact

The proposed new rule could have an economic impact on a licensee if his or her main source of income was derived from the racing industry and he or she was suspended based upon an indictment and would not be eligible to continue participating in the racing industry pending disposition of the indictment.

Regulatory Flexibility Statement

Because the proposed new rule deals with the suspension of an individual based on an indictment, no compliance requirements are imposed upon small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the new proposed rule follows:

13:71-26.9 Suspension pending outcome of indictment

(a) A licensee may be suspended immediately when the licensee is indicted in this State for a crime of the first, second, third or fourth degree or is indicted for a similar crime under Federal law or the law of another state, or Province of Canada law if:

1. The charge or charges arise from activity or activities occurring on the grounds of a race association or a licensed farm; or

2. The charge or charges are directly related to the racing industry whether in this State or another jurisdiction.

(b) Prior to a suspension under (a) above becoming effective, the licensee must first be apprised in writing of why an immediate suspension is sought, the charges and the general evidence in support of the charges. This notice may be given by personal service or by regular mail or by certified mail, return receipt requested, to the last address for the licensee on record with the Commission.

(c) The licensee may request a hearing with a representative of the Commission within 10 days of the date of the written notice of suspension. If no request is made within this time, or such additional time as agreed to by a representative of the Commission or as provided in a negotiated agreement, the suspension issued pursuant to this section shall continue until disposition of the criminal indictment.

(d) A suspension pursuant to this section shall not extend beyond the disposition of the criminal complaint or indictment; provided, that where a licensee is convicted of a charge described in (a) above, such suspension shall remain in effect pending further disciplinary action by the Commission.

(e) Where any licensee is suspended pursuant to this section, said penalty may be appealed to the Commission and a hearing requested.

(f) The hearings before both the Commission's representative and the Commission itself shall be *de novo* proceedings.

(g) Where the suspension is immediate under (a) above, the licensee may seek a stay of said suspension pending a resolution of the charge or charges and/or the Final Decision of the Commission. Any such request shall be in writing and shall be addressed to the Executive Director (or his or her designee) and the Commission.

1. Such a request may be denied by the Commission, Executive Director, or his or her designee, where to grant the same would be adverse to the best interests of racing or inimical to the public in preserving the integrity of the sport and in preserving public confidence in the sport.

PUBLIC UTILITIES

(b)

BOARD OF PUBLIC UTILITIES

Notice of Pre-proposal

Regulation of Alternate Operator Service

Pre-Proposed Amendments: N.J.A.C. 14:10-6

Authorized By: Board of Public Utilities, Scott A. Weiner, President.

Authority: N.J.S.A. 48:2-13 et seq., N.J.S.A. 48:17-23 and 24.

BPU Docket Number: TX90111300.

Pre-Proposal Number: PPR 1991-2.

Take notice that a **public hearing** on the pre-proposed amendments will be held at 10:00 A.M. on Thursday, April 4, 1991 at the following location:

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Board of Public Utilities
Hearing Room, 10th Floor
Two Gateway Center
Newark, New Jersey 07102

Interested persons may submit comments by April 18, 1991 to:
Chrys Wilson, Secretary
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Take notice that the Board of Public Utilities (BPU) is considering amending N.J.A.C. 14:10-6, the rules pertaining to the provision of intrastate Alternate Operator Services (AOS).

On November 16, 1988, the BPU approved the publication of proposed rules pertaining to AOS in New Jersey (see 20 N.J.R. 3115(a)). Among other things, these rules require AOS providers to identify themselves as part of the call and either connect the consumer to the carrier of choice or provide free access to the caller's chosen carrier. In addition, access to the local exchange carrier must be available by dialing zero and no other digits. On August 4, 1989, following receipt of public comments, the BPU adopted these rules as final, and they became effective September 5, 1989 (see 21 N.J.R. 2801(d)).

On January 12, 1990, State legislation pertaining to the provision of AOS was enacted (P.L. 1989, c.337, N.J.S.A. 48:17-23 and 24). This legislation allows AOS companies or aggregators to block access to other operator service providers if the AOS provider either obtains a waiver from the BPU or the Federal Communications Commission. In addition, rate quotes must be available upon request. Finally, the legislation establishes the imposition of a fine for violations of the AOS rules.

The BPU's current rules attempted to provide end users with a choice of operator service providers by permitting operator competition to be developed in New Jersey within the context of the existent marketplace. Allowing free, direct customer access to the carrier of choice was expected to minimize opportunties for excessive rate levels. This was a major lynch pin in the BPU's reasoning for permitting AOS without rate regulation. Thus, in proposing those AOS rules, the BPU stated: "The new rules have been formulated to allow the AOS industry to operate on an inter-LATA basis with as few restrictions as necessary. However, this is to be done with the expectation that the industry will provide a competitively priced quality service in the public interest."

Unfortuantely, a "competitively priced quality service in the public interest" has not been the Board's experience, particularly with respect to the captive transient customer subject to the unintended mini-monopoly created by AOS. Since the inception of these rules, the BPU has received in excess of 120 written customer complaints regarding the provision of AOS service as well as numerous verbal complaints and inquiries. In addition, the BPU notes that there have been similar complaints nationwide as well as widespread complaints as to rates being charged. Excessive price levels were the reason for 86 percent of the complaints received by the BPU. The balance indicated alleged violation of one or more of the BPU's rules, for example, no identificaiton or access to the carrier of choice. These complaints were indireclty related to rate levels as well, because the end user complaint was generally filed after receipt of a bill that the customer considered excessive, thus exacerbating the inability to utilize a preferred carrier.

The BPU is extremely concerned with the frequency of complaints and the industry's apparent inability to self regulate. Therefore,the BPU has determined that more stringent regulation is necessary at this time. Regulation beyond that now required is necessary because the anticipated competition has not materialized, in part, as a result of the failure of the AOS industry to provide free and equal carrier access to consumers in those locations where alternate operator service providers exist.

In light of the aforementioned, the BPU has determined, first, that rate regulation is appropriate and, second, it is necessary to improve and enhance the knowledge and choice of captive end-users regarding rates and access to the telephone system.

These amendments are being offered in the form of a notice of pre-proposal to allow interested parties ample opportunity to comment. If adopted, the pre-proposed amendments to N.J.A.C. 14:10-6 will significantly change the current rules which apply to the provision of AOS. They will potentially affect all AOS providers in New Jersey. For that reason, the BPU decided to pre-propose the amendment and invite comments on the amended rules. Information with respect to public policy concerns is welcomed. The BPU specifically seeks data that would allow it to determine the appropriate rate level that may be charged by AOS providers, and whether or not that rate level should be allowed to exceed the traditional carriers' rates. No proposed amendment will be prepared until after the BPU carefully studies the pre-proposal comments.

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

SUBCHAPTER 6. REGULATION OF [ALTERNATIVE] **ALTERNATE** OPERATOR SERVICE (AOS) [PROVIDERS]

14:10-6.1 Scope

[(a)] The rules contained in this subchapter shall apply to the provision of [Alternative] **Alternate** Operator Service [(AOS)] as defined in N.J.A.C. 14:10-6.3, for any [AOS] **alternate operator service** provider [or its agent], **any aggregator whose location offers equivalent services as an alternate operator service provider, and/or billing agent (as defined in N.J.A.C. 14:10-6.3) providing billing for alternate operator service providers** in New Jersey, other than a transmission or distribution facilities-based carrier. **These rules incorporate alternate operator service legislation as provided for by N.J.S.A. 48:17-23.**

[(b) Federal regulatory policy in the telecommunications industry, as evidenced by the AT&T divestiture and other FCC decisions, has fostered competition in many segments of the telecommunications industry. New companies and technologies have arisen which were not contemplated when existing utility statutes and regulations were set in place. The Board has authorized competition in areas where it believes the benefits of competition will be flowed through to customers in New Jersey. A new area in which competition has recently arisen is in the provision of operator assistance. These rules may allow the benefits of the competitive marketplace to be more quickly flowed to consumers while ensuring that appropriate Board oversight and regulation is maintained.]

[14:10-6.2 Construction and amendment

This subchapter shall remain in effect for 24 months. The Board will revisit the matter at the end of 24 months to review and evaluate the effectiveness of these rules to determine if they should be continued, or to make any changes as are deemed necessary, including more stringent regulation.]

14:10-[6.3]**6.2** Definitions

The following words and terms, when used in this subchapter, shall have the following meanings[, unless the context indicates otherwise]:

"Aggregator" means a person or entity, which is not a telecommunications carrier, which in the ordinary course of its business makes telephones available to the public or to transient users of its business, including, but not limited to, hotels, motels, hospitals, or universities, and which provide operator-assisted services through an operator service provider.

["Alternative Operator Service Provider" or "AOS" means any non-traditional telephone company operator service provider.] **"Alternate operator service provider" means a non-facilities based telecommunications carrier which is a reseller leasing lines from local exchange carrier(s) and/or interexchange carrier(s) and which, using these leased facilities along with its own operators, provides operator-assisted intrastate services.** This does not include AT&T, New Jersey Bell or any other tariffed transmission or distribution facilities-based carrier.

"Billing agent" means a billing and collection company or billing clearinghouse which processes alternate operator service provider's call data to appear on local exchange company telephone bills, or any other form of bill, issued to the consumer that utilized the services of an alternate operator service provider.

"Board" means the New Jersey Board of Public Utilities.

"Consumer" means a person initiating any intrastate telephone call using alternate operator service.

"LEC" means local exchange company.

"Operator-assisted services" means services which assist callers in the placement or charging of a telephone call, either through live intervention or automated intervention.

"Operator service provider" means every telecommunications carrier which provides operator-assisted services.

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"Rate" means the total charge to a consumer for utilizing operator-assisted service including all fees collected from the consumer.

14:10-[6.4]**6.3** Board regulation of [AOS providers] **Alternate Operator Service**

(a) [AOS] **Alternate operator service providers** may complete intrastate interLATA operator assisted calls [over their network].

(b) [AOS providers] **Alternate operator service** shall be subject to Board regulation [on the basis of complaints from their customers]. The Board or its staff may investigate the conduct of any [AOS] **alternate operator service** provider**, any aggregator or any billing agent** and take appropriate action as required.

(c) [AOS providers and their agents shall not be considered resellers, except for AOS] **Alternate operator service** competitors providing intraLATA service in accordance with the provisions of this subchapter[. In those instances, AOS providers] are, in addition to the requirements of this subchapter, also subject to all [the provisions contained in the Board's Orders in Docket Nos. 8112-1051 and 823-242] **rules and regulations governing the resale of telecommunications services, as provided for by N.J.A.C. 14:10-7.**

(d) The [AOS] **alternate operator service** provider [or its agent is]**, and/or aggregator, and/or billing agent are** responsible for conformance with all rules and regulations that apply to the provision of this service and the Board may take action against the [AOS] **alternate operator service** provider [or its agent]**, and/or aggregator, and/or billing agent** as is necessary to rectify any non-conformance with such rules, or to protect the general public interest. The Board's actions [may] **will** include any necessary **action such as disconnection of service to individual aggregator locations experiencing persistent violations, as well as** restrictions concerning billing and collection activities subject to [its] **the Board's** regulation.

(e) The [AOS provider must] **aggregator shall** place dialing instructions **directly** on **its** instruments [to which they provide service] which detail [AOS] **alternate operator service** dialing procedures. [These] **The alternate operator service provider's** dialing [instructions must] **procedures shall** include [and be located in close proximity to] dialing instructions for access to the local exchange company [(LEC)] operator**, as well as information regarding how a consumer may contact their carrier of choice. These dialing instructions shall include all information required by the Federal Telephone Operator Consumer Services Improvement Act of 1990.**

[(f) The AOS is responsible for including written notification of the carrier on or in close proximity to the telephone instrument, and branding must be provided at the beginning of all operator assisted calls prior to connecting the call and the implementation of billing.]

(f) An alternate operator service provider shall inform a caller, prior to connecting the call and the implementation of billing, that the alternate operator service provider is handling the operator-assisted call by verbal identification (branding) of the alternate operator service provider. A form of signage identifying the alternate operator service provider shall also be placed on the telephone equipment owned or controlled by the aggregator or by the alternate operator service provider, if the alternate operator service provider owns or provides the telephones. Alternate operator service providers shall make additional identification available to aggregators upon request and shall periodically inspect locations connected to their service to determine that such locations are in compliance with these requirements. A minimum of two inspections per year are required and shall be certified to the Board on an annual basis.

(g) An alternate operator service provider shall provide callers with rate quotes, including any and all surcharges, upon request and without charge. Because technology has advanced to the point that rate quotes and alternative carrier access information is available through software modifications, the addition of software modifications, or other appropriate methods to provide such inforamtion, shall be a condition of service 12 months from the effective date of these regulations.

(h) Alternate operator service providers may charge, as a maximum rate for operator assisted non-local calls at transient locations, a rate not greater than the toll (Message Telecommunication Service) schedule of the competitive carrier having the largest number of pre-subscribed New Jersey customers, with time-of-day discounts, plus the appropriate operator assistance surcharge, on file with the Board as of January 1, 1991, for intrastate operator assisted calls in New Jersey. These maximum rates and any subsequent rate adjustments shall be on file with the Board. Local calls shall be limited to the rate charged by the local exchange carrier providing service in the affected area. The maximum rate shall be reviewed annually beginning one year from the effective date of these rules, and adjusted if appropriate. The Board will consider changes, other than during its annual review process, in response to a properly filed and supported rate change request from an alternate operator service provider. Such filing shall conform to N.J.A.C. 14:1-6.16.

(i) Surcharges associated with non-coin telephones that are not part of the actual telephone bill or imposed by an operator provider, but are add-on charges imposed by hotels, motels, hospitals, universities and/or other similar transient locations, shall continue to be permissible, but notice of any surcharge shall be conspicuously displayed on all affected telephones.

(j) The alternate operator service provider shall acknowledge that call measurement procedures will be consistent with the existing practice of the local exchange carrier serving the area. Calls not completed shall not be billed.

(k) The alternate operator service provider shall acknowledge that penalties for violations of the conditions of alternate operator service may result in the imposition of fines, as set forth in N.J.A.C. 14:10-6.7.

(l) The toll free public service telephone number furnished by the local exchange company containing a recorded message explaining how a consumer can complete calls using their preferred carrier through the use of the appropriate access code (10XXX) shall be conspicuously displayed on all telephone instruments providing the services of an alternate operator service provider.

14:10-[6.5]**6.4** Access to [AOS] **alternate operator service providers** and other operator service providers

(a) Free access to all other operator service providers [must] **shall** be made available from all instruments connected to an [AOS] **alternate operator service provider**. 10XXX access [is to] **shall** be made available from all Customer Provided Pay Telephone Service (CPPTS) instruments**, with the exception of government controlled penal institutions,** as well as other instruments, where technically capable. Otherwise, other reasonable access codes [will] **shall** be [acceptable] **available with dialing instructions fully explained**. [The AOS shall have the option of connecting the end user to their carrier of choice at the point of origination of the call, or requesting that the end user hang-up and re-dial.] **Every contract between an alternate operator service provider and an aggregator shall include a provision which provides a consumer using a telephone owned, or controlled by, the aggregator or alternate operator service provider with the means to access, where technically possible, any other operator service provider operating in the relevant geographic area, through the access method chosen by the other operator service provider, and access a local exchange operator, as well as access the emergency telephone number that serves the jurisdiction where the telephone is located. However, in order to prevent the fraudulent use of its service, an alternate operator service provider or an aggregator may block access to other operator service providers if either obtains a waiver for this purpose from the Board or the Federal Communications Commission. Such waivers granted by the Board may be for a limited period of time on a specific piece of equipment, or at a specific location upon application to the Board.**

(b) No alternate operator service provider shall transfer a call to another operator service provider unless that transfer is accomplished at, and billed from, the point of origination of the call (that is, splashing). If such a transfer is not technically possible, the alternate operator service provider shall inform the caller that the call cannot be transferred as requested and that the caller should hang up and attempt to reach another operator service provider through the means provided by that other operator service provider.

14:10-[6.6]**6.5** Emergency call handling

All "0-" calls, that is, calls originated by dialing "0" and no other digits within 4 seconds, [are to] **shall** be sent promptly and directly to the LEC operator serving that area. End users who reach an [AOS] **alternate operator service** operator by inadvertently dialing "00" while attempting to reach an LEC operator for an emergency call shall be

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instructed to hang-up and dial zero (0). In addition, an [AOS] **alternate operator service** provider may petition the Board to provide emergency call completion. If an individual [AOS] **alternate operator service provider** can certify that it is capable of handling emergency calls, following a petition to the Board detailing how the service will be provided, it [shall] **may** be granted permission to do so. Each petition will be reviewed separately on its merits.

14:10-[6.7]**6.6** Completion of intraLATA calls

Completion of intraLATA calls is prohibited unless accomplished by a reseller of intraLATA LEC facilities, and completed entirely over resold intraLATA LEC facilities alone.

14:10-6.7 Penalty for violations

Any person who violates the provisions of these rules shall be subject to a fine not to exceed $5,000 for each infraction.

14:10-6.8 [AOS] **Alternate Operator Service** Acknowledgment Forms

[(a)] An [AOS] **Alternate Operator Service** Acknowledgment Form [similar to that completed by resellers, must] **shall** be filed with [New Jersey Bell (the Company)] **the Board**. This form shall [contain] **indicate that alternate operator service providers are subject to** all the rules contained in this subchapter [as well as the following statements:], **currently and as may be amended.**

[—Authorized Alternate Operator Services (AOS) Provider—Denotes a communications competitor who has applied to the Company and advises the Company of its intention to provide operator services in the State of New Jersey and via this signed "Letter of Acknowledgment" agrees to abide by the regulations set forth in such "Letter."

—The AOS shall acknowledge that only proper call measurement procedures will be used and that calls will be billed consistent with existing Company practice, that is, calls which are not completed are not billed.

—The AOS shall acknowledge that penalties for violations of the conditions of AOS may result in the imposition of penalties as stated in N.J.S.A. 48:2-42. The law provides that any person who willfully violates a Board of Public Utilities Order shall be guilty of a misdemeanor.

—The AOS shall notify the Company when it is no longer an intrastate AOS provider.

(b) The company shall formulate an AOS Acknowledgment Form containing all AOS rules contained in this subchaper as outlined in (a) above.]

14:10-6.9 Customer billing

LECs that provide billing and collection services to [AOS] **alternate operator service** providers shall include a statement on the [AOS] **alternate operator service** portion of each customer's bill advising the customer that the [competitive] **alternate** operator service provider is not affiliated with the LEC [and the charges contained on the pages are not regulated by the Board].

(a)

BOARD OF PUBLIC UTILITIES

Notice of Pre-Proposal
Rules for the Resale of Telecommunications Services

Pre-Proposed New Rules: N.J.A.C. 14:10-7

Authorized By: Board of Public Utilities, Scott A. Weiner, President.

Authority: N.J.S.A. 48:2-13.

BPU Docket Number: TX90111298.

Pre-Proposal Number: PPR 1991-3.

Take notice that a **public hearing** on the pre-proposed new rules will be held at 10:00 A.M. on Thursday, April 4, 1991 at the following location:

Board of Public Utilities
Hearing Room, 10th Floor
Two Gateway Center
Newark, New Jersey 07102

Interested persons submit written comments by April 18, 1991 to:

Chrys Wilson
Secretary
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Take notice that the Board of Public Utilities (BPU) is considering proposing new rules at N.J.A.C. 14:10-7, pertaining to the resale of telecommunications services.

Effective June 1, 1981, the Federal Communications Commission (FCC) in Docket No. 80-54, removed prohibitions on the resale of interstate Wide Area Telecommunications Service (WATS) and Message Toll Service (MTS). The removal of prohibitions on the resale of interstate service resulted in a demand to permit the resale of intrastate services and facilities.

Following a public hearing and comment period, the BPU, in Docket Nos. 8112-1051 and 823-242, dated December 27, 1982, permitted the resale of certain usage-sensitive business services including toll and local exchange service. Although New Jersey resellers must follow the BPU's rules and regulations for the services they offer, they are not regulated in the same fashion as the traditional telephone companies, and as such are not required to file a tariff, or to file for a permit or certificate with the BPU. However, an authorized reseller must register with the local telephone company where such services are being offered, using a signed "Letter of Acknowledgment." The letter serves as a contract between the reseller and the company and sets forth the regulations that the reseller must follow.

The BPU is concerned that captive end-users are disadvantaged in the current environment and now proposes to amend Title 14 of the Administrative Code (N.J.A.C. 14) to include existing requirements and new rate cap requirements for resellers of telecommunications services. Clearly, captive customers must also have access to information so that they can make informed decisions and are aware of their calling and rate options, and they can then make an informed choice with respect to those options as they use the telephone system. These rules are being offered in the form of a notice of pre-proposal to allow interested parties ample opportunity to comment.

If adopted as offered, the pre-proposed new rules at N.J.A.C. 14:10-7 will significantly change the current regulations which apply to the resale of telecommunications services in New Jersey. The rules will potentially affect all resellers in New Jersey. For that reason, the BPU decided to pre-propose and invite comments on the new rules. The BPU specifically seeks data that would allow it to determine the appropriate rate level that may be charged by resellers. No proposed rules will be prepared until after the BPU carefully studies the pre-proposal comments.

Full text of the pre-proposal follows:

SUBCHAPTER 7. RULES FOR THE RESALE OF TELECOMMUNICATIONS SERVICES

14:10-7.1 Scope

(a) The rules contained in this subchapter shall apply to the reselling of telecommunications services (resale) as defined in N.J.A.C. 14:10-7.2, for any resale provider in New Jersey other than a transmission or distribution facilities-based carrier.

(b) Federal regulatory policy in the telecommunications industry, evidenced by the AT&T divestiture and various FCC decisions, has fostered competition in many segments of the telecommunications industry. New companies and technologies have arisen which were not contemplated when certain utility statutes and regulations were set in place. The Board has authorized competition in areas where it believes the benefits of competition will be flowed through to consumers in New Jersey. An area in which competition has accelerated since the AT&T divestiture is in the resale of telecommunications services. These rules may allow the benefits of the competitive marketplace to be more quickly flowed to consumers while ensuring that appropriate Board oversight and regulation is maintained.

14:10-7.2 Definitions

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

"Authorized resale carrier" means a non-facilities-based carrier (excluding tariffed carriers) which has applied to the Board with the

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intention to resell for intrastate call completion, any or all of those services available for resale, and has signed a "Letter of Acknowledgment" agreeing to abide by the terms set forth in this subchapter.

"Board" means the New Jersey Board of Public Utilities.

"LEC" means local exchange company.

"Rate" means the total charge to a consumer for utilizing the services of a reseller including all fees collected from the consumer.

14:10-7.3 Board regulation of resellers

(a) The services and facilities which may be offered for resale are subject to the conditions described in this subchapter and the terms of an authorized tariff.

(b) Resellers shall be subject to Board regulation. The Board or its staff may at its discretion investigate the conduct of any reseller. The Board reserves the right to impose a greater degree of regulation on resellers in the future in order to protect the public interest if an investigation determines that such regulation is necessary.

(c) Resellers shall acknowledge that other vendors will be permitted by the reseller and/or any party controlling the premises wherein an end-user receives telephone service to provide similar, alternative, or competitive services, upon the request of any non-transient end-user of the reseller. Documentation of such acknowledgment shall be submitted to the Board at the time the reseller applies for service as a reseller.

(d) Resellers shall acknowledge that call measurement procedures will be consistent with the existing practice of the local exchange carrier serving the area. Calls not completed shall not be billed. Documentation of such acknowledgment shall be submitted to the Board at the time the reseller applies for service as a reseller.

(e) Surcharges associated with non-coin telephones that are not part of the actual telephone bill or imposed by an operator provider, but are add-on charges imposed by hotels, motels, hospitals, universities or other similar transient customer locations, will continue to be permissible. Accordingly, hotel, motel, hospital and university non-coin surcharges are not affected by this subchapter, except that notice of any surcharge shall be conspicuously displayed on all affected telephones.

(f) Resellers of service at transient customer locations may charge, as a maximum rate for non-local calls, a rate not greater than the toll (Message Telecommunication Service) schedule of the competitive carrier having the largest number of pre-subscribed New Jersey customers, with time-of-day discounts, plus, if appropriate, the competitive carrier's operator assistance surcharge, on file with the Board as of January 1, 1991, for any intrastate non-local call in New Jersey. These maximum rates and any subsequent rate adjustments shall be on file with the Board. Local calls shall be limited to the rate charged by the local exchange carrier providing service in the affected area, unless otherwise authorized by the Board. The maximum non-local rate shall be reviewed annually beginning one year from the effective date of these rules, and adjusted if appropriate. The Board will consider changes, other than during its annual review process, in response to a properly filed and supported rate change request from a reseller. Such filing shall conform to N.J.A.C. 14:1-6.16.

(g) Resellers shall acknowledge that violations of any of the conditions of resale may result in the imposition of penalties pursuant to N.J.S.A. 48:2-42. Documentation of such acknowledgment shall be submitted to the Board at the time the reseller applies for service as a reseller.

(h) The reseller shall be responsible for conformance with all rules and regulations that apply to the resale of telecommunications services, and the Board may take action against the reseller as is necessary to rectify any non-conformance with such rules or to protect the public interest. The Board's actions will include any necessary action such as disconnection of service for persistent violations, as well as restrictions concerning billing and collection activities subject to the Board's regulation.

(i) Caller rate quotes and alternative carrier access information shall be available, in locations where transient users are likely to utilize telephone services of a reseller, to users either through software modifications, or other appropriate methods. This requirement shall be a condition of reseller service 12 months from the effective date of these rules.

(j) The toll free public service telephone number furnished by the local exchange company containing a recorded message explaining how a consumer can complete calls using their preferred carrier through the use of the appropriate access code (10XXX) shall be conspicuously displayed on all telephone instruments providing the services of a reseller.

(k) Specific and detailed dialing instructions for access to rate quote information, alternate carrier access information and dialing procedures shall be conspicuously displayed on the telephone instrument.

14:10-7.4 Resale Acknowledgment Form

A Resale Acknowledgment Form shall be filed with the Board. This form shall indicate that resellers are subject to the rules contained in this subchapter, currently and as may be amended.

(a)

BOARD OF PUBLIC UTILITIES

Notice of Pre-Proposal
Rules for Customer Provided Pay Telephone Service
Pre-Proposed New Rules: N.J.A.C. 14:10-8

Authorized By: Board of Public Utilities, Scott A. Weiner, President.

Authority: N.J.S.A. 48:2-13.

BPU Docket Number: TX90111299.

Pre-Proposal Number: PPR 1991-4.

Take notice that a **public hearing** on the pre-proposed rules will be held at 10:00 A.M. on Thursday, April 4, 1991 at the following location:

Board of Public Utilities
Hearing Room, 10th Floor
Two Gateway Center
Newark, New Jersey 07102

Interested persons may submit written comments by April 18, 1991 to:

Chrys Wilson
Secretary
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Take notice that the Board of Public Utilities (BPU) is considering new rules at N.J.A.C. 14:10-8, pertaining to the provision of Customer Provided Pay Telephone Service (CPPTS).

On March 9, 1984 and May 15, 1984, the BPU received separate petitions requesting authorization to connect CPPTS in the State of New Jersey. The BPU issued an Interim Decision and Order on August 22, 1984 (subsequently amended by Further Interim Decision and Orders of February 5, 1985 and March 25, 1985) permitting CPPTS connection within the context of the existent marketplace, and outlining guidelines governing the provision of CPPTS in New Jersey.

Following a public hearing and comment period, the BPU, in Docket Nos. TX8405284 and TX8403154, dated August 18, 1986, issued a final Decision and Order governing the provision of CPPTS. In that Order, the BPU stated: "Generally, the record demonstrates that competitive expansion of the pay telephone market is in the public interest. Competition will foster development and introduction of innovative technology and may increase the availability of pay telephone services for public use. Furthermore, competition has the salutary affect of attracting new investment and generating new employment opportunities across the state. The foregoing indicates that significant benefits will accrue to the State of New Jersey by eliminating existing limitations to pay telephone competition by non-utility providers."

Although CPPTS providers must follow the BPU's rules and regulations for the service they offer, they are not regulated in the same fashion as the traditional telephone companies, and as such are not required to file a tariff, or to file for a permit or certificate with the BPU. However, CPPTS providers currently must register with the local company, where such service is being offered, through the use of a signed "Letter of Acknowledgement." The letter serves as a contract between the CPPTS and the local exchange company and sets forth the regulations that CPPTS providers must follow.

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The BPU is concerned that captive end-users are disadvantaged in the current environment and now proposes to amend Title 14 of the Administrative Code (N.J.A.C. 14) to include existing requirements as articulated in the BPU's Order for CPPTS providers in New Jersey and rate cap requirements. Further, the BPU will require that CPPTS providers incorporate, on the telephone instrument, information sufficient to permit customers to make informed decisions as to their calling choices. These rules are being offered in the form of a notice of pre-proposal to allow interested parties ample opportunity to comment.

If adopted, the pre-proposed new rules at N.J.A.C. 14:10-8 will significantly change the current regulations which apply to the provision of CPPTS in New Jersey. It will potentially affect all CPPTS providers in New Jersey. For that reason, the BPU decided to pre-propose the amendment and invite comments on the new rules. Information on public policy concerns is welcomed. The BPU specifically seeks data that would allow it to determine the appropriate rate level that may be charged by CPPTS providers and whether or not that rate level should be allowed to exceed the traditional carriers' rates. No proposed rules will be prepared until after the BPU carefully studies the pre-proposal comments.

Full text of the pre-proposal follows:

SUBCHAPTER 8. RULES FOR CUSTOMER PROVIDED PAY TELEPHONE SERVICE

14:10-8.1 Scope

(a) The rules contained in this subchapter shall apply to the provision of Customer Provided Pay Telephone Service (CPPTS) as defined in N.J.A.C. 14:10-8.2, for any CPPTS provider in New Jersey. Utility providers of comparable pay telephone services remain subject to traditional Board regulation. These rules contain the regulations incorporated in the Board's CPPTS Order in Docket Nos. TX8405284 and TX8403154, dated August 18, 1986.

(b) Federal regulatory policy in the telecommunications industry, evidenced by the AT&T divestiture and various Federal Communications Commission (FCC) decisions, has fostered competition in many segments of the telecommunications industry. New companies and technologies have arisen which were not comtemplated when certain utility statutes and regulations were set in place. The Board has authorized competition in areas where it believes the benefits of competition will be flowed through to customers in New Jersey. An area in which competition has accelerated since the AT&T divestiture is in the provision of pay telephone services. These rules may allow the benefits of the competitive marketplace to be more quickly flowed to consumers while ensuring that appropriate Board oversight and regulation are maintained.

14:10-8.2 Definitions

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

"Customer Provided Pay Telephone Service" or "CPPTS" means a provider of pay telephone service through the resale of a tariffed carrier's CPPTS type line which may include or exclude collect and third number calls.

"Board" means the New Jersey Board of Public Utilities.

"Consumer" means a person initiating any intrastate telephone call.

"LEC" means local exchange company.

"Rate" means the total charge to a consumer for utilizing CPPTS service including all fees collected from the consumer.

14:10-8.3 Board regulation of CPPTS

(a) CPPTS shall provide dial-tone first.

(b) Emergency calls to "911" (where available) and operator calls ("0") shall be provided by CPPTS free of charge without use of coin or credit cards to originate such calls.

(c) CPPTS are permitted to charge end users for directory assistance calls up to a maximum rate equivalent to that rate which the underlying carrier charges the CPPTS for directory assistance service.

(d) CPPTS shall provide free access to toll-free service, without use of coin or credit cards to originate such calls.

(e) CPPTS shall provide free access to all interexchange carriers with equal access service in equal access exchanges. Where interexchange carriers do not have equal access service, CPPTS may charge applicable local or toll rates for calls to the interexchange carriers' non-equal access numbers.

(f) CPPTS shall provide clear, specific dialing instructions on the CPPTS instrument.

(g) CPPTS shall provide ownership and refund information by posting a free information number on the CPPTS instrument for consumers to use.

(h) Caller rate quotes and alternative carrier access information shall be available to users either through software modifications or other appropriate methods. This requirement shall be a condition of CPPTS service 12 months from the effective date of these rules.

(i) CPPTS shall designate a party within the State of New Jersey responsible for processing refunds to consumers.

(j) CPPTS shall have the ability to complete local and intrastate toll calling.

(k) More than one CPPTS may be connected per CPPTS exchange access line, provided that such connection is associated with common equipment (for example, PBX) dedicated solely to CPPTS, ensures user privacy, and does not result in inordinate levels of blocking.

(l) CPPTS providers may charge, as a maximum rate for non-local calls, a rate not greater than the toll (Message Telecommunication Service) schedule of the competitive carrier having the largest number of pre-subscribed New Jersey customers, with time-of-day discounts, plus, if appropriate, the competitive carrier's operator assistance surcharge, on file with the Board as of January 1, 1991, for any intrastate call in New Jersey. These maximum rates and any subsequent rate adjustments shall be on file with the Board. Local calls shall be limited to the rate charged by the local exchange carrier providing service in the affected area, unless otherwise authorized by the Board. The local rate shall be posted on the CPPTS instrument. The maximum rate shall be reviewed annually beginning one year from the effective date of these rules, and adjusted if appropriate. The Board will consider changes, other than during its annual review process, in response to a properly filed and supported rate change request from a CPPTS provider. Such filing shall conform to N.J.A.C. 14:1-6.16.

(m) CPPTS providers shall make every reasonable effort to repair CPPTS instruments within 24 hours of service outage.

(n) CPPTS shall permit completion of collect, third party billed, and carrier calling card calls without the originating party having to deposit payment.

(o) Extensions of CPPTS exchange access lines are permitted. However, such extensions shall either be technically unable to monitor the CPPTS or the CPPTS provider shall prominently display notice to end users that the CPPTS is subject to monitoring by an extension.

(p) Where CPPTS providers prevent incoming call completion, notice of the inability to accept incoming calls shall be conspicuously displayed on the instrument.

(q) Where CPPTS providers prevent incoming call completion, the CPPTS provider shall make arrangements to ensure non-publication of its number in directory listing services offered by the local exchange carrier for each service location.

(r) The LEC shall permit customer retention of telephone numbers that are associated with a customer's LEC semi-public telephone for use with CPPTS.

(s) Each LEC shall submit quarterly reports of CPPTS installation in their service territories to Board Staff.

(t) The toll free public service telephone number furnished by the local exchange company containing a recorded message explaining how a consumer can complete calls using their preferred carrier through the use of the appropriate access code (10XXX) shall be conspicuously displayed on all CPPTS instruments.

(u) Where CPPTS providers block international calls, notice of the inability to complete international calls shall be conspicuously displayed on the instrument.

14:10-8.4 Resale Acknowledgment Form

A Resale Acknowledgment Form shall be filed with the Board. This form shall indicate that CPPTS providers are subject to the rules contained in this subchapter, currently and as may be amended.

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PUBLIC UTILITIES

(a)

OFFICE OF CABLE TELEVISION

Regulations of Cable Television Prompt Restoration Standards

Reproposed New Rule: N.J.A.C. 14:18-3.13

Authorized By: Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities; Scott A. Weiner, President).

Authority: N.J.S.A. 48:5A-10.

Proposal Number: PRN 1991-111.

A **public hearing** concerning the proposal will be held on:
Monday, April 8, 1991 at 10:00 A.M.
Board of Public Utilities
Hearing Room, 10th Floor
Two Gateway Center
Newark, New Jersey 07102

Submit written comments by April 18, 1991 to:
Celeste M. Fasone, Director
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The reproposed new rule would require cable companies to dispatch personnel to begin corrective action within two hours of notification of any total loss of cable services affecting five or more contiguous subscribers from within the system. Contiguous subscribers are those subscribers residing on the same streets or in the same neighborhood or geographic area of the system. Due to the technical design of cable systems, if five or more contiguous subscribers report a total loss of service, there is a very good likelihood of a distribution plant problem or failure which warrants a prompt response by a cable operator.

Corrective action is action to begin repairs or, in the case where repairs cannot take place for safety or other reasons, have system personnel respond and stand by until such repairs can be effected.

This requirement would apply 24 hours a day for systems serving over 10,000 subscribers. Further, all operators, regardless of size, must respond immediately to emergency situations at the request of police, fire authorities and governmental agencies. Systems having less than 10,000 subscribers are required to dispatch personnel to begin corrective action as expeditiously as possible in response to notification that five or more contiguous subscribers from within the system are experiencing a total loss of cable services.

The rule recognizes that in certain situations a two hour response time might be impracticable due to reasons of safety or equipment access. For example, company crews would not be expected to work on plant during severe lightning storms until the storm has abated. In these cases, operators must respond as soon as the situation would allow.

The prior proposal was originally published in the New Jersey Register at 22 N.J.R. 2891(a) on September 17, 1990. A notice of hearing was also published in the state's major daily newspapers at least 15 days prior to a public hearing held on October 5, 1990. Individual notices were sent to all cable television operators, legislators and municipalities.

As a result of the record developed at the public hearing, the written comments and deliberations of the Board, modifications and clarifications were made to the rule text for re-publication. The principal change necessitating reproposal was the clarification of how a cable operator must respond within the two hour time limit. The proposal was redrafted to indicate that an operator must "dispatch personnel" within two hours to begin corrective action.

Social Impact

Complaints to the Board's Office of Cable Television show that some subscribers experience cable system service interruptions which are extensive. In general, the length of time a service interruption persists is due in large part to the operator's response time. Many cable consumers rely on cable television services as a principal source of information and entertainment. These subscribers are entitled to reliable service, including the expectations that the loss of all services will be corrected as quickly as possible. Moreover, subscriber viewing times extend well into the late evening and in some cases, very early morning hours. For this reason, the proposed rule would be operative 24 hours a day.

Economic Impact

The reproposed new rule would have little impact on most systems in New Jersey which already respond promptly 24 hours a day to most service interruptions affecting distribution plant. The new rule requires a two hour response only in the event five or more subscribers from a contiguous area have all services interrupted. This would allow the operators some discretion in deciding whether to respond to small, scattered outages where only a few individuals are without service.

The majority of companies respond within a reasonable time, usually 24 hours, to single subscriber outages. Howeer, outages which cause a total loss of service for five or more customers warrant a more immediate response, not only because more subscribers are affected but because they also may be indicative of more severe system problems. For example, a single subscriber tap failure might interrupt service to only two or three households while a full service interruption which affects five or more contiguous customers could be a result of plant damage or electronic failure which due to plant design, is likely to affect a larger segment of customers.

There could be some economic burden to those systems which have not developed adequate outage or service interruption response mechanisms or have limited personnel available. However, the Board believes systems over 10,000 subscribers have the capability and financial resources to accommodate a two hour response time on a 24 hour basis.

Regulatory Flexibility Analysis

There are two small cable television companies as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to which this reproposed new rule will apply. These small businesses have subscriber bases well under 10,000 and, therefore, would not be affected by the most stringent requirement of the rule, which is the two hour response time criteria. The two small businesses would be required to comply with the remaining section of the rule, which essentially requires expediency in responding to service interruptions. As such, it is not appropriate to waive the requirements of the reproposed new rule for small businesses.

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

14:18-3.13 [(Reserved)] **Prompt restoration standards**

(a) For systems over 10,000 subscribers, the cable television operator shall dispatch personnel to begin corrective action within two hours of notification of any total loss of service affecting five or more contiguous subscribers within the cable system.

(b) In situations where it is not practicable to respond for reasons of safety or access to equipment, the company shall respond as soon as the situation would allow.

(c) Systems having less than 10,000 subscribers shall dispatch personnel to begin corrective action in response to a total loss of cable service affecting five or more contiguous subscribers within the system as promptly as possible.

(d) All operators shall respond immediately to emergency situations at the request of police, fire, rescue or other governmental authorities or utilities.

(e) All operators shall dispatch personnel to begin corrective action as promptly as possible to any service interruptions or service deficiencies within the control of the operator and affecting the cable distribution plant, which interrupt one or more programming services to subscribers.

(f) For purposes of this rule, contiguous subscribers are those subscribers residing on the same streets or in the same neighborhood or geographic area of the system.

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TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Speed Limits

Routes N.J. 161 in Passaic County and N.J. 35 Ramps (Higgins Avenue) in Monmouth County

Proposed Amendments: N.J.A.C. 16:28-1.7 and 1.49

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Proposal Number: PRN 1991-98.

Submit comments by April 3, 1991, to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendments will establish "speed limit" zones along Routes N.J. 161 in the City of Clifton, Passaic County, and N.J. 35 Ramps (Higgins Avenue) in Brielle Borough, Monmouth County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

As part of a review of current conditions and based upon requests from the local governments, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation and survey. The investigation and survey proved that the revision of the "speed limit" zones along Routes N.J. 161 in the City of Clifton, Passaic County, and N.J. 35 Ramps (Higgins Avenue) in Brielle Borough, Monmouth County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.7 and 1.49, revising these speed limits, and reordering the requirements to specify clearly the municipalities and mileposts involved.

Social Impact

The proposed amendments will establish "speed limit" zones along Routes N.J. 161 in the City of Clifton, Passaic County, and N.J. 35 Ramps (Higgins Avenue) in Brielle Borough, Monmouth County, for the safe and 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 will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendments do not place any reporting, recordkeeping or compliance requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments primarily affect the motoring public and the governmental entities responsible for the enforcement of the rule.

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

16:28-1.7 Route 161

(a) The rate of speed designated for the certain [part] **parts** of State highway [route number] **Route** 161 described in this [section] **subsection** shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

[i. Zone 1: 35 miles per hour in the City of Clifton from Allwood Road to Van Houten Avenue.]

i. In Passaic County:

(1) City of Clifton:

(A) Zone 1: 25 miles per hour from Allwood Road to Richland Court (approximate mileposts 0.00 to 0.20); thence

(B) Zone 2: 35 miles per hour from Richland Court to Van Houten Avenue (approximate mileposts 0.20 to 1.10).

16:28-1.49 Route 35 including Higgins Avenue, Route U.S. 9 and 35[1] and Route 35 and 71

(a) (No change.)

(b) The rate of speed designated for the certain [part] **parts** of State highway Route 35 **Ramps** (Higgins Avenue) described in this [section] **subsection** shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

[i. 35 mph from the Route 35 connection to Higgins Avenue, continuing on Higgins Avenue to intersection of Route 71 and Higgins Avenue;

ii. The legal speed limits through school zones shall be subject to the provisions of N.J.S.A. 39:4-98(a).]

i. In Monmouth County:

(1) Brielle Borough:

(A) Zone 1: 35 miles per hour from the Route N.J. 35 southbound connection at milepost 15.62 to the intersection of Route N.J. 71, milepost 0.00.

(B) Zone 2: 30 miles per hour from Route N.J. 71 milepost 0.00 to the southerly terminus at Ashley Avenue.

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

[1]See also N.J.A.C. 16:28-1.41.

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Speed Limits

Route N.J. 71-35 Ramps

Proposed Amendment: N.J.A.C. 16:28-1.39

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Proposal Number: PRN 1991-99.

Submit comments by April 3, 1991 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 a "speed limit" zone along Route 71-35 Ramps (Evergreen Avenue) in the Borough of Brielle, Monmouth County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from the local government 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 a traffic investigation. The investigation proved that the establishment of a "speed limit" zone along Route N.J. 71-35 Ramps (Evergreen Avenue) in the Borough of Brielle, Monmouth County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.39, adopted elsewhere in this issue of the New Jersey Register, based upon the request from the local government and the traffic investigation.

Social Impact

The proposed amendment will establish a "speed limit" zone along Route N.J. 71-35 Ramps (Evergreen Avenue) in the Borough of Brielle,

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Monmouth County, for the safe and 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 will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. 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 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.

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

16:28-1.39 Route N.J. 71-35 Ramps [(Ashley Avenue)]

(a) The rate of speed designated for the certain parts of State highway Route 71-35 Ramps [(Ashley Avenue)] described in this subsection shall be established and adopted as the maximum legal rate of speed.

1. For both directions of traffic:

i. In Brielle Borough, Monmouth County:

(1) (No change.)

(2) (Evergreen Avenue) 25 miles per hour from Ashley Avenue to northerly terminus of New Jersey Department of Transportation jurisdiction south of River View Drive.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Speed Limits
Route N.J. 71 in Monmouth County
Proposed Amendment: N.J.A.C. 16:28-1.83

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Proposal Number: PRN 1991-100.

Submit comments by April 3, 1991, to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment will establish a revised "speed limit" zone along Route N.J. 71 in the Boroughs of Brielle and Manasquan, Monmouth County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request 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 a traffic investigation. The investigation proved that the establishment of a revised "speed limit" zone along Route N.J. 71 in the Boroughs of Brielle and Manasquan, Monmouth County, was warranted.

The change along Route N.J. 71 is that the speed limit zone begins at Higgins Avenue instead of at Union Lane. There has been no change in the speed limit.

The Department therefore proposes to amend N.J.A.C. 16:28-1.83 based upon the request from local governments, the survey, and the traffic investigation.

Social Impact

The proposed amendment will establish a revised "speed limit" zone along Route N.J. 71 in the Boroughs of Brielle and Manasquan, Monmouth County, for the safe and 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 "speed limit" zone signs. The costs involved in the installation and procurement of signs vary based upon the size, material used, and the method of procurement. Motorists who violate the rules will be assessed the appropriate fine, in accordance with N.J.S.A. 39 and 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 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 amendment primarily affects the motoring public and those governmental agencies responsible for the enforcement of the rules.

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

16:28-1.83 Route 71[1]

(a) The rate of speed designated for the certain [part] **parts** of State Highway [route number] **Route** 71 described in this [section] **subsection** shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

i. In Monmouth County:

[i.](**1**) 30 miles per hour from [Union Lane] **Higgins Avenue at milepost 0.00**, Brielle **Borough**, to Blakely Avenue, Manasquan **Borough**; thence

Recodify [ii.-xv.] as (**2**)-(**15**). (No change in text.)

[1]See also N.J.A.C. 16:28-1.49.

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Mid-Block Crosswalk
Route N.J. 28 in Somerset County
Proposed Amendment: N.J.A.C. 16:30-10.1

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-34.

Proposal Number: PRN 1991-101.

Submit comments by April 3, 1991, to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment will establish a revised location for the mid-block crosswalk on Route N.J. 28 (Main Street) in Somerville Borough, Somerset County, where persons may legally cross the roadway at other than an area which is controlled and directed by a police officer or a traffic control device.

As part of a review of current conditions and upon request from the local government in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation and survey proved that the establishment of a revised location for the Mid-block Crosswalk on Route N.J. 28 in Som-

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erville Borough, Somerset County was warranted, to provide additional parking on Main Street.

The Department therefore proposes to amend N.J.A.C. 16:30-10.1 based upon the request from local government and the traffic investigation.

Social Impact

The proposed amendment will establish a revised location for the mid-block crosswalk on Route N.J. 28 (Main Street) in Somerville Borough, Somerset County, to provide a designated area for persons to legally cross the roadway at other than an area which is controlled and directed by a police officer or a traffic control device. Appropriate signs will be erected to advise the motoring public and pavement markings will be placed.

Economic Impact

The Department will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the appropriate striping and signage along the roadway. The costs involved in the striping and signage along the roadway vary based upon the materials used and the method of procurement. Motorists who violate the rules will be assessed the appropriate fine as established by N.J.S.A. 39 and the State of New Jersey "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 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 amendment primarily affects the motoring public and the governmental entities responsible for enforcement of the rule.

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

16:30-10.1 Route 28

(a) Under the provisions of N.J.S.A. 39:4-34, the certain part of Route 28 described in this [section] **subsection** shall be designated as a Mid-Block Crosswalk.

1. [Along Route 28] **On** (Main Street) in Somerville Borough, Somerset County:

i. From a point [227] **252** feet east of the easterly curb line of Union Street to a point six feet easterly therefrom.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Mid-Block Crosswalk
Route N.J. 161 in Passaic County
Proposed New Rule: N.J.A.C. 16:30-10.14

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-34.

Proposal Number: PRN 1991-102.

Submit comments by April 3, 1991 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 new rule will establish a "mid-block crosswalk" along Route N.J. 161 (Clifton Avenue) in the City of Clifton, Passaic County, where persons may legally cross the roadway at other than an area which is controlled and directed by a police officer or a traffic control device, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

As part of a review of current conditions and upon request from the local government, in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation and survey. The investigation and survey proved that the establishment of a "mid-block crosswalk" along Route N.J. 161 in the City of Clifton, Passaic County was warranted, to allow residents of senior citizen housing access to shopping areas across Clifton Avenue.

The Department therefore proposes new rule N.J.A.C. 16:30-10.14 based upon the request from the local government, and the Department's traffic investigation and survey.

Social Impact

The proposed new rule will establish a "mid-block crosswalk" along Route N.J. 161 in the City of Clifton, Passaic County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace, and to provide a designated area for persons to legally cross the roadway at other than an area which is controlled and directed by a police officer or a traffic control device. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the appropriate striping and signage along the roadway. The costs involved in the striping and signage along the roadway vary based upon the materials used and the method of procurement. Motorists who violate the rules will be assessed the appropriate fine as established by N.J.S.A. 39 and the State of New Jersey, "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed new rule does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily affects the motoring public and the governmental agencies responsible for enforcement of the rule.

Full text of the new rule follows:

16:30-10.14 Route 161

(a) The certain parts of State highway Route 161 described in this subsection shall be designated as a mid-block crosswalk:

1. In Passaic County:

i. City of Clifton (Clifton Avenue):

(1) From a point 368 feet north of the northerly curb line of Allwood Road to a point 10 feet northerly therefrom.

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS

Public Employees' Retirement System
Methods of Payment
Proposed Amendment: N.J.A.C. 17:2-5.6

Authorized By: Board of Trustees, Public Employees' Retirement System, Janice Nelson, Secretary.

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

Proposal Number: PRN 1991-105.

Submit comments by April 3, 1991, to:
Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposal deletes the portion of the rule dealing with methods of payment regarding purchases of service credit within the Public Employees' Retirement System that states that certain purchases must be liquidated by age 60 and, if the member has attained age 58 or more at the time of such purchase, such member may only have two years to complete such purchase. With the elimination of mandatory age requirements and in the current attempt to treat all purchases of service credit

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in a comparable manner, it is felt that the text proposed to be deleted is obsolete.

Social Impact

The proposed amendment will affect present and future members of the Public Employees' Retirement System who are over 58 years of age and are purchasing service credit. If the portion of the rule is not deleted, such persons will have to complete such purchases within two years of the purchase, regardless of when they retire.

Economic Impact

The proposed amendment will not have any serious adverse effect upon the public or the retirement system. It may ease a financial burden of the purchaser, since he or she will now have a longer period to complete the total purchase of such service credit.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, recordkeeping or other compliance requirements upon 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 only impact upon public employers and/or public employees, this amendment will not have any effect upon small business or private industry in general.

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

17:2-5.6 Methods of payment

(a) Methods of payment include the following:

1.-2. (No change.)

3. Extra deductions equal to at least one-half of the full regular pension deduction for a maximum period of 10 years[. Class A to Class B conversions, compulsory and temporary service purchases must be liquidated by age 60; if such person has attained the age of 58 or more at the time of purchase, only two years will be specified for payment];

4. (No change.)

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RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Notice of Administrative Correction
Uniform Administrative Procedure Rules
Adjournments
N.J.A.C. 1:1-9.6

Take notice that the Office of Administrative Law (OAL) has discovered an error in the text of N.J.A.C. 1:1-9.6(j) as adopted in the February 4, 1991 New Jersey Register at 23 N.J.R. 293(a). The reference in that subsection to the sanctions contained in N.J.A.C. 1:1-14.14(a)4 and 5 is a reference to proposed paragraphs not adopted by OAL, although they are reproposed in this issue of the New Jersey Register. Pending the adoption of the reproposed paragraphs, subsection (j) should reference those sanctions in N.J.A.C. 1:1-14.4, as it did prior to this amendment. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

1:1-9.6 Adjournments
(a)-(i) (No change.)
(j) When granting an adjournment after an untimely application, a judge may order any of the sanctions contained in N.J.A.C. 1:1-[14.14(a)4 and 5] **14.4**.

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Condominium, Fee Simple and Cooperative Conversion and Mobile Home Park Retirement Full Plan of Conversion

Adopted Amendment: N.J.A.C. 5:24-1.5

Proposed: December 17, 1990 at 22 N.J.R. 3669(a).
Adopted: January 30, 1991, by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: February 1, 1991, as R.1991 d.108, **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. 2A:18-61.2.
Effective Date: March 4, 1991.
Expiration Date: July 10, 1995.

Summary of Public Comments and Agency Responses:
A comment was received from an attorney who pointed out that the applicable statute and rules do not require filing of the full plan of conversion with the Department and that the reference to a copy of the document being provided to the Department is therefore misleading. The Department agrees that this filing is not required, although it is common practice for applicants for registration under the Planned Real Estate Development Full Disclosure Act to voluntarily include it with their submissions nonetheless.

It is certainly not the Department's intention to imply that a filing is required when that is not the case, so the language stating to whom the copies are to be provided is being deleted. N.J.S.A. 2A:18-61.8 already provides that the full plan of conversion is to be served on the tenant and a duplicate of the document is to be transmitted to the municipal clerk.

Full text of the adopted rule follows (deletions indicated in brackets with asterisks *[thus]*).

5:24-1.5 Full plan of conversion
(a) The "full plan of conversion shall contain the documents and information required in (d) below and in either (b) or (c) below, as may be appropriate, and shall be in compliance with the requirements of (e) and (f) below.
(b) The full plan of condominium or fee simple conversion shall contain the following documents and information:
1.-14. (No change.)
(c)-(d) (No change.)
(e) In order to meet the procedural requirements to evict tenants who choose not to purchase ownership in the condominium, fee simple development or cooperative, a three-year notice of intention to initiate a court action for eviction must be given.
1.-4. (No change.)
(f) Copies of the full plan of conversion *[provided to the Department and to tenants]* shall conform to the following standards:
1. No printing shall be in a type smaller than six point;
2. There shall be a front cover that shall contain the name and address both of the developer and of the development;
3. There shall be a reasonably detailed table of contents setting forth the subject matter of the various sections, subsections and documents contained in the full plan of conversion and the page on which each begins;
4. The text shall be printed on good quality unglazed white paper that is no smaller than 8½ inches by 11 inches and no larger than 8½ inches by 14 inches. The cover may be of a different color, but all printing on the cover shall be legible; and
5. Each copy shall be bound, at a minimum, with heavy-duty staples.

(c)

DIVISION OF HOUSING AND DEVELOPMENT

Planned Real Estate Development Full Disclosure Regulations

Readoption: N.J.A.C. 5:26

Proposed: June 4, 1990, at 22 N.J.R. 1702(a).
Adopted: February 5, 1991, by William M. Connolly, Director, Division of Housing and Development, Department of Community Affairs.
Filed: February 7, 1991, as R.1991 d.123, **without change.**
Authority: N.J.S.A. 45:22A-35.
Effective Date: February 7, 1991, Readoption.
Expiration Date: February 7, 1996.

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. 5:26.

OAL NOTE: The amendments proposed along with this readoption were adopted at 22 N.J.R. 2682(b), effective September 4, 1990. For continuity between proposal and readoption, full text of the amendments is reproduced below:

5:26-1.4 Administration
The Act shall be administered by the Division of Housing and Development of the State Department of Community Affairs, through the Bureau of Homeowner Protection. All correspondence and inquiries may be addressed to the Bureau of Homeowner Protection, CN 805, Trenton, New Jersey 08625.

5:26-2.11 Order of revocation
(a) The Agency may revoke a registration after notice and hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 and upon finding of fact that the developer has:

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1.-7. (No change.)
(b) (No change.)

5:26-9.3 Public Offering Statement
(a) Simultaneously with the filing of an application for registration with the Agency, the developer shall serve upon all tenants in the building a copy of the proposed Public Offering Statement and file an affidavit of service with the Agency within 10 days.
1. The proposed Public Offering Statement that is given to the tenants shall contain the following statement on the first page:
THIS IS THE PROPOSED PUBLIC OFFERING STATEMENT SUBMITTED TO THE DIVISION OF HOUSING AND DEVELOPMENT, DEPARTMENT OF COMMUNITY AFFAIRS, IN AN APPLICATION FOR REGISTRATION TO CONVERT THIS BUILDING TO A CONDOMINIUM OR COOPERATIVE. THIS STATEMENT IS SUBJECT TO CHANGE. THE DEPARTMENT OF COMMUNITY AFFAIRS WILL ACCEPT WRITTEN COMMENTS CONCERNING THIS STATEMENT FOR A PERIOD OF 45 DAYS. ALL COMMENTS SHOULD BE ADDRESSED TO:
Department of Community Affairs
Planned Real Estate Development Section
Bureau of Homeowner Protection
CN 805
Trenton, NJ 08625
THIS DOCUMENT IS NOT THE NOTICE OF INTENTION TO CONVERT AND FULL PLAN OF CONVERSION REQUIRED UNDER THE NEW JERSEY STATUTE GOVERNING REMOVAL OF TENANTS (N.J.S.A. 2A:18-61.1 et seq.).

5:26-11.1 Administration
The Division of Housing and Development in the Department of Community Affairs shall administer and enforce these regulations. Within the Division, responsibility for administration and enforcement of these regulations shall be vested in the Bureau of Homeowner Protection. All powers and responsibilities vested in the Director, Division of Housing and Development, shall be executed by the Chief, Bureau of Homeowner Protection, subject to supervision by the Director and by the Assistant Director for Construction Code Enforcement, with the exception of the power to make rules and the power to make final determinations resulting from any hearing required or permitted pursuant to law.

5:26-11.5 Penalties
(a) The Commissioner, through the Agency, may levy and collect the penalties set forth in the Act after affording the person allegedly in violation an opportunity for a hearing, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., on the alleged violations, and after a final determination that said person is guilty of the violation.
(b)-(c) (No change.)

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Procedural Rules

Readoption: N.J.A.C. 5:91

Proposed: December 3, 1990, at 22 N.J.R. 3610(b).
Adopted: January 9, 1991, by the New Jersey Council on Affordable Housing, Charles Griffiths, Chairman.
Filed: February 7, 1991, as R.1991 d.119, **without change.**
Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.
Effective Date: February 7, 1991.
Expiration Date: February 7, 1996.

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. 5:91.

(b)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Substantive Rules

Readoption: N.J.A.C. 5:92

Proposed: December 17, 1990, at 22 N.J.R. 3671(a).
Adopted: February 6, 1991, by the New Jersey Council on Affordable Housing, Charles Griffiths, Chairman.
Filed: February 7, 1991, as R.1991 d.120, **without change.**
Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.
Effective Date: February 7, 1991.
Expiration Date: February 7, 1996.

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. 5:91.

HUMAN SERVICES

(c)

DIVISION OF ECONOMIC ASSISTANCE

Ruling Number 11

Economic Assistance Staff Development Program

Readoption with Amendments: N.J.A.C. 10:109

Proposed: August 6, 1990 at 22 N.J.R. 2222(a).
Adopted: February 1, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: February 4, 1991 as R.1991 d.111, with **substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 44:10-3.
Effective Date: February 4, 1991, Readoption; March 4, 1991, Amendments.
Expiration Date: February 4, 1996.

Summary of Public Comments and Agency Responses:
Comments were received from seven county welfare agencies concerning the proposed readoption of N.J.A.C. 10:109.
COMMENT: Three agencies commented that N.J.A.C. 10:109-1.2 should be modified to ensure that staffing of training reflects the needs of the agency.
RESPONSE: The yearly budget instructions issued by the Department's Division of Economic Assistance (DEA) allow for and ensure adequate staffing for training in accordance with agency needs. Based on the comments received, the Department has made minor wording modification which provides for additional support of the original intent of the proposed readoption.
COMMENT: Three agencies expressed the belief that, as written, N.J.A.C. 10:109-1.3 allows the Training Advisory Committee too much authority.
RESPONSE: Since the Committee is an advisory group, its authority is limited to recommendations and not to the establishment of policy which is vested in management. As such, no change is being made to the proposed readoption.
COMMENT: One agency recommended that the existence of the Training Advisory Committee be made optional or be contingent upon a DEA review of the agency's training plan.
RESPONSE: After further review of the proposed amendment, the Department has determined to retain the proposed language since the Training Advisory Committee can only enhance an agency's staff development program by promoting submission of input from a variety of sources on an ongoing basis throughout each year.
COMMENT: Five agencies suggested that the proposed amendment be altered to reflect the agency's ability to determine the composition of the Training Advisory Committee. One of these five agencies indicated that there was a need for union representation on the committee.

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RESPONSE: The Department concurs with the comments received and finds that allowing the agency to determine committee composition is acceptable and does not alter the intent of N.J.A.C. 10:109-1.3, provided that all agency staff are represented on the committee. The proposed language has been revised to provide that not only administrative staff, but any group deemd necessary by the agency, may be added to the group.

COMMENT: Two agencies expressed concern over what they perceived to be a requirement to have a tuition reimbursement program.

RESPONSE: The identification of a tuition reimbursement program in the proposed readoption is informational and is a suggested means for meeting career/professional development opportunities. As such, no change to the proposed readoption is being made by the Department.

COMMENT: Two agencies requested the inclusion of additional examples as to how to meet the required components of a staff development and training program.

RESPONSE: The examples cited in the proposed readoption are not to be considered as all-inclusive. The Department has reviewed the comments received from these two agencies and believes the examples, as proposed, to be sufficient and, therefore, does not recommend a change to include additional examples to the proposed text.

COMMENT: Two agencies recommended that a statement concerning availability of funds be included when determining how to meet the required components of the staff development and training program.

RESPONSE: Statements about the availability of funds are applicable when using out-service resources to meet required components of the staff development and training program. The proposed readoption does not mandate the use of out-service resources but suggests that these resources could be used as a means for meeting the required components. As a result of the Departmental review and the comments received, however, minor modifications to the proposed text at N.J.A.C. 10:109-1.4(a) have been added which will clarify this issue.

COMMENT: One agency expressed concern about a required component of the staff development and training program as being new and costly to the agency.

RESPONSE: The required component has been an ongoing responsibility of each county welfare agency since the inception of the particular management information system in question. The proposed readoption of Ruling 11 does not alter this responsibility.

COMMENT: Six agencies expressed their opinion that approval for out-service training activities could be attained through the annual training plan and/or the agency training budget submitted to the DEA, therefore, not necessitating any and/or additional approvals.

RESPONSE: The proposed readoption stipulates that prior approval be obtained from the DEA for planned out-service activities. After a review of the comments received it is the Department's position that prior approval can include information provided by the county in its budget response or annual training plan; however, plans for out-service training activities not contained or described in those documents would require such prior approval. The Department made minor wording changes to the proposed text at N.J.A.C. 10:109-1.5 as a means of clarifying this issue.

COMMENT: Two agencies expressed the desire for an amendment to allow for a $2,500 automatic approval limit for out-service training activities.

RESPONSE: The approval for out-service training activities is not based solely on the total funds required. Program content and target group factors are also to be taken into consideration. The Department does not recommend any change to the proposed text.

COMMENT: Four agencies expressed an overall interest in having N.J.A.C. 10:109 cover the programs/areas supervised by the Division of Youth and Family Services (DYFS) and Division of Medical Assistance and Health Services (DMAHS) as well.

RESPONSE: The proposed readoption of N.J.A.C. 10:109 was created as a means to ensure that Federal requirements of the Family Support Administration governing the Aid to Families with Dependent Children program and the Food Nutrition Service governing the Food Stamp program were met through the DEA's supervisory role with the 21 CWAs and each of the training operations. The intent of N.J.A.C. 10:109 is to address this unique relationship and not the relationships of the CWAs with those agencies.

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

CHAPTER 109
RULING NUMBER 11

SUBCHAPTER 1. PUBLIC ASSISTANCE STAFF DEVELOPMENT PROGRAM

10:109-1.1 Objectives for the public assistance staff development program

The purpose of public assistance staff development is to support the county welfare agency (CWA) in achieving its operating goals effectively and efficiently. The quality and extent of service an agency is able to provide is dependent on the competence and skill of the staff charged with delivering those services. Therefore, increasing the competence of staff in order to assure the highest quality of service to the people served by the public assistance programs is a continuing objective.

10:109-1.2 County welfare agency training and staff development personnel

The director of a CWA shall be responsible for the administration of the training and staff development function of the agency. A training supervisor as well as additional trainers and support staff shall be employed in accordance with yearly budget instructions issued by the Division of Economic Assistance (DEA) ***and CWA needs***, thereby adequately providing for all required components of the staff development and training program as listed at N.J.A.C. 10:109-1.4.

10:109-1.3 Training advisory committee

Each CWA shall establish a training advisory committee which assists with the development of the required annual training plan, and provides guidance, direction, and recommendations concerning the agency's overall policies and procedures for staff development and training. The committee shall be chaired by the training supervisor and shall include representation from clerical, para-professional, professional, supervisory, *[and]* administrative staff ***and/or any other group deemed necessary by the agency.***

10:109-1.4 Components of the staff development and training program

(a) Staff development and training activities will be provided through the use of both in-service and out-service resources, ***when funding is available and*** as determined by ongoing yearly needs assessments conducted by CWA training staff. Required components of a CWA staff development program shall include:

1. A mandated orientation program for new employees which shall include topics such as affirmative action, civil rights, and Acquired Immune Deficiency Syndrome (AIDS) awareness;

2. Ongoing training related to each of the public assistance programs supervised by the DEA and administered by the CWA such as Aid to Families with Dependent Children and Food Stamps;

3. Ongoing training concerning the use of all required management information systems such as Family Assistance Management Information System (FAMIS), Automated Child Support Enforcement Systems (ACSES), and On-line Management of Economic Goal Achievement (OMEGA);

4. A training program which provides for necessary skills development of CWA managers and supervisors, such as the Certified Public Managers Program or courses offered through the Management Development Institute;

5. A general skills development program for all agency staff based on individually assessed needs related to current job responsibilities. This would include programs such as Effective Writing, Communication Techniques, Computer Literacy, Tuition Reimbursement, as well as those courses available through DEA's Program to Reinforce Income Maintenance Development and Effectiveness (PRIDE) Program; and

6. Career/professional development opportunities for all staff which are offered as a means for upward mobility within the agency through such activities as tuition reimbursement for the purpose of attaining an academic degree.

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10:109-1.5 Required reporting and approvals

The reporting of all training activities by an agency's staff development operation must be on a monthly basis in accordance with DEA issued instructions. Plans for cost related out-service training activities must be discussed with and receive the prior approval of the Training office of the DEA. ***If such activities are included in an approved annual training plan and/or budget, additional approval shall not be necessary.***

CORRECTIONS

(a)

THE COMMISSIONER

Juvenile Detention Facilities
Juvenile Population Capacity
Adopted Amendment: N.J.A.C. 10A:32-4.2

Proposed: December 17, 1990 at 22 N.J.R. 3714(b).
Adopted: February 4, 1991 by William H. Fauver, Commissioner, Department of Corrections.
Filed: February 6, 1991 as R.1991 d.118, **without change.**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: March 4, 1991.
Expiration Date: April 16, 1995.

Summary of Public Comments and Agency Responses:

The Department of Corrections received two comments resulting from its reproposal of the amendment to N.J.A.C. 10A:32-4.2.

COMMENTS: Both commenters expressed disappointment with the lack of incentives, for example, sanctions for failing to comply with the three-day transfer requirement, or monetary compensation for time which juveniles remain in a county facility past the three-day limit. The commenters urged the Department of Corrections to implement a policy whereby the county would be reimbursed for juvenile detainees in the same manner as are adult inmates who are held over in the county jails. The commenters also voiced concern over whether the Department of Corrections will be able to comply with the three-day transfer requirement spelled out by N.J.A.C. 10A:32-4.2(d).

RESPONSE: The Department of Corrections has no plan to offer monetary compensation to counties for holding State sentenced juveniles. Subsequent to the court's order in *Monmouth County v. Department of Corrections*, 236 N.J. Super. 523 (App. Div. 1989), the Department of Corrections has expended every effort to accept State sentenced juveniles within the three-day limit as required by N.J.A.C. 10A:32-4.2(d), and the Department of Corrections anticipates that it will continue to comply with this rule in the future.

Full text of the adopted amendment follows:

10A:32-4.2 Juvenile population capacity

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

(d) A juvenile who receives a State sentence of incarceration shall be transported to the juvenile intake unit at the New Jersey Training School for Boys no later than three working days after the Department of Corrections receives notification, in the form of a signed commitment order and a presentence or predisposition report, from the county where the juvenile has been sentenced. The three working days shall be exclusive of the date on which the Department of Corrections receives the appropriate and necessary documentation.

(e) The county official who is responsible for transporting the juvenile shall contact the New Jersey Department of Corrections, Division of Juvenile Services, to ascertain the date on which such transfer may be effected.

INSURANCE

(b)

DIVISION OF LEGISLATIVE AND REGULATORY AFFAIRS

Administration
Readoption: N.J.A.C. 11:1

Proposed: December 17, 1990 at 22 N.J.R. 3686(a).
Adopted: January 31, 1991 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: January 31, 1991 as R.1991 d.101, **without change.**

Authority: N.J.S.A. 17:1C-6(e).

Effective Date: January 31, 1991.
Expiration Date: January 31, 1996.

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. 11:1.

(c)

DIVISION OF ACTUARIAL SERVICES

Medicare Supplement Coverage
Appendix to Subchapters 16 and 23 of Chapter 4
Adopted Amendments: N.J.A.C. 11:4-16.6, 16.8, 23.6 and 23.8; Appendix to Subchapters 16 and 23 "Bridging the Medicare Gaps; A Guide to Medicare Supplements"; Medicare Deductibles and Co-payments for 1990; and Notice of Changes in Medicare and Your Medicare Supplement Coverage—1990.
Adopted Repeal: Appendix to Subchapters 16 and 23 "Bridging the Medicare Gaps: A Guide to Medicare Supplement (Information Concerning Changes to the Medicare Program Effective January 1, 1989); Notice of Changes in Medicare and Your Medicare Supplement Coverage—1989, 1990 and 1991, and Medicare Deductibles and Copayments for 1989.

Proposed: March 5, 1990 at 22 N.J.R. 771(a).
Adopted: February 7, 1991 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: February 7, 1991 as R.1991 d.121, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:35C-7 and 17B:26A-7.

Effective Date: March 4, 1991.
Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: Two commenters criticized "Bridging the Medicare Gaps: A Guide to Medicare Supplements" ("Buyer's Guide") in its treatment of the three plans which Blue Cross and Blue Shield of New Jersey ("BCBSNJ") markets to persons eligible for Medicare. One commenter stated that BCBSNJ was receiving free advertising to the detriment of other insurers. The other commenter stated that the plans offered by BCBSNJ were not necessarily the best coverage buy for the consumer's dollar. This commenter stated that by discussing BCBSNJ's plans in detail, to the exclusion of any other plan or policy, the Department of Insurance ("DOI") is influencing the consumer to buy from BCBSNJ.

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RESPONSE: DOI has no intent to endorse or otherwise promote BCBSNJ or any of its plans. Rather, the Buyer's Guide presentation of the three BCBSNJ plans is intended to inform consumers that two of the three are not qualified Medicare supplement plans, under New Jersey law. These two plans provide less coverage than BCBSNJ's Medicare supplement plan, "Super 65," and any other qualified Medicare supplement plans.

The Department notes that approximately 94 percent of the Medicare supplement contracts or policies in force in New Jersey, as of the end of 1989, were issued by BCBSNJ or AARP. Of the nearly 271,900 Medicare supplement contracts and policies in force in this State, about 127,900 belong to BCBSNJ's "Super 65" plan. However, BCBSNJ has in force another 125,900 contracts based on its "65" and "65 Select" plans which provide only very limited benefits and are not Medicare supplement plans.

The Buyer's Guide should educate consumers that although these plans are offered by a familiar insurer, at a price which appears affordable, they nevertheless may not be the best buy available. DOI does not believe the prejudicial effect, if any, which the presentation may have against other insurers outweighs the consumer's need to know about BCBSNJ's plans and the significant distinctions between them.

COMMENT: One commenter questioned the necessity of the New Jersey Buyer's Guide, noting that a generic pamphlet entitled "A Guide to People on Medicare" is available. The commenter states that the pamphlet contains sufficient information on Medicare, as well as information of a generic nature on private insurance, and that by allowing mass production of the generic booklet, expenses of the insurer would be somewhat reduced.

RESPONSE: The pamphlet noted by the commenter is produced by the Health Care Financing Administration ("HCFA") in conjunction with the National Association of Insurance Commissioners. While valuable, the HCFA pamphlet is generic and does not describe each state's requirements. In fact, the HCFA pamphlet advises the reader to consult his or her own state insurance department to determine what minimum benefit standards are in effect in the individual's own state, and whether the specific standards will apply to the individual's policy or prospective policy.

By contrast, the Buyer's Guide is specific to New Jersey. The Buyer's Guide explains Medicare supplements, hospital indemnity and specified disease policies and the specific New Jersey standards for these insurance products. The Buyer's Guide provides information about State-sponsored programs for the elderly which are not included in the HCFA pamphlet. The Buyer's Guide also provides numerous addresses and telephone numbers where consumers may obtain further, specialized help or information.

Since the HCFA pamphlet directs readers to solicit information from their specific state insurance departments, DOI has found it expedient to produce its own Buyer's Guide providing both the generic information contained in the HCFA pamphlet and information specific to New Jersey. DOI believes this is in the best interests of the Medicare-eligible consumer.

COMMENT: One commenter suggested that an explanation be included under the section heading "What Does Your Employer Offer?," to note that, under certain circumstances, group major medical coverage may provide a valuable supplement to Medicare benefits.

RESPONSE: DOI agrees that addition of such an explanation is worthwhile. The following language is being included upon adoption: "Continuation of a major medical plan through a former employer may help pay for some costs after medicare stops paying or for costs Medicare will not pay at all—for example, medical bills that exceed the Medicare allowed amount."

COMMENT: One commenter suggested deletion of the reference to the immunosuppressive drug therapy benefit, since it is one of many services which are covered by the Part B 20 percent co-payment benefit.

RESPONSE: DOI agrees with the commenter. Specific reference to the immunosuppressive drug therapy benefit has been deleted upon adoption.

COMMENT: One commenter questioned the necessity of the section discussing specified disease policies, since New Jersey prohibits the sale of such policies.

RESPONSE: While it is true that the issuance and delivery of specified disease policies is prohibited in New Jersey, New Jersey residents are often offered specified disease coverage through out-of-State group plans. DOI believes consumers should be aware that this coverage provides little or no protection for most individuals.

Summary of Agency-Initiated Changes:

The Department is making several changes upon adoption, which are primiarily technical in nature, and therefore, do not require an additional comment period.

The Department is amending its printing specification for the Buyer's Guide in an effort to reduce printing and distibution costs. For insurers, savings in the cost of printing may be nominal. However, the lighter weight of the booklet should reduce distribution costs for both insurers and the Department.

The Department is aware that insurers in the past have been concerned about the costs of the booklet. The Department maintains, however, that the specified weight and quality of the paper benefits consumers and should not be compromised. The weight of the paper and cover make the book easy to handle and prevents type bleed-through, which makes it easier to read. Furthermore, the weight is necesary to support the Medicare deductible and copayment chart insert. The current amendments will reduce costs without sacrificing quality at this time.

Several address changes or clarifications have been made. Additionally, in an effort to expedite the processing of information requests, the Department is asking consumers to supply self-addressed envelopes.

The Department has also altered an example of an insured's payment liability for health care costs under the Medicare program. In 1991, physicians essentially are prohibited from charging Medicare-eligible patients amounts exceeding 125 percent of the Medicare-approved amounts. This upper limit will decrease in subsequent years. The example of an insured's uncovered costs has been adjusted to more accurately reflect these changes in the Medicare program.

Finally, the Department is updating Exhibits B and C of the Appendix to subchapters 16 and 23. These Exhibits contain the Medicare Deductibles and co-payment chart and Notice of Changes in Medicare, respectively. Both the required deductible and copayment amounts have changed for 1991, and the Exhibits have been revised upon adoption to reflect these changes in Medicare.

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks ***thus***; deletions from the proposal shown in brackets with asterisks *[thus]*):

11:4-16.6 Minimum standards for benefits

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

(j) "Medicare supplement coverage" is a health insurance policy sold to a Medicare eligible person, which is designed primarily to supplement Medicare, or is advertised, marketed, or otherwise purported to be a supplement to Medicare and which meets the following minimum benefit standards and rules:

1.-2. (No change.)

3. Medicare supplement coverage shall comply with the following:

i.-vii. (No change.)

viii. The notices mandated by (j)3vii above shall be in the format set forth in the Appendix to subchapters 16 and 23 of this chapter, Exhibit C (Notice of Changes in Medicare and Your Medicare Supplement Coverage), which is incorporated herein as part of this rule. Notices shall not contain or be accompanied by any solicitation. No modifications shall be made to an existing Medicare supplement policy when the notices are sent except those necessary to eliminate duplication of Medicare benefits;

ix.-xi. (No change.)

(k) (No change.)

11:4-16.8 Required disclosure provisions

(a) General disclosure requirements are as follows:

1.-13. (No change.)

14. An informational brochure for persons eligible for Medicare by reason of age which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare, shall be furnished by each insurer to each such Medicare eligible person in connection with the purchase of a health insurance policy other than a short-term nonrenewable policy. The full text of the approved guide appears as an Appendix to subchapters 16 and 23 of this chapter, Exhibit A and is entitled "Bridging the Medicare Gaps: A Guide to Medicare Supplements".

15. To ensure uniformity in the content, form and printing of the guide, each insurer shall comply with the following requirements:

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i. (No change.)

ii. The guide shall be printed according to the following specifications:

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

(3) The inside pages of the guide shall be printed on 70 pound *[coated Matee, Patina]* ***dull Centura*** or approved equal;

(4) The cover of the guide is to be printed on *[9]* ***8*** pt. *[Carolina]* ***Champion Kromekote*** cover, coated two sides;

(5)-(6) (No change.)

iii. A chart entitled "Medicare Deductibles and Co-payments for 19__" shall be included in the back pocket of each guide. A sample copy of this chart appears as an Appendix to subchapters 16 and 23 of this chapter, Exhibit B. To ensure uniform design, content and printing of the chart, the Department of Insurance, Division of *[Public Affairs]* ***Enforcement and Consumer Protection, Senior Health Insurance Program***, will provide sample copies of the charts to insurers, to the format of which insurers must adhere exactly.

16. (No change.)

(b)-(n) (No change.)

11:4-23.6 Minimum benefit standards

(a) (No change.)

(b) The following general standards apply to Medicare Supplement policies and are in addition to all other requirements of this subchapter:

1.-6. (No change.)

7. The notices mandated by (b)6 above shall be in the format set forth in the Appendix to subchapters 16 and 23 of this chapter, Exhibit C (Notice of Changes in Medicare and Your Medicare Supplement Coverage), which is incorporated herein as part of this rule. Notices shall not contain or be accompanied by any solicitations. No modifications shall be made to an existing Medicare supplement policy when the notices are sent except those necessary to eliminate duplication of Medicare benefits.

8.-10. (No change.)

(c) (No change.)

11:4-23.8 Required disclosure provisions

(a) General rules concerning required disclosure provisions include the following:

1.-5. (No change.)

6. Insurers and hospital or medical service corporations issuing policies, certificates or subscriber contracts which provide hospital or medical expense coverage on an expense incurred, indemnity, or service benefit basis, other than incidentally, to persons eligible for Medicare by reason of age shall provide for delivery to all applicants an informational brochure, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. The full text of the approved guide appears as an Appendix to subchapters 16 and 23 of this chapter, Exhibit A, and is entitled "Bridging the Medicare Gaps: A Guide to Medicare Supplements".

7. To ensure uniformity in the content, format and printing of the guide, each insurer shall comply with the following requirements:

i. (No change.)

ii. The guide shall be printed according to the following specifications:

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

(3) The inside page of the guide shall be printed on 70 pound *[coated Matee, Patina]* ***dull Centura*** or approved equal;

(4) The cover of the guide is to be printed on *[9]* ***8*** pt. *[Carolina]* ***Champion Kromekote*** cover, coated two sides;

(5)-(6) (No change.)

iii. A chart entitled "Medicare Deductibles and Co-payments for 19__" shall be included in the back pocket of each guide. A sample copy of this chart appears as an Appendix to subchapters 16 and 23 of this chapter, Exhibit B. To ensure uniform design, content and printing of the chart, the Department of Insurance, Division of *[Public Affairs]* ***Enforcement and Consumer Protection, Senior Health Insurance Program***, will provide sample copies of the chart to insurers, to the format of which insurers must adhere exactly.

8.-9. (No change.)

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

APPENDIX TO SUBCHAPTERS 16 and 23
EXHIBIT A
BRIDGING THE MEDICARE GAPS: A GUIDE TO MEDICARE SUPPLEMENTS

INTRODUCTION

Medicare. The word can be both a comfort and a puzzle. A comfort because Medicare is a program which provides good, basic health coverage at minimal cost. A puzzle because the program's structure makes it look harder to understand than it really is.

Medicare historically has paid a relatively stable share of health care costs for older citizens, ranging from about 40 percent in 1977, 45 percent in 1984 and 40.1 percent in 1988, according to the U.S. House of Representatives Select Committee on Aging.

But health care costs have been rising faster than inflation—which means higher medical bills. So even though older people have been paying a relatively constant percentage of their medical bills, the bills themselves are larger. The bottom line is that older citizens are paying more total dollars for their share of health care costs.

Before making a decision about what kind of insurance to buy, everyone should assess his or her own needs. Assessing the need for additional protection is easier if one understands the basic structure of Medicare. The first section of this booklet is designed with that in mind.

The rest of this booklet will tell you what other types of insurance are available to fill some of Medicare's gaps.

BASIC STRUCTURE OF MEDICARE

. . .

The two parts in the program parallel the divisions in the medical community between hospitals and physicians. Although hospitals are filled with doctors, few doctors actually work for hospitals. Most physicians are independent business people. So, if you go to the hospital with the flu, you receive separate bills—one for the things the hospital provides such as a room, nurses, food and drugs; and another for the doctors who treat you. Similarly, Medicare has two parts—A, which pays inpatient hospital bills, and B, which pays doctors' bills and ***other*** outpatient medical expenses.

Part B, the medical portion requires a monthly premium, which, for most people, is deducted from the Social Security check. You're automatically enrolled in Part B when you enroll in Part A, unless you specifically state you don't want it. If you choose not to enroll in Part B when you sign up for Medicare, you can join the program later. But if you wait, the premiums will be higher. If you wait because you're still working and you're still covered under your employer's group health plan, you will not have to pay the higher Part B premium when you do sign up.

Each of the two parts has a deductible, an amount of money which you have to pay before Medicare starts paying.

Each also requires a co-payment, a part of each bill you're required to pay.

And each has its own rules about when these payments are required. The specific dollar amounts can change from year to year. The chart in the back pocket of this booklet shows this year's deductible and co-payment amounts.

Medicare Part A—Hospital Insurance

The hospital insurance portion of Medicare Part A, pays hospital room and board fees. It also pays for some goods and services (such as laboratory costs, physical therapy and drugs) while you're a patient in the hospital.

Part A does not cover all hospital bills. It covers a portion of them, depending on how long you are in the hospital and on the basis of benefit periods (see page ____).

Drawn on a graph like the one on page ____, the system resembles a three-step staircase. First you pay the Part A hospital deductible (which is roughly equal to the average national cost of one day in a hospital).

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What Part A Also Covers

Medicare also pays for three of the newer, less expensive alternatives to hospitalization—skilled nursing facility care, home health care and hospice care.

How Often Can You Collect?

Medicare Part A pays hospital expenses on the basis of benefit periods. A benefit period starts when you enter a hospital and ends when you have been out of the hospital or skilled nursing facility for 60 days in a row.

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When Will Medicare Refuse to Pay?

Medicare covers time in skilled nursing facilities, which are sometimes called nursing homes. But **Medicare does not cover custodial nursing home care** that provides only a place to live and help with personal needs such as bathing, feeding, dressing and taking medicine.

Usually Medicare pays hospitalization, skilled nursing facility and home health agency fees only when the facility or agency is Medicare-approved. **Although all New Jersey hospitals are approved,** some hospitals and treatment centers in other states may not be. And even if a skilled nursing facility or home health agency is licensed by the state, it may not be Medicare-approved.

Medicare may also refuse to pay for **experimental or controversial procedures.**

Except under certain very limited conditions in Canada and Mexico, Medicare will not cover care received outside the United States.

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Medicare Part B—Medical Insurance

Medicare Part B, medical insurance, is the section that helps to pay your doctor, whether you are in or out of the hospital. It also serves as a catch-all for the wide range of services people use when they are not patients in hospitals—outpatient visits to hospitals, physical therapy, laboratory tests, medical equipment (like wheelchairs or oxygen), and medically necessary home health visits.

The medical insurance portion, Part B, has an annual deductible, an amount which you must pay once each year before Medicare will pay any bills related to Part B. The deductible can change, so the chart in the pocket on the back page shows the amount for this year.

How Much Does It Pay?

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Example: Suppose the Medicare approved amount for a medical procedure is $40, but your doctor charges you *[$100]* ***$50***. Medicare will pay 80 percent of the $40 approved amount, or $32; you pay the 20 percent co-payment, or $8. But you also make up the difference between the *[$100]* ***$50*** bill and Medicare's $40 approved amount (*[$60]* ***$10***). So the total out-of-pocket cost to you is *[$68]* ***$18***.

Some doctors accept assignment some of the time, some accept it all the time, while others never accept it at all. Find out, before treatment, whether your doctor will accept assignment. Each year, doctors and medical service suppliers can sign agreements to become Medicare-participating doctors or suppliers. This means they agree in advance to accept assignment for all Medicare claims. The "Medicare-Participating Physician/Supplier Directory", which is available in Social Security offices and county *[offices]* ***Offices*** on Aging, gives the names and addresses of Medicare-participating doctors and suppliers. You can also get this directory from *[Blue Shield of]* Pennsylvania ***Blue Shield***, the Medicare carrier for New Jersey.

For a detailed description of the Medicare program, ask your local Social Security office for a free copy of Your Medicare Handbook.

FILLING IN THE GAPS

You can bridge the gaps in Medicare in a variety of ways. But there are choices to make. Different policies tend to plug different holes in the Medicare program, so you probably won't find one policy that pays all of your health care costs.

To decide which policy suits you best, begin by evaluating your needs and financial circumstances. How much you can afford to pay for insurance? Do you want first dollar coverage that will help pay Medicare's deductibles and co-payments? Or are you more concerned about covering things that Medicare does not—for example, doctors' bills that go beyond the Medicare-approved amount or care outside the United States? Will you find it easier to budget regular insurance payments than to worry about later medical bills you might not be able to pay?

Medicaid

For some people, paying even small amounts for medical expenses or another health insurance policy may be a real hardship. If you are one of them, check with your local Social Security Office or the state or *[county welfare agency]* ***County Welfare Agency*** to see if you are eligible for Medicaid, a free health care program for low-income people funded by the state and federal governments.

Although the combination of Medicare and Medicaid pays many of your health care costs, you should consider the following points before dropping any Medicare supplement policy you may already have:

1. a Medicare supplement policy may cover services not paid by Medicaid, such as private duty nursing, care outside the United States, a private room in a hospital;
2. if your Medicaid eligibility ends, you may have a six month waiting period before a new policy will pay benefits for health conditions you already have;
3. if you enter a nursing home, Medicaid will pay the premium for your Medicare supplement policy;
4. if you cancel Medicare supplement coverage that has been available to you at no charge as a retirement benefit or through your spouse, it may not be renewable if you no longer qualify for Medicaid.

New Jersey also has a variety of health care programs available to certain needy residents who may not qualify for the traditional Medicaid Program. Each program has its own eligibility requirements. Contact your County Welfare Agency or Board of Social Services to see if you qualify for any of the following:

New Jersey Care
Medically Needy
Community Care Program for the Elderly and Disabled (CCPED)
AIDS Community Care Alternative Program (ACCAP)

Prescriptions and Hearing Aids

New Jersey has a program that will help pay for prescription drugs, and another that will help pay for hearing aids.

The Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program helps pay for prescription medicines and some pharmacy items such as insulin syringes and needles.

The Hearing Aid Assistance to the Aged and Disabled (HAAAD) Program reimburses $100 to eligible residents of New Jersey who buy a hearing aid.

To qualify for PAAD or HAAAD, you must be at least 65 or be receiving Social Security Disability, and you must meet certain income limits. The limits which are higher than those for Medicaid, can change.

For more information about each program call the toll-free hotline at (800) 792-9745.

What Does Your Employer Offer?

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One kind of insurance you may be able to keep through continuation or conversion is a major medical policy.

As the name *[applies]* ***implies***, major medical coverage is designed to cover very large medical bills, usually after you have paid a substantial deductible. The deductibles may be as high as $1,000, but the coverage can amount to as much as $1 million.

Continuation of a major medical plan through a former employer may help pay for some costs after Medicare stops paying or for costs Medicare will not pay at all—for example, medical bills that exceed the Medicare allowed amount.

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Health Maintenance Organizations

Membership in a health maintenance organization—HMO—is another way to fill the gaps in Medicare. HMOs are prepaid health care programs. Like insurance policies, HMOs cover certain health care costs. Unlike insurance policies, HMOs actually provide health care services. Some HMOs have contracts with Medicare. As a Medicare beneficiary, you're eligible to join an HMO if you participate in at least Part B of Medicare and live in a county where an HMO that contracts with Medicare is available.

If you join an HMO, you don't have to pay the Medicare deductibles or co-payments or file claims. You pay a monthly premium to the HMO, which provides doctors' services and most other health care. You may have to pay a co-payment of $1 to $10 for some services.

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There are different kinds of HMOs. Some have all their doctors located in facilities owned by the HMO. Some are networks of physicians who maintain their own offices and service HMO patients as a part of their regular practice.

HMO plans and premiums vary. A "low option" HMO plan generally covers at least the services included under the regular Medicare program. A "high option" plan usually includes additional services not covered by Medicare, for example, eye care.

For further information on Medicare-contracting HMOs, write the New Jersey Department of Insurance, *[Public Affairs Division]* ***Enforcement and Consumer Protection***, Senior Health Insurance Program, CN 325, Trenton, N.J. 08625.

Medicare Supplement Policies

If you are looking for a policy specifically designed to coordinate with Medicare, you may want to consider a Medicare supplement policy. The phrase "Medicare supplement" is a special term reserved in New Jersey for policies that meet minimum standards set by the state. Most policies sold to individuals are required to cover at least:

- the Part A hospital co-payment amounts;
- 90% of hospital expenses after 150 days (when Medicare runs out), up to a total of 365 days;
- 20% of Medicare's approved amounts under Part B subject to a maximum calendar year deductible of $75;
- the reasonable cost of the first three pints of blood;

[• 20% of the costs for immunosuppressive drug therapy for one year following an organ transplant.]

Medicare supplement policies vary widely in price, depending on what they cover. Some supplements, for example, also cover a part of private duty nursing care, prescription drugs and the Part B deductible. Generally, the more comprehensive the coverage, the more expensive the policy will be.

The Department of Insurance maintains a *[chart listing]* ***list of*** the individual Medicare supplement policies for sale in New Jersey. *[The listing includes the cost of the policy and the benefits it offers.]* The *[chart]* ***list*** is updated each year.

If you need a copy of the *[chart or other help, write]* ***list, send a self-addressed, stamped envelope to*** the Department ***of Insurance, Enforcement and Consumer Protection, Senior Health Insurance Program, CN 325, Trenton, New Jersey 08625***.

Blue Cross and Blue Shield Coverage

Blue Cross and Blue Shield of New Jersey, Inc. is a non-profit health service corporation offering three individual plans designed to coordinate with Medicare. However, only one of the three plans meets New Jersey's minimum standards for Medicare supplements.

SUPER 65

Blue Cross and Blue Shield Super 65 meets New Jersey's minimum standards for Medicare supplements. It pays the Part A deductible and Medicare's hospital co-payments. After 150 days in a hospital when Medicare stops paying, Super 65 covers 100 percent of Medicare eligible expenses for an unlimited number of days. It pays the Part B deductible, 20 percent of Medicare's allowed amounts for doctors and other out of hospital services without any dollar maximums. Super 65 covers the cost for care received outside the United States. You may enroll in Super 65 any time during the year. However, there is a six month waiting period for pre-existing conditions.

The following two plans are "limited benefit" policies because they do not pay all the benefits, or the dollar amounts of the benefits are less than what we require of Medicare supplements:

65

Blue Cross and Blue Shield 65 is designed to provide basic hospitalization coverage. It pays the Part A deductible and co-payments, and costs for care outside the United States. It also pays the Part B deductible and 20 percent of Medicare's approved amount for doctors who see you while you're hospitalized. Blue Cross and Blue Shield 65 pays 20 percent co-payments for some services outside a hospital but there are annual dollar maximums. It does not pay for hospitalization after 150 days (when Medicare runs out) and it does not cover physician home or office visits.

65 SELECT

Blue Cross and Blue Shield 65 Select is primarily aimed at covering the costs for *[people who fear the expense of]* a long hospital stay. You pay the everyday health care costs—the Part A and B deductibles and some medical co-payments—yourself. 65 Select will pay the Part B co-payment for physician care in the hospital, the Part A hospitalization co-payments, and 90 percent of hospital costs after Medicare runs out. It pays for some services performed outside a hospital, subject to annual dollar maximums, and for health care costs while traveling outside the United States. 65 Select does not cover physician home or office visits.

You can apply for Blue Cross and Blue Shield 65 or 65 Select within 31 days of your 65th birthday, or your Medicare effective date if you're disabled. If more than 31 days have passed since your 65th birthday, you can apply during the open enrollment period from February 1 through April 30 of each year. Your coverage will take effect on July 1.

Hospital Indemnity Policies

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The disadvantage is that they pay only if you're hospitalized. No matter what your medical bills are, you can't collect unless you're in the hospital.

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The other thing to be careful about is that the payments made to you may be much lower than your bills—even though policies sold in New Jersey are required to pay at least $40 a day. Also, the amount of the benefit can remain the same year after year, so unless you update your coverage occasionally, inflation will take its toll on the value of the payments. If you do buy a hospital indemnity policy, try to update it every few years.

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Long Term Care Policies

Long-term care refers to a wide range of medical and non-medical services people need for a long period of time due to a chronic illness, disability, or physical or mental handicap. Long-term care can be provided in a nursing home, at home or in a community facility.

Long-term care insurance policies cover different levels of nursing home care—skilled, intermediate, and custodial. Some will also help pay for alternatives to nursing home care: for example, home care and adult day care.

Before you buy a long-term care policy, be sure to read the policy provisions carefully. Will the policy pay benefits for skilled, intermediate and custodial nursing home care? Will it cover home health care? What is the definition for each level of care? Is there a waiting period (a period of time you have to be in the nursing home or receive home care before the policy will pay benefits)? Does the policy specifically exclude coverage for any conditions? How long will the policy pay benefits? Under what conditions can the company cancel or refuse to renew the policy?

For *[more information about long-term care policies, write the Department of Insurance for]* a copy of our "Buyer's Guide to

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Long-Term Care Insurance*[.]*"*, **send a self-addressed legal size envelope to: Long-Term Care Buyer's Guide, Public Affairs Division, Department of Insurance, CN 325, Trenton, New Jersey 08625.***

. . .

Specified Disease Policies

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Specified disease policies are a bad buy because they pay in so few situations that odds are heavily stacked against the company ever paying you anything.

Be An Educated Consumer

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Don't duplicate coverage. It's better to buy the most comprehensive policy you can afford than several policies that duplicate coverage. Some policies will not pay for an expense already covered under another policy. So if you buy two of the same kind of policy, you can wind up with two sets of payments but only one set of benefits. It is a federal crime for someone to knowingly sell you a policy that duplicates Medicare or any private health policy you already have, but that will not pay costs covered by another insurance policy.

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Watch Out for Key Phrases

Policies are contracts, and like other legal documents, they use special vocabulary, including:

. . .

Pre-existing Condition*[s]* Exclusions. Policies may not pay bills for a health condition you had before you bought the policy. This usually isn't a problem with coverage extended by employers, and in New Jersey, Medicare supplements must pay for any conditions after you*'ve* *[have]* had the policy for six months. But policies that are not called Medicare supplements, such as hospital indemnity policies, can have pre-existing condition exclusions of up to two years.

Renewal. Find out if and when a company can refuse to renew the policy. There are three common types of renewal conditions:

Guaranteed renewable. This means that the company agrees to renew each year until you reach a certain age or for life as long as you pay the premium. *[Medicare supplement policies in New Jersey must be guaranteed renewable.]*

You may see policies *[other than Medicare supplements]* that are:

Conditionally renewable. This means that the company agrees to renew as long as the company continues to insure people in the state with the same kind of policy. If the company decides to discontinue selling that kind of policy here, the coverage can be non-renewed at the end of the policy year or the next premium due date.

Renewable at company option. A policy with this provision can be non-renewed for any reason at the end of the policy year. This kind of clause is prohibited in New Jersey for individual policies, but you may see sales materials for policies with this type of renewal clause from outside the state.

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A Few Cautions

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Be honest on the insurance application. If you lie or don't give a complete medical history, the company can refuse to pay. If someone else helps you fill out the application, check it before signing. It is your claim that will be denied if incorrect medical history is on the application.

. . .

By law, you have a 30-day "free look" to read the policy and return it for a full refund if your are not satisfied.

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Getting Help

To get help filling out claim forms, evaluating policies and finding answers to your health insurance questions, you can contact the Senior Health Insurance Program (SHIP). SHIP is a free service designed to help you with your health insurance problems or questions. You can contact the New Jersey Division on Aging at 1-800-792-8820 for the number of the SHIP office in your county.

[The Department of Insurance maintains charts listing the individual Medicare supplement policies and long-term care policies for sale in New Jersey. The listings include the costs of the policies and the benefits offered. The charts are updated each year.]

If you need *[copies of the charts or]* other help, write the Department of Insurance *[at 20 West State Street]**, **Enforcement and Consumer Protection, Senior Health Insurance Program***, CN-325, Trenton, New Jersey 08625.

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EXHIBIT B
MEDICARE DEDUCTIBLES AND CO-PAYMENTS FOR *[1990]* ***1991***

MEDICARE PART A

Service	Length of Stay	You Pay	Medicare Pays
Hospitalization	First 60 days	$*[592]* ***628*** deductible	Balance
	61st-90th day	$*[148]* ***157*** co-payment per day	Balance
	91st-150th day	$*[296]* ***314*** co-payment per day	Balance
	Beyond 150 days	All costs	Nothing
Post-hospital Skilled Nursing Facility Care	First 20 days	Nothing *provided all conditions are met (see **Your Medicare Handbook**)	All Costs
	21st-100th day	$*[74]* ***78.50*** co-payment per day	Balance
Home Health Care		Nothing *provided all conditions are met (see **Your Medicare Handbook**)	All Costs
Hospice Care *Nursing care, physician's services, physical/ occupational therapy, medical supplies, home health aide services, counseling services (except for bereavement counseling).		Nothing *provided all conditions are met (see **Your Medicare Handbook**)	All Costs
*Drugs and Biologicals		5% co-payment	Balance
*Respite Care		5% co-payment	Balance

MEDICARE PART B

Medical Expenses		$*[75]* ***$100*** annual deductible 20% of Medicare-approved amount after deductible	80% of Medicare-approved amount after deductible

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EXHIBIT C

(COMPANY NAME)

NOTICE OF CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT COVERAGE—*[1990]* ***1991***

THE FOLLOWING OUTLINE BRIEFLY DESCRIBES THE MODIFICATIONS IN MEDICARE AND IN YOUR MEDICARE SUPPLEMENT COVERAGE. PLEASE READ THIS CAREFULLY!

(A BRIEF DESCRIPTION OF THE REVISIONS TO MEDICARE PARTS A & B WITH A PARALLEL DESCRIPTION OF SUPPLEMENTAL BENEFITS WITH SUBSEQUENT CHANGES, INCLUDING DOLLAR AMOUNTS, PROVIDED BY THE MEDICARE SUPPLEMENT COVERAGE IN SUBSTANTIALLY THE FOLLOWING FORMAT.)

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	In *[1989]* ***1990*** Medicare Pays Per Calendar Year	Effective January 1, *[1990]* ***1991*** Medicare Will Pay	In *[1989]* ***1990*** Your Coverage Pays	Effective January 1, *[1990]* ***1991*** Your Coverage Will Pay
MEDICARE PART A SERVICES AND SUPPLIES				
Inpatient Hospital Services	*[Unlimited number of hospital days after $560 deductible]*	All but $*[592]* ***628*** for first 60 days/ benefit period		
Semi-Private Room & Board	***All but $592 for first 60 days/benefit period**	All but $*[148]* ***157*** a day for 61st-90th days/benefit period		
Misc. Hospital Services & Supplies, such as Drugs, X-Rays, Lab Tests & Operating Room	**All but $148 a day for 61st-90th days/benefit period** **All but $296 a day for 91st-150th days (if individual chooses to use 60 nonrenewable lifetime reserve days)***	All but $*[296]* ***314*** a day for 91st-150th days (if individual chooses to use 60 nonrenewable lifetime reserve days)		
BLOOD	*[Pays all costs except payment of deductible (equal to costs for first 3 pints) each calendar year. Part A blood deductible reduced to the extent paid under Part B]* ***Pays all costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period***	Pays all costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period		
SKILLED NURSING FACILITY CARE	There is no prior confinement requirement for this benefit	100% of costs of 1st 20 days (after a 3 day prior hospital confinement)/benefit period		
	*[First 8 days— All but $25.50 a day	All but $*[74.00]* ***78.50*** a day for 21st-100th days/benefit period		
	9th through 150th day— 100% of costs	Beyond 100 days— Nothing/benefit period		
	Beyond 150 days— Nothing]* ***100% of costs for 1st 20 days (after a 3 day prior hospital confinement)/benefit period Beyond 100 days— Nothing/benefit period***			

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MEDICARE PART B SERVICES AND SUPPLIES	80% of allowable charges (after $75 deductible)	80% of allowable charges (after $*[75]* ***100*** deductible/calendar year)
PRESCRIPTION DRUGS	Inpatient prescription drugs. 80% of allowable charges for immuno-suppressive drugs during the first year following a covered transplant after $75 deductible/ calendar year)	Inpatient prescription drugs. 80% of allowable charges for immuno-suppressive drugs during the first year following a covered transplant (after $*[75]* ***100*** deductible/calendar year)
BLOOD	80% of all costs except nonreplacement fees blood deductible) for first 3 pints in each benefit period after $75 deductible/ calendar year)	80% of all costs except nonreplacement fees blood deductible) for first 3 pints (after after $*[75]* ***100*** deductible/calendar year

(Any other policy benefits not mentioned in this chart should be added to the chart in the order prescribed by the outline of coverage. If there are corresponding Medicare benefits, they should be shown.)

(Describe any coverage provisions due to Medicare modifications.)

(Include information about when premium adjustments that may be necessary due to changes in Medicare benefits will be effective.)

THIS CHART SUMMARIZING THE CHANGES IN YOUR MEDICARE BENEFITS AND IN YOUR MEDICARE SUPPLEMENT PROVIDED BY (COMPANY) ONLY BRIEFLY DESCRIBES SUCH BENEFITS. FOR INFORMATION ON YOUR MEDICARE BENEFITS CONTACT YOUR SOCIAL SECURITY OFFICE OR THE HEALTH CARE FINANCING ADMINISTRATION. FOR INFORMATION ON YOUR MEDICARE SUPPLEMENT (Policy) CONTACT:

(COMPANY OR FOR AN INDIVIDUAL POLICY—NAME OF AGENT) (ADDRESS/PHONE NUMBER)

(a)

DIVISION OF ACTUARIAL SERVICES

Annual Medicare Supplement Policy Survey

Adopted New Rules: N.J.A.C. 11:4-35

Proposed: April 16, 1990 at 22 N.J.R. 1226(a).

Adopted: February 7, 1991 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: February 7, 1991 as R.1991 d.122, **with substantive and technical changes** not requiring additional public notice and comments (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:35C-7 and 17B:26A-7.

Effective Date: February 7, 1991.

Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:

One comment from one insurance company was received.

COMMENT: The commenter stated that the annual reporting requirements were unclear with respect to who must file. The commenter noted that N.J.A.C. 11:4-35.2 limits the scope of the subchapter to "insurers providing Medicare supplement coverage in this State." However, the commenter inferred that N.J.A.C. 11:4-35.4 would require annual filings by all insurers, and suggested that this section be amended to provide an exemption from the annual filing requirements for those insurers not providing Medicare supplement insurance in New Jersey.

RESPONSE: Since N.J.A.C. 11:4-35.2 limits the scope of the rule to insurers providing Medicare supplement coverage in this State, the Department of Insurance believes that it should be clear that any insurer not providing such coverage in this State is exempted from making annual filings. N.J.A.C. 11:4-35.4 specifically refers back to N.J.A.C. 11:4-35.2 so no further changes are needed to clarify those provisions. However, the definition of "insurer" is being amended upon adoption to make it clear that only insurers which have provided or will offer to provide Medicare supplement coverage in this State are subject to the new rules.

Summary of Agency-Initiated Changes:

One purpose of these rules, as proposed, was to obtain current information from insurers about their Medicare supplement policies, and then report this information to the United States Secretary of Health and Human Services, in accordance with the reporting requirements of Section 1882(b)(i)(E) of Title XVIII of the Social Security Act, 42 U.S.C. §§1385 et seq. Subsequent to proposal of these rules, the National Association of Insurance Commissioners (NAIC) sent notice to the separate departments of insurance stating that the NAIC intends to gather the required information on an annual basis from 1990 onward. The NAIC will submit the information it gathers from insurers to both the Federal government and the specific state regulatory agencies.

In light of these facts, the New Jersey Department of Insurance (DOI) no longer believes it necessary to require insurers to provide all of the information requested in the proposal appearing at 22 N.J.R. 1226(a). Therefore, the rules have been revised upon adoption to eliminate the data requests which would duplicate reporting requests by the NAIC.

Additionally, revisions in mailing addresses have been made to reflect organizational changes in the DOI.

Upon adoption, the Department is including a rule intended to alert insurers to the possibility of incurring penalties for failure to comply with the subchapter. The penalty provision at N.J.S.A. 17B:21-2 would apply for failure to meet reporting requirements whether specifically referenced or not. While DOI previously did not consider it necessary to reference N.J.S.A. 17B:21-2, upon reflection, DOI has decided it is expedient to remind insurers of the applicability of this provision.

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

SUBCHAPTER 35. ANNUAL MEDICARE SUPPLEMENT POLICY SURVEY

11:4-35.1 Purpose

The purpose of this subchapter is to obtain from insurers the most current and accurate information available with respect to Medicare supplement policies, contracts and certificates delivered in this State*[, which information is required to be submitted by the Commissioner of Insurance to the United States Secretary of Health and Human Services in accordance with reporting requirements in Section 1882(b)(1)(E) of Title XVIII of the Social Security Act, 42 U.S.C. §§1395 et seq]*. The information will be used *[also]* to update charts concerning Medicare supplement coverage available in this State, which charts are maintained by the Department of Insurance and distributed upon request.

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11:4-35.2 Scope

*[(a) All insurers providing Medicare supplement coverage in this State shall file with the Commissioner all the information requested by N.J.A.C. 11:4-35.4(a) for each policy or contract form for which policies, contracts, certificates or evidences of coverage have been or will be delivered or issued for delivery in this State and which are in force as of the date of filing.

(b)]*All insurers providing Medicare supplement coverage in this State shall file with the Commissioner all the information requested by N.J.A.C. 11:4-35.4*[(c)]* for each policy or contract form for which policies, contracts, certificates or evidences of coverage will be or will continue to be delivered or issued for delivery in this State on or after September 1 of the year in which the filing is submitted, except that insurers do not need to file the information for any policy, contract, certificate or evidence of coverage which the insurer will cease to deliver or issue for delivery in this State after December 31 of the year in which the filing is submitted.

11:4-35.3 Definitions

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

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

"Department" means the New Jersey Department of Insurance.

"Insurer" means any person, as that term is defined at N.J.S.A. 17B:17-6, engaged in the business of insurance providing *[health]* ***Medicare supplement*** benefits or services, or a combination thereof, to a resident of this State.

"Medicare supplement policy" means a group or individual policy which is advertised, marketed, or designed primarily as, or is otherwise held out to be, a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare by reason of age. The term does not include:

1. A policy of one or more employee or labor organizations, or of the trustees of a fund established by one or more employee or labor organizations, or a combination thereof, or for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

2. Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such policies or contracts are not marketed or held out to be Medicare supplement policies or benefit plans.

"Policy" means any policy, subscriber contract, enrollment contract, certificate or evidence of coverage issued to an individual or group by any health insurer.

11:4-35.4 Filing

*[(a) Insurers shall file annually with the Department, no later than August 1 of each year, as prescribed by N.J.A.C. 11:4-35.2(a), on a copy of Exhibit A, which appears as in the Appendix to this subchapter, incorporated herein by reference, or in a substantially similar format, the following information, current as of the date of filing:

1. The insurer's name, address and telephone number;

2. The name, title and telephone number of the officer of the insurer responding to the survey;

3. The name and telephone number of the individual designated as the contact person for Medicare carriers;

4. An address where the Medicare carriers should send claims notices; and

5. A list of the policy forms for which there are policies in force in this State, with the following relevant information:

i. Policy form number(s);

ii. The policy form name or a descriptive designation of the policy, if any;

iii. The date the policy form was approved;

iv. An indication of whether the policy form is currently being sold or is a closed block of business; and

v. If closed, the date the policy form was withdrawn from sale in the market.

(b) Filings made pursuant to (a) above should be submitted to:

Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625]*

[(c)] ***(a)*** Insurers shall file annually with the Department, no later than August 1, of each year, as prescribed by N.J.A.C. 11:4-35.2*[(b)]*, *[on]* a separate copy of *[Exhibit B]* ***the exhibit entitled "Medicare Supplement Policy Survey"*** for each policy form, which exhibit appears as in the Appendix to this subchapter ***and is incorporated herein by reference*, *providing*** the following information, current as of the date of filing:

1. The insurer name and address;

2. The name, title and telephone number of respondent;

3. The Medicare supplement policy form number;

4. The number of policyholders of that policy form in this State;

5. Current premiums for a male and female at issue age of 65 provided on a monthly basis for that form;

6. A description of the basic policy provisions and/or benefits which shall include an indication of whether coverage is provided for the following:

i. Medicare's Part A deductible amount;

ii. Medicare's co-payment for skilled nursing facility care;

iii. Benefits for skilled nursing facility care beyond that provided by Medicare, and number of additional days of coverage;

iv. Medicare's Part B deductible;

v. Benefits for Part B expenses in excess of Medicare's allowed amounts;

vi. Benefit(s) for a private room in a hospital;

vii. Benefits for care received outside the United States, not otherwise eligible for Medicare reimbursement;

viii. Benefits for private duty nursing;

ix. Benefits for prescription drugs;

x. Medicare's blood deductible; and

xi. Benefits for home health care.

7. An indication of the policy deductible for Medicare Part B expenses;

8. An indication of whether any of the described benefits are optional, and if so, an inclusion of the current additional monthly premium payable to obtain that optional benefit;

9. A statement of whether the insurer offers a policy to people under age 65 who are eligible for Medicare due to a disability, and the form number of such a policy;

10. The telephone number which interested New Jersey consumers may call to obtain additional information or an outline of coverage for that policy form; and

11. The Outline of Coverage made available to current applicants as an attachment to or enclosure with Exhibit B.

*[(d)]***(b)*** Filings made pursuant to *[(c)]***(a)*** above should be submitted to:

SHIP Coordinator
Division of *[Public Affairs]* ***Enforcement and Consumer Protection***
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625

***11:4-35.5 Penalties**

Failure to comply with the terms of this subchapter may result in the assessment of penalties in accordance with N.J.S.A. 17B:21-2.*

11:4-*[35.5]***35.6*** Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held to be invalid for any reason, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

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APPENDIX

*[EXHIBIT A
MEDICARE SUPPLEMENT POLICY SURVEY—PART A

(To be completed and submitted no later than August 1 to the Assistant Commissioner, Legislative and Regulatory Affairs, New Jersey Department of Insurance, 20 West State Street, CN 325, Trenton, New Jersey 08625)

(a) Insurer Name: _____

Address: _____

_____

_____

Telephone Number: _____

(b) Respondent's Name and Title: _____

Telephone Number: _____

(c) Name of Contact Person for Medicare Carrier: _____

Telephone Number: _____

(d) Address where Medicare Carrier(s) should send claims notices: _____

_____

_____

(e) Policy information (please attach additional pages, if necessary):

Policy Form Number	Name or Designation	Date Approved	Check One: Currently Sold	Check One: Closed Block	Date of Withdrawal

]*

[EXHIBIT B]
MEDICARE SUPPLEMENT POLICY SURVEY *[—PART B]*

(Submit completed forms no later than August 1 to: SHIP Coordinator, Division of *[Public Affairs]* ***Enforcement and Consumer Protection***, New Jersey Department of Insurance, 20 West State Street, CN 325, Trenton, New Jersey 08625)

(a) Insurer Name: _____

Address: _____

_____

_____

(b) Respondent's Name and Title: _____

Telephone Number: _____

(c) Policy Form Number: _____

Number of New Jersey Policyholders: _____

Current Monthly Premiums: Male/Issue Age 65 $ _____
Female/Issue Age 65 $ _____

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Policy Provisions/Benefits			If optional, please show add'l monthly premium
1. Does policy cover Medicare's Part A deductible?	Y____	N____	$
2. Does policy cover Medicare's co-payment for skilled nursing facility care?	Y____	N____	$
3. Does policy provide a benefit for care in a skilled nursing facility not certified by Medicare?	Y____	N____	$
4. Does policy provide a benefit for care in a skilled nursing facility beyond Medicare's coverage? If so, for how many additional days? _____	Y____	N____	$
5. Policy deductible for Part B expenses: _____$0 _____$75			
6. Does policy reimburse Medicare's Part B deductible?	Y____	N____	$
7. Does policy provide a benefit for Part B expenses in excess of Medicare's allowed amounts?	Y____	N____	$
8. Does policy provide a benefit for a private room in a hospital?	Y____	N____	$
9. Does policy provide a benefit for care received outside the U.S. that is not eligible for Medicare reimbursement?	Y____	N____	$
10. Does policy provide a benefit for private duty nursing?	Y____	N____	$
11. Does policy provide a benefit for prescription drugs?	Y____	N____	$
12. Does policy cover Medicare's blood deductible?	Y____	N____	$
13. Does policy provide benefits for home health care?	Y____	N____	$
14. Other benefits (attach additional pages if needed):			
_____			$
_____			$
_____			$
_____			$
_____			$

(d) Does your company offer a policy to people under the age of 65 who are Medicare eligible due to disability?

If so, please indicate policy form number: _____

(e) Telephone number for your company where interested New Jersey consumers can call to obtain additional information or an Outline of Coverage:

_____

MEDICAR/LRWPC

(a)

DIVISION OF THE REAL ESTATE COMMISSION

Real Estate Guaranty Fund

Adopted Amendment: N.J.A.C. 11:5-1.36

Proposed: December 17, 1990 at 22 N.J.R. 3688(a).
Adopted: February 4, 1991 by the New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.
Filed: February 5, 1991 as R.1991 d.114, **without change.**
Authority: N.J.S.A. 45:15-6 and 45:15-40.
Effective Date: March 4, 1991.
Expiration Date: October 28, 1993.

Summary of Public Comments and Agency Responses:

The Real Estate Commission received two written comments concerning this proposed rule amendment.

COMMENT: A broker-salesperson licensee submitted a comment opposing the adoption of the proposed rule amendment. This person indicated that they saw no need to raise fees related to the licensure of salespersons and brokers in order to keep the Real Estate Guaranty Fund solvent when each salesperson and brokerage firm should have errors and omissions insurance coverage. This individual indicated that the burden of all the fees which licensees must pay in order to successfully engage in the real estate brokerage business, including membership fees in several multiple listing boards, Realtor designations, car, health and errors and omissions insurance premiums, self-employment taxes and license fees, make it difficult to remain in the real estate profession.

RESPONSE: While the Commission is sympathetic to the plight of its licensees in this climate of a stagnant real estate market, it cannot jeopardize the solvency of the Real Estate Guaranty Fund by delaying the imposition of the special assessment to be effectuated by this rule amendment. Pursuant to N.J.S.A. 45:15-40, the Commission is required by law to impose this assessment when the balance in the funds does not appear sufficient to meet anticipated pay outs from the fund. Furthermore, by law the fund affords protection to members of the public who suffer monetarily as a result of the illegal and dishonest misappropriation of escrow or trust funds by real estate licensees. Errors and Omissions insurance does not provide coverage for such illegal acts, nor is it mandatory for New Jersey real estate licensees to carry such insurance. Therefore, the availability of such insurance does not impact upon the need to keep the Real Estate Guaranty Fund solvent.

COMMENT: A trade association representing approximately one-half of all New Jersey real estate licensees submitted a written comment supporting the adoption of this amendment in order to maintain an adequate balance in the Real Estate Guaranty Fund.

RESPONSE: Given the nature of this comment, no response is required from the Commission.

Full text of the adoption follows.

11:5-1.36 Real estate guaranty fund

(a) Every licensed real estate broker and licensed broker-salesperson shall pay an additional $10.00 and every licensed real estate salesperson shall pay an additional $5.00 fee with their application for license renewal next following January 1, 1991.

1. Said fees shall be paid into the real estate guaranty fund and be utilized in accordance with N.J.S.A. 45:15-34, et seq.

(b) (No change.)

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(a)

DIVISION OF FRAUD
General Requirements
Readoption: N.J.A.C. 11:16

Proposed: December 17, 1990, at 22 N.J.R. 3688(b).
Adopted: January 31, 1991 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: January 31, 1991 as R.1991 d.102, **without change.**
Authority: N.J.S.A. 17:1C-6(e), 17:33A-1 et seq., 17:23-8 et seq.
Effective Date: January 31, 1991.
Expiration Date: January 31, 1996.

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. 11:16.

LAW AND PUBLIC SAFETY
(b)

DIVISION OF MOTOR VEHICLES
Executive and Administrative Service
Motor Fuels Use Tax Act
Adopted Repeals: N.J.A.C. 13:18-4.15 and 13:18-4.18
Adopted Amendments: N.J.A.C. 13:18-4.2, 4.3, 4.4, 4.5, 4.6, 4.9, 4.14, 4.16, 4.17 and 4.19

Proposed: October 1, 1990 at 22 N.J.R. 3104(b).
Adopted: January 25, 1991, by Col. Clinton L. Pagano, Director, Division of Motor Vehicles.
Filed: January 31, 1991 as R.1991 d.103, **without change.**
Authority: N.J.S.A. 54:39A-8, 54:39A-24 and P.L. 1989, c.116 (N.J.S.A. 54:39A-10).
Effective Date: March 4, 1991.
Expiration Date: March 30, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:18-4.2 Definitions

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

"Decal" means an identification marker provided for under N.J.S.A. 54:39A-10.

"Identification card" means an identification card provided for under N.J.S.A. 54:39A-10.

"Leased vehicle" means a vehicle operated, but not owned, by a user who has the right to exclusive use, possession and control of the vehicle for a period of 30 days or more by virtue of a lease, contract or other arrangement.

"Leasing company" means a person engaged in the business of leasing vehicles.

. . .

"Motor vehicle" means any omnibus that has seats for more than 10 passengers in addition to the driver, or road tractor, or any truck tractor, or any truck having a gross or registered weight, whichever is greater, in excess of 18,000 pounds alone or in combination with a motor-drawn vehicle.

"Operations" means, in addition to the meaning prescribed in N.J.S.A. 54:39A-2, the operations of only those vehicles for which the registered user has purchased decals during the applicable tax year but including substitute and temporary additional vehicles; and in the case of a rental company means the operations of all vehicles not rented to a registered user and excludes the operations of other vehicles only for such periods of time when they are used by a registered user as substitute or temporary additional vehicles.

"Owner/operator" means a person who owns and drives or leases and drives a vehicle leased to a motor carrier.

. . .

"Rental company" means a person engaged in the business of renting vehicles to the general public, including motor carriers, on an hourly, daily, trip or other short-term basis of less than 30 days.

"Rental vehicle" means a vehicle owned by a rental company and rented to the general public on an hourly, daily, trip, or other short-term basis of less than 30 days.

. . .

"Substitute vehicle" means a vehicle owned by a leasing or rental company and used by a registered user as a temporary replacement for a particular leased or rented vehicle.

"Temporary additional vehicle" means a vehicle leased or rented to a registered user as a temporary addition to his normal fleet.

"Trip basis" means rental of a vehicle from a user for a period of less than 30 days. The vehicle operated on a trip lease basis is deemed to be a rental vehicle and the user is deemed to be a rental company.

"User" means every person, firm or corporation who or which operates or causes to be operated any motor vehicle on any highway in this State. The term shall include a rental company in the case of a rental vehicle.

13:18-4.3 User registration

(a) Every user shall register as such, before operating vehicles in this State, on a form furnished by the Division providing the following information:

1. Full name of the user and the address and telephone number of his principal place of business;

2.-6. (No change.)

7. Type of operation—Leasing company; rental company; motor carrier for hire, private, exempt, contract, owner/operator, other;

8.-9. (No change.)

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

13:18-4.4 Identification cards and markers

(a) Coincident with the filing of the registration form specified in these rules, and not later than one month prior to the beginning of each tax year thereafter, each user shall file an application, on a form provided by the Division, for an identification card and as many markers (decals) as he may require. The statutory fee of $5.00 per decal shall be remitted with the application.

(b) (No change.)

(c) If the application is acceptable the Division may issue one motor vehicle fuels user identification card to the user and as many vehicle decals for which the fees have been paid:

1. The original identification card shall be kept in the user's principal place of business. A copy of the card shall be carried in each vehicle when it is in New Jersey.

2. (No change.)

(d) Any decal issued prior to the beginning of the applicable tax year may be displayed on the vehicle on or after March 1.

(e) When a vehicle has been sold, traded or otherwise passes from the control of the user, the decal shall be removed from the vehicle and surrendered to the Division within 48 hours. If the user discontinues business in this State the user shall surrender the identification card as well. The user to whom the identification card and decal were issued shall be liable for taxes applicable to the operations of the vehicles in this State up to the date on which the card and/or decal was surrendered. In the event the vehicle is that of an owner/operator who fails to surrender the decal to the user before leaving his service, the user's liability will terminate upon the date he notifies the Division by mail providing the serial number of the decal and the name and address of the person having possession of same. The provisions of this subsection shall not apply when the vehicle has been stolen or hijacked and a report of such theft or hijack has been made to the appropriate law enforcement agency.

(f) The Division will replace, upon payment by the user of the $5.00 fee, any decal which was lost, stolen or is illegible.

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(g) (No change.)

(h) A written notice of such denial or recall shall be mailed to the user's principal place of business by ordinary mail.

(i) The user shall be afforded a conference by the Division before the denial or recall is effective provided he has made a request by mail within 30 days of issuance of the notice.

(j) The sole issue to be resolved at such conference is whether or not the user in fact did fail to pay moneys due as determined by the Division or file said report. The burden of proof shall be borne by the user.

(k) The conference in such cases shall be conducted by the Manager, Motor Carriers Unit in the Division of Motor Vehicles or such of his or her subordinates as he or she may designate.

(l) Notice of the determination made at such conference shall be given to the user at the close of the conference. If the determination is adverse to the user the denial or recall shall be effective on the fifth day following the date of the conference.

(m) (No change.)

(n) A user who disagrees with the Division's determination to deny or recall an identification card or decal may, within 90 days after the date of the written determination, appeal to the Tax Court of New Jersey by filing a complaint with the Tax Court pursuant to the New Jersey Court Rules.

13:18-4.5 Permits

(a) Upon request by the user and payment of the $5.00 fee, the Division may issue over the counter, by mail or collect telecommunication, an emergency permit authorizing the operation in this State of a vehicle pending the issuance of an identification card and/or decal. The decal will be issued at no additional charge.

(b) A user whose vehicles in the aggregate make not more than six round trips into or through this State in any 12-month period may be issued, upon his request, an occasional operator permit for each such trip. The permit may be issued over the counter, by mail or collect telecommunication, upon payment of the $2.50 fee. The permit, if issued, shall be valid for 96 hours.

13:18-4.6 Tax reports; evidence of timely filing

(a) (No change.)

(b) In the event the filing is made by personal delivery, the Division's date received stamp shall be conclusive evidence of the filing date.

13:18-4.9 Motor Fuels tax; credit and refund

(a) Any user who uses fuel that was purchased in this State outside of this State may apply the fuel tax paid on said fuel as a credit against fuel use tax liability in the next succeeding quarter provided he has records proving the fuel was not used in New Jersey and that he paid the applicable fuel tax thereon.

(b) Any user who purchases motor fuel in bulk quantities in this State and uses a portion thereof outside of this State may be refunded the motor fuels tax which he paid on fuel not used in this State provided:

1. (No change.)

2. The records of his operations within and without this State are made available in New Jersey.

3.-4. (No change.)

(c) An applicant for a refund shall file his claim on a form provided by the Division within one year following the end of the reporting quarter in which the fuel was pumped into the service tanks of the vehicles.

(d)-(e) (No change.)

13:18-4.14 Interest; assessments and refund recovery

(a) Interest at the rate of one and one half percent per month or fraction thereof shall accrue on all moneys due, whether from assessment or refund recovery, from the date on which the taxes were originally due, or when the refund was paid to the user, to the date said moneys due are paid.

(b) (No change.)

13:18-4.15 (Reserved)

13:18-4.16 Notice of address change

Users must notify the Division of any change in name and/or address within seven days following the date of such change.

13:18-4.17 Preservation of records

(a) The records required to be kept by every user under the provisions of the Act or of this subchapter shall be preserved for a period of three years or until audited and written permission has been given for their sooner destruction by an authorized representative of the Director.

(b) Said records shall be made available for examination by the Director's representative upon 30-day written notice, at the time said representative appears at the place where the user has informed the Division that such records are kept.

(c) If said records are not immediately available the Division will make an assessment of the user's tax liability from whatever information is obtainable, or in the case of a refund claim the claim shall be disallowed.

13:18-4.18 (Reserved)

13:18-4.19 Refunds application

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

(a)

VIOLENT CRIMES COMPENSATION BOARD

Eligibility of Claims
Victims of Domestic Violence
Adopted Amendment: N.J.A.C. 13:75-1.6

Proposed: December 17, 1990 at 22 N.J.R. 3690(a).

Adopted: January 30, 1991, by the Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.

Filed: February 6, 1991 as R.1991 d.117, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:4B-9.

Effective Date: March 4, 1991.

Expiration Date: June 5, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

At N.J.A.C. 13:75-1.6(c) and (c)1, "(the effective date of this amendment)" is being deleted and replaced by the actual effective date, March 4, 1991.

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

13:75-1.6 Eligibility of claims

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

(c) Any claimant who is held to be responsible for the crime upon which a claim is based, or is held to have been an accomplice or conspirator of the offender or is injured while participating in an illegal activity is not eligible for compensation. For incidents occurring after March 3, 1983 and continuing through *[(the effective date of the amendment)]* ***March 4, 1991***, a relative of the offender or a victim living with the offender as a member of the offender's family relationship group may recover, if, subsequent to the incident giving rise to the claim, the claimant no longer resides in the same household as the offender and the claimant cooperated in the prosecution of the offender.

1. For incidents and injuries occurring on or after *[(the effective date of this amendment)]* ***March 4, 1991***, the Board will apply the same standards that are applied to claims filed by victims of other violent crimes regardless of the familial relationship of the offender and the victim or the fact that they share a residence. However, no award will be made if compensation to the victim proves to be substantial unjust enrichment to the offender. Where the enrichment

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is inconsequential or minimal, compensation shall not be denied nor reduced. The factors to be considered in determining whether the unjust enrichment is substantial include, but are not limited to:

i. The amount of the award and whether it is made directly to the victim;

ii. Whether the offender has access to any cash payments coming into the household on behalf of the victim;

iii. Whether the award is essential to the well-being of the victim and other innocent and dependent family members;

iv. The amount of living expenses paid by the offender before and during the pendancy of the claim;

v. If a significant portion of the award will be used directly by the offender for living expenses;

vi. The legal responsibilities of the offender to the victim;

vii. Collateral resources available to the victim from the offender which resources include, but are not limited to, court-ordered restitution or support and insurance and pension benefits. In evaluating collateral resources the Board may consider whether the offender has a legal responsibility to pay, whether the offender has resources to pay, and whether payment is likely. The victim will not be penalized for failure of the offender to meet his or her obligation to pay for the costs of the victim's recovery; and

viii. The offender's cooperation in providing the Violent Crimes Compensation Board with information concerning medical insurance coverage and any other information necessary for the Board to make a determination.

(d)-(f) (No change.)

(a)

VIOLENT CRIMES COMPENSATION BOARD

Eligibility of Claims and Compensable Damage for Victims of Drunk Driving

Adopted Amendments: N.J.A.C. 13:75-1.6 and 1.7

Proposed: December 17, 1990 at 22 N.J.R. 3691(a).

Adopted: January 30, 1991, by the Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.

Filed: February 6, 1991 as R.1991 d.116, **without change.**

Authority: N.J.S.A. 52:4B-9.

Effective Date: March 4, 1991.

Expiration Date: June 5, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:75-1.6 Eligibility of claims

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

(e) No compensation shall be awarded if the victim is injured as the result of the operation of a motor vehicle, boat, or airplane unless the same was used as a weapon in the deliberate attempt to run the victim down, if the same was used in the commission of a crime as defined by N.J.S.A. 52:4B-11 and the victim was injured by the same during the commission of said crime, or as provided in N.J.A.C. 13:75-1.7(i).

(f) (No change.)

13:75-1.7 Compensable damages

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

(i) No passenger in a motor vehicle who knew or reasonably should have known that the driver was operating the vehicle while under the influence of alcohol or drugs is eligible for compensation.

1. In order for a victim to be eligible for compensation it is not necessary that the offender is convicted of a violation under N.J.S.A. 39:4-50 nor that a blood alcohol test be administered to the offender. However, the victim or claimant must demonstrate by a preponderance of the credible evidence that the incident involved driving under the influence of alcohol or drugs.

i. "Under the influence" as used in this subsection means a substantial deterioration or diminution of mental faculties or physical capabilities of a person whether due to intoxicating liquor, narcotic, hallucinogenic or habit-producing drugs.

ii. In any matter involving a violation of N.J.S.A. 39:4-50 relating to driving a vehicle while under the influence of intoxicating liquor, the following factors will be taken into account.

(1) A blood alcohol reading of .10 percent is prima facie evidence of a violation of N.J.S.A. 39:4-50;

(2) A blood alcohol reading in excess of 0.05 percent but less than 0.10 percent shall not give rise to any presumption that the offender was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence; and

(3) A blood alcohol reading of 0.05 percent or less shall give rise to the presumption that the offender was not under the influence of intoxicating liquor.

2. The Board may deny or reduce an award if the Board finds the victim was not wearing protective equipment such as a safety belt or if the victim is the operator of a second vehicle and does not have automobile insurance as required by law.

(b)

OFFICE OF EMERGENCY TELECOMMUNICATIONS SERVICES

9-1-1 Emergency Telecommunication System

Adopted Amendments: N.J.A.C. 13:81-2.1, 2.2, 2.4 and 3.2

Proposed: November 19, 1990 at 22 N.J.R. 3453(a).

Adopted: February 5, 1991 by Robert J. Del Tufo, Attorney General, Department of Law and Public Safety.

Filed: February 8, 1991 as R.1991 d.124, **without change.**

Authority: N.J.S.A. 52:17C-3(b), 52:17C-15(b) (P.L. 1989, c.3, secs. 3 and 15).

Effective Date: March 4, 1991.

Expiration Date: August 6, 1995.

Summary of Public Comments and Agency Responses:

These amendments were proposed on November 19, 1990. Six commenters submitted written comments during the comment period which closed on December 19, 1990. In summary, all comments were positive and supportive of the proposed amendments. Some commenters suggested that the proposed amendments should have been expanded. The specific comments and responses follow:

COMMENT: It is with great hope that I write this letter supporting the training requirements for Emergency Telecommunicators. As a police officer, I well recognize the value of a competent dispatcher who can provide me with concise, essential information about the nature of an incident to which I am responding. The more information the dispatcher can obtain and relay, the better the situation upon my arrival.

RESPONSE: The Office of Emergency Telecommunications Services (OETS) concurs.

COMMENT: I have been active in EMS for more than 21 years and have experienced several successful resuscitations based solely on the instructions given by dispatchers to callers prior arrival of EMS personnel. I truly believe New Jersey could show a marked decrease in mortality and morbidity and property loss if telecommunicators could accurately screen calls, provide emergency information to the caller, and dispatch the appropriate personnel in an efficient manner. A standardized telecommunicators training program would insure this capability for all dispatch centers. What good is having a sophisticated communications system, vis a vis, an enhanced 9-1-1 system, and not having thoroughly trained telecommunicators to maximize the effectiveness of that system?

RESPONSE: OETS concurs.

COMMENT: I realize the financial burden that this system and its related training requirements may put on municipal and county governments. However, consider the value of loss of life and property in comparison. An efficient emergency dispatch system should more than compensate for the added cost by reducing monetary loss of property and decreasing long-term expenses caused by delayed responses.

RESPONSE: OETS concurs.

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COMMENT: I am in complete agreement with the Proposal PRN 1990-588 9-1-1 telecommunication system. To institute a 9-1-1 program/service without training regulations/procedures for dispatchers would be a waste of resources. Dispatchers must be trained so that proper information is obtained from the caller and the proper assistance sent. There are many documented cases where this has shown to be a distinct advantage not only for the public, but for the emergency services as well. Timely arrival of support units, such as Advanced Life Support, Fire Department Rescue, etc., is essential to the proper care of the victim. Trained dispatchers are a must if the system is to work.

RESPONSE: OETS concurs.

COMMENT: Call-takers and dispatchers do need additional training. It is sad to see on a daily basis just how poorly the call-taker and dispatcher system operates. Granted, some departments do an admirable job but too many others do not. Proper training would go a long way in correcting the many deficiencies that now exist.

RESPONSE: OETS concurs.

COMMENT: I would like to go on record as being in support of the dispatchers having to perform the lifesaving skill over the phone which has been done so many times in other states.

RESPONSE: OETS concurs.

COMMENT: I recommend the adoption of the proposed amendment. While I continue to believe that this proposal could have been strengthened by not providing lesser requirements for those currently employed, I believe that the reality and necessity of the present situation in local government concerning fiscal constraints and personnel limitations does not afford the opportunity to mandate across the board. The benefits to the citizens of New Jersey which will be derived from training those identified in the proposal will be measured in the lives saved and the ultimate survivability provided where little was previously available. The prompt actions by well trained call-takers and dispatchers using standardized protocols and nationally accepted minimum standards as referenced in this proposal will force this improvement.

RESPONSE: OETS concurs.

COMMENT: If New Jersey is to provide state-of-the-art EMS to its citizens and be a shining star in 9-1-1, then mandatory EMS and telecommunicator training must light the pathway to our success. Let no one, ever again, be subject to ignorance and indifference. Let everyone be afforded equal access to the finest care delivered by the best we have to offer.

RESPONSE: OETS concurs.

COMMENT: I believe a hard copy of TDD communications is a good requirement. I suggest hard copies be retained for the same period required for voice logging recorder tapes. The present rules don't require PSAP's to retain the printed record.

RESPONSE: OETS agrees that hard copies from TDD devices should be retained as are logging recorder tapes. N.J.A.C. 13:81-2.4(a)1 states that tape recordings produced by the logging recorder and all documents or records related to 9-1-1 calls shall be maintained in a secured area for no less than 31 days. Hard copies of TDD communications fall under this section.

COMMENT: The training requirements for PSAP operation personnel are good; APCO's programs are the leading programs in the country. I prefer that all operational personnel be required to attend the 40-Hour APCO program. I do not care for section 2.2(d), but I do understand that some PSAP operations need this standard as to not place a burden on the small PSAP. I request this be changed so a substitute cannot work to replace a telecommunicator, trained as per (c), for a long-term illness. I suggest this should be better defined, such as an illness with a duration of not more than 48 hours.

RESPONSE: N.J.A.C. 13:81-2.2(d)1 states that a substitute may only be utilized if the person is performing as a substitute for a certified call-taker or dispatcher who is scheduled for duty but unavailable due to illness or emergency or the person is providing relief for a certified call-taker or dispatcher during personnel breaks. If a person calls in sick for a long-term illness as you suggest, the immediate replacement for that call-taker or dispatcher may be a substitute person which meets the requirements of N.J.A.C. 13:81-2.2(d)2i, ii, iii and iv. However, if it is known or expected that following shifts cannot be fulfilled by this individual, the certified call-taker or dispatcher must be replaced on the schedule with another certified person. Therefore, in OETS's view, the use of substitute call-takers or dispatchers for an extended period would be impermissible.

COMMENT: The record of substitutes as called for under section 2.4(a) 3 is excellent.

RESPONSE: OETS concurs.

COMMENT: A PSDP is no different than a PSAP when handling calls for service, the phone rings, the call-taker or dispatcher answers and obtains the necessary information and causes services to be dispatched. If the training is below standard, which is what I see proposed, then all the good intentions under 13:81-2.2(c) is for naught and the public will continue to receive services from poorly trained individuals who do not receive even a basic telecommunicator training course. Many dispatch incidents have occurred throughout the country which were not handled correctly because of lack of training and professional standards. Please do not let this happen in New Jersey because the PSDP operation personnel are not trained at least in accord with 13:81-2.2(c).

RESPONSE: OETS is not proposing that training at PSDP's be substandard. Rather than requiring PSDP personnel to be certified by OETS in the interest of local fiscal constraints, OETS and the 9-1-1 Commission elected to allow the local governing agency to either train their dispatchers in the specific services they will dispatch or to have their dispatchers certified by OETS.

COMMENT: The EMD (Emergency Medical Dispatch) requirements are a must. I have heard many EMD calls which saved lives. Have you ever heard the voice of a mother whose child is not breathing, and then after doing what an EMD dispatcher tells her to do, then, you hear the baby crying, what a feeling. This training should remain a requirement.

RESPONSE: OETS concurs.

COMMENT: I believe that the training proposed under 13:81-2.2(c) will improve the professionalism and the respect deserved by these dedicated (call-takers/dispatchers) individuals.

RESPONSE: OETS concurs.

Full text of the adoption follows:

13:81-2.1 PSAP: required and recommended equipment

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

(e) Each PSAP shall provide for the hearing or speech impaired through either:

1. A TDD: A telecommunications device for the deaf or speech impaired which is available for immediate connection to the 9-1-1 network at all PSAPs and which provides a hard copy of the conversation between the deaf or speech impaired person and the call-taker; or

2. (No change.)

(f)-(h) (No change.)

13:81-2.2 PSAP: required staffing

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

(c) Each call-taker and dispatcher position in a PSAP, except as provided in (d) below, shall be staffed by a person certified by OETS as qualified on the basis of the following:

1. Successful completion of Basic Training consisting of either:

i. The APCO Institute 40-Hour Public Safety Telecommunicator Basic Training Course for New Jersey, which is a course developed by the Associated Public-Safety Communications Officers' Institute that has been adapted to provide training in the unique features of the New Jersey 9-1-1 emergency enhanced telecommunications network and system and has been approved by OETS;

ii. Any basic training approved by OETS, upon application of the provider and a finding by OETS that the training offered is substantially equivalent to that provided in the APCO Institute 40-Hour Public Safety Telecommunicator Basic Training Course for New Jersey;

iii. The APCO Institute 24-Hour Public Safety Telecommunicator Basic Training Course for New Jersey, which is a course developed by the Associated Public-Safety Communications Officers' Institute that has been adapted to provide training in unique features of the New Jersey 9-1-1 emergency enhanced telecommunications network and system and has been approved by OETS, if the call-taker either:

(1) Demonstrates to OETS that he or she has had 320 hours of work experience as a call-taker or public safety dispatcher in a local emergency telecommunications center in New Jersey prior to the local center's implementation of the 9-1-1 system; or

(2) Obtains a determination from OETS that a public safety telecommunicators basic training course, which the person has successfully completed, provided training that, when supplemented with the APCO Institute 24-Hour Public Safety Telecommunicator Basic

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Training Course for New Jersey, will be substantially equivalent to the APCO Institute 40-Hour Public Safety Telecommunicator Basic Training Course for New Jersey; or

iv. Any basic training approved by OETS, upon application of the provider and a finding by OETS that the training offered is substantially equivalent to that provided in the APCO Institute 24-Hour Public Safety Telecommunicator Basic Training Course for New Jersey, if the call-taker meets the requirements of (c)1iii(1) or (2) above;

2. Successful completion of annual in-service training during each year of service following initial certification, consisting of an 8-hour program developed by the local PSAP and approved by OETS to address technical developments and improve the provision of 9-1-1 services;

3. Except for a call-taker or dispatcher in a PSAP that directly transfers emergency medical service calls to emergency medical PSDP personnel who meet the requirements of this paragraph and (c)4 below, a current AHA Provider B or ARC Community Level CPR certification; and

4. Except for a call-taker or dispatcher in a PSAP that directly transfers emergency medical service calls to emergency medical PSDP personnel who meet the requirements of this paragraph and (c)3 above, and unless the person meets the requirements of (c)1iii(1) above, Emergency Medical Dispatch Training consisting of either:

i. The APCO Institute 24-Hour Emergency Medical Dispatching Training Program for New Jersey, which is a course developed by the Associated Public-Safety Communications Officers' Institute that has been adapted to provide training in unique features of the New Jersey 9-1-1 emergency enhanced telecommunications network and system and has been approved by OETS; or

ii. Any emergency dispatch training approved by OETS, upon application of the provider and a finding by OETS that the training offered is substantially equivalent to that provided in the APCO Institute 24-Hour Emergency Medical Dispatching Training Program for New Jersey.

(d) Persons who are not certified as provided in (c) above may be utilized to substitute for a certified call-taker or dispatcher under the following circumstances:

1. The person is performing as a substitute for a certified call-taker or dispatcher who is scheduled for duty but unavailable due to illness or emergency or the person is providing relief for a certified call-taker or dispatcher during personnel breaks; and

2. The person is one who meets the following requirements:

i. Has successfully completed the U.S. Department of Transportation's "First Responders: Emergency Medical Care Training Course," or "Crash Injury Management for Traffic Law Enforcement Officers" or "EMT-A Course";

ii. Has a current ARC of AHA CPR certification;

iii. Has successfully completed an eight-hour introductory course on the New Jersey 9-1-1 emergency enhanced telecommunications system which has been prepared by the local PSAP and approved by OETS; and

iv. Has successfully completed annual in-service training during each year of service following completion of the introductory course on the New Jersey 9-1-1 emergency enhanced telecommunications system, consisting of an eight-hour program developed by the local PSAP and approved by OETS to address technical developments and improve the provision of 9-1-1 services.

(e) (No change in text.)

13:81-2.4 PSAP: record keeping

(a) Each PSAP shall maintain the following:

1. Tape recordings produced by the Logging Recorder and all documents or records related to 9-1-1 calls in a secured area for no less than 31 days;

2. A current listing of PSAP call-takers, which indicates the call-takers' certification date, at all times; and

3. A record of each occasion on which a substitute call-taker or dispatcher was utilized, which includes the name of the substitute, the date and time of the substitution, and the reason for the substitution, which shall be retained for one year.

13:81-3.2 PSDP: required staffing

(a) (No change.)

(b) Each dispatcher shall be a person trained in the specific services they will dispatch (that is, police, fire, emergency medical services) by the local governing agency or certified by OETS on the basis provided in N.J.A.C. 13:81-2.2(c).

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Energy Emergency

Adopted New Rules: N.J.A.C. 14A:2 (recodified as N.J.A.C. 14:29)

Proposed: December 17, 1990 at 22 N.J.R. 3692(a).

Adopted: January 31, 1991 by the Board of Public Utilities, Scott A. Weiner, President.

Filed: February 5, 1991, as R.1991 d.112, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27F-18.

BPU Docket Number: AX90080809.

Effective Date: March 4, 1991.

Expiration Date: March 4, 1996.

Summary of Public Comments and Agency Responses:

The only comment received by the Board was from South Jersey Gas Company which indicated its agreement with the definitions and priority plan for involuntary curtailment of natural gas as found in subchapter 1 and subchapter 2, respectively.

In order to properly codify the rules of the former Department of Energy, the Board of Public Utilities is recodifying N.J.A.C. 14A:2 upon adoption as N.J.A.C. 14:29. References to these rules within this chapter are also corrected to reflect the recodification.

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

CHAPTER *[2]****29***
ENERGY EMERGENCY

SUBCHAPTER 1. GENERAL PROVISIONS

*[14A:2]*****14:29***-1.1 Scope

The following rules, with the exception of N.J.A.C. *[14A:2]* ***14:29***-2.2, shall be implemented when the Governor, by Executive Order, has proclaimed a state of energy emergency under N.J.S.A. 52:27F-17. The declaration of an emergency shall be based upon a finding by the Board that there impends or exists a serious shortage of energy which poses a grave threat to the public health, safety or welfare in all or any part of the State. In making such a finding, the Board shall set forth whether the emergency shall be limited to a specific energy form or to any specific area of the State in which such a shortage exists or impends.

*[14A:2]*****14:29***-1.2 Definitions

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

"Alternate fuel capabilities" means a situation where an alternate fuel could have been utilized whether or not the facilities for such use have actually been installed; provided, however, that when the use of natural gas is for plant protection, feedstock, or process uses, and the only alternate fuel is propane or other gaseous fuel, then the consumer will be treated as if he had no alternate fuel capability.

"Ambulatory handicap" means any physical condition which significantly impairs mobility requiring confinement to a wheelchair; or other disability where compliance with the provisions of this chapter

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would have the likelihood of seriously impairing or harming the health of the person.

"Authorized emergency vehicles" means vehicles of fire departments, utilities, police vehicles, ambulances, and such other vehicles as are approved by the Director of the Division of Motor Vehicles in the Department of Law and Public Safety pursuant to the provisions of Title 39 of the Revised Statutes.

"Board" means the New Jersey Board of Public Utilities.

"Boiler fuel" means natural gas used as a fuel for the generation of steam or electricity, including the utilization of gas turbines for the generation of electricity.

"Commercial" means a classification of service to customers engaged primarily in the sale of goods or services, including institutions and local, State and Federal government agencies for uses other than those involving manufacturing or electrical power generation.

"Commercial vehicle" means motor vehicles not designed for the transportation of passengers and motor vehicles, designed but not used for the transportation of passengers, which either bear commercial plates or bear the name and address of the owner of the vehicle affixed to the exterior of the vehicle in the manner prescribed for commercial vehicles in chapter 4 of Title 39 of the Revised Statutes.

"Covered product" means any petroluem product subject to the State Set-Aside.

"Electric utility" means all public utilities, municipal electric departments and electric cooperatives engaged in the distribution of electricity within the State of New Jersey.

"End-user" means any person who is an ultimate consumer of energy.

"Energy emergency" means a shortage in the supply of a particular source of energy of a dimension which endangers the public health, safety or welfare in all or any part of the State of New Jersey.

"Farm vehicle" means any vehicle registered under the provisions of N.J.S.A. 39:3-24 (self-propelled farm tractors, traction equipment, and farm machinery) and N.J.S.A. 39:3-15 (farm trucks) which bear farmer, farm use, or tractor plates.

"Feedstock gas" means natural gas used as raw material for its chemical properties in creating an end product.

"Firm" means a classification of energy service from schedules or contracts under which seller is expressly obligated to deliver specific energy units within a given time period and which anticipates no interruption, but which may permit unexpected interruption in case the supply to higher priority customers is threatened.

"Gas utility" means all public utilities engaged in the distribution of gas within the State of New Jersey.

"Heat recovery system" means a system which uses previously wasted heat for useful purposes such as space heating, process heating, and so forth. It may involve the use of heat rejected from motors, processes, or other heat generating equipment which would otherwise be wasted or lost by being vented to the atmosphere or unrecaptured.

"Industrial" means a classification of energy service to customers engaged primarily in a process which creates or changes raw or unfinished materials into another form or product, including the generation of electric power.

"Interruptible" means a classification of energy service from schedules or contracts under which seller is not expressly obligated to deliver specific energy units within a given time period, and which anticipates and permits interruption on short notice, or service under schedules or contracts which expressly or impliedly require installation of alternative fuel capability.

"Motor fuel" means a mixture of volatile hydrocarbons such as gasoline or diesel fuel used in motor vehicles.

"Motor vehicle" means any vehicle propelled other than by muscular power, excepting such vehicles as run only upon rails or tracks.

"Omnibus" means buses, taxicabs and all other motor vehicles used for the transportation of passengers for hire, except school buses if the same are not otherwise used in the transportation of passengers for hire.

"Operating reserve" means electric generating capability and/or equivalent generation in excess of forecast system peak load which must be available within 30 minutes or less to provide for load variations and forecasting errors, frequency regulation, area protection and equipment failure or malfunction.

"Passenger automobile" means any motor vehicle used and designed for transportation of passengers, except omnibus, school bus, and authorized emergency vehicle.

"Person" means and includes natural persons and partnerships, firms, associations, joint stock companies, syndicates and corporations, and any receiver, trustee, conservator, or other officer appointed pursuant to law or by any court, State or Federal; also counties, municipalities, authorities and other political subdivisions of this State, singular or plural, and the State of New Jersey.

"Plant protection gas" means minimum volumes required to prevent physical harm to the plant facilities or danger to plant personnel when such protection cannot be afforded through the use of an alternate fuel. This includes the protection of such material in process as would otherwise be destroyed, but shall not include deliveries required to maintain plant production. For the purpose of this definition propane and other gaseous fuels shall not be considered alternate fuels.

"Prime supplier" means supplier, or producer who makes the first sale of petroleum products into the State distribution system for consumption within the State.

"Process gas" means gas use for which alternate fuels are not technically feasible such as in applications requiring precise temperature controls and precise flame characteristics. For the purpose of this definition propane and other gaseous fuels shall not be considered alternate fuels.

"Purchase" means and includes, in addition to its ordinary meaning, any acquisition of ownership or possession.

"Residential" means a classification of energy service to all buildings and structures, or parts thereof, in which families or households live, or in which sleeping accommodations are provided for individuals with or without dining facilities.

"Retail dealer" means any person who engages in the business of selling motor fuel from a fixed location such as a service station, filling station, store, or garage directly to the operator of a motor vehicle by dispensing such motor fuel into the service tank of the motor vehicle.

"Sale" means and includes, in addition to its ordinary meaning, any exchange, gift or other disposition. In every case where motor fuel is exchanged, given, or otherwise disposed of, it shall be deemed to have been sold.

"School bus" means any motor vehicle operated by, or under contract with, a public or governmental agency, or religious or other charitable organization or corporation, or privately operated for compensation for the transportation of children to or from school for secular or religious education which complies with the regulations of the Department of Education affecting school buses.

"Spinning reserve" means that portion of primary reserve synchronized to the system and under unrestricted control of the turbine governor.

"Supplier of motor fuel" means any refiner, importer, marketer, jobber, distributor, terminal operator, firm, corporation, wholesaler, broker, cooperative or other person who supplies, sells, consigns, transfers or otherwise furnishes motor fuel to a retail dealer.

"Truck stop" means any retail dealer who provides service predominantly to trucks and truck tractors, as defined in chapter 1 of Title 39 of the Revised Statutes.

"Wholesale purchaser-consumer" means any person that is an ultimate consumer who, as part of its normal business practices, purchases or obtains a covered product from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location and which purchased or obtained more than 50,000 gallons of that covered product in the completed calendar year prior to the declaration of the emergency.

"Wholesale purchaser-reseller" means any person who purchases, receives through transfer, or otherwise obtains (as by consignment) a covered product and resells or otherwise transfers it to other

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purchasers without substantially changing its form. They are designated in the trade as distributors, jobbers, resellers, retailers or service station operators.

*[14A:2]**14:29***-1.3 Exemptions

(a) Any person who is aggrieved by the implementation of any provisions of this chapter may apply for and shall be granted a review of whether compliance places an unreasonable burden upon that person in light of the prevailing conditions of emergency.

(b) Such application shall contain, as a minimum, the name, address and telephone number of the aggrieved party and a concise statement of the grievance.

*[14A:2]**14:29***-1.4 Reservation

The Board reserves the right to modify any of the various emergency measures set out in this chapter and to implement said measures in whole or in part.

SUBCHAPTER 2. END-USE ENERGY REDUCTION

*[14A:2]**14:29***-2.1 Scope

The provisions of this subchapter shall apply to all energy end-users within the State of New Jersey.

*[14A:2]**14:29***-2.2 Public appeal

In the event of an impending supply shortage, the Board may make public appeals or require electric and gas utilities to make public appeals through appropriate news media requesting end-users to reduce their use of electricity, natural gas, and petroleum products.

*[14A:2]**14:29***-2.3 Energy reduction measures

(a) Upon declaration of an energy emergency, the Board may require energy users to implement in whole or in part various energy reduction measures or limitations of energy uses and reductions of hours of operation described in this subsection.

1. Measures for all energy users are as follows:

i. Heating energy sources shall not be used to maintain all temperatures within public buildings of State, county, local governments and school boards, including educational institutions, all industrial and commercial establishments, warmer than 65 degrees Fahrenheit during business hours, including start-up and preparation time, and not more than 55 degrees Fahrenheit during non-business hours.

ii. Where separate thermostats for heating and cooling are in use, air conditioning thermostats shall be at 80 degrees Fahrenheit or at some other level such that cooling energy is not used to achieve prescribed heating levels.

iii. Temperatures within all single and multiple family dwellings shall be set at 65 degrees Fahrenheit from 6:00 A.M. to 11:00 P.M. and 60 degrees Fahrenheit from 11:00 P.M. to 6:00 A.M.

iv. Portable space heaters and threshold heaters used as supplementary heating sources shall be prohibited.

v. Where applicable, window draperies and blinds shall be used to cut down heat losses by setting them to the closed position during the nighttime hours and on cold, cloudy days, and setting them to the open position during periods of sunshine.

vi. Thermostat control devices for hot water shall be set to maintain a maximum temperature of no more than 110 degrees Fahrenheit.

vii. Steps shall be taken to eliminate heating in all unused and seldom used areas, such as stairwells, where economically feasible.

viii. Work schedules for building cleaning, maintenance, restocking, and so forth, which would require offices or industrial facilities to be open beyond normal working hours, shall be minimized.

ix. Nighttime sports, entertainment and recreational activities shall be curtailed.

x. All public museums, art galleries and historic buildings shall be closed.

xi. Retail establishments shall be closed on Sunday except for those providing essential services to the public.

xii. Retail establishments shall be closed from 7:00 P.M. to 9:00 A.M., except those essential services to the public.

xiii. Swimming pool water heating is prohibited.

xiv. All nonessential energy uses shall be prohibited.

2. Measures for electricity users are as follows:

i. All outdoor flood and advertising lighting shall be eliminated, except for the minimum level to protect life and property and, where feasible, a single illuminated sign identifying commercial facilities that are open after dark.

ii. General lighting levels in stores and offices shall be reduced as close to minimum safety levels as possible.

iii. Show window and display lighting shall be eliminated.

iv. The number of elevators operating in office buildings during non-peak hours shall be reduced by at least 50 percent.

v. All aesthetic, ornamental lights shall be extinguished.

3. Measures for natural gas users are as follows:

i. All aesthetic, ornamental gas lights shall be extinguished.

ii. All exterior gas lighting, except for essential safety and security purposes, shall be eliminated.

*[14A:2]**14:29***-2.4 Hour limitations

In the event that the provisions of N.J.A.C. *[14A:2]**14:29***-2.2 and 2.3 fail to provide adequate relief, the Board may impose further hour restrictions upon industrial and commercial operations.

*[14A:2]**14:29***-2.5 Exemptions

(a) Notwithstanding the provisions of N.J.A.C. *[14A:2]* **14:29***-2.2 and 2.3, the Board hereby exempts the following from all or a portion of the above requirements, so long as steps have been taken to reduce all non-essential energy use or unless so directed by order of the Board:

1. Railroads;
2. Local and suburban transit;
3. Interstate transportation by air;
4. Pipeline transportation;
5. Communications (telephone, radio, television and cable television);
6. Electric, gas and sanitary services;
7. Petroleum refining;
8. Hospitals;
9. Electric sales for resale under FERC jurisdiction;
10. Prisons;
11. Police and fire-fighting facilities;
12. Water supply;
13. Federal activities essential to national defense; and
14. Life support systems: Consideration should be given to advance notification of customers with life support systems such as iron lungs, shaker beds, and kidney machines.

SUBCHAPTER 3. NATURAL GAS

*[14A:2]**14:29***-3.1 Scope

The provisions of this subchapter shall apply to all gas utilities within the State of New Jersey.

*[14A:2]**14:29***-3.2 Priority plan for involuntary curtailment

(a) In the event that N.J.A.C. *[14A:2]**14:29***-2.2, 2.3 and 2.4 do not provide sufficient relief, the following sequence of involuntary curtailment shall be implemented:

1. Reduce gas service to a minimum at company facilities;
2. Curtail all interruptible gas service other than for plant protection, process, or feedstock usage;
3. Curtail all interruptible gas service for plant protection, process, or feedstock usage;
4. Curtail all firm industrial service of 50 Mcfd or more, other than for plant protection, process, or feedstock usage;
5. Curtail all firm commercial boiler service of 50 Mcfd or more;
6. Curtail all firm industrial service for process and feedstock of 50 Mcfd or more and large commercial service of 50 Mcfd or more;
7. Curtail all firm industrial service of 50 Mcfd or less;
8. Curtail all firm industrial plant protection service;
9. Curtail all residential and small commercial service (50 Mcfd or less).

(b) Consecutive categories may be curtailed simultaneously to provide sufficient relief in a timely manner. However, higher priorities will not be curtailed prior to the curtailment of lower priorities.

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*[14A:2]**14:29*-3.3 Inter-gas utility allocations

Pursuant to the provisions of section 15(b)(3), P.L. 1977, c.146, the Board may order the allocation of specific quantities of natural gas from one gas utility to another to prevent the curtailment of residential end-users.

*[14A:2]**14:29*-3.4 Residential curtailment

(a) Where all possible means of carrying system load have been taken and load reduction is still required, a gas utility shall curtail residential end-users.

1. The gas utility shall notify the Board as soon as is reasonably feasible and seek authority to implement sectional curtailment of residential end-users pursuant to section 15(b)(3), P.L. 1977, c.146.

2. In the event operating conditions are of such a critical nature that a system emergency is imminent and the implementation of N.J.A.C. *[14A:2]**14:29*-2.2, 2.3 and 2.4 or the notification procedure pursuant to (a)1 above will cause a delay that could unduly jeopardize the integrity and proper operation of the system, the gas utility may implement N.J.A.C. 14A:2-3.2, including the curtailment of residential end-users. Under such conditions, the provisions of (a)1 above and N.J.A.C. *[14A:2]**14:29*-2.2, 2.3 and 2.4 are deemed waived.

SUBCHAPTER 4. ELECTRIC

*[14A:2]**14:29*-4.1 Scope

The provisions of this subchapter shall apply to all electric utilities within the State of New Jersey.

*[14A:2]**14:29*-4.2 Programs to reduce energy consumption

(a) In the event that N.J.A.C. *[14A:2]**14:29*-2.2, 2.3 and 2.4 do not provide sufficient relief, the following actions shall be instituted:

1. The electric utilities, insofar as is feasible, shall operate on a one-system basis, utilizing available fuel resources to produce electrical energy to supply the load of all electric utilities of the power pool to which they belong.

2. Departures from normal operating procedures, which have an acceptable impact on reliability and economy, shall be made. These include, but are not limited to, the following. These steps may be used in any sequence as judged necessary by an electric utility, the PJM Interconnection Dispatcher or the New York Power Pool Dispatcher.

i. Rescheduling of maintenance, to permit best use of the available fuel supply;

ii. Maximum practicable use of generation having the more abundant fuel supply from other areas, even when this is not in accord with economic dispatch;

iii. After careful analysis, opening of limiting transmission lines to avoid operation of capacity with limited fuel availability that would otherwise be required to control line loading;

iv. Reduction of the spinning component of the systems' operating reserve requirement, to avoid operation of capacity with limited fuel availability so long as quick-start units are available for operation;

v. Reliance on manual tripping of pumped storage hydro units, operating as pumps, to limit use of capacity with limited fuel availability that otherwise would be required to control line loadings following a contingency;

vi. Voluntary customer energy reduction programs, as agreed upon from time to time by an electric utility and its customers, shall be placed in effect; and

vii. A five percent voltage reduction is to be made effective on a continuous basis.

3. Loads are to be interrupted on a rotating basis every two hours, as determined by each electric utility. Where particular manufacturing or processing operations do not permit interruptions of service, or where such interruptions would cause severe hardship or would have an unacceptable impact on continuous operations, the electric utility shall, if reasonably feasible, secure the equivalent reduction in use from the customers that might otherwise be interrupted by some method other than the prescribed rotating interruptions.

*[14A:2]**14:29*-4.3 Implementation

The electric utilities shall inform the Board as soon as reasonably feasible and, if possible, prior to implementation of N.J.A.C. *[14A:2]**14:29*-4.2, consistent with the interconnection agreements to which they are signatories.

SUBCHAPTER 5. STATE SET-ASIDE FOR PETROLEUM PRODUCTS

*[14A:2]**14:29*-5.1 Scope and purpose

(a) Upon declaration of an energy emergency the Board may establish a State Set-Aside for the following petroleum products: gasoline, aviation gasoline, kerosene, diesel fuel oil, distillate fuel oil, No. 4 fuel oil, residual fuel oil and propane.

(b) The Board shall utilize the State Set-Aside to meet hardships and emergency requirements of wholesale purchaser-consumers, end-users, and wholesale purchaser-resellers including wholesale purchaser-consumers and end-users which are part of any governmental organization.

*[14A:2]**14:29*-5.2 State Set-Aside volume

(a) Upon establishment of a State Set-Aside, a prime supplier shall report to the Board, on a form prescribed by the Board, on or before the 20th of each month;

1. The estimated volume of each covered product to be sold into the State's distribution system for consumption within the State during the next month;

2. The State Set-Aside volume available during the next month, using the formula in (c) below; and

3. The actual volume of each covered product sold into the State's distribution system for consumption within the State during the previous month.

(b) When appropriate, the Board will determine the State Set-Aside percentage level for each covered product which set aside shall not exceed the levels as follows:

1. Gasoline: five percent;
2. Aviation gasoline: five percent;
3. Kerosene: four percent;
4. Diesel fuel oil: four percent;
5. Distillate fuel oil: four percent;
6. No. 4 fuel oil: three percent;
7. Residual fuel oil: three percent; and
8. Propane: three percent.

(c) The State Set-Aside volume available to the Board for a particular month shall be the amount calculated by multiplying the State Set-Aside percentage level by each prime supplier's estimated volume of each covered product to be sold into the State's distribution system for consumption within the State during that month.

(d) The State Set-Aside for a particular month may not be accumulated or deferred. It shall be made available from stocks of prime suppliers whether directly or through their wholesale purchaser-resellers.

*[14A:2]**14:29*-5.3 Applications for State Set-Aside

(a) All hardship and emergency applications for assignment from the State Set-Aside and appeals shall be filed with the Board.

(b) Applications shall be in writing on a form prescribed by the Board. Applications may first be made by telephone, but must be confirmed in writing within five days.

(c) If the applicant does not have a supplier, it shall identify two suppliers whom the applicant has contacted and who could provide the covered product.

(d) The information to be supplied shall be sufficient to enable the Board to act properly on the application. Applications shall include, but are not limited to, name of applicant, address, telephone number, name of contact person, type of business, type of fuel requested, amount to be received in month of application, amount requested, justification for application, inventory, storage capacity, amount that was received in each month of the previous year from all prime suppliers or wholesale purchaser-resellers (if applicable) and their names.

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*[14A:2]**14:29*-5.4 Assignments from State Set-Aside

(a) If the Board approves a hardship or emergency application, it shall assign a prime supplier and amount from the State Set-Aside to the applicant. Any prime supplier to the State may be assigned regardless of whether its brand, if any, is different from the brand of the applicant. To determine the appropriate prime supplier, the Board may coordinate with the State representative of the prime supplier.

(b) In order to facilitate relief of any hardship and meet the emergency requirements of wholesale purchaser-consumers and end-users, the Board may direct that a wholesale purchaser-reseller be supplied from the State Set-Aside, so that the wholesaler purchaser-reseller can supply the wholesaler purchaser-consumers and end-users experiencing such hardship or emergency.

(c) The Board shall issue an authorizing document to an applicant granted an assignment from State Set-Aside. The Board shall provide a copy of the authorizing document to the prime supplier's designated State representative.

(d) An authorizing document issued by the Board pursuant to this section is effective upon issuance and represents a call on the prime supplier set-aside volumes for the month of issuance, irrespective of the fact that delivery of the product subject to the authorizing document cannot be made until the following month.

(e) An authorizing document not presented to either the prime supplier or designated wholesale purchaser-reseller of the prime supplier within 10 days of issuance shall expire after that time.

*[14A:2]**14:29*-5.5 Responsibilities of wholesale purchaser-resellers

The assigned products specified in the authorizing documents shall be made available to the wholesale purchaser-consumer or end-user at prices prevailing for similar classes of purchases in the locality of the wholesale purchaser or end-user at the time of the sale of the product.

*[14A:2]**14:29*-5.6 Prime suppliers

(a) Each prime supplier shall designate a representative to act on behalf of the prime supplier with respect to the State Set-Aside. Each prime supplier shall notify the Board in writing of such designation within 15 days of said designation.

(b) All prime suppliers shall supply products from their State Set-Aside volume each month, as directed by the Board, not to exceed the total State Set-Aside volume for each product for that month. That portion of a prime supplier's State Set-Aside volume for a particular month which is not assigned by the Board during that month, or which is not subject to an authorizing document issued no later than the last day of that month, shall become a part of the prime supplier's total supply for the subsequent month.

(c) The assigned products specified in the authorizing document shall be made available to the wholesale purchaser-consumer, end-user, or wholesale purchaser-reseller at prices prevailing for similar classes of purchasers in the locality of the wholesale purchaser-consumer, end-user, or wholesale purchaser-reseller at the time of the sale of the product.

*[14A:2]**14:29*-5.7 Releases of State Set-Aside

(a) At any time during the month, the Board may issue an authorizing document releasing part or all of a prime supplier's set-aside volume through the prime supplier's normal distribution system in the State.

(b) The Board may designate certain geographical areas within the State as suffering from an intrastate supply imbalance. At any time during the month, the Board may issue an authorizing document to some or all of the prime suppliers with purchasers within such geographical areas releasing part or all of their set-aside volume through their normal distribution systems to increase the supply of the prime supplier's purchasers located within such areas.

(c) Authorizing documents issued pursuant to this subsection (c) shall be in writing and effective immediately upon presentation to the prime supplier's designated State representative. Such authorizing documents shall represent a call on the prime supplier's set-aside volumes for the month of issuance irrespective of the fact that delivery cannot be made until the following month.

*[14A:2]**14:29*-5.8 Penalties

(a) Any person who violates the provisions of these rules shall be liable for a penalty of not more than $500.00 for the first offense and not more than $5,000 for the second or any subsequent offense, to be collected in a civil action by a proceeding under the penalty enforcement law (N.J.S.A. 2A:58-1 et seq.), or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. The Superior Court shall also have jurisdiction to enforce the penalty enforcement law. If the violation is of a continuing nature, each day during which it continues shall constitute an additional separate and distinct offense.

(b) The Board may compromise and settle any claim for a penalty under this section in such amount at the discretion of the Board as may appear appropriate and equitable under all of the circumstances.

SUBCHAPTER 6. REGULATION AND CONTROL OF SALE OF MOTOR FUEL

*[14A:2]**14:29*-6.1 Scope

In the event that the Board determines there is a significant shortage of motor fuel, this subchapter shall apply to the sale of all motor fuel made by retail dealers to operators of motor vehicles.

*[14A:2]**14:29*-6.2 Days of access to retail dealers—odd/even measure

(a) No retail dealer shall sell any motor fuel for use in a service tank in a passenger automobile except as set forth in the following schedule:

1. Operators of passenger automobiles bearing license plates the last number of which is an even number shall be permitted to purchase motor fuel for use in the service tank of said passenger automobile on even numbered days of each month.

2. Operators of passenger automobiles bearing license plates the last number of which is an odd number or containing no number shall be permitted to purchase motor fuel for use in the service tank of said passenger automobile on odd numbered days of each month.

3. Operators of passenger automobiles bearing license plates from any other state or foreign nation shall be permitted to purchase motor fuel on the same basis as any regulation in effect in their state.

4. For the purpose of determining the last number of the license plate, any number preceded by a hyphen or dash shall not be used in determining the right to purchase motor fuel described in this section.

5. The provisions of this section shall not be applicable on the 31st day of any month.

*[14A:2]**14:29*-6.3 Quantity of motor fuel

The Board may establish minimum or maximum quantities of motor fuel to be sold to any purchaser including limitations on the number of gallons to be sold and/or limitations on the number of dollars of motor fuel to be sold.

*[14A:2]**14:29*-6.4 Methods for notifying public

(a) Every retail dealer of motor fuel shall conspicuously display a flag, so that it is easily visible to the public, during such time that his place of business is open, as follows:

1. A red flag shall be displayed when motor fuel is not available for sale to members of the general public;

2. A green flag shall be displayed when all grades of motor fuel are available for sale to members of the general public without limitations in regard to the maximum amount which may be purchased;

3. A yellow flag shall be displayed when motor fuel is available to members of the general public but such sales are limited in regard to the maximum amount which may be purchased, or there is a grade of motor fuel which is unavailable for sale to members of the general public.

(b) Whenever a retail dealer displays a yellow flag, he shall post in a conspicuous place and manner the limitations applicable to sales of motor fuel.

(c) Every retail dealer of motor fuel shall post in a conspicuous place and manner the hours during which he shall be selling motor fuel to members of the general public.

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(d) All signs posted by a retail dealer relating to the price of motor fuel being sold shall be properly maintained and accurately reflect the current selling price.

(e) Every retail dealer shall prominently indicate the last motor vehicle eligible to receive motor fuel from the retail dealer prior to closing.

(f) If a minimum purchase or minimum sale requirement is in effect, every retail dealer of motor fuel shall post in a conspicuous place and manner the requirement which is in effect at that time.

*[14A:2]**14:29***-6.5 Exemptions; self-implementing

(a) The following persons shall be exempt from N.J.A.C. *[14A:2]**14:29***-6.2, Days of access to retail dealers—odd/even measure:

1. Operators of motor vehicles bearing license plates with "MD" identification marks in which a physician is riding on medical business;

2. Operators of commercial vehicles, farm vehicles, omnibuses, and school buses;

3. Operators of authorized emergency vehicles;

4. Operators of motor vehicles bearing license plates or handicap parking sticker which identify the operator as a disabled or handicapped driver;

5. Operators of motor vehicles which are being used as van pools recognized by the New Jersey Department of Transportation bearing a sticker issued by the Board. Operators of motor vehicles which are being used as van pools may apply to the Board for such an exemption sticker. The Board may require operators of van pools to furnish such proof as the Board may prescribe in order to establish a right to such an exemption; and

6. Operators of motor vehicles with weekday exemption stickers shall only be exempt from Monday through Friday inclusive.

*[14A:2]**14:29***-6.6 Exemptions on application

(a) In the absence of identifying license plates, persons who can establish to the satisfaction of the Board that they suffer from an ambulatory handicap or disability, and require the use of a passenger automobile for business, in connection with their employment or to obtain medical care or the necessities of life, shall be issued a sticker in the form prescribed by the Board, which when affixed to said automobile in the manner prescribed, shall exempt such persons from the provisions of N.J.A.C. *[14A:2]**14:29***-6.2. Such persons shall be required to furnish such proof as may be required by the Board in the form and manner as the Board may prescribe in order to establish such right to exemption.

(b) Any person who can demonstrate to the satisfaction of the Board that an exemption is necessary for the health and welfare of the general public may receive an exemption sticker.

(c) An operator of a motor vehicle, who can demonstrate to the satisfaction of the Board that an exemption is necessary for employment, may receive a weekday exemption sticker.

1. The Board will consider an exemption necessary for an individual's employment when the individual demonstrates that:

i. A motor vehicle is required in pursuing his or her employment;

ii. The motor vehicle used for pursuit of his or her employment is supplied with motor fuel exclusively from a retail dealer;

iii. Alternative means of transportation to pursue his or her employment are unavailable;

iv. The individual travels a minimum of 125 miles per day at least four days a week, exclusive of commutation to and from work; and

v. The individual travels a minimum of 25,000 miles per year in the conduct of his or her employment.

2. To receive an exemption under this subsection, an individual shall submit a completed and notarized application on a form provided by the Board. This form shall be accompanied by a declaration of employment by the individual's employer on the stationery of the employer. Additionally, an individual may be asked to document all information submitted to the Board. The Board reserves the right to require that all applicants submit documentation in any requested form, including, but not limited to, Internal Revenue Service forms.

3. An individual in compliance with the requirements of this subsection will receive a weekday exemption.

*[14A:2]**14:29***-6.7 Arrangements permitted

(a) Any retail dealer who, prior to the declaration of emergency, had a bona fide agreement or written contract with a commercial account for the periodic sale of motor fuel to commercial vehicles, omnibuses, school buses, or authorized emergency vehicles shall be allowed to continue those sale practices, notwithstanding the provisions of N.J.A.C. *[14A:2]**14:29***-6.2 and 6.3.

(b) Provisions concerning special arrangements for emergency services are as follows:

1. The governing body of any New Jersey county or municipality or the senior officer of any Federal agency, the jurisdiction of which includes New Jersey or any portion thereof, which utilizes the services of a volunteer or professional fire department, police department, rescue squad, ambulance service, or the hospital administrator of any New Jersey hospital which utilizes the services of emergency medical personnel may enter into a written contract or agreement with designated retail dealer(s) to permit the sale of motor fuel at any time to such persons that provide said emergency services, notwithstanding any of the provisions of these regulations.

2. Said contracts or agreements shall designate by name those persons who provide said emergency services and shall designate by license plate number the motor vehicle used by said persons when responding to a call to provide said emergency services. Said contracts or agreements shall be submitted to the Board for approval consistent with a policy of motor fuel conservation and equitable allocation and the providing of essential emergency services.

3. Designated retail dealers shall obtain from persons purchasing motor fuel under the provisions of this subsection a signed and dated receipt declaring the motor fuel gallonage purchased. Said designated dealers shall, on a monthly basis, submit all such receipts to the appropriate governing body, senior officer or hospital administrator.

4. The governing body, senior officer, hospital administrator or authorized representative thereof shall conspicuously post in the appropriate municipal building, county office building, agency office building or hospital the names of all persons designated in any said contracts or agreements and the motor fuel gallonage purchased on a monthly basis, if any, by each said designated person. Said governing body, senior officer or hospital administrator shall retain a record of all purchases made under the provisions of this subsection and submit same, upon demand, for review by the Board.

(c) A retail dealer, who, prior to *[the effective date of this rule]* ***March 4, 1991***, qualified as a truck stop, may, at the dealer's option, restrict its sales of motor fuel to the operators of trucks and truck tractors only. Said options does not include the right to sell at the dealer's discretion to the operators of preferred customer passenger automobiles to the exclusion of all other passenger automobiles, and any such dealer who elects to sell to any operator of a passenger automobile after *[the effective date of this rule]* ***March 4, 1991*** shall be required to sell to all operators of passenger automobiles subject to this subchapter. A retail dealer electing to sell only to the operators of trucks and truck tractors under the terms of this section shall post in a conspicuous place such restriction.

*[14A:2]**14:29***-6.8 Police authority to waive regulations in cases of emergency

(a) Notwithstanding any of the provisions of this subchapter, police departments of the Division of State Police in the Department of Law and Public Safety and police departments of any New Jersey municipality may, in cases of bona fide emergency, waive any of these rules and permit a retail dealer to sell motor fuel at any time to the operator of a motor vehicle who would otherwise not be entitled to purchase motor fuel. In every instance where a waiver of these rules is granted, the name of the person requesting such waiver, the waiver granted and the reasons therefor shall be entered into the police blotter of the police department involved. A bona fide emergency exists where a police officer determines that the use of a motor vehicle is necessary for the life, health or safety of an individual or community.

(b) Any person procuring motor fuel by falsely claiming bona fide emergency shall be deemed to be in violation of this section.

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(c) A retail dealer who sells motor fuel pursuant to a waiver as described in (a) above shall not be deemed to be in violation of this subchapter.

*[14A:2]**14:29***-6.9 Privileged vehicles

(a) Notwithstanding any of the provisions of this subchapter, an operator of an authorized emergency vehicle shall be entitled to be sold motor fuel immediately upon demand by a retail dealer at any time including those hours when a retail dealer is not open for the sale of motor fuel to the general public.

(b) A retail dealer who sells motor fuel in accordance with (a) above shall not be deemed to be in violation of this subchapter.

*[14A:2]**14:29***-6.10 Pre-emption

All local and county regulations, statutes, ordinances and proclamations dealing with the subject matter of this subchapter are hereby superseded.

*[14A:2]**14:29***-6.11 Interference with compliance

(a) No person shall threaten, interfere, or attempt to interfere with the retail dealer with respect to compliance with the provisions of this subchapter.

(b) No person shall knowingly or willfully misrepresent a motor vehicle as one entitled to an exemption from this subchapter or a priority thereunder. Such misrepresentation includes, but is not limited to, falsely identifying a motor vehicle as a commercial vehicle. If such misrepresentation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense. Penalties imposed resulting from a violation of this section shall not preclude the application of any other penalties, civil or criminal, as prescribed by law.

*[14A:2]**14:29***-6.12 Modification or suspension of regulations

The Board may, from time to time and for such period as it deems appropriate, modify or suspend the operation and/or enforcement of any portion of or all of this subchapter, in whole or in part. Such modification or suspension may be made immediately effective without prior notice.

*[14A:2]**14:29***-6.13 Preferred customers; sale on first-come, first-served basis

(a) No retail dealer shall give preferential treatment including, but not limited to, separate pumps, separate pump lines, separate hours of sale, or sale by appointment to preferred or regular customers.

(b) All sales of motor fuel shall be on a first-come, first-served basis.

*[14A:2]**14:29***-6.14 Sale of motor fuel in containers

(a) No person shall, for other than commercial or farm purposes, purchase or attempt to purchase from a retail dealer by distribution directly into a container unrelated to an internal combustion engine more than one gallon of motor fuel.

(b) No retail dealer shall, for other than commercial or farm purposes, sell, or attempt to sell, by distribution directly into a container unrelated to an internal combustion engine more than one gallon of motor fuel.

SUBCHAPTER 7. SUPPLIER OF PETROLEUM PRODUCTS

*[14A:2]**14:29***-7.1 Scope

This subchapter shall govern the periodic reporting of energy information by persons who supply petroleum products to retail dealers.

*[14A:2]**14:29***-7.2 Reporting

(a) Each supplier of covered products shall submit to the Board the New Jersey posted dealer tank wagon price, posted reseller tank car price, or other posted price for each covered product for each class of customer within 24 hours of a price change. Submissions postmarked within 24 hours of a price change shall be deemed to be in compliance with this subsection.

(b) The above information shall be sent to:

State of New Jersey
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102
Attention: Office of the Economist

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Public Employees' Retirement System
Nearest Attained Age; Enrollment; Retirement
Adopted New Rule: N.J.A.C. 17:2-1.13

Proposed: December 17, 1990, at 22 N.J.R. 3707(a).

Adopted: January 28, 1991, by the Board of Trustees, Public Employees' Retirement System, Janice Nelson, Secretary.

Filed: February 6, 1991 as R.1991 d.115, **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. 43:15A-17.

Effective Date: March 4, 1991.

Expiration Date: November 8, 1994.

Summary of Public Comments and Agency Responses:

There was one comment received from the public that suggested that the proposed wording be changed to make the language clearer. Those suggestions and changes are incorporated in the adoption of this rule.

Full text of the adopted new rule follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

17:2-1.13 Nearest attained age; enrollment; retirement

(a) An individual who is six months or more *[than his or her current age]* ***past his or her most recent birthdate*** at the time of his or her enrollment will have his or her pension contribution rate and retirement factor based upon the age on his or her next birthday.

(b) Retired members and survivors will have their benefits calculated upon the basis of the factors applicable to their age as set forth in (a) above.

(b)

DIVISION OF PENSIONS

Teachers' Pension and Annuity Fund
Retirement Credit; Back Pay Awards
Adopted Amendment: N.J.A.C. 17:3-6.6

Proposed: November 5, 1990, at 22 N.J.R. 3321(b).

Adopted: January 28, 1991, by the Board of Trustees, Teachers' Pension and Annuity Fund, Michael Weik, Acting Secretary.

Filed: January 31, 1991 as R.1991 d.100, **without change.**

Authority: N.J.S.A. 18A:66-56 et seq.

Effective Date: March 4, 1991.

Expiration Date: August 15, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

17:3-6.6 Retirement credit

(a) (No change.)

(b) A member who appeals the suspension or termination of his or her employment and is awarded back pay for all or a portion of his or her employment for the period of such suspension or termination shall receive retirement credit for the period covered by the award, regardless of the amount of the back pay awarded, provided

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a full normal pension contribution is received from the member or deducted from the value of the award. The amount of the pension contribution will be determined by the provisions of the award. If the member receives full back pay, including normal salary increases, then the contribution will be computed on the base salaries that the employee would have earned for the reinstated, suspended or terminated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salary that the member was receiving for pension purposes prior to the suspension or termination of employment. In the event that the amount of back payment is insufficient to deduct the value of the normal pension contributions due, such contribution shall be paid by the member.

(c) It is the responsibility of the certifying officer to provide a letter attesting to the base salary or salaries to be used to compute pension contributions and to provide a copy of the resolution or legal document that details the terms of the settlement.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Administrative Correction
Teacher Preparation and Certification
Types of Certificates
County Substitute Certificate
N.J.A.C. 6:11-4.5

Take notice that the Department of Education has discovered an incorrect cross-reference in N.J.A.C. 6:11-4.5(i). As currently in the New Jersey Administrative Code, this subsection cross-references N.J.A.C. 6:29-6.3 for a certain approval by the county superintendent of schools. However, effective March 5, 1990, N.J.A.C. 6:29-6.3 was recodified as N.J.A.C. 6:29-3.3 (see 21 N.J.R. 3815(a) and 22 N.J.R. 793(a)), rendering this cross-reference inaccurate. The Department has requested, and the Office of Administrative Law has agreed to permit, the correction of this cross-reference through this notice of administrative correction, which is published in accordance with N.J.A.C. 1:30-2.7.

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

6:11-4.5 County substitute certificate

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

(i) The holder of a county substitute certificate is authorized also to serve as an athletic coach in the district in which he or she is employed. The 20-day limitation noted in (c) above shall not apply to such coaching situations. Issuance of a certificate under these conditions shall be subject to the approval of the county superintendent of schools as specified in N.J.A.C. 6:29-[6.3]**3.3**.

(j) (No change.)

TRANSPORTATION

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Routes U.S. 46 including Route U.S. 1, 9, and 46, and U.S. 202 in Morris County
Adopted Amendments: N.J.A.C. 16:28-1.10 and 1.67

Proposed: December 17, 1990 at 22 N.J.R. 3704(a).
Adopted: January 18, 1991, by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: January 31, 1991, as R.1991 d.105, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.
Effective Date: March 4, 1991.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.10 Route U.S. 46 including Route U.S. 1, 9, and 46

(a) The rate of speed designated for the certain parts of Route U.S. 46 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1.-3. (No change.)

4. For both directions of traffic:

i.-xi. (No change.)

xii. In the Town of Dover, Morris County:

(1) Zone 22: 35 mph between the bridge over Central Railroad and Perry Street, except for 25 mph when passing through the Dover middle school zone, during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 38.18 to 39.14); thence

(2) Zone 23: 40 mph between Perry Street and the Rockaway Township line (George Street), except for 25 mph when passing through the East Dover elementary school zone, during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 39.14 to 39.5); thence

(A) 40 mph in Rockaway Township, Morris County (milepost 39.5 to 39.9); thence

(B) 40 mph between Rockaway Township line and Mannino Street, Rockaway Borough, Morris County (milepost 39.9 to 40.6); thence

Recodify existing xiv.-xv. as xiii.-xiv. (No change in text.)

5.-6. (No change.)

(b) (No change.)

16:28-1.67 Route U.S. 202[1]

(a) The rate of speed designated for the certain parts of State highway Route U.S. 202 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-xix. (No change.)

xx. In Morristown Town and Morris Township, Morris County:

(1) 35 miles per hour to the intersection of Max Drive (approximate milepost 46.13); thence

xxi.-xxii. (No change.)

[1]See also N.J.A.C. 16:28-1.54.

(c)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Routes N.J. 71-35 Ramps (Ashley Avenue) in Monmouth County; N.J. 138 in Monmouth County; and U.S. 9 in Cape May County
Adopted Amendment: N.J.A.C. 16:28-1.41
Adopted New Rules: N.J.A.C. 16:28-1.39 and 1.40

Proposed: December 17, 1990 at 22 N.J.R. 3705(a).
Adopted: January 18, 1991 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: January 31, 1991 as R.1991 d. 106, **without change.**

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Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.
Effective Date: March 4, 1991.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.39 Route 71-35 Ramps (Ashley Avenue)
(a) The rate of speed designated for the certain parts of State Highway Route 71-35 Ramps (Ashley Avenue) described in this subsection shall be established and adopted as the maximum legal rate of speed:
1. For both directions of traffic:
i. In Brielle Borough, Monmouth County:
(1) 25 miles per hour between Higgins Avenue and Evergreen Avenue.

16:28-1.40 Route N.J. 138
(a) The rate of speed designated for the certain parts of State Highway Route 138 described in this subsection shall be established and adopted as the maximum legal rate of speed:
1. For both directions of traffic:
i. In Wall Township, Monmouth County:
(1) 55 miles per hour between Route N.J. 34 and Route N.J. 35 (approximate mileposts 0.00 to 3.50).

16:28-1.41 Route U.S. 9
(a) The rate of speed designated for the certain parts of State Highway Route U.S. 9 described in this subsection shall be established and adopted as the maximum legal rate of speed:
1. For both directions of traffic in Cape May County:
i. Lower Township:
(1) Zone 1: 50 miles per hour between Route 109 and Cresse Lane except, for 35 miles per hour when passing through the LOWER CAPE MAY REGIONAL HIGH SCHOOL zone (mileposts 4.18 to 4.47), during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (mileposts 3.00 to 5.81); thence
(2) Zone 2: 40 miles per hour between Cresse Lane and the Lower Township-Middle Township Corporate line (mileposts 5.81 to 6.63); thence
ii.-iv. (No change.)
2. (No change.)
(b) (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Routes U.S. 40 and N.J. 50 in Atlantic County
Adopted Amendments: N.J.A.C. 16:28A-1.28 and 1.100

Proposed: December 17, 1990 at 22 N.J.R. 3706(a).
Adopted: January 17, 1991, by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: January 31, 1991, as R.1991 d.107, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-138.1.
Effective Date: March 4, 1991.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.28 Route U.S. 40
(a) The certain parts of State highway Route U.S. 40 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.
1.-4. (No change.)
5. No stopping or standing in Hamilton Township, Atlantic County.
i. Along both sides:
(1) (No change.)
(2) Beginning at the easterly side of Old Harding Highway and extending 1,500 feet west therefrom.
ii. (No change.)
6.-8. (No change.)
(b) (No change.)

16:28A-1.100 Route 50
(a) The certain parts of State highway Route 50 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.
1.-2. (No change.)
3. No stopping or standing in Hamilton Township, Atlantic County:
i. Along both sides beginning 200 feet south of the southerly curb line of Third Street to the northerly curb line of Fourth Street.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Notice of Administrative Correction
Organization
Internal Controls
Progressive Slot Machines
N.J.A.C. 19:40-2.1 and 19:45-1.39

Take notice that the Casino Control Commission has discovered errors in the text of N.J.A.C. 19:40-2.1(c)2 and 19:45-1.39(j) as they currently appear in the New Jersey Administrative Code.

As adopted effective November 26, 1990 and published at 22 N.J.R. 3763(a), the text "and Control reviews and evaluates . . . rules of the games;" was deleted from N.J.A.C. 19:40-2.1(j). However, this deletion does not appear in the Code in the 12-17-90 update.

In N.J.A.C. 19:45-1.39, the word "one" in the first sentence phrase "one each day" is a typographic misspelling of the word "once."

This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

19:40-2.1 Organization
(a)-(b) (No change.)
(c) The Commission's staff shall be comprised of the divisions set forth below. Each division shall be organized into such operational units, and each unit shall have such assigned positions, as the Chair shall direct.
1. (No change.)
2. The Division of Financial Evaluation [and Control reviews and evaluates petitions and submissions related to accounting and internal controls, gaming equipment and rules of the games;] **shall** conduct casino gross revenue audits, analyze the financial position and operating performance of casino licensees, and assess and collect fees and gross revenue taxes.
3.-5. (No change.)

19:45-1.39 Progressive slot machines
(a)-(i) (No change.)
(j) The amount indicated on the "progressive meter(s)" and "in meter" on each slot machine shall be recorded on a Progressive Slot

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Summary, at a minimum, [one] **once** each day and each summary shall be signed by the preparer. Supporting documents shall be maintained to explain any reduction in the registered amount from the previous entry and shall indicate the date, casino number of the slot machine, and the amount of the reduction.

(k) (No change.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Hazardous Waste Determination, Waste Code Hierarchy for Manifesting, Waste Oils Listing, Container Labeling

Adopted New Rule: N.J.A.C. 7:26-8.20

Adopted Amendments: N.J.A.C. 7:26-7.2, 7.4, 8.1, 8.5, 8.7, 8.13 and 8.17

Proposed: February 5, 1990 at 22 N.J.R. 288(a).

Adopted: January 29, 1991 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Filed: February 1, 1991 as R.1991 d.110 **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. 13:1E et seq., particularly 13:1E-6.

DEP Docket Number: 061-89-12.

Effective Date: March 4, 1991.

Operative Date: May 3, 1991.

Expiration Date: October 25, 1995.

Summary of Public Comments and Agency Responses:

These amendments were proposed on February 5, 1990. Three commenters submitted written comments during the public comment period which closed on April 6, 1990. A summary of the comments received and agency responses follows.

COMMENT: One commenter objected to the promulgation of the hierarchy, claiming that the hierarchy arrangement is unduly detailed and confusing. It places an additional burden on generators, transporters and, especially, facilities, all of whom must insure that all proper information is entered on manifests.

The commenter expressed a concern that facilities will be deluged by innumerable queries from generators for assistance in understanding the application of the proposed hierarchy and in completing a manifest correctly.

The commenter stated that if the proposed rule and amendments are promulgated, the Department must educate the regulated community in its use and application. The commenter requested that an issue of the NJDEP *Hazardous Waste Quarterly* be entirely devoted to the hierarchy and waste oils and mailed to all generators, transporters, and facilities.

RESPONSE: It was necessary to make the hierarchy detailed in order to address all the possible combinations of wastes that could occur. It is not an additional burden for generators, transporters, and facilities to put all of the proper information on the manifest, since the generator has the responsibility of properly characterizing its waste. The hierarchy will insure uniformity and consistency in the coding of manifested waste. All regulated parties are required to comply with requirements of the hierarchy. The Department maintains the Hazardours Waste Advisement Program to assist the regulated community by answering questions regarding the application of the rules. The Advisement Program can be reached at (609) 292-8341. The Department may write about the hierarchy in a future issue of the *Hazardous Waste Quarterly*. Anyone who would like to receive this newsletter can obtain a free subscription by calling the Advisement Program.

COMMENT: In many industrial settings where measurements are volumetric, it is not always practical nor possible to determine the weight percentages of the various constituents in waste liquids.

RESPONSE: The Department has determined that an evaluation made on the basis of either a volumetric or gravimetric (weight-based) percentage will be acceptable, since the directions for filling out the manifest allow the generator to report the amount of waste shipped in either type of measure. The rules have been revised accordingly.

COMMENT: One commenter questioned whether a New Jersey-permitted facility could accept a manifested waste if a minor but unpermitted waste code number appears in Item J.

RESPONSE: Hazardous waste facilities cannot accept wastes other than those listed in their permit, or for facilities with existing facility status, those listed in their Part A application. The fact that it is a minor component of a larger volume of waste is not relevant. Since the United States Environmental Protection Agency (USEPA) has adopted the "Third-Third" regulations of the Land Disposal Restrictions as required by RCRA at 42 U.S.C. 6924, generators are required to notify hazardous waste facilities of all applicable waste codes. Facilities must be permitted to accept all in-coming wastes in order to accept the shipment. This may require some facilities to seek permit modifications or, in the case of existing-status facilities, file amended Part A applications.

COMMENT: The proposed rule requires the applicable listed waste code, or in the case of a mixture, the listed code for the component forming the highest percentage by weight of the total waste, to be documented in Item I. The rule also requires all other codes pertintent to the proper documentation of the waste to be entered in Item J.

Considering the physical allowance in Item J for writing, in many cases it would be extremely difficult to list all pertinent codes in the space provided. For example, the proper packaging and documenting of lab packs often may include the use of 20 or more waste codes for one container.

The commenter claimed it is permitted to use additional documentation for material he transports and stores by attaching a packing slip to each container and a copy of that packing slip to the manifest for each container handled. The packing slips contain such information as generator name, address, and EPA ID Number; manifest number; DOT proper shipping name, hazard class, UN/NA number; disposal code; EPA or state waste code; container size; weight; chemical name and waste type.

The commenter requested that the Department revise the rule to allow use of additional documentation—for example, a packing slip—to document all other pertinent waste codes, rather than Item J, providing that the additional documentation accompanies the manifest.

RESPONSE: Lab packs present a special case because a single manifest is allowed even though each container may hold more than one type of waste. The use of a packing slip in addition to the manifest can continue for lab packs. The Department is currently preparing a rule proposal that will create a special waste code for lab packs. However, it is still necessary to have a complete list of the contents of the lab pack, whether on the manifest or on a packing slip that accompanies the manifest.

COMMENT: One commenter noted that there has never been any standard hierarchy for use in the designating of accurate waste codes to be documented on the manifest. Since most facilities have been following their own procedures for choosing waste codes that they believe most accurately portray the waste being handled, compliance with this rule may include substantive procedural changes as well as additional training programs for New Jersey facilities. The commenter requested that the Department allow a 90-day phase-in period, upon publishing of the final rule, giving facilities ample time to implement necessary procedural changes and training programs.

RESPONSE: To ease the impact on the regulated community, the Department has set the operative date at 60 days after publication of the adoption.

COMMENT: Table B, Number 1 of the proposed waste code hierarchy reads:

Waste Composition	Manifest Completion	
	Item I	Item J
1. One F, K, P, or U waste that exhibits RCRA characteristc(s) (D wastes)	F, K, P or	U code

In order to be consistent throughout the hierarchy, the commenter requested that the Department revise Table B, Number 1 of the hierarchy to not only require the F, K, P, or U waste code to be put in Item I but also to require the appropriate characteristic D code(s) to be entered in Item J as well.

RESPONSE: The Department had originally not required characteristic "D" codes to be shown in Item J when listed F, K, P or U wastes are manifested in order to relieve generators of the requirement of testing those listed wastes for characteristics. Now that USEPA has promulgated

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the Third-Third of the Land Disposal Restricton regulations, generators are required to send a notification, separate from the manifest, detailing all characteristic and listed waste codes that are applicable to a shipment of hazardous waste. Since all codes applicable to a shipment of hazardous waste are required to be identified as part of the notification, the Department has revised the hierarchy Tables to delete the designation of additional characteristic or constituent waste codes in Item J of the manifest.

COMMENT: Table B, Number 4 and 5 states:

Waste Composition	Manifest Completion	
	Item I	Item J
4. One or more X wastes which exhibit RCRA characteristic(s) (D wastes) and are destined for New Jersey waste oil recycling facilities.	X code (if more than one, use X code of waste forming highest percentage by weight of total waste)	Characteristic D code(s) and other X code(s)
5. One or more X wastes that exhibit RCRA characteristic(s) (D wastes) and are treated (other than recycling), stored, or disposed in New Jersey	Charateristic D code(s)	X codes(s)

The commenter believed that in certain cases these designations would be inconsistent and cause the same waste to be labeled differently under different circumstances. For example, an X waste exhibiting RCRA characteristic(s) (D waste) being manifested to a facility for storage would be described according to the proposed hierarchy by a D waste code upon entering the facility. However, should that same waste upon leaving the facility be manifested to a waste oil recycling facility in New Jersey, it would be described by an X waste code. Therefore, the same waste may, under the proposed hierarchy, be manifested into a facility with one waste code and be manifested out of the facility described by another waste code.

The commenter requested that the Department adopt Table B, Number 5 (which is consistent with the USEPA standards) as it appears in the proposed ruling, and eliminate Table B, Number 4.

RESPONSE: The Department has not incorporated the commenter's suggestion since some New Jersey waste oil facilities are permitted only to accept X wastes for recycling. If such wastes were manifested to those facilities under D codes the facility could not accept the waste until the Department modified all the affected facilities' permits. In addition, the hierarchy generally directs generators to use the most specific applicable waste code so that the waste is more accurately identified. This is in keeping with the Federal regulations that exempt certain wastes from regulation when recycled.

COMMENT: One commenter suggested that N.J.A.C. 7:26-8.5(b) be amended to state that the mixture rule also applies to listed waste oils.

RESPONSE: The mixture rule is found at N.J.A.C. 7:26-8.1(b)2, not N.J.A.C. 7:26-8.5(b) and clearly states that it applies to all listed wastes. This includes waste oils listed at N.J.A.C. 7:26-8.20. N.J.A.C. 7:26-8.5(b) addresses the procedure by which a generator determines whether or not his waste is hazardous. That section has been clarified to state that mixtures of wastes listed at N.J.A.C. 7:26-8.20 and solid wastes are hazardous wastes.

COMMENT: One commenter suggested the phrase "Manifest Document Number" at N.J.A.C. 7:26-7.2(b)1 should be changed to require the use of the New Jersey assigned manifest number which appears on New Jersey's Hazardous Waste Manifest.

RESPONSE: It was always the Department's intent that the unique State Manifest Number be used rather than the generator assigned manifest number. The rule has been clarified to reflect this. However, the New Jersey Manifest Number cannot be required since not all generators will be using New Jersey Manifests.

COMMENT: Regarding N.J.A.C. 7:26-8.5, one commenter questioned whether the generator should not also have the option of determining whether or not his waste is hazardous due to the presence of constituents.

RESPONSE: A generator is always responsible for determining whether or not his waste is hazardous. N.J.A.C. 7:26-8.6 and 8.16(a) address wastes determined by the generator to be hazardous due to the presence of constituents. N.J.A.C. 7:26-7.4(a)4x Table D has been modified to reflect this.

COMMENT: One commenter suggested that the words "... or the generator" be added to N.J.A.C. 7:26-7.4(a)4x Table D.

RESPONSE: The Department agrees and has made the change at Table D.

COMMENT: One commenter pointed out that N.J.A.C. 7:26-7.2(b)1 requires the generator to mark each container of 110 gallons or less with the label specific to New Jersey. The commenter asked whether an out-of-State generator shipping hazardous waste to a New Jersey facility would be required to use the New Jersey label and what labeling requirements applied to New Jersey generators shipping wastes to out-of-State facilities. Under N.J.A.C. 7:26-7.12(e) can New Jersey facilities accept hazardous wastes, transported here from other states if the containers do not bear the marking specified in N.J.A.C. 7:26-7.2(b)?

RESPONSE: The labeling requirements at N.J.A.C. 7:26-7.2(e) prohibit hazardous waste facilities from accepting containers which are not properly labeled and marked. The Department would consider a container to be properly labeled and marked if it were in conformance with the hazardous waste labeling and marking requirements of the state of origin. For wastes not considered hazardous waste in the state of origin, the container must be labeled and marked in conformance with the rules of the state of destination. Shipments of hazardous waste which neither originate in New Jersey nor have a destination in the State, but are merely transported through New Jersey, are not required to meet the New Jersey labeling requirements.

Summary of Agency-Initiated Changes:

Subsections (a) and (b) of N.J.A.C. 7:26-8.17 have been revised on adoption to clarify that wastes listed at N.J.A.C. 7:26-8.20 may also be delisted using the procedures in that section. Without such a clarification, waste at N.J.A.C. 7:26-8.20 could, arguably, not be delisted.

The Department has also revised N.J.A.C. 7:26-7.4(a)4x Tables A, B, and C to remove the requirement of listing all other applicable codes in Item J on the manifest. Since the Federal RCRA program, as a result of the adoption of the "Third-Third" land disposal restrictions, requires a separate notification listing all waste codes applicable to a shipment of hazardous waste to be sent to the receiving facility, requiring the same information in Item J of the manifest would be duplicative. The Federal land disposal restrictions found at 40 C.F.R. Part 268, were effective nationwide upon promulgation. However, the Department has retained this requirement for acutely hazardous wastes in Tables A and B due to extraordinary risks involved with these wastes. The requirement to list any other applicable New Jersey listed waste in Item J also remains in Tables A and B. The requirement to list "other applicable C codes" in Item J at Table D has been deleted since the Department believes identifying the constituent of greatest concern is sufficient.

The Department has deleted the listing of X727 at N.J.A.C. 7:26-8.20(a)7 to conform to an amendment adopted at 22 N.J.R. 1565(a), effective May 21, 1990.

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

7:26-7.2 Container requirements

(a) (No change.)

(b) The hazardous waste generator shall insure that all containers used to transport hazardous waste off-site are in conformance with the construction type and labeling requirements of the United States Department of Transportation concerning hazardous material containerization (49 C.F.R. 171-179), including 1, below.

1. Prior to transporting or offering hazardous waste for transportation off-site, a generator shall mark each container of 110 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 C.F.R. 171-304:

HAZARDOUS WASTE—Federal and/or State Laws Prohibit Improper Disposal. If found, contact the nearest police or public safety authority, the U.S. Environmental Protection Agency or the New Jersey Department of Environmental Protection.

Generator's Name and Address

State Manifest Document Number

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

7:26-7.4 Hazardous waste generator responsibilities

(a) General requirements for generators not exempted pursuant to N.J.A.C. 7:26-8 are as follows:

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1.-3. (No change.)

4. A generator shall provide the following information on the manifest form:

i.-ix. (No change.)

x. The proper waste code(s) that accurately describe the shipment of hazardous waste, determined according to the following hierarchy:

Table A. Wastes which can be described only by one or more F, K, P, U, or X codes

Waste Composition	Manifest Completion Item I	Manifest Completion Item J
1. One F, K, P, or U waste	use the applicable F, K, P or U code	
2. One X waste (transported within New Jersey only)	use the applicable New Jersey listed X code	
3. One X waste (transported out-of-State)	code as required by the receiving state†	New Jersey X code
4. Mixture of two or more F, K, P, and/or U wastes	listed code for the component forming the highest percentage by weight ***or volume*** of the total waste ***depending on units reported in Item 14***	all other ***acutely hazardous*** listed codes
5. Mixture of any X waste and one or more F, K, P, or U wastes	listed waste code for the F, K, P, or U listed waste component forming the highest percentage by weight ***or volume*** of the total waste ***depending on the unit reported in Item 14***	all other ***acutely hazardous*** listed codes *[including]* ***and any*** New Jersey listed waste codes *[,all acutely hazardous and land disposal restricted codes and the percentages of each]*

†If this waste is not hazardous in the receiving state, use the New Jersey hazardous waste code and designate in Item J the method of management requested (that is, hazardous or non-hazardous treatment, storage or disposal).

Table B. Waste that can be described by F, K, P, U, or X codes and characteristic (D) code(s)

Waste Composition	Manifest Completion Item I	Manifest Completion Item J
1. One F, K, P, or U waste that exhibits RCRA characteristic(s) (D wastes)	F, K, P or U code	
2. Mixture of two or more F, K, P, or U wastes which exhibits RCRA characteristic(s) (D wastes)	F, K, P or U code for the listed waste forming the highest percentage by weight ***or volume*** of the total waste ***depending on the units reported in Item 14***	all other ***acutely hazardous*** listed *[and characteristics D]* code(s)
3. Mixture of any X wastes and F, K, P or U wastes which exhibits RCRA characteristic(s) (D wastes)	F, K, P, or U code for the listed waste forming the highest percentage by weight ***or volume*** of the total waste ***depending on the units reported in reported in Item 14***	all other ***acutely hazardous*** listed *[and characteristics D]* code(s) *[including the]* ***and any*** New Jersey listed waste codes
4. One or more X wastes which exhibit RCRA characteristic(s) (D wastes) and are destined for New Jersey waste oil recycling facilities	X code (if more than one, use X code of waste forming highest percentage by weight ***or volume*** of total waste ***depending on the units reported in Item 14)***	*[characteristic D code(s) and]* other X code(s)
5. One or more X wastes that exhibit RCRA characteristic(s) (D wastes) and are treated (other than recycling), stored or disposed in New Jersey	characteristic D code(s)	X code(s)
6. One or more X wastes that exhibit RCRA characteristic(s) (D wastes) and are transported out of State	code as required by receiving state†	X code(s) *[and characteristic D code(s)]*

†If this waste is not hazardous in the receiving state because it is being burned for energy recovery or recycled under the Federal program or similar state program, use the New Jersey hazardous waste code.

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Table C. Waste is not F, K, P, U, or X but displays one or more characteristics (D waste)

Characteristics Exhibited	Manifest Completion Item I	Manifest Completion Item J
1. Waste displays only one characteristic	D code for the characteristic	*[standard information]*
2. Waste displays multiple characteristics	D code for the first characteristic displayed according to the following order: 1. ignitability 2. reactivity 3. corrosivity 4. EP toxicity	*[standard information and all other applicable D codes]*

Table D. Wastes are not listed or characteristic but are classified as hazardous waste by the Department ***or by the generator*** in accordance with N.J.A.C. 7:26-8.5(d) *[and]**,* 7:26-8.6 ***or 7:26-8.16(a)*** because of their constituent content (C waste)

Waste Constituent(s) Present	Manifest Completion Item I	Manifest Completion Item J
1. Wastes considered hazardous due to the presence of only one constituent	C code for constituent	
2. Wastes considered hazardous due to presence of multiple constituents	C code for the constituent forming the highest percentage by weight ***or volume*** of the total waste ***depending on the units reported in Item 14***	*[all other applicable C codes]*

7:26-8.1 Definition of hazardous waste

(a) A solid waste, as defined in N.J.A.C. 7:26-1.6, is a hazardous waste if:

1. (No change.)

2. It meets any one or more of the following criteria:

i.-iv. (No change.)

v. It is listed in 40 C.F.R. Part 261, Subpart D, including all future additions or supplements; or

vi. It is listed in N.J.A.C. 7:26-8.20.

(b) A solid waste which is not excluded from regulation under N.J.A.C. 7:26-8.2 becomes a hazardous waste when any of the following events occur:

1. In the case of a waste listed in this subchapter, when the waste first meets the listing description set forth in N.J.A.C. 7:26-8.13, 8.14, 8.15, or 8.20; or

2.-6. (No change.)

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

7:26-8.5 Hazardous waste determination: generator responsibilities

(a) (No change.)

(b) The generator shall determine whether the waste generated is a hazardous waste listed in N.J.A.C. 7:26-8.13, 8.14 or 8.15 or a mixture of solid waste and one or more hazardous wastes listed in N.J.A.C. 7:26-8.13, 8.14 or 8.15. If it is not, then the generator shall:

1. (No change.)

2. By applying knowledge of the hazardous characteristic of the waste in light of the materials or processes used, determine whether it exhibits a characteristic or characteristics described in N.J.A.C. 7:26-8.9 through 8.12; or

3. If the waste generated is a waste oil as defined at N.J.A.C. 7:26-1.4 ***, or a mixture of one or more waste oils and a solid waste,*** and is being recycled:

i. Determine if the waste oil ***or mixture***:

(1) Is listed at N.J.A.C. 7:26-8.20;

(2) Exhibits a characteristic of hazardous waste described at N.J.A.C. 7:26-8.9 through 8.12; or

(3) Is a hazardous waste under the terms of (d) below; and

ii. Determine if the waste oil is a "used oil" being burned for energy recovery under the federal regulations at 40 C.F.R. Part 266, Subpart E.

NOTE: Federal requirements for the burning of used oil for energy recovery are separate and distinct and, therefore, are in addition to the hazardous waste management requirements of N.J.A.C. 7:26.

(c) If the waste generated has not been classified as a hazardous waste pursuant to (b) above, then the generator shall determine if the waste is listed at N.J.A.C. 7:26-8.20 ***or is a mixture of one or more wastes listed at N.J.A.C. 7:26-8.20 and solid waste***.

(d) (No change in text.)

(e) Wastes designated as hazardous wastes by operation of this section shall be manifested in accordance with the waste code hierarchy at N.J.A.C. 7:26-7.4(a)4x.

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

7:26-8.7 Procedures for decision-making in generator*[:]* specific hazardous waste determination

(a) Designation of a solid waste as a hazardous waste pursuant to N.J.A.C. 7:26-8.6 shall be a case by case determination which applies only to the waste stream of the generator required to submit data pursuant to N.J.A.C. 7:26-8.5(d). The Department may, in its discretion, proceed in this case by case manner or proceed with a rulemaking action pursuant to N.J.A.C. 7:26-8.8.

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

7:26-8.13 Hazardous waste from non-specific sources

(a) (No change.)

7:26-8.17 Delisting procedure

(a) Any person seeking to exclude a waste at a particular generating facility from the lists in N.J.A.C. 7:26-8.13, 8.14 *,* *[or]* 8.15 ***or 8.20*** may petition for a regulatory amendment under this section, and shall satisfy the following requirements:

1.-2. (No change.)

(b) The procedures in the section may also be used to petition the Department for a regulatory amendment to exclude from N.J.A.C. 7:26-8.1(a)2iii or (d)1, a waste which is described in those sections and is either a waste listed in, contains a waste listed ***in***, or is derived from a waste listed in N.J.A.C. *[7:27]****7:26***-8.13, 8.14 *[or]* *,* 8.15 ***or 8.20***. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner *[must]* ***shall*** make the same demonstration as required by (a) above, except that where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous *[waste]* ***wastes***, the petitioner's demonstration may be made with respect to each constituent listed waste or the waste mixture as a whole. A waste which is so excluded may still be a hazardous waste by operation of N.J.A.C. 7:26-8.9, 8.10, 8.11 or 8.12.

(c)-(l) (No change.)

7:26-8.20 State hazardous wastes from non-specific sources

(a) State hazardous wastes from non-specific sources are as follows:

N.J. Hazardous Waste Number	Hazardous Waste	Hazardous Code
Generic 1. X721	Waste automotive crankcase and lubricating oils from automotive service and gasoline stations, truck terminals, and garages.	(T)
2. X722	Waste oil and bottom sludge generated from tank cleanouts from residential/commercial fuel oil tanks.	(T)
3. X723	Waste oil and bottom sludge generated by gasoline stations when gasoline and oil tanks are tested, cleaned, or replaced.	(T)

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4. X724	Waste petroleum oil generated when tank trucks or other vehicles or mobile vessels are cleaned, including, but not limited to, oily ballast water from product transport units of boats, barges, ships or other vessels.	(T)
5. X725	Oil spill cleanup residue which: A. is contaminated beyond saturation; or B. the generator fails to demonstrate that the spill material was not one of the listed hazardous waste oils.	(T)
6. X726	The following used and unused waste oils: metal working oils; turbine lubricating oils; diesel lubricating oils; and quenching oils.	(T)
*[7. X727	Waste oil from the draining, cleaning or disposal of electric transformers.	(T)]*
*[8.]**7.* X728	Bottom sludge generated from the processing, blending, and treatment of waste oil in waste oil processing facilities.	(T)

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Board of Public Utilities

Interdistrict and Intradistrict Solid Waste Flow for Camden, Gloucester, Essex and Sussex Counties

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

Proposed: February 5, 1990 at 22 N.J.R. 284(a).

Adopted: February 4, 1991 by Judith A. Yaskin, Commissioner, Department of Environmental Protection, and by the Board of Public Utilities, Scott A. Weiner, President.

Filed: February 5, 1991 as R.1991 d.113, **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. 13:1E-1 et seq., particularly 13:1E-6, and N.J.S.A. 48:13A-1 et seq.

DEP Docket Number: 063-89-12.

Effective Date: March 4, 1991.

Expiration Date: October 25, 1995.

Summary of Public Comments and Agency Responses:

On February 5, 1990, the Department of Environmental Protection ("DEP" or "Department") and the Board of Public Utilities ("BPU" or "the Board") proposed an amendment to the waste flow rules at N.J.A.C. 7:26-6.5 to designate waste flows to solid waste facilities in the counties of Essex, Camden, Gloucester and Sussex.

Notice of the proposed rule amendment was published on February 5, 1990 in the New Jersey Register at 22 N.J.R. 284(a). That notice advised that a public hearing had been scheduled for Thursday, February 15, 1990 at 2:00 P.M. at the New Jersey State Museum Auditorium, 205 West State Street, Trenton, Mercer County, New Jersey, to afford the public an opportunity to be heard on this rule change. In addition, a Notice of Public Hearing was published on January 16, 1990 in the following newspapers: The Courier Post, the Gloucester County Times, the New Jersey Herald, and the Star Ledger. The notices invited written comments to be submitted on or before March 7, 1990.

The DEP and the BPU have reviewed the transcript of the public hearing held on February 15, 1990 and the written comments submitted during the comment period which closed on March 7, 1990. The following is a summary of the major issues raised which were relevant to the proposal and the agencies' responses.

COMMENT: It has been recognized by Essex County in its 1983 study entitled "The Integration of Energy and Material Recovery in the Essex County Solid Waste Program," as well as in the County's District Solid Waste Management Plan, that it is beneficial to energy recovery operations to integrate recycling or material recovery programs, and that such integration will result in lower capital and disposal costs. Thus, transfer stations which are specifically authorized by the Department to engage in recycling activities and which do in fact sort and separate mixed non-source separated waste loads into various categories such as paper, wood, metals, etc., for recycling purposes should be granted an exemption or waiver from the proposed waste flow rule amendment requirement that such facilities take their residue to either the resource recovery facility or to the two designated County transfer stations. Otherwise, residue disposal costs to these facilities will be so burdensome that they will force these facilities out of business, thereby undermining the State and County recycling goals.

RESPONSE: The DEP and the BPU do not agree that the residue from transfer stations engaged in recycling activities should be exempt from the waste flow rules and, in fact, see no justification for such an exemption. While the Department continues to encourage recycling at transfer stations authorized to do so, any residue generated from the processing of solid wastes to produce recyclable material would still be considered solid waste. By law, this waste is required to be disposed of at the designated solid waste disposal facility(ies) in the respective district(s) which generated the original solid waste. Further, the Department does not agree that the costs associated with disposal of these residue wastes at the generating district's designated disposal facility will undermine the State and County recycling goals, since the revenues from recycling should help offset the costs associated with utilizing the designated Essex County transfer stations or resource recovery facility. Also to date, none of the transfer stations have provided documentation to the Department or Board that this activity will reduce their recycling effort, reduce incentives to recycle or cause significant hardship beyond that which can be recouped from the Board of Public Utilities through a rate increase. Finally, while additional transfer stations that also perform recycling functions undoubtedly enhance the state's recycling efforts, the main thrust of the Recycling Act is to mandate source separation at the point of generation.

COMMENT: Because of limitations of space, time, personnel, equipment and economics, all loads that come into a transfer station and recycling facility must be commingled and intermixed and each individual load cannot be separated, sorted, processed and recycled individually. However, the Department and Board do not permit waste generated in one county to be deposited in a county-designated transfer station in a different county. Under these circumstances, it is impossible to operate a transfer station and recycling facility properly, efficiently and effectively, and to segregate the loads from the various counties wherein the transfer station collects waste materials. The facility could no longer operate were it required to segregate the waste load from each county so that residue from each county could be returned to the county wherein the material was originally collected.

RESPONSE: The Department of Environmental Protection's policy concerning solid waste flows into and out of transfer stations was established in 1983 and has not changed. This policy is that transfer stations may accept solid waste from various origins as long as the solid waste, or a similar amount and type, is ultimately transported for disposal to the facility designated in the Interdistrict and Intradistrict Solid Waste Flow Rules for the county in which the waste originated (N.J.A.C. 7:26-6). Therefore, this comment is not correct. An operator of a transfer station may collect a load of waste from more than one county of origin, process the waste, and dispose of the residue at one disposal facility as long as a similar amount and type is ultimately disposed of at the other designated facility.

COMMENT: The proposed rule amendment redirects solid waste types 10, 23 and 27 to the Essex County Resource Recovery Facility and waste types 13 and 25, bypass waste and ash to out-of-State facilities via the two designated transfer stations (Frelinghuysen Avenue and Avenue A). However, transfer station and recycling facility residue does not fall within solid waste types 10, 13, 23, 25 and 27 because it is a combination and intermix of solid waste types 10, 13, 23, 25 and 27 after processing by the facility. Thus, the residue that remains after processing no longer retains the characteristics of specific waste types but rather is a non-processible waste which could not be accepted at the County Resource Recovery Facility.

Also, the proposed amendment directs waste type 10 to the resource recovery facility and waste type 13 to transfer stations for out-of-State disposal. If residue from a transfer station/recycling facility is classified as waste type 27, then according to the proposed rules, it is directed to the Resource Recovery Facility. Residue may contain what was originally waste type 13. Waste type 13 is not processible at the resource recovery facility. Thus waste which originally was not processible at the resource recovery facility becomes, only through DEP classification, processible. Given this classification system, there is a probability that materials will be incinerated which were not intended to be incinerated. This may result in environmentally unsound disposal of some waste.

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RESPONSE: It is the responsibility of the transfer station/recycling facility to assure that after the recyclables are removed from the solid waste stream, that the residue is segregated into these specific solid waste types since, as the commenter acknowledged, certain waste types are not appropriate for incineration and may not be included in the resource recovery facility's permitted waste types. In order to ensure that only solid waste which is permitted to be incinerated at the resource recovery facility and which is combustible is, in fact, sent by the transfer stations to the resource recovery facility, this type of segregation of solid waste into specific waste identification types is necessary. Since these waste types are typically tipped at the transfer station/recycling facility in separate trucks/containers as municipal, industrial or construction waste, it should be possible to keep the solid waste types segregated after the recyclables are removed, so that they may be sent to the designated disposal facility. The Department and the BPU have consistently maintained this position regarding solid waste segregation as evidenced in the agencies' response to a comment regarding the 1988 proposed amendments to Essex County's district waste flow rules at N.J.A.C. 7:26-6.5(g) (see 21 N.J.R. 1560, June 5, 1989). The County and State's concern for ensuring that solid waste is legally and properly disposed of requires that transfer stations that perform some recycling remain in compliance with the waste flow rules.

COMMENT: The economic impact section of the proposed rule amendment states that although tipping fees for the Essex Resource Recovery Facility have not yet been finalized, it is anticipated that increases in disposal costs may result upon operation of the facility. The economic impact does not predict that tipping fees will decrease over time, but simply states that operation of the resource recovery facility will provide stable and reliable tipping fees in the long run. Therefore, unless the tipping fees for the resource recovery facility and the two designated Essex County transfer stations are substantially and significantly lower than the present tipping fees charged at the transfer stations, transfer station/recycling facilities will be forced to dispose of the residue from the facility at a higher cost than is currently the case for out-of-State disposal. These higher costs would be so substantial that the facility could not continue to operate. This situation would cause irreparable harm to the recycling efforts that has been mandated by the Legislature through the Statewide Mandatory Recycling Act and also by Essex County through the adoption of its Solid Waste Management Plan.

RESPONSE: The tipping fee at the Essex County Resource Recovery Facility has been approved by the Board of Public Utilities at $70.00 per ton such that the premise of the comment is invalid.

COMMENT: The proposed amendment represents a departure by the BPU from its goal to have all solid waste collection and disposal facilities render cost efficient services to the residents of the State. Requiring a transfer station/recycling facility to deliver its processible residue to the Essex County Resource Recovery Facility and its non-processible residue and bypass waste to the two designated County transfer stations would result in tipping fee costs that are prohibitive. Additional unnecessary costs are also added by requiring transfer station/recycling facilities to send residue from one transfer station to another transfer station prior to out-of-State disposal. Such a system of double handling these waste materials and residue is not only uneconomical but, moreover, it clearly violates the legislative mandate as encompassed in the Solid Waste Utility Control Act, which charged the BPU with the duty to ensure that citizens of the state receive and "require efficient and reasonable solid waste collection, disposal and utilization service," N.J.S.A. 48:13A-2.

RESPONSE: The BPU maintains that the amended waste flow rule is consistent with its legislative mandate to "require efficient and reasonable solid waste collection, disposal and utilization service." This rule change proposal represents a continuation of existing disposal practices within Essex County and not a departure from current policy. Since July 27, 1987 when the DEP and the BPU issued an emergency redirection order (later adopted as a formal amendment to N.J.A.C. 7:26-6.5(g) at 21 N.J.R. 1558(a), June 5, 1989) directing solid waste types 10, 13, 23, 25 and 27 from within Essex County to either of the two designated county transfer stations, the operators of transfer stations/recycling facilities have been required to dispose of their waste at one of two county authorized transfer stations prior to out-of-State disposal. This rule will require these operators and all transporters to dispose of their processible waste at the resource recovery facility and the non-processible waste at the transfer stations prior to out-of-State disposal. Therefore, the only change in disposal that this rule will require is that processible waste must be delivered to the resource recovery facility instead of one of the designated transfer stations.

COMMENT: Residue waste identified as waste type 27 is not accepted at the designated transfer stations. Thus, what guarantees, if any, would be provided that residue classified as ID 27 will be accepted at the resource recovery facility?

RESPONSE: Pursuant to the waste flow rules adopted in the New Jersey Register on June 5, 1989, all solid waste types 10, 13, 23, 25 and 27 generated in Essex County municipalities are directed to either the Waste Management of New Jersey Transfer Station or the Solid Waste Transfer and Recycling, Inc., Transfer Station prior to out-of-State disposal. Furthermore, the solid waste facility permits issued to Waste Management of New Jersey on July 7, 1987 and to Solid Waste Transfer Recycling, Inc., on June 30, 1987 authorize each of these facilities to accept type 27 waste. Therefore, any refusal of the transfer stations to accept this waste type would be a violation of the waste flow rules and their respective permits. Also, the Essex County Resource Recovery Facility is authorized, pursuant to its solid waste facility permit of December 10, 1985, to accept type 27 waste exclusive of certain subcategories. If the residue in question is combustible, the Essex County RRF should accept the waste. If not, the waste is directed out-of-State for disposal pursuant to the waste flow rules adopted in this notice.

COMMENT: From a procedural aspect, the notice of this proposed amendment to the rule at N.J.A.C. 7:26-6.5 was not provided in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. N.J.S.A. 52:14B-4(a)(3) provides that "the agency shall provide at least 15 days notice of such hearing, which shall be conducted in accordance with the provision of subsection (g) . . ." In the instant matter, notice of the February, 1990 hearing was published on less than 15 days notice in the February 15, 1990 New Jersey Register. Thus, the DEP and BPU failed to comply with the requirements of the Administrative Procedure Act.

RESPONSE: The DEP and BPU disagree with the conclusions of the commenter as has previously been expressed to the commenter in a letter from the Department. To reiterate: the statutory requirements of notice and hearing for agency rulemaking are found in the Administrative Procedure Act ("APA"), N.J.S.A. 52:14B-4. There is no requirement in the APA that a public hearing initiated by the Department be held on a proposed rulemaking. However, where the Department decides to hold a public hearing, it must comply with the Rules for Agency Rulemaking, N.J.A.C. 1:30. Pursuant to N.J.A.C. 1:30-3.3(b), where a public hearing is held as part of a proposed rulemaking, the agency must provide as least 15 days notice thereof. Additionally, N.J.A.C. 1:30-3.3(b) requires that:

Whenever possible, notice of the public hearing shall be contained in the notice of pre-proposal or proposed rule. Otherwise, notice of the public hearing shall be published in the manner reasonably calculated to reach the interested public.

The rules implementing the APA do not require that the 15 days notice of a hearing be contained in the notice of proposed rule, but only that such notice be given in a manner reasonably calculated to reach the interested public. With this in mind, the Department issued public notice of the proposed rule 30 days prior to the public hearing scheduled for February 15, 1990. This notice was published in each of the major newspapers serving the four counties impacted by the proposed rule. Specifically, on January 16, 1990, notice of the proposed amendments to N.J.A.C. 7:26-6.5 was published in the Courier Post (Camden County), the Star Ledger (Essex County), the New Jersey Herald (Sussex County) and the Gloucester County Times (Gloucester County).

COMMENT: The choice of Trenton as the place of the public hearing on the proposed amendment is a violation of N.J.S.A. 52:14B-4(g) which provides that hearings shall be conducted at such times and in locations which shall afford interested parties the opportunity to attend. Thus, a hearing should have been held in each of the four counties affected by the proposed amendment.

RESPONSE: The Department and the BPU also disagree with this comment. Because this rule affects two northern counties and two southern counties, Trenton was chosen as the site for the public hearing due to its centralized location between the two affected counties. This is consistent with Department practice. The agencies maintain that the choice of this location was an appropriate exercise of discretion and in accordance with the requirements of the Administrative Procedure Act and its implementing rules.

COMMENT: The following questions were raised regarding the Camden County waste flows to be directed to the Camden City and Pennsauken incinerator facilities. (Note: In accordance with the agency-

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initiated change set forth below, the following responses address only the resource recovery facility constructed in the City of Camden.)

COMMENT: The notice of proposed amendment made statements of how the Department's "enforcement authority will be used to ensure compliance with permit conditions thereby ensuring that the environmental impact will remain at a minimum." As the Department's enforcement of violations (in the case of the Pennsauken Landfill) is backlogged over a year and it is unclear whether the Department will ever institute any kind of penalties, what new and/or improved methods of enforcement does the Department plan to undertake to ensure "compliance with permit conditions"? In the case of non-compliance with permit conditions, what does the Department plan to do, how many people does the Department plan to employ to see that permit conditions are adhered to, and where does the Department plan to get the funding for this enforcement?' Have these plans been worked out yet or is this "enforcement compliance" issue still in the planning stages? How long until this "enforcement compliance" becomes a reality?

RESPONSE: A review of the compliance files for the Pennsauken Landfill by the various enforcement units of the Department has determined that there is no enforcement violation processing backlog regarding this facility. Although the Department acknowledges general processing backlogs at times, it is not felt that backlog problems, when they do occur, would be severe enough to affect the Department's enforcement of this facility's permit conditions or any other facility's permit conditions in such a manner that the environmental impact of a facility would exceed the minimum standard. It must be noted that the Department has promulgated various fee rules that will fund additional enforcement activities and compliance monitoring inspections. This additional funding should also alleviate any processing backlogs.

COMMENT: What disposal method will be employed for ID 27 waste (such as asbestos) that is not suitable for incineration? Also, where will this material be disposed of, which agency is responsible for the cost of disposal, and which agency has designated the site for disposal of this waste?

RESPONSE: Waste flows have been established for Camden County. These waste flows mean that specific waste types from specific municipalities are directed to specific facilities for disposal. With regard to ID 27 waste, this waste type is directed to either the Pennsauken Sanitary Landfill or the South Camden Resource Recovery Facility depending upon the municipality of origin. The vendor for the Camden facility has determined which wastes to accept for incineration. Any waste directed to the Camden facility which cannot be incinerated (such as asbestos) will be considered as bypass waste and will be directed out-of-State for disposal. The ultimate cost for disposal, regardless of the method of disposal, is paid for by the generator of the waste. Regarding the establishment of tipping fees at the resource recovery facility, in accordance with N.J.S.A. 13:1E-136 et seq., the BPU reviews and approves the tipping fee formula which is part of the negotiated service agreement between the vendor and the public entity sponsoring the project. Finally, existing Departmental rules govern the disposal of asbestos at landfills (see N.J.A.C. 7:26-2.12).

COMMENT: What disposal method is to be implemented when non-permitted waste is directed by the Department to be disposed of at either of these facilities (such as ID 25 waste which the Department has directed to the Pennsauken Landfill on at least three different occasions)?

RESPONSE: Under normal circumstances, any load directed to a resource recovery facility that represents a waste that the facility is not authorized to accept should be rejected and disposal should be in accordance with the waste flow rules. The acceptance by a resource recovery facility of a waste type that the facility is not authorized to accept constitutes a violation of that facility's solid waste permit. Only in an emergency situation, as determined by the DEP and BPU, may a load of unauthorized waste be accepted at a disposal facility. On the three occasions noted in the comment, the Department requested the assistance of the Pennsauken Solid Waste Management Authority to accommodate the disposal of dead animals that could not be processed at an animal crematorium which was having facility repairs. The emergent nature of this situation and the agreement reached with the Pennsauken Landfill avoided a disruption of disposal for this waste type for the residents of the Camden County service area.

COMMENT: Why is the Camden facility authorized to dispose of ID 13 waste? Why is Pennsauken not authorized to accept ID 13 waste? What items make up or are considered ID 13 waste? Where will ID 13 waste in the Pennsauken franchise be disposed of-the incinerator, the landfill, or is Pennsauken prohibited from accepting this waste?

RESPONSE: The decision of which waste type to accept at the South Camden Resource Recovery Facility is made by the facility vendor based on the specific technology used at the facility and its BTU requirements. This decision on the acceptance of specific waste types is included in the facility's permit application and is ultimately approved by the DEP in its issuance of the final permit. The vendor for the South Camden facility has decided, with Departmental approval, to accept bulky waste exclusive of noncombustible materials. According to the waste flow rules promulgated in this document, all waste type 13 from municipalities in the Pennsauken franchise area shall be disposed of at the Pennsauken Landfill. Type 13 waste, as defined in N.J.A.C. 7:26-2.13(g)1iii, is large items of waste material, such as appliances, furniture, whole trees, branches, tree trunks and stumps. Also included are waste building materials and rubble resulting from construction, remodeling, repair and demolition operations on houses, commercial buildings, pavements and other structures. Discarded automobiles, trucks and trailers and large vehicles parts, and tires are included under this category.

COMMENT: The waste flows from the resource recovery facilities seem to have been predicated on the belief that any ash residue will be non-hazardous. In the event that the ash is determined to be hazardous, where in New Jersey will it be disposed of? If ash residue is determined to be hazardous and has to be disposed of out-of-State, won't this defeat the intention of the Department to keep New Jersey's waste within New Jersey's borders? What contingency plan does New Jersey have in the event that this does happen?

RESPONSE: The Interdistrict and Intradistrict Waste Flow Rules (N.J.A.C. 7:26-6) only cover non-hazardous waste. Therefore, the rules are silent with respect to the disposal of hazardous waste. However, individual solid waste facility permits specifically address ash testing and management in detail. Since New Jersey at the present time has no authorized hazardous waste landfills, all hazardous waste generated within New Jersey must be manifested and disposed of out-of-State at a permitted hazardous waste facility. Ash from the Camden resource recovery facility will be tested according to the solid waste permit. Any ash determined to be hazardous must be disposed of out-of-State in accordance with contracts secured by the resource recovery facility vendor or the public entity sponsoring the project. Toward the future, the Hazardous Waste Facilities Siting Commission is attempting to site needed hazardous waste disposal facilities to make New Jersey less dependent upon other states for the disposal of its hazardous waste.

Summary of Agency-Initiated Change:
N.J.A.C. 7:26-6.5(d)6

In light of discussions occurring both in Camden County and around the State regarding resource recovery facilities, and the fact that the Pennsauken resource recovery facility is far from ready to begin start-up operations, the Department and Board of Public Utilities consider it more appropriate to reserve that portion of the proposed waste flow rule which directs solid waste to the Pennsauken Resource Recovery Facility at this time.

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

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

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

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

1. All waste types 10, 13, 23, 25 and 27 generated from within the Camden County municipalities of Audubon Park, Barrington, Bellmawr, Brooklawn, Clementon, Collingswood, Gibbsboro, Gloucester City, Gloucester Township, Haddon Heights, Hi-Nella, Laurel Springs, Lawnside, Magnolia, Mount Ephraim, Oaklyn, Pine Hill, Pine Valley, Runnemede, Somerdale, Stratford, and Woodlynne shall be disposed of out-of-State in an approved facility in accordance with the laws and regulations of the receiving state.

2. (No change.)

3. All residential waste types 10, 13, 23, 25 and 27 generated in Chesilhurst Borough, Waterford Township and Winslow Township shall be directed to the Winslow Township Transfer Station, facility number 0436I, located in Winslow Township, Camden County, New Jersey, when it becomes operational, prior to out-of-State disposal. Disposal out-of-State shall be in an approved facility in accordance

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with the laws and regulations of the receiving state. Upon commencement of operations at the South Camden Resource Recovery Facility, Facility Number 0408C, these waste types shall be directed from the transfer station to the resource recovery facility except for waste type 25 which shall continue to be directed from the transfer station to out-of-State disposal.

i. All commercial waste types 10, 13, 23 and 25 and industrial waste type 27 generated in Chesilhurst Borough, Waterford Township and Winslow Township shall be disposed of directly out-of-State in an approved facility in accordance with the laws and regulations of the receiving state. Upon commencement of operations at the South Camden Resource Recovery Facility, Facility Number 0408C, waste shall be directed to the facility except that waste type 25 shall continue to be disposed of directly out-of-State.

ii. All solid waste types 10, 13, 23, 25 and 27 generated in Berlin Borough and Berlin Township which is collected and transported by the public works departments of Berlin Borough and Berlin Township shall be directed to the Winslow Township Transfer Station when it becomes operational, facility number 0436I, located in Winslow Township, Camden County, New Jersey, prior to out-of-State disposal. Disposal out-of-State shall be in an approved facility in accordance with the laws and regulations of the receiving state. Upon commencement of operations at the South Camden Resource Recovery Facility, facility number 0408C, waste will be directed from the transfer station to the resource recovery facility except that waste type 25 shall continue to be directed from the transfer station to out-of-State disposal.

iii. All solid waste types 10, 13, 23, 25 and 27 generated in Berlin Borough and Berlin Township which is not collected and transported by the public works departments of Berlin Borough and Berlin Township shall be disposed of directly out-of-State in an approved facility in accordance with the laws and regulations of the receiving state. Upon commencement of operations at the South Camden Resource Recovery Facility, facility number 0408C, waste shall be directed to the facility except that waste type 25 shall continue to be disposed of directly out-of-State.

4. All waste types 10, 13, 23 and 27 generated from within the Camden County municipalities of Audubon Borough, Cherry Hill Township, Haddonfield Borough, Haddon Township, Lindenwold Borough, Merchantville Borough, Pennsauken Township, Tavistock Borough, and Voorhees Township shall be disposed of at the Pennsauken Township Sanitary Landfill, facility number 0427D, located in Pennsauken Township, Camden County, New Jersey.

i. All waste type 25 generated from within the Camden County municipalities of Audubon, Cherry Hill, Haddonfield, Haddon Township, Lindenwold, Merchantville, Pennsauken, Tavistock and Voorhees shall be disposed of out-of-State in an approved facility in accordance with the laws and regulations of the receiving state.

5. All waste types 10, 23, 25 and 27 generated from within the Camden County municipality of Camden City shall be disposed of out-of-State in an approved facility in accordance with the laws and regulations of the receiving state.

i. All waste type 13 generated from within the Camden County municipality of Camden City shall be disposed of at the Pennsauken Township Sanitary Landfill, facility number 0427D, located in Pennsauken Township, Camden County, New Jersey.

6. *[All solid waste types 10, 23 and 27 generated within the Camden County municipalities of Audubon, Cherry Hill, Collingswood, Haddonfield, Haddon Township, Lindenwold, Merchantville, Oaklyn, Pennsauken, Tavistock, and Voorhees shall be directed to the Pennsauken Resources Recovery Facility, facility number 0427F, located in Pennsauken, Camden County, New Jersey, upon commencement of operation of that facility.

i. All waste type 13 from the municipalities listed in (d)6 above, bypass waste and non-hazardous ash from the operation of the Pennsauken Resource Recovery Facility shall be disposed at the Pennsauken Township Landfill, facility number 0427D, located in Pennsauken Township, Camden County, New Jersey, in accordance with the requirements of the service agreement between the Pennsauken Solid Waste Management Authority and Odgen-Martin Systems of Pennsauken.

ii. All waste type 25 from the municipalities listed in (d)6 above shall be disposed of at an approved out-of-State facility in accordance with the laws and regulations of the receiving state.]* ***(Reserved)***

7. All solid waste types 10, 13, 23 and 27 generated within the Camden County municipalities of Audubon Park, Barrington, Bellmawr, Berlin Borough, Berlin Township, Brooklawn, Camden City, Chesilhurst, Clementon, Gibbsboro, Gloucester City, Gloucester Township, Haddon Heights, Hi-Nella, Laurel Springs, Lawnside, Magnolia, Mt. Ephraim, Pine Hill, Pine Valley, Runnemede, Somerdale, Stratford, Waterford, Winslow and Woodlynne shall be directed to the South Camden Resource Recovery Facility, facility number 0408C, located in Camden City, Camden County, New Jersey, upon commencement of operation of that facility.

i. All waste type 25 from the municipalities listed in (d)7 above, bypass waste, and ash from the operation of the South Camden Resource Recovery Facility shall be disposed of at approved out-of-State facilities in accordance with the laws and regulations of the receiving state.

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

(g) Waste flows within, into and out of the Essex County District:

1.-5. (No change.)

6. Upon commencement of operations of the Essex County Resource Recovery Facility, all solid waste types 10, 23 and 27 generated within the municipalities of Belleville, Bloomfield, Caldwell, Cedar Grove, East Orange, Essex Fells, Fairfield, Glen Ridge, Irvington, Livingston, Maplewood, Millburn, Montclair, Newark, North Caldwell, Nutley, Orange, Roseland, South Orange, Verona, West Caldwell and West Orange shall be directed to the Essex County Resource Recovery Facility, facility number 0714X, located in Newark, Essex County, New Jersey.

i. All waste types 13 and 25 from the municipalities listed in (g)6 above, bypass waste and ash from the operation of the Essex County Resource Recovery Facility shall be disposed of at approved out-of-State facilities in accordance with the laws and regulations of the receiving state. Out-of-State disposal shall be via the transfer stations referenced in (g)1 through 5 above for so long as these facilities remain in an approved District Solid Waste Management Plan for Essex County; otherwise, waste shall be disposed of directly out-of-State.

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

1. All solid waste types 10, 13, 23, 25 and 27 generated from within the Gloucester County municipalities of Clayton, Deptford, East Greenwich, Elk, Franklin, Glassboro, Greenwich, Harrison, Logan, Mantua, Monroe, National Park, Newfield, Paulsboro, Pitman, South Harrison, Swedesboro, Washington, Wenonah, West Deptford, Westville, Woodbury, Woodbury Heights, and Woolrich, shall be disposed of at the Gloucester County Landfill, facility number 0816A, located in South Harrison Township, Gloucester County, New Jersey.

2. When the Gloucester County resource recovery facility becomes operational, solid waste types 10, 13, 23 and 25 generated in all of Gloucester County's municipalities shall be directed to the resource recovery facility, facility number 0820I, located in West Deptford Township, Gloucester County, New Jersey.

3. All bypass waste and non-hazardous ash from the resource recovery facility shall be disposed of at the Gloucester County Landfill, facility number 0816A, located in South Harrison Township, Gloucester County, New Jersey.

(i)-(s) (No change.)

(t) Waste flows within, into and out of the Sussex County District:

1. All solid waste types 10, 13 and 23 generated from within the Sussex County municipality of Hopatcong shall be disposed of at Hopatcong Sanitary Landfill, facility number 1912A, located in Hopatcong Borough, Sussex County, New Jersey.

i. Upon closure of this facility, all solid waste types 10, 13 and 23 generated from the Sussex County municipality of Hopatcong Borough shall be disposed of at the new Sussex County Landfill, facility number 1913C, located in Lafayette Township, Sussex County, New Jersey.

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ii. All solid waste types 25 and 27 generated from within the Sussex County municipality of Hopatcong Borough shall be disposed of at the Sussex County Landfill, facility number 1913C located in Lafayette Township, Sussex County, upon commencement of operations. Prior to commencement of landfill operations, waste shall be disposed of at the Sussex County Transfer Station, facility number 1913D.

2. All solid waste types 10, 13, 23, 25 and 27 generated from within the Sussex County municipalities of Andover Borough, Andover Township, Branchville, Byram, Frankford, Franklin, Fredon, Green, Hamburg, Hampton, Hardyston, Lafayette, Montague, Newton, Ogdensburg, Sandyston, Sparta, Stanhope, Stillwater, Sussex, Vernon, Walpack and Wantage shall be disposed of at the Sussex County Landfill, facility number 1913C, located in Lafayette Township, Sussex County, New Jersey, upon commencement of operations. Prior to the commencement of landfill operations, waste shall be disposed of at the Sussex County Transfer Station, Facility Number 1913D.

(u)-(v) (No change.)

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Permits, Certificates, Hearings and Confidentiality

Adopted Repeal: N.J.A.C. 7:27-8.6

Adopted New Rules: N.J.A.C. 7:27-8.5, and 8.7 through 8.26

Adopted Amendments: N.J.A.C. 7:27-8.1 through 8.5

Proposed: February 5, 1990 at 22 N.J.R. 292(a) and February 20, 1990, at 22 N.J.R. 593(a) (administrative correction).

Adopted: January 30, 1991, as R.1991 d.109 **with substantive and technical changes** requiring no 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 N.J.S.A. 26:2C-8.

DEP Docket Number: 007-91-01

Effective Date: March 4, 1991.

Operative Date: March 31, 1991.

Expiration Date: Exempt under 42 U.S.C. 7401 et seq.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (the Department) is adopting new rules and amendments to N.J.A.C. 7:27-8 and is repealing N.J.A.C. 7:27-8.6, as previously promulgated. N.J.A.C. 7:27-8 may hereinafter be referred to as subchapter 8.

Sections N.J.A.C. 7:27-8.1 through 8.11 of these new rules and amendments contain provisions pertaining to the Department's air pollution control permits to construct and certificates to operate. The Department is responsbile for issuing permits and certificates, as part of its statutory mandate to control the emission of air contaminants in order to protect human health and welfare and the environment. Sections N.J.A.C. 7:27-8.12 through 8.26 contain new rules which set forth certain general provisions, such as conditions and procedures for adjudicatory hearings, confidentiality of information, and certification reports and applications.

Public hearings were held on March 15, 1990, at the War Memorial Building in Trenton, New Jersey, and on March 28, 1990, at the Rider College Student Center in Lawrenceville, New Jersey, to provide interested parties the opportunity to comment on the proposed amendments. The comment period closed on April 6, 1990. The Department received written testimony from 36 persons, and 17 persons presented comments at the public hearings.

A summary of the public comments received and the Department's responses to these comments follows. Commenters recommended additions to the proposed rule text are indicated in boldface **thus**, and their recommended deletions from the proposed rule text with brackets [thus].

GENERAL COMMENTS:

COMMENT: One commenter stated that some of the new rules will be extremely onerous, and the additional costs will be particularly burdensome to small businesses.

Another commenter added that, in his view, if the proposed revisions and new regulations are adopted, they will:

(1) Impose an unreasonable burden on facility owners and operators;

(2) Undercut the State's current program of controlling emissions through regulations and permitted emission standards; and

(3) Be inconsistent with the Department's entire regulatory scheme.

RESPONSE: These new rules and amendments are consistent with the Department's regulatory authority, as established in the Air Pollution Control Act (N.J.S.A. 26:2C) and the Administrative Procedures Act (N.J.S.A. 52:14B-1 et seq.). The primary effect of these rule revisions is anticipated to be improved implementation of the Department's Air Pollution Control permit and certificate program, including monitoring of conformance with emissions standards established in permits issued for stationary sources.

Any burden which may be imposed by these new rules and amendments falls on those businesses whose activities have the potential to result in the release of air contaminants which may threaten human health or welfare, or the environment. It is the Department's responsibility to establish rules that require such businesses, whether small or large, to prevent and control the release of such emissions.

In developing these new rules and amendments, the Department has been mindful of the effect of these rules on regulated businesses and has attempted to alleviate the burden they impose, when such alleviation is consistent with protection of human health and welfare and the environment. For example, greater detail of information and direction has been included in the proposal in order to make it easier for business owners and operators who choose to prepare their own permit and certificate applications, thereby avoiding the expense of retaining environmental consultants.

Also, the fee schedules in these revisions reflect an intent to move toward a service fee system where the fee amount charged has a direct relationship to the workload in providing that service imposes on the Department. Toward this end, for fee purposes, sources have been divided into two categories: Category I and Cateogry II. The former is subject to lower services fees than the latter, and includes common, relatively simple equipment and control apparatus that the Department can quicky review in a routine manner. Thus, businesses whose permit and certificate impose a lesser workload on the Department will be subject to lower fees.

COMMENT: The Department should hold back the continuing expansion of this program at this time. This proposal is inconsistent with Governor Florio's recently announced major commitment to the people of New Jersey to conduct a financial and management audit of State government activities.

RESPONSE: This proposal is consistent with the Governor's commitment to improve the State government's finances and management because:

(a) The adopted regulations will place more of the burden of funding the air pollution control program where it belongs, with those who emit air contaminants rather than with the general public; and

(b) Many of these amendments also serve to streamline and clarify the permitting process.

COMMENT: The Department's management philosophy has created much of the problem in many of its programs. The Department should place far greater emphasis on performance standards, and let industry decide how to achieve those goals. Too much time and money have been spent creating paperwork and adminstrative proceedings, rather than funneling resources toward solutions.

RESPONSE: Achieving efficient and effective administration of permit and certificate functions is a continuing goal of the Department. In each initiative taken to prevent and control emission of air contaminants, consideration is given to the appropriate regulatory strategy. In some instances, setting performance standards and leaving it to industry to decide how to meet these goals is the most appropriate approach. However, in those instances where procedures for testing are unavailable to demonstrate compliance with the standards, or where such procedures are unreliable or unduly costly, alternative regulatory approaches, including requiring permit appilcations so that the Department may review the equipment design, must be considered.

COMMENT: The Department, along with industry, must develop "state-of-the-art" compliance criteria for all industries. Then, everybody will know what to expect each year and what to do to achieve the goals.

RESPONSE: The Air Pollution Control Act, N.J.S.A. 26:2C-9.2(c), establishes that "state-of-the-art" air pollution control is required for new sources and sources being altered. Existing sources (unless they are being

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altered) do not have to demonstrate "state-of-the-art" control each year, or every five years when their certificates come up for renewal.

By definition, what constitutes "state-of-the-art" control cannot be specified with any permanence. One may refer to recently issued permits for the same type and scale of source to see what controls have recently been accepted by the Department as "state-of-the-art." Since new equipment is required to incorporate "advances in the art of air pollution control developed for the kind and amount of air contaminant emitted," the level of control will change as technology advances. The Department plans to use some of the increased fee revenue to develop additional state-of-the-art guidance for common equipment to assist applicants in selecting control measures. However, the determination of whether any given proposed measures constitute the mandated advances must remain a case-by-case determination because it is impossible to project advances for all equipment, and case-by-case factors should be incorporated into the determination. The process set up by the legislation is one where the applicant **demonstrates** that the equipment incorporates the required advances, and the Department **determines** the adequacy of the demonstration.

COMMENT: The proposed rules will be costly, and will subject facility operators to an even more time-consuming application process. The result will be more bureaucracy and more expense, but little, if any, improvement in air quality.

RESPONSE: These revisions have been developed, in large measure, as a component of the Department's effort to streamline the permit application process. The Department anticipates that the average time for a permit decision will be shortened once the increased fees are used to staff adequately the permit review units.

Sources that have the potential to emit air toxics are a possible exception to this. Adequate resources will allow the Department to scrutinize more thoroughly potential threats to human health from these emissions. Air toxics sources may find they are consequently subjected to a lengthier review process, which may result in requirements calling for additional control measures and improvement in air quality.

COMMENT: The permit review and approval process will not be simple. It will include a number of very difficult and demanding considerations affecting the applicant's and the Department's staffs. For example, as shown in the chart of "Permitting Task," and as stated on page eight of the Basis and Background Document, "The Department further examines whether any proposed control of potential air contaminant emissions would incorporate 'state-of-the-art' advances in air pollution control for the type and quantity of air contaminants which may be emitted." This will involve decisions dealing on the very cutting edge of new technology and will lead to further delays and backlogs in the permitting section. And the costs to the applicant for state-of-the-art controls will be substantial.

RESPONSE: Incorporation of "state-of-the-art" advances in air pollution control in the design and construction of new and altered sources is required by the Air Pollution Control Act, N.J.S.A. 26:2C-9.2(c), and has always been a requirement for approval of a permit and certificate. No new "state-of-the-art" requirements are being imposed by these amendments and new rules.

COMMENT: This commenter would like to add his name to those that think that the direction taken by the Department to ensure bureacracy and add details to the permit procedure do not best serve the cause that endeavors to improve air quality for all. There should be dialogue, technical support, and correlation between the regulator and industry, and that will do more to serve the cause of reduced emissions than any permit. And the reduction will be achieved at less cost to government and industry.

While some rules and permits are necessary, the rules proposed here answer better the problems of the 1980's than they will address the problems the Department will encounter in the 1990's. This commenter will provide the Department with a list of the problems to be faced in the 1990's, to which the Department should be addressing its concerns.

RESPONSE: Dialogue with representatives of the regulated community, environmental protection advocates, and members of the public at large is a critical element in the evolution of public policy. The Department will review and consider any suggestions submitted by this commenter or other persons.

COMMENT: The Department should withdraw its proposed regulations and consider further the testimony and comments received at the public hearings and in writing in order to develop the best approach to increasing the efficiency of the air pollution regulatory process.

RESPONSE: For over two years the Department has deliberated over these proposed amendments and new rules in order to develop measures which would improve the permit process. Also, consideration has been given to the comments received on this proposal during the public comment period, and certain adjustments have been made in the proposed text in response to these comments. It is time now to proceed with, not withdraw, the new provisions in order to improve the permit process.

COMMENT: The Department's stated objective is to streamline and expedite the permit process, but this commenter sincerely doubts that the proposed revisions will streamline the permit process. Streamlining will not necessarily be accomplished by increasing the number of permit reviewers. The Department needs to prioritize its resources and to direct its staff's efforts to those activities which may increase air contaminant emissions, rather than increasing the complexity of the permit process and addressing it through more staff.

RESPONSE: Increasing the number of permit reviewers will shorten the average time the Department utilizes to act on a permit application. This is required in addition to the streamlining measures which have been implemented, and that will be implemented as a result of these amendments.

In addition to seeking to increase the number of permit staff to address the workload and improve permit review, the Department has streamlined the permit process through administrative measures such as reorganization of the review process, and by providing more information, more clearly expressed, to permit applicants so that loss of time and waste of effort due to confusion or misinformation can be avoided.

COMMENT: One commenter supported the new rules and amendments to subchapter 8 and found the amendments to be a fair way to raise the monies needed by the Department to issue air pollution control permits.

Another commenter commended the Department for the significant improvement to the rules in this proposal. And he found particularly noteworthy the recognition of the need for a strong system to protect confidential information, the exemption of control apparatus used solely to purify air feeds to sources, the attempt to streamline the permit process (the development of Category I, in particular), the development of the "equipment changeover" concept, and the recognition of control apparatus on laboratory ventilation systems as Category I facilities.

RESPONSE: The Department acknowledges these statements of support.

COMMENT: Several commenters observed that, whereas there are deadlines that applicants have to meet in the permitting process, the Department is not subject to any comparable time limits. One commenter added that this hinders progress and project scheduling. Several commenters made the following individual suggestions:

1. The Department should comply with a published schedule which should include cutoff dates for such provisions as the assessment of additional service fees; a notification, waivable for simple permits, that the application has been deemed complete; and a written final decision on the permit application.

2. Unless denied within three months, an application should receive an automatic approval.

3. A new section in subchapter 8 should list, for example, the following permitting time limits: 30 days for Cateogry I, 90 days for Category II, and 30 days for renewals. Should the Department fail to act within the specified time limits, an application should receive an automatic approval.

RESPONSE: The Department recognizes the importance to the regulated community of timely action on the permit applications it receives. It has, therefore, established as goals the following time periods, from the time the Department receives a complete application, for completing permit review: simple permits—30 days; permits of intermediate complexity—90 days; complex permits—six months; and highly complex major project permits requiring public participation—one year.

The Department's ability to achieve these goals depends in part, however, on timely receipt of information from applicants. Therefore, deadlines for submission of information have been established in these amendments and new rules. Automatic approval after set time periods is inconsistent with State and Federal law.

COMMENT: Permit conditions similar to those in the batch and pilot plant policies could be applicable to other sources desiring such treatment. These policies should be included in the proposal.

RESPONSE: Most permit conditions issued for batch production plants and pilot plants do not differ from what would be standard for permits for any type of operation.

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The reporting requirements, however, are unique. Batch production plants and pilot plants, because of the variable nature of their operation, are subject to extensive reporting, in order to provide flexibility for some modification of such processes without preconstruction approval. Such flexibility and reporting is unnecessary for most sources.

COMMENT: The regulations should define a "de minimis" air emission limit of perhaps 0.2 pounds per hour. Below this limit, no air permit would be required. And, since the bulk of state-wide emissions is certain to come from sources greater than "de minimis," this would relieve industry and the Department from the burden of permiting small sources that contribute insignificant emissions into the atmosphere.

RESPONSE: The term "de minimis" is customarily used to denote a quantity, or rate of release, of air contaminants such that any amount equal to or less than that quantity or rate can be considered so minimal as to not require regulation.

The Department has used this concept numerous times throughout the air pollution control code. For example, N.J.A.C. 7:27-8.2(a)7 does not include any source operation in which the combined weight of all materials introduced per hour, excluding air and water, is 50 pounds or less. Exemption of **de minimis sources** is a concept that the Department considers for use in rules. However, while de minimis production rate or source size is readily determined, emission rates cannot be so readily determined. Therefore, confusion would result as to what sources require permit if applicability is based on emissions.

Also, sources which emit minimal amounts of air contaminants cannot always be excluded from regulation. Small sources become significant when there are many such sources of a given type, making them collectively equivalent to a substantial source; or when the nature of the contaminants emitted, as is the case with carcinogenic air contaminants, may cause a potential threat to human health or welfare or the environment.

COMMENT: Additional permitting costs to this commenter due to these rule changes are estimated at about four times the current burdensome cost. In this commenter's industry, four companies have recently gone out of business or moved out of state, and every new regulation results in additional operating costs. The cost gets passed on to customers; and those who cannot afford it go elsewhere, where suppliers are not faced with the same regulations. While there is heightened awareness on the part of many of us of the need to improve the environment, we must work toward this goal without making it impossible for companies to remain competitive if we wish to maintain a manufacturing tax base in New Jersey.

RESPONSE: The new fee schedule is expected, on the average, to increase the amount of permit and certificate fees fourfold. Even with this increase, the regulated community will be reimbursing the Department for only about two-thirds of the full cost to the Department of providing complete permit and certificate services.

The Department has been advised that in many instances costs incurred by the regulated community when the Department lacks adequate resources to help them apply for and conform with permits substantially exceed any service fee costs. When the Department lacks the personnel to provide technical and administrative guidance, many applicants are forced to hire consultants and lawyers, even for relatively simple applications. When the Department's internal workload backlog causes months of delay in acting on a permit application, the cost to the applicant from the time lost may be thousands or millions of dollars. Improved service and reduced overall costs to permit applicants are major objectives of this regulatory action.

COMMENT: The new rules inhibit the development of innovative soil treatment technologies, such as vapor extraction systems, and are, therefore contrary to the goals of the Department's divisions of Water Resources and Solid Waste Management, which are trying to reduce reliance on contaminated soil excavation and removal during environmental cleanups. Emission rate limits in permits should reflect the low environmental impact of vapor extraction systems, which after carbon treatment typically emit contaminants into the atmosphere at non-detectable levels and generally are in operation only for short periods of time. Soil treatment systems in general should be identified as Category I Equipment and Control Apparatus. Moreover, continuous emission monitoring and extensive stack tests should not be required for innovative soil treatment systems because they will increase the cost of such beyond their economic viability.

RESPONSE: These amendments and new rules do not change the requirements for, nor do they inhibit the development of, innovative soil treatment technologies. The requirement for permits and certificates to be obtained for waste treatment equipment, pursuant to N.J.A.C. 7:27-8.2(a)15, was previously promulgated, and is not a new requirement. Furthermore, these amendments and new rules impose no new emission rate limits and other control requirements on sources.

Innovative soil treatment equipment is appropriately subject to higher, Category II permit and certificate fees. This equipment, by definition, is not a routine and familiar source type, and therefore, it is appropriately not a Category I source. Case-by-case review will be necessary. Whether continuous emission monitoring or stack testing will be required to ensure that compliance with emission requirements is attained will be determined also on a case-by-case basis.

COMMENT: The proposed rules give the Department unbridled discretion to change or revoke permits or certificates without due process protection.

RESPONSE: These new rules and amendments do not give the Department unbridled discretion to change or revoke permits or certificates.

By statutory prohibition, N.J.S.A. 26:2C-9.2(c), the Department may not change the previously established state-of-the-art control requirements included in an approved operating certificate, unless there are alterations to the equipment. The Department may revoke any certificate only for cause, as set forth in N.J.A.C. 7:27-8.10. Additionally, if any person is aggrieved by any decision of the Department to change the conditions of approval of a certificate or to revoke a certificate, he or she is entitled to contest the decision. N.J.A.C. 7:27-8.12 sets forth the procedures for contesting Departmental decisions.

COMMENT: The wording used for the permit applications and the certificates, as well as the official code, is difficult to understand. It should be written so that business persons can easily read it.

RESPONSE: Clear, comprehensible language is important in codes, and application forms. An objective of these amendments has been to express more clearly certain of the provisions in the rule that some persons have found confusing. The development of source specific application forms for common source operations is also intended to make the application process more understandable and relevant for the business person.

COMMENT: Businesses should be informed of any new changes in the code initially through efforts of the Department.

RESPONSE: In order to notify the regulated community, all proposed and adopted rule changes are published in the New Jersey Register. In addition, all proposed changes are published in the legal advertisement section of one or more newspapers of general circulation, and copies of the adoption document are sent to any person who commented to the Department on the rule proposal. In addition to these formal notification mechanisms, the Department periodically meets with representatives of business and business associations to exchange information.

COMMENT: Concerning some of the problems faced by small businesses, three commenters stated the following:

(1) After investing $100,000 in new equipment, this auto-body shop owner finds that the present business climate will make it difficult to recoup his investment. One major problem is posed by unfair competitors who set up shop in their garages or backyards and fail to comply with some or all of the applicable regulations and ordinances. Eventually, they are found out and shut down by the authorities, at which point they move to a different location and start over again.

(2) In another auto-body shop owner's area, there are several shops that nobody knows about, and some of them are his competitors. He does not mind complying with all applicable regulations, but he believes everybody else should be compelled to comply as well.

(3) This commenter's company, a printing and laminating concern, does and has always done its best to comply but he knows that other companies do not. He added that, without equal enforcement, only the companies that comply share the burden of supporting the program, and he feels this is unfair.

RESPONSE: It is the responsibility of all persons subject to the rules to comply with their applicable provisions. This includes the State government, any political subdivision of the State, and any agencies or instrumentalities thereof. Any person who fails to do so is subject to enforcement action.

Any member of the public who knows of another person's failure to comply with applicable rules is asked to so notify the Department. Field inspection staff will act on such notice. If they can verify that the person is failing to comply with applicable rules, they will issue a notice of violation, causing that person to be subject to the applicable penalty and enforcement action.

COMMENT: Two or three years ago, this commenter went to Trenton and spent about three hours with a gentleman from the Department obtaining guidance on how to fill out the Department's application forms.

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Some four months later, after completing and mailing in his application forms in accordance with this guidance, this commenter received a telephone call from the same gentleman, telling him that his application had been rejected because the regulations had changed. Now, if the Department's own people cannot fill out a form and have it passed, how does the Department expect applicants to do it?

RESPONSE: The Department must base any decision as to whether to approve a permit application on the rules in effect at the time the decision is made. In most cases, changes in rules occur infrequently. For example, prior to this revision, N.J.A.C. 7:27-8 has not changed since 1985.

In order to keep members of the regulated community informed as to any changes in the rules, notices of adoption of any new rules or amendments are published in the New Jersey Register. To prevent such a disapproval, an permit applicant may submit in writing to the Department any additional information, including additional control measures, that the applicant may want the Department to take into consideration as a result of a rule change, up until the time the Department has made its final permit decision.

COMMENT: Several commenters recommended the development of a system specifically designed to assist the regulated community. They commented as follows:

(1) It has never been possible to communicate satisfactorily with the Department.

(2) Small businesses cannot afford the services of engineers or attorneys to assist them in their interactions with the Department, or to help them comply with all applicable rules and regulations.

(3) The Department should staff a unit with professionals who are familiar with industry, as well as with the regulations, and who can reliably respond to inquiries from the regulated community.

(4) Small-business people should not be told to hire consultants.

(5) The Department should be capable of issuing official rulings as to whether any specific source operation will require permitting.

RESPONSE: In recent years the Department has not had the resources it would need to provide the individual guidance requested by many permit applicants. However, to provide some assistance, the Department has held a "Permit Workshop" twice a year to inform interested persons about the application process. With the increased staffing that improved fee revenue will allow, the Department expects to provide more permit-related assistance to small businesses.

COMMENT: Concerning the Department's increase in personnel, there could be one person in the Department to help find grant money throughout the state or Federal government to pay for some of the new technology. Small businesses do not know how to look for grant money, and maybe the Department can take the initiative and put somebody in there to help with that. This way, we will be able to meet the Department's requirements and have a safer environment.

RESPONSE: The Department is not aware of any grant money available to help businesses purchase equipment or control apparatus. However, a Technical Assistance Program has recently been established at the New Jersey Institute of Technology in order to assist businesses in determining what pollution prevention measures they could undertake. The Director of this program may be contacted at (201) 596-9864.

COMMENT: This commenter finds it frustrating to get booklets containing proposed rule changes, go through them, and then not be able to understand anything about them. He was concerned when, after talking with members of the New Jersey Coalition of Automotive Repairers, he learned that the only people who received these booklets were the people that had Air Pollution Control permits, probably five to 10 percent of the total body shop owners in the state. The other 90 percent, who either do not have filters or do not have stacks, never received any. There are 2,500 to 2,800 body shops in the State, and this commenter is sure none of them are even aware of what is going on.

RESPONSE: The Department attempted to inform all interested persons of the proposed changes to the permit code. The Department mailed out about 7,600 copies of the proposed amendments and new rules to interested parties. Included in this mailing were all persons, except the owners and operators of gasoline stations, holding a permit and certificate that is in effect. The Department also published a notice of the proposed changes in the New Jersey Register and in 19 New Jersey general circulation newspapers.

COMMENT: All small businesses, such as auto body shops, would benefit greatly from a substantial simplification of the application forms and more help from the Department with interpretation of the rule language and in filling out applications with detailed technical information. A lot of body shop owners want to be part of the solution, not part of the problem. We would like to get together with the Department and the insurance commissioner. We could solve a lot of problems that the Department's people have with the industry.

RESPONSE: When a need for a simplified permit application form for a particular type of small business operation is demonstrated, the Department may work with representatives of that type of business to develop a specialized form. This has been done, for example, for gas stations and dry cleaners.

The Department appreciates this offer of cooperation and is working with representatives of auto body shops to develop a simplified application form suited to their needs. Since the public hearing on these rules, a draft application form specific to small painting operations has been shared with representatives of auto-body shops.

COMMENT: People may go to get their cars fixed in Philadelphia or New York, where they do not have to deal with the same regulations. Permit requirements would not be too bad if the same burden were on one's neighbors.

RESPONSE: The Department concurs that it is desirable for neighboring states to impose similar standards and requirements on the regulated community. The Department is active in a number of regional consortiums which aim to foster consistency in regulation among states.

However, when an air pollution problem exists within the State, it would not be appropriate for the State to refrain from addressing it because a neighboring state is not also acting on the problem.

COMMENT: Two body-shop owners stated their suppliers informed them that state-of-the-art equipment or paints are not available. One of them explained he has tried to obtain the best possible paints, including special paints manufactured for use in California, but the demand is so great there that they will not be obtainable here for a long while. And the kind of equipment for these paints is also not available. The manufacturers have developed a high-volume, low-pressure gun which delivers more paint to a surface, but demand for this gun is so great in California that manufacturers cannot meet the demand. So, all the guns that have been produced are in California. A lot of the problem is not necessarily a question of complying. It is just that everything is so new that it is impossible to keep up.

RESPONSE: These comments are relevant to N.J.A.C. 7:27-16.5, which was promulgated on November 6, 1989, and became operative on January 5, 1990, and not relevant to the current proposal.

COMMENT: For a raw material change with a resulting 30 percent emission reduction, this commenter has had a permit application in the system since 1987. There have been at least 25 different opinions on how to handle this permit as far as adding new equipment is concerned. People have been changed on the job, and they do not know where the permit has been. Now, what is going to happen next month when another new change is needed? Five thousand dollars has been spent in new equipment and untold hours of engineering time, and still there is no permit. It does not make sense.

RESPONSE: The Department has been unable to find a permit application which has been pending for this commenter since 1987. The application on record most likely to be the subject of this comment was received April 11, 1988, and approved on May 5, 1988. However, the amendments adopted may address the situation raised by this commenter. As of the effective date of these amendments and new rules, a change of raw material under certain conditions no longer requires a permit. N.J.A.C. 7:27-8.3(c) provides that if a new raw material is introduced to equipment or control apparatus for which a permit and certificate are in effect, such change may be reported as an amendment within 120 days of the occurrence of the change, provided that the change does not constitute an alteration. Use of a new raw material would not constitute an alteration if a permit and certificate are in effect for the equipment or control apparatus, and if the change does not result in any increase in the rate or concentration of any air contaminant emissions, cause the emission of a new air contaminant, increase the concentration of any air contaminant in any influent to a control apparatus, or cause the contravention of any ambient air quality standard, any provision of N.J.A.C. 7:27, or any condition of approval of any permit or certificate in effect.

COMMENT: This commenter applied for four permits to change emissions from asbestos to fiberglass. Every 90 days the certificates for these permits are continued under temporary status. Why haven't they been made permanent? Other people attending the hearing are in the same boat. How big would your backlog be if these things were cleaned up?

RESPONSE: The Department may elect not to issue such a source a "permanent" operating certificate, valid for five years, until it is able to

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confirm that the source is operating in conformance with the requirements of its permit and certificate. After the Department approves a permit for such a source, it issues it a temporary certificate to operate, valid for 90 days.

A number of factors may make it impossible for the Department to confirm the source's compliance within the first 90-day period, causing the Department to renew the temporary certificate for 90-day periods. Among these factors is the limited number of field inspectors available to make site inspections. The Department plans to utilize some of the additional monies derived from the new fee schedules to employ additional field inspectors to make more timely inspections of new equipment.

COMMENT: The hot-asphalt-mix industry fully supports the Department's efforts for clean air, and in recent years it has invested well over $10 million in hardware to achieve the 0.02 grains-per-standard-cubic foot standard. But the industry has a problem with a permit process that has become increasingly encumbered, where permits now take longer to process than the time required to fabricate and install new air pollution control equipment. Therefore, prior to throwing more money at an administrative problem, the Department should reach out for the services of the regulated community for assistance and advise as to how the Department can reduce the interminable length of time it currently takes to review a permit, even for the simplest of equipment.

RESPONSE: The Department concurs with this comment, and has recognized the need to develop specific permitting procedures for the hot-asphalt-mix industry. The Department has met with industry representatives to obtain their advance on how to improve the permitting process.

COMMENT: "Grandfathered" facilities, those in operation prior to the enactment of subchapter 8, cause this commenter great concern. Is it the Department's intent to eliminate grandfathering of all existing units and to require all existing emission sources in the very near future to undergo state-of-the-art review? If so, this is one of the broadest, most far-reaching and expensive air regulations in the nation.

RESPONSE: The permit and certificate requirements contained in the Air Pollution Control Act apply only to new and altered sources. Any source that was constructed and installed prior to the date on which this law was enacted (June 15, 1967) and which has not been since altered, is not subject to permit and certificate requirements. Such sources are often referred to as "grandfathered" sources.

The Department has neither the authority nor the intention to eliminate "grandfathering" of such sources through these new rules and amendments. However, as time goes on, it becomes increasingly unlikely that sources existing before June 15, 1967, will continue to operate without alterations.

COMMENT: The permit and certificate application forms should be a part of the regulation so that parties can comment on them.

RESPONSE: Forms are not normally part of rules to allow the Department flexibility to modify existing forms and develop new forms without a two-year rulemaking process. The Department welcomes suggestions as to how its permit and certificate application forms could be improved; it can normally do so as a procedural change without rulemaking so long as no substantive change to a rule will occur.

COMMENT: This commenter stated that it would appear to be impossible, within the present statutory limits, to adjust the fee schedule sufficiently to be equitable and to hire the staff needed to improve the Department's review time. This is because some review processes are costlier than $500.00 or because many more highly trained staff members are required than can be presently attracted to State government.

RESPONSE: The Department carries out its programmatic responsibilities pursuant to the legislative intent established by law and reflected in the State budget. Pending bills would increase the fee cap above $500.00. The Department also acts in accordance with the administrative policies and procedures of the State, including those for personnel.

COMMENT: For certain projects the applicant must perform a screening analysis to determine whether multi-source modeling is required. This analysis must be submitted to the Department for approval, and the determination as to whether multi-source modeling is needed must be made before putting the new equipment into operation. This commenter has submitted such a screening analysis, and then experienced lengthy delays. In one case, there has been no response from the Department since June 1989 regarding whether a particular protocol is sufficient for a required pre-approval analysis. As a consequence, a major replacement project that would significantly improve air quality now is in jeopardy of not being completed. The Department is simply overloaded.

RESPONSE: A number of factors may contribute to delays in the Department's review of protocol for the performance of an air quality modeling review. However, a primary factor has been the limited number of technical staff available in the Department to perform these reviews. The Department plans to utilize some of the additional monies derived from the new fee schedule to employ additional staff to carry out modeling reviews.

COMMENT: This commenter suggested that a private company be allowed to fund an outside consultant—that the Department would unilaterally select—to complete a timely review of complicated, highly technical matters, such as protocols for air sampling, health risk assessment, and ambient air quality impact analyses. In this way, a review would not be uncompleted after a substantial time period simply because the Department has inadequate funding for an adequate staff.

RESPONSE: To supplement the resources of its staff, the Department does employ consultants to perform certain selected tasks, including permit review. However, there are limitations as to where consultant services can prove useful.

Hiring a consultant does not necessarily significantly lighten the workload of the Department or speed permit review. It imposes a significant administrative burden on the departmental staff in issuing and managing contracts. Furthermore, the Department must establish detailed guidance for the consultant on the work to be performed and must review the work of the consultant to ensure that the task has been performed properly.

Qualified consultants willing to work for the State are not always available. Performing permit and certificate-related reviews for the Department means that a consultant, to avoid a conflict-of-interest situation, must refuse to perform permit and certificate tasks for the companies seeking such permits. Many consulting firms find this economically disadvantageous.

Nevertheless, the Department concurs with the thrust of the comment, and may use a portion of the increased fees to fund consultants' review of permit applications. Also, the Department will further consider the suggestion that an individual applicant be able to provide a supplemental fee to support consultant review of certain permit tasks, as pointed out by the commenter.

N.J.A.C. 7:27-8.1 Definitions

COMMENT: To the definition of "agricultural commodity" in proposed N.J.A.C. 7:27-8.1, add "including but not limited to grains, forages, seeds, fertilizers, etc."

RESPONSE: The definition of the term "agricultural commodity" clearly includes grains, forages, and seeds; this type of explicit listing would be redundant. However, the term as defined also clearly does not include fertilizers and pesticides, as these are not solely "vegetable matter or animal matter." Listing these would therefore be inappropriate.

COMMENT: Some of the proposed definitions create new questions in this commenter's mind. For example, the definition of "agricultural commodity" includes any vegetable or animal matter. Presumably, this means vegetable matter as opposed to mineral, but it does not necessarily state whether or not it does include mineral matter or substances which cannot fall within that category of vegetable matter or animal matter. Examples are certain fertilizers that contain minerals and seed that is coated with a mineral for whatever purpose. And whether the fact that some seeds are coated with certain minerals to protect them from insect infestation would have an impact upon the definition of the commodity.

RESPONSE: The term "agricultural commodity" includes commodities that are composed of animal or vegetable matter such as feed grains. It includes seeds, even if they are treated with an anti-insecticide coating. It does not, however, include commodities that are predominantly composed of minerals or man-made chemicals such as fertilizers and pesticides, even when these commodities are used for agricultural purposes.

COMMENT: In N.J.A.C. 7:27-8.1, in the definition of "air contaminant," what separates a "liquid particle" from a "vapor" or a "gas"?

RESPONSE: Gases and vapors can expand indefinitely and completely fill their containers. In contrast, particles, including liquid particles, have a definite volume and do not expand like gases.

COMMENT: Several commenters questioned the definition of "air contaminant" proposed under N.J.A.C. 7:27-8.1, and made the following observations:

(1) Why was the phrase "which are discharged into the outdoor atmosphere" removed from this definition? The regulation of indoor air contaminants will be burdensome to industry and the Department. In addition, OSHA regulations address indoor air contaminants.

(2) There is no basis to suggest that the Department needs or intends to regulate "indoor" air pollution, and this definition should retain the concept of "outdoor atmosphere." This would be consistent with the

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proposed definition of "indirect emissions," which covers only emissions into the outdoor atmosphere."

(3) Make this definition more specific. As proposed, it is too broad.

RESPONSE: The Department has neither the authority nor the intent to address indoor air pollution issues. However, when air contaminants present in a building or at a facility are released into the outdoor air and move off site, they may result in pollution which is subject to regulation under the Air Pollution Control Act (N.J.S.A. 26:2C). The Act establishes the Department's authority to prohibit, control or prevent the occurrence of such pollution.

The phrase "which are discharged into the outdoor atmosphere" has been deleted from the definition of the term air contaminant because a substance can be an air contaminant without being in the outdoor atmosphere. Whether it remains indoors or may be released to the outdoor atmosphere is, however, a critical factor in determining whether it may be regulated under the Air Pollution Control Act.

COMMENT: To simplify the system, delete the definition of "alteration" in N.J.A.C. 7:27-8.1, and substitute the concept of "amendment" for any change in an existing permit.

RESPONSE: Certain changes to equipment or control apparatus subject to this rule cause, or any cause, significant increases or changes in air contaminant emissions. Such changes are, within the context of this rule, alterations. Pursuant to the Air Pollution Control Act, N.J.S.A. 26:2C-9.2(a), such changes must be subjected to the scrutiny and evaluation of a permit review, and can not merely be reported after the fact as "amendments" to existing permits.

COMMENT: The definition of "alteration" defines the term by examples and exclusions, and provides seven categories of actions that are alterations, which are not mutually exclusive. As a result, facility operators will be left without a clear understanding of when an action constitutes a "change" and therefore an "alteration." The definition should clearly define what changes are alterations.

RESPONSE: The Department has changed the definition of "alteration" to clarify that alteration is any change, except those to be reported as amendments under N.J.A.C. 7:27-8.3(c), and those which are "repair or maintenance." Consequently, facility operators will be able to tell if a change is an alteration by process of elimination, since N.J.A.C. 7:27-8.3(c) and the definitions of "repair or maintenance" and the related definitions of "substantial component" are clear and excluded from the definition of alteration. The remainder of the definition provides specific examples of alterations in order to provide guidance on particular changes which are alterations.

COMMENT: The definition of "alteration" is impractical and vague because it encompasses almost all physical and/or operational changes to equipment and/or control apparatus, even if the changes do not have adverse effects on air quality.

Make the definitions of "change" and "alteration" more specific. What exactly constitutes a change or alteration?

RESPONSE: The types of equipment or control apparatus subject to this rule are specified in N.J.A.C. 7:27-8.2. Any change made to any equipment or control apparatus subject to this rule is an alteration, unless it is a type of change excepted in the definition of "alteration."

COMMENT: Regarding the new definitions proposed under N.J.A.C. 7:27-8.1 in general, several commenters expressed the following concerns:

(1) These definitions will cause a significantly larger number of "changes" to trigger permitting, even when those changes have no potential adverse effects on air quality. Since nearly every change will require a permit, the proposed amendments will drastically increase the volume of permit applications, will impose an unreasonable burden on owners and operators, and will overwhelm the number of new employees. The backlogs will continue, and permits will continue to be issued in a six-month to two-year time frame.

(2) The revised and expanded list of definitions leaves this commenter very much confused and concerned. Certainly, there are not many exceptions to the permitting process. Has the Department estimated the numbers of additional permit applications that the proposal will generate, and how this will affect the current permit backlog?

(3) Although the proposed scheme will increase revenues, it is impractical because it will increase the number of applications.

(4) No permitting scheme that increases the number of applications to be submitted will help streamline the permitting process.

RESPONSE: The revision of the definition of the term alteration is not expected to have a significant overall effect on the number of permit applications submitted to the Department.

Certain aspects of the definition will generate an increase in applications. Even where no substantive changes are being made in the rule, the greater clarity and specificity of language in these amendments is expected to make more persons aware that they are subject to permit requirements and, therefore, result in additional permit applications.

On the other hand, replacement-in-kind of permitted equipment is now exempted by these amendments from obtaining a new permit for the five years from the date of approval of the original permit. This should reduce the number of permit applications received. Also, a number of changes which previously would have been alterations (and therefore required a permit application) are reclassified through these rule revisions as "repair or maintenance" (which need not be reported to the Department) or as changes which can be reported after the fact to the Department as amendents of the existing permits. These should also reduce the number of applications the Department receives.

COMMENT: Concerning the definition of "alteration" proposed under N.J.A.C. 7:27-8.1, several commenters made the following statements:

(1) This definition should focus on whether a change will adversely affect air quality. As proposed, it would encompass almost any physical or operational change to equipment or control apparatus, even if the change would not adversely affect air quality. The exceptions for "repair or maintenance" and "equipment changeover" are negated by proposed requirements applicable to the replacement of equipment or control apparatus.

(2) Since it is highly impractical and vague, this definition would be counterproductive because it would prevent the Department from concentrating on alterations that may seriously impact air quality.

(3) Counter to the Department's assertion that it will "eliminate backlog," it will increase by one order of magnitude the number of permit applications, and it will thus hopelessly bog down the entire permit system, with consequent loss of revenue to the regulated community.

(4) This definition should only include those changes that will increase the quantity or deteriorate the quality or nature of the air contaminant emitted.

(5) This definition should only include changes that adversely impact air quality. The proposed scheme is faulty because it does not consistently base the designation as an "alteration" on whether a change will adversely affect air quality. Therefore, if these provisions are adopted unmodified, the Department will be unable to focus "on those changes to equipment and control apparatus with the greatest potential for air contaminant emissions." Instead, contrary to its stated intention, the Department will expend a significant amount of its resources "on adjustments to equipment or its use which have little or no possibility of resulting in increased air contaminant emissions."

(6) This significantly expanded definition would unreasonably burden facility owners and operators by imposing permit requirements for routine repair and maintenance activities that do not adversely impact air quality.

RESPONSE: The effect of the potential emissions from equipment and control apparatus is the ultimate concern of permitting and is assessed during permit review. However, it can not be used directly as a criterion to differentiate what is or is not an alteration. Air quality effects may be technically complex to evaluate and are not clear-cut criteria which can be readily understood and applied by all members of the regulated community. They are, therefore, not appropriate for use as criteria for determining what is an "alteration" for which a permit is required.

Indirectly, however, the effect on air quality has been a guiding factor in determining which changes are defined as "alterations." The revised definition of the term "alteration" has been crafted so as to include in the term those changes which may have significant impacts on air quality and to exclude those that would not have such an impact. This has been done so as to focus the Department's attention and resources on those changes with the potential for adverse environmental consequences.

COMMENT: The definition of "alteration" in N.J.A.C. 7:27-8.1 would be counterproductive because users would hesitate to improve control equipment efficiency by making changes—even when such changes would reduce emissions.

RESPONSE: In order to allow certain changes which have no adverse effect on air quality to occur without prior approval of the Department being required, a number of types of changes have been recognized as not being "alterations." These include the changes listed in N.J.A.C. 7:27-8.3 which are to be reported as amendments, "repair or maintenance," and replacement-in-kind of permitted equipment for five years from the date of approval of the original permit.

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COMMENT: Exclude from the definition of "alteration" changes that do not increase emissions. For such changes a state-of-the-art evaluation should not be required. The Department's efforts can be best used in reviewing the overall design aspects of installations and consequent emissions. In the present rapidly changing technological environment, the state-of-the-art evaluation is an expensive and time-consuming sort of moving target. For long-lead items, a piece of equipment that is adequate for its intended application may cease to be state-of-the-art between the time the specifications are written and the time the Department initiates its review. It also requires specialized personnel and a data bank of all available technologies, which are only available to large manufacturers.

RESPONSE: Pursuant to the requirements of the Air Pollution Control Act, N.J.S.A. 26:2C-9.2(c), changes which constitute "alterations" require new permits. In determining whether to issue a permit, the Department must decide whether the alteration incorporates state-of-the-art control of emissions.

These amendments establish that certain types of changes are not "alterations," and are therefore not subject to permit review. These include "alterations," and are therefore not subject to permit review. These include replacement-in-kind of permitted equipment for the first five years after the issuance of a permit, changes that can be reported as an amendment to an existing permit or certificate, and repair or maintenance. Changes that are not included in the term "alteration" are changes that will not increase emissions. This is consistent with the legislative mandate to require advances in the art of air pollution control when replacing or altering equipment or control apparatus.

COMMENT: Many industries may be required to implement and install significant and expensive emission monitoring and state-of-the-art controls at presently grandfathered sources. Since many utilities burn only oil and/or natural gas, and regulations strictly limit the oil sulfur content, rate payers may be forced to pay significantly higher rates without a concomitant improvement in air quality, as a result of the proposed amendments.

RESPONSE: Equipment or control apparatus built and installed prior to the passage of N.J.S.A. 26:2C is not subject to the permit and certificate requirements established under this law, until such time as it is altered. Such exempt sources are comonly referred to as "grandfathered sources." Although such grandfathered sources do have to comply with all promulgated standards, these sources do not have to demonstrate conformance with state-of-the-art emission control requirements, which are established as part of the permit process, and do not have to carry out emission monitoring, which may be required of permitted sources as a condition of approval of a permit.

No "grandfathered" equipment can be altered, however, unless a permit is obtained authorizing the change. At such time, pursuant to the Air Pollution Control Act, if the emissions from the equipment exceed state-of-the-art standards, changes would be required through the permit so that the standards are achieved. If close attention is needed to ensure that the emissions from the source, due to their nature or quantity, do not exceed permitted limits, monitoring may be required for certain sources as a condition of approval. However, if the equipment as currently operated has low emission levels or achieves state-of-the-art emission control, no such changes would be required.

COMMENT: Some of the clarifications in the proposed rules are helpful in providing greater certainty to the Department's staff and the public about when new or amended permits and certificates are required.

RESPONSE: The Department concurs that the clarifications should prove helpful.

COMMENT: A "reconfiguration" by itself should not be defined as an alteration simply because it is done on a piece of grandfathered equipment. This provision should be eliminated.

RESPONSE: Reconfiguration of "grandfathered" or permitted equipment or control apparatus constitutes an alteration for which a permit is required. This is a clarification of the previous rule, rather than a new provision. Since changes in the sequence of control equipment usually affects air contaminant emissions, it is necessary that such changes be subject to permit review.

COMMENT: Repair or maintenance of equipment is itself an activity that directly causes the emission of an air contaminant.

RESPONSE: The repair and maintenance performed on equipment or control apparatus must conform with any applicable Federal or State codes, including N.J.A.C. 7:27-5, Prohibition of Air Pollution. Emissions deriving from repair or maintenance are subject to any limits set forth in any applicable permit or certificate in effect.

COMMENT: Concerning paragraph 1 of the definition of "alteration" under proposed N.J.A.C. 7:27-8.1, several commenters formulated the following remarks and recommendations:

(1) Change this paragraph to allow relocation to another site without a permit.

(2) Revise this paragraph to read: "Change in the location of equipment or control apparatus **listed in the permit**."

(3) This paragraph should only apply to the location of a discharge point and only if the change in the discharge point would affect the dispersion of pollution at the property line.

(4) Delete this paragraph. A change in the location of equipment or control apparatus, provided it remains on the same premises, should not require a full permit review. This change can be best accommodated as "general permit or certificate information." Therefore, the definition of "general permit or certificate information" should be revised to include this change in location.

(5) Does the relocation of a boiler's burners with no change (or with a reduction) in emissions require permitting? Under this definition it will, and this would be unnecessary, time consuming, expensive, and counterproductive.

(6) Revise this item to read: "Change in the location of the discharge point," and move it to the "equipment changeover" section. Equipment location should not matter if venting conditions and dispersion remain the same.

(7) Since the relocation of equipment or control apparatus is only of concern if an adverse impact on air quality results, revise this paragraph to read: "**Any** change in the location of equipment or control apparatus **resulting in an adverse effect on air quality**."

(8) To this paragraph, add the phrase ". . . **listed in the permit**." Process equipment is often portable within a building or area, which is noted in the permit. This suggested change would allow this type of equipment to be moved without changing the permit. It would also limit the moving of equipment to other areas which the Department has not evaluated.

(9) Why is "alteration" needed to change equipment location? This should be done by "amendment" rather than by "alteration."

RESPONSE: In response to these comments, clarification of paragraph one has been made in the adopted rule. This clarification indicates that it is the change in location of the point of discharge of emissions, not the movement of the equipment or control apparatus per se, that is significant in determining whether an alteration has taken place. The clarification also points out that change to alternative locations of emission points, if set forth in the permit application and approved by the Department as part of the permit approval, do not constitute an alteration.

However, change of location of an emission point not approved in the permit does constitute an alteration, whether the change is to another location at the same facility or to another facility. Relocation of the emission point for equipment or control apparatus may change its effects on air quality. Consequently, a change in the location of such an emission point is an alteration requiring a permit application and preconstruction review, and is not a change which can be reported as an amendment to an existing permit.

The Department anticipates that permit applications for relocations of points of discharge will generally be "alteration" permit applications, not new "installation" permit applications. For alteration permit applications, in making its determination as to whether the equipment or control apparatus incorporate advances in the art of air pollution control, it is the Department's practice to consider only whether state-of-the-art emission control relevant to those components of the equipment and control apparatus which are being changed is incorporated. Only in the case of a new "installation" permit would the state-of-the-art status of all equipment and control apparatus included in the permit, as a whole system, be considered.

In the many instances, when relocation of a point of discharge will have no or negligible off-property effects, the Department's review of a permit application for a change in the location of a point of discharge would be straightforward and expeditious and would result in no additional state-of-the-art requirements being imposed on the source. However, if the relocation (or reorientation) of the discharge point could have off-property effects, the Department's review could be more detailed and new state-of-the-art control requirements could be imposed.

The Department does recognize that normal use of certain categories of equipment and control apparatus entail their being moved and used at various sites within a facility, or a specified part of a facility, or within a range of facilities within the State. Any person who intends to move

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such equipment or control apparatus may request that the Department review and approve, in its consideration of a permit application for the equipment or control apparatus, the designation of an area (such as within a wing of a building or within a site) or a range of sites (such as at any gasoline station within a given county) as specification of location of the equipment or control apparatus.

The Department will review any such requests, received and make a determination as to whether the specified type of equipment or control apparatus, when used for the specified application, can be approved for an area or range of sites. An example of equipment or control apparatus for which an applicant may specify the area in which that equipment or control apparatus may be used is equipment and control apparatus in a pilot plant.

In its review of such an application seeking approval to use the equipment within a specified area or a range or sites, the Department will presume that the equipment or control apparatus will be located at the site within the area or range of sites at which the "worst case" effects on air quality will occur. If the Department finds that the emissions that may be released from the use of the equipment and control apparatus at this site do not result in any contravention of any air quality standard or requirement, the Department will conclude that use at any site within the area or range of sites would also not result in any contravention of any air quality standard or requirement. If the application also meets all other requirements, the Department would then approve the application. With such an approval, movement of the emission point of the equipment or control apparatus within the specified area, or from one site to another within the range of sites, would not constitute an alteration, and no prior approval of the Department would be needed. The conditions of approval of such a permit may, however, require the permittee to report movement of the equipment or control apparatus, as an amendment of the information in the permit.

COMMENT: Regarding paragraph 2 of the definition of "alteration" under proposed N.J.A.C. 7:27-8.1, several commenters submitted the following remarks and suggestions:

(1) Although replacements should be equivalent or better in terms of their effect on air quality, the other limitations go too far. The Department has no legitimate interest in restraining like-kind replacements if they are equivalent or better for purposes of air pollution control.

(2) The overly broad definition of "alteration" may prove counterproductive by reducing or delaying improvements in air quality. Thus, if the equipment changeover exception only applies to replacement with identical components, operators will be dissuaded from replacing different but functionally equivalent components, even if this would reduce emissions.

(3) Also of concern are the state-of-the-art policy requirements applicable to alterations of equipment when in fact there has been no alteration. While the ideal is to incorporate the most up-to-date technology, there must be a balance between economic and environmental considerations. Furthermore, state-of-the-art is a subjective term that does not assure that the technology so termed will be available or suitable.

RESPONE: Pursuant to the Air Pollution Control Act N.J.S.A. 26:2C-9.2(c), it is the Department's responsibility to determine whether an alteration of equipment or control apparatus incorporates advances in the art of emissions control prior to issuing any certificate authorizing use of the altered equipment or control apparatus. However, the Act also authorizes the Department pursuant to an adopted rule to "dispense with the filing of applications" for permits.

In subparagraph 2iii of the adopted revisions to the definitions of "alteration," the Department has exercised its authority to dispense with the filing of permit applications, and exempted replacement-in-kind made during the first five years after a permit is issued from being an alteration. Therefore, replacement-in-kind is no longer "restrained" by any requirement to obtain a new permit (and be subjected to a new state-of-the-art determination) during that five-year period. However, such a replacement would have to be reported to the Department, pursuant to N.J.A.C. 7:27-8.3(c)5ii.

Furthermore, replacement-in-kind of parts which are not "substantial components" of the equipment or control apparatus is defined as "repair or maintenance." Such replacing of parts is at no time considered an "alteration," and does not require an alteration permit.

However, replacing equipment or control apparatus, or any ccomponent thereof, with something that is functionally equivalent but not the same kind as that being replaced is not replacement-in-kind; it is a change which is an alteration for which a preconstruction permit is required. Whether or not the "functionally equivalent" replacement meets state-of-the-art requirements must be determined by the Department during the permit review process.

"State-of-the-art" technology, while advanced, is available technology. In making a replacement during the first five years after the initial permit is issued, an operator may choose either a replacement-in-kind (which will not be subject to permit review) or a dissimilar but "functionally equivalent" replacement (which requires a preconstruction permit). After the five-year period, however, any replacement is subject to permit requirements, and the equipment must incorporate state-of-the-art emissions control at this time.

COMMENT: Under subparagraph 2i of the definition of "alteration" in N.J.A.C. 7:27-8.1, delete "the same kind as" and, in its stead, insert "a replacement in kind to."

RESPONSE: The phrases "is not the same kind as that being replaced" and "is not a replacement in kind to that being replaced" appear in all respects in the context of this rule to be identical in meaning, and do not seem likely to cause confusion. Therefore, the proposed terminology has been retained in the adopted rules.

COMMENT: What does "same kind" mean? This should not refer to materials of construction, which have no effect on the environment, but only to some kind of operation. Clarify or define "is not the same kind." Does this refer only to equipment type and size, or does it extend to make and model number?

RESPONSE: The phrase "the same kind as" or "in kind," as used in the definition of "replacement" in N.J.A.C. 7:27-8.1, means that which is the same type of equipment or control apparatus as that being replaced. For equipment, the size or rating in terms of such parameters as capacity, power, and production rate could be no larger than that of the equipment being replaced. For control apparatus, not only would the new device have to be of the same type as that being replaced, but also the control efficiency of the replacement device would have to be at least equal to that of the control apparatus being replaced.

COMMENT: The changes in definitions in subchapter 8 constitute an area of concern, particularly the definition of "alteration." The replacement of equipment of the "same kind" should not be considered an alteration because this will have a substantial impact on equipment categories and require "grandfathered" pieces to be permitted or repermitted. This will add an unprecedented number of permits that would have to go through an already overburdened process within the next five years.

RESPONSE: For five years after the approval of the permit authorizing the installation of equipment or control apparatus, the equipment or control apparatus may be replaced with equipment or control apparatus of the same kind without a permit being required, pursuant to those amendments. After five years, however, such replacement does constitute an alteration for which a new permit is required.

COMMENT: Delete subparagraph 2i of the definition of "alteration" in N.J.A.C. 7:27-8.1. This provision conflicts with 2ii, which provides a better streamlined permit review program. The criteria for full review should be equivalent in terms of air emissions, not equipment or apparatus.

RESPONSE: These two provisions are complementary, not contradictory, and both have been retained in the adopted revisions at subparagraph 2i and paragraph 9 of the definition of "alteration." Together they ensure that the level of emissions control established in the state-of-the-art determination made during the review and approval of the permit in effect is preserved. In the first five years after initial approval, these provisions allow for replacement of equipment or control apparatus with the same kind of equipment or control apparatus without permit, as along as emissions are the same or lower. A different kind of equipment or control apparatus appropriately requires a permit review to confirm that emissions are the same or lower, and still represent "advances in-the-art" of air pollution control. By requiring permit applications for replacements of existing equipment or control apparatus with devices that are not the same kind as that being replaced, the Department is fulfilling the legislative mandate for improved air pollution control over time, as equipment or control apparatus is replaced.

COMMENT: One commenter stated that, in the sentence, "The new equipment . . . is not the same kind as that which is being replaced," of subparagraph 2i in the definition of "alteration" under N.J.A.C. 7:27-8.1, the words "same kind" are subjective, as are "not equivalent" and "better than" in Subparagraph 2ii. The Department should focus on resultant emissions only, and let the owner or manufacturer decide on the "kind," equivalent," or "better than" aspects.

RESPONSE: As used in this rule and as applied by the Department, these phrases are not susceptible to subjective interpretation. "Same

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kind" or "in kind" means being of the same type (for example, a baghouse) as the equipment or control apparatus, or component thereof, being replaced. "Equivalent to or better than" means conforming at least with all limits and requirements established in the approved permit.

COMMENT: In subparagraph 2iii of the proposed definition of "alteration" in N.J.A.C. 7:27-8.1, why not say "the equipment being replaced is more than five years old; or . . ."? This is much clearer than what is written in the proposal.

RESPONSE: The phrase "the equipment being replaced is more than five years old" does not indicate the starting point from which the age is counted. The date the equipment is ordered or installed or the date use commences are examples of alternative possibilities. The rule makes it clear that the five-year period begins with the date of approval of the permit.

COMMENT: The age limitation will encourage the inefficient practice of premature replacement of otherwise functioning equipment less than five years old while discouraging the replacement of obsolete equipment more than five years old.

RESPONSE: The Department does not foresee that this provision will be a significant factor, in most cases, in decisions as to whether to replace equipment. Equipment aging and breakdown or the economic advantages to converting to more advanced processes should be more important considerations.

COMMENT: Concerning subparagraph 2iii of the proposed definition of "alteration" in N.J.A.C. 7:27-8.1, replace the word "five" with the word "fifteen."

RESPONSE: In balancing the objective of dispensing with applications for new permits to avoid the burden they impose on the regulated community and the Department with the objective of ensuring air quality protection; and in consideration of the fact that the Air Pollution Control Act, N.J.S.A. 26:2C-9.2(c)(2), establishes five years as the period that a certificate shall remain in effect; the Department determined that five years would also be an appropriate period to exempt replacement from the requirement to obtain a new permit. This assures owners and operators that unless they otherwise alter their equipment, the state-of-the-art determination established in their permit will remain valid for five-years. It also assures the public that as replacement occurs after the five-year period the owner or operator will install and use available state-of-the-art emissions control.

COMMENT: Concerning subparagraph 2iii of the proposed definition of "alteration" in N.J.A.C. 7:27-8.1, two commenters stated that the assumption that the age of a piece of equipment should determine whether an alteration has taken place is inappropriate. Replacement by equipment of the same kind should not be an alteration. Subparagraph 2iii should be deleted or aligned with the investment's economic life. Five years is too short a time for applying state-of-the-art requirements. The Department should not apply a piecemeal approach because this will have a major impact on the cost of equipment and amortization.

Another commenter added that state-of-the-art requirements are presently considered by the Department only during preconstruction and alteration review periods. It is believed that the intent of this requirement is to limit the alteration designation on replacement operations of equipment at least five years old. However, the text as presently drafted automatically triggers state-of-the-art review on all replacement operations on equipment or control apparatus, based solely on the age of the permitted operation, regardless of cost, equivalence or air quality considerations.

RESPONSE: It is not the age of the equipment but the period of time that has passed since the equipment has been subjected to a state-of-the-art emissions control determination, as part of a permit review, that is the critical factor.

It was the intent of the Air Pollution Control Act (N.J.S.A. 26:2C) that over time existing equipment incorporate advances in the art of air pollution control. The act envisioned that the advances would be incorporated whenever the equipment was also being otherwise altered.

It is consistent with this intent that replacement-in-kind be changed to equipment that is exempted only for a limited period from requiring a new permit and, therefore, a new state-of-the-art determination to ensure that the change incorporates advances in the art of control.

COMMENT: Replacement of equipment should be allowed as an amendment. If the effective date of the permit is less than five years old, the Department should not have to complete another state-of-the-art (SOTA) review. Therefore, a replacement should require no notification as an alteration or as an amendment. Furthermore, if the effective date of the permit is greater than five years old, an amendment should be filed with the Department rather than an alteration. This would allow the applicant to proceed with the replacement under the "At Peril Policy." If the Department finds that the replacement is not SOTA, it may append a condition to the permit requiring that SOTA be achieved within five years. This will allow industry to continue operations if a piece of equipment fails.

RESPONSE: The adopted revisions require replacement-in-kind to be reported to the Department as an amendment of the permit in effect for five years following the approval of the permit. Thereafter, however, replacement-in-kind constitutes an alteration for which prior approval of a permit and certificate is required. This enables the Department to be informed as equipment is changed, and ensures that state-of-the-art emission control will be mandated whenever equipment more than five years old is replaced.

COMMENT: Concerning state-of-the-art requirements and "grandfathered" equipment, one commenter stated the following:

(1) At the steam-electric facilities operated by the utility with which one commenter is associated, the installation of state-of-the-art controls for nitrogen oxides would require capital expenditures of about $1 billion, and operation and maintenance (O&M) costs of $200 to $300 million a year. The corresponding estimates for the installation of scrubbers for sulfur oxide removal will exceed $600 million and $60 million, respectively.

In addition to the steam units, this utility operates a large number of peaking jet engines. Considering their age, adoption of the proposed regulations would probably trigger system-wide replacement since retrofit of nitrogen-oxide controls is neither economically nor technically feasible. Rough estimates indicate that the system-wide replacement could result in capital expenditures of $1 billion to $1.5 billion, with O&M costs of $100 million to $150 million a year.

The total capital costs to this utility due to state-of-the-art requirements could reach $2.5 billion to $3 billion, with O&M costs of $360 million to $500 million a year.

These costs would have to be financed by the rate payers and would negatively affect New Jersey's industrial base—all at a time when the state is already facing severe revenue shortfalls. Do we need and can we afford this far-reaching and extreme regulatory proposal at this time?

(2) The Department should be aware of the effects on the utilities and their millions of customers. For example, the power generating facilities of the utility with which this commenter is associated currently maintain over 60 active combustion-source and storage-tank permits, and it has more than 120 "grandfathered" pieces of equipment. Due to the proposed amendments, this utility expects half of its current permits and over 100 of its "grandfathered" units to go through the new permitting process within the next five years. Can the Department handle efficiently and effectively this projected number of additional permits? An avalanche of permit applications seems likely to overwhelm the Department.

Another commentor remarked that Public Service Electric and Gas Company would like to "grandfather" its turbine-generator units by the New Jersey Turnpike, near Edison. These units have long been a source of unsightly, noxious fumes. All existing and new turbines should be required to comply with the proposed, revised, and new permit and fee requirements, and to use the best available control technology.

RESPONSE: The intent of the Air Pollution Control Act was not to exempt existing equipment permanently, but to allow the owners and operators to wait to upgrade their control of the air contaminant emissions until they also chose to otherwise alter the equipment, or their use of the equipment. A permit is required for the replacement of any equipment or control apparatus, if the date of approval of the original permit authorizing the installation of the equipment or control apparatus is more than five years ago. In order for the Department to issue such a permit, the owner or operator, as part of the permit application, would be required to demonstrate to the satisfaction of the Department that the replacement equipment or control apparatus incorporates advances in the art of air pollution control. The requirement that replacement equipment incorporate advances in the art of air pollution control is established in the Air Pollution Control Act and is not a new provision established in these new rules and amendments. All facilities in New Jersey, including utilities, are equally subject to these requirements.

As the Department already reviews and acts on in excess of 5,000 Air Pollution Control permit applications each year, and as the new fee schedules set forth in these adopted revisions should enable the Department to have the resources to employ additional permit review engineers, the Department believes that it will be able to address the permitting workload described.

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COMMENT: In subparagraph 2iii of the definition of "alteration" in N.J.A.C. 7:27-8.1, replace the word "permit" with "certificate." The replacement in kind should be contingent on the date of the most recent review and not the date of installation.

RESPONSE: The Department makes its primary determination as to whether the replacement equipment or control apparatus continues to incorporate advances in the art of air pollution control as part of its engineering review of a permit application. Therefore, it is appropriate that the date referenced here is the date of approval of the permit.

COMMENT: If industry has to halt production when a vessel breaks, industry will be seriously impacted. It is counterproductive to require a permit alteration for an in-kind replacement, which is strictly a maintenance activity.

RESPONSE: Any replacement of parts which is on the scale of "repair or maintenance" is, by definition in these amendments, not an alteration. Therefore, for such maintenance activity no permit is required pursuant to this rule.

COMMENT: Regarding subparagraph 2iii of the proposed definition of "alteration" at N.J.A.C. 7:27-8.1, maintenance staff performing scheduled repair and maintenance work often do not know the scope of the work required until the facilities are shut down and inspected. The Department now takes six (and occasionally 12 or 18) months to process permit applications. While the Department promises to reduce its permit backlog and shorten the review process, nowhere does the Department provide specific time frames within which it will review and act on permit applications. Large facilities cannot predict six or eight months in advance all repair and maintenance items requiring the replacement of "substantial components" that may be necessary during a scheduled outage. The scope of the Department's scheme will impair the ability of many operators to schedule and conduct planned maintenance. Moreover, it is unrealistic to expect facilities that are shut down because of equipment failure to remain idle while waiting for the Department to act on a permit application.

RESPONSE: Some types of equipment or control apparatus may be subject to malfunction which can not be remedied through repair of the existing equipment but instead must be remedied by replacing the unit, or a substantial component thereof. Any operator of such equipment or control apparatus should determine whether or not the production process can tolerate a shutdown period while he obtains a permit for the new equipment or control apparatus. If not, he should anticipate such a contingency and obtain a permit for stand-by equipment or replacement components which can be brought on line when needed. All replacement equipment or control apparatus must incorporate "state-of-the-art" emissions control.

COMMENT: Concerning subparagraph 2iv of the definition of "alteration" under proposed N.J.A.C. 7:27-8.1, several commenters recommended that this paragraph be deleted or modified. As proposed, the amended definition would be too broad and would needlessly subject certain activities to additional permit review. There is no justification for the $20,000 figure in the "Basis and Background Document." Therefore, there is no justification for its use as a criterion. A $20,000 capital expenditure, insignificant for the kinds of equipment most utilities operate, would probably be exceeded by every repair or maintenance job. If approved, nearly every repair or replacement of power plant equipment would require permitting. As long as there is no adverse effect on air quality, the fact that replacement costs are more than $20,000 does not provide a legitimate basis for triggering preconstruction permit requirements. This could stop operations, with significant loss of products the public depends on, and of millions of dollars for many companies. As examples, the unit costs of a 50-square-foot condenser, a 100-gallon reactor, a centrifuge, and some filters are $30,000, $20,000 to $50,000, $200,000, and $250,000, respectively.

If the Department finds that some cost criterion is needed, it should consider one that reflects the relative capital cost of completely new equipment or control apparatus, similar to that found in 40 CFR 60.15, which sets the replacement trigger at 50 percent or more of the fixed capital cost required to construct a comparable facility.

In the case of facilities that represent substantial capital investments, such as power plants, it is impractical to conduct repair or replacement activities for less than $20,000. Inasmuch as smaller facilities would be able to make wholesale changeouts without exceeding the $20,000 limit, this condition discriminates against larger facilities without any consideration of differences in emissions levels. More reasonably, the Department should adopt a rule similar to 40 CFR 60.15, which affects repairs or replacements involving capital expenditures that exceed 50 percent of the cost of an entirely new facility. Revise this item to read: "The total capital cost of the **replacement exceeds 50 percent of the total capital cost of comparable entirely** new equipment or control apparatus, **and** exceeds $20,000 as calculated in 1989 dollars."

If burners are being replaced or repaired on a boiler, the cost of the burners in 1989 dollars should not exceed a properly selected percentage of the 1989 dollar cost of the boiler. Guidance should be obtained from 40 CFR 60.15, which provides a 50 percent limit.

RESPONSE: In the adopted amendments, subparagraph 2iv is not adopted as proposed. Impact on the environment is the ultimate concern of permitting. However, such impact can be complex to assess and difficult to quantify. Therefore, it cannot be used directly as a cutoff criterion to differentiate between what is and what is not an alteration. Rather, the $20,000 criterion is included in the definition of a "substantial component" for Category I equipment and control apparatus. However, as suggested by a number of commenters, a substantial component of Category II equipment and control apparatus is defined in the adopted definition of "substantial component" to be any replacement component whose cost exceeds 50 percent of the total fixed capital costs of replacement of the equipment or control apparatus or $20,000, whichever is greater. Alternatively, for both Category I and Category II equipment or control apparatus, a component may be a "substantial component" if it is so designated in the conditions of approval of the permit in effect.

Replacement of a "substantial component" in either Category I or Category II equipment constitutes alteration, for which a permit is required. Replacing a part which is not a "substantial component" is not an alteration, and does not require a permit. Pursuant to the Air Pollution Control Act (N.J.S.A. 26:2C), the Department can not approve an application for a permit unless it finds the equipment or control apparatus incorporates state-of-the-art advances in air pollution control. Whether a replacement component incorporates such advances is determined as part of the permit review process.

COMMENT: One commenter stated N.J.A.C. 7:27 has no provisions for emergencies and it should include conditional time for equipment adjustments. As proposed, the new and amended regulations would cause equipment breakdowns to bring about the interruption of operations, which would result in layoffs, and capital and tax-revenue losses. There needs to be a provision allowing for repair or maintenance of control apparatus, while allowing the source to continue to operate free from penalty.

Another commenter added that the new definitions have highlighted the need to create an "after-the-fact emergency" notification/permit system to cover replacements caused by equipment breakdowns.

RESPONSE: If equipment breakdowns may result in intolerable interruptions in the production processes, it is the responsibility of the owner or operator to anticipate such a contingency and to have standby equipment permitted, installed, and ready to be used to avert any "emergency."

The owner or operator of a source is subject to penalty if that source operates not in compliance with the requirements of its permit or certificate or with any applicable State or Federal law, regulation or rule.

If use of a control apparatus is required for that source to conform with any emission limit to which it is subject, that source cannot operate unless such control is in place.

COMMENT: One commenter stated that paragraph 3 of the proposed definition of "alteration," concerning the introduction of a new raw material, should not be deemed an alteration because it will prevent companies from doing research and development. Three commenters indicated that this paragraph could discourage changes that might improve processes and air quality through improved process efficiency. One commenter recommended that the use of a new "category" of raw materials, or of a new TXS, be an "alteration."

Several commenters recommended that paragraph 3 be included in paragraph 5 in the definition of alteration. If the addition of a raw material does not increase emissions, industry should be allowed to add the material to the list by amendment. As proposed, this rule could discourage changes that would improve air quality due to more efficient processing.

RESPONSE: In the adopted amendments, paragraph 3 is changed, so that it addresses only equipment or control apparatus for which no certificate is in effect; that is, "grandfathered" sources. Use of a new raw material in a grandfathered source constitutes a change in use which is an alteration. Therefore, a permit is required.

For equipment and control apparatus for which a permit is in effect, when the introduction of a new raw material may increase the concentration or rate of any air contaminant emission, subparagraph 5ii of the

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definition of alteration is applicable and the change constitutes an alteration for which a permit is required. When the introduction of a new raw material does not have potential to result in such adverse effects, N.J.A.C. 7:27-8.3(c) is applicable and the change must be reported to the Department as an amendment of the permit and certificate in effect within 120 days of the occurrence of the change. Thus, change which poses no additional environmental or health risk may proceed without prior approval of the Department; but change which could pose such risks is subjected to the scrutiny of the permit review.

COMMENT: Concerning paragraph 3 of the definition of alteration which addresses the change of contents of a storage tank for which no permit or certificate has been issued, one commenter stated that such replacement should only be a concern when it affects air quality. Another asked whether the Department intends to require permits for grandfathered storage tanks as this would be in contradiction to the proposed definition of "equipment changeover." As defined, changing a storage tank's contents is an "equipment changeover" (and hence an "amendment") if it does not require an alteration of equipment or need more air pollution control equipment. Another stated that the provision should be deleted. If a storage tank is exempt from permitting requirements, the permittee should have the right to change the contents of the tank without notifying the Department. However, if the storage tank is not exempt, then the facility would be in violation of N.J.A.C. 7:27-8.3, which establishes the requirement to obtain a permit for any alteration of equipment.

RESPONSE: A change in the contents of a storage tank may change the emissions characteristics of that storage tank and thereby have an effect on air quality. Paragraph 3 of the adopted revisions to the definition of alteration establishes that if no certificate is in effect for that storage tank, such change in contents constitutes a change in the use of that tank which is an alteration, requiring that a permit be obtained before the change can be made. If a certificate is in effect for a storage tank, change in its contents may be reported as an amendment to the existing permit and certificate, pursuant to N.J.A.C. 7:27-8.3(c), if it will not result in any additional health or environmental risk. Otherwise, it will be an alteration, pursuant to subparagraph 5ii of the definition of alteration.

COMMENT: Several commenters recommended that paragraph 4 of the definition of "alteration" under proposed N.J.A.C. 7:27-8.1 be included in paragraph 5 of the same definition. If the reconfiguration of equipment does not increase emissions, change the permitted discharge point(s), or have other adverse potential impacts, industry should be allowed to reconfigure equipment via amendments, except for pilot plants, for which specific procedures have been developed. As proposed, this rule could discourage changes that would improve air quality due to more efficient processing.

RESPONSE: The reconfiguration of equipment and control apparatus may result in changes in the rate, direction, or composition of the air contaminants emitted and thereby have an adverse effect on air quality. Whether any such adverse effects could, in fact, occur is not necessarily self-evident. Technical analysis of the parameters of the operation, including in some cases air quality simulation modeling, is needed to make this determination.

Such analysis is done as part of permit review. Therefore, a change to a new configuration of equipment and control apparatus not specified in the original permit application is an alteration for which a new permit is required.

COMMENT: The pilot and batch plant "decision trees" used by the Department should be attached to the permit conditions to prevent research and batch manufacturing operations from being impacted. It should be allowable to follow the Pilot Plant Procedures and maintain an up-to-date list on site for inspection.

RESPONSE: As a procedural aid to owners and operators of batch production plants and pilot plants, the Department has developed "decision trees" to help such persons determine whether a particular change to their equipment or control apparatus would make them subject to a requirement for a new permit. Distribution of these decision trees, together with the permit conditions, in the package notifying an applicant of the approval of his permit could be a useful mechanism for placing this guidance document in the hands of the persons who most need to use it.

Pilot plant operators, because of the frequent changes in their use of raw materials, are required in the conditions of approval of their permits to maintain on-site a regularly updated record of raw materials used. There is no need for most operators to maintain such records.

COMMENT: Revise paragraph 4 of the definition of "alteration" under proposed N.J.A.C. 7:27-8.1 to read: "Any reconfiguration **of control apparatus** to an alternative configuration **not equivalent to that** specified . . ."

RESPONSE: The Department does not support these recommended additions to the definition of the term alteration. The phrase "of control apparatus" would be redundant because the term reconfiguration is defined in N.J.A.C. 7:27-8.1 as "a change in the setup of equipment or control apparatus, or both . . ." Furthermore, the phrase "not equivalent to that" would introduce ambiguity to the rule, engendering confusion as to what is and is not equivalent and impeding the imposition of uniform standards. Any person who wishes to operate his equipment and control apparatus in more than one configuration should specify this in his permit application, so that any approval issued by the Department would include approval of operation in alternative configurations.

COMMENT: One commenter asked whether reconfiguration as set forth in paragraph 4 included ductwork. Another commenter stated that the definition of "reconfiguration" is very broad, including things like ductwork and utilities, not covered anywhere else in the rule, and would proliferate the number of permit alterations required. If this specifically refers to alternative permitting policies (batch plants and pilot plants), the "alteration" definition should say so.

Another commenter asked the Department to eliminate from reconfiguration such things as ductwork and utilities, which are not covered anywhere else in the rule.

RESPONSE: Although the phrase "associated utilities, piping, ductwork, and conveyor systems" is not included in the adopted defintion of "reconfiguration," the term "equipment" is defined to include "any stack or chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment." These ancillary components are therefore included in the term "reconfiguration" through the use of the word "equipment" in its definition.

COMMENT: Concering paragraph 5 of the definition of "alteration" under proposed N.J.A.C. 7:27-8.1, several commenters stated that the provision should be explicitly made applicable only to **areas outside those over which the owner or operator has exclusive use or occupancy,** and not to any areas within the owner's property line. OSHA regulates areas within the plant, which are outside the Department's jurisdiction.

One commenter added that without such an exclusion, this provision would include any change that negatively affects a stack's air dispersion characteristics, even though such changes may also reduce emissions, as follows: Worst operating conditions are listed on air permits to ensure that one always operates within an envelope of permit compliance. Operating at lower-than-worst conditions (lower pumping rate and lower temperature) will reduce emission rate, but will also reduce exit velocity, which may negatively impact local air quality, and therefore require a permit alteration even though less air contaminants are emitted. This would place a permittee in the untenable position of being unable to both operate to minimize emissions and comply with air permit regulations.

RESPONSE: The Air Pollution Control Act (N.J.S.A. 26:2C-2) excludes "all aspects of the employer-employee relationship as to health and safety hazards" from the Department's authority to regulate air pollution. However, any of the changes listed in subparagraphs 5i through iii which may negatively impact public health or welfare or the environment are properly of concern to the Department and are an alteration for which a permit is required.

COMMENT: Revise paragraph 5 of the definition of "alteration" in proposed N.J.A.C. 7:27-8.1 to read: "Any of the following [types of change] **changes to equipment, control apparatus, or process operations** if it **results in a** [is a] change which may have an adverse effect on air quality, **including":**.

RESPONSE: The Department concurs that there is awkwardness in the proposed phraseology of this paragraph is awkward, and has changed the wording to make it clearer.

COMMENT: One commenter stated that the paragraph 5 of the definition of "alteration" in N.J.A.C. 7:27-8.1 includes five examples of changes that constitute alterations if they adversely affect "air quality." The first example refers to the addition, replacement or removal of "auxiliary devices or appurtenances," which is not defined in the proposal.

Another commenter added that, with regard to the need for additional or more precise definitions, in subparagraph 5i of the definition of "alteration," the phrase "auxiliary devices or appurtenances" is used, but is not defined anywhere. It cannot mean "equipment," "control apparatus," "parts," or "source operation." Does it refer to "associated utilities, piping, ductwork, or conveyor systems," which is a phrase included in the definitions of "install" and "reconfiguration"?

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RESPONSE: The phrase "auxiliary devices or appurtenances" is intended to be an open-ended category referring to supplemental equipment used with the equipment subject to permit and certificate requirements. Examples of such auxiliary devices or appurtenances would be flow meters and small holding tanks.

COMMENT: One commenter recommended the addition to subparagraph 5ii of the definition of "alteration" in proposed N.J.A.C. 7:27-8.1 of the qualifying phrase "not specified in the permit application." This provision does not recognize that emissions discharged from a process are often discharged within a range of values, which are set during the design of the process equipment. The recommended change to this provision should cover this scenario.

RESPONSE: The provision proposed at subparagraph 5ii of the definition of "alteration" is adopted as paragraph 9 of that definition, and the phrase "above that authorized in the permit or certificate" is included to clarify that variation of concentration within a range whose upper limit does not exceed the permitted limit does not constitute an alteration.

COMMENT: Subparagraph 5iv of the definition of "alteration" in N.J.A.C. 7:27-8.1 should be clarified so that it relates only to a change in the rate of production which increases emissions above permit limitations, or production beyond the facility's design limits, or which otherwise does not conform with specific requirements of the operating certificate. For example, if a facility operates under a certificate that limits heat input, the operator should be entitled to change the rate of production so long as the maximum heat input does not exceed the permitted requirement.

RESPONSE: The provision proposed at subparagraph 5iv of the definition of "alteration" is adopted as paragraph 10 of that definition, and the phrase "above that authorized in the permit or certificate" is included to clarify that changes in the rate of production do not constitute an alteration unless the limit established in the permit or certificate is exceeded.

COMMENT: Concerning paragraph 6 of the proposed definition of "alteration" in N.J.A.C. 7:27-8.1, several commenters objected to the inclusion of the word "potential." The phrase "potential rate of emission" sets forth a concept that is confusing and too vague for the regulated community to use.

One commenter asked that the word "potential" be defined as part of the public record in order to ensure consistency in permitting and enforcement, as well as to inform the public of the Department's intent. Another stated that its use might lead to interpretations which would effectively eliminate the exemptions of "equipment changeover" and "repair or maintenance" from the term alteration.

RESPONSE: The Department concurs that the use of the word "potential" in paragraph 6 of the definition of alteration is both confusing and unnecessary to convey the Department's intent in this context. Therefore, the word potential has been deleted from this paragraph.

COMMENT: Delete paragraphs 6 and 7 of the definition of "alteration." The requirements in paragraph 6 and 7 are redundant with the stated definition of "change which may have an adverse impact on air quality" and should be deleted.

RESPONSE: As the definition of "change which may have an adverse effect on air quality" is not included in the adopted rule, the adopted definition of "alteration" incorporates the substance of the proposed definition of "change which may have an adverse impact on air quality," including at paragraphs 5 and 11 as well as 6 and 7 and 11 of the definition of "alteration" in N.J.A.C. 7:27-8.1.

COMMENT: Paragraph 7 of the definition of "alteration" at proposed N.J.A.C. 7:27-8.1, which relates to emissions of new air contaminants not authorized by the permit or certificate in effect, should be clarified to refer to emissions of new contaminants that result from process or equipment changes because permits and certificates do not necessarily list all contaminants that may be produced by a source. Nor are all contaminants subject to regulatory programs. Listing a previously unidentified, unregulated contaminant on a permit or certificate for the first time for a source that previously has emitted the contaminant should not be subject to regulatory review, and should be done through an amendment.

RESPONSE: Pursuant to N.J.A.C. 7:27-8.7(c), no air contaminant may be emitted from a source subject to permit and certificate requirements unless that air contaminant is a species whose emission is authorized by the permit or unless it is a member of a category of air contaminants (such as "VOS") whose emission is authorized by the permit.

To begin emitting an air contaminant not so authorized is to initiate an air contaminant release whose effects have not been evaluated by the Department. It therefore constitutes an alteration for which a new permit is required.

"Air contaminant" is a defined term. The only substances which may be emitted that are not air contaminant are water and those species which are defined as "distillates of air." Only emissions of these substances excluded from the definition of "air contaminant" would not be subject to the provisions of paragraph 7.

COMMENT: Several commenters recommended that paragraph 7 of the proposed definition of "alteration" in N.J.A.C. 7:27-8.1 be treated as a subset of paragraph 5 of the same definition. If the emissions do not increase or do not have an adverse impact on the environment, or if the contaminants fit into categories already approved by the Department, a new contaminant should be allowed by amendment. An applicant should be allowed to use a chemical after notifying the Department, unless procedures such as the pilot plant procedures specify otherwise.

RESPONSE: Emission of a new air contaminant whose release is not authorized in the existing permit has the potential to result in an adverse effect on air quality. Whether any adverse effects could, in fact, occur may not be self-evident. Technical analysis of the parameters of the operation, including in some cases air quality simulation modeling, is needed to make this determination.

Such analysis is done as part of the permit review. Therefore, the emission of a new air contaminant not authorized in the existing permit is an alteration for which a new permit is required.

However, an application may list classes of substances which, if sufficiently precise and clearly limited, the Department will review and may approve on a case by case basis. Changes within an approved class could then be made by amendment.

COMMENT: Several commenters recommended that paragraph 7 of the proposed definition of "alteration" in N.J.A.C. 7:27-8.1 be revised to read: ". . . any new air contaminant or air contaminant category . . ." or otherwise changed to include the concept of an "air contaminant category."

RESPONSE: Only in a limited number of cases, such as with "VOS" where a group of contaminants all contribute to the same environmental effect, does the Department's permit evaluation consider groups or categories of contaminants. In most cases the Department considers the effects of air contaminant emissions on a species-by-species basis. Thus, the Department, to ensure continued protection of human health and welfare and the environment, must perform a new evaluation of the consequences of the emission of any new air contaminant species. Therefore, emission of a new air contaminant is a change which constitutes an alteration, for which a new permit is required.

COMMENT: One commenter stated that the proposed definition of "amendment" in N.J.A.C. 7:27-8.1 now requires notification of minor changes to the permit, which in the past required no notification or could be handled through a simple letter. For example, a change in the plant contact did not require notification. Now, this information will have to be revised, with a fee assessed every time a new individual assumes the role of plant contact. This is added paper work for the regulated community and the Department and an unnecessary expense to the company. Other examples are plant address and telephone number.

Two other commenters added that the proposed definitions of "amendment" and "general permit or certificate information " in proposed N.J.A.C. 7:27-8.1 should allow informational changes, such as plant address, contact, and telephone number, at no cost. Some requisite amendment changes such as telephone numbers (which will inevitably occur when the 201 area code is split) will result in an unreasonable expense to the regulated community. For a facility with 300 permits at $50.00 per amendment, a telephone number change could total $15,000 and generate thousands of amendments every year. Moreover, this will waste the Department's time and resources because informational changes can be done by letter. Given the computerized nature of the Department's records, such changes can be made globally, referring to the site's Air Pollution Control ID Number.

RESPONSE: Changes required to be submitted as amendments of existing permits and certificates are listed in N.J.A.C. 7:27-8.3(c) in the adopted amendments. In addition to certain types of change made to equipment or control apparatus or the use thereof, various "administrative" changes must be reported, including change in business name, division or plant name, mailing address, company stack designation, telephone number and name of plant contact. Reporting these changes is needed for keeping the Department's permit and certificate records up-to-date. These records not only document the permits and certificates issued, but are used by the Department as a basis for communicating with persons to whom permits and certificate have been issued and monitoring of compliance with permits and certificates.

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As part of its administration of the permit and certificate functions, the Department maintains a number of files and data bases containing information obtained from permit and certificate applications. Updating and correcting these data bases adds to the Departmental workload. The service fee charged for amendments reimburses the Department the costs incurred in maintaining these data bases, essential to administering the permit and certificate program. Economic benefits accrue to persons holding permits and certificates, and it is appropriate that they bear at least a significant portion of the costs to the State of administering the permit and certificate program. In consideration of the comment submitted on the amendment fees, however, the Department has determined not to impose any fee for an amendment which reports solely changes in telephone numbers or names of plant contacts.

COMMENT: Concerning the proposed definition of "Category I" in proposed N.J.A.C. 7:27-8.1, equipment should be categorized based upon the complexity of air permit review. The longer the review, the higher the category and the greater the cost for permit application.

RESPONSE: In a general sense, differentiating between Category I and Category II equipment and control apparatus permit applications is based on the complexity of the Department's review. Applications for permits for Category I equipment and control apparatus are, in general, those that are less resource intensive for the Department to review. Several factors play a role in determining how resource intensive a review is. Whether the design of the equipment and control apparatus is low in complexity, how frequently the Department receives applications for the same kind of equipment, whether the application includes from the outset provision for what is undisputably the highest attainable rate of control, and how great the potential is for the equipment to emit significant quantities of air contaminants all contribute to determining the resource intensity of the Department's review.

COMMENT: Neither Category I nor Category II provides the applicant with enough details to minimize inquiries.

RESPONSE: Some clarification has been inserted in the adopted definition of "Category I." If further clarification is needed, please contact the Bureau of New Source Review of the New Jersey Department of Environmental Protection at 1-800-441-0065.

COMMENT: Several commenters recommended the deletion of the word "retail" from Item 1 of the proposed definition of "Category I," at N.J.A.C. 7:27-8.1. Applicability should not depend on whether the system is installed at a retail facility, since the permit review period should be identical regardless of location. Many companies maintain motor pools which use gasoline dispensing facilities similar to those in retail facilities.

RESPONSE: To clarify the Department's intent to include any facility whose function is to refuel vehicles, the word retail is not included in the adopted amendments. The subsection appropriately applies to motor pools as well as retail gasoline outlets. Additionally, the definition of the term "gasoline dispensing facility," previously promulgated in N.J.A.C. 7:27-16, is included in the adopted amendments. This definition specifies that it is "vehicle fuel tanks" that are filled at such a facility, establishing that facilities such as those at which tanker trucks or marine vessels are loaded are not gasoline dispensing facilities.

COMMENT: Revise paragraph 2 of the proposed definition of "Category I," N.J.A.C. 7:27-8.1 to read: "Any woodworking . . . and sanders, **from which direct or indirect emissions of air contaminants occur and in which the combined weight of all materials introduced into any one source operation is in excess of 50 pounds in any one hour**[, that has . . . 99 percent]"; and revise paragraph 3 of the definition to read: "Any metalworking . . . and drill presses, **from which direct or indirect emissions of air contaminants occur and in which the combined weight of all materials introduced into any one source operation is in excess of 50 pounds in any one hour**[, that has . . . 99 percent]"; the designation of these operations into a Category I classification should be based on their relatively minimal permit review periods, as well as their relatively insignificant air quality impacts. If the Department has a concern regarding large scale operations which may exhibit potentially significant emissions, a de minimis emission rate (that is, five tons a year) should be specified. It must be noted that the proposed minimum particulate collection efficiency of 99 percent is more rigorous than that which is presently required under state-of-the-art.

RESPONSE: The Department considers control apparatus with a minimum collection efficiency of 99 percent is, for the kind and amount of particulate emitted from woodworking and metalworking equipment, state-of-the-art emission control. Some persons may believe that for their operations a control apparatus with a lower collection efficiency may be state-of-the-art. However, justification and consideration of these lower efficiency rates must be carried out on a case-by-case basis, and it is therefore more resource intensive for the Department. Therefore, only equipment which incorporates a minimum collection efficiency of 99 percent is included in Category I. Woodworking and metalworking equipment with lower efficiency would be submitted as a Category II application.

COMMENT: To be consistent with the proposed "alteration" definition, delete paragraph 3 of the definition of "Category I" in N.J.A.C. 7:27-8.1.

RESPONSE: Paragraph 3 of the definition of "Category I" is not inconsistent with the definition of "alteration." The definition of the term "alteration" establishes which changes to existing equipment and control apparatus require a new permit. The definition of the term "Category I" establishes which applications for permits and certificates are subject to lower fees; Category I includes both applications that derive from the intent to construct new equipment and applications that result from the intent to alter equipment.

COMMENT: Revise paragraph 5 of the definition of "Category I" in N.J.A.C. 7:27-8.1 to read: "**Any** storage tanks **and associated control apparatus (e.g., conservation vent, white paint, bottom fill, or insulation)** which are used for the storage of liquid substances; this term does not include any tank used to store a substance which is a TXS."

RESPONSE: This clarification has been incorporated.

COMMENT: Regarding paragraph 5 of the definition of "Category I" under proposed N.J.A.C. 7:27-8.1, several commenters recommended that more types of storage tanks, even all storage tanks, be included in this item. Storage tank permits are straightforward, regardless of size. It should take no longer to review a permit application for a 20,000-gallon or a 150,000-gallon tank than for a 2,000 or 15,000-gallon storage tank storing volatile organic substances. Certainly, they should take no longer to review than the fossil-fuel burning equipment listed under paragraph 4 of this same definition.

One commenter suggested that storage tanks of every size not containing a TXS, controlling emissions by being painted white and fitted with a submerged fill and a conservation vent should be Category I.

Another commenter suggested that stationary storage tanks used to store TXS should be included in Category I if their emissions are controlled/reduced by at least 99 percent. The removal of the volume restriction and addition of the ability to permit a TXS, as long as it is properly controlled, will provide more incentive to control large stationary storage tanks voluntarily.

RESPONSE: Larger storage tanks and tanks storing TXS have a greater potential for emission of air contaminants and, therefore, require more detailed scrutiny by the Department during permit review. This closer scrutiny is resource intensive for the Department. Therefore, only tanks which store less than 20,000 gallons and do not store TXS are included in Category I.

COMMENT: The proposed definition of "Category I" (at N.J.A.C. 7:27-8.1) should include emergency generators using fuels other than "diesel" (natural gas, for example).

RESPONSE: Emergency diesel generators tend to be smaller in scale than generators using other fuels, and consequently have less potential to emit air contaminants. Therefore, only emergency diesel generators are included in Category I.

COMMENT: From paragraph 7 of the definition of "Category I," N.J.A.C. 7:27-8.1, delete the phrase: "and has a . . . of 99 percent . . ." From paragraph 8, delete the phrase "that have . . . of 99 percent."

RESPONSE: At this time, the Department considers that a minimum particulate collection efficiency of 99 percent is state-of-the-art control. For some operators a lower rate of control may be state-of-the-art. However, consideration of these lower rates of control must be done on a case-by-case basis, and it is thus more resource intensive for the Department. Therefore, only equipment which incorporates a minimum collection efficiency of 99 percent is included in Category I.

COMMENT: Regarding the proposed definition of "Category I" in N.J.A.C. 7:27-8.1, one commenter noted that no minimum values are noted for tank volume or heat inputs, meaning any size tank and any heat input rate would require a permit. How will existing permits and certificates be classified if these amendments and new rules become effective?

Other commenters recommended the deletion of paragraphs 9 and 10 from the proposed definition of "Category I," N.J.A.C. 7:27-8.1, as these types of sources should not be subject to permit requirements.

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RESPONSE: Classification in Category I does not subject equipment to permit requirements. Rather, it makes application for permits for such equipment subject to lower fees.

COMMENT: Revise Paragraph 10 of the definition of "Category I" in N.J.A.C. 7:27-8.1 to read as follows: "Any control apparatus that solely serves one or more laboratory hoods, **fume hoods or elephant trunks** or fume exhaust system . . ."

RESPONSE: As recommended, a clarification of the exhaust apparatus included has been made in Paragraph 10 of the adopted definition of Category I.

COMMENT: Concerning paragraph 10 of the proposed definition of "Category I" under N.J.A.C. 7:27-8.1, several commenters recommended that testing and diagnostic laboratories be added to the types of laboratories included. This would be consistent with the policies being developed by the Department. Testing and diagnostic laboratories use the same chemicals and equipment as industrial and educational laboratories.

COMMENT: Revise paragraph 10 of the definition of "Category I" in N.J.A.C. 7:27-8.1 to read as follows: "Any control apparatus that solely serves one or more laboratory hoods, **fumes hoods or elephant trunks** or fume exhaust system . . ."

RESPONSE: As recommended, a clarification of the exhaust apparatus included has been made in paragraph 10 of the adopted definition of Category I.

COMMENT: Concerning paragraph 10 of the proposed definition of "Category I" under N.J.A.C. 7:27-8.1, several commenters recommended that testing and diagnostic laboratories be added to the types of laboratories included. This would be consistent with the policies being developed by the Department. Testing and diagnostic laboratories use the same chemicals and equipment as industrial and educational laboratories.

RESPONSE: Control apparatus serving exhaust systems in any type of laboratory are included in paragraph 10 of the adopted definition of Category I, including testing and diagnostic laboratories.

COMMENT: Replace paragraph 10 in the definition of "Category I" at N.J.A.C. 7:27-8.1 with: "Any pilot plant equipment operated in association with or support of research, development or educational laboratory."

RESPONSE: Category I has been established to identify common equipment types which, because they are standard and familiar, are relatively less time-consuming for the Department to review. The application fees for permits and certificates for such equipment are lower, in recognition that it requires less of the Department's resources to act on these applications.

Pilot plants, used for developing new products and production processes, are by their nature not standard operations. Their configuration, their processes, and their potential for emissions must be considered individually on a case-by-case-basis. Such equipment does not belong in Category I.

COMMENT: Several commenters suggested the additional inclusion of the following types of sources operations in "Category I" at N.J.A.C. 7:27-8.1:

(1) **"Small sources that discharge into a building, whether or not controlled."** If such air is clean enough to meet OSHA standards, it cannot be a significant emission source;

(2) **"Emission points to the outdoor atmosphere that represent state-of-the-art and that do not require a control apparatus."** Since such emissions would represent state-of-the-art, they would not have a significant impact on the environment, and would not require a complex review;

(3) **"Any tank, reservoir, container, or bin that is used for the mixing or blending of nonreactive materials"**;

(4) **"Control devices that discharge into an inside work place"**;

(5) **"Equipment and control devices which represent state-of-the-art design and/or control"**;

(6) **"Applications with only harmless and nonhazardous particulate emissions and other simpler applications"**; and

(7) Other types of gasoline vapor recovery systems. Gasoline vapor control devices are simple charcoal adsorption systems, and would not require significant review time.

RESPONSE: Several of those types of source operations suggested for inclusion in Category I would not be appropriate Category I source types. Category I sources are simple, familiar source types that do not require case-by-case detailed evaluation to know if they conform with all applicable Air Pollution Control requirements.

Sources that meet standards suitable for direct discharge into a building or workplace are not necessarily sources that incorporate state-of-the-art emission controls or are adequately protective of public health. Occupational Standards and Health Act (OSHA) requirements are established to be acceptably protective of a healthy adult population exposed to the emissions for only an eight-hour workday. Air Pollution Control standards take into consideration the more vulnerable segments of the population—the young, the old, and the health-impaired. They also consider that exposure may occur over 24 hours a day.

Unless state-of-the-art standards have been specified in the rule for the source type, as has been done in the wood-working and metalworking equipment in the definition of "Category I," a source claimed by its owner or operator to incorporate state-of-art emission control is not appropriate for inclusion in Category I. This is the case whether or not the claimed state-of-the-art emission control is achieved with or without the use of control apparatus, the raw materials are reactive or nonreactive, and the air contaminants emitted are hazardous or nonhazardous. Whether the source does, in fact, incorporate state-of-the-art emission control is established on a case-by-case basis during permit review.

In general, sources with large volumes of emissions or with the potential for air toxic emissions that are variable or not well characterized are also not appropriate for inclusion in Category I. Their potential for causing adverse effects on public health or welfare or the environment is such that they must be evaluated on a case-by-case basis during permit review.

COMMENT: Expand the definition of "control apparatus" under "Category II" to exclude insulation, white paint, conservation vents, submerged fill and closed loop vapor return systems. These controls are normally found on storage tanks. Unless they are specifically excluded, it is implied that all storage tanks having these controls would require Category II permits, which would be necessary and would further burden the already inundated permitting process.

RESPONSE: Control apparatus serving Category I storage tanks are also included in Category I.

COMMENT: Regarding paragraph 2 of the proposed definition of "change which may have an adverse effect on air quality" under N.J.A.C. 7:27-8.1, several commenters recommended that the word "contaminant" be replaced with the phrase "contaminant or air contaminant category."

One commenter suggested that this paragraph should read: "Equipment or control apparatus to emit any air contaminant **or air contaminant category** not authorized by the existing permit or certificate. **If an air contaminant category is authorized by the Department, emission of contaminants within the category is allowable by an amendment. Pilot plants should follow the Department's Pilot Plant Procedures.**"

Another commenter stated that, in the definition of "change which may have an adverse effect on air quality" in N.J.A.C. 7:27-8.1, paragraph 2 is too broad. Not all air contaminants emitted by a facility are subject to regulatory limits or even categorized in permits and certificates. The regulations should focus on the actual emission of a contaminant not previously emitted by the facility, if that contaminant is otherwise subject to regulation, as a result of a change to process or equipment.

RESPONSE: Although the proposed definition of the term "change which may have an adverse effect on air quality" is not included in the adopted amendents, the substance of this definition has been relocated into the rule at paragraphs 5, 6, 7, 8 and 11 of the definition of "alteration" in Section 8.1, in lieu of use of the proposed term. The particular provision referred to by these commenters is incorporated primarily at paragraph 7.

The concept of air contaminant categories was not explicitly set forth in the amended proposal, nor is it explicitly included in the adopted revisions. However, in some cases permits and certificate may authorize, within established limits, the emission of a category of air contaminants, such as "VOS." In such a case, unless the specific conditions of a permit or certificate specify otherwise, emission of any combination of VOS is allowed, and no notification of the Department is required, including no submission of an amendment, should the relative amounts of the various VOS change. However, if the limit for VOS is exceeded, this constitutes an alternative, for which a new permit is required.

COMMENT: Two commenters suggested revision of paragraph 3 of the proposed definition of "change which may have an adverse effect on air quality" in N.J.A.C. 7:27-8.1. One commenter recommended the following wording changes: "The ambient air concentration of any contaminant to increase **at the facility's fence line** due to change in any stack dispersion parameter, including **but not limited to** temperature, velocity, direction, or volumetric flow rate. Another commenter asked that it be applicable only when the increases of any ambient air contaminant concentration are due to a change outside normal operating or approved permit conditions.

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RESPONSE: Although the proposed definition of the term "change which may have an adverse effect on air quality" is not included in the adopted amendments, the substance of this definition has been relocated into the rule at paragraph 8 of the definition of "alteration."

Although the Air Pollution Control Act, N.J.S.A. 26:2C-2, does exclude "all aspects of employer-employee relationship as to health and safety hazards" from the purview of the authorities established under the act, changes in ambient concentrations, wherever they may occur in the outdoor air are of concern to the Department if they may have an adverse effect on public health or welfare or the environment. Changes to stacks or chimneys are alterations if they result in an increase in the ambient concentration of any air contaminant emitted, whether the operations from which these emissions result are "normal" or not. Any operation outside the approved permit conditions constitutes a violation, for which the owner or operator is subject to penalties.

COMMENT: Concerning the proposed definitions of "construct" and "install" under N.J.A.C. 7:27-8.1, several commenters formulated the following recommendations:

(1) Combine the two definitions with a new "construct and install" definition, and use a definition that is the same as or similar to the proposed definition of "install" for it. Since certain permits require long evaluation periods, this suggested change will help minimize the impact of lengthy reviews.

(2) Delete the definition of "construct" because of the time-dependent costs of construction and of the extended approval—decision time by the State. The Department should focus its regulatory controls at the point of installation. Industry should have the option of economically pursuing fast track projects that use best available technology.

RESPONSE: The Air Pollution Control Act, N.J.S.A. 26:2C-9.2(a), specifies that: "No person shall construct, install or alter any equipment or control apparatus . . . until . . . an installation or alteration permit [has been] issued by the department . . ." As the term "construct" is included in this enabling legislation, it can not be omitted from the implementing rule.

COMMENT: Although similar to the existing N.J.A.C. 7:27-8.3(a), the proposed N.J.A.C. 7:27-8.7(e)1 states that permit approval may be withdrawn if construction does not start within one year. But the proposed N.J.A.C. 7:27-8.1 defines "construct" in such a way that it significantly changes the impact of this rule by excluding site preparation and foundation work. Thus, in a large PSD-affected project, site preparation and foundation work can take over a year, well within the validity of a PSD permit, but subject to permit cancellation by the Department. The definition of "construction" and permit validity should be consistent with those in the Federal PSD regulations, which the Department also administers.

RESPONSE: The Department's approach to defining "construct" is actally more lenient than the Federal definition in the Prevention of Significant Deterioration (PSD) regulations. The Air Pollution Control Act, N.J.S.A. 26:2C-9.2(a), prohibits any person from constructing equipment or control apparatus prior to obtaining permit approval from the Department. By the Department's excluding site preparation and foundation work from the definition of construct, a person who chooses to do so is allowed to carry out site preparation and foundation work even though the permit is not yet approved.

COMMENT: The proposed definitions of "construct" and "install" in N.J.A.C. 7:27-8.1 should specify that they exclude repair or maintenance of existing equipment or control apparatus or any other activities that otherwise would not be alterations.

RESPONSE: The definitions of "construct" and "install" as proposed make it clear they refer to the initial placement and readying for use of equipment and control apparatus, and do not pertain to the upkeep of that equipment and control apparatus. Therefore, there is no further need to differentiate either of these terms from "repair or maintenance."

COMMENT: In light of P.L. 1989, c.151, delete the word "animal" from the proposed definition of "domestic waste" in N.J.A.C. 7:27-8.1.

RESPONE: P.L. 1989, c.151, (codified at N.J.S.A. 13:1E-99.21 et seq.) primarily addresses the development of leaf composting facilities, although it does also mandate the development of rules to address the composting and handling of animal wastes. None of the provisions of this act establish any cause for deleting "animal" from the definition of "domestic waste," as used in the context of this rule.

COMMENT: The definition of "domestic waste" is rather inclusive. Is this meant to include untreated as opposed to treated wastes? Under other laws, there is a great difference between treated and untreated waste.

RESPONSE: The term "domestic waste," as used in this subchapter, refers to wastes processed in domestic treatment works, and includes both wastes that are untreated and those that have been pretreated. This definition is intended to differentiate domestic waste from the other types of waste processed in domestic treatment works: ground water, surface water, storm water, or industrial process wastewater.

COMMENT: The proposed definitions of "equipment" and "control apparatus" are overly broad. As drafted, these definitions fail to distinguish between those portions of a facility that may emit or have the potential to emit air contaminants and those that do not. As a result, there is uncertainty as to the scope of changes that might be deemed to trigger the Department's review and approval requirements.

RESPONSE: These amendments do distinguish between those types of devices that fall within the scope of the rule and those that do not. Specifically, the definition of "equipment" states that a device is equipment, in the context of this subchapter, only if it has the capability of causing the emission of an air contaminant. Similarly the definition of "control apparatus" states that a device is a control apparatus, in the context of this subchapter, only if it has the capability of preventing or controlling the emission of an air contaminant.

Whether or not a particular type of equipment or control apparatus is subject to this rule is set forth in N.J.A.C. 7:27-8.2.

COMMENT: The uncertainty as to the scope of changes that might trigger the Department's review and approval requirements is increased by the proposed language suggesting that the scope of regulated equipment extends to devices "indirectly" causing the emission of an air contaminant. The proposed regulations could be said to extend to process equipment separate from, but dependent upon, devices that emit or have the potential to emit air contaminants. These non-emitting facilities may indirectly affect the emissiosn level from an emitting facility. For example, the steam requirements of a turbine generator may affect the emissions of a boiler by changing operating hours or production rate. Changes in operating hours or production rates should not independently trigger permit requirements, unless the changes violate permit or certificate requirements. The rules should limit the "boundaries" of the equipment and control apparatus to those components that directly or indirectly emit or have the potential to emit contaminants.

RESPONSE: The emissions referred to in the definition of "equipment" are those that derive from subject to the permit requirements, not those from other devices used in the process. Even when changes in operationally interrelated equipment impact the operation of permitted devices the emissions from these devices may not exceed any applicable limit established in the permit or certificate; nor may other limits, such as hours of operation or rate of production, established in the permit or certificate for the equipment or control apparatus be exceeded.

COMMENT: Concerning the proposed definition of "equipment" in N.J.A.C. 7:27-8.1, is "duct," as used in this definition, different from "ductwork" as used in the definition of "install"?

RESPONSE: The term ductwork used in the definition of "install" refers to the system of ducts designed to connect the equipment to other devices and to serve as intake and exhaust routes for the equipment.

COMMENT: Since the term "a stack or chimney" appears in the definitions of "mathematical combination" and "indirect emissions," is this idea equivalent to the longer list of six similar devices included in the definition of "equipment," or only to the first four? And, if they are equivalent only to the first four, how do the last two differ from the other devices which allow emissions from the first "device" to get into the outdoor atmosphere?

RESPONSE: The two terms "stack, chimney," listed in the proposed definition of "equipment" are equivalent to the defined term "stack or chimney" and have been changed to reflect this in the adopted amendments. A "stack or chimney" has the purpose of emitting air contaminants into the outdoor air.

The remaining listed terms "conduit, flue, duct, vent" serve as intake or exhaust routes for the equipment or control apparatus, and may also interconnect the equipment or control apparatus with other devices.

COMMENT: Given the broad definitions proposed for "control apparatus" and "equipment," it is unclear which equipment could be considered "auxiliary" and not subject to direct regulation.

RESPONSE: The phrase "auxiliary devices or appurtenances" refers to supplemental equipment used with the equipment subject to permit and certificate requirements. Examples of such auxiliary devices or appurtenances are flow meters and holding tanks. The equipment and control apparatus subject to regulation is that set forth in N.J.A.C. 7:27-8.2.

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COMMENT: Add to the definition of "equipment": "Equipment means any device, **except any relief valve, rupture disc or other safety device designed to protect property and personnel from abnormal or unexpected process conditions,** capable of causing the emission of an air contaminant . . ."

RESPONSE: Relief valves, rupture discs and other such safety devices are components of the equipment they serve. Excepting them from the definition of "equipment" in this rule, as recommended by two commenters, would have the consequence of exempting air contaminant emissions released by these devices from the prevention and control requirements imposed through permit and certificate requirements. Such an exemption would be inconsistent with the Department's legal mandate to protect public health and welfare and the environment.

COMMENT: In the definition of "equipment," N.J.A.C. 7:27-8.1, "or indirectly" unreasonably expands the universe of the regulation. A control device venting inside a building should not require a permit. Devices used for employee comfort or health should not require permits. The regulations are for "environmental protection," not employee protection, which is adequately regulated by OSHA.

RESPONSE: The Air Pollution Control Act (N.J.S.A. 26:2C) mandates the Department to prevent, control, and prohibit air pollution. Emissions from equipment, whether or not they are emitted through stacks or chimneys, are of concern to the Department if they may be released directly or indirectly into the outdoor atmosphere. This includes leaks and controlled or uncontrolled emission streams vented into a building. The air contaminants in these emissions will, through the building's air conditioning or ventilation system, circulate into the outdoor air.

A control device, even though installed by a company for reasons of employee comfort or health, also serves as an air pollution control apparatus, and is therefore subject to this rule.

COMMENT: This commenter interprets the definition of "equipment" in proposed N.J.A.C. 7:27-8.1 to not include environmental control systems used in farm structures for ventilation, temperature and humidity control. Examples of such apparatus used in farms are: fans used to control temperature and moisture in livestock buildings and greenhouses, blowers in grain bins, and air circulation fans in farm structures. This definition should specifically exclude these of agricultural apparatus used by a farmer.

RESPONSE: Although blowers and fans may be components of equipment, they are not themselves equipment which is subject to the permit and certificate requirements of this rule. All equipment subject to this rule is listed in N.J.A.C. 7:27-8.2.

COMMENT: In the definition of "equipment," N.J.A.C. 7:27-8.1, it is unclear what the definition of "manufacturing process" is.

RESPONSE: The definition of "manufacturing process" has been previously promulgated at N.J.A.C. 7:27-8.1, and therefore was not included in the proposal documents for these amendments and new rules.

COMMENT: Remove the necessity for possessing a permit or certificate before qualifying for a change exempted from the permitting process. Do not limit "equipment changeover" to changes that affect certificates currently in effect. Thus, the definition of alteration would not depend on whether one holds a permit. If the same change is perforemd on "grandfathered" equipment as on permitted equipment, and as long as there is no potential for adverse impact on air quality, it is illogical and unreasonable to subject the first change to permitting when the second is not.

RESPONSE: The Air Pollution Control Act (N.J.S.A. 26:2C-9.2) exempts equipment constructed and installed prior to the date of its enactment (June 15, 1967) from permit and certificate requirements, if the equipment has not been since altered. The intent of the law was not to exempt existing equipment permanently. Rather, it allowed the owners and operators of equipment existing prior to June 15, 1967, to defer any upgrading needed to bring their air-contaminant emission controls in line with the "state-of-the-art" to which new equipment is subject until such time as they chose to alter the equipment or their use of the equipment.

The Department has specified in N.J.A.C. 7:27-8.3(c) certain types of changes to equipment or control apparatus for which a permit has been issued (and which therefore have "state-of-the-art" emission control) as changes which can be reported to the Department as amendments. These changes do not have the potential for adverse health, welfare, or environmental effects, and can be made to such equipment without a new permit being required.

These same specified changes, when made to equipment for which no permit has been issued, are classifed as alterations and do trigger the requirement for a permit to be obtained for the equipment. This is consistent with the Air Pollution Control Act's intent to subject existing equipment to permit and certificate requirements, including "state-of-the-art" emission control, at the time when the equipment is being otherwise altered.

COMMENT: Under the proposed definition of "equipment changeover" in N.J.A.C. 7:27-8.1, subparagraph 2ii exempts changes in the relative use, by weight percent, of raw materials from the requirements applicable to "alterations," if such changes do not have an adverse effect on air quality. These types of changes should be exempt to the full extent that they do not otherwise result in the emission of any air contaminant in excess of permits limits. This will allow facility operators to operate most efficiently, while protecting the environment consistent with the limitations in the certificate.

RESPONSE: Any change in the relative use, by weight percent, of raw materials is an alteration if it may cause an increase in emissions. In many cases, the Department approves limits in a permit or certificate which it recognizes substantially exceed the emissions expected under normal operation in order to allow for the higher emissions that may occur periodically when an upset occurs in the operation. It would not be protective of human health and welfare or the environment to allow a change in the relative use of raw materials which may cause a higher level of emissions to be released under normal operating conditions, even if those emissions are within permitted limits, without subjecting the change to the scrutiny of permit review.

COMMENT: To allow minor alterations during routine maintenance, revise subparagraph 1i of the definition of "equipment changeover" in N.J.A.C. 7:27-8.1 to read: "Require any physical or mechanical alteration of the equipment or new air pollution control apparatus **which do not have any adverse effect on air quality**."

RESPONSE: Although the proposed term "equipment changeover" was not included in the adoptd amendments, much of the substance of the proposed definition was relocated to N.J.A.C. 7:27-8.3(c), which specifies which changes must be reported as amendments.

However, the content of subparagraph 1i in the proposed definition of "equipment changeover," which discusses physical or mechanical alteration of the equipment, was not moved to N.J.A.C. 7:27-8.3(c) as a new permit would be required for such "alteration" to occur.

COMMENT: Several commenters recommended the revision of paragraph of 1 the proposed definition of "equipment changeover" under N.J.A.C. 7:27-8.1 to read: "A change in the contents of a storage tank **or in the raw materials used in a process**, provided such a change does not . . ." Two of these commenters added that this revision would help to maintain consistency throughout the regulation.

RESPONSE: Although the proposed term "equipment changeover" was not included in the adopted amendments, much of the substance of the proposed definition was relocated to N.J.A.C. 7:27-8.3(c), which specifies which changes must be reported as amendments. A provision equivalent to that recommended is included in the adopted amendments in N.J.A.C. 7:27-8.3(c)4.

COMMENT: Paragraph 2 of the proposed definition of "equipment changeover" in N.J.A.C. 7:27-8.1 is more easily understood if it is changed to read: "Any . . . effect on air quality which is not classified under the definition of alteration."

RESPONSE: Although the proposed term "equipment changeover" was not included in the adopted amendments, much of the substance of the proposed definition was relocated to N.J.A.C. 7:27-8.3(c), which specifies which changes must be reported as amendments. The following phrase is included in N.J.A.C. 7:27-8.3(c): "provided that the change does not constitute an alteration, as defined in N.J.A.C. 7:27-8.1 . . . ."

COMMENT: To maintain consistency between subparagraph 2iii of the proposed definition of "alteration" and subparagraph 2i(3) of the proposed definition of "equipment changeover" in N.J.A.C. 7:27-8.1, replace the word "permit" with the word "certificate."

RESPONSE: The word "permit," not "certificate," was used in both these provisions in the proposed amendments to this rule.

COMMENT: The Department can do state-of-the-art reviews when the five-year certificates are renewed, and does not need to do so whenever equipment is replaced.

RESPONSE: Pursuant to the Air Pollution Control Act, N.J.S.A. 26:2C-9.2(c), the Department is prohibited from imposing additional certificate. The Department is mandated, rather, to perform a new state-of-the-art review for existing equipment or control apparatus when they are altered.

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COMMENT: Concerning subparagraph 2i(3) of the proposed definition of "equipment changeover" under N.J.A.C. 7:27-8.1, several commenters formulated the following recommendations and remarks:

(1) Delete this item. Equipment must be routinely replaced. Replacements in kind or "state-of-the-art" should be allowed regardless of age. Without this, the permitting system would be overburdened with permit applications.

(2) Revise this item to read: "The **effective** date [of approval] of the permit **certificate** for the equipment or control apparatus being replaced is [less] **more** than five years prior to the date of installation of the new equipment or control apparatus; and . . . ." If equipment must be replaced within five years of the approval date, no notification should be required. The Department would have done a state-of-the-art review prior to issuing the permit. If the equipment must be replaced more than five years after the effective date, an amendment filed with the Department should suffice. It should be possible to replace the equipment upon filing the amendment. the Department could then approve the change with or without additional conditions. And these conditions could stipulate compliance with state-of-the-art requirements within five years from the date of filing the amendment, should such requirements call for improved controls or equipment.

(3) Why not say "The equipment being replaced is less than five years old; and . . . ?"

(4) Replace the word "five" with the word "fifteen."

RESPONSE: Although the proposed term "equipment changeover" was not included in the adopted amendments, much of the substance of the proposed definition was relocated to N.J.A.C. 7:27-8.3(c), which specifies which changes must be reported as amendments.

Subparagraph 2i of the proposed definition of "equipment changeover" concerned replacement of equipment or control apparatus. None of this subparagraph was relocated to N.J.A.C. 7:27-8.3(c). In the adopted amendments, "replacement of equipment or control apparatus or of any substantial component thereof" is a change which constitutes an alteration for which a new permit is required. Any replacement of parts which is of such a scale that it constitutes "repair or maintenance," and is therefore not an "alteration," does not need to be reported to the Department as an amendment or otherwise.

Also, the replacement of equipment or control apparatus for the first five years after the approval of a permit need be reported to the Department as an amendment only. The original state-of-the-art determination remains valid for that five-year permit.

COMMENT: Regarding subparagraph 2i(4) of the proposed definition of "equipment changeover" under N.J.A.C. 7:27-8.1, several commenters made the following recommendations and remarks:

(1) Why $20,000?

(2) Delete this item. There is no basis stated for the $20,000 cutoff. Moreover, equipment cost should not be the basis for permit approval. Industry should be allowed to replace equipment regardless of cost. Implementing this would overburden the permit system. It will also place a severe economic burden on the regulated community if it has to wait for the Department's approval to replace broken or damaged equipment.

(3) Revise this item so that it is consistent with subparagraph 2iv of the definition of "alteration."

RESPONSE: Although the proposed term "equipment changeover" was not included in the adopted amendments, much of the substance of the proposed definition was relocated to N.J.A.C. 7:27-8.3(c), which specifies which changes must be reported as amendments.

Subparagraph 2i of the proposed definition of "equipment changeover" was concerned with replacement of equipment or control apparatus. This subparagraph was relocated to N.J.A.C. 7:27-8.3(c)5. In the adopted amendments, "replacement of equipment or control apparatus or of any substantial component thereof" is a change which constitutes an alteration for which a new permit is required. Any replacement of parts which is of such a scale that it constitutes "repair or maintenance," and is therefore not an "alteration," does not need to be reported to the Department as an amendment or otherwise.

The proposed subparagraph 2i(4) which included the $20,000 criterion was utilized with modification, however, in the adopted amendments in defining the term "substantial component." Replacement of a "substantial component" is an "alteration" for which a permit is required. Replacing a part which is not a "substantial component" is "repair or maintenance," for which no notification to the Department is required.

COMMENT: There appears to be a conflict between subparagraph 2ii of the definition of "equipment changeover" and subparagraph 5iii of the definition of "alteration" proposed in N.J.A.C. 7:27-8.1. This conflict should be resolved or at least the intent of these provisions clarified.

RESPONSE: Although the proposed term "equipment changeover" was not included in the adopted amendments, much of the substance of the proposed definition was relocated to N.J.A.C. 7:27-8.3(c), which specifies which changes must be reported as amendments.

Subparagraph 2ii of the proposed definition of "equipment changeover" was concerned with a change in the relative use, expressed in percent by weight, of any raw material. This provision was not relocated to N.J.A.C. 7:27-8.3(c).

In the adopted amendments a change in the relative use of raw materials does not need to be reported to the Department, unless the change constitutes an "alteration" as defined at N.J.A.C. 7:27-8.1, or entails the use of a new raw material and is required to be reported as an amendment pursuant to N.J.A.C. 7:27-8.3(c)4.

COMMENT: The proposed modification to the proposed definition of "incinerator" in N.J.A.C. 7:27-8.1 is in error. Many thermal processes exist which cannot be construed as incineration. For example, a distillation column for water purification and an automobile engine could be "incinerators" under the proposed definition.

RESPONSE: This commenter correctly notes ambiguities in the proposed amendments to the definition of the term "incinerator." In order to clarify this definition, the more precise phrase "combustion or pyrolysis" has been substituted for the phrase "thermal processes" in the adoped amendments to the definition.

COMMENT: Delete the proposed definition of "indirect emissions" from N.J.A.C. 7:27-8.1 because it is not referred to in the proposed regulation. However, if the Department insists on retaining the definition, amend it to read: "Indirect emissions means the **intentional** discharge of any air contaminant **during the normal operation of any source equipment or control apparatus** into the outdoor atmosphere . . . . **This term does not apply to discharges from closed loop indoor control apparatus which includes but is not limited to ductless hoods for odor and particle removal, central vacuum cleaning equipment, high efficiency filters, or electronic air cleaners installed for the purpose of industrial hygiene and energy conservation.**"

RESPONSE: The definition of the term "indirect emissions" was previously promulgated. Whether or not the amendments had been adopted, the term would have remained in the rule.

This definition's function is to differentiate indirect emissions of air contaminants from those emitted through a stack or chimney. It does not address whether the release is intentional or not. Nor does it address the types of equipment or control apparatus from which such emissions may emanate.

COMMENT: Concerning the proposed definition of "laboratory operations" under N.J.A.C. 7:27-8.1, several commenters stated that this definition does not clearly encompass diagnostic or testing facilities, and the reference to laboratory ventilation systems is too narrow. Medical facilities and diagnostic and testing laboratories have similar facilities as industrial and academic organizations. The definition in the proposed regulations does not clearly include these facilities. Also, the reference to laboratory hoods does not recognize the full range of ventilation systems used in modern laboratories.

RESPONSE: The adopted definition of "laboratory operations" does not exclude any type of laboratory or facility. Rather, it specifies the types of activities included in this term. Pursuant to this definition, such activities are "laboratory operations" no matter what type of laboratory or facility they are conducted in.

COMMENT: Delete the proposed definition of "laboratory operations" under N.J.A.C. 7:27-8.1 because it is not referred to in the proposed regulations. It is impossible to comment on the the applicability of this definition without knowing in what context it will be used.

RESPONSE: The term "laboratory operations" was used in the proposed definition of the term "research, development, or educational laboratory" and is used in paragraph 10 of the definition of "Category I" in N.J.A.C. 7:27-8.1.

COMMENT: In the definition of laboratory operations," N.J.A.C. 7:27-8.1, insert "diagnostic and testing" between the words "laboratory" and "operations."

RESPONSE: Diagnostic and testing activities may occur in many settings. The definition of the term "laboratory operations" designates the kinds of activities included in the term, but does not identify or constrain the settings in which these activities may take place.

COMMENT: Since under P.L. 1989, 1989, c. 151, the New Jersey Department of Agriculture is responsible for the development of criteria

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and standards for handling animal manure and land application of manure is an approved agricultural practice, to alleviate any misunderstandings add the following to the proposed definition of "land treatment facility" in N.J.A.C. 7:27-8.1: "This shall not include the land application of animal manures or on hazardous, noncontaminated food processing residuals or food processing vegetative wastes or any other material beneficial to production agriculture and used according to appropriate agricultural practices."

RESPONSE: The Air Pollution Control Act (N.J.S.A. 26:2C-8) establishes that the Department "shall have power to formulate and promulgate, amend and repeal codes and rules and regulations preventing, controlling and prohibiting air pollution . . . ." The activities of any type of waste treatment facility including land treatment facilities located within New Jersey, if they have the potential to result in th emission of air contaminants, may be subject to the air pollution control codes. This does not preclude these activities from also being subject to other rules or regulations.

COMMENT: There is also a definition of "land treatment facility," which is one of those operations covered by the "New Jersey Pollutant discharge Elimination System" permits and regulations. The Division of Water Resources does not refer to these things as "facilities," and, for the sake of consistency as well as to avoid confusion with other regulations that do not apply to air permits or air pollution, the definition should perhaps be revised to read: "land treatment operation."

RESPONSE: This definition of the term "land treatment facility" was previously promulgated at N.J.A.C. 7:14A-4.3 as part of a subchapter that establishes hazardous waste management requirements for owners and operators of industrial waste management facilities.

Different chapters of the New Jersey Administrative Code have been set aside to address pollution problems that occur in different media. However, the Department recognizes that numerous cross-medium issues need to be addressed in establishing pollution control requirements, and seeks to establish rules that take into account cross-medium interrelationships and interdependencies. Promulgating identical or nearly identical definitions of the same term in these different chapters creates a common vocabulary that can facilitate promulgating consistent and complementary regulations in the various chapters. Pursuant to this objective, the Chapter 14A definition of the term "land treatment facility" is promulgated here.

COMMENT: Concerning the proposed defintion of "land treatment facility" in N.J.A.C. 7:27-8.1, one commenter requested a clarification because there are many types of land-based treatment facilities. He asked whether the program means to regulate all of them or just some.

RESPONSE: Within this subchapter, the term "land treatment facility" is used in the definition of "hazardous waste landfill." This definition, together with the use of the term "hazardous waste landfill" in N.J.A.C. 7:27-8.2(a)16, indicates that for the purposes of this rule a land treatment facility can be classified as an "other solid waste facility," and is therefore subject to all provisions applicable to this category of facility.

COMMENT: From the proposed definition of "permit" under N.J.A.C. 7:27-8.1, delete ". . . to construct . . ."

RESPONSE: The phrase "to construct" must be included as an explanation of the activities authorized by a permit, as established in the Air Pollution Control Program's enabling legislation. The New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-9.2(a), states that "no person shall construct, install or alter any equipment or control apparatus until a permit has been issued by the Department."

COMMENT: In the definition of "periodic compliance inspection" in N.J.A.C. 7:27-8.1, specify how often or at what intervals these inspections will be conducted. According to the fee schedule, the permittee will be charged $200.00 per inspection per certificate. A $200.00 inspection per facility is more reasonable than per certificate, especially if these certificates are for multiple and identical applications. A facility should be charged for an inspector's time and travel costs, but enormous fees could result from finalizing the regulations as proposed, especially if no timetable for inspections exists.

RESPONSE: The phraseology "periodic compliance inspection" has been retained in the adopted amendments as the definition of the more generic term "compliance inspection." A new definition of "periodic compliance inspection" is adopted which specifies, as this commenter requests, the intervals at which periodic compliance inspections will be conducted. As the new definition states, periodic compliance inspections will be performed in accordance with a schedule included in the conditions of approval of a permit or certificate.

Since the fee schedules in N.J.A.C. 7:27-8.11 establish fees only for periodic compliance inspections and not for other types of compliance inspections, only if such a schedule is included in the conditions of approval is the source subject to periodic compliance inspection fees.

The Department has the authority to perform, but does not have the authority to charge for, other compliance inspections. Also, any cost the Department may incur in conducting an inspection as part of its procedures for determining whether or not to approve or renew a certificate is included in the "certificate" and "certificate renewal" fees. Therefore, no separate charge will be made for such inspections.

COMMENT: The proposed definition of "reconfiguration" in N.J.A.C. 7:27-8.1 does not include a change in the location of equipment or control apparatus from that specified in the permit.

RESPONSE: To be consistent with the clarifiation made in paragraph 1 of the definition of "alteration," the corresponding provision in the definition of "reconfiguration" has also been changed to ". . . does not include a change in the location of the point of discharge of any air contaminant from equipment or control apparatus. . . ."

COMMENT: To maintain consistency and ensure clarity, the definition of "reconfiguration" should be revised to read: " 'Reconfiguration' means a change in the setup of equipment, control apparatus **or any substantial component thereof** of an alternate configuration. . . ."

RESPONSE: In this rule, each piece of equipment and control apparatus is considered individually. A change in the setup" of a "substantial component" would either constitute a physical change to the device, which would be an "alteration" for which a new permit would be required, or "reconfiguration" of the device itself. Therefore, separate mention of "any substantial component" is not needed here.

COMMENT: Revise the definition of "repair or maintenance" in N.J.A.C. 7:27-8.1 to read as follows: " 'Repair or maintenance' means upkeep of existing equipment or control apparatus, including the replacement of parts, but does not include the replacement of the equipment or control apparatus[, or of any substantial component thereof] **unless such equipment or control apparatus is designed and permitted specifically for routine removal and replacement in kind.**

RESPONSE: The definition of "substantial component" clarifies by exclusion which parts of a piece of equipment or control apparatus are not substantial components. No notification to the Department is required for replacement-in-kind of parts that are not substantial components.

COMMENT: Delete or define "or of any substantial component thereof" as used in the proposed definition of "replacement" in N.J.A.C. 7:27-8.1 because this could include a 55-gallon activated carbon canister, packing material in a scrubber, column trays, conveyor belts, boiler burners, boiler burner nozzles, etc. As proposed, the routine replacement of these parts would require an alteration permit.

RESPONSE: The phrase "or any substantial component thereof" is essential to this definition, in order to differentiate "replacement" from "repair or maintenance." However, to clarify its meaning, a definition of the term "substantial component" is included in the adopted amendments.

COMMENT: Modify the proposed definition of "repair or maintenance" in N.J.A.C. 7:27-8.1 to conform with the USEPA (40 CFR 60.15) idea of "routine repair or maintenance or replacement." This would exempt routine replacement for equipment upkeep, but would not exempt such replacements if air quality might be adversely affected. Alternatively, define "substantial component," and provide instead the following: "but does not include the replacement of the equipment, or of more than 50 percent of the fixed capital cost of such equipment"; or, if necesary, add: "as calculated in 1989 dollars." Then, subparagraphs 2iii and 2iv of the definition of "alteration" would be eliminated.

RESPONSE: The concept set forth in 40 CFR 60.15 of using 50 percent of the fixed capital cost is incorporated into the definition of "substantial component" in the adopted amendments. The function of this definition is to differentiate changes which are part of "repair or maintenance" and changes which are "alterations."

COMMENT: Regarding the proposed definition of "research, development, or educational laboratory" under N.J.A.C. 7:27-8.1, several commenters made the following recommendations and remarks:

(1) To maintain consistency with the policies the Department is currently developing, revise this definition to read: "research, development, **testing, diagnostic**, or educational laboratory. . . ."

(2) Revise this definition to read: " 'research, development, **diagnostic, testing**, or educational laboratory' means . . . ."

(3) Revise the last sentence to read: "Such operations **are not primarily for the** production of products for sale."

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(4) Substitute "**primarily**" for "do not include."

(5) This definition should state that research and development facilities are engaged in operations that **do not primarily produce products for sale**.

(6) Expand the definition of "research, development, or educational laboratory" to read as follows: " 'research, development, **testing and diagnostic,** or educational laboratory' means any facility engaged in laboratory operations solely for the purposes of research, product development, **testing and diagnostics**, or education. Such operations **are not for** [do not include] production of **already commercialized products. These operations may offer non-commercialized products for sale to cover R&D costs and to test the viability of the product on the market**."

RESPONSE: The proposed definition "research, development, or educational laboratory" has not been incorporated into the adopted amendments (see Summary of Agency-Initiated changes.)

COMMENT: Define "risk assessment" at N.J.A.C. 7:27-8.1 by referencing some other already promulgated state or federal standard; for example, by referring to a numerical risk factor, at least with regard to human health. As proposed, there is no difference between an effect affecting one in a hundred million and an effect affecting one in ten thousand persons.

RESPONSE: In this section the term "risk assessment" is defined genercially as a procedure. Such a definition does not address which procedural methodology is to be used or what an acceptable level of risk may be in a specific context.

COMMENT: Where a term is defined by the Department or by the EPA in another set of regulations, it would be preferable to refer to it by its statutory or regulatory reference; for example, "solid waste facility" would be "as defined at N.J.A.C. 7:26-1.4." Thus, as that definition is amended, so is the definition in these rules without any need to propose another amendment.

RESPONSE: Incorporation of a definition by reference carries with it the risk of the definition being revised in its original context without due consideration being given to the ramifications of the change in the context where it is used by reference.

The efficiency and consistency that would be achieved through such a practice would have to be balanced against the possible future vulnerability of the definition to unwanted or unanticipated changes.

COMMENT: Regarding the proposed definition of "source operation" at N.J.A.C. 7:27-8.1, several commenters asked for the definition of the word "potential" to be made part of the public record, to assure consistency in permitting and enforcement, and to inform the public of the Department's intent.

RESPONSE: The Random House College Dictionary defines potential as "possible, as opposed to actual" and "capable of being or becoming." Webester's New Collegiate Dictionary defines potential as "something that can develop or become." These common usage definitions of the term apply here.

In respect to a source operation, the potential for emissions refers to the possibility or capability for air contaminant emissions, under any circumstance of operation, to be released.

COMMENT: Rework the definition of the term "source operation" to provide a clear method to determine which operations are source operations. As proposed, this definition is extremely vague and difficult to understand. This type of definition is subject to multiple interpretations, and does not help the regulated community to identify which areas in their operations should be permitted.

RESPONSE: To determine if a process or part thereof is a source operation subject to this rule, first determine if it emits or has the capacity to emit any air contaminants. If so, this rule may apply.

Next, determine if it is a member of any of the source categories listed in N.J.A.C. 7:27-8.2 as types of sources subject to this rule. If it it a member of any subject category, then the rule applies to that source operation. If not, then it is not a source operation subject to this rule.

COMMENT: To really simplify the system, consider deleting the definition of "source operation" and substituting the concept of "stack" as a regulated unit.

RESPONSE: The Department recognizes that standards and requirements may be set on a number of bases; for example, per source, stack, building, or facility. Each may be appropriate in certain contexts.

A common problem with a "per stack" basis, however, it that owners and operators often have considerable discretion over how many stacks they use to vent emissions. Standards set on a per stack basis can be met by releasing the facility's emissions through a sufficient number of stacks or chimneys that each meets the standard. This shows compliance "on paper," but does not in fact result in prevention or control of air contaminant emissions.

COMMENT: To the proposed definition of "source operation" in N.J.A.C. 7:27-8.1, add: ". . . excluding that equipment or vessel with a capacity of 100 gallons or less and laboratory instrumentation."

RESPONSE: The exemption of specific categories of equipment from permit and certificate requirements is done by listing them in N.J.A.C. 7:27-8.2 as an exception to the general applicability of permit and certificate requirements, not by excluding them from the definition of the general term.

Also, use of equipment or vessels with a capacity of 100 gallons or less and laboratory equipment could result in the emission of air contaminants which, because of their nature or quantity, could pose a threat to human health or welfare or the environment. Therefore, a general exception of such equipment would not be appropriate.

COMMENT: Under P.L. 1989, c.15, the New Jersey Department of Agriculture has the authority over handling animal manure. This excludes those tanks located on farms which are used by a farmer for the storage of animal manure from the definition of "storage tanks" in N.J.A.C. 7:27-8.1.

RESPONSE: The Air Pollution Control Act (N.J.S.A. 26:2C-8) establishes that the Department "shall have power to formulate and promulgate, amend and repeal codes and rules and regulations preventing, controlling and prohibiting air pollution . . ." Any storage tank, including tanks used by a farmer for storage of animal manure, if it has the potential to result in the emission of air contaminants, may be subject to the air pollution control codes. This does not preclude such tanks from also being subject to other rules or regulations.

COMMENT: In paragraph 2 of the proposed definition of "storage tank" in N.J.A.C. 7:27-8.1, add the word "mixing" to acceptable treatment.

RESPONSE: Mixing may or may not be a treatment allowed in a storage tank. If the purpose of the mixing is to maintain materials in combination which were in combination when deposited in the vessel, this would be an acceptable treatment in a storage tank. If the purpose of the mixing is to combine, or to combine more thoroughly, different materials, this is a manufacturing process and is not acceptable in a storage tank.

COMMENT: From the defintion of "surface impoundment," delete "natural topographic depression."

RESPONSE: The Department's intent is to move toward greater consistency in the context of its various programs in the definition of terms. The definition of the term "surface impoundment" is that promulgated in N.J.A.C. 7:27-1.4. It is the Department's intent to use the identical definition also within N.J.A.C. 7:27.

COMMENT: Defining key words by reference, as the proposed definition of "volatile organic substances" in N.J.A.C. 7:27-8.1 does, is wrong. When the definition in subchapter 16 is changed, a facility will be affected not only by the rule changes in subchapter 16, but also with subchapter 8, but without benefit of public comment or review.

RESPONSE: The United States Environmental Protection Agency is requiring New Jersey to amend its terminology, and the definitions thereof, for use in referring to volatile organic substances. It is doing this pursuant to its authority to require states that fail to attain the National Ambient Air Quality Standard for ozone to take measures that will lead to reasonable further progress toward the standard. Volatile organic substances are precursors to ozone formation, and the United States Environmental Protection Agency is seeking to impose national consistency in the naming and definition of this air contaminant category.

An amendment of N.J.A.C. 7:27-16 proposing these changes is currently under development. The proposal document will provide notice of the impact of this change on N.J.A.C. 7:27-8, and interested parties will have the opportunity to comment on any aspect of the proposed change during the public comment period. The definition being adopted has been developed to ensure that this revised terminology will be consistently applied in both N.J.A.C. 7:27-8 and 16.

COMMENT: To maintain constency throughout the regulations and with current Department policies, the following definition should be added under N.J.A.C. 7:27-8.1: " 'Air Contaminant Category' means the categorization of any air contaminant as defined in Department policy."

RESPONSE: The term air contaminant is defined in these amendments. The common usage definition of the word category, as found in the Random House College Dictionary, is adequate explication of this term: "a classificatory division in a system . . ." While the Department at times categorizes air contaminants for specific applications, it has no policy containing a general system of air contaminant categorization.

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COMMENT: One commenter noted that there appears to be no definition for farmer contained in the air pollution control permit definitions. The exact definition of a farmer has been questioned before. There are a large number of distinct definitions of the word farmer. Who is and who is not a farmer? Does a farmer mean someone who qualifies to get agricultural tags on his pickup truck? Does farmer mean an individul who makes X amount of dollars each year from his business? Is it designed to refer to the definitions contained in Title 4 of the New Jersey statutes or other statutes?

Another commenter recommended the following definition: " 'Farmer' means an individual who owns or operates land that meets the eligibility requirements of the Farmland Assessment Act of 1964, P.L. 1964, c.48 (C.54:4-23.1 et seq.).

RESPONSE: The word "farm" rather than the proposed word "farmer" is used in the adopted amendments. A definition of "farm" is included in N.J.A.C. 7:27-8.1, as adopted, which is consistent with the definition of "farmer" recommended by the commenter.

COMMENT: The regulations should define Good Management Practices, which can be useful in enforcement actions.

RESPONSE: "Good management practices" is not a term used in this rule; therefore, no definition of the term is included here.

COMMENT: The regulations should define "grandfathered" sources.

RESPONSE: "Grandfathered" sources is not a term used in this rule; therefore, no definition of the term is included here.

COMMENT: Since the regulations refer to "potential," the following definition should be added to proposed N.J.A.C. 7:27-8.1: "Potential means the capability to emit air contaminants in the absence of an air pollution control apparatus."

RESPONSE: The Random House College Dictionary defines potential as "possible, as opposed to actual" and "capable of being or becoming." Webster's New Collegiate Dictionary defines potential as "something that can develop or become." These common usage definitions of the term apply in this rule, unless the context clearly indicates otherwise.

COMMENT: Proposed N.J.A.C. 7:27-8.1 should redefine "state-of-the-art (SOTA)," for which applicants receive no guidance under the pretense of the Department not being a consultant. Since the EPA has three existing standards (RACT, BACT, LAER), and is proposing a fourth (MACT), the Department should align with EPA and not confuse the matter further with the ever-nebulous SOTA, which is capriciously applied.

RESPONSE: The Air Pollution Control Act, N.J.S.A. 26:2C-9.2(a), clearly prohibits the Department from issuing a permit unless the applicant shows to the satisfaction of the Department that "the equipment incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted by the applicant's equipment." This mandate is set forth in the Administrative Code at N.J.A.C. 7:27-8.6(b). Such a standard cannot be specified because what constitutes "state-of-the-art" emissions control changes as technological advances are made.

N.J.A.C. 7:27-8.2 Applicability

COMMENT: The new proposed definitions in N.J.A.C. 7:27-8.1 raise more questions about what type of equipment is regulated than they answer. Specific terms, such as "woodworking equipment" and "metalworking equipment" included in the definition of "Category I," are particularly vague. This ambiguity is compounded by the fact that the Department proposes to change to a "potential for emission" standard in N.J.A.C. 7:27-8.2(a)17 and 8.3(h). This new standard may be interpreted to encompass many previously unregulated devices. It is not clear what the Department intends.

RESPONSE: Proposed N.J.A.C. 7:27-8.2 establishes which source operations are subject to permit and certificate requirements. Permits and certificates are required for those types of woodworking and metalworking equipment which fall into one of the 17 categories listed in N.J.A.C. 7:27-8.2(a) and which are not excepted pursuant to N.J.A.C. 7:27-8.2(b). Woodworking and metalworking equipment for which a permit and certificate are required are included in Category I, as set forth in the definition of Category I. This means that such equipment is subject to the lower Category I permit and certificate fees.

The phrase "potential for emission" is used in the new paragraph N.J.A.C. 7:27-8.2(a)17. The effect of this paragraph is to make a permit and certificate required for any type of equipment or control apparatus which has the capability (that is, "the potential") to emit a toxic substance, if such emission under worst case conditions of operation may exceed the exception rate specified in N.J.A.C. 7:27-17.9. Some equipment in which a TXS is used but for which permits and certificates were previously not required, such as small storage tanks or certain types of equipment into which less than 50 pounds of raw materials are introduced in any one hour, may as a result of paragrah (a)17 now be subject to permit and certificate provisions.

COMMENT: This commenter supports regulatory programs that provide for protection of human health and the environment. As a general comment to the proposed subchapter 8 changes, it is not always apparent how some requirements further that objective. Many companies have made public commitments to reduce emissions of toxic chemicals voluntarily over the next several years. Many of these efforts will require process and equipment changes, which must comply with State air pollution laws. However, must these voluntary reductions be subjected to the long and complicated preconstruction review process required by the definition of alteration and the complex "state-of-the-art" review? In general, changes made by industry to protect the environment should be allowed with little or no review time prior to making the change. Examples of some changes include adding state-of-the-art controls and changing to unpermitted raw materials or equipment configurations that reduce emissions and better protect human health.

RESPONSE: The Department appreciates voluntary efforts made by any company to reduce its emissions of toxic chemicals. However, by statute, N.J.S.A. 26:2C-9.2(a), any construction and installation of any new equipment or control apparatus, or any change made to existing equipment or control apparatus which is an alteration, requires a new permit and certificate. This requirement is not waived for any reason, even if the change may ultimately result in reduced emissions.

The Air Pollution Control Act, N.J.S.A. 26:2C-9.2(c), requires not just that emissions be reduced but that state-of-the-art emission controls be employed. Pursuant to the Act, emission reduction less than that which can be achieved through use of state-of-the-art methods can not be accepted by the Department. Whether the type of control proposed for a source in fact represents state-of-the-art emission control is determined during permit evaluation.

The Department has the goal of reviewing and acting on permit and certificate applications in a timely manner. The additional resources that are anticipated from the new fee schedule contained in these new rules and amendments should provide the additional resources necessary to shorten review time.

COMMENT: Concerning proposed N.J.A.C. 7:27-8.2, Permits to Construct, Install and Alter and Certificates to Operate should be required only for processes which emit more than a specific threshold level of air contaminant, such as one pound per hour. For greater emissions, a tiered permit structure geared to emission levels as opposed to specific process types should be established. Category I permits would start at one pound per hour up to five pounds per hour. This approach should streamline the existing permitting process and reduce the number of applications submitted for environmentally inconsequential processes.

RESPONSE: In general, the tiered permit structure recommended by this commenter is what is in place. In many instances, equipment whose size or scale of operation is small is not subject to permit and certificate requirements. Further, more detailed scrutiny in the permit review process is given to equipment whose emission of air contaminants, because of their kind or quantity, pose a greater potential threat to public health and welfare and the environment.

However, a comprehensive reconsideration of the "cut-points" in setting these review tiers was beyond the scope of the rule proposal.

COMMENT: Several commenters recommended the revision of proposed N.J.A.C. 7:27-8.2(a) to exempt from permitting requirements all filters or other apparatus that purify the air fed or recirculated into ventilation and heating systems in rooms and buildings, as well as those installed on source operations that are exempted by N.J.A.C. 7:27-8.2(a). And one of these commenters recommended the addition of the phrase "offices and general work areas (that is, warehouses, laboratories, etc.)."

RESPONSE: The recommendation of these commenters has been incorporated into the adopted amendments. By definition, a control apparatus subject to the permit and certificate requirements of the Air Pollution Control Act, and codified in N.J.A.C. 7:27-8, is a "device which prevents the emission of any air contaminant." The function of filters or other air purifying apparatus that serve intake air streams is not prevention of emissions; therefore, they are not subject to permit and certificate requirements.

COMMENT: N.J.A.C. 7:27-8.2 has authorized that specific operations, due to their minor emission potential, be exempt from permitting requirements. However, as presently drafted, if a control apparatus is voluntarily installed on an exempt operation, the applicability status of

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the operation changes, and the operation is no longer exempt from permitting requirements. Thus, facilities which install control apparatus become subject to economic and administrative burdens which would not have been present had controls not been added. Since this penalizes those facilities which are voluntarily attempting to reduce emissions from exempt operations, a significant number of exempt operations remain uncontrolled, due solely to this requirement. If the Department is committed to both streamlining the permitting process and protecting air quality, it should include within this rulemaking revisions which allow exempt operations to install control apparatus voluntarily without penalization.

RESPONSE: Pursuant to the provisions of the Air Pollution Control Act (N.J.S.A. 26:2C-9.2), all newly installed air pollution control apparatus are subject to the same standards and requirements, whether or not they are installed voluntarily or as a result of a regulatory mandate.

COMMENT: Two commenters recommended that proposed N.J.A.C. 7:27-8.2(a)1 be amended to exempt from permitting requirements any control apparatus installed in a research and development laboratory hood or other laboratory operations. Due to the importance to New Jersey of research and development, the Department should recognize the uniqueness of research, development, educational, medical, and diagnostic laboratory operations, and it should acknowledge that such facilities should not be regulated as manufacturing processes.

And a third commenter recommended the addition to proposed N.J.A.C. 7:27-8.2(a)1 of the phrase: "room, building, or laboratory fume exhaust system." The reasons for this being that the permit application which the Department uses requires information on the nature of the process and the materials used. The applicant must attempt to characterize future chemicals and processes, which is difficult to do for laboratory fume exhaust systems in which experimental work takes place. Often laboratories do not need to install control devices in order to meet regulatory requirements, but consideration is given to adding a control device for that "extra measure" of protection. This practice of adding control devices when not required will be discouraged if all laboratories must go through the permitting process, requiring prior approval, in order to install the device. Moreover, the Laboratory Fume Exhaust Systems Policy addresses the issue of state-of-the-art control in laboratory applications.

RESPONSE: The Air Pollution Control Act, N.J.S.A. 26:2C-9.2(a) and (b), requires that any person who constructs, installs, or alters any control apparatus shall obtain a permit for that apparatus and that any person who uses a control apparatus shall obtain a certificate which authorizes such use. The Act does not limit its applicability only to manufacturing operations. Therefore, the suggestions made by the these commenters are not consistent with this legislative mandate.

COMMENT: Revise proposed N.J.A.C. 7:27-8.2(a)1 to read: ". . . source operation, or except any control apparatus used on a source in which the combined weight of all materials employed—excluding air and water—is not in excess of 50 pounds in any one hour."

RESPONSE: Exempting all control apparatus which serves equipment whose scale of operation falls below the **de minimis** limit established in N.J.A.C. 7:27-8.2(a)7 would have the effect of exempting such equipment also from the state-of-the-art emission control requirements established in the Air Pollution Control Act at N.J.S.A. 26:2C-9.2(c) and presently codified at N.J.A.C. 7:27-8.5(b). As control apparatus is not installed unless air contaminants may be emitted which need to be controlled and since the Act mandates that a state-of-the-art standard be achieved by such control apparatus, exemption of this category of control apparatus from this requirement would be contrary to the intent of the Act.

COMMENT: Several commenters stated that the operators of the thousands of small auto body shops in New Jersey are deeply concerned over the prohibitive cost of new technologies required by the regulations. Data from California indicate that a shop averaging 200 to 350 cars a year must invest from $200,000 to $300,000 in spray booth equipment to comply with the rules. Distributing these costs at $100.00 a car, it will take 10 years to pay off this equipment, and this does not account for additional regulations that the State will most likely continue to promulgate every year.

One commenter added that he is very conscious of the environment because he lives next door to his auto body shop and does not want any fumes from the shop to affect his family. What does not make any sense to him is the fact that if you install a filter (a control device) and reduce contaminant emissions, you need a permit; but if you do not install any filters or if you do not have a spray booth, you may not need a permit.

RESPONSE: Amendments to N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Substances, adopted on May 26, 1989, established VOS emission limits applicable to the larger auto body shops. The rules allow compliance to be achieved either through the use of add-on air pollution control apparatus (such as an incinerator or scrubber) or through the use of complying coatings which have a limited VOS content.

As acknowledged in the adoption document for this rule change, published on June 19, 1989, in the New Jersey Register (21 N.J.R. 1669-80), the Department concurs that in almost all cases the cost of add-on control will be too high to be practical. The Department, therefore, expects most auto body shop owners to choose to achieve compliance through the less costly alternative: the use of complying coatings.

Permits and certificates are required not only for any auto refinishing operation that uses control apparatus but for any refinisher who uses more than 0.5 gallons of coating per hour and 2.5 gallons per day. This should include most auto refinishing operations.

COMMENT: A problem exists with state-of-the-art (SOTA) and proposed N.J.A.C. 7:27-8.2(a)1. Thus, a spray booth will not need a permit if usage is 0.1 gallons per hour and there is no filter in the stack. Since many commerical booths have integral filters, the source operator may legally remove such a filter and be in compliance. But if the filter is left in, a permit will be required (at a cost). Furthermore, should the source try to get a permit claiming 80 percent control, this will not be approved because SOTA requires 99 percent. In this case, no control is acceptable, but 80 percent control is not. Attempting to classify this under Category I will not help. SOTA should not be used as the standard here, and the Department should reconsider the need to permit this source at all.

RESPONSE: Pursuant to N.J.A.C. 7:27-8.2(a)1, any filter serving the air stream exiting a spray booth is subject to permit and certificate requirements. This requirement was promulgated in 1967 and is not a new requirement imposed by these amendments.

The Air Pollution Control Act, pursuant to N.J.S.A. 26:2C-9.2(c), requires that any new control apparatus must incorporate advances in the art of air pollution control. If 99 percent control efficiency represents state-of-the-art, a control efficiency of 80 percent cannot be approved.

Only small sources are exempted, pursuant to N.J.A.C. 7:27-16.5, from the requirement to control their VOS emissions. Only spray booths which use less than 2.5 gallons of coating per day **and** less than 0.5 gallons of coating in any hour are so exempted. All others must control their emissions either by using only "compliant" coatings which meet VOS content standards or by installing control apparatus, for which a permit and certificate are required.

COMMENT: One commenter wanted to know where he stands and what is expected of him. In his facility, he has a paint booth and exhausts. He needs to know does he need a permit? His facility has been in operation for 25 years, and it is now in compliance with State regulations. He would like to have an explanation of the previously mentioned half a gallon per hour.

RESPONSE: The commenter will need a permit for his paint booth if it was installed or altered since 1967. Examples of an alteration which may have occurred since its initial installation would be the installation of filters or of a control device that would need a permit. Concerning the 0.5 gallons, this de minimis applicability limit was adopted as an amendment to N.J.A.C. 7:27-16 and became effective on July 25, 1989. To comply with this amendment, any spray booth, if its coating usage exceeds 0.5 gallons per hour and 2.5 gallons per day, must limit its emissions either by installing state-of-the-art control apparatus or by using low solvent paints. These amendments to N.J.A.C. 7:27-8 modify the permit and certificate code to be consistent with the 1988 amendments to N.J.A.C. 7:27-16 and require a permit and certificate for any booth that sprays over 0.5 gallons an hour.

COMMENT: This commenter has a half-a-gallon paint bench and puts the paint into a gun. Is what is going into the air included in what is called a half a gallon? Even if it is the new spray gun which puts roughly 90 percent of the paint on the vehicle and reduces emissions by 70 percent. Is any of that being considered?

RESPONSE: If a person sprays over 0.5 gallons an hour, whether or not the coating sprayed lands on the surface being coated, he needs a permit. Spraying efficiency is considered during the review process. Permit applications are evaluated to see that the proposed operation meets the code, and factors such as transfer efficiency, the solvent content of the paint, and the kind of filters in the spray booth are reviewed. If the operation meets the codes and includes state-of-the-art emission controls, the Department issues the applicant a permit.

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COMMENT: This commenter's spray booth was installed in 1965, so he assumes he is exempted from the requirement to obtain a permit and certificate.

RESPONSE: Any source that was constructed and installed prior to June 15, 1967, and that has not been modified since, is not subject to permit and certificate requirements.

COMMENT: Two commenters requested that, in proposed N.J.A.C. 7:27-8.2(a)6 and 7, either the word "process" be redefined or the words "manufacturing process" be reinserted into those two paragraphs.

RESPONSE: The Random House College Dictionary (1988) defines process as "a systematic series of actions directed to some end." This common usage definition is applicable to the word "process" as used in N.J.A.C. 7:27-8.2(a)6 and 7.

COMMENT: Several commenters requested that, in proposed N.J.A.C. 7:27-8.2, the 50 pounds-per-hour cutoff be increased to 500 pounds in any one hour. Another commenter recommended an increase to 100 gallons per hour.

RESPONSE: The "in excess of 50 pounds in any one hour" criterion included in N.J.A.C. 7:27-8.2(a)7 was promulgated in 1967 and has been applied since in determining which operations are subject to permit requirements. These commenters should note that paragraph (a)7 excepts surface coating carried out in manufacturing operations, surface preparation operations and surface cleaning operations, from the applicability of this 50 pound criterion.

This criterion has served effectively in providing guidance that differentiates operations too small to be potentially significant sources of air contaminant emissions from those that may be large enough to be of concern, though it could be argued that it is not sufficiently stringent. A source that uses 50 pounds per hour of VOS, could be a 100 ton-a-year source of VOS emissions if 50 percent of the VOS used is released as emissions.

A twofold or tenfold relaxation in this 50 pounds-per-hour criteria would not therefore be sufficiently protective of human health and welfare or the environment.

COMMENT: One commenter suggested exempting bench scale type operations from permitting.

RESPONSE: Most bench scale type operations, except those that emit toxic substances at a rate greater than 0.1 pounds per hour, are not subject to this rule.

COMMENT: N.J.A.C. 7:27-8.2(a)7 should be clarified to discount non-contaminant mass in the 50 pounds. "Materials" should be changed to "raw materials." At some bakeries, some inspectors have counted the metal bread pan as part of the total weight.

RESPONSE: The word "raw" is being inserted before "materials" in N.J.A.C. 7:27-8.2(a)7, as recommended by this commenter, to clarify the intent of this section and make the terminology used consistent with the terms defined in N.J.A.C. 7:27-8.1.

COMMENT: Modify subsection N.J.A.C. 7:27-8.2(a) by addressing the 1,000-gallon tanks in N.J.A.C. 7:27-16.2(c). Otherwise, applicants may incorrectly feel they need neither permit nor control for the 1,000-gallon tank.

RESPONSE: Tanks with a capacity of 1,000 gallons or greater which store VOS have a vapor pressure of greater than 13.0 pounds per square inch absolute are subject to N.J.A.C. 7:27-16.2(c). Any "vapor control system" installed on such a tank is subject to permit and certificate requirements, pursuant to N.J.A.C. 7:27-8.2(a)1. Also, any tanks that have a capacity of 2,000 gallons or greater and which store VOS are subject to permit and certificate requirements, pursuant to N.J.A.C. 7:27-8.2(a)9.

COMMENT: Proposed N.J.A.C. 7:27-8.2(a)11 should exclude the applicability the conveyer belts, augers, and similar devices used by farmers to transfer agricultural commodities.

RESPONSE: Pursuant to N.J.A.C. 7:27-8.2(a)11, permits and certificates are required for stationary material-handling equipment which use pneumatic, bucket, or belt conveying systems, if the equipment may emit air contaminants, whether or not the owner or operator is a farmer. Consideration of this exemption for farmers was not included in the scope of the rule proposal.

COMMENT: N.J.A.C. 7:27-8.2(a)12 should exclude from applicability on-farm grain dryers.

RESPONSE: Pursuant to N.J.A.C. 7:27-8.2(a)12, permits and certificates are required for commercial fuel burning equipment which has a heat input rate of 1,000,000 BTU per hour or greater, including on-farm grain dryers. Consideration of an exemption for this farm equipment was not included in the scope of the rule proposal.

COMMENT: In proposed N.J.A.C. 7:27-8.2(a)15, the word lagoon has been removed and replaced with surface impoundment. Yet below, in subparagraphs (a)15iii or iv, in the list of types of waste or water treatment equipment exempted from the requirement to have a permit, there has been no change. The change in the term in paragraph (a)15 above is not being carried down below to (a)15iii or iv, where exclusions are actually covered. This is going to cause some confusion and unnecessary hearings unless it is corrected.

RESPONSE: The definition of "surface impoundment" lists aeration pits and lagoons as types of surface impoundments. Only aeration basins and lagoons, and other types of surface impoundments, are exempted in subparagraphs (a)15iii and iv of N.J.A.C. 7:27-8.2.

COMMENT: Two commenters requested the removal from proposed N.J.A.C. 7:27-8.2(a)15iii and iv of the exemptions for publicly owned treatment works and domestic treatment works.

RESPONSE: The Department recognizes that the operations at publicly owned and domestic treatment works may be a source of air contaminant emissions. Currently, the Department is supporting a study at Rutgers University to determine the extent and nature of these emissions.

The 1990 revisions to the Federal Clean Air Act require the State to control additional emission sources. The findings of this Rutgers study will be taken into consideration by the Department in its deliberations as to whether treatment works constitute a source of sufficient significance to be regulated pursuant to the Clean Air Act requirements.

COMMENT: Concerning proposed N.J.A.C. 7:27-8.2(b)2, several commenters formulated the following observations and recommendations:

(1) Revise this paragraph to read: "Tanks, reservoirs, containers, and bins used by farmers for the storage of agricultural crops which are either produced on the farm and stored for future sale or produced or purchased and stored for on-farm livestock feed."

(2) Revise this paragraph to read: "Tanks, reservoirs, containers, and bins used by **the farm industry** [farmers] for the storage of agricultural commodities produced by or consumed in their own operations. This exemption does not include tanks, reservoirs, containers and bins used by distributors of agricultural commodities [or by research facilities which develop products for use in agricultural production]."

(3) One commenter was very pleased because storage facilities used by farmers will be exempted and recommended that storage facilities used by distributors of agricultural commodities, or at least those used by seed dealers, also be exempted because of the negligible off-site impact of their particulate emissions.

RESPONSE: This exception of tanks, reservoirs, containers, and bins used on farms has been included in order to lessen the burden imposed on the owners and operators of farms. This has been done both out of recognition of the environmental benefits that accrue to the state through the preservation of working farms and in the expectation that little or no adverse effects on air quality as a result of this exception.

This exception was not extended to any distributors of agricultural commodities or to research facilities which develop products for use in agricultural production. The scale and nature of these operations do pose the possibility of adverse environmental impacts. Also, they do not, in most cases, provide the direct environmental benefit of the preservation of open space, as do farms.

COMMENT: Add N.J.A.C. 7:27-8.2(b)3 as follows: "Sources that discharge into a building and meet OSHA standards for the work place regardless of the presence of control apparatus." If it is safe to discharge into the room under OSHA regulations, the Department should also consider this practice safe and not regulate this activity twice.

RESPONSE: The standards established by the Occupational Safety and Health Administration (OSHA) are intended to protect healthy adults exposed, at the maximum, during an eight-hour working day. These standards are not necessarily sufficiently protective for exposures lasting longer than eight hours or for exposures to the young, elderly, chronically ill, and members of the population who are particularly sensitive. For public health protection, exposure to emissions that meet OSHA standards can not be presumed to be safe.

N.J.A.C. 7:27-8.3 General provisions

COMMENT: Two commenters requested the deletion of the word "construct" from proposed N.J.A.C. 7:27-8.3(a).

RESPONSE: New Jersey's Air Pollution Control Act, N.J.S.A. 26:2C-9.2, prohibits any person from constructing any equipment or control apparatus without having obtained a permit. Since "construct" is explicitly included in the enabling legislation, it cannot be omitted from the rule.

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COMMENT: Two commenters requested the revision of proposed N.J.A.C. 7:27-8.3(b) so that an existing air permit and certificate remains in effect until the Department automatically renews the five-year certificate using computer-generated forms. They added that nobody should be penalized if the Department fails to renew a certificate prior to the expiration date.

RESPONSE: N.J.A.C. 7:27-8.4(g) ensures that no person who submits an application for renewal 90 days or more prior to the expiration date of the operating certificate will be subject to penalty for the failure of the Department to act on the application in time.

COMMENT: The regulations should allow for maintenance of control equipment while allowing the source to continue to operate without incurring the risk of being penalized.

RESPONSE: Subchapter 8 prohibits use of the equipment other than in accordance with the permit and certificate. If the permit approval includes the requirement that the exhaust stream from equipment be served by control apparatus, that equipment may not be used if such service by control apparatus is not available, including when maintenance activities prevent the operation of the control apparatus.

In such cases an owner or operator may choose to have alternate control apparatus available to bring on-line to allow continued use of the equipment.

COMMENT: The Department's proposal is overbearing without any benefit to the environment. The burden of fees on individual plants in the aggregate (sand, gravel, and crushed stone) and the ready-mix-concrete industries is excessive and unnecessary. In the past, industry has advocated "site permits" for a single fee. Some plants have as many as 15 or 16 conveyors, which would take an inspector a few minutes to review, and, under the current proposal, the Department would require fees of $7,000, or $8,000. Some conveyors are mobile, and, under the Department's proposal, a separate permit will be needed every time a conveyor is moved within a plant. The Department is asking industry to fund greater numbers of inspectors and more fees and fines without any additional environmental benefits to anyone in New Jersey.

RESPONSE: The Department recognizes that normal usage of some equipment and control apparatus may entail its being moved and used at various sites within a facility, or a specified part of a facility, or within a range of facilities within the State, or within some political subdivision thereof. In such cases, in specifying the location of the equipment or control apparatus in a permit application, an applicant may specify not just a single site but rather an area or range of sites at which use of that equipment or control apparatus may be made.

In its review of such an application, the Department will presume that the equipment or control apparatus will be located at the site within the area or range of sites at which the "worst case" effects on air quality will occur. If the Department finds that the emissions that may be released from the use of the equipment and control apparatus at this site do not result in any contravention of any air quality standard or requirement and if the application also meets all other requirements, the Department will then approve the application. With such an approval, movement of the equipment within the area specified in the permit or from one site to another within a range of sites would not constitute an alteration, and no prior approval by the Department would be needed. The conditions of approval of such a permit could, however, require the permittee to report such movement of equipment or control apparatus so that field inspection personnel can locate it during on-site inspections.

COMMENT: Revise proposed N.J.A.C. 7:27-8.3(c) to clarify that the "amendment" reporting requirement is a self-executing item that requires no further Department review or approval. Otherwise, revise the definition of "amendment" to clarify that activities that do not require a preconstruction review also do not require regulatory review after they are accomplished. Furthermore, since the Department performs no "service" in connection with these reporting requirements, there should be no service fee in this connection.

RESPONSE: An amendment is a report which revises or updates the information in the Department's permit and certificate records to reflect changes that have occurred since the information was originally submitted to the Department. The Department does not approve or disapprove the information reported; rather, the Department acts on the information to "amend" its permit and certificate records by revising the Department's data systems to incorporate the changed information. However, the Department does review the amendment reports submitted to confirm that the changes made do not constitute alterations. Reporting a change which constitutes an alteration as an amendment is, if the change has been carried out, a violation of N.J.A.C. 7:27-8.3 and is subject to enforcement action.

Up-to-date information is essential for the Department to monitor compliance with and enforce permit requirements effectively. The updating of the Department's records and data systems to reflect the changes reported as amendments is an administrative burden imposed on the Department by the person to whom the permit or certificate is issued. Executing this administrative burden is part of the Department's service of issuing and monitoring conformance with permits and certificates. Pursuant to N.J.S.A. 26:2C-9(g), the Department may "in accordance with a fee schedule adopted as a rule . . . charge fees for any of the services it performs."

COMMENT: Several commenters suggested that proposed N.J.A.C. 7:27-8.3(h) should define "potential" as a part of the public record. Another commenter recommended the substitution of "normal emissions potential could be 100 percent capacity" for "potential for emissions."

RESPONSE: The Random House College Dictionary defines potential as "possible, as opposed to actual" and "capable of being or becoming." Webster's New Collegiate Dictionary defines potential as "something that can develop or become." These common usage definitions of the term apply here.

In respect to a permit at the time of its issuance, the potential for emission is a possibility, but not an actuality, as construction and installation is proposed but not yet initiated. In respect to a certificate, the potential for emission refers to the maximum emission potential or the highest levels of emission of which the equipment or control apparatus is capable under any circumstance of operation consistent with the parameters set forth in the permit.

COMMENT: Modify proposed N.J.A.C. 7:27-8.3(i) also to exclude structural changes, routine replacement, and repair or maintenance from triggering a requirement to obtain a new permit and certificate.

RESPONSE: The definition of the term "alteration" establishes which types of changes to equipment and control apparatus trigger the requirement to obtain a permit or certificate, established in N.J.A.C. 7:27-8.3(a) and (b) respectively, and which do not.

Repair and maintenance are excluded from alteration. In certain cases, routine replacement is excluded. Structural changes are excluded only if they have already been approved in the permit in effect.

COMMENT: Proposed N.J.A.C. 7:27-8.3(i) codifies the exemption from regulatory review for repair or maintenance, provided that such repair or maintenance does not constitute an "alteration" and it is not a change which may have an adverse effect on air quality. This requirement stated in the conjunctive creates confusion about the definition of alteration. If the repair or maintenance activity is not an alteration, it does not require a permit. There is no regulatory scheme applicable to changes that affect air quality that are not "alterations."

RESPONSE: This commenter is correct in stating that inclusion of the phrase "and is not a change which may have an adverse effect on air quality" in proposed N.J.A.C. 7:27-8.3(i) creates confusion in respect to the relationship between "repair or maintenance" and "alteration" as proposed in N.J.A.C. 7:27-8.1.

In the adopted rule, in order to eliminate this confusion, the term "change which may have an adverse effect on air quality" has been excluded from the rule. The substance of the term is incorporated directly into the definition of "alteration" in N.J.A.C. 7:27-8.1.

"Repair or maintenance," as defined in N.J.A.C. 7:27-8.1 of the adopted rule, is not an "alteration." Therefore, the substance of the proposed phrase "change which has an adverse effect on air quality" does not directly apply to "repair or maintenance." This is consistent with the intent of the definition of "repair or maintenance" to include in the term only activities that have no or negligible adverse effects on air quality.

COMMENT: Several commenters found the language in proposed N.J.A.C. 7:27-8.3(j) too broad, nebulous, unclear, arbitrary, and capricious in that it enables the Department to act when certain emissions, whether permitted or not, tend "to be injurious to human health or welfare, animal or plant life or property, or would unreasonably interfere with the enjoyment of life or property" and when "necessary to protect human health or welfare or the environment." The uncertainty created by these proposed revisions would be a strong negative factor in any business decision to locate a new facility in New Jersey.

By participating in the regulatory program, each operator of a new facility is subject to specific emission limits that are determined, through the permitting process or through other administrative proceedings, to be reasonably necessary to protect the environment and human health and welfare. Operators rely on these permit limits in spending millions of dollars to develop their facilities. Operators are also required to abide by these limits at the risk of no longer being able to operate their facilities. The Department should also respect these permit conditions. It is unfair

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to create a back door opportunity to revise permit conditions, or even revoke a permit, based on open-end standards. In addition, open-ended provisions like these may provide an opportunity for litigious third parties to assert a cause of action against facility operators who are otherwise in compliance with their permits. This risk is an unreasonable burden to place on operators of existing facilities and a disincentive to economic development in New Jersey.

For all of these reasons, two commenters asked for clarification of proposed N.J.A.C. 7:27-8.3(j), and one commenter recommended that these provisions be deleted.

RESPONSE: The provisions of proposed N.J.A.C. 7:27 8.3(j) do not impose any new requirements on equipment or control apparatus, as the provisions of this subsection are already contained in N.J.A.C. 7:27-5. These provisions derive from authority, established in the Air Pollution Control Act (N.J.S.A. 26:2C-8), given to the Department to prohibit air pollution. The definition of "air pollution" contained in the Act (N.J.S.A. 26:2C-2) establishes the scope of the air contaminants regulated in this subsection.

The effect of this section is to make a violation of these provisions, originally located only in N.J.A.C. 7:27-5, not only a violation of the code but also of the permit and certificate. Any person responsible for such a violation is subject to the penalties that apply to the violation of a permit or certificate requirement.

COMMENT: In proposed N.J.A.C. 7:27-8.3(j), include a clarification stating that odors which occur at food processing plants as a direct result of cooking or processing food for human consumption shall not be included.

RESPONSE: N.J.A.C. 7:27-8.3(j) is applicable to any odor, including those deriving from cooking or processing food for human consumption, if the odor is present in the outdoor air, off-site of areas over which the owner or operator has exclusive use or occupancy, in such quantity and duration which is, or tends to be injurious to human health or welfare, animal or plant life or property, or would unreasonably interfere with the enjoyment of life or property.

N.J.A.C. 7:27-8.4 Applications for permits and certificates

COMMENT: The Department should make provision for the electronic submission of air permit applications and allow for submission of computer-generated air permit applications.

RESPONSE: The Department concurs that provision for the electronic submission of air permit applications is a constructive goal for the future, and such concepts are now in the planning phase. Once sufficient resources are available for the equipment and start-up costs entailed, perhaps from the fees that will be derived from the new fee schedule in these new rules and amendments, the Department intends to move toward introducing electronic submission of air permit applications.

However, the Department does not intend to allow submission of computer-generated air permit applications. Use of original forms ensures that the precise wording, format, layout, content and color-coding of the forms will be uniformly preserved.

COMMENT: Two commenters requested the revision of proposed N.J.A.C. 7:27-8.4(b) to read: "The Department may require . . . that the equipment or control apparatus incorporates **practical commericially available and economically feasible** advances in the art of air pollution control. . . ."

RESPONSE: The New Jersey Air Pollution Control Act (N.J.S.A. 26:2C-9.2) prohibits the Department from approving any new operating certificate "unless the application shows to the satisfaction of the department that . . . the equipment incorporates advance in the art of air pollution control developed for the kind and amount of air contaminant emitted . . ." The law provides no basis for qualification of the requirement to incorporate advances in air pollution control, as recommended by these commenters.

COMMENT: Several commenters recommended the revision of proposed N.J.A.C. 7:27-8.4(c)2 so that, if the Department fails to comment on a test protocol within 60 days, testing may proceed in accordance with the submitted protocol. One commenter added that the requirement to perform testing in accordance with an approved protocol in N.J.A.C. 7:27-8.4(c)3 should be deleted.

RESPONSE: Both automatic acceptance of protocols requiring more than 60 days to act on and allowing testing to proceed without an approved protocol would be inconsistent with the Department's mandate to ensure protection of public health and welfare and the environment.

The Department has established the requirement to submit the test protocol 60 days prior to the anticipated date of testing with the expectation that this 60-day period will, in most cases, be sufficient for the Department to review and act on the protocol. Protocols that raise complex, unorthodox, or controversial issues may, however, require more time.

COMMENT: Two commenters recommended that, under the proposed paragraph N.J.A.C. 7:27-8.4(c), the Department should specify the sources, conditions, or emission rates that will trigger stack testing.

RESPONSE: Pursuant to N.J.S.A. 26:2C-9.2(c)(1), the decision as to whether stack testing will be required prior to renewal of a certificate will be made by the Department on a case-by-case basis. That determination will be guided by the Department's mandate to ensure protection of public health and welfare and the environment.

COMMENT: Three commenters recommended the substitutions of **"If testing is required the Department may require the applicant to:"** for "[The applicant shall]:" at the end of the first paragraph of proposed N.J.A.C. 7:27-8.4(c).

RESPONSE: The Department concurs that adding the phrase "If such testing is required" prior to the words "The applicant shall" increases the clarity of the intent of this subsection, and has inserted these words in the adopted text.

The Department has not, however, changed the verb "shall" to "may," as recommended by these commenters, as performance of the six limited requirements is obligatory, not optional, for applicants required to perform testing.

COMMENT: Two commenters pointed out that, pursuant to proposed N.J.A.C. 7:27-8.4(c), (f) and 8.8(b), the Department can, at its discretion, as a condition of approval require an applicant to perform emission testing, prepare an ambient-air quality impact analysis, and carry out continuous emission monitoring. They added that the Department should be limited in its use of these provisions to those instances where the Department justifiably believes that there exists a condition that is injurious to human health or welfare, animal or plant life or property.

RESPONSE: The Department makes use of these discretionary authorities when it needs further information to determine whether public health or welfare or the environment could be at a risk.

The Department requires an applicant to perform source emissions testing ("stack testing") when it needs to verify, before reaching a decision as to whether to approve an operating permit, that the air contaminants actually emitted from the equipment or control apparatus do not exceed the emission rates set forth in the permit application. The Department requires an applicant to perform an air quality impact analysis when it needs further information, before reaching a decision as to whether to approve a permit, on the off-property effects on ambient concentrations of air contaminants that could be expected to occur due to the potential emissions from the equipment or control apparatus. The Department requires a permittee to perform continuous emisisons monitoring when the quantity or nature of the emissions from the equipment or control apparatus are such that frequent confirmation is needed to provide assurance that the emissions continue to be within the approved limits.

COMMENT: Several commenters requested that the 30-day limit proposed under N.J.A.C. 7:27-8.4(c)5 for submittal of test results be increased to 60 days because testing laboratories or consultants will rarely complete their reports in 30 days.

RESPONSE: The Department needs the information obtained from testing before it can determine whether to approve or deny an application for an operating certificate. To avoid prolonging the period during which a source is operating under a temporary operating certificate, the Department is seeking to have applicants submit any required test report to the Department within 30 days. When this is not possible, the applicant may request an extension in writing, explaining why such an extension is necessary. The Department intends to honor any such request if it finds that the facts of the situation indicate a vaild need for an extension.

Also, to clarify that submission of this test information is a reporting requirement established pursuant to a condition of approval of an approved permit or certificate, the Department has substituted upon adoption the phrase "test report" for the word "results" in the text of this subsection.

COMMENT: The requirement of proposed N.J.A.C. 7:27-8.4(c)6 calling for certification of test results by a Professional Engineer (PE) is unnecessary and extremely costly. First, stack tests are analytical, not engineering, procedures. Then, to sign off on a document, a PE usually wants to be involved in the project from its inception. Since most stack tests are performed in accordance with EPA and/or Department-approved standard test methods, the permittee is forced to pay a PE to review information already approved by the Department, observe the test which is normally performed by an independent environmental consulting

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firm, and finally certify information obtained using Department-approved test methods. This additional certification is redundant and should be eliminated from the proposal.

RESPONSE: Because of its highly technical nature, the Department requires that test reports from any source emission testing have technical certification by a PE as well as managerial certification. The requirement for technical certification is contained in N.J.A.C. 7:27-8.4(c)6. The requirement for managerial certification is contained in N.J.A.C. 7:27-8.24.

In those instances where the person qualified to certify the test report pursuant to N.J.A.C. 7:27-8.4(c)6 is also qualified to certify the test report pursuant to N.J.A.C. 7:27-8.24, that one person can make both certifications.

COMMENT: Under N.J.A.C. 7:27-8.4(e), list the air emission source categories that are affected by NESHAPS and NSPS standards.

RESPONSE: The source categories affected by NSPS and NESHAPS may be found at 40 CFR 60 and 61, respectively.

COMMENT: Concerning N.J.A.C. 7:27-8.4(e), the Department should develop a guidance document explaining exactly what is required. Although large corporations have adequate resources and expertise to comply with the requirements of this subsection, small businesses without engineering staffs will be forced to retain expensive engineering consultants if they have no guidance.

RESPONSE: The applicability and requirements for compliance for NSPS and NESHAP are set forth at 40 CFR 60 and 61, respectively. Certain additional guidance for applicants is incorporated in application forms and policy statements available from the Department.

COMMENT: Three commenters asked the Department to define, as a part of the public record, "compliance demonstration" as used in proposed N.J.A.C. 7:27-8.4(e).

RESPONSE: A compliance demonstration shall consist of a listing of all applicable requirements, together with a statement that attests as to how the source or its operation conforms or will conform with each requirement. Such a statement may include supporting data or other documentation.

COMMENT: Two commenters requested that proposed N.J.A.C. 7:27-8.4(f) be revised so that, if the Department fails to respond to or comment on the protocol within 60 days from its submittal, the analysis may proceed in accordance with the submitted protocol.

RESPONSE: The Department concurs in the goal of reviewing and acting on submitted protocols in a timely manner. In most cases, a properly prepared protocol would be approved within 60 days of its submission. However, review of some protocols may not be completed in this time period.

It would be inconsistent with the Department's responsibility to ensure protection of public health and welfare and the environment for it to accept any air quality impact analysis as valid unless that analysis has been performed in accordance with procedures acceptable to and approved by the Department.

COMMENT: In order for an applicant to be aware beforehand of what assessments will be needed, several commenters asked for clarification or definition of the conditions, or the promulgation of specific regulations, that will determine when air quality impact analysis will be required pursuant to proposed N.J.A.C. 7:27-8.4(f). One commenter stated that the Department should be prevented from requesting such information when it is impossible for the change to affect air quality adversely. And another commenter recommended the deletion of the proposed subsection.

RESPONSE: Pursuant to N.J.S.A. 26:2C-9.2(a), before the Department can make a determination as to whether or not to approve a permit, it must consider whether the operation of the equipment or control apparatus, as represented in the information submitted in the permit application, will be in conformance with the Department's air pollution control rules. The Department requires the performance of risk assessments or air quality impact analyses for sources for which the Department needs further information before it can determine whether emissions from the source could result in the presence off-site of contaminant concentrations which impose unacceptable risks to public health or welfare or the environment or which exceed allowable limits.

COMMENT: Two commenters proposed the addition of a new subsection (j) to proposed N.J.A.C. 7:27-8.4, setting time limits for the Department to act upon a permit or certificate application. Exceedance of these limits would result in immediate, automatic approval.

RESPONSE: The Department has as its goal that final action on applications be timely and achieved within standard time frames. As indicated in the Basis and Background Document that accompanied the proposal of these new rules and amendments, the Department has undertaken a range of actions toward this end. However, in some instances, the time needed to complete the necessary review before a decision is made to approve or deny an application will exceed the usual time frames the Department has established as goals. In such instances, immediate, automatic approval would be contrary to the mandate of the Air Pollution Control Act, N.J.S.A. 26:2C-9.2(c), which states that:

"No operating certificate . . . shall be issued by the department unless the applicant shows to the satisfaction of the department that the equipment is designed to operate without causing a violation of any provision of this act or of any codes, rules and regulations promulgated thereunder and that . . . the equipment incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted by the applicant's equipment."

N.J.A.C. 7:27-8.5 Public comment

COMMENT: Several commenters expressed concern with respect to proposed N.J.A.C. 7:27-8.5(a) and (b), which in their opinion should be deleted or which alternatively should set time limits on the Department's actions involving public hearings and comments.

RESPONSE: The provisions of N.J.A.C. 7:27-8.5 represent no change in the public comment authorities or practices of the Department. This section has been included in the rule so as to inform permit applicants better of the practices in place.

Public comment will be required for an application only when so required by Federal laws or regulations or when the Department determines that public comment would assist the Department in obtaining the information it needs to act on an application. Comment periods are normally 30 to 60 days in length, but may be extended in exceptional circumstances.

COMMENT: In view of the new fees for implementing public comment requirements, several commenters recommended that proposed N.J.A.C. 7:27-8.5(b) either be deleted or clearly defined or the Department should publish in the regulations which application types will require public comment.

RESPONSE: The fee category "Implement public comment requirement" applies only to those permitting processes where public comment is required by Federal law or regulations. The Department may choose to invite public comment on other permit applications. However, no fees will be charged when the Department's implementation of public comment is an optional, not a Federally mandated, step in the Department's review of the permit.

COMMENT: Under proposed N.J.A.C. 7:27-8.5(b), to assure consistency in permitting and inform the public of the Department's intent, define "significant degree of public interest" as part of the public record. Otherwise, delete this provision.

RESPONSE: The public conveys its interest to the Department in many ways. The Department receives many queries through letters or phone calls. Groups submit petitions or request meetings with Department officials. Some protest or hold public meetings on issues. Others post their view on billboards. Citizens take their concerns to the media, and the Department learns their views from newspaper, radio or television.

Whenever, in the judgment of the Department, the level of interest or the range of concerns is such that legitimate citizen concerns cannot be adequately identified or addressed by one-on-one communication through letters, phone calls or small group meetings, the Department may establish a formal forum for receiving comment which it will consider and to which it will respond by establising a public comment period.

COMMENT: Develop and include in the regulation detailed guidelines outlining when a particular application would be considered for a public hearing. This is important because public hearings will add significant time to the permitting time frame.

RESPONSE: Applications that generate significant public interest are, in general, ones about which citizens in the community in which the facility is located or in adjacent communities are apprehensive concerning the public health or environmental consequences of the proposed activity. Until it is already into the review process, the Department cannot foresee whether an application may cause such concern.

The applicant, however, with advance knowledge of both the project he is proposing and the community in which the facility is located, may be able to anticipate whether there might be significant public interest in the application. This would enable the applicant to anticipate the Department's determining a need for a public comment process, thereby allowing the applicant to project more realistically the permitting time frame.

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N.J.A.C. 7:27-8.6 Denials

COMMENT: If the Department denies a permit or certificate, is a resubmission considered a "new" application, an amendment, or supplementary information? This results in considerable fee differences.

RESPONSE: Any resubmission following a denial would constitute a new application and be subject accordingly to all applicable fees.

COMMENT: Several commenters requested an additional explanation of proposed N.J.A.C. 7:27-8.6(a)2 and asked what will happen if an applicant is already in a nonattainment area.

RESPONSE: This provision requires the Department to deny an application for a permit or certificate if the use of the equipment or control apparatus contained in the application would result in the exceedance of a State or Federal ambient air quality standard. Whether or not a source is located in a designated nonattainment area where the preexisting condition is one of exceedance of the ambient standard, N.J.A.C. 7:27-8.6(a)2 would apply only if it can be shown that the probable cause of the exceedance would be the emissions from the new or altered equipment or control apparatus.

COMMENT: Several commenters recommended the deletion of proposed N.J.A.C. 7:27-8.6(a)7. As alternatives, some commenters suggested the phrase "established by" be replaced with or used in addition to the phrase "duly promulgated by" and the "criteria" mentioned in the paragraph be specified.

RESPONSE: The intent of N.J.A.C. 7:27-8.6(a)7 is to establish the basis for the Department to deny permits which threaten public health or welfare or the environment, even if the precise nature of the threat has not been previously anticipated. It is used by the Department to ensure protection of the public from such adverse effects as increased risk of incurring cancer.

As a part of their reseach and development effort, manufacturers are continually synthesizing new chemicals and producing new mixtures of chemicals for use in their products and processes. The health and environmental effects of many of these are not well understood; scientific research may uncover new information about their effects at any time. Promulgation of standards is a multi-year process. If the Department has information available to it that indicates that the air contaminant emissions from any proposed equipment or control apparatus may, because of their nature or quantity, pose a hazard to health or welfare or the environment, it needs the authority to prohibit or require control of those emissions. Requiring the Department to wait multiple years until a standard is promulgated before acting on such information would not be protective of public health or the environment.

COMMENT: The Department has proposed changing the allowed response time of an applicant who has submitted an incomplete application form 90 to 30 days. The effect of this would be to require additional fees for applicants who are asked for more complex information by the Department which cannot be answered within 30 days. The existing 90-day allowance should be maintained, keeping in mind that providing an expeditious response is in the applicant's best interests. It is unclear why the Department would want to charge additional fees after only 30 days when the State would incur no increased expense with a 90-day response time.

RESPONSE: N.J.A.C. 7:27-8.6(c) establishes that any applicant may request from the Department a response period longer than 30 days if an extended period is necessary. The Department has no intent to use the provisions of this section as a means to collect additional fees. Rather, the intent is to minimize the cost and inconvenience the Department incurs when it is compelled to maintain for extended periods pending applications which it cannot act on because the applicant has failed to provide requested information in a timely manner.

COMMENT: Two commenters recommended the revision of proposed N.J.A.C. 7:27-8.6(c), setting a deadline which should depend on the complexity of the equipment for the Department's response. If the applicant does not receive a response by the deadline, installation may proceed in accordance with the application.

RESPONSE: Presumably these commenters are seeking to have the Department act on permit applications they submit on a timely basis. The Department shares this goal. As indicated in the Basis and Background Document that accompanies the proposal of these new rules and amendments, the Department has undertaken a range of actions toward this end.

However, in some instances the time needed to complete the necessary review, before a decision is made to approve or deny an application, will exceed the usual time frames the Department has established as a goal for review completion. In such instances, automatic approval would be contrary to the mandate of the Air Pollution Control Act, N.J.S.A. 26:2C-9.2(c), which states that:

"No operating certificate . . . shall be issued by the department unless the applicant shows to the satisfaction of the department that the equipment is designed to operate without causing a violation of any provision of this act or of any codes, rules and regulations promulgated thereunder and that . . . the equipment incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted by the applicant's equipment."

COMMENT: Delete proposed N.J.A.C. 7:27-8.6(d)2. Reimbursement of fees incurred by the Department for telephone charges and laboratory analysis, as cited in proposed N.J.A.C. 7:27-8.6(d)2, is not a requirement of any of the other provisions of subchapter 8, in particular N.J.A.C. 7:27-8.11, and therefore should not be grounds for denying a permit or certificate.

RESPONSE: The responsibility for a person to whom the Department has issued a permit or certificate to reimburse the Department for certain telephone and laboratory charges, if so required in the conditions of approval of the permit, is established under N.J.A.C. 7:27-8.8(e). It is appropriate that the Department have the authority to deny the approval of a certificate, or a renewal thereof, to any person who has failed to carry out this responsibility.

COMMENT: Two commenters objected to the reimbursements required by proposed N.J.A.C. 7:27-8.6(d)2ii. In addition to bearing the cost of preparing preliminary information, testing, and preparing final reports, applicants are already paying for permitting, protocol evaluation, and inspection fees. The commenters believe that requiring applicants to reimburse the Department for the cost of analyzing audit samples collected by the Department pursuant to its oversight of testing or monitoring required in the conditions of the approval of the permit or certificate is beyond the intent of the enabling statute.

RESPONSE: The Department may require an applicant to test prior to its approval of an operating certificate or of any renewal thereof, pursuant to the Air Pollution Control Act, N.J.S.A. 26:2C-9.2(c)1. To verify that the analysis of samples taken is properly performed, the Department may take audit samples and have them independently analyzed.

The costs involved in the analysis of the audit samples is a cost imposed on the Department by the applicant through the application for a new certificate or a renewal thereof. It is appropriate that the burden of the costs of these analyses be borne by the applicant, to whom the economic benefits of the operation of the equipment or control apparatus will accrue, rather than by the public coffers of the State.

N.J.A.C. 7:27-8.7 Approvals

COMMENT: Delete the last sentence from proposed N.J.A.C. 7:27-8.7(a), which states that the responsibility for the adequacy of the design lies with the applicant, because it is superfluous.

RESPONSE: This statement was included to forestall possible misunderstanding by persons who apply to, and receive approval from, the Department for permits. An approval of a permit application is an approval to construct and install equipment as described in the permit application. Such approval does not constitute any verification by the Department as to the adequacy of its design, construction and installation for any purpose, including the achievement of the emission standards or the conformance with other limits or requirements contained in the permit.

COMMENT: The new rules require, in some cases, testing of air treatment apparatus prior to permit issuance. Frequently, this is an impossible requirement because owners are unwilling to construct and install air control apparatus prior to assurance that a permit will be issued. Accordingly, flexibility should be maintained in cases where it is unreasonable to construct control apparatus prior to assurance that a permit will be issued.

RESPONSE: The Department makes its decision on whether or not to approve a permit based on the information presented in the permit application. However, the Air Pollution Control Act, N.J.S.A. 26:2C-9.2(c)(1), authorizes the Department to require testing to verify that the kind or amount of the air contaminant emitted from any control apparatus conforms with the emissions information contained in the permit, prior to reaching its decision as to whether or not to issue an operating certificate.

Applicants for a permit are responsible for adequate design and construction of any control apparatus they construct, install or operate. To forestall any confusion in respect to this obligation, this is explicitly stated in N.J.A.C. 7:27-8.7(a).

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COMMENT: Two commenters suggested that, in view of the current long permitting delays, proposed N.J.A.C. 7:27-8.7(a) should accept emergency repairs with no emission increases because, as proposed, it is severely restrictive and could adversely affect a utility's ability to maintain service.

RESPONSE: As specified in N.J.A.C. 7:27-8.3(i), repair and maintenance do not trigger any permit requirement. However, changes to the equipment which are significant enough to be classified as "alteration" do, of course, require a new permit for the alteration.

COMMENT: Revise proposed N.J.A.C. 7:27-8.7(a) to read: "Except as provided for under N.J.A.C. 7:27-8.3(c), no person . . . permit." Proposed N.J.A.C. 7:27-8.7(a) requires a new application for modifications in plans or specifications which "render them in any respect inconsistent" with the permit application. This language overrides the provisions for general permit or certificate information and equipment changeover as set forth in N.J.A.C. 7:27-8.3(c).

RESPONSE: Submission of a report of an allowed type of change to equipment or control apparatus as an amendment of a permit, within the 120-day reporting period, is consistent with "the provisions and conditions of an approved permit application" and does not need to be restated.

Further, in recognition of the fact that the Air Pollution Control Act does not prohibit any person from modifying plans and specifications without advance approval of the Department, the following proposed sentence has not been adopted: "No modification may be made in plans or specifications for construction which renders them in any respect inconsistent with the provisions and conditions of an approved permit application unless the person to whom the Department has issued a permit submits a new application for a permit to alter, and this new application is approved by the Department." However, no equipment or control apparatus may be altered pursuant to any modifications of plans or specifications until an alteration permit is approved by the Department.

COMMENT: From proposed N.J.A.C. 7:27-8.7(c), delete ". . . air contaminant, or . . . ."

RESPONSE: The effect of this deletion would be to set air contaminant emission limits only for categories of air contaminants, not for individual contaminant species. Most standards with which equipment and control apparatus must conform are limits on the emission of a single air contaminant. For example, N.J.A.C. 7:27-9 and 10 set several of their requirements in terms of rate of emission of sulfur dioxide, and each of a list of specified toxic substances is regulated under N.J.A.C. 7:27-17. It is therefore necessary that a person submitting a permit application inform the Department of the potential for emission of individually specified air contaminants, not categories of air contaminants, as suggested by this commenter. The Department bases its decision on whether to approve or deny a permit, in part, on this information. Any approval issued by the Department cannot be construed as an approval to emit air contaminants other than those specified, either individually or as members of a category of air contaminants where accepted by the Department, in an approved permit.

COMMENT: Concerning proposed N.J.A.C. 7:27-8.7(c), three commenters recommended the deletion of the first sentence of this subsection. Alternatively, they suggested that this subsection begin with "Only those air contaminants . . ." instead of "No air contaminant . . . ." The reason for this is that no permit will list all possible contaminants; however, one commenter believes that the proposed wording could be interpreted more restrictively than intended.

RESPONSE: Emission of an air contaminant not authorized by the permit or certificate in effect constitutes a change in the use of equipment or control apparatus which is an "alteration," for which a permit is required.

The Department bases its decision on whether to issue such certificate on the equipment's potential to emit air contaminants. The Department cannot make appropriate decisions unless it is informed in respect to all contaminants which may be emitted. An application which does not include information on all air contaminants is not complete.

The Department does not, however, need all information submitted on a species-by-species basis. "VOS," for example, is a commonly used category that encompasses many individual species. Depending on the type of source under consideration, the permit application form and certain of the Department's permit guidance documents may indicate that some emission information may be submitted by air contaminant category.

COMMENT: Concerning proposed N.J.A.C. 7:27-8.7(c), three commenters recommended that this subsection be revised to include a reference to the portions of N.J.A.C. 7:27-8 that specify standards for specific air contaminants.

RESPONSE: Emission standards for specific air contaminants are not specified in N.J.A.C. 7:27-8.

COMMENT: Concerning proposed N.J.A.C. 7:27-8.7(c), three commenters stated that, as proposed, this subsection represents a substantial increase in the scope of the Department's permitting powers and an unjustified excursion beyond the Department's mandate to protect health and environment. The Department should not concern itself with emissions that it has not found, in proper regulatory proceedings, to require regulation to protect health and environment. Unless a contaminant is subject to a regulatory program, its emission should not be generically prohibited.

RESPONSE: This section does not expand the scope of the Department's permitting powers. Rather, in an attempt to forestall confusion amongst persons subject to the requirements of this rule, it explicitly sets forth certain aspects of the authority established by New Jersey's Air Pollution Control Act (N.J.S.A. 26:2C).

The Department's legal mandate is a broad one: to issue and enforce rules in order to prevent, control and prohibit air pollution (N.J.S.A. 26:2C-8). The rules governing the issuance of permits and certificates mandate the Department to determine not only whether the proposed equipment or control the emissions apparatus will conform with promulgated emission standards but also whether the emissions pose a risk to health or welfare. To make this latter determination, the Department must know the full range of air contaminants that may be emitted.

COMMENT: This commenter operates an auto body shop and would like to comment on the Department's application forms with their specific chemical breakdowns. The thousands of different colors and hundreds of possible solvent and coating combinations with which auto body shops deal make it impossible to list all of the chemical combinations used. It would be better to list generic categories, such as enamels and reducers or lacquers and thinners, and then supplement this with, say, MSDS sheets.

RESPONSE: The Department recognizes that owners or operators of certain types of small businesses, such as auto body shops, may find it difficult to comply with the requirement to list, either individually or by category accepted by the Department, all air contaminants to be emitted in their application for a permit. To assist body shop operators, the Department is developing a permit application form that is specific to and appropriate for this source category. The form will provide guidance applicable to this source category and simplify the task of completing the form.

COMMENT: One commenter objected to the term "air contaminant" in N.J.A.C. 7:27-8.7(c), and another suggested the deletion of "no air contaminant" from the same subsection. Both commenters added that there should be a "de minimis" quantity which can be emitted without being specified in the permit. A "pure compound" may contain traces of compounds which may vary with the supplier. For example, commercial xylene may contain a mixture of three xylene isomers as well as some ethyl benzene and toluene. It is impossible to predict how much of these components may be present in "xulene." These commenters recommended a three percent limit.

RESPONSE: To facilitate preparation of a permit application, the Department may allow the listing of certain groups of substances, such as VOS, by air contaminant category, precluding the necessity of listing the substances in this group individually. However, where the applicable rules include standards or requirements for specific substances, these must be individually listed, even if the substances are present only in small quantities. Examples of substances which must always be listed individually are all toxic substances.

COMMENT: Concerning proposed N.J.A.C. 7:27-8.7(c), current batch permits list the most representative pounds of contaminant and hours per operation. Some variation is normal for batch processing and expected. If the Department wishes to include this provision, it should add a grandfathering clause here for existing batch and dual permits.

RESPONSE: The batch plant permitting procedure does ask for the submission of "representative" emission rates and hours of operation. These representative numbers reflect maximum averages.

COMMENT: N.J.A.C. 7:27-8.7(c) lists three items as information that appear in an application and will constitute maximum allowable limits. However, Item 2 is not necessary for all applicants; only Item I, "rates of emission," and 3, "any rate of production," are necessary for all

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applicants. For an electric utility, Item 3 would be the amount of fuel burned per year. This, from the kind of fuel to be burned, makes it possible to calculate the maximum allowable number of hours of steady operation, that is, of burning the same amount of fuels, to ensure that no standard is violated, including the maximum allowable rates of emission. You do not need the hours to calculate back to the emission rates for all operations. Therefore, Item 2 is irrelevant for some applicants, namely those whose emission rates can be verified without reference to operating hours.

However, the limit on operating hours can be worse than simply irrelevant or redundant. This is most important to the Department, to applicants, to taxpayers, and to the State of New Jersey. By limiting the total hours of operation, the Department may remove the incentive for an applicant to get maximum efficiency out of his control apparatus in order to lower his emission rates so that he can then increase his production. This will happen if this third limit is imposed because, even if the emissions are lowered, the applicant still connot increase his output because he cannot operate for more hours—even though, by operating longer, he will not increase rates or total emissions!

RESPONSE: The Department bases its decision as to whether or not to approve a permit application on the information contained in the application. An applicant may or may not choose to specify continual operation.

Certain applicants may find that they cannot meet applicable emissions limits unless they curtail their hours of operation. This is an option available to them. However, any hours of operation specified in the permit application and approved by the Department become the maximum operating time allowed that source for the specified time period. This is an enforceable limit on the operation.

COMMENT: Proposed N.J.A.C. 7:27-8.7(d) establishes that the Department may issue conditions of approval of a permit. These conditions should be reviewed with the applicant, who should have the opportunity to respond, before being finalized. For example, if an applicant wants to operate the equipment half of the year (an approximate figure), and the Department specifies a maximum of 183 days per year (a precise figure), both parties should understand each other's position before the Department's position is finalized in the permit.

RESPONSE: The information submitted in an application should be clear and precise. The Department bases its review, and its decision, and any conditions it may issue on the information contained in the application.

If an applicant believes that the Department has not understood the information in the application as it was intended and this has resulted in the Department establishing conditions of approval that are, from the applicant's perspective, inappropriate, the applicant should contact the Department and negotiate an acceptable resolution. However, if the applicant remains dissatisfied, the applicant may submit a request for an adjudicatory hearing on the matter pursuant to N.J.A.C. 7:27-8.12.

COMMENT: Regarding proposed N.J.A.C. 7:27-8.7(e), two commenters made the following recommendations:

(1) Although similar to the existing N.J.A.C. 7:27-8.3(a), the proposed N.J.A.C. 7:27-8.7(e)1 states that permit approval may be withdrawn if construction does not start within one year. But the proposed new N.J.A.C. 7:27-8.1 defines "construct" so that it significantly changes the impact of this regulation by excluding site preparation and foundation work. Thus, in a large prevention-of-significant deterioration (PSD) affected project, site preparation and foundation work can take over a year, well within the validity of a PSD permit but subject to cancellation by the Department. The definition of "construct" and permit validity should be consistent with those in the federal PSD regulation, which the Department also administers.

(2) Modify proposed N.J.A.C. 7:27-8.7(e) to empower the Department to grant a permittee additional time (one year) before withdrawing its approval. This would be on the basis of a written request that sets forth the reasons for the delay (that is, waiting for other permits).

RESPONSE: Withdrawal of approval of a permit application if construction has not started within a year is not automatic but discretionary on the part of the Department. The intent of this provision is to allow the Department to take back its approval of permits for projects which have been abandoned or that are substantially delayed, not to withdraw approval from large-scale projects which require substantial up-front site preparation and foundation work.

COMMENT: Two commenters strongly objected to proposed N.J.A.C. 7:27-8.7(f) as an abrogation of the permit. One added that a company that installs state-of-the-art equipment should have the right to use the equipment for its economic life. This will be especially true if the company continues to meet all other regulations.

RESPONSE: The Air Pollution Control Act, N.J.S.A. 26:2C-9.2(c), does allow the Department to impose further conditions of approval to ensure that the equipment or control apparatus represents state-of-the-art emissions control prior to the Department's issuing its initial approval of the operating certificate. Thereafter, the Department may require further incorporation of advances in the art of air pollution control only at such times as the owner or operator may seek to alter the equipment or control apparatus.

Certain modification of the conditions of approval is possible after the initial approval of an operating certificate, pursuant to N.J.A.C. 7:27-8.7(f)2 or 3, for those conditions pertinent to monitoring of compliance, rather than state-of-the-art control requirements. These conditions include those relevant to testing, reporting, or the schedule of compliance inspections.

COMMENT: Proposed N.J.A.C. 7:27-8.7(f) is not the correct approach because it gives the agency the power to modify a permit at any time and thus force the permittee to modify the final design during permitting without any legal justification or recourse. Items 1 and 2 of subsection (f) should be deleted. If the Department decides to keep subsection (f) intact, it should only be valid if new regulations are promulgated that cause the temporary permit or operating certificate to be out of compliance. Internal, unwritten policies should not be a means of enacting the authority under subsection (f).

RESPONSE: Pursuant to the Air Pollution Control Act, N.J.S.A. 26:2C-9.2(c), the Department has the authority to modify any conditions of approval up until such time as it issues the initial five-year operating certificate. Thereafter, the Department may modify only those conditions of approval which do not pertain to incorporation of "advances in the art of air pollution control . . ." Such conditions include, for example, those pertaining to reporting or the scheduling of periodic compliance inspections. Any person who is aggrieved by any condition imposed by the Department may request an adjudicatory hearing pursuant to N.J.A.C. 7:27-12.

COMMENT: One commenter asked the Department to define as a part of the public record the intent of proposed N.J.A.C. 7:27-8.7(f)1 to assure consistency in permitting and enforcement and to inform the public of the Department's intent.

Two commenters recommended the deletion of N.J.A.C. 7:27-8.7(f)1. They added that a temporary certificate is renewed every 90 days until the Department inspects the equipment. Therefore, the time a temporary certificate is in place depends on the Department's ability to inspect. Some certificates have been temporary for up to four years. No applicant should be penalized for the Department's inability to do timely inspections. If the Department does not inspect in one year, a temporary certificate should automatically become permanent.

RESPONSE: Not all equipment and control apparatus put into use under a temporary operating certificate prove to operate as represented in the application. At times, a field inspector may discover that not all relevant aspects of a device's operation have been included in the permit application. Such cases are examples of occasions upon which the Department may need to revise the conditions of approval for the device, prior to approving a five-year operating certificate.

The Department's assessment of whether any modification is needed in the conditions of approval issued as part of the permit approval of the permit is usually made as part of the process of reaching a decision as to whether to approve a five-year operating certificate. However, when the 90-day period of a temporary certificate is up and the Department does not yet have available to it all the information it needs to determine whether to approve the operating certificate, the Department may renew the temporary certificate. In some such instances, when the information already assembled up to that time indicates the necessity for a revision of the conditions of approval, the Department may communicate the revised conditions to the applicant at the time of the renewal of the temporary certificate.

In no case where the Department lacks adequate information to determine whether a device is operating within the parameters included in the approved permit or whether the device "incorporates advances in the art of air pollution control" should a temporary operating certificate automatically become permanent. Pursuant to the Air Pollution Control Act, N.J.S.A. 26:2C-9.2(c), it is the obligation of the Department to withhold issuance of an operating certificate until the applicant has shown that that the operation of the equipment conforms with promulgated air pollution control codes, rules and regulations and that it incorporates state-of-the-art emission control.

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COMMENT: Two commenters recommended the deletion of the "carte blanche" in proposed N.J.A.C. 7:27-8.7(f)3 because they found it unacceptable. They also found it questionable whether the Department will implement this provision responsibly, equitably or fairly. They added that the Department often imposes restrictions or operating requirements without regard to expense, practicality or feasibility.

RESPONSE: The provision in N.J.A.C. 7:27-8.7(f)3 is not a "carte blanche that allows the Department to modify its conditions of approval at any time." It can be invoked only if the Department finds that modification of the conditions of a certificate is necessary to protect human health or welfare or the environment.

COMMENT: Delete proposed N.J.A.C. 7:27-8.7(f)3 or revise it to allow the Department to modify the conditions of a certificate only if it is shown that the source causes a contravention of a properly promulgated standard designed to protect human health or welfare or the environment. Although the Department should have the authority to ensure that human health and the environment are protected, proposed N.J.A.C. 7:27-8.7(f)3 is not the correct approach because it gives the agency the power to modify a permit at any time, forcing the permittee to modify the final design after the Operating Certificate is issued without any legal justification or recourse. Paragraph (a)3 should be expanded to define what is meant by "endangerment of human health and the environment."

RESPONSE: Business continually modifies its products and processes and develops new products and processes. Such changes are often necessary to remain competitive. Certain of these changes in operation may be made, pursuant to this rule, without a new permit being required for the equipment and control apparatus.

Such changes may, however, result in emissions that threaten public health and welfare or the environment. In such an eventuality the Department must have the authority to intervene if, in its judgment, the emissions pose unacceptable risks. Any person who believes he or she is aggrieved by a departmental decision to modify any conditions of approval of a permit or certificate may request an adjudicatory hearing pursuant to N.J.A.C. 7:27-8.12.

COMMENT: N.J.A.C. 7:27-8.7(f) should have some provision for the Department to issue emergency permits to allow alterations and the return of these facilities to service as quickly as possible where it can be shown that such action is in the best public interest.

RESPONSE: The air pollution control laws make no provision for "emergency" permits. It is the responsibility of persons issued permits to foresee when new permits for alterations will be required and submit applications within a time frame that allows equipment to be available for use when it is needed.

COMMENT: Some of the proposed modifications fail to recognize business reality and will introduce such great risk into developing and operating energy facilities that they will discourage future cogeneration development in the state. If the Department has the authority to modify permit conditions when renewing a temporary or five-year operating certificate pursuant to N.J.A.C. 7:27-8.7(f)3, the owners of cogeneration facilities will have no rational basis on which to calculate their financial requirements over the life of a project contract. As a result, it will be impossible to finance any new projects because the risks and uncertainties will be too great.

The uncertainty created by these proposed revisions would be a strong negative factor in any business decision to locate a new facility in New Jersey. By participating in the regulatory program, each operator of a new facility is subject to specific emission limits that are determined, through the permitting process or through other administrative proceedings, to be reasonably necessary to protect the environment and human health and welfare. Operators rely on these permit limits in spending millions of dollars to develop their facilities. Operators are required to abide by these limits at the risk of no longer being able to operate their facilities. The Department should also respect these permit conditions.

RESPONSE: These new rules and amendments do establish the authority for the Department to modify its conditions of approval of a certificate. However, the Department may not, once it has approved an operating certificate for the equipment, modify its determination that "the equipment incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted" unless the equipment is altered. The assured stability of the state-of-the-art determination should be the primary factor affecting financial considerations.

The types of conditions which could be revised are reporting requirements, frequencies of inspections, and conditions that derive from new rules and rule amendments promulgated since the conditions of approval were drafted.

COMMENT: Several commenters stated that the proposed regulations lack due process protections. The proposed regulations authorizing modification to permits and certificates make no provision for notice and an opportunity to be heard for the permit holder or other affected operator, in contravention of well established principles of due process. The proposed provisions authorizing the Department to revoke or modify permits or otherwise restrict the operations of facilities based on unspecified adverse impacts on "human health or welfare" or interference with "enjoyment of life or property" are both unfair and without constitutionally required due process protection for owners and operators of affected facilities.

The Department should be allowed to modify the "conditions of approval" of a permit or certificate only after affording due process to the holder, and any proposed modification "to protect human health or welfare" or "the enjoyment of life and property" should be based only on criteria defined in properly promulgated air emission standards adopted pursuant to proper administrative proceedings.

It is unfair to create a back-door opportunity to revise permit conditions, or even revoke a permit, based on open-ended standards. In addition, open-ended provisions like these may provide an opportunity for litigious third parties to assert a cause of action against facility operators who are otherwise in compliance with their permits. This risk is an unreasonable burden to place on operators of existing facilities and a disincentive to economic development in New Jersey. For all of these reasons, this commenter requests that proposed N.J.A.C. 7:27-8.7(f)(3) not be adopted as proposed.

RESPONSE: Provision for appealing any decision by the Department including a decision to modify the conditions of approval of a certificate, is made at N.J.A.C. 7:27-8.12.

N.J.A.C. 7:27-8.8 Conditions of approval

COMMENT: For all paragraphs under N.J.A.C. 7:27-8.8, the Department must state under what conditions these requirements will be imposed. An overzealous permit reviewer may require any or all of these for a simple lubricating oil tank—certainly far more testing than should be required.

RESPONSE: Pursuant to this section, the Department may establish, in its conditions of approval, requirements for testing, maintenance of instrumentation, record keeping, and reporting and a schedule for the frequency of inspection. These conditions are established, as appropriate, to facilitate the Department's verification of the source's conformance with standards and requirements.

If an applicant believes that the Department has imposed inappropriate conditions on any approval, the applicant so aggrieved should contact the Department and negotiate an acceptable resolution. However, if the applicant remains dissatisfied, he or she may submit a request for an adjudicatory hearing pursuant to N.J.A.C. 7:27-8.12.

COMMENT: Amend N.J.A.C. 7:27-8.8(a) so the Department can inspect for this information during normal working hours rather than requiring information in writing. Change the subsection to read as follows: "Upon request . . . permit or certificate shall [submit] **make available at the facility** to the Department."

RESPONSE: Unless it has the authority to request and obtain the submission of the information specified in this section, the Department is hindered in carrying out its responsibility to verify conformance with Federal regulations, State rules, and the provisions and conditions of applicable permits and certificates, and to enforce these rules, provisions and requirements. Having access to relevant information only on the premises of the facility could necessitate wasteful diversion of manpower to site visits, thereby diminishing the Department's oversight of compliance.

COMMENT: Concerning N.J.A.C. 7:27-8.8(b)1, if the Department wants to test process materials or source emissions outside the permit approval process, the Department should take the samples and pay for them.

RESPONSE: The Department, as a condition of approval, may require pursuant to N.J.A.C. 7:27-8.8(b)1 that the permittee test process materials or emissions. This authority derives from the Air Pollution Control Act, N.J.S.A. 26:2C-9.2(c)(1), and enables the Department, for sources where the demonstration of conformance with requirements through testing is needed more frequently than every five years, to require testing upon renewal of the operating certificate. Acceptance of the costs involved in such testing, including the costs of the samples taken, is a

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condition of the Department's approval of the certificate for such sources. This places the burden of the costs of verifying comformance with permit and certificate requirements in part on the owner or operator of the equipment, rather than on public resources of the State.

COMMENT: The continuous emission monitors specified by N.J.A.C. 7:27-8.8(b)2i are expensive to purchase and install and difficult to maintain. Specify the sources for which they will be required.

RESPONSE: Continuous emission monitors will be required for sources that, in the judgment of the Department, have or may have such potential for violating emission limits or for increasing the risks to human health or welfare or the environment as to merit continuous monitoring of their emissions. Such monitoring allows quick transmission of the information that the emissions from the source have exceeded, or may be about to exceed, emission limits established to protect human health or welfare or the environment. This allows the owners or operators of the source to act rapidly to prevent or mininize the occurrence of such exceedances.

COMMENT: Two commenters requested the deletion of proposed N.J.A.C. 7:27-8.8(b)2iii because, since there is no way to distinguish between sources of air contaminants in ambient concentrations (for example, cars exhausting benzene next to a factory emitting benzene), the kind of monitoring required by this provision is meaningless. A third commenter added that the Department does not have the authority to require the ambient monitoring specified in proposed N.J.A.C. 7:27-8.8(b)2iii.

RESPONSE: Exposure to increased ambient concentrations of certain air contaminants may be, or may tend to be, injurious to human health or welfare, animal or plant life or property. The Department is authorized under N.J.S.A. 26:2C to require that emissions of such air contaminants be prevented, controlled, and prohibited.

In the course of the permit application process, applications for certain major sources may assert that the emission from their sources will have no or negligible impact on the concentration of air contaminants in the ambient air off the limits of their property. The Department may base its decision as to whether to approve such a permit in part of this claim. It is therefore appropriate, and within the Department's authority, in such cases to require pre-construction and post-construction ambient air monitoring to verify this claim.

COMMENT: Change N.J.A.C. 7:27-8.8(b)3 to require that records should be available upon request within a reasonable amount of time rather than having records on the operating premises. At gasoline stations, it is difficult to keep and maintain records of this type on site.

RESPONSE: The conditions of approval provide notice to a person to whom a permit is issued to have any required records available on site.

For a gas station, the only record keeping normally required in the conditions of approval is a record of the station's monthly throughput of gasoline. This information would be available as normal business record keeping. Making this information available for review by the Department should not place an undue burden on station owners and operators.

COMMENT: Several commenters made the following observations and recommendations concerning proposed N.J.A.C. 7:27-8.8(d):

(1) To maintain consistency with the definitions, change the word "replacement" to "alteration" in this subsection.

(2) This subsection conflicts with previous definition of "state of the art."

(3) This subsection incorporates the "advances in the art of air pollution control" requirement into, and completely negates the safe harbor provided earlier in these proposed regulations by, "equipment changeover" or "repair or maintenance" that are not alterations, and thus require no permit. This proposal attempts to apply the "advances in the art of air pollution control" requirement to any replacement of equipment or control apparatus. This requirement should apply only to a replacement that is also an "alteration." This would preserve the exemptions for "equipment changeovers," which would be subject to the requirement that the replacement be made with like-kind equipment or control apparatus that is equivalent to the old equipment for air pollution control purposes, and "repair or maintenance."

(4) Revise this subsection to read as follows: "The Department may require the applicant for a permit or certificate for new equipment or control apparatus to incorporate current advances in the art of air pollution control developed for the kind and amount of air contaminant emitted. However, incorporation of such advances shall not be required for in-kind replacement of equipment or control apparatus."

(5) Change this subsection to allow for like-kind replacement in accordance with the proposed definitions of "alteration" and "equipment changeover." The incorporation of advances in the art of air pollution control developed for the kind and amount of air contaminant emitted should depend on other triggers, such as new installations or major modifications to existing installations. In addition, it is inappropriate to require such "current advances" from technical and economical points of view whenever a minor replacement occurs or when an existing certificate is renewed. Consideration for the economic life of equipment or control for apparatus is imperative if the Department is interested in forging a reasonable and workable permit regulation.

(6) Expand, clarify, and exclude "like replacement" from this subsection. It negates provisions for "equipment changeover" which do not fall within the definition of "alteration," and which do not require permitting. Moreover, it contradicts the Air Pollution Control Act, N.J.S.A. 26:2C-9.2, which states that "renewals" are not subject to the requirement calling for new advances in the art of air pollution control.

(7) To maintain definition consistency, in this subsection replace the word "replacement" with the word "alteration." In addition, define "current advances in the art of air pollution control developed for the kind and amount of air contaminant emitted." Furthermore, amend this subsection to read: "No person . . . new equipment or control apparatus incorporates [current] **practical, commercially available and economically feasible** advances in the art of." The Department is implementing this state-of-the-art provision by policy rather than by rulemaking. At the very least, the Department should publish policy documents about state-of-the-art determinations in the New Jersey Register so they are known to all applicants.

(8) Delete this subsection because it conflicts with the Department's proposed requirements of "alteration" and "amendment."

(9) In this subsection, define "current advances in the art of air pollution control developed for the kind and amount of air contaminant emitted," commonly known as the "state-of-the-art" provision. The Department should regularly publish in the New Jersey Register what constitutes "state of the art."

RESPONSE: As suggested by the first commenter, the word "alteration" has been substituted for "replacement" in the adopted new rule. However, as a replacement is a change to equipment or control apparatus which constitutes an "alteration," this substitution does not alter the substance of the section.

As new permits and certificate are required for any "alteration," and state-of-the-art control of emisions is a prerequisite for the Department's approval of any new certificate pursuant to the Air Pollution Control Act (N.J.S.A. 26:2C-9.2), the provisions set forth at N.J.A.C. 7:27-8.8(d) represent a codification of the requirements established in the law.

"Repair or maintenance" is not an "alteration" of equipment. Therefore, changes made that constitute "repair or maintenance" do not result in a requirement for a new state-of-the-art emission control review.

Furthermore, the Department has dispensed with requiring new permit and certificates for "alterations" which are replacements-in-kind for five years from the date of approval of the permit. Such replacements-in-kind must be the same type of equipment or control apparatus as that being replaced. For equipment, the size or rating in terms of such parameters as capacity, power, and production rate could be no larger than that of the equipment being replaced. For control apparatus, not only would the new device have to be of the same type as that being replaced but also the control efficiency of the replacement device would have to be at least equal to that of the control apparatus. Otherwise, the change represents an "alteration" of the equipment, for which a new permit and certificate is required.

One of the commenters is correct in stating that incorporation of advances in the art of air pollution control is not a prerequisite for the Department's approving a renewal of a certificate. It is, however, a prerequisite for approving a new permit and certificate for an alteration.

Conceptually, the meaning of "current advances in the art of air pollution control" is self-evident. This phrase means: the most advanced air pollution control techniques currently available. What may not be self-evident is what techniques will be found to represent state-of-the-art emissions control in a specific application. This places a research responsibility on some applicants, who will have to propose and justify what the relevant "current advances" are for their equipment or control apparatus, when they submit their applications. This will also place a review and evaluation responsibility on the Department, which must determine whether the proposed control in fact represents state of the art.

There is no legal basis for qualifying the "current advances" requirement with a phrase like "practical, commercially available, and economically feasible" as recommended by one of the commenters.

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"State-of-the-art" determinations are made on a case-by-case basis in the context of each permit application. Because of the continually evolving nature of "current advances," a promulgation of state-of-the-art requirements, in many instances, would soon be outdated.

COMMENT: If, as stated in N.J.A.C. 7:27-8.8(e)2, the Department wants to test process materials or emissions outside the permit approval process, the Department should take the samples and pay for them.

RESPONSE: The Department, as a condition of approval, may require pursuant to N.J.A.C. 7:27-8.8(b)1 that the permittee perform testing or monitoring. Such testing or monitoring enables the Department to have a demonstration of conformance, for sources where verification of conformance with requirements is needed more frequently then every five years when the operating certificate is renewed. Acceptance of the costs involved in analyzing the samples taken in such testing or monitoring is a condition of Department's approval of the certificate for such sources. This places the burden of the costs of verifying conformance in part on the owner or operator of the equipment, rather than on public resources of the State.

COMMENT: The uncertainty created by these proposed revisions would be a strong negative factor in any business decision to locate a new facility in New Jersey. By participating in the regulatory program, each operator of a new facility is subject to specific emission limits that are determined, through the permitting process or through other administrative proceedings, to be reasonably necessary to protect the environment and human health and welfare. Operators rely on these permit limits in spending millions of dollars to develop their facilities. Operators are required to abide by these limits at the risk of no longer being able to operate their facilities. The Department should also respect these permit conditions. It is unfair to create a back-door opportunity to revise permit conditions, or even revoke a permit, based on open-ended standards. In addition, open-ended provisions like these may provide an opportunity for litigious third parties to assert a cause of action against facility operators who are otherwise in compliance with their permits. This risk is an unreasonable burden to place on operators of existing facilities and a disincentive to economic development in New Jersey. For all of these reasons, this commenter requests that proposed N.J.A.C. 7:27-8.8(f) not be adopted as proposed.

RESPONSE: The provisions of proposed N.J.A.C. 7:27-8.8(f) do not impose any new requirements on equipment or control apparatus, as the provisions of this subsection are already contained in N.J.A.C. 7:27-5. These provisions derive from authority established in the Air Pollution Control Act, N.J.S.A. 26:2C-8, enabling the Department to prohibit air pollution. The definition of "air pollution" contained in the Act, N.J.S.A. 26:2C-2, establishes the scope of the air contaminants regulated in this subsection.

The effect of this subsection is to make violation of these provisions not only a violation of the code but also of the permit and certificate. It also makes any person responsible for such a violation subject to the penalties that apply to the violation of a permit or certificate requirement.

7:27-8.9 Reporting requirements

COMMENT: Regarding proposed N.J.A.C. 7:27-8.9(b), several commenters made the following remarks and recommendations:

(1) Revise this subsection so that the form of transmittals be as agreed upon by the applicant and the Department rather than "at the discretion of the Department."

(2) Delete from this subsection ". . . at the discretion of the Department."

(3) Although the Department's interest in stimulating efficient data transmission deserves support, the following language is objectionable: "requiring electronic transmission of data at the discretion of the Department."

(4) Under this subsection, the Department has the discretion to require reports on paper, electronically or on magnetic media. Such reports should be required on paper only. The option for electronic or magnetic media should be at the mutual convenience of the Department and the permittee.

(5) Revise this subsection to read: "Such report [shall] **may** be transmitted on paper, on computer disk, or electronically [at the discretion] **with the approval** of the Department." A requirement calling for information to be submitted electronically would place an undue burden on industry. The method of transmittal should be agreed upon by the applicant and the Department.

(6) Amend this subsection to read: "Any person to whom the Department has issued a permit or certificate shall submit any required report in a format or on a schedule approved by the Department. Such reports [shall] **may** be transmitted on paper, or on computer disk, or electronically [at the discretion of the Department]."

RESPONSE: Receipt and review of information are tasks that consume a significant fraction of the Department's resources. In order to ensure the efficiency of the Department's operations, it is essential that reports be transmitted to the Department in a form that the Department can receive and use. It is appropriate that persons to whom permits and certificates are issued have the responsibility for transmitting them in such a form. Although electronic data transmission is definitely the present and future trend, the Department does not intend to institute procedures which would compel small businesses to buy computers. Any applicant who believes himself or herself aggrieved by a decision made by the Department may request an adjudicatory hearing pursuant to N.J.A.C. 7:27-8.12.

COMMENT: Two commenters suggested that, for all paragraphs under proposed N.J.A.C. 7:27-8.9, the Department must state under what conditions these requirements will be imposed. One commenter added that an overzealous permit reviewer may require any or all of these for a simple lubricating oil tank—certainly far more testing than should be required.

RESPONSE: The provisions of N.J.A.C 7:27-8.9 establish reporting, not testing, requirements.

Reporting pursuant to subsections (a) and (d) may be required whenever the Department needs more information about a permitted source. The information may be needed for such reasons as determining the source's conformance with applicable requirements or developing emissions inventory informations for sources of that type.

The requirement for reporting pursuant to subsection (b) is established in the conditions of approval of a permit or certificate. Any person who believes himself or herself to be aggrieved by any condition of approval may contest the condition, in accordance with the provisions of N.J.A.C. 7:27-8.12.

Subsection (c) is a procedural requirement, applicable to all reports submitted to the Department.

Reporting pursuant to subsection (e) is required whenever a change is made so that the permit or certificate information must be amended.

N.J.A.C. 7:27-8.10 Revocation

COMMENT: The Act clearly specifies the Department's right to inspect facilities with certificates for air emissions. However, the Department's proposal to grant itself powers of revocation at N.J.A.C. 7:27-8.10 based solely on failure to allow entry is unwarranted. For instance, there may be situations of imminent danger which would require a prudent operator to deny access temporarily, but which would otherwise fall under the broad and absolute situations of "lawful entry" to which the Department is entitled. The Department, by proposing to grant itself the additonal powers to revoke a certificate, is bypassing other channels, such as the issuance of a notice of violation or involvement by the course, which would typically be called upon as a final arbiter to settle affairs surrounding such a disputed action.

RESPONSE: The provisions of N.J.A.C. 7:27-8.25 state that the Department's right of lawful entry is conditioned by compliance with standard safety procedures. Therefore, this commenter's concern that safety considerations could be dispensed with in situations of imminent danger is without basis.

Denial of lawful entry by any official who has identified himself or herself as an authorized representative of the Department, except to comply with standard safety procedures, would constitute a violation of N.J.A.C. 7:27-8.25 for which a notice of violation could be issued by the Department. However, in addition, the Department has the authority to revoke any certificate held by an owner or operator who makes such a denial. The Department's revocation authority is established in the Air Pollution Control Act, N.J.S.A. 26:2C-9.2(c)(2).

COMMENT: Revise N.J.A.C. 7:27-8.10(a)4 so that the notification process described in this subsection should be self-executing. There is no need to request an amendment of a permit or certificate (which implies regulatory review) for changes that are not "alterations."

RESPONSE: This commenter is correct in stating that, in accordance with these rule amendments, notification of the Department of an amendment to permit or certificate information constitutes a report of a change, not a request for approval of that change. The text of the rule has been modified at N.J.A.C. 7:27-8.10(a)4, to incorporate this clarification.

COMMENT: Proposed N.J.A.C. 7:27-8.10(a)7 cites as grounds for revocation failure to pay fees associated with telephone charges and

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laboratory analysis incurred by the Department. As with N.J.A.C. 7:27-8.7(d)2, these fees are not required by subchapter 8, and therefore should not be grounds for revocation of permits or certificates.

RESPONSE: N.J.A.C. 7:27-8.8(e) makes clear the Department's authority to require, as a condition of approval of a permit or certificate, reimbursement to the Department of certain charges it incurs in verifying a source's operation in compliance with all applicable requirements.

Failure to reimburse the Department for these charges constitutes a failure to comply with the conditions of approval, and is an appropriate ground for the Department's revocation of approval of a certificate.

COMMENT: The uncertainty created by these proposed revisions would be a strong negative factor in any business decision to locate a new facility in New Jersey. By participating in the regulatory program, each operator of a new facility is subject to specific emission limits that are determined, through the permitting process or through other administrative proceedings, to be reasonably necessary to protect the environment and human health and welfare. Operators rely on these permit limits in spending millions of dollars to develop their facilities. Operators are required to abide by these limits at the risk of no longer being able to operate their facilities. The Department should also respect these permit conditions. It is unfair to create a back-door opportunity to revise permit conditions, or even revoke a permit, based on open-ended standards. In addition, open-ended provisions like these may provide an opportunity for litigious third parties to assert a cause of action against facility operators who are otherwise in compliance with their permits. This risk is an unreasonable burden to place on operators of existing facilities and a disincentive to economic development in New Jersey. For all of these reasons, this commenter requests that proposed N.J.A.C. 7:27-8.10(b) not be adopted as proposed.

N.J.A.C. 7:27-8.10(b), as proposed, also fails to provide the due process protection required by law and protect the principles of fairness on which these regulations should be based. This subsection provides that the Department may revoke any approval if it determines that the approval "authorizes a contravention of Federal or State laws, regulations, rules or procedural requirements." Although neither the Department nor operators want to violate Federal or State laws, the Department must recognize that federal and state statutes, regulations and court decisions in the field of air pollution control are complex and subject to constant change and interpretation. It is not fair for the Department to make a subsequent determination that Federal or State law may be violated, and as a result revoke its approval. Facility operators are entitled to presume that permits and certificates are lawfully issued and that operation under their terms will not violate New Jersey law. Unless a New Jersey court finds that the Department's permitting process has not proceeded properly or that the permit conditions are illegal, the Department should not have independent authority to change its mind and revoke its approval. Similarly, the Federal government should be obligated to prove in a court of competent jurisdiction that some part of the Department's approval contravenes Federal law before the Department is entitled to commence a proceeding to revoke its approval. In any event, due process requires that no proceeding to revoke a permit may be instituted until after proper notice to the permit holder and an opportunity to be heard.

RESPONSE: The Department cannot knowingly allow any owner or operator to use equipment or control apparatus in a manner that is in violation of State or Federal law. If the Department becomes aware that any approval it has issued allows use which contravenes State or Federal law, it can not continue to authorize such use.

Any person who believes himself or herself to be aggrieved by a Departmental decision to revoke an approval is entitled to request a stay of the effective date of such a decision in accordance with N.J.A.C. 7:27-8.13 and an adjudicatory hearing in accordance with N.J.A.C. 7:27-8.12.

COMMENT: Add N.J.A.C. 7:27-8.10(c), stating: "**the notification of revocation should be in writing.**"

RESPONSE: The clarification requested by this commenter has been incorporated into the adopted rule.

COMMENT: Concerned proposed N.J.A.C. 7:27-8.10, the rule should stipulate that the permittee must be notified by certified mail 30 days prior to a permit revocation. The notice should also justify the revocation and indicate the steps necessary to avoid revocation again.

RESPONSE: As a matter of administrative practice, the Department normally carries out the practices recommended by this commenter, although the time frame may vary depending on the degree of risk posed and the specific circumstances of the case. However, this detailed level of specification as to administrative practice is not normally codified in the Department's rules.

N.J.A.C. 7:27-8.11 Service fees

COMMENT: While the Department needs to raise additional operating funds, the proposed fee system is unreasonable and contrary to New Jersey law.

RESPONSE: The Air Pollution Control Act, N.J.S.A. 26:2C-9(g), established the Department's authority to charge fees for services it performs. Economic benefits accrue to persons to whom permits and certificates are issued. It is reasonable that these persons reimburse the Department for the costs it incurs in acting on permit and certificate applications and in monitoring conformance with permit and certificate requirements.

COMMENT: From proposed N.J.A.C. 7:27-8.11(b), delete the phrase: "application for a permit." As written, subsection (b) may cause a delay in the issuance of a permit while the accounting activities for the application are being performed. Therefore, the fee should be assessed after the construction permit is issued, but before the final operating certificate is issued.

RESPONSE: While the Department will invoice each applicant prior to taking final action on an application, it does not intend to wait to receive payment before taking final action. This will ensure that the applicant receives notice of the total supplemental fees due in a timely manner, but not delay the issuance of the permit.

COMMENT: Proposed N.J.A.C. 7:27-8.11(d) specifies a 30-day applicant response time if the Department requests supplementary information. Although this is enough time to prepare most supplementary information, the starting point of the 30-day clock is not specified. With possible mailing delays, response time could be considerably less than 30 days.

RESPONSE: The words "receipt of," specifying the starting point of 30-day clock, were inadvertently omitted from the text of this provision. This starting point was intended to ensure that the applicant would have a full 30 days to respond. "Receipt of" has been inserted into the adopted rule.

COMMENT: In today's economy, all businesses must institute controls on their operations and expenses. This is normally achieved through a system of checks, balances and justifications. What controls are in place in the Division of Environmental Quality to prevent a run-away fee schedule?

RESPONSE: Pursuant to the Air Pollution Control Act, N.J.S.A. 26:2C-9(g), the Department may not charge fees, except in accordance with a fee schedule adopted as a rule. Additionally, the Department may charge fees only for services it performs, and in no case may a fee exceed $500.00.

COMMENT: The increased costs do not seem to provide review and approval time limits. The Department's Division of Coastal Resources has acknowledged this responsibility through N.J.A.C. 7:7-4.7, which says: "If the Division fails to act within the prescribed time period, the application shall be deemed to have been approved, subject to the standard conditions set forth in N.J.A.C. 7:7-1.5." The regulated community needs binding time limits to be able to plan and do business on a predictable schedule. The current open-ended application process results in severe economic penalties to the applicant.

RESPONSE: The Department recognizes the importance to the regulated community of timely action on the permit applications it receives. It has therefore established, as goals, the following time periods, from the time the Department is in receipt of a complete application, for completing permit reviews: simple permit—30 days; intermediate permits—90 days; complex permits—six months; and major projects—one year.

The Department's ability to achieve these goals is dependent, however, on adequate staffing of its permit review units. It is the Department's intent to utilize a significant portion of the increased monies collected as a result of the new fee schedule to staff these permit units more adequately.

COMMENT: The proposed fee schedule is out of balance, particularly in Category II, with a 400 percent increase in the "basic" fee. The $350.00 fee for each additional source equipment or control apparatus is also unreasonable.

RESPONSE: Permit and certificate services, provided by the Department to applicants and permittees, have been paid for largely out of public funds. The permit fees paid in the past have been sufficient to reimburse the Department for only a fraction of the services provided.

Economic benefits accrue to those who use equipment and control apparatus, whose construction, installation, and operation is authorized by the permits and certificates the Department issues. These fee increases

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reflect the view that those who enjoy these economic benefits should pay a greater portion of the costs to the Department for action on applications and monitoring consequent compliance. The Department projects that the increased fees will be sufficient to reimburse the Department for about two-thirds of the costs it incurs providing permit and certificate services.

COMMENT: A precise definition of what constitutes a source is needed. To define a source operation or equipment as "any" equipment is unreasonable. Thus, a laboratory instrument could be construed as an additional source to a laboratory hood which, according to the proposal, should be a Category I, not a Category II, permit.

RESPONSE: The terms "source operation," "equipment," and "control apparatus" are defined in N.J.A.C. 7:27-8.1. The phrase "any equipment" used in the context of subchapter 8 means any equipment subject to the rule and does not include any equipment not subject to the rule. N.J.A.C. 7:27-8.2 specifies the types of equipment, control apparatus, and other source operations that are subject to the rule.

For example, a laboratory instrument would be subject to subchapter 8 if:

(a) It had the potential to emit a toxic substance at a rate greater than the exception rate specified in N.J.A.C. 7:27-17;

(b) The combined weight of the material, excluding air and water, introduced to the instrument were more than 50 pounds in any one hour; or

(c) It were a type of equipment listed in N.J.A.C. 7:27-8.2.

If the instrument were subject to subchapter 8, it would fall into Category II. Control apparatus which serve laboratory hoods and other laboratory fume exhaust devices are classified as Category I; but other types of equipment, control apparatus and other source operations used in laboratories, if subject to this rule, are Category II sources.

COMMENT: A cap of $1,500 combined maximum should be placed on any Category II permit and certificate application, and a $1,000 cap should be placed for all supplementary fee-schedule items combined.

RESPONSE: The fee cap established in the Air Pollution Control Act, N.J.S.A. 26:2C-9(g), is a fee limit per service provided. Complex permits may include multiple pieces of control apparatus, emissions of large quantities or emissions that may pose significant threats to human health and welfare and to the environment, and involve innovative, unfamiliar equipment types. Multiple steps or tasks may be involved in evaluating applications for such equipment; consequently, multiple fees may be incurred in the permit or certificate review process, which will total significantly more than the $1,000 or $1,500 caps suggested. The fees charged will, however, not exceed the costs the provision of these services imposes on the Department, and on the average are expected to reimburse the Department for only about two-thirds of the costs incurred.

COMMENT: Several commenters were concerned about the $200.00 per certificate fee for compliance inspections set forth in the proposed Supplementary Fee Schedule in N.J.A.C. 7:27-8.11. Last year, the Department inspected the 800+ permitted facilities at one commenter's plant. The inspector averaged one day per month at the site. If this schedule continues, the fees will add up to $160,000 a year. This is in addition to the $500.00 per certificate for new permits. This means that this commenter will pay for the continuous services of 1+ people, when actually the inspector is at the site one day a month which is certainly not full time. This charge is not justifiable, and the Department should change its fee structure. This fee should be $120.00 per hour and should be charged only for the time the inspector is on the site. This rate correlates with the cost of one hour of technical work in Appendix E of the basis document.

Another commenter stated that the compliance-inspection fee-schedule should not exceed $300.00 **per day**. It would be impossible for a business to plan or budget under the proposed open-ended, chain-reaction fee schedule.

RESPONSE: No person will be subject to periodic compliance inspection fees unless the Department establishes, in its conditions of approval of a permit or certificate pursuant to N.J.A.C. 7:27-8.8(c), a schedule of periodic compliance inspections, to be carried out additionally to any inspections performed pursuant to a Department's reaching a decision as to whether to approve or review a certificate. The cost of any compliance inspection carried out to reach a certificate decision is included in the base certificate and certificate renewal fees. Fees will be charged only for periodic compliance inspections made in addition to these, as scheduled in the conditions of approval. Also, no fee will be charged for any unscheduled compliance inspections which the Department may perform.

COMMENT: Under Item 5e, "Banking," of the proposed Base Fee Schedule in N.J.A.C. 7:27-8.11, make the fees for donation of credits to the State consistent with the cost of processing the application.

RESPONSE: The voluntary action on the part of an owner or operator of shutting down an existing source in a non-attainment area becomes a permanent contribution to improving the air quality of that area should any emission offset credits that derive from that shutdown be donated to the State, rather than used to entitle another source to begin operation.

Such an action is a contribution to protecting public health and welfare and the environment. In addition, by reducing emissions in an non-attainment area, the permittee also relieves the Department to that degree from the administrative burden of promulgating more stringent regulations to achieve such a reduction. This saving of public resources sufficiently outweighs the burden of processing the donation request, making the charge of $0.00 an appropriate fee.

COMMENT: Remove the words "or a mathematical combination" from all paragraphs under N.J.A.C. 7:27-8.11 as the term pertains to a "bubble" permit and is superfluous and confusing.

RESPONSE: "Mathematical combination" is the correct term for referring to the summation of emissions from two or more stacks or chimneys, although "bubble" is a common term for this and is used coloquially.

"Mathematical combination" is therefore the term that is defined in N.J.A.C. 7:27-8.1, and is used in the rule.

COMMENT: This commenter is concerned that all fines and fees that are collected by this program go to funding enforcement, salaries, "other associated programs," etc. It would be beneficial that a percentage of the fines collected be used to fund the Wastewater Trust Fund and help noncompliers to reach compliance.

RESPONSE: The Air Pollution Control Act, N.J.S.A. 26:2C, does not authorize the Department to provide subsidies to enable persons out of compliance to come into compliance. However, N.J.S.A. 54:4-3.56 does authorize tax exemptions for equipment, facilities or devices constructed or installed for use primarily for the purpose of abating or preventing pollution of the atmosphere or the waters of the state.

COMMENT: Several commenters maintained that the fee schedule under proposed N.J.A.C. 7:27-8.11 is overly burdensome and complex. They suggested that the Department should expand permit categorization to several categories in addition to the proposed I and II. Then, the Department should develop appropriate fees based on project complexity and size, and this should result in a single, in some cases larger, fee for each category. However, existing legislation limits fees to $500.00, and in their opinion the Department's approach to obtaining new funding, by creating new "service" categories, violates the spirit if not the letter of the statutory limit. Therefore, these commenters recommended that the Department seek new legislation to allow the necessary higher fees.

RESPONSE: The Department's role is to administer the laws as adopted by the Legislature. The Air Pollution Control Act, N.J.S.A. 26:2C-9, authorizes the Department to charge fees based on the services it performs, not on other criteria such as project size and complexity.

In considering the range of types of permit and certificate applications it receives, the Department determined that, for the purpose of establishing fee amounts, the applications could best be divided into two categories: Category I for simple, common, routine types of sources, and Category II for all others. Creating other categories would not only unduly increase the complexity of the fee schedule, making interpreting it more burdensome to the applicant, but would be unlikely to alter significantly the effective fees.

COMMENT: Some plants will require up to 150 permits for what the Department will currently combine into one permit.

RESPONSE: As set forth at N.J.A.C. 7:27-8.4(d), an application for a permit may include all equipment and control apparatus vented through a single stack or chimney or a "stack equivalent." This represents no change in scope of permits from what has been standard departmental practice. If an owner or operator has 150 sources venting through a single stack combined into a single permit, he will continue to be able to have such a permit under these amendments and new rules.

COMMENT: Several commenters stated that the fee schedule under proposed N.J.A.C. 7:27-8.11 will have a major financial impact on the regulated community and will increase their fees substantially. One commenter said his fees would increase by up to 700 percent. Commenters from the hot-asphalt-mix industry said the proposed fee schedule would increase permitting costs five to sixfold.

One commenter submitted a table comparing permit costs for his research laboratory, the holder of 12 permits, using the proposed and

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existing fee schedules over a five-year period. His Category I permit cost would increase from $3,500 to $20,500, and his Category II permit cost would go from $2,075 to $11,000, a sixfold and a tenfold increases, respectively. This commenter recommended that the proposed fee schedule reflect no more than threefold increase for a typical organization.

RESPONSE: The Department anticipates that, on the average, air pollution control fees will increase 400 percent. However, some persons will find that their fees will increase more than this, and others will find that their fees will increases less than this.

In general, larger and more complex sources and sources that could have the potential to pose a significant risk to human health or welfare or the environment will be subject to larger fee increases. On the other hand, simpler sources which pose no or negligible threat to human health and welfare or the environment will be subject to lesser fee increases. In fact, the Department anticipates that about one-third of all permit and certificate applications submitted will be subject to no fee increases.

Prior to the adoption of these amendments and new rules, the permit and certificate fees paid by applicants reimbursed the Department for only about 40 percent of the costs it incurred in administering the permit and certificate program. The remaining costs were paid for out of public funds.

Permits and certificates authorize persons to install and use equipment. Economic benefits accrue to persons to whom permit and certificates are issued. It is appropriate that such persons alleviate the burden imposed on public funds by bearing a larger portion of the costs entailed in administering the permit and certificate program. Furthermore, as applications for large and complex sources impose a greater administrative burden on the Department, it is appropriate that persons submitting such applications pay a greater amount.

COMMENT: The proposed subchapter 8 amendments will make it practically impossible for the regulated community to pre-estimate total application fees. This will be due to the vagueness of many definitions and to the many new supplemental fees to be charged for services that will originate with the Department's unpredictable discretionary actions. And, since there will be no way to plan for these costs, this will place a particularly heavy burden on public entities because they always operate under very tight budgetary constraints.

RESPONSE: The nature and quantity of air contaminants that may be emitted from a source are a primary factor in determining the degree of review and monitoring a source will require and therefore, the supplementary fees to which that source will be subject.

For budgetary planning purposes, major projects, including but not limited to those subject to PSD and N.J.A.C. 7:27-18 emission offset requirements and sources that may emit significant quantities of any TXS, should presume that they will be subject to all applicable fees.

COMMENT: Since the review of applications for a series of identical or similar installations is duplicative, only the first application should require a fee.

The fees should be based on equipment type, and not on individual equipment. One commenter stated that he recently submitted two applications for facilities involving several redundant vessels, condensers and jets, often in series with a common discharge point. The fees were $3,000 and $4,000. Under the proposed fee schedule, the fees would have been $89,050 and $128,250. These new figures do not include the costs of protocol approval, modeling and risk assessment review, and monitoring certification. According to the Basis document, this commenter would be paying enough to have one technical person work full time for one and one-half years to review these two applications. This is unacceptable.

RESPONSE: The permit and certificate requirements in the Air Pollution Control Act, N.J.S.A. 26:2C-9.2, are imposed on each device which is equipment or control apparatus. The permit and certificate code, N.J.A.C. 7:27-8, including the fee provisions thereof, are derived from this basis.

Also, allowing lower overall fees when permitting several similar devices as opposed to permitting the same number of different devices entails establishing criteria for differentiating similar from different and creates an administrative burden for implementing the criteria. Rather than attempting to justify how to differentiate devices that are "almost the same" from those that are undoubtedly "somewhat different," while recognizing that each device does have its own emission stream that must be evaluated, the Department has developed a fee schedule that makes no provisions for such differentiation.

COMMENT: Inasmuch as many permit applications are processed simultaneously, and inspections can be done more economically at multiple installations on a single site, there should be a discount for multiple permits at the same facility.

RESPONSE: The compliance inspection fee is based on the average time required to conduct such an inspection. A number of factors may contribute to making the actual inspection time required for any given source higher or lower. A grouping of equipment on one site or at several adjacent sites may diminish the travel time required. However, inaccessibility of location, site safety procedures, and operational problems are among the factors that may increase the time required. Consequently, one can not conclude that inspection of several sources at one facility is necessarily less time-consuming than inspection of the same number of sources at multiple facilities. On balance, use of one average inspection time figure as a basis for all inspection fees avoids undue complexity and achieves reasonable fairness.

COMMENT: The fees proposed under Banking, Bubble, PSD, Air Monitoring, Air Quality Impact Analysis, Risk Assessment, Testing, and Audit Performance of Continuous Emission Monitors appear to be duplicatively subdivided so as to collect multiples of the maximum $500.00 service fee. This treatment will render the fees for these services exorbitant.

RESPONSE: In the course of its administration of permits and certificates the Department provides an array of distinct services to applicants and to persons to whom a permit or certificate has been issued, each of which culminates in a determination by the Department. For example, an approval or denial, a finding of adequacy, sufficiency, conformity or inadequacy, insufficiency, or failure to conform.

This fee schedule establishes separate fees for many of these services. The fee categories are not duplicative, but rather indicate separate services the Department provides. For each fee category, the multiple tasks performed to carry out the respective service are listed in Appendix B of the Basis and Background Document for the rule proposal.

Only a few of the services listed in the fee schedules need be performed for most permits and certificates. To a significant degree, the number of services required, and, therefore, the total sum of the fees to which that source is subject, are related to the scale of the project and the extent to which its emissions may pose a threat to public health and welfare and the environment. The intent is not to proliferate fees, but rather to charge fees that, to the greatest degree possible, reflect the costs of the administrative burden imposed on the Department in providing the service.

COMMENT: The magnitude of the proposed fee increases and duplication of payments are such that they should force the State and the regulated community to examine carefully the Department's mission and the bureaucratic mechanism designed to carry out that mission. Several commenters stated that the increase in fees should result in more timely permit review and an improvement in service.

RESPONSE: It is the Department's objective to continue to improve its administration of the air pollution control permit and certificate program so that services entailed will be performed in a more thorough and timely manner. In addition to utilizing the additional resources derived from the new fee schedules to provide more staff to carry out permit and certificate tasks, the Department plans to work toward this objective by continuing the improvement and streamlining of procedures, by program reorganization, and through management development and staff training. As this transition occurs, suggestions from the regulated community as to how to make the Department's bureaucratic "mechanisms" more effective will certainly be encouraged.

COMMENT: In the "Supplementary Fee Schedule" of proposed N.J.A.C. 7:27-8.11, replace the heading entitled "AMOUNT" with "TO A MAXIMUM OF" to allow the Department to charge a fee consistent with the complexity of the activity.

RESPONSE: The fee amounts, except where limited by the $500.00 fee cap established in the Air Pollution Control Act, N.J.S.A. 26:2C-9(g), represent the average, not the maximum, cost to the Department of performing the service. It would be administratively unwieldy to adjust fees higher or lower each time a service is performed, depending on how time-consuming performing the service was in that instance. Charging fees that represent an average cost of a service avoids undue complexity and achieves reasonable fairness.

COMMENT: Considering the cost per hour to the Department and speaking as a body shop owner and a small generator, this commenter states that he leans toward the increase in the fee structure.

RESPONSE: Your open-mindedness toward the revised fee schedules is appreciated.

COMMENT: The notice in the February 5, 1990, issue of the New Jersey Register gave $1.9 million as the 1988 fiscal year fee collection amount. This covered one-sixth of the cost of the 1988 air program

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budget, 40 percent of which was spent on permit and certificate implementation. Thus, the cost of permit and certificate responsibilities was about $4.6 million in 1988. If the proposed additional fees amount to $6.8 million in addition to the already collected $1.9 million, the $8.7 million total permit and certificate fees collected will exceed the 1988 fiscal year cost by about 90 percent. Although the permit fees imposed should bear no more than the cost of the permit program, it appears that the proposed fees are designed to recover the costs of the entire air program.

RESPONSE: The funds that have been available for the administration of the permit and certificate program have been insufficient to carry out the range of responsibilities entailed thoroughly and efficiently. This resulted in backlogs in the reviewing of permit applications and in other areas of the program. This resulted in certain tasks such as compliance inspections being performed with less than optimal frequency. This also resulted in some jobs not being performed or not being performed well. It is a reflection of this situation that several commenters have stated that they have not received adequate service from the Department. Each year the situation becomes somewhat more aggravated, as the number of permitted sources increases and the workload to be performed expands without a concomitant staff increase. In addition, inflation each year erodes the value of the funds available to the Department.

The additional resources anticipated from the revised fee schedule will be used both to counteract the effects of inflation and provide additional staffing.

COMMENT: The $120.00-an-hour basis for the background document's cost estimates seems excessive. A comparison with this commenter's organization, done by dividing its total budget (including administrative and overhead costs) by the number of first line researchers, results in $62.00 an hour. The Department should be able to operate at a $60.00 to $70.00 hourly rate.

RESPONSE: This commenter may represent an organization that is a more cost-efficient operation. Differences between the organizations or the methodologies used in calculating costs may also explain the discrepancy.

COMMENT: Since the Department maintains that a 350 percent increase will not suffice, a larger increase should be expected in three years. The yearly $147,000 cost per engineer given by the Basis and Background document is out of line with industry standards. The 1,170 hours of productive work per year, or a weekly 22.5 hours, is low. The 25 percent of a technical reviewer's time spent on administrative reports also seems out of line. The Department seems to be double counting sick and training time. Fifteen days of sick leave are far beyond what is actually used or industry standards. Ten days are unlikely to be used for training, and 52 days are an inordinate amount for administrative tasks. Engineering consultants estimate the cost per engineer at between 2.2 to 3.2 times the base salary—or $79,000 to $115,000 for a $36,000-a-year engineer, including profits, benefits, building costs, training, vacations and holidays.

Of the 236 working days in a year, only 156 will be dedicated to technical tasks. Almost 35 percent of the available time is spent on nontechnical activities. This may be where you want to start making changes in the system, not by raising fees. The permittee should not have to support activities that are not associated with the permitting process.

If the Department's figures are accurate, the air permit program will be an ideal place for the State Office of Management and Budget to start the Florio auditing process, or seek alternative methods of approval (perhaps certification by Department approved and regulated private firms).

RESPONSE: The Department's apportionment of costs per technical staff person (calculated to be $140,400) was prepared with care. While some estimation was involved in the calculation, the result is a reliable figure. What may be misleading is that this figure represents not just the costs to the Department of employing that one person, but also the apportioned costs of all the other persons in the Department (including administrators, managers, personnel managers, attorneys, accountants, computer technicians, word processors, secretaries, etc.) who support that individual's work.

The 1,170 hours of technical work per year in fact represents only 75 percent of the staff person's "productive" work time. The remaining 25 percent, labelled in Appendix E of the Basis and Background Document as being expended on "administrative" tasks, is also productive time. Administrative tasks are in fact a catch-all category that includes all other tasks and assignments the staff person takes on in addition to his or her primary assignment. Major components of this category include answering the numerous telephone inquiries received from the public, obtaining and providing the necessary information and drafting written responses to public inquiries. Preparing reports, oversight of file maintenance, attending staff meetings, drafting standard operating procedure documents, researching state-of-the-art emission control issues, and preparing presentations are also among the myriad of "administrative" tasks that may be performed.

COMMENT: The proposed 350 percent fee increase cannot be justified by simply stating that it results from "the multiplication of the average number of hours it requires the Department's technical staff to provide the service by the cost to the Department, on the average, to provide one hour of technical service."

RESPONSE: This approach has been taken to set fee amounts so that, within the constraints imposed by the fee cap established in N.J.S.A. 26:2C-9(g), the fee amounts reflect the workload and costs that performing such a task impose on the Department.

COMMENT: It seems the renewal fee has been increased because the Department wants to review every permit that comes up for renewal to ensure it complies with its current state-of-the-art definition. If a facility is older than 15 years, this may be acceptable. However, for newer facilities, this does nothing but add additional costs to the permitee and paperwork for the Department.

RESPONSE: The increased renewal fees do not reflect any intent by the Department to perform a new state-of-the-art emission control review of the equipment and control apparatus at the time of certificate renewal. The Air Pollution Control Act, N.J.S.A. 26:2C-9.2(c), does not provide the Department authority to reevaluate whether equipment or control apparatus incorporates advances in the art of air pollution control at the time of certificate renewal.

COMMENT: Several commenters found the $500.00 certificate-renewal fee proposed under N.J.A.C. 7:27-8.11 excessive and unjustified because renewals will involve little review. They offered the following comments and suggestions:

(1) Only $500.00 should be charged per set of five certificates.

(2) Certificate applications should not be subject to the same fee as permit applications. $250.00 per set of five certificates would be more appropriate.

(3) The existing $75.00 renewal fee is more in line with the probable cost to the State for this service. It should be maintained, unless the Department can justify a greater change.

(4) The renewal fee should not exceed $150.00. In addition, it will be helpful if the Department simply requires submittal of the correct amount rather than rejecting the application.

(5) Currently, this commenter renews about 40 permits per quarter, and under the new schedule this will cost $80,000 a year. Renewals require very little from the Department. Generally, the Department sends a computer printout to the permittee asking whether a renewal is needed. If the permittee wishes to renew, he returns the form with a check and gets a certificate.

RESPONSE: The certificate renewal fee covers not just the processing of the certificate renewal forms, but the Department's oversight of that source for a five-year period. Appendix B of the Basis and Background Document contains a detailed listing of the numerous tasks such oversight entails. The fee amount reflects the amount of work required over this five-year period.

COMMENT: The renewal fee should be broken down by category, with Category I costing less than Category II renewals. Since there is no difference between Category I and II renewal fees, the proposed amendment will make it more economical to reapply for a Category I permit than to renew it.

RESPONSE: The Department finds merit in this comment. Also, since the new fee schedule was proposed in February 1990, the Department has been engaged in on-going efforts to streamline its review of Category I sources. These efforts are resulting in a less resource-intensive process.

Therefore, as suggested by the commenter, the Base Fee Schedule in N.J.A.C. 7:27-8.11 of these new rules and amendments includes different certificate renewal fees for Category I and Category II sources. The lower ($250.00) certificate renewal fee for Category I sources reflects the workload savings that are being achieved, or are anticipated, through these streamlining efforts. Also, having the Category I certificate renewal fee the same as the Category I permit fee eliminates any incentive to submit a permit application, rather than a renewal application, at renewal time.

COMMENT: Concerning the "amendment" fees proposed under N.J.A.C. 7:27-8.11, two commenters estimated that $200.00 was excessive for "equipment changeover," and suggested that $50.00 should suffice. Particularly for general information and ownership, which in his opinion merely require clerical changes, a third commenter recommended a flat $250.00 fee per notification.

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RESPONSE: Reports of changes made to equipment or control apparatus require additional verification that the change reported is appropriately classified as an amendment of an existing permit or certificate and not an "alteration" for which a new permit would be required. The higher fee for changes to equipment reflects the greater workload the Department must carry out in its oversight of the change.

The amendment fee for transfer of ownership and for changing company name, mailing address or stack designation is on a "per permit" basis. All such changes, reported to the Department in a single submittal, would be subject to a single $50.00 fee.

For reports of other changes, such as change of telephone number and plant contact submitted to the Department as an amendment of an existing permit, no fee will be charged, pursuant to the adopted fee schedule.

COMMENT: Concerning the periodic compliance inspection fees in the "Supplementary Fee Schedule" of proposed N.J.A.C. 7:27-8.11, several commenters offered the following comments and recommendations:

(1) Since inspection fees are included in the renewel fees, the permittees will be charged twice for inspections.

(2) If not included in the initial fee, inspections should be charged on a daily or hourly basis; for example, $200.00 a day.

(3) It is unclear how the $200.00 per-inspection-per-permit fee will be enforced. Instead, permitted facilities should be charged an annual fee based on the number of permits and one yearly inspection per permit.

(4) The $200.00 per inspection fee can become very expensive. The Department should charge less for a Category I (that is, a storage tank) inspection than for a Category II inspection.

RESPONSE: Certificate and certificate renewal fees include the costs of any compliance inspections which the Department may perform as part of its process of reaching a determination as to whether to approve or deny the certificate or its renewal. Periodic compliance inspection fees are fees charged in addition to these, for additional compliance inspections performed in accordance with a schedule set forth in the conditions of approval of the permit or certificate. If such a schedule is not included in the conditions of approval, the source is not subject to periodic compliance inspections fees.

The Department anticipates that it will not be usual for a Category I permit to have an inspection schedule included in its conditions of approval. However, should such a schedule be established, the nature of the inspection would not significantly vary between Category I and Category II equipment. Therefore, a uniform fee for both categories of equipment is appropriate.

Since any periodic compliance inspection will be set forth in the conditions of approval, the owner or operator may anticipate and plan for the fees which will be charged. Also, if the owner or operator believes himself or herself to be aggrieved by the Department's decision to impose such an inspection schedule, he or she is entitled to contest the decision and request an adjudicatory hearing, pursuant to N.J.A.C. 7:27-8.12.

COMMENT: Revise the proposed Supplementary Schedule in N.J.A.C. 7:27-8.11 to make it consistent with the Base Fee Schedule, which recognizes that concurrent reviews for additional pieces of equipment in an application do not require the same effort as multiple, independent applications. Thus, the base schedule provides for reduced fees for the second and additional pieces of equipment or control apparatus. Similarly, the regulations should allow a single protocol to cover multiple similar or identical sources, and be subject to a single "per protocol" fee. The periodic-compliance-inspection fees should also have reduced fees for the second and subsequent certificates.

RESPONSE: A number of the fees in the Supplementary Fee Schedule are, in effect, being charged on the "per facility" or "per major project" basis, and therefore, have a broad scope as recommended by this commenter. For example, the Ambient Air Monitoring/Review Protocol fee is charged "per protocol"; the protocol would be for the entire ambient air monitoring program under consideration.

Periodic compliance inspection fees, however, are on a "per inspection per certificate" basis. Such inspections will be carried out for sources that the Department has determined, during its permit or certificate review, require regular scrutiny. Each such inspection means workload imposed on the Department. The fee set for periodic compliance inspections reflects the average workload such inspections impose, and, therefore, takes into account the variation in workload that may occur from inspection to inspection.

COMMENT: Several commenters were concerned with Item 6, "Audit Performance of Continuous Emission Monitors," of the proposed Supplementary Fee Schedules in N.J.A.C. 7:27-8.11. One commenter stated that it is unclear whether the fees will be charged per facility, per train or per pollutant. Facilities with multiple process trains will require numerous continuous emission monitors for each flue, and a per-monitor fee would be extremely costly. Since more than one monitor is used for the same function, a per-monitored-pollutant fee would be preferred. Also, a per-facility fee cap would be appropriate. How will the Department handle these fees? The same analysis can be applied to performance testing and report reviewing. Another commenter stated that the protocol evaluation fee should be based on the permit, not on each individual monitor. This is because one device may monitor multiple parameters, and one stack may have multiple sampling devices.

Another commenter stated that the $500.00 fee per continuous emission monitor to evaluate the performance protocol is excessive. Since performance testing follows standard EPA and Department-approved methods, to charge $500.00 for the review of a boilerplate document is too much. This fee should be $100.00 per certificate, not per monitor. Often duplicate monitors are installed on units to ensure continuous compliance. The per-monitor fee penalizes the permittee for being proactive in trying to comply with the regulations and protect the environment.

Another commenter stated that the permittee should not be required to bear the test observer cost.

RESPONSE: The basis for the fees related to the auditing of performance of continuous emission monitors is set forth in the fee schedule. Fees for protocols will be charged on a "per protocol per permit" basis. The protocol will specify the performance tests that must be carried out and the procedures which must be followed to verify the performance of the continuous emission monitoring system required by a permit. Fees for observing the testing will also be on a "per protocol, per permit" basis. A single "Observe Testing" fee will be charged for all observation performed by the Department of the testing performed pursuant to a protocol for a particular permit. In most cases a single testing report, prepared for all testing and performed pursuant to a protocol for a particular permit, and will include the results of all performance tests carried out. The fee for reviewing the report will be on a "per report" basis.

Auditing the performance of continuous emission monitors, required pursuant to the conditions of approval of a permit or certificate, imposes a workload on the Department. It is appropriate that the persons to whom the permits and certificates are issued bear, at least in part, the cost of that workload.

COMMENT: In order to assure consistency in permitting and enforcement, and to inform the public of the Department's intent, "continuous emission monitor" should be defined as a part of the public record.

RESPONSE: Performance Specification 2, Appendix B, 40 CFR 60 defines a "Continuous Emission Monitoring System" as: "The total equipment required for the determination of gas concentration or emission rate." A "continuous emission monitor," as listed in Item B6a of the Supplementary Fee Schedule in N.J.A.C. 7:27-8.11 of the adopted new and amended regulations, corresponds to such a system, when used for the continous determination of air contaminants in the exhaust gases released through any stack or chimney, or stack equivalent. Such a continuous emission monitoring system includes, but is not limited to, the sample interface, the analyzer, and the data-recording system.

N.J.A.C. 7:27-8.12 Request for an adjudicatory hearing

COMMENT: Two commenters recommended that the 20-day time limit at proposed N.J.A.C. 7:27-8.12(c) be increased to 30 working days, and a third commenter suggested an increase to 45 working days.

RESPONSE: The time for filing a hearing request is prescribed at N.J.S.A. 26:2C-14.1 and codified at N.J.A.C. 1:1-1.4. Specifically, the 20 calendar days for filing a hearing request start on the calendar day after a person receives notice in writing of the Department's decision. The Department is following the statutory language, and has no authority to expand the time frame as suggested by the commenters.

COMMENT: Several commenters objected to the Department's authority at proposed N.J.A.C. 7:27-8.12(e) to determine whether any request for a contested case hearing should be granted.

Two commenters stated that every hearing request should be granted.

And another commenter added that:

(1) He objected to any limitation by the Department on the right to an administrative hearing as a violation of the Administrative Procedure Act, pursuant to which the Office of Administrative Law should decide whether a contested case exists, or whether issues of fact or law are raised.

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(2) He thought this was another example of a disturbing trend that has the Department acting to limit hearings whenever possible, sacrificing constitutional rights on the altar of administrative convenience.

(3) Moreover, he found the entire procedure very complex and in need of simplification.

RESPONSE: The Department disagrees with these comments. According to the Administrative Procedure Act, an initial determination must be made by the Commissioner that a contested case exists. As for the information to be provided in a hearing request, the Commissioner needs a certain amount of information to decide whether a contested case exists. The Department may deny a hearing request if the requesting party does not fulfill the enumerated requirements of the hearing request procedure. The Department believes that the information required by these rules to be submitted as part of a hearing request is both appropriate and reasonable.

N.J.A.C. 7:27-8.14 Confidentiality claims

COMMENT: Concerning confidentiality, proposed N.J.A.C. 7:27-8.14 through 8.22 appear to contradict the Act which, under N.J.S.A. 26:2C-9.2(a), states: "Information relating to secret processes or methods of manufacture or production is exempted from the plans and specifications and other pertinent information to which the Department is entitled under this section." Raw material percentages are irrelevant to the review and should be deemed secret, but still there is a need for some information from applicants. The State Legislature needs to change the Act before the Department can effectively obtain data.

RESPONSE: All statutes must be read with their intended purpose in mind. The Department must know a certain amount of information in order to either issue or deny a permit or certificate. The confidentiality provisions in the rule allow a procedure for the Department to gain enough information to make a responsible permit or certificate decision while giving comfort to the applicant about his or her confidentiality claim.

COMMENT: Concerning proposed N.J.A.C. 7:27-8.14(a), three commenters stated that air contaminants should be considered confidential, but pollutant categories should be reported and should not be kept confidential.

A fourth commenter recommended the addition to N.J.A.C. 7:27-8.14(a) of: "**However, when a specific substance is emitted that can be classified in an air contaminant category accepted by the Department, the specific substance identity may be claimed as confidential.**" He added that the release of information as to the specific composition of emissions could compromise a confidentiality claim, and that information by category (VOS, for example) should suffice.

Another commenter suggested that the following sentence should be added to proposed N.J.A.C. 7:27-8.14(a): "However, if such information could lead to release of proprietary information or trade secrets, Department-approved emission categories instead of specific compounds may be used."

RESPONSE: Emissions released from an operation into the ambient air may affect public health or welfare or the environment. Therefore, an applicant may claim use, but not emission, of a specific chemical species as confidential information, if the applicant believes such usage information is entitled to confidential treatment pursuant to N.J.A.C. 7::27-8.16 and 17. In no case is information pertaining to either use or emission of a category of air contaminants entitled to confidential treatment.

N.J.A.C. 7:27-8.17 Substantive criteria for use in confidentiality determinations

COMMENT: In various sections, confidentiality can be claimed for "proprietary information" and for information that, if disclosed, "would be likely to cause substantial damage to its competitive position." But N.J.A.C. 7:27-8.17(a)6 limits confidentiality claims to "secret processes or methods of manufacture or production." Many other types of information (such as protocols for modeling and monitoring which can affect realty costs) can be considered "proprietary" and premature disclosure can affect one's competitive position. The Department should allow a broader range of information claimable as confidential, and should recognize that "premature disclosure of information" can be a substantive basis for entitlement to confidential treatment.

RESPONSE: The statutory language at N.J.S.A. 26:2C-9.2(a) specifically limits the claims of confidentiality to "information relating to secret processes or method of manufacture . . ." The Department is limited by this statutory language and has no authority to expand the scope of confidentiality claims.

N.J.A.C. 7:27-8.18 Disclosure of confidential information

COMMENT: Concerning proposed N.J.A.C. 7:27-8.18(c), notification of disclosure of confidential information should be done prior to the disclosure of the information.

RESPONSE: The Department has proposed the conditions where it will disclose confidential information only to another state or federal agency in proposed N.J.A.C. 7:27-8.18(a) and (b). The Department is confident that these procedural safeguards along with the notification to the applicant after the information is disclosed is both efficient and appropriate.

COMMENT: Several commenters recommended the addition to proposed N.J.A.C. 7:27-8.24(a)1 of the phrase "to the best of my knowledge" into the certificate statement. They stated that, in many cases, a submittal to the Department is based on information received from laboratories, consultants, and equipment manufacturers that one cannot always verify. Another commenter added that high ranking individuals with overall responsibility do not typically have direct knowledge.

RESPONSE: The Department disagrees with this suggested additional language. The Department has determined that a senior manager must be responsible for the actions of his or her company. The intent of this certification is that the senior manager must have personal knowledge of the operation of his or her company and be responsible for the environmental as well as the economic actions of that company.

COMMENT: Proposed N.J.A.C. 7:27-8.24(a)1, as now written can be construed to mean that any person signing the required certification is subject to civil and/or criminal penalties if his or her permit application is rejected because additional information is required.

RESPONSE: Pursuant to N.J.A.C. 7:27-8.24(a) as adopted, the person who signs a certification and files a permit application that is not "true, accurate and complete" is liable to the penalties prescribed by law. Even when a complete application is submitted, the Department may find in the course of its review the need for additional information. The Department may request such information, which when received is included as part of the application information. Such a request from the Department need not imply that the original application was incomplete.

COMMENT: Under proposed N.J.A.C. 7:27-8.24(a), the requirement calling for a certification to be "signed by the highest ranking individual with direct knowledge and overall responsibility for the information contained in the certified document" be included with "in application, registration, or report" to the Department is too demanding. It should not apply to all reports, such as quarterly information or amendment filings.

RESPONSE: Persons who submit reports to the Department, including periodic reports submitted pursuant to conditions of approval, the requirements of a promulgated rule or regulation, and reports which are incorporated into a permit or certificate as an amendment of the permit or certificate information, are responsible for the contents of those reports. The "highest ranking individual with direct knowledge and overall responsibility for the information contained in" the report is the person with this responsibility and is, therefore, the person required to sign the certification contained in N.J.A.C. 7:27-8.24(a).

COMMENT: Clarify proposed N.J.A.C. 7:27-8.24(b)2. Certain regulations, such as those promulgated pursuant to the Toxic Catastrophe Prevention Act, require a company to notify the Department's Environmental Action Line both verbally and in writing in the event of an Extremely Hazardous Substance release. Verbal and written notification must be immediate and within three working days, respectively. If the Department implies that notifications of this nature must follow N.J.A.C. 7:27-8.24, there will be major problems and confusion. This section should be confined to permitting activities only. The Department should allow the other promulgated regulations to cover their own violations and reporting requirements.

RESPONSE: N.J.A.C. 7:27-8.24(b)2 pertains to written reports submitted pursuant to the provisions of this rule.

COMMENT: Delete proposed N.J.A.C. 7:27-8.24(b)2 because it may contravene the Fifth Amendment to the United States Constitution.

RESPONSE: The Department believes that N.J.S.A. 7:27-8.24(b), as adopted, does not contravene the Fifth Amendment to the United States Constitution.

COMMENT: One commenter recommended the addition of the following at proposed N.J.A.C. 7:27-8.24(d):

"(d) . . . official, or by a duly authorized representative of that person, as described in (e) below."

Naturally, (e) would become (f). The new (e) would be:

"(e) A person is a duly authorized representative only if:

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"1. The authorization is made in writing by a person described in (d) above:

"2. The authorization specifies either an individual or a position having responsibility for the overall compilation and submission of the application or report, such as the position of a corporate environmental manager, licensing/permitting manager, or a person of equivalent responsibility (a duly authorized representative may thus be either a named person or any individual occupying a named position);

"3. The written authorization is submitted to the Department; and

"4. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation, a new authorization satisfying the requirements of this subchapter shall be submitted to the Department with any documents to be signed by a duly authorized representative."

He added that this is necessary because, in a large corporation, the vice presidents are unable to examine personally the voluminous, complex, highly technical information in a major air application.

Another commenter recommended the addition of the following phrase to proposed N.J.A.C. 7:27-8.24(d): "or the highest ranking officer on site who has been designated as a corporation representative by the Corporate Vice President." There are several manufacturing facilities in the state without a resident vice president on site.

RESPONSE: The Department disagrees with this suggested additional language. The Department has determined that a ranking official must be responsible for the actions of his or her company. The intent of this certification is that the ranking official have personal knowledge of major permitting activity with the potential for significant environmental consequences as it is being initiated by the company and for violations of rules, regulations, and permit and certificate requirements caused by the activities of the company. The ranking official must be responsible for the environmental as well as the economic actions of that company.

N.J.A.C. 7:27-8.25 Inspections

COMMENT: The Department should be restricted to inspecting equipment, processes, and plant areas affected by an air permit being inspected.

RESPONSE: The Department has, consistent with both the Federal and State constitutions, both general and specific statutory authority to investigate known or suspected sources of air pollution. Pursuant to N.J.S.A. 13:1D-9, the Department has authority to "enter and inspect any building or place for the purpose of investigating an actual or suspected source of pollution of the environment and ascertaining compliance or noncompliance with any codes, rules and regulations of the Department." Pursuant to N.J.S.A. 26:2D-9(d), the Department has a right "to enter and inspect any building or place, except private residences, for the purpose of investigating an actual or suspected source of air pollution." Also, pursuant to N.J.S.A. 26:2D-19(b) "any person who violates the provisions of this or any code, rule, or regulation or order promulgated or issued pursuant to this act shall be liable to a civil administrative penalty of not more than $10,000 for the first offense, not more than $25,000 for the second offense, and not more than $50,000 for the third and each subsequent offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense." Therefore, a refusal to allow the Department to enter is a violation of the Act. Each day of this violation will trigger an additional penalty.

Furthermore, Department compliance inspectors are authorized to verify conformance with a range of environmental acts, rules, regulations, and other requirements, not just conformance with Air Pollution Control permits and certificates.

COMMENT: In proposed N.J.A.C. 7:27-8.25(b), the second sentence should have the following provision at the end: ". . ., provided that such conditions are within the safety margins applicable to the equipment."

RESPONSE: The adopted rules clarifies that the Department may request the owner or operator to operate equipment or control apparatus during testing only in accordance with the parameters and limits set forth in the permit in effect. As any requested operating conditions would therefore be consistent with the range of authorized operation set forth by the owner or operator in a permit application, this should ensure that any operating conditions requested by the Department would be within safety margins.

COMMENT: Under proposed N.J.A.C. 7:27-8.25, the word "site" is used, which is not a defined term. However, "facility" is defined and appears to be synonymous.

RESPONSE: In the adopted rule, the term "facility," rather the undefined term "site," is used in this section.

COMMENT: Concerning proposed N.J.A.C. 7:27-8.25(a), several commenters recommended modification of the phrase "compliance with appropriate safety procedures." Some of them suggested the revision of this subsection to read: ". . . and compliance with appropriate **facility safety procedures.**" They added that the Department must adhere to the facility's safety procedure, which may be more stringent than standard safety procedures, and were developed by those most knowledgeable of their site safety concerns. Another commenter suggested replacement of this phrase with "compliance with the written safety policies of the facility." One commenter suggested that the Department should not have the right to conduct compliance inspections where such activities pose a safety risk to the Department representative and their company escort. Another stated that reference to safety procedures should specifically state compliance with Occupational Health and Safety Act (OSHA) regulations and company established safety procedures and policies.

RESPONSE: The adopted phrase "appropriate standard safety procedures" encompasses any facility safety procedures which the Department has considered and determined to be appropriate. Any owner or operator who has written safety procedures which are more specific or stringent than standard industry practice and that should, in his opinion, be observed by Departmental staff during their conduct of compliance inspections, should submit these to the Department in advance of any such inspection for its review and concurrence as to the procedures' appropriateness.

COMMENT: Revise proposed N.J.A.C. 7:27-8.25(a) to read: "Such right shall include, but not be limited to, test or sample any materials at the facility **related to the issue of non-compliance,** to sketch or photograph any portion of the site **related to the non-compliance,** building or equipment, to copy or photograph any documents or records necessary to determine compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant **who might reasonably have information related to the issue of compliance or non-compliance.**"

RESPONSE: This suggestion has not been incorporated into the adopted regulations, as it is the responsibility of the Department to verify conformance with laws, rules, regulations, exemptions, and permits and certificates, and not just to investigate suspected instances of non-compliance.

COMMENT: Photographs should only be allowed if the proper equipment is used for taking pictures of the non-compliance. It is unacceptable for the Department to use equipment that does not meet the specifications determined by the Underwriters Laboratory intrinsic rating of a Class I, Division I, Group D. This is the rating for explosion-proof cameras.

RESPONSE: If the conditions prevailing at a facility require the Department to use any specialized equipment, such as the use of explosion-proof cameras in order to conform with the written safety procedures of the facility, the owner or operator should provide the Department with a copy of such written procedures in advance of the Department's performing any compliance inspection, and should notify the Department of the need for use of specialized equipment.

COMMENT: N.J.A.C. 7:27-8.25(a) indicates that the right of inspections shall be absolute, whereas proposed subsection (c) indicates entrance to any premises at reasonable hours. Is a reasonable-hour clarification appropriate for proposed N.J.A.C. 7:27-8.25(a)?

It is inappropriate to review records at other than a site's normal business hours because personnel familiar with these records are not available "at any time." Authorization for inspections at non-business hours should be limited to the investigation of alleged violations believed to occur at the time of off-hour inspections.

The Department should be limited to inspect during normal working hours or during "reasonable working hours," unless the inspection responds to a specific non-compliance allegation.

RESPONSE: While the Department is authorized to enter any premise at any hour to ascertain compliance or noncompliance with the Air Pollution Control Act, rules, regulations, any permit or certificate, or any order or agreement issued or entered into pursuant thereto, this authority is tempered, pursuant to N.J.A.C. 7:27-8.25(c), with reasonableness. What is reasonable depends on the specific context, including but not limited to the operational patterns of the facility and the potential for risk to public health or welfare or the environment.

COMMENT: Several commenters expressed concern that the provisions of N.J.A.C. 7:27-8.25(a) would jeopardize preservation of confidentiality. One commenter noted that the paragraph provides the Department with the right to photograph buildings, equipment and documents, and sample process streams, but does not indicate whether the photographs taken or any reports based on analysis of the samples that

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are deemed proprietary or company secrets will be maintained as confidential information by the Department following the inspection. Two commenters recommended that, for security and confidentiality purposes, photography should be deleted from this section.

One commenter observed that the Department has extended its authority to sample and/or duplicate documents, materials and property of a facility which are considered confidential, without any confidentiality provisions. In the past, the Department has by mistake sent copies of permit documents to the wrong parties, and inadvertently released information regarding plant effluents. The Department was notified by phone in all these instances. Due to this past performance, all documents should be reviewed at the plant site, unless the company does not consider the information confidential, or the Department develops duly promulgated regulations concerning the handling of confidential, privileged trade secrets or security information.

One commenter recommended adding, at the end of the last sentence, the phrase "and prior confidentiality agreements" to ensure that confidentiality is observed.

One commenter recommended including a new subsection to cover confidentiality claims made during an inspection, reading as follows:

"(d) Notwithstanding the requirements of N.J.A.C. 7:27-8.25(a), (b), and (c), any information or data requested during inspections or Department activities authorized by N.J.A.C. 7:27-8.25(a), (b), and (c), which is claimed to be confidential may be submitted in accordance with N.J.A.C. 7:27-8.14."

Another commenter suggested that the Department should not have the right to conduct compliance inspections when such activity jeopardizes the confidentiality of the process of product.

RESPONSE: Any person required to provide the Department access to information pursuant to N.J.A.C. 7:27-8.25 may regard such access as equivalent to submitting "information, pursuant to the provisions of the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. or this subchapter," as set forth in N.J.A.C. 7:27-8.14(a), and may claim confidentiality of the information so provided to the Department pursuant to N.J.A.C. 7:27-8.14. The provisions and conditions applicable to determination and maintenance of confidentiality set forth in N.J.A.C. 7:27-8.14 through 8.22 shall apply. The penalties set forth in N.J.A.C. 7:27-8.23 shall apply, if employees, representatives, and contractors fail to adhere to the procedures set forth to preserve the confidentiality of confidential information.

COMMENT: Several commenters objected to requirements to assist the Department in performing sampling. One commenter stated that proposed N.J.A.C. 7:27-8.25(b) exceeds reasonableness in its requirements of assistance to departmental inspectors. The Department should supply its own sampling equipment. A source will be required to stock sampling equipment and containers, and this goes well beyond providing safe sampling ports and cooperating by providing process information and operating equipment under conditions required for sampling and testing. Another commenter recommended deletion of all references to "assisting" the Department. If the Department wants to take samples, it should take the samples itself. This is not the applicant's responsibility.

RESPONSE: The Department's inspectors collect samples for a wide array of types and makes of equipment and control apparatus. These inspectors rely on the assistance of owners and operators to have available appropriate sampling equipment for the particular types of permitted devices they operate. Making available such assistance to inspectors is a condition of the Department's approval, as established in this rule, of any permit or certificate.

COMMENT: Regarding proposed N.J.A.C. 7:27-8.25(b), clarify under which circumstances the facility or the Department will be responsible for the costs associated with the sampling stipulated by this subsection. The Department should be responsible for all costs incurred unless it can document reasonable justification of non-compliance and the tests indicate non-compliance.

RESPONSE: A person to whom a permit is issued is responsible for all costs of testing, including the reimbursement of the Department for the costs charged by any laboratory for performing the analysis of audit samples collected by the Department, if such testing is required in the conditions of approval of any permit or certificate.

The person to whom a permit or certificate has been issued is not responsible for the costs of other testing conducted by the Department pursuant to its responsibilities to verify a source's conformance with requirements or to demonstrate its non-compliance.

Summary of Agency-Initiated Changes:

Additional changes have been made on adoption to clarify the requirements as follows:

In order to forestall confusion which may result from the introduction of a new term that is not used elsewhere, the proposed term "equipment changeover" is not adopted. Rather, the content of the definition of "equipment changeover" is incorporated with modifications at N.J.A.C. 7:27-8.3(c), and reference to this subsection is included in N.J.A.C. 7:27-8.1, in the definition of "alteration," N.J.A.C. 7:27-8.9(e), N.J.A.C. 7:27-8.10(a)4, and item 3c of the Base Fee Schedule in N.J.A.C. 7:27-8.11, in lieu of use of the term "equipment changeover."

In order to avoid redundancy, the phrase "a change in the process which is approved in the permit issued by the Department, reconfiguration which is approved in the permit issued by the Department" which lists changes that are not alterations has not been included in the adopted revisions to the definition of the term "alteration" in N.J.A.C. 7:27-8.1, as this information is also provided in paragraph 5 and subparagraph 6iv of the definition of "alteration."

As a technical clarification, specification is included in paragraph 1 of the definition of "alteration" in N.J.A.C. 7:27-8.1 that it is the location of "the point of discharge of any air contaminant," not of the equipment or control apparatus **per se**, that is of concern.

Also as a technical clarification, specification is made in paragraphs 1 and 3 of the definition of "alteration" in N.J.A.C. 7:27-8.1 that only those changes that are not already authorized in the permit or certificate in effect constitute alteration.

In order to make consistent use of defined terms, the words "or of any substantial component thereof" are added to paragraph 2 of the adopted definition of "alteration" in N.J.A.C. 7:27-8.1 to complete the defined term "replacement of equipment or control apparatus or of any substantial component thereof."

In order to preclude confusion, a definition of the term "substantial component," used in paragraph 2 of the definition of "alteration," in the term "replacement of equipment or control apparatus or any substantial component thereof," and in the definition of "repair or maintenance" in N.J.A.C. 7:27-8.1, is adopted in N.J.A.C. 7:27-8.1; also the provision proposed in subparagraph 2iv of the definition of "alteration" in N.J.A.C. 7:27-8.1 is incorporated in the definition of the term "substantial component."

In order to preclude misinterpretation, the word "replacement" is substituted for the word "new" in subparagraphs 2i, ii, and iii of the definition of "alteration" in N.J.A.C. 7:27-8.1, as the replacement equipment, while new to use at that location, may be new or used equipment at the time of installation; similarly, the word "new" proposed as a modifier of "air contaminant" is not adopted in paragraph 7 of the definition of "alteration."

In order to clarify that the first date being referenced in subparagraph 2iii of the definition of "alteration" is the date of approval of the permit authorizing the installation of the equipment or control apparatus, not the date of approval of a later permit authorizing alteration of the equipment or control apparatus, the phrase "authorizing the installation of" is added to this provision.

In order to use terminology that in the specific context is clearer, the words "more than" are substituted for "at least" in subparagraph 2iii of the adopted definition of "alteration."

In order to forestall any uncertainty as to whether any replacement of equipment or control apparatus, or of any substantial component thereof, constitutes an alteration of equipment and control apparatus for which no permit is in effect, subparagraph 2iv of the adopted definition of "alteration" states explicitly that such replacement constitutes alteration.

To make clear that the consequences of introducing a new raw material to equipment or control apparatus differ, depending on whether or not a permit or certificate is in effect for the equipment or control apparatus, this section is revised to address only the equipment or control apparatus for which no certificate is in effect; the provisions relevant to equipment or control apparatus for which a certificate is in effect are relocated to subparagraph 5ii of the definition of "alteration" in N.J.A.C. 7:27-8.1 and to N.J.A.C. 7:27-8.3(c)4, as described below.

To clarify that the consequences of introducing a new raw material to equipment or control apparatus for which a certificate is in effect which may increase the quantity or concentration of any air contaminant emission are the same as the consequences of any other change in the relative use of a raw material as set forth in subparagraph 5ii of the definition of "alteration," the phrase "including the introduction of a raw material

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not authorized in the permit or certificate in effect" has been added to subparagraph 5ii of the definition of "alteration."

To ensure that the Department has knowledge of the fact that a new raw material has been introduced to equipment or control apparatus for which a certificate is in effect, even though this change may not increase the quantity or concentration of any air contaminant emission and that therefore is not an "alteration" for which application for a new permit would be required, the requirement to report this introduction of a new raw material as an amendment of the permit or certificate in effect is set forth in N.J.A.C. 7:27-8.3(c)4.

In order to achieve greater conciseness of language, the phrase "permit or certificate" in paragraph 3 of the definition of "alteration" in N.J.A.C. 7:27-8.1 is shortened to "certificate"; although a permit is a prerequisite to a certificate, it is the certificate that authorizes use and is therefore pertinent to this paragraph.

In order to make uniform use of language, the phrase "in effect," modifying the terms permit and certificate, is substituted for alternative phrases such as "issued," "existing," and "approved by the Department" in paragraphs 2, 3 and 4 of the definition of "alteration" and in the definition of "amendment" in N.J.A.C. 7:27-8.1.

In order to maintain consistency in verb tense, verbs have been revised to be in the present tense in paragraph 3 of the definitions of "alteration" of "domestic treatment works" in N.J.A.C. 7:27-8.1.

In order to maintain consistency with the terminology used in paragraphs 1 and 2 of the definition of "alteration" in N.J.A.C. 7:27-8.1, the word "authorized" is substituted for the word "specified" in paragraph 4.

In order to forestall confusion which may result from the introduction of a new term that is not used elsewhere, the term "change which may have an adverse effect on air quality" proposed in N.J.A.C. 7:27-8.1 is not adopted. Rather, the substance of the proposed definition is incorporated at N.J.A.C. 7:27-8.1 in paragraphs 5, 6, 7, and 11 of the definition of "alteration," in lieu of use of the term "change which may have an adverse effect on air quality."

In order to maintain regulatory consistency, the phrase "equipment or control apparatus" is substituted for the term "equipment" in subparagraph 5v of the definition of the term "alteration" in N.J.A.C. 7:27-8.1.

In order to forestall confusion which may result from the use of undefined and nonessential terms, the word "potential" is omitted from paragraph 6 of the definition of "alteration" in N.J.A.C. 7:27-8.1; similarly in order to forestall confusion which may result from the use of imprecise phrases, the phrase "or has the potential to emit" is not adopted in paragraph 9 of the definition of "Category I."

To simplify the structure of the definition of "alteration" in N.J.A.C. 7:27-8.1, the provisions of subparagraphs 2ii and iv are moved to paragraphs 9 and 10, respectively.

To preclude uncertainty as to whether certain changes constitute alteration, changes that were implicitly defined to be "alterations" in the proposal are explicitly stated as such in paragraphs 8, 10, and 11 of the adopted amendments to the definition of "alteration" in N.J.A.C. 7:27-8.1.

In order to maintain consistent use of terms, the word "air" is replaced with the word "atmosphere" in the definitions of "ambient air monitoring," "control apparatus," and "plume rise" in N.J.A.C. 7:27-8.1.

In order to avoid redundancy, the following sentence is omitted from the adopted revisions to the definition of "amendment" in N.J.A.C. 7:27-8.1, as the substance of this sentence is adopted at N.J.A.C. 7:27-8.3(c): "The term includes the correcting or updating of general permit or certificate information; the providing of notification of any transfer of ownership of a permit or certificate; and the recording of any equipment changeover."

In order to maintain consistent use of terms, and as the term "amendment" refers to a change in the permit and certificate documents, which reflects (but is distinct from) a change in the corresponding equipment or control apparatus, the phrases "the modification of information in a permit or certificate to reflect" and "of equipment or control apparatus" are added to the definition of the term "amendment" in N.J.A.C. 7:27-8.1 to retain this distinction between a change to documentation and a change to equipment or control apparatus.

In order to clarify that certain types of gasoline dispensing facilities, such as motor pools, which cannot be strictly classified as retail operations are intended to be included in this category, the word "retail" is not included in the adopted amendments; however, to establish clearly that the gasoline dispensing facilities included are only those which refuel vehicles and not bulk terminals, the definition of "gasoline dispensing facility" previously adopted in N.J.A.C. 7:27-16.1 has also been included in N.J.A.C. 7:27-8.1.

The phrase "and the particulate control apparatus serving the equipment" is added to paragraphs 2, 3, 7, and 8, and the phrase "and the particulate control apparatus servicing the paint spray booth" is added to paragraph 9 of the definition of "Category I" in N.J.A.C. 7:27-8.1, in order to clarify that such control apparatus is intended to be included in the "equipment" subject to these paragraphs.

Similarly, the phrase "and any control apparatus serving such tanks" is added to paragraph 5 of the definition of "Category I" in order to clarify that such control apparatus is intended to be included in the "equipment" subject to this paragraph.

As a technical correction, the words "fabric filter," modifying particulate control apparatus, are omitted from paragraphs 7 and 8 of the definition of "Category I." Although the Department expects that particulate control apparatus that meets the specified standard will in most cases be fabric filter particulate control apparatus, any particulate control apparatus that meets the standard is acceptable to the Department.

In order to complete paragraph 7 of the definition of "Category I," the following phrase "tank, reservoir, container or bin" is inserted in the final clause of paragraph 7, as it is evident from the context that this phrase was intended in this clause, and was inadvertently omitted.

In order to be stylistically consistent, within N.J.A.C. 7:27 the phrase "0.5 gallons" in paragraph 9 of the definition of "Category I" is replaced with "one half gallon," as it is set forth in the corresponding provision in N.J.A.C. 7:27-16.5(c).

In order to maintain consistency with the other paragraphs in the definition, the proposed paragraph 9 of the definition of the term "Category I" is modified in the adopted rules to make the proposed plural phrase "paint spray booths" singular.

As technical correction, the phrase "that achieves a minimum collection efficiency of 99 percent and" is not adopted in paragraph 9 of the definition of "Category I," as classification as Category I for this class of sources is based on rate of paint usage, not on the collection efficiency of the control apparatus.

As a technical correction, the phrase "laboratory hoods" in paragraph 10 of the definition of "Category I" is replaced with the phrase "laboratory hoods, ducts, vents, or similar devices used as conduits for exhausting fumes from laboratory operations," as a variety of types of ventilation equipment, not just "laboratory hoods," are used in laboratory settings.

As a clarification, the phrase "used in a research, development, or educational laboratory" proposed in paragraph 10 of the definition of "Category I" is not included in the adopted definition; it is the Department's intent to include all laboratory operations in this provision. Furthermore, the proposed definitions "research, development, or educational laboratory," "product development," and "education" are also not adopted, as their function was to define terms used in or used to explain this phrase.

In order to provide additional clarification as to how to distinguish between activities that are included in the term "construct" and preparatory activities that are not included in this term, the following sentence is added to the definition of "construct" included in N.J.A.C. 7:27-8.1: "This term does not include ordering, receiving, or temporary storage of equipment or control apparatus, but does include placing such a device in the location where it is intended to be used."

In order to make consistent use of defined terms, the term "stack or chimney" is substituted for the phrase "stack, chimney" in the definition of the term "equipment" and for the word "stack" in the definition of "mathematical combination in N.J.A.C. 7:27-8.1 and in N.J.A.C. 7:27-8.3(c)4; the term "raw materials" is substituted for the word "materials" in N.J.A.C. 7:27-8.2(a)7; "a permit" is substituted for the phrase "an air pollution control permit" in N.J.A.C. 7:27-8.2(a)15; the term "testing" is substituted for the word "test" in item 5c of the Supplementary Fee Schedule in N.J.A.C. 7:27-8.11; and the term "facility" is substituted for the word "site" in N.J.A.C. 7:27-8.25(a).

In response to a request for clarification from a commenter, the term "farm" is substituted for the word "farmer" in N.J.A.C. 7:27-8.2(b) and the following definition of the term "farm," used by the New Jersey Department of Agriculture, is included in N.J.A.C. 7:27-8.1:

"Farm" means any land which meets the eligibility requirements of the Farmland Assessment Act of 1964 (N.J.S.A. 54:4-23.1 et seq.) for land deemed in agricultural use.

In order to be technically more precise, the phrase "combustion or pyrolysis" is substituted for the phrase "thermal processes" in the definition of "incinerator" in N.J.A.C. 7:27-8.1 and "catalytic" oxidizers, as well as thermal oxidizers, are excepted from the term.

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As a technical correction, the following sentence, proposed as part of the definition of "laboratory operations" in N.J.A.C. 7:27-8.1, is not included in the adopted amendments, as it is inappropiate to define what constitutes a "source operation" in the context of defining "laboratory operations": "All laboratory operations that occur within the area designed to be vented by a single laboratory hood, except any equipment or control apparatus otherwise listed in N.J.A.C. 7:27-8.2 is a single source operation."

In response to a number of queries from commenters as to what is meant by "1989 dollars" and "substantial component," these terms are defined in N.J.A.C. 7:27-8.1; the term "Consumer Price Index" or "CPI" used in this definition of "1989 dollars" is also defined.

As a technical correction, the phrase "Notices of Assessment" has not been included in the adopted definition of the term "order" in N.J.A.C. 7:27-8.1.

In order to differentiate clearly between those compliance inspections that are and are not subject to the fees set forth in item 7 of the Supplementary Fee Schedule in N.J.A.C. 7:27-8.11, the proposed definition of "periodic compliance inspection" is adopted as the general definition of "compliance inspection," and an additional definition of "periodic compliance inspection" which identifies those compliance inspections that are subject to the fees is set forth.

As the definition of "equipment" set forth in N.J.A.C. 7:27-8.1 itself comprehensively includes all relevant ancillary components, the phrase "or of associated utilities, piping, ductwork, or conveyor systems" is not included in the adopted definition of the term "reconfiguration."

In order to make consistent use of defined terms, the word "the" before the word equipment and the comma following the word "apparatus" in the term "replacement of equipment or control apparatus or of any substantial component thereof," used in the definition of "repair or maintenance," are not included in the adopted definition in N.J.A.C. 7:27-8.1.

In order to distinguish between replacement which constitutes an alteration and that which does not, the proposed term "replacement" (which designates change which is an alteration) is adopted as the term "replacement of equipment or control apparatus or of any substantial component thereof," to differentiate it from replacement of parts which is an aspect of routine repair or maintenance (and is not an alteration); also, the proposed definition is modified to clarify that the focus of replacement is on the installation of replacement equipment, not on the removal of the previously installed equipment.

In order to maintain consistent use of terminology, the phrase "human health, human welfare" is changed to "human health or welfare" in the definition of the term "risk assessment" in N.J.A.C. 7:27-8.1.

In order to avoid ambiguity, the word "primarily" was not included in the adopted definition of the term "stack or chimney" in N.J.A.C. 7:27-8.1.

In order to maintain consistent use of terminology, the phrase "any air contaminant" is substituted for "air contaminants" in the definitions of the terms "stack or chimney" and "test run" or "run" in N.J.A.C. 7:27-8.1 and at N.J.A.C. 7:27-8.2(a)2, 6, and 7; 8.4(b); 8.8(b)2i; and 8.25(b); it is also substituted for "that pollutant" at N.J.A.C. 7:27-8.4(f)3.

As a grammatical correction, a closing parenthesis ")" is inserted in the definition of "surface impoundment" in N.J.A.C. 7:27-8.1.

In response to requests by commenters for clarification of the meaning of total capital cost, a definition of the term "total fixed capital cost" is set forth in N.J.A.C. 7:27-8.1.

To maintain consistency in the use of terminology, the phrase "toxic volatile organic substance" is replaced by "TXS" at N.J.A.C. 7:27-8.2(a)15i.

In order to maintain regulatory consistency, the phrase "or been revoked" is included in N.J.A.C. 7:27-8.3(b)2.

In order to facilitate determination of whether a given change is subject to N.J.A.C. 7:27-8.3(c) by eliminating the need to refer elsewhere to obtain additional detail, a specific listing of the changes subject to its requirements is set forth in this subsection in place of the more general phrase "change in general permit information, transfer of ownership of the permit or certificate, or equipment changeover." Pursuant to this, the proposed term "general permit and certificate information" is not adopted, and the substance of this term is included in paragraph (c)1; the phrase "transfer of ownership of the equipment or control apparatus covered by a permit or certificate" constitutes paragraph (c)2. And the proposed term "equipment changeover" is not adopted, and the substance of this term, with the modifications discussed below, is included in paragraphs (c)3, 4, 5 and 6.

Similarly, in order to clarify when reporting "general permit and certificate information" is subject to fees, the phrase "change in business name, division name or plant name; mailing address; company stack designation" which lists the specific types of changes that, when reported, are subject to "amendment" fees is substituted for the broader and less precise term "general information" in item 3a of the Base Fee Schedule in N.J.A.C. 7:27-8.11.

Also, as the term "equipment changeover" is not adopted, the phrase "any change listed in N.J.A.C. 7:27-8.3(c)3, 4, 5, or 6" is substituted for this term in item 3c of the Base Fee Schedule in N.J.A.C. 7:27-8.11.

In order to avoid redundancy, subparagraphs 1i and ii of the proposed definition of "equipment changeover" are not retained in N.J.A.C. 7:27-8.3(c)3 as either of these included changes would constitute an "alteration"; rather the phrase "provided that the change does not constitute an alteration, as defined in N.J.A.C. 7:27-8.1" is included in the second sentence in subsection (c).

In order to avoid imposing reporting requirements which make no significant contribution to prohibiting, preventing or controlling the emission of air contaminants, only that portion of the provisions of subparagraph 2ii pertaining to the introduction of a new raw material and none of the provisions of subparagraph 2iii of the proposed definition of "equipment changeover" are retained in N.J.A.C. 7:27-8.3(c)4, as adopted.

In order to be consistent in verb tense and pluralization, revisions are made at N.J.A.C. 7:27-8.3(j) and 8.8(f).

In order to avoid redundancy, the phrase "provided that such repair or maintenance does not constitute, in whole or part, an alteration of the equipment or control apparatus and is not a change which may have an adverse effect on air quality" is not retained in N.J.A.C. 7:27-8.3(i), as the definition of the term "repair or maintenance" in N.J.A.C. 7:27-8.1 already specifies that the term includes only the upkeep of existing equipment or control apparatus, and does not include replacement which would constitute alteration.

In order to be technically accurate, the phrase "an application for" is omitted from N.J.A.C. 7:27-8.4(c), as the Department's approval (or denial) is of the certificate, not of the application.

To clarify that an applicant must perform the items listed in N.J.A.C. 7:27-8.4(c) only if testing is required by the Department, the qualifying phrase "if such testing is required" is added to this paragraph in the adopted amendments.

In order to clarify that a requirement to submit the results of testing to the Department is a reporting requirement, the word "results" is replaced with "testing report" in N.J.A.C. 7:27-8.4(c)5 and 6.

In order to clarify that the fees in items B5a and b of the Supplementary Fee Schedule in N.J.A.C. 7:27-8.11 are applicable only when a testing protocol for a particular source is required in the conditions of approval, the phrase "if such a protocol is required in the conditions of approval of the permit or certificate" is added to N.J.A.C. 7:27-8.4(c)1 and 8.8(b)1. Reference is made to this requirement in N.J.A.C. 7:27-8.4(c)2. The term "source-specific testing protocol" is used to designate the protocols subject to fee requirements, in lieu of "protocol" or "testing protocol," in N.J.A.C. 7:27-8.4(c)1 through 4 and in 8.8(b)1 and in items B5a and b of the Supplementary Fee Schedule in N.J.A.C. 7:27-8.11. Pursuant to this, "a source-specific testing protocol" (which is subject to the protocol-related fees) is contrasted with "a standard testing procedure acceptable to the Department" (which is not subject to the protocol-related fees) in N.J.A.C. 7:27-8.4(c)3 and 8.8(b)1.

To correct an erroneously proposed reference, "N.J.A.C. 7:27-8.11" is substituted for "N.J.A.C. 7:27-8.10" in N.J.A.C. 7:27-8.6(d)1.

In order to clarify the applicability of the provision, the phrase "pursuant to N.J.A.C. 7:27-8" is included in N.J.A.C. 7:27-8.4(h).

In order to be consistent with the language in N.J.A.C. 7:27-8.8(b)1 which states that protocols must be approved by the Department prior to the conduct of testing, the phrase "approved in advance by the Department" is substituted for the word "approved" in N.J.A.C. 7:27-8.4(c)3.

In order to use clearer terms, the word "after" is replaced by "of" at N.J.A.C. 7:27-8.6(d)1 and 2; 8.10(a)4, 6 and 7; and at 8.11(b) and (d). Also the phrase "of receipt of the" is substituted for the word "after" at N.J.A.C. 7:27-8.16(c)3.

Originally part of proposed N.J.A.C. 7:27-8.7(a), the following sentence is not adopted: "No modification may be made in plans or specifications for construction which renders them in any respect inconsistent with the provisions and conditions of an approved permit application unless the person to whom the Department has issued a permit submits a new application for a permit to alter, and this new application is approved by the Department." This sentence is not adopted because there is no

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basis in law of its requirements. The Air Pollution Control Act prohibits any person from constructing, installing, or altering equipment or control apparatus before obtaining a permit. The Act does not prohibit the development of design or specification modifications, as long as no construction, installation, or alteration is carried out as a consequence of said modifications.

In order to maintain a consistent style of punctuation, a comma is moved from before to after the word "including" at N.J.A.C. 7:27-8.8(a).

In order to make consistent use of terminology, the phrase "air contaminant emissions" is substituted for the word "emissions" at N.J.A.C. 7:27-8.8(b)3 and 4 and at 8.9(d). Similarly, in order to make clear that aggrieved persons must submit a written request for a contested case hearing, the words "in writing" are added to N.J.A.C. 7:27-8.12(b).

To forestall confusion, the phrase "or its representatives" is added to N.J.A.C. 7:27-8.8(b)3.

In order to maintain a consistent use of terminology, the word "a" is changed to "any" at N.J.A.C. 7:27-8.8(e)1 and 8.10(a)7i and ii.

In order to preclude any misinterpretation, the phrase "including a report submitted as an amendment of a permit or certificate pursuant to N.J.A.C. 7:27-8.3(c)" is added at N.J.A.C. 7:27-8.9(c) to make explicit the fact that a report of an amendment is a report, and is subject to the certification requirements to which other reports are subject.

In order to make consistent use of terms, the word "category" is used in place of "class" in N.J.A.C. 7:27-8.9(d).

In order to avoid redundancy, reference is made in N.J.A.C. 7:27-8.9(e)3 to N.J.A.C. 7:27-8.3(c) for specification as to which changes must be reported as amendments, in lieu of again listing the changes subject to this requirement in this subsection.

In order to clarify that an amendment could modify either a permit or a certificate without modifying the reciprocal document, the word "and" is changed to "or" in N.J.A.C. 7:27-8.9(e).

In response to a request by a commenter to make clear that amendments are not subject to approval by the Department, N.J.A.C. 7:27-8.10(a)4 is changed to specify that an amendment is submitted as a "report" to the Department.

In order to clarify a limit to the Department's authority to revoke a certificate, the phrase "change in the permit or certificate information, required pursuant to N.J.A.C. 7:27-8.3(c) and 8.9(e)" is included in N.J.A.C. 7:27-8.10(a)4 to specify that a certificate is subject to revocation pursuant to this provision only if the information required in that subsection is not reported to the Department.

In order to use consistent terminology, the words "out of" are replaced by "not in" in N.J.A.C. 7:27-8.10(a)1, and the word "Departmental" is replaced by "from the Department" in N.J.A.C. 7:27-8.10(a)2.

In order to make clear that a certificate is not subject to revocation for a person's failure to pay certificate renewal fees until the date of expiration of the certificate in effect, the phrase "or, in the case of a renewal of a certificate, by the date of expiration of the certificate being renewed" is added to N.J.A.C. 7:27-8.10(a)6; as a standard administrative practice, the Department issues invoices for renewal fees up to six months prior to the date of the expiration of the certificate.

In order to make clear that due notice will be provided prior to the revocation of a certificate, the following is added as N.J.A.C. 7:27-8.10(c); "Any notice of revocation issued by the Department shall be in writing."

In order to correct an inadvertent omission, the phrase "receipt of" is inserted in N.J.A.C. 7:27-8.11(d).

To maintain consistency of language in the statement of the fee basis in item 1b of the Base Fee Schedule in N.J.A.C. 7:27-8.11, the phrase "New or Altered," used for the first piece of equipment or control apparatus is added also for each additional piece of equipment or control apparatus; similarly the phrase "new or altered" is inserted in the footnote to the Base Fee Schedule, both before the phrase "Category I equipment and control apparatus" and the phrase "Category II equipment and control apparatus."

To preclude the use of terminology which has no clear reference, the words "and Implementation" are not included in the adopted specification of the activity in item 2c of the Base Fee Schedule in N.J.A.C. 7:27-8.11.

In order to preserve regulatory consistency, the word "facility" is not adopted in item 3b of the Base Fee Schedule in N.J.A.C. 7:27-8.11, as pursuant to N.J.A.C. 7:27-8.3(c)2 the transfer of ownership of any piece of equipment or control apparatus is required to be reported as an amendment; this requirement applies whether or not this transfer of ownership is part of a transfer of ownership of the facility as a whole.

To clarify the basis on which fees are assessed in the Supplementary Fee Schedule in N.J.A.C. 7:27-8.11, the phrase "Per Protocol Per Permit" is adopted in items 6a and b in place of "Per Monitor" and "Per Performance Test," respectively.

To avoid the use of words that have different meanings in different contexts, the proposed word "performance" is not included in item 6c of the Supplementary Permit Fee Schedule in N.J.A.C. 7:27-8.11.

In order to make consistent use of terminology, the word "decisions" is replaced by "any decision" in N.J.A.C. 7:27-8.12(a).

To maintain consistency with the wording of the title in N.J.A.C. 7:27-8.12, the word "Request" is substituted for the word "Requests" in the title of N.J.A.C. 7:27-8.13.

In order to maintain stylistic consistency, the word "Departmental" in the proposed heading to N.J.A.C. 7:27-8.13 is adopted as "departmental."

In order to avoid the use of a double negative, revision of language is made at N.J.A.C. 7:27-8.19(b); to complete the clause, the word "it" is inserted in N.J.A.C. 7:27-8.21(c); and a punctuation correction is made at N.J.A.C. 7:27-8.22(b).

In order to correct typographical errors, "it" is substituted for "if" in N.J.A.C. 7:27-8.23(d) and "with" is substituted for "will" in N.J.A.C. 7:27-8.25.

In order to maintain stylistically consistent punctuation, the commas proposed to follow the word "aggrieved" in N.J.A.C. 7:27-8.12(a), the word "type" at N.J.A.C. 7:27-8.13(c), and the word "made" at N.J.A.C. 7:27-8.22(b) are not adopted. Also, a comma is inserted following the word "document" in N.J.A.C. 7:27-8.13(b) and "; or" is substituted for "." in N.J.A.C. 7:27-8.23(d)1.

In order to number and arrange paragraphs consistently, the numeral "1" is not included in adopted N.J.A.C. 7:27-8.24(a).

In order to be stylistically consistent, "inspections" is replaced with "inspection" and "constructions" with "construction" at N.J.A.C. 7:27-8.25(b).

As a technical correction, to make clear the intent of the Department, the phrase "consistent with the operational parameters and limits set forth in the permit or certificate in effect" is included in N.J.A.C. 7:27-8.25(b).

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

SUBCHAPTER 8. PERMITS, CERTIFICATES, HEARINGS AND CONFIDENTIALITY

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.

"Agricultural commodity" means any vegetable matter or animal matter.

"Air contaminant" means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases.

"Air quality impact analysis" means a procedure, entailing the use of air quality simulation modeling, for determining whether air contaminant emissions will result in ambient air concentrations that exceed standards established for the protection of human health and welfare and the environment.

"Air quality simulation model" means a mathematical procedure, taking into account the dispersive capacity of the atmosphere and other relevant factors, to predict the concentration of an air contaminant in the ambient air.

"Air stripping equipment" means equipment used to transfer any air contaminant from water or other liquids directly or indirectly into the outdoor atmosphere including, but not limited to, packed columns and water spray equipment.

"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, except for *[a change in the process which is approved in the permit issued by the Department, reconfiguration which is approved in the permit issued by the Department, equipment changeover,]* ***change reported to the Department pursuant to N.J.A.C. 7:27-8.3(c) as an amendment of the permit in**

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effect* and repair or maintenance. Alteration includes, but is not limited to:

1. Change in the location of ***the point of discharge of any air contaminant from*** equipment or control apparatus ***into the outdoor atmosphere, unless the change is authorized in the permit or certificate in effect***;

2. Replacement of *[the]* equipment or control apparatus ***or of any substantial component thereof*** if:

i. The *[new]* ***replacement*** equipment or control apparatus is not the same kind as that which is being replaced;

ii. The *[new]* ***replacement*** equipment or control apparatus is not equivalent to, or better than, for the purpose of air pollution control, that which is being replaced;

iii. The date of approval of the permit *[for]* ***authorizing the installation of*** the equipment or control apparatus being replaced is *[at least]* ***more than*** five years prior to the date of installation of the *[new]* ***replacement*** equipment or control apparatus; or

iv. *[The total capital cost of the new equipment or control apparatus exceeds $20,000, as calculated in 1989 dollars]* ***No permit is in effect for the equipment or control apparatus***;

3. The introduction of any new raw material*[, not approved in a permit or]* ***to equipment of control apparatus for which no*** certificate *[which]* is *[currently]* in effect, including the change of contents of a storage tank for which no *[permit or]* certificate *[has been issued]* ***is in effect***;

4. Any reconfiguration to an alternate configuration not *[specified]* ***authorized*** in the permit *[application and approved by the Department]* ***in effect***;

5. Any of the following *[types of change, if it is a change which may have an adverse effect on air quality]* ***changes to equipment or control apparatus, or to the use thereof, if the change may increase the concentration or rate of any air contaminant emission***:

i. Addition, replacement, or removal of auxiliary devices or appurtenances;

[ii. Change in the concentration of any air contaminant in the influent to existing control apparatus;]

*[iii.]***ii.*** Change in the relative use, expressed in percent by weight, of any raw material in the operation of equipment or control apparatus or in the process***, including the introduction of a raw material not authorized in the permit or certificate in effect***; ***or***

[iv. Change in the rate of production; or]

*[v.]***iii.*** Change in the process in which the equipment ***or control apparatus*** is used;

6. Increase in the *[potential]* ***concentration or*** rate of emission of any air contaminant above *[the rate]* ***that*** authorized by the permit and certificate in effect; *[and]*

7. Emission of any *[new]* air contaminant not authorized by the permit and certificate in effect*[.]**;*

8. Any change to a stack or chimney or the use thereof, including any change to a stack dispersion parameter including, but not limited to, temperature, velocity, direction, or volumetric flow rate, if:

i. The change is not in compliance with the stack height regulations promulgated at 40 CFR 51;

ii. The change may result in an increase in the ambient concentration of any air contaminant; or

iii. No permit is in effect for the equipment or control apparatus;*

9. Any change in the concentration of any air contaminant in the influent to existing control apparatus above that authorized in the permit or certificate;*

10. Any increase in the total hours of operation per time period or the rate of production above that authorized in the permit or certificate; and*

11. Any change to equipment or control apparatus, or to the use thereof, if the change will result in a contravention of any State or Federal ambient air quality standard, any provision of N.J.A.C. 7:27, or any condition or approval of any permit or certificate in effect.*

"Ambient air monitoring" means the measurement of concentrations of one or more air contaminants in the outdoor *[air]* ***atmosphere***.

"Amendment" means any revision of information in *[an existing]* ***a*** permit or operating certificate ***in effect*** which does not reflect a change in the quality, nature, or quantity of emissions to the outdoor atmosphere or a change in the effect of the emissions on ambient air quality. *[The term includes the correcting or updating of general permit or certificate information; the providing of notification of any transfer of ownership of a permit or certificate; and the recording of any equipment changeover.]* The term does not include ***the modification of information in a permit or certificate to reflect*** alteration ***of equipment or control apparatus***.

"AP-42" means the manual entitled "Compilation of Air Pollutant Emission Factors" published by the EPA.

"Banking" means reserving approved emission reductions for future use pursuant to N.J.A.C. 7:27-18.

"British thermal unit" or "BTU" means the quantity of heat required to raise the temperature of one avoirdupois pound of water one degree Fahrenheit at 39.1 degrees Fahrenheit.

"Category I" means the following types of new or altered equipment and control apparatus which require a permit or certificate:

1. Any gasoline vapor recovery system constructed, installed, or operated at any *[retail]* gasoline dispensing facility; this does not include gasoline vapor recovery systems at bulk terminals;

2. Any woodworking equipment including, but not limited to, saws, planers, and sanders, that has particulate control apparatus which achieves a minimum collection efficiency of 99 percent ***and the particulate control apparatus serving the equipment***;

3. Any metalworking equipment including, but not limited to, welders, grinders, and drill presses, that has particulate control apparatus that achieves a minimum collection efficiency of 99 percent ***and the particulate control apparatus serving the equipment***;

4. Fossil fuel burning equipment used only for the burning of liquid or gaseous commercial fuel and having a designed heat input rate of less than 10 million BTU per hour; this does not include any equipment used for the burning of coal or other solid fuel, noncommercial fuel, crude oil or process by-products in any form;

5. Stationary storage tanks which have a capacity of less than 20,000 gallons and which are used for the storage of liquid substances ***and any control apparatus serving such tanks***; this does not include any tank used to store a substance which is a TXS;

6. Emergency diesel generators with less than 10 megawatts of electrical output that operate less than 500 hours per year;

7. Any tank, reservoir, container or bin that is used for the storage of solid particles and has *[fabric filter]* particulate control apparatus that achieves a minimum collection efficiency of 99 percent ***and the particulate control apparatus serving the equipment***; this does not include any ***tank, reservoir, container or bin*** that is used for the storage of any TXS;

8. Enclosed stationary solid material handling equipment using pneumatic, bucket or belt conveying systems that have *[fabric filter]* particulate control apparatus that achieves a minimum collection efficiency of 99 percent ***and the particulate control apparatus serving the equipment***; this does not include any equipment used to handle any material which is a TXS;

9. *[Paint]* ***Any paint*** spray *[booths that have]* ***booth that has*** particulate control apparatus *[that achieves a minimum collection efficiency of 99 percent]* and that *[use]* ***uses*** less than *[0.5 gallons]* ***one half gallon*** of paint per hour ***and the particulate control apparatus serving the paint spray booth***; this does not include any paint spray booth which emits *[or has the potential to emit]* any TXS; and

10. Any control apparatus that solely serves one or more laboratory hoods *[used in a research, development, or educational laboratory]**, ***ducts, vents, or similar devices used as conduits for exhausting fumes from laboratory operations***.

"Category II" means any type of new or altered equipment and control apparatus which requires a permit or certificate, except those types which are defined above as belonging to Category I.

. . .

"CFR" means the Code of Federal Regulations.

*["Change which may have an adverse effect on air quality" means any change which causes or has the potential to cause:

1. The quantity, concentration, or rate of any air contaminant emission from equipment or control apparatus to exceed any limit established by the existing permit or certificate;

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2. Equipment or control apparatus to emit any air contaminant not authorized by the existing permit or certificate; or

3. The ambient air concentration of any air contaminant to increase due to a change in any stack dispersion parameter, including temperature, velocity, direction, or volumetric flow rate.]*

. . .

"Compliance inspection" means the on-site examination by representatives of the Department of equipment or control apparatus to determine if the equipment or control apparatus is constructed, installed and used in conformance with all applicable permit and certificate provisions and conditions of approval, and all applicable laws, regulations, and rules.

"Construct" means to fabricate or erect equipment or control apparatus at a facility where it is intended to be used. This term does not include dismantling of existing equipment or control apparatus, site preparation, or placement of the footings or foundation upon which the structural elements of the equipment or control apparatus will rest. ***This term does not include ordering, receiving, or temporary storage of equipment or control apparatus, but does include placing such a device in the location where it is intended to be used.*** This term also does not include install.

"Consumer Price Index" or "CPI" means, for any calendar year, the annual average Consumer Price Index for all-urban consumers published by the United States Department of Labor.

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

. . .

"Criteria pollutant" means any air contaminant for which a national ambient air quality standard has been promulgated under 40 CFR 50 or for which a State ambient air quality standard has been promulgated in N.J.A.C. 7:27-13.

. . .

"Domestic treatment works" means a publicly or privately owned treatment works and *[shall include]* ***includes*** a treatment works processing primarily domestic wastes together with any ground water, surface water, storm water, or industrial process wastewater that may be present.

"Domestic waste" means waste derived from humans, animals, households, restaurants, cafeterias, hotels, hospitals, markets, and similar installations.

. . .

["Education" means the provision of academic or technical instruction by an elementary or secondary school, a private vocational school approved by the New Jersey Department of Education, or a college or university licensed by the New Jersey Department of Higher Education.]

"Effective stack height" means the distance to the plume center line from the ground as determined by adding the plume rise to the physical height of the stack.

"EPA" means the United States Environmental Protection Agency.

"Equipment" means any device capable of causing the emission of an air contaminant either directly or indirectly to 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.

*["Equipment changeover" means any of the following changes to equipment or control apparatus, or to the use thereof, for which the Department has issued a certificate which is currently in effect:

1. A change in the contents of a storage tank, provided such change does not:

i. Require any physical or mechanical alteration of the equipment or new air pollution control apparatus;

ii. Result in any additional emission control requirement becoming applicable; and

iii. Involve the use or storage of any TXS; or

2. Any of the following changes, provided that it is not a "change which may have an adverse effect on air quality":

i. Replacement of equipment or control apparatus if:

(1) The new equipment or control apparatus is the same kind as that which is being replaced;

(2) The new equipment or control apparatus is equivalent to, or better than, for the purpose of air pollution control, that which is being replaced;

(3) The date of approval of the permit for the equipment or control apparatus being replaced is less than five years prior to the date of installation of the new equipment or control apparatus; and

(4) The total capital cost of the new equipment or control apparatus does not exceed $20,000, calculated in 1989 dollars;

ii. Change in the relative use, expressed in percent by weight, of any raw material being processed;

iii. Increase in the rate of production, unless such increase in rate would result in the exceedance of any limitation on a rate established in the permit or certificate, or the conditions thereof; or

iv. Any of the following changes to stacks, provided that such change is in compliance with the EPA's stack height and dispersion regulations codified in 40 CFR 51:

(1) Change in the number of stacks venting the equipment, provided that the change does not result in any discharge height less than that of the tallest stack existing prior to the change;

(2) Decrease in stack diameter, provided that the exhaust is vented upwards;

(3) Replacement of an existing stack with a taller stack, provided that this results in an effective stack height which is no less than that existing before the change; or

(4) Increase in stack gas exit temperature or stack gas volume, provided that this results in no increase in the emission rate of any air contaminant.]*

"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.

"Farm" means any land which meets the eligibility requirements of the Farmland Assessment Act of 1964 (N.J.S.A. 54:4-23.1 et seq.) for land deemed in agricultural use.

*["General permit or certificate information" means the information contained in a permit or certificate application other than that pertaining specifically to the construction, installation, alteration or use of equipment or control apparatus. This term includes:

1. Business name, division name or plant name;
2. Mailing address;
3. Company stack designation;
4. Telephone number; and
5. Name of plant contact.]*

"Gasoline dispensing facility" means a facility consisting of one or more stationary gasoline storage tanks together with dispensing devices used to fill vehicle fuel tanks.

"Hazardous waste" means those materials defined as hazardous waste under N.J.A.C. 7:26-8.

"Hazardous waste landfill" means a solid waste facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, or a waste pile.

"Incinerator" means any device, apparatus, equipment, or structure using *[thermal processes]* ***combustion or pyrolysis*** for destroying, reducing or salvaging any material or substance, but does not include thermal ***or catalytic*** oxidizers used as control apparatus on manufacturing equipment.

"Indirect emissions" means a discharge of any air contaminant into the outdoor atmosphere through any opening that is not a stack or chimney directly connected to the equipment.

"Install" means to carry out final setup activities necessary to provide the equipment or control apparatus with the capacity for use or service. This term includes, but is not limited to, the connection of the equipment and control apparatus, associated utilities, piping, ductwork and conveyor systems. This term does not include construct, nor the reconfiguration of equipment and control apparatus to an alternate configuration specified in the permit application and approved by the Department.

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"Laboratory operations" means any action, process, or treatment utilizing chemical, physical, or biological factors to conduct experimental research, tests, or demonstrations. *[All laboratory operations that occur within the area designed to be vented by a single laboratory hood, except any equipment or control apparatus otherwise listed in N.J.A.C. 7:27-8.2, is a single source operation.]*

"Land treatment facility" means a facility, or part of a facility, at which waste is applied onto or incorporated into the soil surface so as to change the physical, chemical, or biological characteristics or composition of the waste.

"Liquid particles" means particles which have volume but are not of rigid shape.

. . .

"Mathematical combination" means the summation, pursuant to N.J.A.C. 7:27-16.6, of the air contaminant emissions from two or more stacks or chimneys and the regulation of those emissions as if they came from the same sources venting through a single stack ***or chimney***.

"NESHAP" means a National Emission Standard for a Hazardous Air Pollutant as promulgated under 40 CFR 61.

***"1989 dollars" means current dollars adjusted by the fraction, if any, by which the most recent Consumer Price Index differs from the Consumer Price Index for the calendar year 1989, using the following equation:**

1989 dollars = (Current dollars) (1989 CPI)/(Most recent CPI)

Where

"1989 dollars" is the total fixed capital cost calculated in 1989 dollars;

"Current dollars" is the total fixed capital cost expressed in dollars as currently valued;

"1989 CPI" is the Consumer Price Index for the calendar year 1989; the CPI for 1989 is 124.0; and

"Most recent CPI" is the Consumer Price Index for the most recent calendar year for which a Consumer Price Index has been published.*

"Nonattainment area" means any area identified by the Department as one in which the ambient air concentration of a criteria pollutant exceeds an ambient air quality standard.

. . .

"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, specifically 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.

"Order" means any and all orders issued by the Department including, but not limited to, *[Notices of Assessment,]* Administrative Orders, and Administrative Consent Orders.

. . .

"Performance test" means a series of test runs used for the purpose of determining emissions of air contaminants to the outdoor atmosphere.

"Periodic compliance inspection" means *[the on-site examination by representatives of the Department of equipment or control apparatus to determine if the equipment or control apparatus is constructed, installed, and used in conformance with all applicable permit and certificate provisions and conditions of approval and all applicable laws, regulations, and rules.]* ***any compliance inspection carried out in accordance with a schedule included in the conditions of approval of a permit or certificate. This term does not include a compliance inspection which the Department may carry out as part of its consideration as to whether to approve or renew an operating certificate.***

"Permit" means a "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C-9.2.

"Person" means corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, and 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 *[air]* ***atmosphere*** to the highest point attained by the center line of the effluent stream.

"Prevention of significant deterioration" or "PSD" means a permitting process as defined in 40 CFR 52 which is applicable to new or modified major emitting sources locating in areas attaining the national ambient air quality standards for at least one air contaminant.

"Process material testing" means the testing of any solid, liquid, or gaseous substance involved in a manufacturing process or other operation. This term includes, but is not limited to, fuel and other feed material, process intermediates, products, by-products, and wastes, but excludes any source emission testing.

["Product development" means investigations directed toward the establishment of methods of manufacture or of specific designs of salable substances, devices, or procedures, based on previously discovered facts, scientific principles or substances.]

. . .

"Rate of production" means the quantity per unit time of any process intermediate, product, by-product, or waste generated through the use of any equipment, source operation, or a process.

"Raw material" means any input to equipment, control apparatus, or a process, including fuels, but excluding heat and other forms of energy. Such inputs may include mixtures, composites, compounds and elemental substances.

"Reconfiguration" means a change in the setup of equipment or control apparatus, or both, to an alternate configuration. This term also includes reorientation or reconnection into an alternate pattern of equipment or control apparatus, or both*[, or of associated utilities, piping, ductwork, or conveyor systems]*. This term does not include a change in the location of equipment or control apparatus from that specified in the permit.

"Repair or maintenance" means upkeep of existing equipment or control apparatus, including the replacement of parts, but does not include the replacement of *[the]* equipment or control apparatus*[,]* or of any substantial component thereof.

"Replacement ***of equipment or control apparatus or of any substantial component thereof***" means the *[removal]* ***installation*** of *[existing]* ***replacement*** equipment or control apparatus, or any substantial component thereof, *[and the construction and installation]* at the same location *[of new]* ***as that occupied by the*** equipment or control apparatus ***being replaced***.

"Research" means investigations directed toward the discovery of facts, scientific principles, reactions, or substances.

["Research, development, or educational laboratory" means any facility engaged in laboratory operations solely for the purposes of research, product development, or education. Such operations do not include the production of products for sale.]

"Risk assessment" means a procedure for characterizing the probability that potential exposure to air contaminants will result in adverse effects on human health, *[human]* ***or*** welfare or the environment.

"Sampling" means the selective collection of a quantity of raw materials, process intermediates, products, by-products or wastes.

"Sanitary landfill" means a solid waste facility, at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal or storage for a period of time exceeding six months, except that it does not include any waste facility approved for disposal of hazardous waste.

. . .

"Solid waste facility" means any system, site, equipment, or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovery, or disposal of solid waste.

"Source emission testing" means the testing of a discharge of any air contaminant from equipment, control apparatus or source operation through any stack or chimney.

"Source operation" means any process or any identifiable part thereof having the potential to emit any air contaminant either directly or indirectly into the outdoor atmosphere.

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"Stack equivalent" means an aggregation of more than one stack or chimney approved by the Department for use in calculating or measuring air contaminant emissions from a single source operation or a group of source operations with a common exhaust ventilation system.

"Stack or chimney" means a flue, conduit or opening designed, constructed, or utilized *[primarily]* for the purpose of emitting ***any*** air contaminant*[s]* into the outdoor atmosphere.

"Standard conditions" means 70 degrees Fahrenheit (21.1 degrees centigrade) and one atmosphere pressure (14.7 pounds per square inch absolute or 760.0 millimeters of mercury).

"Storage tank" means any tank, reservoir, or vessel which is a container for liquids or gases, wherein:

1. No manufacturing process, or part thereof, other than filling or emptying takes place; and

2. The only treatment carried out is that necessary to prevent change from occurring in the physical condition or the chemical properties of the liquids or gases deposited into the container. Such treatment may include recirculating, agitating, maintaining the temperature of the stored liquids or gases, or replacing air in the vapor space above the stored liquids or gases with an inert gas in order to inhibit the occurrence of chemical reaction.

***"Substantial component" means any component of equipment or control apparatus, if:**

1. The total fixed capital cost of the component exceeds:

i. For Category I sources, $20,000 as calculated in 1989 dollars; or

ii. For Category II sources, 50 percent of the total fixed capital cost of replacement of the equipment or control apparatus or $20,000 as calculated 1989 dollars, whichever is greater; or

2. The component is designated in the conditions of approval of the permit in effect as a substantial component.*

"Surface cleaner" means a device to remove unwanted foreign matter from the surfaces of materials.

"Surface cleaning" means removing unwanted foreign matter from the surfaces of materials.

"Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials***)***, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

"Surface stripping" means the removal of paints and other coatings from the surface of materials.

"Telemetry" means the automatic transmission of measurement data by phone line, radio waves, or other means to a receiver and recorder.

"Temporary operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C-9.2, which is valid for a period not to exceed 90 days.

"Testing" means a procedure for the determination of the kind and amount of one or more air contaminants, potential air contaminants or air contaminant precursors present. This term includes, but is not limited to, sampling, sample custody, analysis, and reporting of findings.

"Test run" or "run" means a single integrated measurement or procedure used for the purpose of collecting a sample of ***any*** air contaminant*[s]* emitted during a specified time interval.

"Total fixed capital cost" means the total sum, in dollars, paid to purchase and install equipment or control apparatus, including any design costs incurred. This term does not include any costs of operation or startup. This term also does not include the costs of dismantling any equipment or control apparatus being replaced, site preparation, placement of any footings or foundation upon which the structural elements of the equipment or control apparatus rest. This term also does not include any charges for legal services, governmental taxes or fees, or any patent or licensing costs.

"Toxic substance" or "TXS" means a substance listed in N.J.A.C. 7:27-17.

"Use" means to engage in any form or manner of operation of equipment or control apparatus subsequent to the installation of such equipment or control apparatus. This term includes any trial operation.

"Volatile organic substances" or "VOS" means any organic substances, mixture of organic substances, or mixture of organic and inorganic substances defined as volatile organic substances in N.J.A.C. 7:27-16.1.

7:27-8.2 Applicability

(a) New or altered equipment and control apparatus for which a permit and an operating certificate are required, pursuant to the provisions of N.J.A.C. 7:27-8.3, include:

1. All control apparatus, except any control apparatus used solely to purify intake air fed into a source operation;

2. Equipment used in a manufacturing process involving surface coating including, but not limited to, spray and dip painting, roller coating, electrostatic depositing, surface stripping or spray cleaning, from which direct or indirect emissions of ***any*** air contaminant*[s]* occur and in which the quantity of coating or cleaning material used in any source operation is equal to or greater than one half gallon in any one hour;

3.-5. (No change.)

6. Equipment, in addition to that set forth in (a)3, 4, and 5 above, used in a process involving surface cleaning or preparation including, but not limited to, degreasing, etching, pickling, or plating, from which direct or indirect emissions of ***any*** air contaminant*[s]* occur from a tank or vessel, the capacity of which is in excess of 100 gallons;

7. Equipment, used in a process, other than as set forth in (a)2, 3, 4, 5, and 6 above, from which direct or indirect emissions of ***any*** air contaminant*[s]* occur and in which the combined weight of all materials, excluding air and water, introduced into any one source operation is in excess of 50 pounds in any one hour;

8. Stationary storage tanks which have a capacity in excess of 10,000 gallons and which are used for the storage of liquids, except water or distillates of air;

9. Stationary storage tanks which have a capacity of 2,000 gallons or greater and which are used for the storage of volatile organic substances;

10-13. (No change.)

14. Any incinerator, except incinerators constructed, installed or used in one or two-family dwellings or in multi-occupied dwellings containing six or less family units, one of which is owner occupied;

15. Waste or water treatment equipment which may emit air contaminants, including, but not limited to, air stripping equipment, aeration basins, and surface impoundments. *[An air pollution control]* ***A*** permit is not required for:

i. Any water treatment equipment if the concentration of each *[toxic volatile organic substance]* ***TXS*** included in N.J.A.C. 7:27-17 does not exceed 100 parts per billion by weight and the total concentration of VOS does not exceed 3,500 parts per billion by weight;

ii. Potable water treatment equipment, except air stripping equipment with a capacity greater than 100,000 gallons per day;

iii. Aeration basins and lagoons at publicly owned treatment works; or

iv. Aeration basins and lagoons at domestic treatment works;

16. Equipment used for the purpose of venting a closed or operating dump, sanitary landfill, hazardous waste landfill, or other solid waste facility directly or indirectly into the outdoor atmosphere; and

17. Any source operation which has the potential to emit any TXS at a rate greater than the exception rate specified in N.J.A.C. 7:27-17.

(b) New or altered equipment and control apparatus for which a permit and an operating certificate are not required, notwithstanding the provisions of (a) above, include:

1. A storage tank maintained under a pressure greater than one atmosphere provided that any vent serving such storage tank has the sole function of relieving pressure under emergency conditions; and

2. Tanks, reservoirs, containers, and bins used *[by farmers]* ***on any farm*** for the storage of agricultural commodities produced by or consumed in *[their]* ***the farm's*** own operations. This exemp-

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tion does not include tanks, reservoirs, containers and bins used by distributors of agricultural commodities or by research facilities which develop products for use in agricultural production.

7:27-8.3 General provisions

(a) No person shall construct, install, or alter any equipment or control apparatus without first having obtained a permit.

(b) No person shall use or cause to be used:

1. Any new or altered equipment or control apparatus without first having obtained a certificate; or

2. Any equipment or control apparatus if its certificate has expired ***or been revoked***.

(c) Any person holding a permit or certificate shall keep the information in the permit or certificate up to date. Such person shall report any *[change in general permit information, transfer of ownership of the permit or certificate, or equipment changeover]* ***of the following changes*** to the Department within 120 days after the occurrence of *[such]* ***the*** change, as an amendment of the permit or certificate *[information.]**, **provided that the change does not constitute an alteration, as defined in N.J.A.C. 7:27-8.1:**

1. Change in business name, division name, or plant name; mailing address; company stack designation; telephone number; or name of plant contact;

2. Transfer of ownership of the equipment or control apparatus for which a permit or certificate is in effect;

3. Change in the contents of a storage tank for which a permit is in effect, provided such change does not involve the use or storage of any TXS;

4. The introduction of a raw material not authorized in the permit or certificate in effect;

5. Replacement of equipment or control apparatus or of any substantial component thereof, provided that the date of installation of the replacement equipment or control apparatus is less than five years after the date of approval of the permit authorizing the installation of the replaced equipment or control apparatus; or

6. Any of the following changes to a stack or chimney or the use thereof, provided that the change is in compliance with the stack height regulations promulgated at 40 CFR 51:

i. Change in the number of stacks or chimneys serving the equipment or control apparatus, provided that the change does not result in any discharge height less than that of the tallest stack or chimney existing prior to the change;

ii. Decrease in the diameter of a stack or chimney, provided that the exhaust is vented upward;

iii. Replacement of an existing stack or chimney with a taller stack or chimney, provided that this results in an effective stack height which is no less than that existing before the change; or

iv. Increase in the exit temperature or volume of gas emitted from a stack or chimney*.

(d) Any person holding a permit or certificate shall make said permit or certificate, together with any amendments thereto, readily available for inspection on the operating premises.

(e) No person shall use or cause to be used any equipment or control apparatus unless:

1. All conditions and provisions of the permit and certificate are fulfilled; and

2. All components connected or attached to, or serving the equipment or control apparatus***,*** are functioning properly and are in use in accordance with the permit and certificate.

(f) A permit or certificate shall not be transferable either from *[one]* ***the*** location ***authorized in the permit in effect*** to another or from any one piece of control apparatus or equipment to another.

(g) (No change.)

(h) Permits and certificates issued under this subchapter are based on the potential for emission of air contaminants only and do not in any way relieve the applicant from the obligation to obtain necessary permits from other governmental agencies and to comply with all other applicable Federal, State, and local rules and regulations.

(i) The provisions of (a) and (b) above shall not apply to repair or maintenance of control apparatus or equipment*[, provided that such repair or maintenance does not constitute, in whole or part, an alteration of the equipment or control apparatus and is not a change which may have an adverse effect on air quality]*.

(j) No person holding any permit or certificate shall suffer, allow, or permit any air contaminant, including an air contaminant detectable by the sense of smell, to be present in the outdoor atmosphere in such quantity and duration which is, or tends to be, injurious to human health or welfare, animal or plant life or property, or would unreasonably interfere with the enjoyment of life or property. This *[does]* ***shall*** not include an air contaminant which occurs only in areas over which the owner or operator has exclusive use or occupancy.

7:27-8.4 Applications for permits and certificates

(a) Applications for a permit or a certificate, or for a renewal thereof, shall be made to the Department on forms obtained from the Department. Application forms and information pertinent to applications, may be requested from:

Bureau of New Source Review
Division of Environmental Quality
Department of Environmental Protection
CN 027
Trenton, New Jersey 08625-0027

(b) The Department may require the applicant to submit such details regarding the equipment or control apparatus as it considers necessary to determine that the equipment or control apparatus is designed to operate without causing a violation of any provisions of relevant State or Federal laws or regulations and that the equipment or control apparatus incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted by the applicant's equipment. Such information may include description of processes, raw materials used, operating procedures, physical and chemical nature of ***any*** air contaminant*[s]*, volume of gas discharged, and such other information as the Department considers necessary. All information submitted to the Department shall be public information except that which is designated confidential in accordance with N.J.S.A. 26:2C-9.2 and in compliance with N.J.A.C. 7:27-8.14 through 8.23.

(c) Before *[an application for]* an operating certificate, or any renewal thereof, is approved, the Department may require the applicant to conduct such testing as is necessary, at the discretion of the Department, to verify that the kind and amount of air contaminants emitted from the equipment or control apparatus are in compliance with the limits established in the permit and certificate and that only the air contaminants approved in the permit are being emitted. *[The]* ***If such testing is required, the*** applicant shall:

1. Submit *[the proposed]* ***a source-specific*** testing protocol to the Department at least 60 days prior to the anticipated date of the testing***, if such a protocol is required in the conditions of approval of the permit or certificate***;

2. Obtain approval of *[the]* ***any required source-specific testing*** protocol from the Department in advance of conducting the testing;

3. Conduct the testing in accordance with ***a standard testing procedure acceptable to the Department or*** the approved ***source-specific testing*** protocol ***approved in advance by the Department***;

4. Give the Department at least seven days advance notice of the date and time of the start of any testing ***conducted pursuant to a source-specific testing protocol***, except in cases where the Department has specified in ***the conditions of approval of*** the permit ***or certificate*** other time requirements for notice;

5. Submit the *[results]* ***test report*** to the Department within 30 days after the completion of the sampling, unless a longer period for submission is approved in writing by the Department; and

6. Have the *[results of]* ***test report from*** any source emission testing reviewed and certified by a licensed professional engineer, or by an industrial hygienist who has been certified by the American Board of Industrial Hygiene, prior to their submission to the Department.

(d) A single application for a permit or certificate may pertain to all equipment and control apparatus from which all of the air contaminants are vented through a single stack or chimney or through a single stack equivalent.

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(e) Any person who is applying for a permit shall submit as part of the application, an NSPS and NESHAP applicability and compliance demonstration, if the proposed equipment or the intended use of the proposed equipment is within any source category to which any NSPS or NESHAP is applicable.

(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 air quality impact analysis, including air quality simulation modeling and possibly ambient air monitoring and risk assessment, whether the maximum controlled emissions stated on the permit application may cause:

1. A violation of any State or Federal ambient air quality standard;

2. Any exceedance of a PSD increment as defined in 40 CFR 52;

3. A threshold increase in ambient air concentration, as set forth in Table 1 of N.J.A.C. 7:27-18.3(a), in a nonattainment area for *[that pollutant]* ***any air contaminant***; or

4. A contravention of any other criterion established by the Department to protect human health and welfare and the environment.

(g) In order to ensure timely renewal of an operating certificate, an application for renewal of an operating certificate shall be made to the Department on forms obtained from the Department not less than 90 days prior to the expiration date of the operating certificate.

(h) Any person submitting any application to the Department ***pursuant to this subchapter*** shall include, as an integral part of the application, certifications complying with N.J.A.C. 7:27-8.24.

(i) Any information an applicant wants the Department to take into consideration in making a decision on an application shall be submitted to the Department in writing for incorporation into the application prior to the Department's making a decision on the application.

7:27-8.5 Public comment

(a) The Department shall seek comments from the general public prior to making any final decision on those applications for which such comment is required by State or Federal statutes. Such applications include, but are not limited to, those applications which:

1. Are subject to the PSD requirements published at 40 CFR 52; or

2. Must be submitted to the EPA for approval as *[a]* revisions to any state implementation plan.

(b) The Department may seek comments from the public whenever it finds a significant degree of public interest in a permit application or whenever the Department determines such comments might clarify one or more issues involved in the decision on the permit application.

7:27-8.6 Denials

(a) The Department shall deny an application for a permit or certificate, or a renewal thereof, if construction, alteration, or use of control apparatus or equipment pursuant to the application would result in:

1. A violation of any provision of N.J.A.C. 7:27;

2. An exceedance of any State or Federal ambient air quality standard;

3. An exceedance of any applicable PSD increment as defined in 40 CFR 52;

4. A violation of any applicable NSPS;

5. A violation of any applicable NESHAP;

6. A violation of any Federal stack height or emission dispersion requirement as stated in 40 CFR 51; or

7. A contravention of other criteria established by the Department to protect human health and welfare and the environment.

(b) (No change.)

(c) The Department may deny an application for a permit or certificate if the applicant fails to provide all information requested by the Department within 30 days after the request, or within a longer response period if approved in writing by the Department.

(d) The Department may deny an application for a certificate, or a renewal thereof, if the applicant has failed to:

1. Pay any outstanding service fees, charged in accordance with the schedules contained in N.J.A.C. 7:27-8.*[10]****11***, within 60 days *[after]* ***of*** receipt of a fee invoice; or

2. Reimburse the Department within 60 days *[after]* ***of*** receipt of an invoice for any of the following charges incurred by the Department:

i. The charges billed by any telephone company for the maintenance of a dedicated telephone line required by the conditions of approval of a permit or certificate for the electronic transmission of data; or

ii. The charges billed by any laboratory for performing the analysis of audit samples collected pursuant to testing or monitoring required by the conditions of approval of a permit or certificate.

7:27-8.7 Approvals

(a) No person may construct, install, or alter equipment or control apparatus other than as described and authorized in an approved permit. *[No modification may be made in plans or specifications for construction which renders them in any respect inconsistent with the provisions and conditions of an approved permit application unless the person to whom the Department has issued a permit submits a new application for a permit to alter, and this new application is approved by the Department.]* Full responsibility for adequate design and construction shall be with the person to whom the Department has issued the permit.

(b) No person may operate equipment or control apparatus other than as described and authorized in an approved certificate. Full responsibility for use in accordance with the provisions of the certificate shall be with the person to whom the Department has issued the certificate.

(c) No air contaminant, or category of air contaminant where accepted by the Department, shall be emitted other than those approved in the permit. Any information contained in an approved application and any condition of approval thereof are subject to enforcement. This includes the following application information, which shall constitute maximum allowable limits, unless the Department establishes other limits in the conditions of approval:

1. Rates of emission of each air contaminant and each category of air contaminant listed;

2. Total hours of operation per time period; and

3. Any rate of production.

(d) The Department may establish conditions of approval of any permit or certificate application. In the event that a discrepancy exists between the information in an application for a permit or certificate and the conditions of its approval, the conditions of approval shall prevail.

(e) The Department may withdraw its approval of a permit if the person to whom the Department has issued the permit:

1. Does not begin construction, installation, or alteration within one year after the date of approval of the permit; or

2. Discontinues construction, installation, or alteration for a period of more than one year.

(f) The Department may modify the conditions of approval of a certificate:

1. At the time of renewal of a temporary operating certificate;

2. At the time of approval or renewal of a five-year operating certificate; or

3. At any time during the period a certificate is in force, if the Department determines that such modification is necessary to protect human health or welfare or the environment.

(g) Any person to whom the Department has issued a permit or certificate shall comply with all terms and conditions of any order related to the permit or certificate.

7:27-8.8 Conditions of approval

(a) Upon request of the Department, any person to whom the Department has issued a permit or certificate shall submit to the Department information relevant to the operation of equipment and control apparatus*[,]* including, but not limited to:

1. A diagram of the facility indicating the location of any equipment and control apparatus, its applicable permit and certificate number, any stack designation assigned by the Department, and any stack designation assigned by the person;

2. Records documenting any use of any equipment, control apparatus, or other source operation including, but not limited to, rate of production and hours of operation; and

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3. Records documenting any construction, installation, or alteration, including the dates thereof, of any equipment or control apparatus.

(b) The Department may include, as a condition of approval, the requirement that a person to whom the Department has issued a certificate provide verification that the equipment or control apparatus is being used in compliance with the provisions and conditions of its permit and certificate. Such verification may include:

1. Periodic testing of any process materials or source emissions, or measurement of the ambient concentration of any air contaminant. *[Such]* ***The*** testing or measurement shall be conducted in accordance with a ***standard testing procedure acceptable to the Department or a source-specific testing*** protocol approved in advance by the Department***, if such a protocol is required in the conditions of approval of the permit or certificate***;

2. Installation, operation, and maintenance of instrumentation and sensing devices to measure, either at specified intervals or continuously:

i. The kind and amount of ***any*** air contaminant*[s]* emitted;

ii. Operating parameters relevant to determination of potential for air contaminant emissions, such as opacity, pH, flow rate, pressure drop, and temperature at specified process points; and

iii. Ambient concentrations of air contaminants;

3. Recordkeeping including, but not limited to, information pertaining to ***air contaminant*** emissions, process operations, and operations of equipment and control apparatus. Such records shall be kept in a manner approved by the Department and be available on the operating premises for review by the Department ***or its representatives***; and

4. Reporting to the Department such information as analysis and monitoring results, data derived from measurement of ***air contaminant*** emissions and operating parameters, and other information relevant to verifying that the operation of the equipment and control apparatus is in compliance with the provisions of the operating certificate and its conditions. Such information shall, pursuant to the conditions of the permit or certificate, be reported periodically, in conformance with a schedule, or within a specified number of days of the occurrence of a violation or other event.

(c) The Department may establish, as a condition of approval of any *[application for a permit or]* certificate, or any renewal thereof, a schedule of periodic compliance inspections to which the equipment *[and]* ***or*** control apparatus *[are]* ***is*** subject.

(d) No person to whom the Department has issued a permit or certificate shall carry out, or allow to be carried out, any *[replacement]* ***alteration*** of equipment or control apparatus unless the *[new]* ***altered*** equipment or control apparatus incorporates current advances in the art of air pollution control developed for the kind and amount of air contaminant emitted.

(e) If the conditions of a permit or certificate require the Department to incur any of the following charges, the person to whom the Department has issued the permit or certificate shall reimburse the Department for the full amount of these charges:

1. The charges billed by *[a]* ***any*** telephone company for the maintenance of a dedicated telephone line required by the conditions of approval of a permit or certificate for the electronic transmission of data; or

2. The charges billed by any laboratory for performing the analysis of audit samples collected pursuant to testing or monitoring required by the conditions of approval of a permit or certificate.

(f) No person shall use equipment or control apparatus in a manner which will cause any air contaminant, including an air contaminant detectable by the sense of smell, to be present in the outdoor atmosphere in such quantity and duration which *[are, or tend]* ***is, or tends*** to be injurious to human health or welfare, animal or plant life or property*,* or ***would*** unreasonably interfere with the enjoyment of life or property. This *[does]* ***shall*** not include ***an*** air *[contaminants]* ***contaminant*** which *[occur]* ***occurs*** only in areas over which the owner or operator has exclusive use or occupancy.

(g) Any person to whom the Department has issued a permit or certificate, or a renewal thereof, shall, when requested by the Department, provide such testing facilities exclusive of instrumentation and sensing devices as may be necessary for the Department to determine the kind and amount of air contaminants emitted from the equipment or control apparatus. During testing by the Department, the equipment and control apparatus shall be operated under such conditions within their capacities as may be requested by the Department. The testing facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws, regulations, and rules concerning safe construction and safe practice.

7:27-8.9 Reporting requirements

(a) Upon the request of the Department, any person holding a permit or certificate shall submit to the Department any record relevant to any permit or certificate. Such record shall be submitted to the Department within 30 days of the request by the Department or within a longer time period if approved in writing by the Department.

(b) Any person to whom the Department has issued a permit or certificate shall submit any required report in a format and on a schedule approved by the Department. Such report shall be transmitted on paper, on computer disk, or electronically, at the discretion of the Department.

(c) Any person submitting any report to the Department***, including a report submitted as an amendment of a permit or certificate pursuant to N.J.A.C. 7:27-8.3(c),*** shall include, as an integral part of the report, certifications complying with N.J.A.C. 7:27-8.24.

(d) Upon the request of the Department, any person to whom the Department has issued a certificate shall report on forms obtained from the Department the ***air contaminant*** actual emissions, and information relevant thereto, of any air contaminant or *[class]* ***category*** of air contaminants emitted by the equipment, control apparatus, or source operation.

(e) Any person to whom the Department has issued a permit or certificate shall provide, in each report of an amendment of permit and certificate information, specification of the date and nature of each change that has occurred. The report shall be submitted on forms obtained from the Department. Changes to be reported to the Department as an amendment of permit *[and]* ***or*** certificate *[information include:

1. Changes in the general permit and certificate information, including the name of the company, mailing address, telephone number, authorized company representative or any company stack designation;

2. Transfer of ownership of the permit and certificate; or

3. Equipment changeover]* ***are specified in N.J.A.C. 7:27-8.3(c)***.

7:27-8.10 Revocation

(a) The Department may revoke its approval of a certificate or a renewal thereof, if the person to whom the Department has issued the certificate:

1. Uses, or allows to be used, equipment or control apparatus *[out of]* ***not in*** compliance with any provision or condition of approval of the certificate, or any renewal thereof, or with any applicable Federal, State, or local law, regulation, or rule;

2. Constructs or alters, or allows to be constructed or altered, equipment or control apparatus without applying for and obtaining ***from the*** Department*[al]* approval of a permit for such alteration of the equipment or control apparatus;

3. Fails to allow lawful entry by authorized representatives of the Department, pursuant to N.J.A.C. 7:27-8.25;

4. Fails to *[submit]* ***report*** to the Department a *[request for]* ***change in the permit or certificate information, required pursuant to N.J.A.C. 7:27-8.3(c) and 8.9(e), as an*** amendment of the permit or certificate *[information]**,* within 120 days *[after]* ***of*** the occurrence of *[any]* ***the*** change *[in general permit or certificate information, transfer of ownership of the permit or certificate, or equipment changeover]*;

5. Fails to pay any penalty assessed pursuant to a final order issued by the Department;

6. Fails to pay any outstanding service fees, charged in accordance with the schedules contained in N.J.A.C. 7:27-8.11, within 60 days

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[after] ***of*** receipt of a fee invoice ***or, in the case of a renewal of a certificate, by the date of expiration of the certificate being renewed***;

7. Fails to reimburse the Department within 60 days after receipt of an invoice for any of the following charges incurred by the Department:

i. The charges billed by *[a]* ***any*** telephone company for the maintenance of a dedicated telephone line required by the conditions of approval of a permit or certificate for the electronic transmission of data; or

ii. The charges billed by *[a]* ***any*** laboratory for performing the analysis of audit samples collected pursuant to monitoring any testing required by the conditions of approval of a permit or certificate; or

8. Fails to dispose lawfully of all aqueous and solid wastes generated as a result of the operation of the equipment or control apparatus.

(b) The Department may revoke any approval of any application, if it determines that the approval authorizes a contravention of Federal or State laws, regulations, rules, or procedural requirements.

(c) Any notice of revocation issued by the Department shall be in writing.

7:27-8.11 Service fees

(a) Any person subject to the provisions of this subchapter shall submit with each application for a permit, an operating certificate or a renewal thereof, or a mathematical combination, or with a request for an amendment or a banking service, as an integral part thereof, a non-refundable base service fee in accordance with the Base Fee Schedule.

(b) Prior to taking final action on any application for a permit, an operating certificate or a renewal thereof, or a mathematical combination, or on any request for an amendment or a banking service, the Department will invoice each applicant for any additional fees due to the Department, assessed in accordance with the Base Fee Schedule and the Supplementary Fee Schedule. The applicant shall submit any fees so assessed to the Department within 60 days *[after]* ***of*** receipt of the invoice.

(c) The Base Fee Schedule and the Supplementary Fee Schedule are applicable to all applications on which the Department makes its decision on or after the date on which this section is operative.

(d) An additional service fee will not be assessed solely for the failure by the applicant to submit a complete application, pursuant to this subchapter, provided that the applicant, within 30 days *[after]* ***of receipt of*** the written request from the Department, or within a longer time period if so specified in writing by the Department, submits in writing the requested supplementary information to the Department.

A. BASE FEE SCHEDULE

Activity	Basis	Amount
1. Permit Application[1]		
a. Category I	Per Application	$100.00
b. Category II	Per First New or Altered Piece of Equipment or Control Apparatus Listed in N.J.A.C. 7:27-8.2(a) per Application	500.00
	Per Each Additional ***New or Altered*** Piece of Equipment or Control Apparatus Listed in N.J.A.C. 7:27-8.2(a) in an Application	350.00
2. Certificate Application		
a. Category I	Per Operating Certificate	150.00
b. Category II	Per Operating Certificate	500.00
3. Amendment		
a. *[General Information]* ***Change in business name, division name or plant name; mailing address; or company stack designation***	Per Permit	50.00
b. Transfer of *[Facility]* Ownership	Per Permit	50.00
c. *[Equipment Changeover]* ***Any change listed in N.J.A.C. 7:27-8.3(c)3, 4, 5, or 6***	Per Change	200.00
4. Certificate Renewal		
a.* *Category I	***Per Operating Certificate***	***250.00***
b.* *Category II	Per Operating Certificate	500.00
5. Banking		
a. Base Application Review	Per Source Operation	200.00
b. Verification	Per Source Operation	200.00
c. Transfer of Facility Ownership	Per Source Operation	50.00
d. Withdrawal of Credits	Per Source Operation	200.00
e. Donation of Credits to the State of New Jersey	Per Donation	0.00
6. Mathematical Combination (Bubble)		
a. Engineering Review	Per Application, plus	500.00
	Per Source Operation	500.00
b. Implement Public Comment Requirement	Per Comment Period	500.00

[1]Should both Category I and Category II equipment and control apparatus be included in a single application, the ***new or altered*** Category I equipment and control apparatus will be subject to the Category I fee; and the ***new or altered*** Category II equipment control apparatus will be subject to the Category II fee.

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B. SUPPLEMENTARY FEE SCHEDULE

Activity	Basis	Amount
1. Prevention of Significant Deterioration		
a. Engineering Review	Per Applicable Air Contaminant	$500.00
b. Implement Public Comment Requirement	Per Comment Period	500.00
2. Ambient Air Monitoring		
a. Review Protocol	Per Protocol	500.00
b. Inspect Monitoring Locations and Equipment Installation	Per Inspection	500.00
c. Review Quality Assurance Plan *[and Implementation]*	Per Plan	500.00
d. Review Data	Per Required Report	500.00
3. Air Quality Impact Analysis		
a. Evaluate Protocol	Per Protocol	500.00
b. Review Screening Modeling	Per Review	500.00
c. Review Refined Modeling	Per Review	500.00
4. Risk Assessment		
a. Evaluate Protocol	Per Protocol	500.00
b. Review Risk Assessment	Per Review	500.00
5. Testing		
a. Evaluate ***Source-Specific Testing*** Protocol		
i. Process Materials Testing	Per Protocol	450.00
ii. Source Emission Testing	Per Protocol	500.00
b. On-site Monitoring of Sample Collection ***Pursuant to an Approved Source-Specific Testing Protocol***		
i. Process Materials Testing	Per Collection Event	200.00
ii. Source Emissions Testing	Per Performance Test	500.00
c. Review *[Test]* ***Testing*** Report		
i. Process Materials Testing	Per Report	200.00
ii. Source Emissions Testing	Per Report	500.00
6. Audit Performance of Continuous Emission Monitors		
a. Evaluate Protocol	Per *[Monitor]* ***Protocol Per Permit***	500.00
b. Observe Testing	Per *[Performance Test]* ***Protocol Per Permit***	500.00
c. Review *[Performance]* ***Testing*** Report	Per Report	500.00
7. Periodic Compliance Inspection	Per Inspection Per Certificate	200.00

7:27-8.12 Request for an adjudicatory hearing

(a) An applicant who believes himself or herself to be aggrieved*[,]* with respect to *[decisions]* ***any decision*** made by the Department regarding any permit and certificate, amendment, certificate renewal, variance, or registration, may contest the decision and request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1, if the Department:

1. Denies an application, or any part thereof;
2. Has, in the judgement of the applicant, imposed an unreasonable condition on its approval of an application;
3. Revokes or withdraws a previously issued approval; or
4. Denies the request for a stay under N.J.A.C. 7:27-8.13.

(b) Requests for a contested case hearing shall be submitted to:

Assistant Director
Environmental Enforcement Element
Division of Environmental Quality
Department of Environmental Protection
CN 027
Trenton, New Jersey 08625-0027

(c) All requests for a contested case hearing must be received by the Department within 20 days of the date upon which the notice of decision was received.

(d) All requests for a contested case hearing must be submitted by the applicant in writing to the Department in accordance with (b) above and shall contain:

1. The name, address and telephone number of the person making such request;
2. A statement of the legal authority and jurisdiction under which the request for a hearing is made;
3. A brief and clear statement of specific facts describing the Department decision being appealed, as well as the nature and scope of the interest of the requester in such decision; and
4. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested. Any legal issues associated with the alleged facts at issue must also be included.

(e) The Department shall determine whether any request for a contested case hearing should be granted. In making such determination, the Department shall evaluate the request to determine whether a contested case exists and whether there are issues of fact which, if assumed to be true, might change the Department's decision. Where only issues of law are raised by a request for a hearing, the request will be denied. Denial by the Department of a request for a contested case hearing shall constitute the final decision of the Department for the purposes of judicial appeal.

7:27-8.13 Request*[s]* for a stay of the effective date of a *[D]* ***d***epartmental decision

(a) The Department may grant a stay of the effective date of a decision to revoke any previous approval. The applicant for a stay shall submit documents which substantiate, by a preponderance of the evidence, that one of the following circumstances exist:

1. The granting of the stay is required as a constitutional or statutory right; or

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2. The potential effect on human health and welfare or the environment which might result from a decision to grant a stay is greatly outweighed by immediate, irreparable injury to the specific party requesting such stay.

(b) The decision to grant a contested case hearing request shall not automatically result in a stay of the Department action appealed from, *[absent]* ***in the absence of*** an express decision by the Department to stay such action. The burden shall be upon the party requesting a hearing to explicitly request a stay of action within the same document*,* as well as to describe reasons why such stay should be granted.

(c) Department decisions are effective according to their terms, unless stayed by the Department in writing.

(d) Written requests for a stay of the effective date of the Department's decision shall be made to the Department within 20 days of the date upon which the notice of decision was received.

(e) Any stay granted by the Department shall be temporary and shall not extend beyond the date of the Department's final decision in respect to the contested case.

(f) Determinations made pursuant to this section shall be made in writing and mailed to the specific party making such request.

7:27-8.14 Confidentiality claims

(a) Any applicant required to submit any information, pursuant to the provisions of the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. or this subchapter, which in the applicant's opinion constitutes trade secrets, proprietary information, or information related to national security, may assert a confidentiality claim by following the procedures set forth in this subchapter. Emissions information may not be claimed as confidential.

(b) Any applicant submitting any information to the Department and asserting a confidentiality claim covering any information contained therein shall submit two documents to the Department. One shall contain all the information required by the Department including any information which the applicant alleges to be entitled to confidential treatment. The second shall be identical to the first except that it shall contain no information which the applicant alleges to be entitled to confidential treatment. The second can be a photocopy of the first, with the allegedly confidential material blacked out. The second document may be released by the Department to the public as submitted.

(c) The top of each page of the first submission containing the information which the applicant alleges to be entitled to confidential treatment shall display the heading "CONFIDENTIAL" in bold type*[,]* or stamp.

(d) All parts of the text of the first submission which the applicant alleges to be entitled to confidential treatment shall be underscored or highlighted in a clearly identifiable manner. The manner of marking confidential information shall be such that both the allegedly confidential information and the underscoring or highlighting is reproducible on photocopying machines.

(e) The first submission, containing the information which the applicant alleges to be entitled to confidential treatment, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope, together with the second, non-confidential submission (which may or may not be enclosed in a separate envelope, at the option of the applicant), shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no marking indicating the confidential nature of the contents.

(f) To ensure proper delivery, the complete package should be sent by certified mail, return receipt requested, or by other means which will allow verification of receipt. Ordinary mail may be used, but the Department will assume no responsibility for packages until they are actually received.

7:27-8.15 Access to information; non-disclosure

(a) Until such time as a final confidentiality determination has been made, access to any information for which a confidentiality claim has been made will be limited to Department employees, representatives and contractors whose activities necessitate such access and as provided at N.J.A.C. 7:27-8.18 and 8.21.

(b) No disclosure of information for which a confidentiality claim has been asserted shall be made to any other persons except as provided in this subchapter.

(c) Nothing in this section shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that such disclosure is not in a form that would foreseeably allow persons not otherwise having knowledge of such confidential information to deduce from it the confidential information or the identity of the owner or operator who supplied it to the Department.

7:27-8.16 Confidentiality determinations

(a) Information for which a confidentiality claim has been asserted will be treated by the Department as entitled to confidential treatment, unless the Department determines that the information is not entitled to confidential treatment as provided in this section and N.J.A.C. 7:27-8.17.

(b) The Department shall act upon a confidentiality claim and determine whether information is or is not entitled to confidential treatment whenever the Department:

1. Receives a request under N.J.S.A. 47:1A-1 et seq. to inspect or copy such information;

2. Desires to determine whether information in its possession is entitled to confidential treatment; or

3. Desires for any reason in the public interest to disclose the information to persons not authorized by this subchapter to have access to confidential information.

(c) The Department shall make the initial determination whether information is or is not entitled to confidential treatment.

1. If the Department determines that information is not entitled to confidential treatment, it shall so notify the applicant who submitted the information.

2. The notice required under this section shall be sent by certified mail, return receipt requested, and shall state the reasons for the Department's initial determination.

3. Any applicant who wishes to contest a determination by the Department shall, within 30 days *[after]* ***of receipt of the*** notification of the determination, submit evidence to support the applicant's contention that the Department's initial determination was incorrect. The evidence may include, but need not be limited to, a statement indicating:

i. The period of time for which confidential treatment is desired by the applicant (for example, until a certain date, until the occurrence of a specified event, or permanently);

ii. The measures taken by the applicant to guard against undesired disclosure of the information to others;

iii. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith; and

iv. The extent to which disclosure of the information would result in substantial damage to the applicant, including a description of the damage, an explanation of why the damage would be substantial, and an explanation of the causal relationship between disclosure and the damage.

4. Failure of an applicant to contest the Department's initial determination and submit supporting evidence within 30 days waives the applicant's confidentiality claim.

5. The applicant may assert a confidentiality claim to any information submitted to the Department by an applicant as part of its evidence pursuant to (c)3 above.

6. The Department may extend the time limit for submitting evidence pursuant to (c)4 above for good cause shown by the applicant and upon receipt of a request in writing.

(d) After receiving the evidence, the Department shall review its initial determination and make a final determination.

1. If, after review, the Department determines that the information is not entitled to confidential treatment, the Department shall so notify the applicant by certified mail, return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the confidentiality claim, and that the Department may make the information available to the public on the 14th day following receipt of the written notice by the applicant.

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2. If, after review, the determination is made that information is entitled to confidential treatment, the information shall not be disclosed, except as otherwise provided by this subchapter. The applicant shall be notified of the Department's determination by certified mail, return receipt requested. The notice shall state the basis for the determination and that it constitutes final agency action.

7:27-8.17 Substantive criteria for use in confidentiality determinations

(a) When the applicant satisfies each of the following substantive criteria, the Department shall determine that the information for which a confidentiality claim has been asserted is confidential:

1. The applicant has asserted a confidentiality claim which has not expired by its terms or been waived or withdrawn;

2. The applicant has shown that sufficient responsible measures have been taken to protect the confidentiality of the information and that the applicant intends to continue to take such measures;

3. The information is not, and has not been, available or otherwise disclosed to other persons without the applicant's consent (other than by subpoena or by discovery based on a showing of special need in a judicial or quasi-judicial proceeding, as long as the information has not become available to persons not involved in the proceeding);

4. No statute specifically requires disclosure of the information;

5. Except for information related to national security, the applicant has shown that the disclosure of the information would be likely to cause substantial damage to its competitive position; and

6. The information relates to secret processes or methods of manufacture or production.

7:27-8.18 Disclosure of confidential information

(a) The Department may disclose confidential information to persons other than Department employees, representatives and contractors only as provided in this section or N.J.A.C. 7:27-8.20 or 8.21.

(b) The Department may disclose confidential information to any other State agency or to a Federal agency if:

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency;

2. The request sets forth the official purpose for which the information is needed;

3. The Department notifies the other agency of the Department's determination that the information is entitled to confidential treatment, or of any unresolved confidentiality claim covering the information;

4. The other State or Federal agency has first furnished to the Department a written formal legal opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department to disclose such information to the other agency;

5. The other agency agrees not to disclose the information further unless:

i. The other agency has statutory authority both to compel production of the information and to make the proposed disclosure; or

ii. The other agency has obtained the consent of the affected owner or operator to the proposed disclosure; and

6. The other agency has adopted rules or regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure.

(c) Except as otherwise provided at N.J.A.C. 7:27-8.20, the Department shall notify in writing the applicant who supplied the confidential information of:

1. Its disclosure to another agency;

2. The date on which disclosure was made;

3. The name of the agency to which it was disclosed; and

4. A description of the information disclosed.

7:27-8.19 Disclosure of confidential information to contractors

(a) The Department may disclose confidential information to a contractor of the Department when the contractor's activities necessitate such access.

(b) No information shall be disclosed to a contractor unless the contract in question provides that the contractor and the contractor's employees, agents, and representatives shall use the information only for the purpose of carrying out the work required by the contract, shall *[not]* disclose the information ***only*** to *[anyone not]* ***a person*** authorized in writing by the Department ***to have access to the information***, shall store the information in locked cabinets in secure rooms, and shall return to the Department the information, all copies of the information, and any abstracts or extracts therefrom, upon request by the Department or whenever the information is no longer required by the contractor for the performance of the work required by the contract.

(c) Disclosure in violation of this subchapter or the contractual provisions described in (b) above shall constitute grounds for debarment or suspension as provided in N.J.A.C. 7:1-5, Debarment, Suspension and Disqualification from Department Contracting, in addition to whatever other remedies may be available to the Department at equity or law.

7:27-8.20 Disclosure by consent

(a) The Department may disclose any confidential or allegedly confidential information to any person if it has obtained the written consent of the person claiming confidentiality to such disclosure.

(b) The giving of consent of person claiming confidentiality to disclose shall not be deemed to waive a confidentiality claim with regard to further disclosures unless the authorized disclosure is of such a nature as to make the disclosed information accessible to the general public.

7:27-8.21 Disclosure based on imminent and substantial danger

(a) Upon a finding that disclosure of confidential information would serve to alleviate an imminent and substantial danger to human health and welfare and the environment, the Department may:

1. Prescribe and make known to the applicant such shorter comment period (see N.J.A.C. 7:27-8.16(c)3), post-determination waiting period (see N.J.A.C. 7:27-8.16(d)1), or both, as it finds necessary under the circumstances; or

2. Disclose confidential information to any person whose role in alleviating the danger to human health and welfare and the environment necessitates that disclosure. Any such disclosure shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in alleviating the danger.

(b) Any disclosure made pursuant to this section shall not be deemed a waiver of a confidentiality claim, nor shall it of itself be grounds for any determination that information is no longer entitled to confidential treatment.

(c) The Department will notify the applicant of any disclosure made pursuant to this section as soon as ***it*** is feasible.

7:27-8.22 Security procedures

(a) Submissions to the Department pursuant to the Act and this chapter will be opened only by persons authorized by the Department to engage in administering the Act and this chapter.

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made*[,]* shall open any envelope which is marked "CONFIDENTIAL."

(c) All submissions entitled to confidential treatment as determined in accordance with N.J.A.C. 7:27-8.16 shall be stored by the Department or its contractors in locked cabinets only.

(d) Any record made or maintained by Department employees, representatives or contractors which contains confidential information shall contain appropriate indicators identifying the confidential information.

7:27-8.23 Wrongful access or disclosure; penalties

(a) A person shall not disclose, seek access to, seek to obtain or seek to have possession of any confidential information obtained pursuant to this chapter, except as authorized by this subchapter.

(b) Every Department employee, representative, and contractor who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

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(c) A Department employee, representative, or contractor shall not disclose, or use for his or her private gain or advantage, any information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department.

(d) If the Department finds that any person has violated the confidentiality rules N.J.A.C. 7:27-8.14 through 8.23, *[if]* ***it*** may:

1. Commence a civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information*[.]****; or***

2. Pursue any other remedy available by law.

(e) In addition to any other penalty that may be sought by the Department, violation of the confidentiality rules, N.J.A.C. 7:27-8.14 through 8.23, by an employee of the Department shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(f) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

7:27-8.24 Certification of information

(a) Any person who submits an application, registration, or report to the Department shall include, as an integral part of the application or report, the following certification, signed by the highest ranking individual with direct knowledge and overall responsibility for the information contained in the certified documents:

[1.] "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including fines or imprisonment or both, for submitting false, inaccurate or incomplete information."

(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 provision of the emission offset rules contained in N.J.A.C. 7:27-18.2(a) or (b); or

2. Any report which indicates that a violation has or may have occurred of any provision or condition of a permit or certificate or any applicable law, regulation, or rule.

(c) Any person who submits an application or report to the Department, for which additional certification is required pursuant to (b) above, shall include, as an integral part of the application or report, the following additional certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents and, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information."

(d) The additional certification set forth in (c) above shall be signed by the ranking official, as follows:

1. For a corporation, a principal executive officer of at least the level of vice president;

2. For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

3. For a municipality, the mayor or equivalent official;

4. For a county, the county executive or equivalent official;

5. For the State, an official of at least the rank of agency director; or

6. For any other public agency, a principal executive officer or ranking elected official.

(e) Notwithstanding the provisions of (b) above, the certification contained in (a) above shall be the only certification required if the individual required in (a) above to sign the certification is the same individual required in (d) above to sign the additional certification.

7:27-8.25 Inspections

(a) The Department and its representatives shall have the right to enter and inspect any *[site]* ***facility***, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C, this chapter, any permit or any certificate, or any order or agreement issued or entered into pursuant thereto. The Department and its representatives shall also have the right to enter and inspect any *[site]* ***facility***, building or equipment, or any portion thereof, at any time to verify any information included in any application or report submitted to the Department. Such right shall include, but not be limited to, the right to test or sample any materials at the facility, to sketch or photograph any portion of the *[site]* ***facility***, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance *[will]* ***with*** appropriate standard safety procedures.

(b) Owners or operators, and any employees or representatives thereof, shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection*[s]*. Such assistance shall include making available sampling equipment necessary to conduct sampling at the facility and providing sampling facilities for the Department to determine the nature and quantity of ***any*** air contaminant*[s]* emitted. During such testing by the Department, the equipment and all components connected, attached to, or serving the equipment shall be used and operated under normal routine operating conditions or under such other conditions***, consistent with the operational parameters and limits set forth in the permit or certificate in effect,*** as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction*[s]* and safe practice.

(c) No person shall obstruct, hinder or delay, or interfere with by force or otherwise, the performance by the Department or its personnel of any duty under the provisions of this chapter, or refuse to permit such personnel to perform their duties by refusing them upon proper identification or presentation of a written order of the Department, entrance to any premises at reasonable hours.

7:27-8.26 Civil or criminal penalties for failure to comply

Any person who is subject to the provisions of this chapter and who fails to conform to its requirements may be subject to civil penalties in accordance with N.J.A.C. 7:27A-3 or criminal penalties pursuant to N.J.S.A. 2C-28.3 or both.

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PUBLIC NOTICES

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Notice of Effective Date of Model Codes

Take notice that the 1991 supplements to the BOCA National Building Code/1990 and the BOCA National Mechanical Code/1990 are now available. The effective date for the use of these model codes in New Jersey is hereby set at March 4, 1991, pursuant to the State Uniform Construction Code Act (N.J.S.A. 52:27D-123b.) which provides that "the initial adoption of a model code or standard as a subcode shall constitute adoption of any subsequent revisions or amendments thereto." Proposed amendments containing all necessary technical and editorial changes will be published in the New Jersey Register.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF WATER RESOURCES

Amendment to the Northeast Water Quality Management Plan
Public Notice

Take notice that an amendment to the Northeast Water Quality Management (WQM) Plan has been proposed. This amendment proposes an on-site groundwater disposal system to serve the proposed Shops of Primrose Brook commercial development in Harding Township, Morris County. The projected wastewater flow from this development is 6,379 gallons per day.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, 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 Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP 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 NJDEP address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Northeast Water Quality Management Plan
Public Notice

Take notice that an amendment to the Northeast Water Quality Management (WQM) Plan has been proposed. This amendment proposes to amend the Ringwood Borough Wastewater Management Plan (WMP) in the following manner: 1. The limits of the "future developed areas—on site treatment/subsurface disposal or individual septic systems" service area will be amended to include the Waterview at Ringwood Development, a proposed industrial and commercial development, and additional areas in the Borough zoned residential, commercial and industrial; 2. The proposed 30,000 gallon per day sewage treatment plant for the Ringwood Care Center will be deleted from the Ringwood WMP although this area will remain as a "future developed area—on site treatment/subsurface disposal or individual septic system" service area. This amendment also corrects the "Existing Sewered and Septic Disposal Areas" map to delineate the "existing septic absorption system areas" and the "Wetlands and Flood Hazard" and "Parks and Preserved Lands" maps to delineate current boundaries.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, 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 Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP 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 NJDEP address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Northeast Water Quality Management Plan
Public Notice

Take notice that an amendment to the Northeast Water Quality Management (WQM) Plan has been proposed. This amendment would adopt a Wastewater Management Plan (WMP) for the Pequannock, Lincoln Park and Fairfield Sewerage Authority (PLPFSA). The WMP proposes an increase in the permitted flow of the PLPFSA sewage treatment plant (STP) for treatment of a projected annual average flow of 9.6 million gallons per day and delineates the existing and future PLPFSA STP sewer service areas and the non surface discharge service areas for facilities having design capacities of less than 20,000 gallons per day. The Laurel Homes and Plains Plaza Shopping Center STPs will be eliminated with flows diverted to the PLPFSA STP. The PLPFSA WMP will amend the Caldwell Borough WMP by including a portion of Fairfield currently in the Caldwell STP sewer service area within the PLPFSA STP sewer service area. Notwithstanding N.J.A.C. 7:15-5.11(b), adoption of this WMP shall not expand the PLPFSA WMP area to include any portions of Butler, Bloomingdale, Kinnelon or Riverdale. The municipalities of Butler, Bloomingdale and Kinnelon will remain in the WMP area of the Pequannock River Basin Regional Sewerage Authority (PRBRSA). Riverdale will be included in the PRBRSA WMP area through the PRBRSA WMP.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, 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 Bureau of Water Quality Planning at (609) 633-7026.

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Interested persons may submit written comments on the amendment to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP 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 NJDEP address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(a)

DIVISION OF WATER RESOURCES

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that on January 17, 1991, pursuant to the provisions of the Water Quality Planning Act (N.J.S.A. 58:11A-1 *et seq.*), and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Sussex County Water Quality Management Plan was adopted by the Department. The Sussex County Board of Chosen Freeholders approved this amendment on December 27, 1990. This amendment adopts a Wastewater Management Plan (WMP) for Sparta Township dated September, 1990. That document allows for the upgrade and expansion of the Sparta Township Plaza Sewage Treatment Plant to a design capacity of 125,000 gallons per day and establishes a sewer service area for that facility. The WMP identifies five other existing wastewater treatment plants within the Township and specifies a sewer service area for each. The majority of the Township is included within the individual on-site wastewater treatment system service area.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that on January 29, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for Bedminster Township, Somerset County. The WMP allows for expansion of the Bedminster Township Sewage Treatment Plant (STP) to accommodate wastewater flows of 0.306 million gallons per day. The Bedminster Township STP sewer service area will also be expanded. The sewer service area of the Environmental Disposal Corporation (EDC) STP will be expanded. The remainder of the Township is identified as an on-site groundwater disposal area for facilities with design flows of less than 20,000 gallons per day.

A comment was received during the public comment period, and is summarized below with the Department's response.

COMMENT: A comment was received regarding an area within the EDC sewer service area which was dedicated as open space and was to remain unsewered.

RESPONSE: The service area mapping has been corrected to identify the area which was dedicated as open space.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on January 31, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment adopts the Township and the City of Burlington Wastewater Management Plan (WMP). The Township and City of Burlington WMP proposes to expand the sewer service area of Burlington Township and Burlington City to include the majority of both municipalities. In addition, the WMP proposes to upgrade and expand the Burlington Township Central Avenue Wastewater Treatment Facility (WTF) to a wastewater flow capacity of 3.65 million gallons per day (MGD) and move the effluent outfall location to the Delaware River. The existing LaGorce Square WTF will be abandoned and replaced by a 1.0 MGD pumping station. This pumping station will transfer wastewater from eastern Burlington Township to the expanded Central Avenue WTF. The Burlington City WTF will be upgraded and rerated to a design capacity of 2.7 MGD and the effluent outfall location will be moved to the Delaware River. An existing 600,000 GPD force main, which transfers wastewater from the Central Avenue WTF to the City WTF, will become a permanent component of the municipal infrastructure.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan and Upper Delaware Water Quality Management Plans

Public Notice

Take notice that an amendment to the Upper Raritan and Upper Delaware Water Quality Management (WQM) Plans has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for Washington Township, Morris County. Activities proposed in the WMP include: expansion of the Schooley's Mountain Sewage Treatment Plant (STP) sewer service area; construction of two discharge to groundwater STP's, one servicing the Long Valley Village Sewer Area and one serving the Parker Acres Service Area; abandonment of the Long Valley Middle School STP and Old Farmers Road School STP and incorporation of their flows into the proposed Long Valley Village STP; and the remainder of the Township identified as an on-site groundwater disposal area for facilities with design flows of less than 20,000 gallons per day. This amendment will also amend the Washington Township portions of the "Hackettstown Municipal Utilities Authority WMP for the Town of Hackettstown and portions of Allamuchy Township, Independence Township, Mansfield Township, Washington Township, Mount Olive Township."

This notice is being given to inform the public that a plan amendment has been developed for the Upper Raritan and Upper Delaware WQM Plans. All information dealing with the aforesaid WQM Plans and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, 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 Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP 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

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requests must be submitted within 30 days of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

HEALTH

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Notice of Receipt of Petition for Rulemaking and Notice of Agency Action

Health Maintenance Organizations

N.J.A.C. 8:38-1.4

Take notice that on June 28, 1990, the Department of Health received a petition from the New Jersey Podiatric Medical Society requesting that the Department amend N.J.A.C. 8:38-1.4 to require that all Health Maintenance Organizations (HMOs) utilize licensed podiatrists for provision of podiatric services and that HMO enrollees be able to have podiatry services rendered by a licensed podiatrist.

The Department of Health, in consultation with the Department of Insurance, has completed its survey of the status of provision of podiatric services by HMOs, and has determined that there is no need for formal rulemaking to effect the utilization of podiatrists by the HMOs. The Department anticipates working with its HMO regulatory staff, with the New Jersey Podiatric Medical Society and the two HMOs not providing podiatric care through podiatrists to facilitate a mutually satisfactory solution in attaining acceptance of licensed podiatrists in all New Jersey HMOs.

HUMAN SERVICES

(b)

DIVISION OF DEVELOPMENTAL DISABILITIES

Notice of Availability of Grant Funds

Title of Grant: Temporary Child Care—Crisis Nurseries

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services, Division of Developmental Disabilities hereby announces the availability of the following grant program funds.

Name of program: Family Support Project.

Purpose: To provide Statewide, non-medical respite services to families who have children with disabilities or children who are chronically ill as defined by the Education of the Handicapped Act (20 U.S.C. 1401(a)(1)).

Amount of money in the program: $200,000 (75 percent or $150,000 from Federal Funds; 25 percent or $50,000 in matching funds) of which the Division of Developmental Disabilities will contribute $35,000 in matching funds. The balance of matching funds must be made up by the participating agencies. It is anticipated that approximately five awards of $37,000 each will be made (excluding funds from the required local match). However, it is possible that fewer or more awards may be made in varying sums, depending on the proposals received. Per the Federal requirements associated with this grant award, a sliding fee scale must be applied to families who receive services through this program. The fee scale will be provided by DDD. Any funds collected from client fee charges must be applied toward the operation of the program as a means of providing additional respite services.

Organizations which may apply for funding under this program: Private, non-profit organization(s) who can assure service delivery to a specific geographic region of the state and who, when combined with other award recipients, can assure service delivery on a Statewide basis.

Qualifications needed by an applicant to be considered for funding: Must have an established successful history of developing and managing Family Support Programs and an ability to provide planned and emergency respite services on a 24 hour basis.

Procedure for eligible organizations to apply: All eligible organizations interested in applying should contact the Project Coordinator and request that an application be sent to them.

Address to which applications must be submitted:
Division of Developmental Disabilities
CN 726
Trenton, New Jersey 08625
Attn: Patricia Fettweis, Project Coordinator

Deadline by which applications must be submitted: April 3, 1991.

Date by which applicant shall be notified of approval or disapproval: May 1, 1991.

(c)

DEVELOPMENTAL DISABILITIES COUNCIL

Notice of Availability of Grant(s)

Capital Infusion Grants Program

Take notice that in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services, Developmental Disabilities Council hereby announces the availability of the following grant program.

Name of program: Capital Infusion Grants Program. Start-up date expected: 10/1/91.

Purpose of program: To provide funds for the start-up, expansion or spin-off of profit-making operations which will employ a diverse workforce of people with and without disabilities at equal rates of pay and provide a product, service or other means of generating income so as to become self-sustaining operations following the initial grant period.

It has been found that two-thirds of the people with developmental disabilities who can and want to work, cannot find employment. The Developmental Disabilities Council has determined that employment opportunities in integrated workplaces are feasible and demonstration of that feasibility at the small business level is needed. In addition, the Council has determined that public funding for employment programs serving people with disabilities cannot sustain the level of participation desired by people with disabilities nor the on-going cost incurred at the present.

The Council wishes to receive proposals for the operation of profit-making entities, capable of providing employment for a diverse workforce over the long run, without reliance on public funding or financing.

Amount of grant(s): There will be a minimum of six grants of no more than $50,000 each—funds come from the Developmental Disabilities Council through authorization by the Developmental Disabilities Assistance and Bill of Rights Amendments of PL 100-146. These grants may be supplemented, as required or desired, by the applicant's effective use of traditional entrepreneurial funding sources. Assistance from the Small Business Administration will be available to all applicants.

Eligible applicants: Individuals with or without a disability, private profit operations, private non-profit operations, and new or existing ventures may request a proposal package. Applicants need not be from New Jersey or affiliated with New Jersey organizations, but must demonstrate in the proposal the ability to establish operations in New Jersey in an effective and timely manner.

Requirements of applicants: Applicants should have a clear concept of the process by which a business venture needs to be designed. Assistance in writing the proposals can be used, but the proposals will be evaluated based on the applicant's ability to present a clear and effective business plan as well as the capability for following through with the plan.

Any proposal providing for the objectives noted above will be considered by the evaluation committee.

Procedure to apply: Request for Proposal Packages (RFP's) must be completed by any applicant by the deadline noted below. The RFP package should be requested by any eligible organization or individual as soon as possible by writing to:
Ethan B. Ellis, Executive Director
N.J. Developmental Disabilities Council
CN-700
Trenton, NJ 08625
Reference Proposal #90:A-7:04.

Address to which application must be submitted: Complete proposal packages must be submitted to: Ethan B. Ellis, Executive Director, Developmental Disabilities Council at the above address.

Proposal deadline: A completed proposal package must be received no later than 4:00 P.M. on May 24, 1991 to be eligible for consideration.

Final notification: Applicants who submit a proposal will be notified of approval or disapproval no later than 60 days following the closing date for receipt of proposals.

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(a)

DEVELOPMENTAL DISABILITIES COUNCIL

Notice of Availability of Grant(s)
Grass-Roots Advocacy Training Project

Take notice that in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services, Developmental Disabilities Council hereby announces the availability of the following grant program.

Name of program: Grass-Roots Advocacy Training Project. Start-up date expected: 10/1/91.

Purpose of program: To provide training to consumers and their families and caregivers in the techniques of organizing a political base and of influencing and impacting on the political process at the local, State and national levels. The project provider will develop, test and then present a curriculum addressing the essential elements of advocacy and political organization to 300 to 400 targeted participants throughout the state of New Jersey. A second series of training sessions, involving in-depth development of organizing and networking skills among selected trainees, will be developed by the provider in proposal format only, to be carried out should funding and fund allocation permit.

Amount of grant(s): Year one: Grass Roots Advocacy Training—$200,000. Year two: To be determined. Funds derived from the Developmental Disabilities Council through authorization by the Developmental Disabilities Assistance and Bill of Rights Amendments of PL 100-146.

Eligible applicants: Any profit or non-profit agency, organization or individual which is capable of providing the services described in the time period described.

Requirements of applicants: Any public or private entity having the demonstrated experience in developing, nurturing and presenting advocacy issues and techniques may apply. Past experience targeting advocacy for people with disabilities is desired but not necessary if the proposal indicates an ability to develop a relevant and sensitive curriculum through consultation and/or hiring of experienced personnel. Prior experience in Council or Department contracted service provision is not a requirement.

Procedure to apply: Request for Proposal Packages (RFP's) must be completed by any applicant by the deadline noted below. The RFP package should be requested by any eligible organization or individual as soon as possible by writing to:

Ethan B. Ellis, Executive Director
N.J. Developmental Disabilities Council
CN-700
Trenton, NJ 08625
Reference Proposal # 90:C.4:02.

Address to which application must be submitted: Complete proposal packages must be submitted to: Ethan B. Ellis, Executive Director, Developmental Disabilities Council at the above address.

Proposal deadline: A completed proposal package must be received no later than 4:00 P.M. on May 10, 1991 to be eligible for consideration.

Final notification: Applicants who submit a proposal will be notified of approval or disapproval no later than 60 days following the closing date for receipt of proposals.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF CONSUMER AFFAIRS
BOARD OF CHIROPRACTIC EXAMINERS

Notice of Receipt of Petition for Rulemaking

Petitioners: Council of New Jersey Chiropractors.
Authority: N.J.S.A. 52:14B-4(f).

Take notice that on January 18, 1991, petitioners filed a petition with the Board of Chiropractic Examiners requesting a new rule concerning the performance of independent chiropractic examinations for third parties.

The petition requests a rule which will make it professional misconduct for a licensee to perform an independent chiropractic examination or other review of records which results in a written report to assist a third party in determining whether to continue chiropractic treatment without conducting a physical examination of the patient. The rule would require that a licensee conducting an independent chiropractic examination establish that he or she has devoted a minimum of 75 percent of practice time to direct non-independent chiropractic examination patient care during the two years immediately preceding the examination and at the time of the examination and that the licensee has completed five years of chiropractic practice. The requested rule further would require those licensees who are performing independent chiropractic examinations to register with the Board, pay an initial registration fee of $100.00, and renew such registration annually by confirming that the licensee continues to meet the requirements and paying a renewal fee of $50.00.

The new rule which has been requested by the petitioner also would require every licensee who is registered as an independent chiropractic examiner to file an annual report with the Board which would provide the total number of independent chiropractic examinations which were performed in the previous year, a statement that the total practice time devoted to independent chiropractic examinations does not exceed 25 percent of total annual practice time, and any further information that the Board may prescribe by rule. The performance of an independent chiropractic examination without being registered with the Board would be deemed professional misconduct. The rule also would require all parties who request an independent chiropractic examination to select a licensee from the Board's registrants. Finally, the requested rule would make the performance of an independent chiropractic examination of a New Jersey resident by a chiropractic physician who is not licensed in New Jersey the unlicensed practice of chiropractic.

The petitioner states that the purpose of this rule is to assure that a patient is examined before payment for treatment is terminated based upon a conclusion that there is no further need for treatment. It is the petitioner's position that such a conclusion cannot be reached without a physical examination of the patient. The petitioner also is concerned that insurance companies are relying on inexperienced chiropractors who work exclusively or primarily for the insurance companies. The petitioner feels that this practice places in question the integrity of the examination. Finally, the petitioner is concerned that payment for treatment is being terminated by New Jersey insurance companies on the basis of reports of out-of-State doctors of chiropractic who are conducting a "paper review" which does not include an examination of the patient.

After due notice, this petition will be considered by the Board of Chiropractic Examiners in accordance with the provisions of N.J.S.A. 52:14B-4(f).

Pursuant to this notice, the Board solicits **comments or other pertinent information** on the petitioner's proposed new rule and the general issue prompting the petition for rulemaking.

Interested persons may submit written comments on the petition for rulemaking until April 3, 1991. Address comments to: Jay Church, Executive Director, New Jersey State Board of Chiropractic Examiners, 1207 Raymond Boulevard, P.O. Box 45004, Newark, New Jersey 07101.

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EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter.** If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	5/4/92
1:5	10/20/91
1:6	5/4/92
1:6A	3/19/95
1:7	5/4/92
1:10	5/4/92
1:10A	5/4/92
1:10B	10/6/91
1:11	5/4/92
1:13	5/4/92
1:13A	4/3/94
1:20	5/4/92
1:21	5/4/92
1:30	1/25/96
1:31	6/17/92

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	11/19/95
2:2	1/17/94
2:3	8/21/94
2:5	8/21/94
2:6	9/3/90
2:9	7/7/91
2:16	1/22/96
2:19	10/1/95
2:20	10/1/95
2:22	7/6/92
2:23	7/18/93
2:24	4/2/95
2:32	6/1/92
2:33	3/6/94
2:34	1/2/95
2:48	10/25/95
2:50	5/1/92
2:52	5/1/95
2:53	1/10/96
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	11/7/93
2:69	11/7/93
2:70	8/20/95
2:71	7/8/93
2:72	7/8/93
2:73	7/8/93
2:74	7/8/93
2:76	7/31/94
2:90	6/22/95

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/4/96
3:2	4/12/95
3:3	1/11/95
3:6	3/3/91
3:7	9/12/95
3:11	5/1/94
3:13	11/17/91
3:16	6/18/95
3:17	6/18/91
3:18	1/19/93
3:19	3/17/91
3:21	2/2/92
3:22	5/12/94
3:23	7/6/92
3:24	8/18/94
3:25	8/17/92
3:26	12/31/95
3:27	9/12/95
3:28	12/12/94
3:32	10/3/93
3:33	9/18/94
3:38	10/5/92
3:41	10/11/95
3:42	4/4/93

PERSONNEL—TITLE 4A

N.J.A.C.	Expiration Date
4A:1	10/5/92
4A:2	10/5/92
4A:3	9/6/93
4A:4	6/6/93
4A:5	10/5/92
4A:6	1/4/93
4A:7	10/5/92
4A:8	1/16/95
4A:9	10/5/92
4A:10	11/2/92

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:1	2/5/95
5:2	4/10/94
5:3	9/1/93
5:4	10/5/92
5:10	11/17/93
5:11	3/10/94
5:12	12/27/94
5:13	12/24/92
5:14	11/9/95
5:15	5/1/94
5:18	1/4/95
5:18A	1/4/95
5:18B	1/4/95
5:18C	2/5/95
5:19	2/1/93
5:22	2/5/95
5:23	3/1/93
5:24	7/10/95
5:25	3/1/91
5:26	2/7/96
5:27	5/2/95
5:28	12/13/95
5:29	6/18/91
5:30	6/29/93
5:31	12/1/94

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N.J.A.C.	Expiration Date
5:33	8/6/95
5:34	12/3/95
5:37	1/7/96
5:38	10/27/93
5:51	9/1/93
5:52	1/2/95
5:70	7/9/92
5:71	6/4/95
5:80	4/20/95
5:91	2/7/96
5:92	2/7/96
5:100	6/18/95

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

N.J.A.C.	Expiration Date
5A:1	3/12/95
5A:2	5/17/95

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:1	1/11/96
6:2	2/6/94
6:3	7/8/93
6:5	10/22/95
6:7	1/2/95
6:8	1/5/92
6:11	9/21/95
6:12	4/2/91
6:20	7/16/95
6:21	11/22/94
6:22	7/16/95
6:22A	12/19/93
6:24	1/11/96
6:28	4/10/94
6:29	2/8/95
6:30	7/5/93
6:31	11/16/94
6:39	8/14/94
6:43	8/10/95
6:46	10/5/92
6:53	7/7/92
6:64	1/11/93
6:68	2/26/95
6:69	6/4/91
6:70	10/17/94
6:78	11/7/93
6:79	11/25/92

ENVIRONMENTAL PROTECTION—TITLE 7

N.J.A.C.	Expiration Date
7:1	8/15/95
7:1A	6/5/92
7:1C	6/15/95
7:1D	11/28/93
7:1E	8/6/95
7:1F	4/20/92
7:1G	9/29/94
7:1H	7/13/95
7:1I	7/18/93
7:2	6/24/93
7:3	3/21/93
7:4A	9/18/94
7:5	11/19/95
7:5C	1/16/95
7:6	6/9/94
7:7	5/12/94
7:7A	6/6/93
7:7E	7/24/95
7:7F	1/19/93
7:8	2/5/93
7:9	1/18/96
7:9A	8/21/94
7:10	9/1/94
7:11	5/13/93
7:12	4/11/93
7:13	7/14/94
7:14	4/27/94
7:14A	6/2/94
7:14B	12/21/92
7:15	10/2/94
7:18	8/6/91
7:19	2/26/95
7:19A	3/19/95
7:19B	3/19/95
7:20	5/2/95
7:20A	12/16/93
7:22	1/5/92
7:22A	2/5/95
7:23	6/9/94
7:24	5/19/91
7:25	2/18/91
7:25A	4/23/95
7:26	10/25/95
7:26B	12/21/92
7:27	Exempt
7:27A	12/4/94
7:27B-3	Exempt
7:28	7/30/95
7:29	5/21/95
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:38	9/18/95
7:45	2/6/94

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:7	9/14/95
8:8	4/12/94
8:9	2/18/91
8:13	9/8/92
8:18	11/6/94
8:19	5/11/95
8:20	3/2/95
8:21	10/23/95
8:21A	4/1/90
8:22	8/4/91
8:23	12/13/94
8:24	5/2/93
8:25	5/19/93
8:26	8/4/91
8:31	1/16/95
8:31A	2/20/95
8:31B	8/17/95
8:31C	1/20/92
8:33	7/27/95
8:33A	2/20/92
8:33B	7/27/95
8:33C	7/17/91
8:33E	6/23/92
8:33F	11/16/94
8:33G	7/17/94
8:33H	5/16/95
8:33I	9/15/91
8:33J	4/24/94
8:33K	3/27/94
8:33L	11/16/92
8:33M	7/17/94
8:33N	5/15/94
8:33P	3/19/95
8:33Q	11/19/95
8:34	11/15/93
8:38	4/3/94
8:39	6/20/93

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N.J.A.C.	Expiration Date
8:40	5/7/91
8:41	2/17/92
8:42	8/17/92
8:42A	6/19/94
8:42B	7/18/93
8:43	11/19/92
8:43A	7/27/95
8:43E	12/11/92
8:43F	2/20/95
8:43G	2/5/95
8:43H	8/21/94
8:43I	3/21/93
8:44	11/2/93
8:45	2/7/95
8:51	9/17/95
8:52	12/15/91
8:53	8/4/91
8:57	4/20/95
8:57A	4/20/95
8:59	9/29/94
8:60	5/3/95
8:61	10/6/91
8:65	12/2/90
8:66	3/5/95
8:66A	3/5/95
8:70	8/19/93
8:71	2/17/94

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	2/21/94
9:2	5/4/95
9:3	9/27/93
9:4	10/30/91
9:5	1/21/91
9:6	4/30/95
9:6A	1/4/93
9:7	2/28/93
9:8	10/15/95
9:9	10/3/93
9:11	4/17/94
9:12	4/17/94
9:14	4/11/95
9:15	8/21/94

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	11/7/93
10:2	1/5/92
10:3	11/21/93
10:6	1/7/96
10:11	1/16/95
10:12	1/5/92
10:13	7/18/93
10:14	5/16/93
10:31	6/5/94
10:36	8/18/91
10:37	11/2/95
10:38	5/28/91
10:39	5/7/95
10:40	5/11/94
10:41	3/20/94
10:42	8/18/91
10:43	8/21/94
10:44A	11/21/93
10:44B	7/16/95
10:45	2/20/95
10:46	9/17/95
10:47	11/2/95
10:48	12/19/95
10:49	7/13/95
10:50	3/3/91
10:51	10/9/95
10:52	2/8/95
10:53	4/27/95
10:54	3/3/91
10:55	3/8/95
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	2/19/96
10:61	3/3/91
10:62	12/19/93
10:63	11/28/94
10:64	3/3/91
10:65	2/19/96
10:66	12/15/93
10:67	3/3/91
10:68	7/7/91
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/93
10:70	6/16/91
10:71	12/24/95
10:72	8/27/92
10:80	5/19/94
10:81	8/24/94
10:82	8/24/94
10:83	1/19/94
10:85	12/20/94
10:87	1/27/94
10:89	5/24/95
10:90	10/14/92
10:91	9/4/95
10:95	Exempt
10:97	5/15/94
10:99	6/4/95
10:109	2/4/96
10:120	8/21/91
10:121	7/16/95
10:121A	12/7/92
10:122	5/15/94
10:122A	Exempt
10:123	7/13/95
10:124	12/7/92
10:125	6/4/95
10:126	11/7/93
10:126A	5/7/95
10:127	8/26/93
10:128	2/19/96
10:129	7/13/95
10:130	7/2/95
10:131	12/7/92
10:132	1/5/92
10:141	2/7/94

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:2	2/5/95
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:19	8/21/94
10A:21	2/4/96
10A:22	7/5/93
10A:31	3/5/95
10A:32	4/16/95
10A:33	5/2/94
10A:34	4/6/92

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N.J.A.C.	Expiration Date
10A:70	Exempt
10A:71	2/5/95

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	1/31/96
11:2	11/30/95
11:3	1/4/96
11:4	11/30/95
11:5	10/28/93
11:7	10/19/92
11:10	7/12/95
11:12	10/27/91
11:13	11/12/92
11:15	10/26/94
11:16	1/31/96
11:17	4/18/93
11:17A	1/2/95
11:17B	1/2/95
11:17C	1/2/95
11:17D	1/2/95
11:18	12/18/94

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	12/19/93
12:5	9/19/93
12:6	10/17/93
12:15	7/30/95
12:16	3/23/95
12:17	1/4/96
12:18	3/7/93
12:19	7/2/95
12:20	8/14/94
12:35	7/16/95
12:40	2/5/95
12:41	1/17/94
12:45	5/2/93
12:46	5/2/93
12:47	5/2/93
12:48	5/2/93
12:49	5/2/93
12:51	6/30/91
12:56	9/26/95
12:57	9/26/95
12:58	9/26/95
12:60	3/21/93
12:90	12/15/94
12:100	9/22/94
12:102	5/21/95
12:105	1/11/96
12:110	1/19/93
12:112	9/6/93
12:120	5/3/95
12:175	11/28/93
12:190	1/4/93
12:195	6/24/93
12:196	8/6/95
12:200	8/3/95
12:210	9/6/93
12:235	5/5/91

COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:9	3/7/93
12A:10-1	10/13/94
12A:11	9/21/92
12A:12	9/21/92
12A:31	7/16/95
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	7/2/95
12A:100-1	9/8/91
12A:120	9/6/93
12A:121	12/5/93

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/5/93
13:1A	10/15/95
13:2	7/24/95
13:3	4/25/93
13:4	1/17/96
13:10	3/27/94
13:13	7/16/95
13:18	3/30/95
13:19	8/18/94
13:20	12/13/95
13:21	12/13/95
13:23	5/26/94
13:24	9/27/94
13:25	3/16/95
13:26	9/26/93
13:27	2/20/95
13:28	5/16/93
13:29	5/23/95
13:30	3/12/95
13:31	12/12/91
13:32	10/23/92
13:33	3/12/95
13:34	10/26/93
13:35	9/21/94
13:36	9/27/94
13:37	1/23/95
13:38	8/27/95
13:39	6/19/94
13:39A	7/7/91
13:40	8/3/95
13:41	7/17/95
13:42	10/31/93
13:43	9/1/93
13:44	8/7/94
13:44B	11/2/92
13:44C	7/18/93
13:44D	8/7/94
13:45A	11/9/95
13:45B	4/17/94
13:46	9/4/95
13:47	2/2/92
13:47A	10/5/92
13:47B	2/21/94
13:47C	6/9/94
13:47K	9/17/95
13:48	1/17/96
13:49	12/16/93
13:51	4/27/92
13:54	10/5/91
13:59	7/30/95
13:60	1/20/92
13:61	3/5/95
13:62	3/19/95
13:70	1/25/95
13:71	1/25/95
13:75	6/5/94
13:76	6/27/93
13:77	2/1/93
13:78	3/20/94
13:80	9/17/95
13:81	8/6/95

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PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:10	9/8/91
14:10-6	9/5/91
14:11	1/27/92
14:17	4/24/94
14:18	7/26/95
14:25	3/5/95
14:29	3/4/96
14:30	2/19/96
14:32	1/22/96

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:6	1/16/95
14A:8	1/16/95
14A:11	1/16/95
14A:13	2/2/92
14A:14	1/30/94
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	5/2/93
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

PUBLIC ADVOCATE—TITLE 15A

N.J.A.C.	Expiration Date
15A:2	12/27/94

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	10/1/95
16:1A	6/16/94
16:5	11/20/94
16:6	8/7/94
16:7	3/6/94
16:13	9/4/95
16:20A	2/20/95
16:20B	2/20/95
16:21	8/6/95
16:21A	11/20/94
16:21B	12/3/95
16:22	12/18/95
16:24	2/5/95
16:25	8/15/93
16:25A	7/18/93
16:26	9/5/94
16:27	9/8/91
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	2/8/95
16:38	10/15/95
16:41	7/28/92
16:41A	1/23/95
16:41B	7/2/95
16:43	5/10/95
16:44	5/25/93
16:45	9/18/94
16:46	11/6/94
16:49	2/8/95
16:51	4/6/92
16:53	7/17/94
16:53B	7/3/94
16:53C	6/16/93
16:53D	5/3/94
16:54	4/7/91
16:55	6/14/93
16:56	8/7/94
16:60	6/14/93
16:61	6/14/93
16:62	2/26/95
16:72	3/31/91
16:73	1/30/92
16:74	10/20/91
16:75	5/13/93
16:76	2/6/94
16:77	3/5/95
16:78	12/17/95
16:79	10/20/91
16:80	11/7/93
16:81	11/7/93
16:82	9/5/94

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/6/93
17:2	11/8/94
17:3	8/15/93
17:4	6/8/95
17:5	11/30/95
17:6	11/22/93
17:7	12/19/93
17:8	10/15/95
17:9	10/3/93
17:10	5/6/93
17:12	10/13/94
17:13	10/13/94
17:14	10/13/94
17:16	12/2/90
17:19	3/8/95
17:20	9/26/93
17:25	5/26/94
17:27	10/7/93
17:28	8/17/95
17:29	9/26/95
17:30	5/4/92
17:32	3/21/93
17:33	4/17/94
17:40	11/19/95

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:1	7/21/94
18:2	9/6/93
18:3	3/14/94
18:5	3/14/94
18:6	3/14/94
18:7	3/14/94
18:8	2/24/94
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	3/14/94
18:19	3/14/94
18:21	2/19/96

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N.J.A.C.	Expiration Date
18:22	2/24/94
18:23	2/24/94
18:23A	9/4/95
18:24	6/7/93
18:25	2/19/96
18:26	6/7/93
18:35	6/7/93
18:36	3/19/95
18:37	7/23/95
18:38	2/16/93
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	5/26/93
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93
19:8	7/5/93
19:9	10/17/93
19:10	9/5/94
19:11	8/20/95
19:12	8/7/91
19:14	8/20/95
19:16	8/7/91
19:17	6/8/93
19:18	5/21/95
19:20	2/5/95
19:25	10/1/95
19:30	7/23/95
19:31	8/20/95
19:40	8/24/94
19:41	5/12/93
19:42	5/12/93
19:43	4/27/94
19:44	9/29/93
19:45	3/24/93
19:46	4/28/93
19:47	4/28/93
19:48	10/13/93
19:49	3/24/93
19:50	5/12/93
19:51	8/14/91
19:52	9/25/91
19:53	4/28/93
19:54	3/24/93
19:61	7/7/91
19:65	7/7/91
19:75	1/13/94

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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the January 7, 1991 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.1991 d.1 means the first rule adopted in 1991.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT DECEMBER 17, 1990

NEXT UPDATE: SUPPLEMENT JANUARY 22, 1991

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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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
22 N.J.R. 687 and 884	March 5, 1990	22 N.J.R. 2861 and 3072	September 17, 1990
22 N.J.R. 885 and 1010	March 19, 1990	22 N.J.R. 3073 and 3182	October 1, 1990
22 N.J.R. 1011 and 1182	April 2, 1990	22 N.J.R. 3183 and 3274	October 15, 1990
22 N.J.R. 1183 and 1290	April 16, 1990	22 N.J.R. 3275 and 3420	November 5, 1990
22 N.J.R. 1291 and 1408	May 7, 1990	22 N.J.R. 3421 and 3606	November 19, 1990
22 N.J.R. 1409 and 1648	May 21, 1990	22 N.J.R. 3607 and 3666	December 3, 1990
22 N.J.R. 1649 and 1806	June 4, 1990	22 N.J.R. 3667 and 3896	December 17, 1990
22 N.J.R. 1807 and 1964	June 18, 1990	23 N.J.R. 1 and 144	January 7, 1991
22 N.J.R. 1965 and 2062	July 2, 1990	23 N.J.R. 145 and 248	January 22, 1991
22 N.J.R. 2063 and 2202	July 16, 1990	23 N.J.R. 249 and 332	February 4, 1991
22 N.J.R. 2203 and 2386	August 6, 1990	23 N.J.R. 333 and 636	February 19, 1991
22 N.J.R. 2387 and 2622	August 20, 1990	23 N.J.R. 637 and 798	March 4, 1991
22 N.J.R. 2623 and 2860	September 4, 1990		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.2, 14.10	Interlocutory appeal for review of hearing location	22 N.J.R. 3278(a)	R.1991 d.34	23 N.J.R. 194(a)
1:1-3.3, 9.6, 12.1, 14.4, 14.7, 14.14, 18.4, 19.2	Scheduling, processing, and conclusion of contested cases	22 N.J.R. 3278(b)	R.1991 d.44	23 N.J.R. 293(a)
1:1-9.5	OAL Notice of Filing: preproposal regarding notification of parties to contested case	22 N.J.R. 2066(b)		
1:1-9.6	Adjournments: administrative correction	_____	_____	23 N.J.R. 687(a)
1:10-8.1	Transmission of Economic Assistance cases	23 N.J.R. 3(a)		
1:10-18.2	Economic Assistance hearings: exception to initial decision	22 N.J.R. 3278(b)	R.1991 d.44	23 N.J.R. 293(a)
1:10B-18.2	Medical Assistance hearings: exception to initial decision	22 N.J.R. 3278(b)	R.1991 d.44	23 N.J.R. 293(a)
1:13-14.4	Motor Vehicle cases: failure to appear	22 N.J.R. 3278(b)	R.1991 d.44	23 N.J.R. 293(a)
1:13A-14.1	Lemon Law hearings: failure to appear	22 N.J.R. 3278(b)	R.1991 d.44	23 N.J.R. 293(a)
1:30	Agency rulemaking	22 N.J.R. 3281(a)	R.1991 d.85	23 N.J.R. 399(a)
Most recent update to Title 1: TRANSMITTAL 1990-6 (supplement November 19, 1990)				
AGRICULTURE—TITLE 2				
2:6-1	Distribution and use of veterinary biologics	22 N.J.R. 2068(a)		
2:16	Plant certification	22 N.J.R. 3285(a)	R.1991 d.28	23 N.J.R. 194(b)
2:32-2.3, 2.11, 2.22, 2.27	Sire Stakes Programs	23 N.J.R. 252(a)		
2:53	Retail milk stores	22 N.J.R. 3609(a)	R.1991 d.51	23 N.J.R. 294(a)
Most recent update to Title 2: TRANSMITTAL 1990-10 (supplement December 17, 1990)				
BANKING—TITLE 3				
3:1	General provisions of Department	22 N.J.R. 3425(a)	R.1991 d.48	23 N.J.R. 294(b)
3:1-4.2, 4.7, 4.9, 4.10	Protection of governmental unit deposits	22 N.J.R. 1809(a)		
3:1-6.1, 6.2, 6.6, 7.4, 7.6	License fees, assessments, examination charges	23 N.J.R. 254(a)		
3:3-2	Nonpublic records	23 N.J.R. 253(a)		
3:6	General rules for banks	23 N.J.R. 147(a)		
3:6-14.2	License fees, assessments, examination charges	23 N.J.R. 254(a)		
3:13-3.2	License fees, assessments, examination charges	23 N.J.R. 254(a)		
3:17-1.1, 1.4	Consumer loan advertisements	22 N.J.R. 2626(a)		
3:18-10.1	License fees, assessments, examination charges	23 N.J.R. 254(a)		
3:19-1	Home repair financing	23 N.J.R. 256(a)		
3:23-2.1	License fees, assessments, examination charges	23 N.J.R. 254(a)		
3:26	Savings and loan associations	22 N.J.R. 3428(a)	R.1991 d.41	23 N.J.R. 205(a)
3:29-1.1–1.4, 1.6, 1.7, 1.8	Savings and loan associations: audit requirements	22 N.J.R. 1968(a)		
3:38-1.1	License fees, assessments, examination charges	23 N.J.R. 254(a)		
Most recent update to Title 3: TRANSMITTAL 1990-8 (supplement December 17, 1990)				
CIVIL SERVICE—TITLE 4				
Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)				

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PERSONNEL—TITLE 4A				
Most recent update to Title 4A: TRANSMITTAL 1990-5 (supplement November 19, 1990)				
COMMUNITY AFFAIRS—TITLE 5				
5:10-1.6, 1.10, 1.11	Hotels and multiple dwellings: classification of dormitories	22 N.J.R. 1870(a)		
5:10-22.5	Ceiling heights in multiple dwellings	22 N.J.R. 3430(a)	R.1991 d.59	23 N.J.R. 405(a)
5:19-3.1	Continuing care retirement communities: financial feasibility study for proposed facility	23 N.J.R. 3(b)		
5:23-2.14	Uniform Construction Code: gas utility meters	22 N.J.R. 3609(b)	R.1991 d.60	23 N.J.R. 405(b)
5:23-2.23	Uniform Construction Code: certe of occupancy requirements	23 N.J.R. 257(a)		
5:23-4.19–4.22, 4A.12, 5.21, 5.22, 8.6, 8.10, 8.18, 8.19	Uniform Construction Code fees	23 N.J.R. 257(b)		
5:23-7.13, 7.18	Barrier-Free Subcode: parking spaces; platform lifts	22 N.J.R. 2869(a)	R.1991 d.36	23 N.J.R. 296(a)
5:23-7.18	Barrier-Free Subcode: platform lifts	23 N.J.R. 260(a)		
5:23-9.6	UCC interpretation: casino stools	22 N.J.R. 3610(a)	R.1991 d.61	23 N.J.R. 406(a)
5:23-11	Uniform Construction Code: preproposal on indoor air quality subcode	22 N.J.R. 3209(a)		
5:24-1.5	Full plan of property conversion documents	22 N.J.R. 3669(a)	R.1991 d.108	23 N.J.R. 687(b)
5:25	New home warranties and builders' registration	22 N.J.R. 1701(a)		
5:26	Planned real estate development full disclosure	22 N.J.R. 1702(a)	R.1991 d.123	23 N.J.R. 687(c)
5:28	State Housing Code	22 N.J.R. 1456(a)	R.1991 d.18	23 N.J.R. 57(a)
5:29	Landlord-tenant relations	22 N.J.R. 2070(b)		
5:30-6.1	Local Finance Board: address correction	———	———	23 N.J.R. 57(b)
5:34-4.2	Local public contracts: administrative correction	———	———	23 N.J.R. 57(b)
5:37	Municipal, county and authority employees deferred compensation programs	22 N.J.R. 3076(a)	R.1991 d.19	23 N.J.R. 57(c)
5:80-2.2	Housing and Mortgage Finance Agency: consultation with housing sponsors	22 N.J.R. 3669(b)		
5:80-9	Housing and Mortgage Finance Agency: housing project rents	22 N.J.R. 2389(b)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	22 N.J.R. 3670(a)		
5:91	Council on Affordable Housing: procedural rules	22 N.J.R. 3610(b)	R.1991 d.119	23 N.J.R. 688(a)
5:92	Council on Affordable Housing: substantive rules	22 N.J.R. 3671(a)	R.1991 d.120	23 N.J.R. 688(b)
5:92-7.1(b)	Council on Affordable Housing: notice of invalidation of 1,000 unit cap	———	———	23 N.J.R. 58(a)
Most recent update to Title 5: TRANSMITTAL 1990-12 (supplement December 17, 1990)				
MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A				
Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)				
EDUCATION—TITLE 6				
6:1-2.4	State Board of Education quorum	Exempt	R.1991 d.58	23 N.J.R. 297(a)
6:11-4.5	County substitute certificate: administrative correction	———	———	23 N.J.R. 713(a)
6:11-11.9	Speech language specialist endorsement	23 N.J.R. 336(a)		
6:12	Governor's Teaching Scholars Program	22 N.J.R. 3672(a)		
6:20-2A.11	Accounting in local districts: administrative correction	———	———	23 N.J.R. 59(a)
6:22-2.1, 5.2, 5.3, 5.4, 5.5	School Facility Planning Service: administrative corrections	———	———	23 N.J.R. 59(b)
6:24	Controversies and disputes	22 N.J.R. 2841(a)	R.1991 d.57	23 N.J.R. 297(b)
6:28-3.6, 11.5	Special education: administrative corrections	———	———	23 N.J.R. 59(c)
6:29-7.3, 7.4	School employee physical examinations	23 N.J.R. 336(b)		
Most recent update to Title 6: TRANSMITTAL 1990-9 (supplement December 17, 1990)				
ENVIRONMENTAL PROTECTION—TITLE 7				
7:1E-2.2, 4.3, 4.4	Bureau of Discharge Prevention: address correction	———	———	23 N.J.R. 60(a)
7:11-3.3	Sanitary Landfill Facility Contingency Fund: suspension of claims	22 N.J.R. 3675(a)		
7:2	State Park Service rules	22 N.J.R. 2652(a)		
7:6-1.31, 1.37, 1.42, 6.2, 6.3, 6.4	Boating rules	23 N.J.R. 392(a)		
7:7-2.3	Waterfront development: administrative correction	———	———	23 N.J.R. 60(b)
7:7-2.3(a)2	Waterfront development: rule invalidation	———	———	23 N.J.R. 406(b)
7:7A	Freshwater Wetlands Protection Act rules: water quality certification	23 N.J.R. 338(a)		
7:7E-5.3	Coastal growth ratings: preproposal regarding Western Ocean County	22 N.J.R. 1214(a)		
7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5, 3.6	Water Pollution Control Act	22 N.J.R. 2870(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:9	Water pollution control	22 N.J.R. 3297(a)	R.1991 d.68	23 N.J.R. 406(c)
7:9	Water pollution control: extension of comment period	23 N.J.R. 29(a)		
7:9-4.6	Water quality based effluent limitations: administrative correction	———	———	23 N.J.R. 302(a)
7:11-2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir Complex: schedule of rates	22 N.J.R. 3676(a)		
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: schedule of rates	22 N.J.R. 3678(a)		
7:14-8.1, 8.2, 8.5	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:14A-1.8	NJPDES fee schedule	22 N.J.R. 3679(a)		
7:14A-15	Industrial wastewater pretreatment: preproposed rules	23 N.J.R. 149(a)		
7:18-1.1, 1.3, 1.4, 1.6, 1.7, 1.9, 2.1–2.4, 2.6, 2.7, 2.10–2.15, 5.2–5.5, 5.7, 5.8	Radon laboratory certification program	23 N.J.R. 29(b)		
7:22A-1.1, 1.2, 1.3, 1.4, 1.7, 3.1, 4, App.	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:25	Division of Fish, Game, and Wildlife	23 N.J.R. 37(a)		
7:25-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)		
7:25-12	Surf clam management	Emergency (expires 3-5-91)	R.1991 d.49	23 N.J.R. 223(a)
7:25-18.1	Winter flounder and red drum: size and possession limits	23 N.J.R. 43(a)		
7:25-18.5	Bait net and gill net regulation	22 N.J.R. 3685(a)		
7:25-18.5–18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)		
7:25-22.3	Fishing for Atlantic menhaden	22 N.J.R. 3611(a)		
7:26-4.3, 4.4, 4.6, 15.6	Fee schedule for solid waste facilities	22 N.J.R. 3079(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties	22 N.J.R. 284(a)	R.1991 d.113	23 N.J.R. 719(a)
7:26-7.2, 7.4, 8.1, 8.5, 8.7, 8.13, 8.20	Hazardous waste management: waste code hierarchy; waste determination; waste oils listing; container labeling	22 N.J.R. 288(a)	R.1991 d.110	23 N.J.R. 715(a)
7:26-8.2, 8.8, 8.12	Hazardous waste management: Toxicity characteristic	23 N.J.R. 151(a)		
7:26-8.13	Hazardous waste from non-specific sources: F019 exclusion	23 N.J.R. 153(a)		
7:26-8.14	Hazardous waste management: methyl bromide production wastes	23 N.J.R. 154(a)		
7:26-8.15, 8.16	Hazardous waste management: ferric dextran and strontium sulfide	23 N.J.R. 44(a)		
7:26-8.17, App. I	Delisting of hazardous waste at Beecham Laboratories	22 N.J.R. 3430(b)		
7:26-8.19	Listing of hazardous wastes	22 N.J.R. 3299(a)		
7:26-8.19	Listing of hazardous waste: extension of comment period	23 N.J.R. 45(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management: extension of comment period	22 N.J.R. 3431(a)		
7:26A	Solid waste recycling	22 N.J.R. 3088(a)		
7:27-3.2	Air Pollution Control: administrative correction	———	———	23 N.J.R. 61(a)
7:27-8	Air pollution control permit and certificate process	22 N.J.R. 292(a)	R.1991 d.109	23 N.J.R. 723(a)
7:27-8.2	Air pollution control permit and certificate process: correction to proposed amendment	22 N.J.R. 593(a)		
7:27-23.5	Volatile organic substances: administrative correction and revised operative date regarding labeling of architectural coatings	———	———	23 N.J.R. 303(a)
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Air pollution by vehicular fuels	23 N.J.R. 45(b)		
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Vehicular fuel air pollution: extension of time to inspect copies of proposed amendments and new rules	23 N.J.R. 261(a)		
7:28-3.5, 3.13, 4.19	Fee schedules for possession and use of radioactive materials	22 N.J.R. 3300(a)		
7:28-16.2	Dental radiographic installations: qualified individual	22 N.J.R. 3303(a)		
7:36-8	Green Acres Program: public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 593(b)		
7:36-8	Green Acres Program: public hearing and extension of comment period regarding public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 1352(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:50-2.11, 4.66, 6.13	Pinelands Comprehensive Management Plan: preproposed amendments	22 N.J.R. 3432(a)		

Most recent update to Title 7: TRANSMITTAL 1990-12 (supplement December 17, 1990)

HEALTH—TITLE 8

8:9	Handling of human remains	22 N.J.R. 3458(a)		
8:21A	Good drug manufacturing practices	22 N.J.R. 3189(a)		
8:24	Retail food establishments	23 N.J.R. 168(b)		
8:26	Public recreational bathing	23 N.J.R. 376(a)		
8:31A-1, 2, 5, 7, 9, 10	Standard Hospital Accounting and Rate Evaluation (SHARE) Manual	22 N.J.R. 3460(a)		
8:31B	Hospital reimbursement	22 N.J.R. 3724(a)		
8:31B-3	Hospital rate setting	Emergency (expires 3-1-91)	R.1991 d.42	23 N.J.R. 227(a)
8:31B-4.38, 4.61	Hospital reimbursement: Maternity, Outreach, and Management Services (MOMS)	22 N.J.R. 594(a)	Expired	
8:31C-1.15, 1.18	Residential alcoholism treatment facilities: reimbursement methodology	22 N.J.R. 3468(a)	R.1991 d.88	23 N.J.R. 412(a)
8:33H-3.3	Long-term care beds for AIDS and HIV-infected patients	Emergency (expires 2-11-91)	R.1991 d.22	23 N.J.R. 124(a)
8:33L-2.4	Home health services for AIDS and HIV-infected patients	Emergency (expires 2-11-91)	R.1991 d.22	23 N.J.R. 124(a)
8:39-19.5, 20.1, 29.1, 29.3, 30.1	Long-term care facilities: Mantoux tuberculin testing of staff; pharmacy organization	22 N.J.R. 3612(a)		
8:41-8.1	Mobile intensive care units: administration of medications	22 N.J.R. 3104(a)	R.1991 d.12	23 N.J.R. 61(b)
8:43G-5.6	Hospital licensure: reportable events	22 N.J.R. 3469(a)		
8:43G-6	Hospital licensure: anesthesia	22 N.J.R. 3470(a)		
8:59-1.3, 12	Worker and Community Right to Know: certification of consultants and consulting agencies	22 N.J.R. 1892(a)		
8:65	Controlled dangerous substances	22 N.J.R. 3190(a)		
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8:71	Interchangeable drug products (see 22 N.J.R. 1597(b), 2163(a))	22 N.J.R. 596(a)	R.1990 d.570	22 N.J.R. 3581(c)
8:71	Interchangeable drug products (see 22 N.J.R. 2162(b), 3149(a))	22 N.J.R. 1214(b)	R.1990 d.569	22 N.J.R. 3581(b)
8:71	Interchangeable drug products	22 N.J.R. 1511(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 3582(a))	22 N.J.R. 2501(a)	R.1991 d.29	23 N.J.R. 206(a)
8:71	Interchangeable drug products	22 N.J.R. 3191(a)	R.1991 d.30	23 N.J.R. 206(b)
8:71	Interchangeable drug products	23 N.J.R. 178(a)		

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9:1-1.2, 3.1	Characteristics of a university	22 N.J.R. 1655(b)		
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9:3-4	Minority and women-owned businesses: participation in State construction contracts	22 N.J.R. 1656(b)		
9:4-3.12	Noncredit courses at county community colleges	22 N.J.R. 2254(b)		
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9:5	Tuition policies for public institutions	22 N.J.R. 3437(a)		
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10:46	Developmental disability services: public hearings regarding determination of eligibility	22 N.J.R. 764(a)		
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10:51-1.1, 1.14, 3.3, 3.12	Bundled drug services	23 N.J.R. 281(a)		

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10:52-1.1, 1.22	Bundled drug services	23 N.J.R. 281(a)		
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10:54	Physician's Services Manual	22 N.J.R. 3711(a)		
10:54-1.1, 1.16	Bundled drug services	23 N.J.R. 281(a)		
10:56-1.1, 1.4	Bundled drug services	23 N.J.R. 281(a)		
10:57	Podiatry Services Manual	22 N.J.R. 3439(b)		
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10:58	Nurse-Midwifery Services Manual	22 N.J.R. 3613(a)		
10:59	Medical Supplier Manual	22 N.J.R. 3712(a)		
10:60	Home Care Services Manual	22 N.J.R. 3116(a)	R.1991 d.65	23 N.J.R. 420(b)
10:61	Independent Laboratory Services Manual	22 N.J.R. 3713(a)		
10:64	Hearing Aid Services Manual	22 N.J.R. 3614(a)		
10:65	Medical Day Care Services Manual	22 N.J.R. 3327(b)	R.1991 d.87	23 N.J.R. 448(a)
10:66-1.2, 1.10	Bundled drug services	23 N.J.R. 281(a)		
10:67	Psychologist's Services Manual	22 N.J.R. 3615(a)		
10:69A-6.11	PAAD program: release of eligibility files to Division of Motor Vehicles	23 N.J.R. 7(a)		
10:71	Medicaid Only Manual	22 N.J.R. 3357(a)	R.1991 d.33	23 N.J.R. 215(a)
10:71-4.5–4.9, 5.4, 5.6, 5.7	Medicaid Only Program: eligibility determinations for long-term care	22 N.J.R. 7(a)	R.1991 d.32	23 N.J.R. 215(b)
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only: new eligibility computation amounts	Emergency (expires 3-1-91)	R.1991 d.37	23 N.J.R. 233(a)
10:81-1.12, 2.2, 2.8, 2.9, 2.17, 2.18, 3.16, 3.18, 3.19, 3.31, 4.7, 4.10, 4.16, 4.23, 5.4, 5.6, 5.9, 6.11, 6.14, 7.1, 7.4, 7.20, 8.22, 8.24, 9.1, 10.7, 12.1, 12.3, 12.4, 12.6, 12.7, 12.8, 12.11, 14.1–14.8, 14.10–14.15, 14.17, 14.19–14.22, 14.24	Public Assistance Manual: JOBS program	22 N.J.R. 2405(b)	R.1991 d.8	23 N.J.R. 63(b)
10:81-15	Child Care Plus Demonstration	23 N.J.R. 8(a)		
10:82-1.1A	AFDC Standard of Need	23 N.J.R. 285(a)		
10:82-1.6, 1.7, 1.8, 2.1, 2.3, 2.8, 2.9, 2.10, 2.19, 3.2, 3.14, 4.1, 4.4, 4.8, 4.14, 5.1, 5.2, 5.3, 5.6, 5.7, 5.8, 5.9	Assistance Standards Handbook: JOBS program	22 N.J.R. 2445(a)	R.1991 d.7	23 N.J.R. 93(a)
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10:85-4.6	General Assistance: emergency assistance	22 N.J.R. 2078(a)		
10:85-4.6	Emergency assistance: public hearing and extension of comment period	22 N.J.R. 2674(a)		
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10:89-2.2, 2.3	Home Energy Assistance: eligibility criteria	22 N.J.R. 3590(a)	R.1991 d.39	23 N.J.R. 218(a)
10:91-4.4, 7.1	Commission for Blind and Visually Impaired: administrative corrections	———	———	23 N.J.R. 99(a)
10:109-1	Economic Assistance staff development program: Ruling Number 11	22 N.J.R. 2222(a)	R.1991 d.111	23 N.J.R. 688(a)
10:121A-1.3, 1.5, 2.2, 5.8	Manual of standards for adoption agencies	22 N.J.R. 2674(b)	R.1991 d.6	23 N.J.R. 99(b)
10:123-3	Social Services Program: personal needs allowance for residents of health care facilities and boarding houses	23 N.J.R. 382(a)		
10:123A	Personal Attendant Services Program	22 N.J.R. 1527(a)		
10:123A	Personal Attendant Services Program: extension of comment period	22 N.J.R. 2082(a)		
10:128	Children's group homes	22 N.J.R. 2916(a)	R.1991 d.66	23 N.J.R. 476(a)

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10A:2-3	Expenditure of inmate welfare funds	23 N.J.R. 155(a)
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10A:16-7.4	Distribution of money and personal belongings of deceased inmates	23 N.J.R. 156(a)		
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10A:21-5	Reporting unusual incidents or events within facilities	22 N.J.R. 3304(a)	R.1991 d.53	23 N.J.R. 304(a)
10A:21-8	Reporting violations of criminal statutes	22 N.J.R. 3440(a)	R.1991 d.43	23 N.J.R. 306(a)
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10A:31-13.9, 13.10, 13.18	Adult county facilities: pregnant inmates; dental care	23 N.J.R. 15(a)		
10A:32-4.2	Transfer of juvenile under State sentence	22 N.J.R. 3714(b)	R.1991 d.118	23 N.J.R. 690(a)
10A:35	Alternatives to Juvenile Incarceration Grant Program	23 N.J.R. 156(b)		

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11:3	Automobile insurance	22 N.J.R. 1678(a)	R.1991 d.45	23 N.J.R. 306(b)
11:3-8.2–8.7, App. A and B	Nonrenewal of automobile policies	22 N.J.R. 3766(b)	R.1991 d.89	23 N.J.R. 507(a)
11:3-10.5	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:3-14.8, 37	Benefit determination between automobile personal injury protection and health insurance plans	22 N.J.R. 3777(a)	R.1991 d.90	23 N.J.R. 597(a)
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12:45-1	Vocational Rehabilitation Services: correction to proposal	22 N.J.R. 1230(a)		
12:46–12:49	Repeal (see 12:45-1)	22 N.J.R. 1045(c)		
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12:196-1.10	Dispensing of retail gasoline: signs	22 N.J.R. 3306(a)	R.1991 d.47	23 N.J.R. 310(d)
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13:4	Division on Civil Rights: practice and procedure	22 N.J.R. 3689(a)	R.1991 d.67	23 N.J.R. 608(a)
13:14	Family Leave Act rules: public hearing	22 N.J.R. 2395(a)		
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13:18-4.2–4.6, 4.9, 4.14–4.19	Motor Fuels Use Tax	22 N.J.R. 3104(b)	R.1991 d.103	23 N.J.R. 702(b)
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13:20-31.1	Motor vehicle inspection: private center licensing	23 N.J.R. 387(a)		
13:21	Motor Vehicles licensing service	22 N.J.R. 3311(a)	R.1991 d.21	23 N.J.R. 207(c)
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13:41-4.2–4.5	Certified landscape architects; site planning services	23 N.J.R. 21(b)		
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13:70-14A.11	Thoroughbred racing: licensee violations of drug use prohibition	22 N.J.R. 3451(a)	R.1991 d.75	23 N.J.R. 611(a)
13:71-1.25	Harness racing: "horseman" defined	22 N.J.R. 1233(b)		
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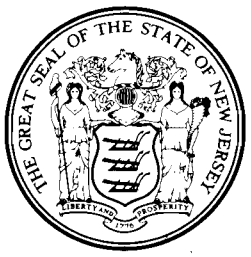

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