NEW JERSEY REGISTER

THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 24 NUMBER 10

May 18, 1992 Indexed 24 N.J.R. 1841-1932

(Includes adopted rules filed through April 27, 1992)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MARCH 16, 1992
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT APRIL 20, 1992

RULEMAKING IN THIS ISSUE

RULE PROPOSALS

RULE ADOPTIONS

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **June 17, 1992.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

RULEMAKING IN THIS ISSUE—Continued

Filing Deadlines

June 15 issue:	
Adoptions	**May 22**
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Proposals	**June 19**
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August 3 issue:	
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NEW JERSEY REGISTER

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

The New Jersey Register (ISSN 0300-6069) is published the first and third Mondays (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, $125 ($215 by First Class Mail); back issues when available, $15 each. Make checks payable to OAL Publications.

POSTMASTER: Send address changes to New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in South Plainfield, New Jersey.

RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Special Hearing Rules
Division of Consumer Affairs
Lemon Law Hearings; Exceptions
Reproposed Repeal and New Rule: N.J.A.C. 1:13A-18.2
Proposed New Rules: N.J.A.C. 1:13A-1.2
Proposed Amendment: N.J.A.C. 1:13A-18.1

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Proposal Number: PRN 1992-201.

Submit comments by June 17, 1992 to:
Jeff S. Masin, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9, CN 049
Quakerbridge Road
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Office of Administrative Law special hearing rules for lemon law cases currently do not permit the filing of exceptions or replies because the Director of the Division of Consumer Affairs has only 10 days from receipt of the initial decision to adopt, reject or modify the decision. However, since parties often contact the Division and seek to comment on the initial decision, the OAL and the Division now believe that exceptions should be permitted. The OAL has proposed two previous new rules which have attempted to adequately balance the need of the parties to comment on the decision with the tight statutorily-mandated timeframe for issuance of a final decision.

On August 5, 1991 (see 23 N.J.R. 2208(a)), OAL proposed a new rule permitting the filing of exceptions no later than seven days after the date the initial decision was mailed to the parties. Three comments were received. The Department of the Public Advocate took no position. Chrysler Corporation supported the proposal, but suggested that replies and cross-exceptions also be permitted. The Acting Director of the Division of Consumer Affairs agreed that exceptions would be helpful, but was concerned that recent staff cutbacks coupled with the limited review period made the review of exceptions a burden that the Division could not manage.

After further discussions with the Division, OAL reproposed the rule on December 16, 1991 (see 23 N.J.R. 3682). That proposed rule continued to provide for the filing of exceptions within seven days, but limited exceptions to three pages. Given the limited review period, OAL declined to provide for exceptions and cross-exceptions.

Legal Services of New Jersey commented that exceptions should not be permitted, or should only be permitted when both parties are legally represented, since the cost of filing exceptions by overnight or fax delivery is more burdensome on consumers than manufacturers and since corporations are more likely to file exceptions. OAL agrees that there are some costs involved in fax or overnight delivery, but these costs are minimal particularly with regard to the cost of an automobile. OAL does not believe that the opportunity to comment on the decision should be denied to consumers and manufacturers.

The Division again expressed its concerns regarding an exception process. In particular, the difficulties with the short review period are exacerbated by the fact that an initial decision is hand-delivered to the agency, but mailed to the parties. Thus, the time for agency review begins to run several days before the decision is received by the parties. At the agency's request, OAL has agreed to mail the decision to the agency, so that receipt by the agency and parties will be approximately simultaneous (see proposed N.J.A.C. 1:13A-18.1(c)), and OAL will presume for both the agency and the parties that mailed decisions are received three days after mailing (see proposed N.J.A.C. 1:13A-1.2). Exceptions must be filed no later than eight days after the mailing date. Thus, the Division should have five days to review the decision and any exceptions. Finally, proposed N.J.A.C. 1:13A-18.2 continues to limit the number of pages for exceptions to three. This proposal supersedes the previous proposals.

Social Impact

The reproposed repeal and new rule and proposed amendment and new rule provides the parties with an opportunity to comment on the initial decision while requiring that the exceptions be filed within an extremely short timeframe. The reproposed repeal and new rule and proposed amendment and new rule provides parties with greater opportunity to participate in the adjudicatory process and provides the Division with the opportunity to receive comments from the parties while attempting to ensure that the agency still has time to review the matter.

Economic Impact

Parties wishing to avail themselves of the opportunity to file exceptions may have to incur some costs to ensure that the comments are received in a timely manner by the agency. In some cases these costs may include overnight delivery, fax costs or the cost of a personal delivery.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the reproposed repeal and new rule and proposed amendment and new rule do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As part of the adjudicatory process, the proposed repeal and new rule and proposed amendment and new rule permit, within a specified timeframe, any party, including small businesses, to file an exception.

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

1:13A-1.2 Presumptions

An initial decision mailed pursuant to these rules shall be presumed to be received three days after mailing.

1:13A-18.1 Initial decisions

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

(c) The initial decision shall be mailed promptly to the agency head and to the parties.

[(c)](**d**) Within four days after the initial decision is [filed with] **mailed to** the agency head, the Clerk shall certify the entire record with original exhibits to the agency head.

1:13A-18.2 Exceptions; replies

[No exceptions or replies to the initial decision shall be permitted.]

(a) If a party wishes to take exception to the initial decision, such exception must be submitted in writing to the Director of the Division of Consumer Affairs, the judge and to all parties. Exceptions must be received by the Division of Consumer Affairs no later than eight days after the initial decision was mailed to the parties. Exceptions shall not exceed three pages in length. In all other respects, exceptions shall conform to the requirements of N.J.A.C. 1:1-18.4(b) and (c).

(b) No replies or cross-exceptions shall be permitted.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Maintenance of Hotels and Multiple Dwellings; Uniform Construction Code

Methods, Devices and Systems for Indirect Apportionment of Heating Costs in Multiple Dwellings; Approval of Nonconforming Materials; Departmental Fees

Proposed New Rules: N.J.A.C. 5:10-25

Proposed Amendments: N.J.A.C. 5:23-3.7, 3.8 and 4.20

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

Authority: N.J.S.A. 55:13A-7.10 (P.L. 1991, c.453, section 3) and 52:27D-124.

Proposal Number: PRN 1992-211.

A **public hearing** on this proposal will be held on Monday, June 8, 1992, at 10:00 A.M., at the offices of the Department of Community Affairs, Construction Code Element, 3131 Princeton Pike, Bldg. 3, Lawrenceville, NJ.

Submit written comments by June 17, 1992 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625-0802
FAX Number (609) 633-6729

Summary

P.L. 1991, c.453, an act concerning indirect apportionment of heating costs in multiple dwellings, was signed into law on January 18, 1992, to become effective on the 90th day following, which is April 17, 1992. Systems of indirect apportionment of heating costs that are in use on the effective date of the act may continue to be used until October 17, 1992, and thereafter must be removed, and their use discontinued, unless approved by the Department. Any new use or installation of any method or device for indirect apportionment of heating costs on or after April 17, 1992 requires prior approval by the Commissioner of Community Affairs.

The act prohibits installation or employment of any method or device of measurement or calculation for purpose of indirect apportionment of heating costs until the Commissioner has certified, in accordance with evidence and documentation presented in accordance with rules to be adopted by the Department that the method and any device are reliable and accurate, that the system will be inspected and maintained in accordance with an appropriate schedule, that heating costs will be distributed among dwelling units on the basis of actual usage, that the system will incorporate individual thermostatic controls in each dwelling unit, that billing of heating costs to each dwelling unit will include a statement of total heating costs to the building and the proportion apportioned to each dwelling unit, and that only costs for fuel or electric current will be apportioned under this method. The rules adopted by the Commissioner must require adequate certification of the performance of inspection and maintenance.

The proposed new rules are based on recommendations contained in Appendices F and G of the Executive Committee report of the National Conference on Weights and Measures Task Force on Energy Allocation, which met October 6 and 7, 1988 in Gaithersburg, Maryland. The task force, which published its findings in 1989, decided that national calibration of heat metering devices could not be accomplished, but made recommendations for use by State and local jurisdictions.

It is clear to the Department that since the report of the task force is several years old, new technological advances may have altered the field of available devices, and some newer designs may have resolved difficulties that were identified regarding accuracy, reliability, and the use of "assumptions" instead of actual measurements to calculate usage, all of which the task force criticized. A copy of the task force's report may be obtained from the Department on request.

Though the new N.J.A.C. 5:10-25 will be administered by the Bureau of Housing Inspection, the Construction Code Element will be responsible for technical evaluation of all proposed devices and systems. Approval by the Department of the system to be used will be required prior to any installation. A fee is required to be paid to the Department sufficient to cover the cost of any necessary tests plus a 10 percent administrative surcharge, to be charged for approval of fixtures, materials, appurtenances and methods not otherwise approved under the Uniform Construction Code.

Social Impact

The proposed new rules and amendments would require that indirect heat apportionment devices and methods be shown to be accurate and reliable before they are used to allocate heating costs to tenants. The Legislature, in enacting P.L. 1991, c.453, has deemed it inequitable to use devices or methods that do not accurately measure heat used by a particular tenant for the purpose of billing that tenant.

Economic Impact

Manufacturers, distributors and other persons seeking approval for use of their devices and systems for indirect apportionment of heating costs will be subject to fees for Departmental approval of their systems, along with administrative application costs. The new fee that would be applicable to approval of these devices, as well as other fixtures, appurtenances, materials and methods not already provided for in the Uniform Construction Code, is set at an amount equal to the cost to the Department of any necessary tests plus a 10 percent administrative surcharge.

Owners of multiple dwellings proposing to utilize a method or system for indirect apportionment of heating costs are required to provide to the Bureau of Housing Inspection the information specified in N.J.A.C. 5:10-25.2(c), and will incur the administrative cost necessary to provide this information. Owners with approved methods or systems of indirect apportionment are responsible for the costs of inspection and maintenance, in accordance with the schedule filed under N.J.A.C. 5:10-25.2(c)10, and maintaining records of same. If a multiple dwelling owner's existing method or system for indirect apportionment of heating costs is not approved by the Bureau, an approved method or system must be installed, or the use of indirect apportionment discontinued, by October 17, 1992, pursuant to the act. The cost of such installation or discontinuance will vary depending upon the specifics of the multiple dwelling and the method or system installed or discontinued.

Regulatory Flexibility Analysis

The proposed new rules and amendments impose compliance requirements on manufacturers, distributors and other persons seeking approval for use of their devices and systems of devices for indirect apportionment of heating costs, and impose recordkeeping and compliance requirements on multiple dwelling owners proposing to use methods or systems for indirect apportionment of heating costs. Some of these may be entities which are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The compliance requirements on those seeking approval for their devices and systems of devices include providing the information and fee specified in N.J.A.C. 5:10-25.2(a) to the Construction Code Element. Multiple dwelling owners proposing to use indirect apportionment of heating costs methods or systems must provide the Bureau of Housing Inspection with the information set forth under N.J.A.C. 5:10-25.2(c), comply with the inspection and maintenance schedule submitted, and keep records of such maintenance and inspections. If an existing method or system is not approved under these rules, the owner must discontinue use of the method or system or install an approved one. The costs of these requirements are discussed in the Economic Impact above. Professional services may need to be employed by multiple dwelling owners in the installation (if necessary), inspection and maintenance of the systems or methods used; the costs of such services will vary depending upon the method or system installed and specific charges for inspection and maintenance.

These proposed new rules and amendments implement a statute intended to protect tenants from unfair and arbitrary charges. The compliance and recordkeeping requirements are no less for small than for large businesses or landlords because even a small business or landlord cannot be allowed to bill in an inequitable way or to collect improper billing amounts from tenants.

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

SUBCHAPTER 25. METHODS, DEVICES AND SYSTEMS FOR INDIRECT APPORTIONMENT OF HEATING COSTS IN MULTIPLE DWELLINGS

5:10-25.1 Scope

(a) This subchapter establishes standards and procedures for the Bureau of Housing Inspection's approval of methods and devices for indirect apportionment of heating costs in multiple dwellings, in accordance with P.L. 1991, c.453.

(b) No method, device or system of devices for apportionment of heating costs in multiple family dwellings shall be used without prior approval of the Bureau pursuant to this subchapter, except that methods or devices in use on April 17, 1992 may continue in use pending application for and issuance of approval by the Bureau, until not later than October 17, 1992, after which date they must be removed and their use discontinued.

(c) This subchapter shall not apply to devices for direct apportionment of heating costs that are approved by the Board of Regulatory Commissioners.

5:10-25.2 Application to the Department

(a) Any manufacturer, distributor or other person seeking approval for use of a device or system of devices for indirect apportionment of heating costs in a multiple dwelling shall submit two copies of the following information, as well as the appropriate fee, at such time as the fee shall be determined in accordance with N.J.A.C. 5:23-4.20(d), to the Construction Code Element, CN 805, Trenton, NJ 08625. The Construction Code Element will forward one copy of the information document to the Bureau:

1. The name and address and social security or taxpayer identification number of the applicant for approval;
2. The name and address of the general partner(s) or corporate officer(s), if applicable;
3. A description of the device or system of devices, including a narrative description, schematics, and any test certifications or listings of components;
4. A description of the method for computing energy consumption based on measurements recorded by the device or system of devices, using commonly recognized standard American units;
5. A description of any calculations used to convert standard units and any subsequent calculations used to arrive at occupant usage; and
6. A description of any calculations used to arrive at a unit cost charged occupants.

(b) Approved devices and systems shall be placed on a list to be maintained by the Construction Code Element. The list shall be made available to any interested party on request.

1. An owner of a multiple dwelling shall not submit an application for use of such a device or system to the Bureau unless the device or system is on the Department's list of approved devices and systems.

(c) An owner of a multiple dwelling who proposes to institute a method or system for indirect apportionment of heating costs shall provide the following information to the Bureau:

1. The make and identifying number of the device or system for indirect apportionment of heating costs that is proposed to be installed;
2. The name, address and social security or taxpayer identification number of the owner of the building;
3. The name and address of the building manager, if applicable;
4. The address and registration number of the multiple dwelling;
5. The number of dwelling units;
6. A copy of all written information related to heating costs that is provided to existing or prospective occupants, including applicable lease terms;
7. A copy of the billing format used or proposed to be used to bill for apportioned heating costs;
8. A copy of information concerning indirect apportionment of heating costs provided to existing and prospective occupants, including information about complaints, maintenance requests and challenges to billing, and including the names and addresses of persons responsible for responding to any such complaints, requests or challenges; and
9. A proposed schedule of inspection and maintenance of the indirect apportionment system.

5:10-25.3 Criteria for acceptance

(a) Before accepting a device or system of devices for indirect apportionment of heating costs for use in multiple dwellings, the Bureau, after consultation with the Construction Code Element, shall be satisfied that it is:

1. Reliable and accurate;
2. Subject to an appropriate inspection and maintenance schedule;
3. Capable of equitably measuring distribution of energy to all occupancies based on actual usage;
4. Equipped with individual thermostats for each dwelling unit;
5. Designed to produce itemized billing statements, or to produce data for itemized billing statements, based on actual use in each dwelling unit; and,
6. Not designed so as to include additional costs or usages, whether apportioned or not, in the data or billings for individual dwelling units.

(b) The Bureau, in consultation with the Construction Code Element, shall review testing records for all devices and systems, inspection and maintenance records for devices and systems previously in use and proposed schedules for inspection and maintenance.

(c) The following general classes of systems may be approved:

1. Gas, oil, or electric-fired furnace systems that monitor time of delivery of gas, or electricity or oil consumed, rate of consumption and accuracy of timer activation;
2. Hydronic heated/cooled systems that monitor changes in water temperature, volume of water, and time period of usage; and
3. Any other type of system that the Department approves in accordance with these rules.

(d) The following general classes of methods, devices and systems shall not be approved because of inherent inaccuracy:

1. Elapsed time monitors for hydronic systems;
2. Time/temperature monitors for hydronic systems which do not measure flow rate;
3. Systems for any heat source based solely on thermostat settings in individual dwelling units; and
4. Methods that rely on any means of calculation other than the use of approved devices or systems.

(e) The Bureau shall not reject, on technical grounds, any device or system that is approved by the Construction Code Element.

5:10-25.4 Approval of methods, devices and systems

(a) When the Construction Code Element is satisfied that a device or system proposed to be used complies with N.J.A.C. 5:10-25.3, it shall issue a letter of technical adequacy to the Bureau and shall place such device or system on the list that it maintains. When the Bureau has determined that all requirements of P.L. 1991, c.453 and of this subchapter are met, it shall issue to the applicant a notice of approval of the method, device or system; provided, however, that any such notice of approval shall be subject to, and contingent upon, receipt by the Bureau of a copy of the certificate of approval issued by the local construction official for the installation of the device or system.

(b) The Bureau, with the assistance of the Construction Code Element or of local construction officials, may make such inquiries and inspections regarding the use and installation of methods, devices and systems for indirect apportionment of heating costs in multiple dwellings as it may deem necessary in order to properly enforce P.L. 1991, c.453 and this subchapter.

(c) The Bureau shall revoke any notice of approval of a method, device or system for the indirect apportionment of heating costs if the use, installation or operation of such method, device or system is in violation of P.L. 1991, c.453 or of this subchapter.

5:10-25.5 Maintenance requirements

(a) The owner of a multiple dwelling in which a device or system for indirect apportionment of heating costs has been installed shall

maintain the device or system, and cause it to be inspected, in accordance with the inspection and maintenance schedule filed as part of the application for approval and approved by the Bureau.

(b) The owner shall at all times have available for examination by the Bureau's representatives documentation evidencing the maintenance and inspection of the device or system in accordance with the approved schedule.

(c) Complaints concerning methods, devices or systems for indirect apportionment of heating costs in multiple dwellings may be filed with the Bureau. Any such complaint shall include all available relevant information.

5:23-3.7 Municipal approvals of nonconforming materials

(a) Approvals: [The] **Except as otherwise provided in N.J.A.C. 5:23-3.8, the** appropriate subcode official may approve the use of fixtures, appurtenance, materials and methods of a type not conforming with the requirements of, nor expressly prohibited by, the regulations after determination that such fixture, appurtenance, material or method is of such design or quality, or both, as to appear to be suitable and safe for the use for which it is intended. A record of such approvals shall be maintained and shall be available to the public.

1. Any person desiring to install or use a fixture, appurtenance, material or method of a type not conforming with the requirements of, nor expressly prohibited by, the regulations shall, prior to such installation or use, submit to the appropriate subcode official such proof as may be required to determine whether such fixture, appurtence, material or method is of such design or quality, or both, as to appear to be suitable and safe for the use for which it is intended.

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

5:23-3.8 Departmental approval of nonconforming materials

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

(d) The Department shall have exclusive authority to approve systems for indirect apportionment of heating costs in multiple dwellings.

5:23-4.20 Departmental fees

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

(d) The fee for an application by a manufacturer, distributor, owner or any other person for approval of any fixture, appurtenance, material or method, pursuant to N.J.A.C. 5:23-3.8, shall be an amount equal to the cost incurred, or to be incurred, by the Department for such tests as the Department may require, plus an administrative surcharge in the amount of 10 percent of such cost.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Standards for Municipal Fees, Departmental Fees Plumbing Fixtures and Equipment
Proposed Amendments: N.J.A.C. 5:23-4.18 and 4.20

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

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

Proposal Number: PRN 1992-202.

Submit written comments by June 17, 1992 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625-0802
FAX Number (609) 633-6729

The agency proposal follows:

Summary

This proposed amendment would eliminate the current fee for special devices as it applies to gas service entrances. When the Department set fees and designed standard forms, it was not intended that the special device fee would be charged along with the other fees in this situation.

Under law, the gas utility is responsible for inspection up to and including the gas meter. The jurisdiction of the State Uniform Construction Code covers inspection of gas piping from the meter to any gas fired appliance and the inspection of the appliance. Individual fees already exist for gas piping and for appliances inspection. Since the gas utility is responsible for the gas service entrance, an inspection fee for this type of connection is unwarranted.

This change is being made in fees charged by the Department and those permitted to be charged by municipalities.

Social Impact

There should be no social impact as a result of this change, because the equipment will continue to be inspected and there will be no adverse effect on public safety.

Economic Impact

This proposed amendment would reduce fees for new construction utilizing gas construction and for alterations involving conversion to gas. Since the inspection fee to be eliminated is a special device fee of $60.00, many applicants may benefit from a significant reduction in the amount they are charged for installation and conversion.

Regulatory Flexibility Statement

This amendment would reduce construction code fees for all businesses doing new construction or alterations that involve installation of gas service. The fee reduction would be approximately $60.00 per installation in all instances in which the fee was formerly charged. There will be no differential impact on small businesses, nor is any appropriate.

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

5:23-4.18 Standards for municipal fees

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

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

1. (No change.)

2. Plumbing fixtures and stacks: Fees shall be based upon the number of plumbing fixtures, devices, plumbing stacks and utility service connections to be installed. Utility service connections include sewer connections and water service connections. The fee shall be a unit rate per fixture, stack, and utility service connection. The unit rate may vary for different types of fixtures and utility service pipes, but this shall be clearly indicated in the ordinance and schedule. **There shall be no inspection fee charged for gas service entrances.**

3.-4. (No change.)

(d)-(k) (No change.)

5:23-4.20 Departmental fees

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

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

1. (No change.)

2. The basic construction fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and pieces of equipment, the number of electrical fixtures and devices and the number of sprinklers, standpipes, and detectors (smoke and heat) at the unit rates provided herein plus any special fees. The minimum fee for a basic construction permit covering any or all of building, plumbing, electrical, or fire protection work shall be $43.00.

i. (No change.)

ii. Plumbing fixtures and equipment: The fees shall be as follows:

(1) (No change.)

(2) The fee shall be $60.00 per special device for the following: grease traps, oil separators, water cooled air conditioning units, refrigeration units, utility service connections, back flow preventers, steam boilers, hot water boilers (excluding those for domestic water heating), gas piping, [gas service entrances,] active solar systems,

sewer pumps, interceptors and fuel oil piping. **There shall be no inspection fee charged for gas service entrances.**

iii.-iv. (No change.)

3.-8. (No change.)

(a)

OFFICE OF THE OMBUDSMAN FOR THE INSTITUTIONAL ELDERLY

Notice of Extension of Comment Period

Ombudsman Practice and Procedure: Advance Directives for Health Care Act

Proposed Amendments: N.J.A.C. 5:100-2.3, 2.4 and 2.5

Proposed: April 20, 1992 at 24 N.J.R. 1455(a).
Proposal Number: PRN 1992-178.

Take notice that Thomas P. Brown, Acting Ombudsman for the Institutionalized Elderly has extended the comment period until May 27, 1992 for the above captioned proposal in order that proper secondary notice may be provided.

Submit comments by May 27, 1992 to:

Goldie Torres Colonna, General Counsel
Office of the Ombudsman for the
Institutionalized Elderly
28 West State Street, Room 305
CN 808
Trenton, NJ 08625-0808

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

DIVISION OF FISH, GAME AND WILDLIFE

Fish and Game Council
1992-93 Game Code

Proposed Amendments: N.J.A.C. 7:25-5

Authorized By: Fish and Game Council, Cole Gibbs, Chairman.
Authority: N.J.S.A. 13:1B-29 et seq.
DEPE Docket Number: 015-92-04.
Proposal Number: PRN 1992-210.

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

June 9, 1992 at 8:00 P.M.
Mercer County Community College
West Windsor Campus
1200 Old Trenton Road
Administration Building, Conf. Rm. A
West Windsor, New Jersey

Submit written comments by June 17, 1992 to:

Robert McDowell, Director
Division of Fish, Game and Wildlife
Department of Environmental Protection and Energy
CN 400
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed 1992-93 Game Code, N.J.A.C. 7:25-5, states when, under what circumstances, in what location, by what means, and in what amounts and numbers, birds, game animals and fur-bearing animals may be pursued, taken, killed or possessed.

Since the turn of the century, the Game Code has provided a system for the protection, propagation, increase, control and conservation of game birds, game animals, and fur-bearing animals in this State and for their use and development for public recreation and food supply. Yearly revisions based on scientific investigation and research ensure the greatest likelihood of success in reaching these goals.

The proposed amendments include the following revisions:

1. Most hunting season dates are adjusted to correspond with the 1992-93 calendar which takes into account both anticipated differences in hunting activity according to the day of the week, and the effects of the regulatory activities of neighboring states. Small game seasons have been adjusted to correspond to changes in the deer hunting season, generally with no change in the overall length of the small game season (N.J.A.C. 7:25-5.2, 5.3, 5.4, 5.5, 5.7, 5.15, 5.17, 5.18).

2. Hunting on semi-wild preserves for species under license is extended from February 28 to March 15, 1993 to allow for additional recreational opportunity and to provide a closing date the same as that for commercial hunting preserves (N.J.A.C. 7:25-5.2, 5.3).

3. Wild turkey permit quotas for eight areas are adjusted to provide for a total increase of 400 permits. Turkey populations in these areas have expanded enough to allow for an increased harvest without detriment to the population (N.J.A.C. 7:25-5.7).

4. Beaver special permit quotas are adjusted to allow for a net decrease of two beaver permits. However, an increase of two, from a total of 31 to 33, site specific beaver permits is available in order to further address complaint colonies or sites.

5. Permit allocations for river otter are reduced by one in each of four zones in order to reduce the harvest in these zones as a result of a decrease in otter habitat (N.J.A.C. 7:25-5.10).

6. The mandatory call-in reports required for river otter captures during the special permit otter season is eliminated. Even under the current permit system river otter are consistently underutilized in most areas and therefore, the mandatory call-in, which was an early safeguard against overharvest, is no longer considered necessary (N.J.A.C. 7:25-5.10).

7. Persons legally engaged in hunting woodcock may use shot not larger than No. 4 fine shot when the prescribed woodcock and shotgun deer seasons overlap, thereby providing woodcock hunters the maximum number of days available under the Federal framework (N.J.A.C. 7:25-5.23).

8. A Special Muzzleloader Rifle Scope Permit may be issued by the Division to certain visually impaired individuals who are incapable of using a muzzleloading rifle with open sights or peep sights for deer hunting. This change will allow persons with a documented and otherwise uncorrectable vision disability to hunt deer with a muzzleloading rifle during prescribed seasons (N.J.A.C. 7:25-5.23).

9. The fall bow season bag limit in Zones 7, 8, 10, 11, 12 and 41 is changed to antlerless deer only during the first six days of the season (September 26 through October 2, 1992). This change will increase the availability of antlered bucks for the six-day firearm season and provide for a more equitable distribution of the antlered buck harvest (N.J.A.C. 7:25-5.25).

10. The fall bow season bag limit in Zones 18 and 21 is changed to antlered bucks only during the first three weeks of the season (September 26 through October 16, 1992). This change will provide for a more equitable distribution of the anterless deer harvest among all either-sex seasons (N.J.A.C. 7:25-5.25).

11. The permit muzzleloader deer season length in Zone 1 is increased from eight to 13 days for the purpose of increasing recreational opportunity and the muzzleloader harvest (N.J.A.C. 7:25-5.28).

12. Permit muzzleloader, permit shotgun and permit bow season quotas, bag limits and season lengths are adjusted according to harvest objectives to yield a Statewide net decrease in the anticipated antlerless deer harvest (N.J.A.C. 7:25-5.28, 5.29, 5.30).

13. The duration of the permit shotgun deer season is: reduced from seven to six days in Zones 5, 7, 8, 10, 11, 12, 41 and 63; reduced from six to three days in Zones 35 and 51; reduced from three days to one day in Zones 22 and 30; and increased from no days to one day in Zone 32 for the purpose of achieving antlerless deer harvest objectives designed to maintain the deer population at a level compatible with the available habitat and its human population (N.J.A.C. 7:25-5.29).

14. The permit shotgun deer season bag limit is reduced from two deer of either sex and any age to one deer of either sex and any age in Zones 22 and 30 for the purpose of reducing the permit shotgun antlerless deer harvest (N.J.A.C. 7:25-5.29).

15. The permit bow deer season is reinstated in Zone 1 for the purposes of increasing recreational opportunity for bow hunters and increasing the permit bow antlerless deer harvest (N.J.A.C. 7:25-5.30).

16. The Deer Management Zone 40 designation (number) was reassigned, because Allamuchy State Park, located in Warren County, requested to drop its special area status and return to being part of Zone 8. The new Zone 40 was created from 1.1 square miles of Earle Naval Weapons Station (Zone 39), located in Monmouth County, for the purpose of creating a separate special area deer management program for an isolated portion of the facility open only to bow hunting. Description errors for Zones 25, 26 and 49 were corrected (N.J.A.C. 7:25-5.28, 5.29, 5.30).

17. The permit bow season length is increased from 25 days to 49 days in Zone 40, only, for the purposes of increasing recreational opportunity and the antlerless deer harvest (N.J.A.C. 7:25-5.30).

The remaining changes have been made for clarification and correction of typographical errors.

Social Impact

Adjustments in the dates of small game seasons in order to account for 1992 calendar changes are minor with no social impact anticipated.

The relatively limited changes proposed for hunting seasons, permit quotas, and hunting areas should have a minimal adverse social impact, in that hunting activity will be further curtailed in some areas and at some times, from what has been permitted under prior codes.

However, the increase in the number of days available for deer hunting in some areas and the additional permits available for turkey hunting should have a significant positive impact on increasing hunting opportunity. Adjustments that have been made to deer hunting quotas, season lengths, and bag limits, should benefit all segments of the public in providing for healthier deer populations, long-term enhanced recreational hunting opportunities, and deer population level compatible with other land uses.

The positive social impact anticipated includes the conservation, management, and the enhancement of the wildlife resource for continued recreational opportunities.

Economic Impact

There may be a small, short-term adverse economic impact on local retailers serving the hunting population as a result of changes in hunting seasons, permit quotas, and special permit seasons.

However, these amendments to the Game Code should further the conservation and enhancement of the wildlife resource upon which a significant recreation and commercial industry is dependent and, therefore, occasion a long-term economic boon.

Environmental Impact

The proposed amendments should have a positive environmental impact in continuing the conservation, management and enhancement of the State's wildlife resources based on their current population, distribution and habitat status.

Regulatory Flexibility Analysis

The proposed 1992-93 Game Code imposes reporting and compliance requirements on sportsmen engaged in recreational hunting. These requirements are not, therefore, imposed upon small businesses, as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

However, the Game Code also regulates the activity of trappers, who may engage in such activity for their economic benefit. Such trappers may be considered small businesses. The proposed amendments to trapping rules N.J.A.C. 7:25-5.8 through 5.11 impose no additional reporting, recordkeeping or compliance requirements. Reporting requirements for otter taken under special permit are in fact lessened. The 1991-92 season dates are revised for the 1992-93 season, and the permit limits are revised, where appropriate. These revisions should result in no increased capital cost to trappers, and cause no need for professional services to be engaged, in order to comply.

As there is no increased regulatory burden on trappers due to the proposed amendments, and given the Council's objective to both protect game resources and foster recreational opportunities related to game, no differentiation in requirements to exemption related to business size are provided.

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

SUBCHAPTER 5. [1991-1992] **1992-93** GAME CODE

7:25-5.2 Pheasant—Chinese ringneck (Phasianus colchicus torguatus), English or blackneck (P. c. colchicus), Mongolian (P. mongolicus), Japanese green (Phasianus versicolor); including mutants and crosses of above

(a) The duration for the male pheasant season is November [9] **7**, to December [7, 1991] **5, 1992** inclusive, and December [16, 1991] **14, 1992** through January [4, 1992] **2, 1993** excluding December [18, 19 and 20, 1991] **16, 17, and 18, 1992** in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The duration for the male pheasant season for properly licensed persons engaged in falconry is September 1 to December [7, 1991] **5, 1992** inclusive and December [16, 1991] **14, 1992** through March 31, [1992] **1993**, excluding November [8] **5, 1992** and December [18, 19 and 20, 1991] **16, 17 and 18, 1992** and January [17, 18 and 25, 1992] **15, 16 and 23, 1993** in those management zones in which a shotgun deer permit season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) The duration of the season for pheasants of either sex in the area described as Warren County north of Route 80, Morris County north of Route 80, Ocean County south of Route 70 and the counties of Sussex, Passaic, Bergen, Hudson, Essex, Camden, Atlantic, and Cape May and on all wildlife management areas is November [9] **7** to December [7, 1991] **5, 1992**, inclusive, and December [16, 1991] **14, 1992** through February [17, 1992] **15, 1993**, excluding December [18, 19 and 20, 1991] **16, 17 and 18, 1992** and January [17, 18 and 25, 1992] **15, 16 and 23, 1993** in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(e) The hours for hunting pheasants on November [9, 1991] **7, 1992** are 8:00 A.M. to ½ hour after sunset. All other days on which the hunting for pheasants is legal, the hours are sunrise to ½ hour after sunset.

(f) (No change.)

(g) The [opening of the] season [on] **for properly licensed** semi-wild preserves [coincides with the listed Statewide opening of November 10, 1990] **is November 7, 1992 to March 15, 1993 inclusive.**

(h) (No change.)

7:25-5.3 Cottontail rabbit (Sylvilagus floridanus), black-tailed jack rabbit (Lepus californicus), white-tailed jack rabbit (Lepus townsendii), European hare (Lepus europeus), chukar partridge (Alectoris graeca), and quail (Colinus virginianus)

(a) The duration of the season for the hunting of cottontail rabbit, black-tailed jack rabbit, white-tailed jack rabbit, European hare, chukar partridge and quail is November [9] **7** through December [7, 1991] **5, 1992**, inclusive, and December [16, 1991] **14, 1992** to February [17, 1992] **15, 1993**, excluding December [18, 19 and 20, 1991] **16, 17 and 18, 1992** and January [17, 18 and 25, 1992] **15, 16 and 23, 1993** in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The duration of the season for the hunting of the animals enumerated by (a) above for properly licensed persons engaged in falconry is September 1 to December [7, 1991] **5, 1992**, inclusive, and December [16, 1991] **14, 1992** through March 31, [1992] **1993**, excluding November [8] **6** and December [18, 19 and 20, 1991] **16, 17 and 18, 1992** and January [17, 18 and 25, 1992] **15, 16 and 23, 1993** in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) The hunting hours for the animals enumerated in this section are as follows: November [9, 1991] **7, 1992**, 8:00 A.M. to ½ hour after sunset. On all other days for which hunting for these animals is legal, the hours are sunrise to ½ hour after sunset.

(e) The quail and chukar partridge season for properly licensed semi-wild preserves is November 7, 1992 to March 15, 1993 inclusive.

[(e)](**f**) (No change in text.)

7:25-5.4 Ruffed grouse (Bonasa umbellus)

(a) The duration of the season for the hunting of grouse is October [12] **10** through December [7, 1991] **5, 1992**, inclusive, and December [16, 1991] **14, 1992** to February [17, 1992] **15, 1993**, excluding December [18, 19 and 20, 1991] **16, 17 and 18, 1992** and January [17, 18 and 25, 1992] **15, 16 and 23, 1993** in those deer management zones in which a shotgun permit deer season is authorized and excluding any extra deer permit season day(s) that is declared open.

(b) (No change.)

(c) The hunting hours for ruffed grouse are sunrise to ½ hour after sunset, with the exception of November [9, 1991] **7, 1992** when legal hunting hours are 8:00 A.M. to ½ hour after sunset.

(d) (No change.)

7:25-5.5 Eastern gray squirrel (Sciurus carolinensis)

(a) The duration of the season for the hunting of squirrels is October [12] **10** through December [7, 1991] **5, 1992**, inclusive, and December [16, 1991] **14, 1992** to February [17, 1992] **15, 1993**, excluding December [18, 19 and 20, 1991] **16, 17 and 18, 1992** and January [17, 18 and 25, 1992] **15, 16 and 23, 1993** in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit season day(s) if declared open.

(b) The duration of the season for the hunting of squirrels for properly licensed persons engaged in falconry is September 1 to December [7, 1991] **5, 1992**, inclusive, and December [16, 1991] **14, 1992** through March 31, [1992] **1993**, excluding December [18, 19 and 20, 1991] **16, 17 and 18, 1992** and January [17, 18 and 25, 1992] **15, 16 and 23, 1993** in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) Hunting hours for squirrels are sunrise to ½ hour after sunset, with the exception of November [9, 1991] **7, 1992** when legal hunting hours are 8:00 A.M. to ½ hour after sunset.

(e) (No change.)

7:25-5.7 Wild turkey (Meleagris gallapavo)

(a) The duration of the Spring Wild Turkey Gobbler hunting season includes five separate hunting periods of four, five or ten days each. The hunting periods for all hunting areas shall be:

1. Monday, April [20, 1992] **26, 1993**-Friday, April [24, 1992] **30, 1993**

2. Monday, [April 27, 1992] **May 3, 1993**-Friday, May [1, 1992] **7, 1993**

3. Monday, May [4, 1992] **10, 1993**-Friday, May [8, 1992] **14, 1993**

4. Monday, May [11, 1992] **17, 1993**-Friday, May [15, 1992] **21, 1993** and Monday, May [18, 1992] **24, 1993**-Friday, May [22, 1992] **28, 1993**

5. Saturday, [April 25, 1992] **May 1, 1993**; Saturday, May [2, 1992] **8, 1993**; Saturday, May [9, 1992] **15, 1993**; and Saturday, May [16, 1992] **22, 1993**.

(b)-(f) (No change.)

(g) Special permits consist of [an application stub and] a back display which includes a wild turkey transportation tag. The back portion of the permit will be conspicuously displayed on the outer clothing in addition to the valid firearm or archery license. [The validated application stub must be in the possession of the permittee while hunting.] Any wild turkey killed must be tagged immediately with the completed wild turkey transportation tag. This completely filled in wild turkey transportation tag allows legal transportation of the wild turkey to an authorized checking station only. Personnel at the checking station will issue a "possession tag". Any permit holder killing a wild turkey must transport this wild turkey to an authorized checking station by 3:00 P.M. on the day killed to secure the legal "possession tag". The possession of a wild turkey after 3:00 P.M. on the date killed without a legal "possession tag" shall be deemed illegal possession.

(h) Wild Turkey Hunting Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, address, [1992] **1993** firearm or archery hunting license number, turkey hunting areas applied for, hunting periods applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of February 1-15, [1992] **1993**, inclusive. Applications received after February 15 will not be considered for the initial drawing. Selection of permits will be by random drawing.

i. If a fall turkey hunting season is authorized for [1992] **1993**, application shall be made in conjunction with the spring season application procedures in a form as prescribed by the Division.

4.-6. (No change.)

(i) Special Farmer Spring Turkey Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, address and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of February 1-15, [1992] **1993**. There is no fee required and all qualified applicants will receive a Special Farmer Spring Turkey Permit delivered by mail.

4. (No change.)

(j) (No change.)

(k) Turkey Hunting Area Map is on file at the Office of Administrative Law and is available from that agency or the Division. The [1992] **1993** Spring Turkey Hunting Season Permit Quotas are as follows:

[1992] **1993** SPRING TURKEY HUNTING SEASON PERMIT QUOTAS

Turkey Hunting Area Number	Weekly Permit Quota*	Season Total	Portions of Counties Involved
1	100	500	Sussex
2	120	600	Sussex, Warren
3	80	400	Sussex, Warren
4	[100] **120**	[500] **600**	Sussex, Warren, Morris
5	100	500	Sussex
6	150	750	Sussex, Passaic, Bergen
7	150	750	Sussex, Morris, Passaic
8	[60] **70**	[300] **350**	Warren, Hunterdon
9	[60] **75**	[300] **375**	Warren, Hunterdon, Morris
10	[25] **30**	[125] **150**	Essex, Middlesex, Morris, Somerset, Union
11	[40] **50**	[200] **250**	Middlesex, Mercer, Hunterdon, Somerset
13	[10] **15**	[50] **75**	Burlington, Ocean
14	[50] **60**	[250] **300**	Burlington, Ocean, Mercer, Monmouth
15	55	275	Burlington, Camden, Atlantic
16	60	300	Burlington, Atlantic, Ocean, Cape May, Cumberland
20	[65] **70**	[325] **350**	Cumberland, Salem
21	50	250	Atlantic, Cumberland, Salem
22	0	0	Atlantic, Cape May, Cumberland
Total	[1,275] **1,355**	[6,375] **6,775**	

*Applied to each of the five hunting periods (A,B,C,D,E) in all areas:

A. Monday, April [20, 1992] **26, 1993**-Friday, April [24, 1992] **30, 1993**

B. Monday, [April 27, 1992] **May 3, 1993**-Friday, May [1, 1992] **7, 1993**

C. Monday, May [4, 1992] **10, 1993**-Friday, May [8, 1992] **14, 1993**

D. Monday, May [11, 1992] **17, 1993**-Friday, May [15, 1992] **21, 1993** and Monday, May [18, 1992] **24, 1993**-Friday, May [22, 1992] **28, 1993**

E. Saturday, [April 25, 1992] **May 1, 1993**; Saturday, May [2, 1992] **8, 1993**; Saturday, May [9, 1992] **15, 1993**; and Saturday, May [16, 1992] **22, 1993**.

(l)-(m) (No change.)

7:25-5.8 Mink (Mustela vison), muskrat (Ondatra zibethicus) and nutria (Myocaster coypus) trapping only

(a) (No change.)

(b) The duration of the mink, muskrat and nutria trapping season is as follows:

1. Northern Zone: 6:00 A.M. on November 15, [1991] **1992** through March 15, [1992] **1993**, inclusive, except on State Fish and Wildlife Management Areas.

2. Southern Zone: 6:00 A.M. on December 1, [1991] **1992** through March 15, [1992] **1993**, inclusive, except on State Fish and Wildlife Management Areas.

3. (No change.)

4. On State Fish and Wildlife Management Areas: 6:00 A.M. on January 1 through March 15, [1992] **1993**, inclusive.

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

7:25-5.9 Beaver (Castor canadensis) trapping

(a) (No change.)

(b) The duration of the trapping season for beaver shall be February 1 through February 28, [1992] **1993**, inclusive.

(c) Special Permit: A special permit obtained from the Division of Fish, Game and Wildlife shall be required to trap beaver. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders.)[.] Applications shall be received in the Trenton office during the period December 1, [1991] **1992**-December 26, [1991] **1992**. Applicants may apply for only one beaver trapping permit and shall provide their [1991] **1992** trapping license number. Permits will be allotted on a zone basis as follows: Zone 1—[9] **8**, Zone 2—[8] **7**, Zone 3—2, Zone 4—4, Zone 5—3, Zone 6—16, Zone 7—3, Zone 8—1, Zone 9—3, Zone 10—5, Zone 11—3, Zone 12—3, Zone 13—0, Zone 14—1, Zone 15—0, Zone 16—3, Zone 17—3, Zone 18—2. Total [69] **67**. Successful applicants must trap with a valid, current trapping license.

(d) Special Site Specific Permit: During the initial application period, applicants may also apply for one special site specific beaver permit. The total number of permits available shall not exceed [31] **33**. Site specific permits will be issued for specific locations or properties where the Division has determined that beaver damage or nuisance problems exist. A random drawing will be held to determine permit holders; however, applicants unsuccessful in obtaining the special permit as set forth at (c) above will be given first opportunity. Permits will be valid only during the beaver trapping season.

(e) (No change.)

(f) A "beaver transportation tag" provided by the Division shall be affixed to each beaver taken immediately upon removal from trap, and all beaver shall be taken to a designated beaver checking station at the times and dates specified on the beaver permit and, in any case, no later than March [2, 1992] **6, 1993.**

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

7:25-5.10 River otter (Lutra canandensis) trapping

(a) (No change.)

(b) The duration of the trapping season for otter shall be February 1 through February 28, [1992] **1993,** inclusive.

(c) Special Permit: A special permit obtained from the Division of Fish, Game and Wildlife shall be required to trap otter. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders.)[.] Beaver permit holders will be given first opportunity for otter permits in their respective zones. Applications shall be received in the Trenton office during the period December 1, [1991] **1992**-December 26, [1991] **1992.** Only one application per person may be submitted for trapping otter and applicants shall provide their [1991] **1992** trapping license number. Permits will be allotted on a zone basis as follows: Zone 1-[8] **7**, Zone 2-[8] **7**, Zone 3-2, Zone 4-[4] **3**, Zone 5-[3] **2**, Zone 6-9, Zone 7-3, Zone 8-6, Zone 9-3, Zone 10-4, Zone 11-5, Zone 12-2, Zone 13-14, Zone 14-7, Zone 15-12, Zone 16-4, Zone 17-2, Zone 18-5. Total [101] **97.** Successful applicants must trap with a valid, current trapping license.

(d) (No change.)

(e) The "otter transportation tag" provided by the Division must be affixed to each otter taken immediately upon removal from the trap. All otter pelts and carcasses shall be taken to a beaver-otter check station at dates specified on the otter permit and, in any case, no later than March [2, 1992] **6, 1993,** where a pelt tag will be affixed and the carcass surrendered.

[(f) Any person trapping an otter must notify one of the regional law enforcement offices within 24 hours.]

Recodify existing (g)-(j) as **(f)-(i)** (No change in text.)

7:25-5.11 Raccoon (Procyon lotor), red fox (Vulpes vulpes), gray fox (Urocyon cinereoargenteus), Virginia opossum (Didelphis virginiana), striped skunk (Mephitis mephitis), long-tailed weasel (Mustela frenata), short-tailed weasel (Mustela erminea), and coyote (Canis latrans) trapping only

(a) (No change.)

(b) The duration of the regular raccoon, red fox, gray fox, Virginia opossum, striped skunk, long-tailed weasel, short-tailed weasel and coyote trapping season is 6:00 A.M. on November 15, [1991] **1992** to March 15, [1992] **1993,** inclusive, except on State Fish and Wildlife Management Areas.

(c) The duration for trapping on State Fish and Wildlife Management Areas is 6:00 A.M. on January 1, [1992] **1993** to March 15, [1992] **1993,** inclusive.

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

7:25-5.13 Migratory birds

(a) Should any open season on migratory game birds, including waterfowl, be set by Federal regulation which would include the date of November [9, 1991] **7, 1992,** the starting time on such date will be 8:00 A.M. to coincide with the opening of the small game season on that date. However, this shall not preclude the hunting of migratory game birds, including waterfowl, on the tidal marshes of the State as regularly prescribed throughout the season by Federal regulations.

(b) (No change.)

(c) A person shall not take, attempt to take, hunt for or have in possession, any migratory game birds, including waterfowl, except at the time and in the manner prescribed in the Code of Federal Regulations by the U.S. Department of the Interior, U.S. Fish and Wildlife Service, for the [1991-92] **1992-93** hunting season. The species of migratory game birds, including waterfowl, that may be taken or possessed and unless otherwise provided the daily bag limits shall be the same as those prescribed by the U.S. Department of the Interior, U.S. Fish and Wildlife Service for the [1991-92] **1992-93** hunting season.

(d)-(g) (No change.)

(h) Hunting hours for waterfowl shall be those hours that are prescribed by the Department of the Interior, United States Fish and Wildlife Service for the [1991-92] **1992-93** hunting season.

(i)-(l) (No change.)

(m) A person shall not take or attempt to take migratory game birds:

1.-10. (No change.)

11. Before 8:00 A.M. on November [9, 1991] **7, 1992.** However this shall not preclude the hunting of migratory game birds on tidal waters or tidal marshes of the State.

12.-13. (No change.)

14. Except at the time and manner prescribed by the State or Federal regulation, or by the [1991-92] **1992-93** Game Code.

15.-19. (No change.)

(n) Seasons and Bag Limits are as follows:

1. Mourning dove (Zenaida macroura) are protected. There will be no open season on these birds during [1991-92] **1992-93.**

2. Rail and gallinule season and bag limits are as follows:

i. The duration of the season for hunting clapper rail (Rallus longirostris), Virginia rail (Rallus limicola), sora rail (Porzana carolina) and common gallinule or moorhen (Gallinula chloropus) is September 1 through November 9, [1991] **1992,** inclusive.

ii. (No change.)

(o) Woodcock zones and hunting hours are as follows:

1.-2. (No change.)

3. Hunting hours for Woodcock are sunrise to sunset except on November [9] **7,** when the hunting hours are 8:00 A.M. to sunset.

(p)-(r) (No change.)

7:25-5.15 Crow (Corvus [brachyrhynches] **spp.**)

(a) Duration for the season for hunting the crow shall be Monday, Thursday, Friday and Saturday from August [12, 1991 through March 21, 1992] **10, 1992 through March 20, 1993,** inclusive, excluding December [9-14] **7-12** and December [18, 19 and 20, 1991 and January 17, 18 and 25, 1992] **16, 17, and 18, 1992 and January 15, 16 and 23, 1993** in those deer management zones in which a shotgun permit deer season is authorized.

(b) (No change.)

(c) The hours for hunting crows shall be sunrise to ½ hour after sunset, except on November [9, 1991] **7, 1992** when the hours are 8:00 A.M to ½ hour after sunset.

(d) (No change.)

7:25-5.17 Raccoon (Procyon lotor) and Virginia opossum (Didelphis virginiana) hunting

(a) The duration for the season of hunting raccoons and Virginia opossum is one hour after sunset on October 1, [1991] **1992** to one hour before sunrise on March 1, [1992] **1993.** The hours for hunting are one hour after sunset to one hour before sunrise.

(b) (No change.)

(c) A person shall not hunt for raccoon or opossum with dogs and firearms or weapons of any kind on December [9-4] **7-12** and on December [18, 19 and 20, 1991] **16, 17, and 18, 1992** and January [17, 18 and 25, 1992] **15, 16 and 23, 1993** in those deer management zones [or] **for** which a shotgun permit deer season is authorized and including any extra permit deer season day(s).

(d) A person shall not train a raccoon or opossum dog other than during the period of September 1 to October 1, [1991] **1992** and from March 1 to May 1, [1992] **1993.** The training hours are one hour after sunset to one hour before sunrise.

(e) (No change.)

7:25-5.18 Woodchuck (Marmota monax) hunting

(a) Duration for the hunting of woodchucks with a rifle in this State is March [14] **13** through September [19, 1992] **18, 1993.** Licensed hunters may also take woodchuck with shotgun or long bow and arrow or by means of falconry during the regular woodchuck rifle season and during the upland game season established in N.J.A.C. 7:25-5.3.

(b)-(f) (No change.)

7:25-5.19 Red fox (Vulpes vulpes) and gray fox (Urocyon cinereoargenteus) hunting

(a) The duration of the red fox and gray fox hunting season is as follows:

1. Bow and Arrow Only—September [28] **26** through November [8, 1991] **6, 1992.**

2. Firearm or Bow and Arrow—November [9, 1991] **7, 1992** through February [22, 1992] **20, 1993,** excluding December [9-14, 18, 19 and 20, 1991] **7-12, 16, 17 and 18, 1992** and January [17, 18 and 25, 1992] **15, 16 and 23, 1993** in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The use of dogs shall not be allowed for fox hunting during the Statewide bow and arrow only season of September [28] **26**-November [8, 1991] **6, 1992.** There shall be no fox hunting during the firearm deer season, except that a person hunting deer during the firearm deer season may kill fox if the fox is encountered before said person kills a deer. However, after a person has killed a deer he must cease all hunting immediately.

(c) The hours for hunting fox are 8:00 A.M. to ½ hour after sunset on November [9, 1991] **7, 1992** and on other days from sunrise to ½ hour after sunset.

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

7:25-5.20 Dogs

(a) A person shall not exercise or train dogs on State Fish and Wildlife Management Areas May to August 31, inclusive, except on portions of various wildlife management areas designated as dog training areas, and there shall be no exercising or training of dogs on any Wildlife Management Area on November [8, 1991] **6, 1992.**

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

7:25-5.23 Firearms and missiles, etc.

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

(e) Within the areas described as portions of Passaic, Mercer, Hunterdon, Warren and Sussex Counties lying within a continuous line beginning at the intersection of Rt. 513 and the New York State line; then south along Rt. 513 to its intersection with the Morris-Passaic County line; then west along the Morris-Passaic County line to the Sussex County line; then south along the Morris-Sussex County line to the Warren County line; then southwest along the Morris-Warren County line to the Hunterdon County line; then southeast along the Morris-Hunterdon County line to the Somerset County line; then south along the Somerset-Hunterdon County line to its intersection with the Mercer County line; then west and south along the Hunterdon Mercer County line to its intersection with Rt. 31; then south along Rt. 31 to its intersection with Rt. 546; then west along Rt. 546 to the Delaware River; then north along the east bank of the Delaware River to the New York State Line; then east along the New York State Line to the point of beginning at Lakeside; and in that portion of Salem, Gloucester, Camden, Burlington, Mercer, Monmouth, Ocean, Atlantic, Cape May and Cumberland counties lying within a continuous line beginning at the intersection of Rt. 295 and the Delaware River; then east along Rt. 295 to its intersection with the New Jersey Turnpike; then east along the New Jersey Turnpike to its intersection with Rt. 40; then east along Rt. 40 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Rt. 536; then east along Rt. 536 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with the New Jersey Turnpike; then northeast along the New Jersey Turnpike to its intersection with Rt. 571; then southeast along Rt. 571 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with Rt. 9 at Somers Point; then south along Rt. 9 to its intersection with Rt. 83; then west along Rt. 83 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Dennis Creek; then south along the west bank of Dennis Creek to its intersection with Delaware Bay; then northwest along the east shore of Delaware Bay and the Delaware River to the point of beginning; persons holding a valid and proper rifle permit in addition to their [1992] **1993** firearm hunting license may hunt for squirrels between January [27 and February 17, 1992] **25 and February 15, 1993** using a .36 caliber or smaller muzzleloading rifle loaded with a single projectile.

(f) Except as specifically provided below for waterfowl hunters, semi-wild and commercial preserves, muzzleloader deer hunters and trappers, from December [9-14, 1991] **7-12, 1992,** inclusive, it shall be illegal to use any firearm of any kind other than a shotgun. Nothing herein contained shall prohibit the use of a shotgun not smaller than 20 gauge nor larger than 10 gauge with a rifled bore for deer hunting only. Persons hunting deer shall use a shotgun not smaller than 20 gauge or larger than 10 gauge with the lead or lead alloy rifled slug or slug shotgun shell only or a shotgun not smaller than 12 gauge nor larger than 10 gauge with the buckshot shell. It shall be illegal to have in possession any firearm missile except the 20, 16, 12 or 10 gauge lead or lead alloy rifled slug or hollow based slug shotgun shell or the 12 or 10 gauge buckshot shell. (This does not preclude a person legally engaged in hunting on semi-wild or commercial preserves for the species under license **or a person legally engaged in hunting woodcock** from being possessed solely of shotgun(s) and nothing larger than No. 4 fine shot, nor a person engaged in hunting waterfowl only from being possessed solely of shotgun and nothing larger than T (.200 inch) steel shot **during the shotgun deer seasons.**) A legally licensed trapper possessing a valid rifle permit may possess and use a .22 rifle and short rimfire cartridge only while tending his or her trap line.

1. Persons who are properly licensed may hunt for deer with a muzzleloader rifle during the [1991] **1992** six day firearm deer season and the permit muzzleloader rifle deer season.

2. Muzzleloader rifles used for hunting deer are restricted to single-shot single barreled weapons with flintlock or percussion actions, shall not be less than .44 caliber and shall fire a single missile or projectile. **Except as provided in (p) below,** [Only] **only** open iron sights and peep sights shall be attached or affixed to the muzzleloader rifle while engaged in hunting for deer. Only one muzzleloader rifle may be possessed while hunting. Double barrel and other types of muzzleloader rifles capable of firing more than one shot without reloading or holding more than one charge are prohibited. Persons who are properly licensed may hunt for deer with a smoothbore muzzleloader during the permit muzzleloader rifle season. Smoothbore muzzleloaders are restricted to single-shot, single barreled weapons with flintlock or percussion actions, shall not be smaller than 20 gauge or larger than 10 gauge, and shall fire a single missile or projectile. **Except as provided in (p) below,** [No] **no** telescopic sights shall be attached or affixed to the smoothbore muzzleloader while engaged in hunting for deer. Only one muzzleloader rifle or smoothbore muzzleloader may be possessed while deer hunting. Double barrel and other types of smooth bore muzzleloaders capable of firing more than one shot without reloading or holding more than one charge are prohibited.

3.-5. (No change.)

(g)-(o) (No change.)

(p) The Division may issue a Special Muzzleloader Rifle Scope Permit to certain visually handicapped individuals which would allow these individuals as specified below in this subsection to hunt with a muzzleloader rifle during the prescribed seasons. Special Muzzleloader Rifle Scope Permit applications will require certification by a Doctor of Ophthalmology, licensed to practice in New Jersey, and be subject to Division review and ratification. For the purposes of this permit, a visually handicapped individual is defined as one who is incapable of achieving proper sight alignment/sight picture using a muzzleloader rifle equipped with open sights or peep sights due to a permanent vision disability which cannot be adequately addressed through the use of corrective lenses.

[(p)] **(q)** (No change in text.)

7:25-5.24 Bow and arrow, general provisions

(a) (No change.)

(b) No person shall use a bow and arrow for hunting, on December [18, 19 and 20, 1991 and January 17, 18 and 25, 1992] **16, 17 and 18, 1992 and January 15, 16 and 23, 1993** in those deer management zones in which a permit shotgun deer season is authorized, on any additional Permit Deer Season Day(s) if declared open, during the 6-Day Firearm Deer Season, or between ½ hour after sunset and sunrise during other seasons. Deer shall not be hunted for or taken on Sunday except on wholly enclosed preserves that are properly licensed for the propagation thereof.

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

7:25-5.25 White-tailed deer (Odocoileus virginianus) fall bow season (either sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from September [28-November 8, 1991] **26-November 6, 1992,** inclusive; except in Zones **4, 18 and 21** only deer with antlers at least three inches long may be taken from September [28 to October 18] **26 to October 16, 1992; and in Zones 7, 8, 10, 11, 12 and 41 where only deer without antlers and deer with antlers which are less than three inches long may be taken from September 26 to October 2, 1992.** Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

(b) Bag Limit: Two deer of either sex, **except as noted in (a) above.** Only one deer may be taken in a given day. Deer shall be tagged immediately with completely filled in "transportation tag" and shall be transported to a deer checking station before 8:00 P.M. E.S.T. on the day killed. Upon completion of registration of first deer, one valid and proper "New Jersey Second Deer Permit And Transportation Tag" (second tag) will be issued which will allow this person to continue hunting and take one additional deer of either sex during the current fall bow deer season. The second tag shall not be valid on the day of issuance and all registration requirements apply.

1. (No change.)

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

7:25-5.26 White-tailed deer winter bow season (either sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from 1/2 hour before sunrise on January [6] **4** to

½ hour after sunset on January [29, 1992] **27, 1993** inclusive, excluding January [17, 18 and 25, 1992] **15, 16 and 23, 1993** in those management zones in which a shotgun permit season is authorized. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

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

7:25-5.27 White-tailed deer six day firearm season

(a) Duration for this season will be December [9-14, 1991] **7-12, 1992** inclusive with shotgun or muzzleloader rifle, exclusively.

(b) Bag Limit: Two deer, with antler at least three inches long; except in those areas designated as "hunters choice" indicated in (d) below, where the bag limit is two deer of either sex. Only one deer may be taken in a given day per person on a regular firearm hunting license. Persons awarded Zone 9 or Zone 13 shotgun permits may also take one deer of either sex and any age, per permit, on December [9 and 14, 1991, and persons possessing Zone 5, 7, 8, 10, 11, 12, 41 or 63 shotgun permits may also take one deer of either sex and any age per permit on December 9, 1991] **7 and 12, 1992** subject to the provisions of N.J.A.C. 7:25-5.29. Deer shall be tagged immediately with the "transportation tag" appropriate for the season, completely filled in and shall be transported to a checking station before 7:00 P.M. E.S.T. on the day killed. Upon completion of the registration of the first deer, one valid and proper "New Jersey Second Deer Permit And Transportation Tag" (second tag) will be issued which will allow that person to continue hunting and take one additional deer with antler at least three inches long or one additional deer of either sex in the "hunters choice" area, exclusively, during the current, six-day firearm season. The second tag shall not be valid on the day of issuance and all registration requirements apply. Any legally killed deer which is recovered too late to be brought to a check station by closing time shall be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. This deer must be brought to a checking station on the next open day to receive a legal "possession tag." If the season has concluded, this deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag."

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

(e) Hunting Hours: December [9-14, 1991] **7-12, 1992,** inclusive, 7:00 A.M. E.S.T. to 5:00 P.M. E.S.T., with shotgun or muzzleloader rifle.

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

7:25-5.28 White-tailed deer muzzleloader rifle permit season (either sex)

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

(d) Duration of the muzzleloader rifle permit season is December [16, 17, 21, 23, 24, 26, 27, 28, 30, 31, 1991 and January 2, 3, 4, 1992 in zones 2, 3, 5-36, 40-51, 55, 57, 58, 61, 63 and 65; November 9-16, 1991 (first segment) and December 16-27, 30, 31, 1991 and January 2, 3, 4, 1992 (second segment) in zones 37 and 52; December 16-31, 1991 and January 1, 2, 3, 4, 1992 in zones 39 and 62; November 30-December 7, 1991 (first segment) and December 16-31, 1991 (second segment) in zone 53; December 16, 17, 21, 23, 24, 26, 27, 28, 1991 in zones 1 and 4; December 16-31, 1991 in zone 54] **14, 15, 19, 21, 22, 23, 24, 26, 28, 29, 30, 31, 1992 and January 2, 1993 in zones 1-3, 5-36, 41-51, 55, 57, 58, 61, 63 and 65; December 14, 15, 19, 21, 22, 23, 24, 26, 1992 in zone 4; November 7-14, 1992 (first segment) and December 14-25, 1992 (second segment) in zones 37 and 52; December 14, 1992 to January 2, 1993 in zones 39, 54 and 62; November 28-December 5, 1992 (first segment) and December 14-31, 1992 (second segment) in zone 53** or any other time as determined by the Director. Legal hunting hours shall be sunrise to 1/2 hour after sunset E.S.T.

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

(h) Muzzleloader Rifle Permit Season Permits shall be applied for as follows:

1. Only holders of valid and current firearm hunting licenses may apply by detaching from their hunting license the stub marked "Special Deer Season [1990] **1992**", signing as provided on the back, and sending the stub, together with the permit fee and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2.-3. (No change.)

4. The application form shall be filled in to include: Name, address, current firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of August 15-September 10, [1991] **1992** inclusive. Applications postmarked after the September 10 will not be considered for the initial drawing. Selection of permittees will be made by random selection.

5.-7. (No change.)

(i) Farmer Muzzleloader Rifle Permit Season Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of August 1 to 15, [1991] **1992.** There is no fee required, and all qualified applicants will receive a farmer muzzleloader rifle permit season permit, delivered by mail.

4.-5. (No change.)

(j) (No change.)

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The [1991] **1992** Muzzleloader Rifle Deer Season Permit Quotas (either sex) are as follows:

[1991] **1992** MUZZLELOADER RIFLE PERMIT SEASON PERMIT QUOTAS

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest [1991] **1992**	Permit Quota [1991] **1992**	Portions of Counties Involved
1	1	[58] **123**	[405] **500**	Sussex
2	[2] **1**	[100] **145**	[535] **600**	Sussex
3	[2] **1**	[107] **156**	[750] **800**	Sussex, Passaic, Bergen
4	[1] **2**	[76] **134**	[288] **370**	Sussex, Warren
5	[2] **1**	[357] **293**	[1540] **1225**	Sussex, Warren
6	[2] **1**	[124] **143**	[650] **750**	Sussex, Morris, Passaic, Essex
7	[2] **1**	[151] **143**	650	Warren, Hunterdon
8	[2] **1**	[326] **319**	1735	Warren, Hunterdon, Morris, Somerset
9	[2] **1**	[99] **131**	[400] **450**	Morris, Somerset
10	[2] **1**	[239] **176**	850	Warren, Hunterdon
11	[2] **1**	[121] **74**	[500] **400**	Hunterdon
12	[2] **1**	[285] **201**	1050	Mercer, Hunterdon, Somerset
13	[2] **1**	[37] **44**	[225] **270**	Morris, Somerset
14	[2] **1**	[150] **125**	700	Morris, Somerset, Middlesex, Burlington

15	[2] **1**	[115]	**125**	[400]	**450**	Mercer, Monmouth, Middlesex
16	[2] **1**	[108]	**97**	[450]	**425**	Ocean, Monmouth
17	[2] **1**	[73]	**57**	[250]	**275**	Ocean, Monmouth, Burlington
18	[2] **1**	[48]		[265]	**275**	Ocean
19	[2] **1**	[64]	**73**	[350]	**400**	Camden, Burlington
20	[2] **1**	[98]	**53**	[350]	**300**	Burlington
21	[2] **1**	[179]	**126**	550		Burlington, Ocean
22	[2] **1**	[31]	**36**	[150]	**110**	Burlington, Ocean
23	[2] **1**	[219]	**154**	[800]	**825**	Burlington, Camden, Atlantic
24	[2] **1**	[299]	**154**	[650]	**600**	Burlington, Ocean
25	[2] **1**	[133]	**101**	600		Gloucester, Camden, Atlantic, Salem
26	[2] **1**	[304]	**182**	800		Atlantic
27	[2] **1**	[196]	**178**	[600]	**650**	Salem, Cumberland
28	[2] **1**	[152]	**113**	475		Salem, Cumberland, Gloucester
29	[2] **1**	[114]	**77**	[400]	**385**	Salem, Cumberland
30	[2] **1**	[42]	**35**	[140]	**160**	Cumberland
31	[2] **1**	[15]	**14**	[65]	**67**	Cumberland
32	[2] **1**	[14]	**5**	50		Cumberland
33	[2] **1**	[63]	**45**	[250]	**210**	Cape May, Atlantic
34	[2] **1**	[194]	**100**	[550]	**525**	Cape May, Cumberland
35	[2] **1**	[135]	**126**	[500]	**570**	Gloucester, Salem
36	[2] **1**	[14]	**13**	60		Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	3	[82]	**70**	[225]	**260**	Burlington (Fort Dix Military Reservation)
38						Morris (Great Swamp National Wildlife Refuge)
39	4	[17]	**20**	[25]	**35**	Monmouth (Earle Naval Weapons Station)
40	[2]	[16]		[80]		[Warren (Allamuchy State Park)] **Monmouth (Earle Naval Weapons Station—Waterfront)**
41	[2] **1**	[119]	**45**	[400]	**250**	Mercer, Hunterdon
42	[2] **1**	[17]	**8**	[55]	**65**	Atlantic
43	[2] **1**	[92]	**44**	[230]	**220**	Cumberland
44	[2] **1**	[29]	**26**	75		Cumberland
45	[2] **1**	[81]	**55**	[275]	**340**	Cumberland, Atlantic, Cape May
46	[2] **1**	[73]	**63**	[188]	**250**	Atlantic
47	[2] **1**	[26]	**21**	[100]	**90**	Atlantic, Cumberland, Gloucester
48	[2] **1**	[52]	**35**	250		Burlington
49	[2] **1**	[4]	**8**	[15]	**40**	Burlington, Camden, Gloucester
50	[2] **1**	44		250		Middlesex, Monmouth
51	[2] **1**	[40]	**34**	[125]	**150**	Monmouth, Ocean
52	3	[18]	**29**	[70]	**100**	Ocean (Fort Dix Military Reservation)
53	5	[27]	**7**	[40]	**32**	Ocean (Lakehurst Naval Engineering Center)
54	[6] **4**	[1]	**2**	6		Morris (Picatinny Arsenal—ARRAD Com)
55	[2] **1**	[15]	**12**	[70]	**75**	Gloucester
56				[0]		Atlantic (Forsythe National Wildlife Refuge)
57	[2] **1**	[13]	**4**	40		Atlantic (Forsythe National Wildlife Refuge)
58	[2] **1**	[11]	**9**	50		Burlington, Ocean (Forsythe National Wildlife Refuge)
59				[0]		Salem (Supawna National Wildlife Refuge)
60						Hunterdon (Round Valley Recreation Area)
61	[2] **1**	[24]	**11**	105		Atlantic (Atlantic County Parks)
62	4	[13]	**1**	[20]	**6**	Monmouth (Fort Monmouth)
63	[2] **1**	[66]	**53**	200		Salem
64				0		Monmouth (Monmouth Battleground State Park)
65	[2] **1**	[21]	**13**	[95]	**100**	Gloucester
Total		[5,741]	**4,733**	[21,972]	**22,101**	

(l) The Season Dates Code Referred in the table in (k) above is as follows:

1. Indicates the season dates will be December [16, 17, 21, 23, 24, 26, 27 and 28, 1991.] **14, 15, 19, 21, 22, 23, 24, 26, 28, 29, 30, 31, 1992 and January 2, 1993.**

2. Indicates the season dates will be December [16, 17, 21, 23, 24, 26, 27, 28, 30, 31, 1991 and January 2, 3, 4, 1992] **14, 15, 19, 21, 22, 23, 24, 26, 1992.**

3. Indicates the season dates will be November [9-16, 1991 (first segment); and, December 16-27, 30 and 31, 1991 and January 2, 3 and 4, 1992 (second segment).] **7-14, 1992 (first segment); and December 14-25, 28-31, 1992 (second segment).**

4. Indicates the season dates will be December [16-31, 1991 and January 1-4, 1992.] **14, 1992—January 2, 1993.**

5. Indicates the season dates will be November [30—December 7, 1991 (first segment) and December 16-31, 1991 (second segment).] **28-December 5, 1992 (first segment) and December 14-31, 1992 (second segment).**

[6. Indicates the season dates will be December 16-31, 1991.]

(m) Permit quotas in zones 37, [38,] 39, [40,] 52-54, 57-[59] **58**, 61 and 62 are contingent upon approval by appropriate land management agencies for those zones.

(n) Muzzleloader[,] rifle permit season permits not applied for by September 10, [1991] **1992** will be reallocated to shotgun and bow permit season applicants.

7:25-5.29 White-tailed deer shotgun season (either sex)

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

(c) The season bag limit per permit shall be one deer of either sex and any age with a shotgun permit season permit in Zones 1, 3, 4, 18, 20, 21, **22,** 23, 24, 26, 30, 31, 32, 34, 37, [40,] 43, 45, 46, 52, 53, 55, [61,] 64 and 65; two deer of either sex and any age with

a shotgun permit season permit in Zones 2, 5-17, 19, [22,] 25, [27-30,] **27-29,** 33, 35, 36, [39,] 41, 42, 44, [zones:] **Zones** 47-51, 54[, 62] and 63; three deer of either sex and any age with a shotgun permit season permit in [zones:] **Zones 39,** 56, 59, 60 **and 61**; six deer of either sex and any age in Zone 57 and 58; and 10 deer of either sex and any age in Zone 38. Only one deer may be taken in a given day per permit except in Zone 38 where the limit is two deer in a given day per permit. Persons awarded Zone 9 and 13 shotgun permits may also take a deer with antler at least three inches long on December [9 or 14, 1991] **7 or 12, 1992** with a regular firearm license, [and persons awarded Zone 5, 7, 8, 10-12, 41 or 63 shotgun permits may also take a deer with antler at least three inches long on December 9, 1991] subject to the provisions of N.J.A.C. 7:25-5.27. It is unlawful to attempt to take or hunt for more than the number of deer permitted.

(d) Duration of the permit shotgun deer season is from sunrise to ½ hour after sunset E.S.T. on the following dates:

1. December [18, 1991 in Zones 1, 3, 4, 18, 20, 21, 23, 24, 26, 31, 32, 34, 40, 43, 45, 46, 55 and 65;] **16, 1992 in Zones 1, 3, 4, 18, 20, 21, 22, 23, 24, 26, 30, 31, 32, 34, 43, 45, 46, 55 and 65.**

2. December [18, 19, 20, 1991 and January 17, 18, 25, 1992 in Zones 2, 14, 15, 17, 25, 27, 35, 36, 47, 48, 49, 50 and 51;] **16, 17, and 18, 1992 and January 15, 16, and 23, 1993 in Zones 2, 5, 7, 8, 10, 11, 12, 14, 15, 17, 25, 27, 36, 41, 47, 48, 49, 50 and 63.**

3. December [9, 18, 19, 20, 1991 and January 17, 18, 25, 1992 in Zones 5, 7, 8, 10, 11, 12, 41 and 63;] **16, 17 and 18, 1992 in Zones 6, 16, 19, 28, 29, 33, 35, 42, 44, 51, 56, 60 and 61.**

4. December [18, 19, 20, 1991 in Zones 6, 16, 19, 22, 28, 29, 30, 33, 42, 44, 56, 60 and 61.;] **7, 12, 16, 17 and 18, 1992, and January 15, 16 and 23, 1993 in Zones 9 and 13.**

5. December [9, 14, 18, 19, 20, 1991 and January 17, 18 and 25, 1992 in Zones 9 and 13;] **26, 1992 in Zones 37 and 52.**

6. December [28, 1991 in Zones 37 and 52;] **3, 4, 10, 11 and 12, 1992 in Zone 38.**

7. December [5, 6, 12, 13 and 14, 1991 in Zone 38;] **19, 1992, and January 23 and 30, 1993 in Zones 39 and 62.**

8. [December 21, 1991 and January 18 and 25, 1992 in Zones 39 and 62;] **January 2, 1993 in Zone 53.**

9. [January 4, 1992 in Zone 53;] **December 19, 1992 and January 16, 1993 in Zone 54.**

10. December [9, 10, 11, 18, 19, and 20, 1991 in Zones 57 and 58;] **7, 8, 9, 16, 17 and 18, 1992 in Zones 57 and 58.**

11. December [9, 10 and 11, 1991 (first segment), December 18, 19 and 20, 1991 (second segment), January 17, 18 and 25, 1992 (third segment) in Zone 59;] **7, 8 and 9, 1992 (first segment), December 16, 17 and 18, 1992 (second segment), and January 15, 16 and 23, 1993 (third segment) in Zone 59.**

12. January [17, 1992 (first segment), January 18, 1992 (second segment), January 25, 1992 (third segment), in Zone 64;] **15, 1993 (first segment), January 16, 1993 (second segment), and January 23, 1993 (third segment) in Zone 64.**

[13. December 20 and 21, 1991 in Zone 54; or]

[14.]**13.** (No change in text.)

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

(h) Shotgun Permit Season Permits shall be applied for as follows:

1. Only holders of valid and current firearm hunting licenses including juvenile firearm license holders may apply by detaching from their hunting license the stub marked "Special Deer Season [1991] **1992**," signing as provided on the back, and sending the stub, together with the permit applied for and an application form properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2. (No change.)

3. The application form shall be filled in to include: Name, address, current firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of August 15—September 10, [1991] **1992**. Applications postmarked after September 10 will not be considered for the initial drawing. Selection of permittees will be made by random selection.

4.-6. (No change.)

(i) Farmer Shotgun Permit Season Permits shall be applied or as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of August 1 to 15, [1991] **1992**. There is no fee required, and all qualified applicants will receive a farmer, shotgun permit season permit, delivered by mail.

4. (No change.)

(j) (No change.)

(k) The Deer Management Zone Map on file at the Office of Administrative Law and is available from that agency or the Division. The [1991] **1992** Shotgun Permit Season Permit Quotas (Either Sex) are as follows:

[1991] **1992** SHOTGUN PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest [1991] **1992**	Permit Quota [1991] **1992**	Portions of Counties Involved
1	1	[124] **166**	[651] **807**	Sussex
2	2	[652] **599**	[1461] **1447**	Sussex
3	1	[56] **51**	[476] **556**	Sussex, Passaic, Bergen
4	1	[35] **47**	[304] **366**	Sussex, Warren
5	[3] **2**	[2131] **1823**	[4083] **3797**	Sussex, Warren
6	[4] **3**	[325] **317**	[1225] **1321**	Sussex, Morris, Passaic, Essex
7	[3] **2**	[935] **722**	[1704] **1580**	Warren, Hunterdon
8	[3] **2**	[2399] **2034**	[4579] **4571**	Warren, Hunterdon, Morris, Somerset
9	[5] **4**	[604] **532**	[1276] **1516**	Morris, Somerset
10	[3] **2**	[1348] **1018**	[2687] **2357**	Warren, Hunterdon
11	[3] **2**	[632] **586**	[1347] **1218**	Hunterdon
12	[3] **2**	[1523] **1029**	[2653] **2394**	Mercer, Hunterdon, Somerset
13	[5] **4**	[316] **323**	[778] **795**	Morris, Somerset
14	2	[908] **624**	[2078] **1919**	Morris, Somerset, Middlesex, Burlington
15	2	[379] **435**	[736] **845**	Mercer, Monmouth, Middlesex
16	[4] **3**	[121] **124**	[512] **460**	Ocean, Monmouth
17	2	[389] **300**	[618] **628**	Ocean, Monmouth, Burlington
18	1	13	[108] **123**	Ocean

19	[4] **3**	[172]	**148**	[448]	**496**	Camden, Burlington
20	1	[20]	**33**	[221]	**195**	Burlington
21	1	[23]	**29**	[202]	**218**	Burlington, Ocean
22	[4] **1**	[50]	**35**	[200]	**180**	Burlington, Ocean
23	1	[36]	**32**	[217]	**238**	Burlington, Camden, Atlantic
24	1	[34]	**24**	[197]	**139**	Burlington, Ocean
25	2	[322]	**225**	[596]	**652**	Gloucester, Camden, Atlantic, Salem
26	1	[55]	**27**	[230]	**170**	Atlantic
27	2	[307]	**322**	[759]	**831**	Salem, Cumberland
28	[4] **3**	[45]	**43**	[153]	**234**	Salem, Cumberland, Gloucester
29	[4] **3**	[297]	**176**	[645]	**665**	Salem, Cumberland
30	[4] **1**	[48]	**29**	[103]	**125**	Cumberland
31	1	0		0		Cumberland
32	1	[0]	**4**	[0]	**28**	Cumberland
33	[4] **3**	[47]	**76**	[136]	**187**	Cape May, Atlantic
34	1	[20]	**24**	[142]	**134**	Cape May, Cumberland
35	[2] **3**	[282]	**223**	[656]	**883**	Gloucester, Salem
36	2	[25]	**45**	[95]	**117**	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	[6] **5**	[21]	**24**	[65]	**120**	Burlington (Fort Dix Military Reservation)
38	[7] **6**	[200]	**208**	600		Morris (Great Swamp National Wildlife Refuge)
39	[8] **7**	[13]	**104**	[53]	**74**	Monmouth (Earle Naval Weapons Station)
40	[1]	[15]		[83]		[Warren (Allamuchy State Park)] **Monmouth (Earle Naval Weapons Station—Waterfront)**
41	[3] **2**	[622]	**426**	[1070]	**867**	Mercer, Hunterdon
42	[1] **3**	[21]	**15**	56		Atlantic
43	[0] **1**	0		0		Cumberland
44	[4] **3**	[14]	**23**	[30]	**75**	Cumberland
45	1	0		0		Cumberland, Atlantic, Cape May
46	1	[19]	**17**	[90]	**83**	Atlantic
47	2	[34]	**44**	[80]	**105**	Atlantic, Cumberland, Gloucester
48	2	[281]	**291**	[616]	**613**	Burlington
49	2	[26]	**37**	[42]	**45**	Burlington, Camden, Gloucester
50	2	[141]	**121**	[426]	**412**	Middlesex, Monmouth
51	[2] **3**	[102]	**82**	[300]	**325**	Monmouth, Ocean
52	[6] **5**	[18]	**12**	[45]	**65**	Ocean (Fort Dix Military Reservation)
53	[9] **8**	[14]	**7**	[48]	**38**	Ocean (Lakehurst Naval Engineering Center)
54	[13] **9**	[7]	**18**	[30]	**28**	Morris (Picatinny Arsenal—ARRAD Com)
55	1	[6]	**3**	30		Gloucester
56	[4] **3**	[26]	**28**	20		Atlantic (Forsythe National Wildlife Refuge)
57	10	[21]	**22**	40		Atlantic (Forsythe National Wildlife Refuge)
58	10	[26]	**15**	50		Burlington, Ocean (Forsythe National Wildlife Refuge)
59	11	[67]	**42**	75		Salem (Supawna National Wildlife Refuge)
60	[4] **3**	[50]	**40**	120		Hunterdon (Round Valley Recreation Area)
61	[4] **3**	[21]	**27**	[105]	**108**	Atlantic (Atlantic County Parks)
62	[8] **7**	12		[20]	**24**	Monmouth (Fort Monmouth)
63	[3] **2**	[174]	**157**	[285]	**336**	Salem
64	12	[90]	**65**	135		Monmouth (Monmouth Battleground State Park)
65	1	[10]	**15**	[50]	**53**	Gloucester, Camden
Total		[16,735]	**14,093**	[36,740]	**36,689**	

(l) Shotgun permit season permits not applied for by September 10, [1991] **1992** may be reallocated to muzzleloader rifle, permit season applicants.

(m) The Season Dates Code referred in the table in (k) above is as follows:

1. Indicates one day shotgun permit season—December [18, 1991] **16, 1992**.

2. Indicates six-day shotgun permit season—December [18, 19 and 20, 1991 and January 17, 18 and 25, 1992] **16, 17 and 18, 1992 and January 15, 16 and 23, 1993**.

3. Indicates [seven-day shotgun permit season—December 9, 18, 19 and 20, 1991 and January 17, 18 and 25, 1992] **three-day shotgun permit season December 16, 17 and 18, 1992.**

4. Indicates [three-day shotgun permit season December 18, 19 and 20, 1991] **an eight-day shotgun permit season December 7, 12, 16, 17 and 18, 1992, and January 15, 16 and 23, 1993.**

5. Indicates [an eight-day shotgun permit season December 9, 14, 18, 19 and 20, 1991 and January 17, 18 and 25, 1992] **a one-day shotgun permit season December 26, 1992.**

6. Indicates a [one-day shotgun permit season December 28, 1991.] **five-day shotgun permit season December 3, 4, 10, 11 and 12, 1992.**

7. Indicates a [five-day shotgun permit season December 5, 6, 12, 13 and 14, 1991] **three-day shotgun permit season December 19, 1992 and January 23 and 30, 1993.**

8. Indicates a [three-day shotgun permit season—December 21, 1991 and January 18 and 25, 1992] **one-day shotgun permit season January 2, 1993.**

9. Indicates a [one-day shotgun permit season January 4, 1992] **two-day shotgun permit season December 19, 1992 and January 16, 1993.**

10. Indicates a six-day shotgun permit season December [9, 10, 11, 18, 19 and 20, 1991] **7, 8, 9, 16, 17 and 18, 1992.**

11. Indicates three, three-day shotgun permit season segments—December [9, 10 and 11, 1991 (first segment); December 18, 19 and 20, 1991 (second segment); and January 17, 18 and 25, 1992 (third segment)] **7, 8, and 9, 1992 (first segment); December 16, 17 and**

18, 1992 (second segment); and January 15, 16, 23, 1993 (third segment).

12. Indicates three one-day shotgun permit season segments—[January 17 (first segment), January 18 (second segment), and January 25 (third segment), 1992] **January 15, 1993 (first segment), January 16, 1993 (second segment), and January 23, 1993 (third segment).**

[13. Indicates a two-day shotgun permit season December 20 and 21, 1991.]

(n) (No change.)

(o) Permit quotas for Zones 37, 38, 39, [40,] 52-54, 56-62 and 64 are contingent upon approval by appropriate land management agencies for those zones.

(p) Deer Management zones are located as follows:

1.-24. (No change.)

25. Zone No. 25: That portion of Gloucester, Atlantic and Camden Counties lying within a continuous line beginning at the intersection of Rts. Rt. 54 and Rt. 40 near Buena; then west on Rt. 40 to its intersection with Rt. 553; then north on Rt. 553 to its intersection with Rt. 610 (Aura Road); then southeast on Rt. 610 to its intersection with Rt. 655 (Fries Mill [County Rt. 536] **Road**); **then north on Rt. 655 to its intersection with Rt. 322;** then west on Rt. 322 to its intersection with Rt. 47 at Glassboro; then north on Rt. 47 to its intersection with County Road 635 (Hurfville-Grenloch Road); then eastward on County Road 635 to its intersection with county road Rt. 707 (Woodbury-Turnersville Rd.); then southeast along Gloucester County Road Rt. 707 (which becomes Camden County Road Rt. 705) to its intersection with County Road 688 (Turnerville-Hickstown Road); then eastward along County Road 688 to its intersection with County Road 689 (Berlin-Crosskeys Road); then northeast along County Road 689 to its intersection with Rt. 73 at Berlin; then south on Rt. 73 to its intersection with Rt. 30; then southeast along Rt. 30 to its intersection with Blue Anchor Brook, just past Cedar Avenue, south of Ancora; then eastward along Blue Anchor Brook until it becomes Albertson Brook at Fleming Pike; then eastward along Albertson Brook to its intersection with Rt. 206 (about four miles north of Hammonton); then south on Rt. 206 to its intersection with Great Swamp Branch (just past the intersection of Rt. 206 and Middle Road); then eastward along Great Swamp Branch to its intersection with Nescochague Creek; then eastward along Nescochague Creek to Nescochague Lake, at Pleasant Plains; then westward along the north and western shore of Neschochague Lake to its intersection with Hammonton Creek; then westward along Hammonton Creek to its intersection with Rt. 30 (White Horse Pike), near Hammonton; then southeast on Rt. 30 to its intersection with Rt. 559 (Weymouth Road); then southward on Rt. 559 to its intersection with the Atlantic City Expressway; then west along the Atlantic City Expressway to its intersection with Eighth Street; then south along Eighth Street to its intersection with Rt. 322; then westward on Rt. 322 to its intersection with Rt. 54; then southward on Rt. 54 to its intersection with Rt. 40 near Buena, the point of beginning. Zone 65 is excluded from Zone 25.

26. Zone No. 26: That portion of Atlantic and Burlington Counties lying within a continuous line beginning at the intersection of Rts. 40 and 54 near Buena; then southeast on Rt. 40 (40-322) to its intersection with the Garden State Parkway; then northeast on the Garden State Parkway to its intersection with the Mullica River; then northwest along the south bank on the Mullica River to its intersection with Rt. 563 at Green Bank; then north on Rt. 563 to its intersection with Rt. 542, then west on Rt. 542; to its intersection with Nescochague Creek at Pleasant Mills; [then northwest along Neschochague Creek to Great Swamp Branch; then westward along Great Swamp Branch to its intersection with Rt. 206 (just south of the intersection of Rt. 206 and Middle Road); then north along Rt. 206 to its intersection with Albertson Brook (about four miles north of Hammonton); then westward along Albertson Brook until it becomes Blue Anchor Brook; then westward along Blue Anchor Brook to its intersection with Rt. 30 near Cedar Ave., south of Ancora; then northwest on Rt. 30 to its intersection with Rt. 54] **then south along the west bank of Nescochaque Creek to Nescochaque Lake; then southwest along the western bank of Nescochaque Lake to its intersection with Hammonton Creek; then westward along Hammonton Creek to its intersection with Rt. 30 (White Horse Pike), near Hammonton; then south on Rt. 30 to its intersection with Rt. 559 (Weymouth Rd.); then south on Rt. 559 to its intersection with the Atlantic City Expressway; then northwest along the Atlantic City Expressway to its intersection with Eighth Street; then southwest along Eighth Street to its intersection with Rt. 322 (Black Horse Pike); then northwest along Rt. 322 to its intersection with Rt. 54**; then southwest along Rt. 54 to its intersection with Rt. 40 at Buena, the point of beginning.

27.-38. (No change.)

39. Zone No. 39: That portion of Naval Weapons Station Earle, U.S. Department of the Navy [and Fort Monmouth, U.S. Department of the Army,] designated as open for deer hunting, lying within Monmouth County.

40. [(Reserved)] **Zone No. 40: That portion of Naval Weapons Station Earle, Waterfront Section, U.S. Department of the Navy, designated as open for deer hunting, lying within Monmouth County.**

41.-48. (No change.)

49. Zone No. 49: That portion of Gloucester, Camden and Burlington Counties lying within a continuous line beginning at the mouth of Mantua Creek on the Delaware River; then northeast along the east bank of the Delaware River to Rt. 541 at the City of Burlington; then southeast along Rt. 541 to its intersection with Interstate 295; then southwest along Interstate 295 to its intersection with Rancocas Creek; then east along the Rancocas Creek to its intersection with the New Jersey Turnpike; then southwest along the New Jersey Turnpike to its intersection with Rt. 73; **then south along Rt. 73 to its intersection with County Road 689 at Berlin**; then south **west** along County Road 689 to its intersection with County Road 688; then west along County Road 688 to its intersection with County Road 705; **then northwest along County Road 705 to its intersection with County Road 635**; then southwest on County Road 635 to its intersection with [Rt. 47; then north on Rt. 47 to its intersection with] Mantua Creek; then northwest along Mantua Creek to its mouth at the Delaware River, the point of beginning. Petty Island lying in the Delaware River is in this zone.

50. Zone No. 50: That portion of Monmouth and Middlesex Counties lying in a continuous line beginning at the intersection of the New Jersey Turnpike and Rt. 522 near Jamesburg; then southeast on Rt. 522 to its intersection with Rt. 537 at Freehold; then southwest on Rt. 537 to its intersection with Rt. 33; then east on Rt. 33 to its intersection with the western edge of the fenced boundary of the Earle Naval Weapons Depot; then north and east along the fenced boundary of the Earle Depot to its intersection with county route 38 (Wayside Road); then south on County Route 38 to its intersection with Rt. 547; then north on Rt. 547 and to its intersection with the Garden State Parkway; then north on the Garden State Parkway to its intersection with Rt. 36 near Eatontown; then east on Rt. 36 to the Atlantic Ocean; then north along the Atlantic coastline to the Raritan Bay; then south and west along the shore of Raritan Bay to the Raritan River; then continuing west along the southbank of the Raritan River to its intersection with the New Jersey Turnpike; then southwest along the New Jersey Turnpike to its intersection with Rt. 522, the point of beginning. Monmouth Battlefield [is] **State Park, Zone 64, and Earle Naval Weapons Station, Zone 40, are** excluded from this zone.

51.-65. (No change.)

7:25-5.30 White-tailed deer bow permit season[,] (either sex)

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

(d) Duration of the bow permit season is from November [9-December 7, 1991 in Zones 2, 3, 5-37, 39-55, 58, 59, 61-63, 65] **7-December 5, 1992 in Zones 1-3, 5-37, 39, 41-55, 58, 59, 61-63 and 65; and November 7-January 2, 1993 in Zone 40**; or any other time as determined by the Director. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

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

(h) Bow Permit Season Permits shall be applied for as follows:

1. Only holders of valid bow and arrow licenses including juvenile bow license holders may apply by detaching from their bow hunting

license the stub marked special deer season [1990] **1992**, signing as provided on the back, and sending the stub together with the permit fee and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2.-8. (No change.)

(i)-(j) (No change.)

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The [1991] **1992** Bow Permit Season Quotas (Either Sex) are as follows:

[1991] **1992** BOW PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest [1991] **1992**	Permit Quota [1991] **1992**	Portions of Counties Involved
1	1	[0] **93**	[0] **840**	Sussex
2	1	[135] **107**	[1035] **1150**	Sussex
3	1	[75] **70**	[800] **1040**	Sussex, Passaic, Bergen
4	1	0	0	Sussex, Warren
5	1	[327] **288**	[2640] **2500**	Sussex, Warren
6	1	[97] **120**	[1045] **1200**	Sussex, Morris, Passaic, Essex
7	1	[189] **146**	1300	Warren, Hunterdon
8	1	[369] **351**	3025	Warren, Hunterdon, Morris, Somerset
9	1	[163] **132**	[1000] **1150**	Morris, Somerset
10	1	[260] **186**	1680	Warren, Hunterdon
11	1	[148] **90**	[1000] **900**	Hunterdon
12	1	[272] **179**	1900	Mercer, Hunterdon, Somerset
13	1	[88] **101**	[675] **775**	Morris, Somerset
14	1	[130] **120**	1300	Mercer, Somerset, Middlesex, Burlington
15	1	[85] **129**	[800] **920**	Mercer, Monmouth, Middlesex
16	1	[80] **72**	[750] **700**	Ocean, Monmouth
17	1	[58] **66**	[450] **500**	Ocean, Monmouth, Burlington
18	1	[20] **42**	[260] **340**	Ocean
19	1	[41] **60**	[400] **500**	Camden, Burlington
20	1	[42] **25**	[350] **300**	Burlington
21	1	[72] **54**	[425] **490**	Burlington, Ocean
22	1	[24] **22**	[210] **160**	Burlington, Ocean
23	1	[61] **65**	[600] **650**	Burlington, Camden, Atlantic
24	1	[46] **44**	[400] **340**	Burlington, Ocean
25	1	[71] **84**	[650] **700**	Gloucester, Camden, Atlantic, Salem
26	1	[76] **67**	400	Atlantic
27	1	[102] **99**	[700] **750**	Salem, Cumberland
28	1	[46] **52**	400	Salem, Cumberland, Gloucester
29	1	[64] **71**	[425] **500**	Salem, Cumberland
30	1	[18] **17**	150	Cumberland
31	1	[6] **7**	[60] **64**	Cumberland
32	1	4	40	Cumberland
33	1	[27] **22**	[175] **200**	Cape May, Atlantic
34	1	[40] **62**	[375] **425**	Cape May, Cumberland
35	1	[107] **109**	[700] **840**	Gloucester, Salem
36	1	[13] **26**	[200] **230**	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	1	[11] **7**	100	Burlington (Fort Dix Military Reservation)
38		0	0	Morris (Great Swamp National Wildlife Refuge)
39	1	[9] **20**	50	Monmouth (Earle Naval Weapons Station)
40	[1]**2**	[3] **10**	[80] **20**	[Warren (Allamuchy State Park)] **Monmouth (Earle Naval Weapons Station Waterfront)**
41	1	[103] **43**	[750] **500**	Mercer, Hunterdon
42	1	[8] **6**	[65] **75**	Atlantic
43	1	28	[200] **150**	Cumberland
44	1	[5] **14**	[40] **50**	Cumberland
45	1	[26] **33**	250	Cumberland, Atlantic, Cape May
46	1	[18] **16**	[100] **200**	Atlantic
47	1	[16] **10**	90	Atlantic, Cumberland, Gloucester
48	1	[56] **61**	500	Burlington
49	1	[3] **4**	[30] **40**	Burlington, Camden, Gloucester
50	1	[58] **36**	450	Middlesex, Monmouth
51	1	[44] **47**	[350] **400**	Monmouth, Ocean
52	1	[2] **5**	[30] **70**	Ocean (Fort Dix Military Reservation)
53	1	[6] **5**	[45] **38**	Ocean (Lakehurst Naval Engineering Center)
54	1	[11] **14**	[30] **36**	Morris (Picatinny Arsenal—ARRAD Com)
55	1	9	80	Gloucester

56		0		0		Atlantic (Forsythe National Wildlife Refuge)
57		0		0		Atlantic (Forsythe National Wildlife Refuge)
58	1	6		50		Burlington, Ocean (Forsythe National Wildlife Refuge)
59	1	[13]	**12**	35		Salem (Supawna National Wildlife Refuge)
60		0		0		Hunterdon (Round Valley Recreation Area)
61	1	[14]	**13**	135		Atlantic (Atlantic County Parks)
62	1	[12]	**3**	[20]	**30**	Monmouth (Fort Monmouth)
63	1	[37]	**52**	[275]	**300**	Salem
64						Monmouth (Monmouth Battleground State Park)
65	1	[11]	**13**	[100]	**115**	Gloucester, Camden
Total		[3,865]	**3,649**	[30,175]	**32,123**	

(1) The Season Dates Code referred in the table in (k) above is as follows:

1. Indicates the season dates will be November [9-December 7, 1991] **7-December 5, 1992.**

2. Indicates the season dates will be November 7, 1992 to January 2, 1993.

(m)-(n) (No change.)

7:25-5.31 White-tailed deer permit shotgun season permit (either sex), Great Swamp National Wildlife Refuge (Zone 38).

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

(c) Duration of the Great Swamp Permit Shotgun Season permit shall be from sunrise to ½ hour after sunset on the following dates: December [5, 6, 12, 13 and 14, 1991] **3, 4, 10, 11 and 12, 1992,** or as may otherwise be designated by the U.S. Fish and Wildlife Service.

(d)-(i) (No change.)

7:25-5.34 Controlled hunting—hunting restrictions on wildlife management areas

(a) No wildlife management areas have been selected for limited hunter density for the [1991-92] **1992-93** season. However, hunting with firearms shall be prohibited on November [8, 1991] **6, 1992** on those wildlife management areas designated as pheasant and quail stamp areas in N.J.A.C. 7:25-5.33.

(b) (No change.)

7:25-5.37 Fish and Game Law Enforcement Region Headquarters

(a) North—No. Region Office, R.R. 1, Box 383, Hampton, N.J. 08827 [(201) **(908)** 735-8240[)].

(b) (No change.)

(c) South—[Inskip Tract, Piney Hollow Rd., P.O. Box 388, Williamstown, N.J. 08094] **Winslow WMA, 220 New Brooklyn/Blue Anchor Road, Sickleville, N.J. 08081.** (609) 629-0555[)].

(d) (No change.)

HIGHER EDUCATION

(a)

BOARD OF DIRECTORS OF THE EDUCATIONAL OPPORTUNITY FUND

Financial Eligibility for Undergraduate Grants

Proposed Amendment: N.J.A.C. 9:11-1.5

Authorized By: Board of Directors of the Educational Opportunity Fund, Delbert Payne, Chairperson.

Authority: N.J.S.A. 18A:71-33.

Proposal Number: PRN 1992-209.

Submit comments by June 17, 1992 to:

Brett E. Lief
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Educational Opportunity Fund Program is open to students from educationally and economically disadvantaged backgrounds. Participants in the program are eligible to receive financial aid and other support services for attending institutions of higher education in New Jersey. The Board of Directors of the Educational Opportunity Fund determines the income levels for which eligibility to participate in the program is based. The proposed amendments to N.J.A.C. 9:11-1.5(a) and (d) increases those income levels.

The new addition to subsection (e) provides objective criteria for the administration of the EOF over-income waiver. This provides uniform guidance to institutions to help insure students admitted under this provision meet the spirit and intent of the rule.

Social Impact

The proposed amendments to N.J.A.C. 9:11-1.5(a) and (d), by increasing the maximum income levels for participation in the Educational Opportunity Fund Program, recognizes the changes in family income levels in the State. The amendment will enable the Educational Opportunity Fund Program to continue to offer higher educational opportunities to disadvantaged citizens of New Jersey consistent with the spirit and intent of the original legislation.

The proposed addition to subsection (e) will help insure that participants admitted under this clause also meet the spirit and intent of the rule.

Economic Impact

The proposed amendments to N.J.A.C. 9:11-1.5(a) and (d) changes eligibility requirements for the Educational Opportunity Fund Program but does not change the amount of aid which each program participant receives. The increase in the income levels will serve to expand the potential pool of applicants to the program and increase the number of current program participants who will have continued eligibility. The proposed amendment does not have a direct economic impact on the total number of awards, and thus total amount of costs, associated with the program. Program funding is dependent upon the amount of funding provided by the Legislature and the Governor. The proposed amendment expands the number of potential program participants but does not necessarily increase the number of actual program participants.

The proposed addition to subsection (e) provides a uniform criteria to administer the 10% waiver. This will reduce or eliminate the need for extensive central office review and interpretation of individual cases admitted under the provision.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Board of Directors has determined that the proposed amendments will not impose reporting, recordkeeping, or other compliance requirements on small businesses. The proposed amendments provide for increased eligibility requirements for Educational Opportunity Fund students attending New Jersey institutions of higher education.

These provisions affect New Jersey colleges and universities and are not intended for small businesses. However, as proposed the new criteria as outlined in subsection (e) should reduce the extent of Central Office involvement in individual institution decision-making.

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

9:11-1.5 Financial eligibility for undergraduate grants

(a) A dependent student is financially eligible for an initial EOF grant if the gross income of his or her parent(s) or guardian(s) does

not exceed the applicable amount set forth below in the EOF Income Eligibility Scale. Where the dependent student's parent(s) or guardian(s) are receiving welfare as the primary means of family support, the student is presumed to be eligible without regard to the amount of primary welfare support.

1. EOF Dependent Student Eligibility Scale:

Applicants With a Household of:	Gross Income (Not to Exceed):
2 persons	[$15,320] **$15,480**
3	[17,650] **17,970**
4	[19,980] **20,460**
5	[22,310] **22,950**
6	[24,640] **25,440**
7	[26,970] **27,930**

2. For each additional member of the household, an allowance of [2,330] **$2,490** shall be added to this amount in order to determine eligibility for EOF for the [1991-1992] **1992-93** Academic Year. This allowance shall be adjusted annually to reflect changes in the Standard Maintenance Allowance as published by the College Scholarship Service. In addition, the gross income level for each household size also shall be adjusted to reflect the change in the annual Standard Maintenance Allowance.

3. (No change.)

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

(d) An independent student is financially eligible for an EOF grant providing his or her gross annual income (including spouse) for the calendar year prior to the academic year for which aid is requested and the calendar year during which aid is received does not exceed the following schedule:

1. [$9,450] **$9,610** family size (including student) 1;
2. [$11,780] **$12,100** family size (including spouse) 2;
3. [$14,110] **$14,590** family size (including spouse) 3;
4. [$16,440] **$17,080** family size (including spouse) 4;
5. Add [$2,330] **$2,490** for each additional dependent. This amount should be adjusted annually to reflect changes in the Independent Student Allowance as published by the College Scholarship Service.
6. (No change.)

(e) Where there is evidence that strict adherence to the maximum income eligibility cut-offs will not serve the purpose of the EOF Program, the campus EOF director may admit up to a maximum of 10 percent of the annual freshman class under a waiver pursuant to the provisions of this section. Students admitted under this provision must **have family incomes that do not exceed 175 percent of the official national poverty threshold as published annually by the Federal Government adjusted to reflect New Jersey's cost of living and** meet one of the following criteria:

1. The student attends(ed) a District Factor Group A or B school district as certified by the New Jersey Department of Education.
2. The student has resided in a municipality defined as a "high distress" area. A high distress area, as defined by the New Jersey Office of Management and Budget, is one which, in comparison to the rest of the state, is characterized by old or substandard housing and/or low real estate value, low per capita income, high unemployment, population decline, and a high percentage of residents receiving welfare and other benefits targeted for low-income families.
3. The student has resided in an area of a municipality that is historically populated by low-income families; such an area is commonly known as a "pocket of poverty" as characterized by criteria outlined in (e)2 above.
4. The student has a sibling who was, or is currently, enrolled in an EOF Program.
5. The student (or family) is eligible for government assistance and educational programs targeted toward low-income and disadvantaged populations (TRIO programs, free and reduced breakfast/lunch programs, food stamps) and is a first-generation college student.

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

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

New Jersey Care . . . Special Medicaid Programs Manual

Medicaid Eligibility

Children

Proposed Amendments: N.J.A.C. 10:72-1.1, 3.4 and 4.1

Authority: N.J.S.A. 30:4D-3, 30:4D-7, 7a, b, and c and 1902(a)(10)(A)(IV), 1902(l)(1)(D) and (2)(C) of the Social Security Act.

Proposal Number: PRN 1992-198.

Submit comments by June 17, 1992 to:

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

The agency proposal follows:

Summary

These proposed amendments pertain to children under the age of 19.

Sections 1902(a)(10)(A)(IV), 1902(l)(C) and (2)(B) of the Social Security Act require the State to provide Medicaid eligibility to children up to the age of 19 whose family income is less than 100 percent of the Federal poverty guideline for the family's size by the year 2001. The Federal statute provides that this expanded coverage is phased in year by year, increasing the age of the eligible children each year. On December 20, 1991, Governor Florio signed State legislation (P.L.1991, c.328) which enacts this coverage in New Jersey. Because New Jersey employs a concept of full-month eligibility, coverage for this new eligibility expansion began December 1, 1991. Therefore, effective that date children ages six and seven may be eligible for Medicaid as well as children who have turned eight years of age on or after October 1, 1991. The Division of Medical Assistance and Health Services has already instructed the county welfare agencies to implement the new statutory provisions.

Under existing provisions, eligibility for children is limited to children under the age of six with family income less than 133 percent of the Federal poverty guideline. Children over the age of six are currently eligible only if family income is less than the payment standard for Aid to Families with Dependent Children (AFDC). For example, a six-year-old in a family of four is eligible under existing regulations if the family's countable income is less than $488.00 monthly. With this expansion of eligibility, that child would be eligible so long as the family's income is less than $1,162 monthly.

Social Impact

It is estimated that the expansion of the Medicaid program to include children whose family's income is less than 100 percent of the Federal poverty guideline could result in an additional 9,300 children attaining Medicaid eligibility in fiscal year 1992. It is expected that this expansion of Medicaid will have a significant and positive effect on health care access for children in low income families. The expansion of eligibility for children provides an avenue for increased early medical intervention which should result in an overall improvement in the short and long-term health of the newly eligible children and, therefore, a long-term reduction in health care costs.

Economic Impact

The increased costs associated with the anticipated additional children aged six, seven and eight participating in the program is estimated at $1.5 million for the remainder of this fiscal year, which will be subject to a 50 percent match from the Federal government.

Regulatory Flexibility Statement

The proposed amendments impose no reporting, recordkeeping, paperwork or other compliance and/or administrative requirements on Medicaid providers or other small businesses as defined under the

Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required. The proposed amendments expand Medicaid coverage to include children up to the age of 19 whose family's income is less than 100 percent of the Federal poverty guideline for the family's size. The proposed amendments do impact the county welfare agencies charged with the responsibility of certifying Medicaid eligibility for the newly expanded eligible population.

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

10:72-1.1 Program scope

(a) (No change.)

(b) Medicaid eligibility under the provisions of this chapter is limited to:

1. Pregnant women; and

2. Children under the age of six years[.] **and children born after September 30, 1983 who have:**

i. Effective December 1, 1991, attained the age of six, seven, or eight;

ii. Effective October 1, 1992, attained the age of nine;

iii. Effective October 1, 1993, attained the age of 10;

iv. Effective October 1, 1994, attained the age of 11;

v. Effective October 1, 1995, attained the age of 12;

vi. Effective October 1, 1996, attained the age of 13;

vii. Effective October 1, 1997, attained the age of 14;

viii. Effective October 1, 1998, attained the age of 15;

ix. Effective October 1, 1999, attained the age of 16;

x. Effective October 1, 2000, attained the age of 17; and

xi. Effective October 1, 2001, attained the age of 18.

3. (No change.)

(c) Retroactive Medicaid eligibility is available beginning with the third month prior to the month of application for Medicaid for any month during which the applicant meets all eligibility criteria and during which the applicant has unpaid medical expenses for covered services. In order to qualify for retroactive coverage, an individual need not be determined eligible at the time of application for Medicaid benefits. Application for retroactive Medicaid coverage may be made on behalf of a deceased person so long as the person was alive during a portion of the three month period immediately prior to the month of application and he or she has unpaid medical expenses for Medicaid covered services.

i. Retroactive Medicaid coverage is not available under the provisions of this chapter for [pregnant women and children up to the age of one whose income exceeds 133 percent of the federal poverty guideline for any period prior to July 1, 1991] **a child for any period prior to the effective date of program coverage for the age of the child. Retroactive eligibility is not available to pregnant women and children up to the age of one whose family income exceeds 133 percent of the Federal poverty guideline for any period prior to July 1, 1991.**

10:72-3.4 Eligible persons

(a) The following persons who meet all eligibility criteria of this chapter are eligible for Medicaid benefits:

1. (No change.)

2. Children under the age six years[.] **, and children born after September 30, 1983 who have:**

i. Effective December 1, 1991, attained the age of six, seven, or eight;

ii. Effective October 1, 1992, attained the age of nine;

iii. Effective October 1, 1993, attained the age of 10;

iv. Effective October 1, 1994, attained the age of 11;

v. Effective October 1, 1995, attained the age of 12;

vi. Effective October 1, 1996, attained the age of 13;

vii. Effective October 1, 1997, attained the age of 14;

viii. Effective October 1, 1998, attained the age of 15;

ix. Effective October 1, 1999, attained the age of 16;

x. Effective October 1, 2000, attained the age of 17; and

xi. Effective October 1, 2001, attained the age of 18.

3.-7. (No change.)

10:72-4.1 Income eligibility limits

(a) Income limits for Medicaid for aged, blind, and disabled persons**, as well as children aged six years or older,** covered under the provisions of this chapter will be based on 100 percent of the poverty income guidelines as defined by the U.S. Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35). The monthly income standard will be one-twelfth of the annual poverty income guideline rounded down to the next whole dollar amount for household unit sizes of one and two **for aged, blind, and disabled individuals and for the appropriate family size for children aged six years or over.** The annual revision to the Federal poverty income guideline will be effective for purposes of this section with the first day of the year for which the poverty income guideline is promulgated.

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

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF NURSING

Notice of Request for Informal Public Input Certification of Homemaker-Home Health Aides

Authorized By: Board of Nursing, Golden Bethune, President.
Authority: N.J.S.A. 45:11-24.

Take notice that the Board of Nursing is soliciting, pursuant to N.J.A.C. 1:30-3.2(a), comments with respect to the certification of Homemaker-Home Health Aides. N.J.S.A. 45:11-24, the Nursing Practice Act of New Jersey, was amended effective December 16, 1989 to require the Board of Nursing to prescribe standards and requirements for a competency evaluation program resulting in the certification of homemaker-home health aides.

To assist the Board in establishing certification standards which will promote and protect the public health and welfare, comments and suggestions concerning homemaker-home health aide testing, supervision and curriculum will be solicited at **an open public forum** to be held on Wednesday, June 10, 1992 at:

Middlesex County College
Woodbridge Avenue and Mill Road
Edison, New Jersey 08817

Two sessions will be held: the first between 10:00 A.M. and 12:00 P.M. and the second between 1:30 P.M. and 3:30 P.M.

Persons wishing to speak at this public forum should provide written notice to the Board of Nursing at Post Office Box 45010, Newark, New Jersey 07101 no later than June 3, 1992.

So that the Board may determine the sequence and identity of speakers who will provide it with relevant, noncumulative comments and data, the notice should specify the issues to be addressed and should include a brief synopsis of the proposed statement. Speakers will be limited to a three-minute statement.

This is a Notice of Request for Informal Public Input (see N.J.A.C. 1:30-3.2(a)). Any rule proposal which may result concerning the subject of the public forum must still comply with the rulemaking provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30.

(a)

VIOLENT CRIMES COMPENSATION BOARD
Eligibility of Claims and Compensable Damages
Proposed Amendment: N.J.A.C. 13:75-1.7

Authorized By: Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.
Authority: N.J.S.A. 52:4B-9.
Proposal Number: PRN 1992-212.

Submit comments by June 17, 1992 to:
Amedeo A. Gaglioti, Esq.
Violent Crimes Compensation Board
60 Park Place
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment is an addition to N.J.A.C. 13:75-1.7, authorizing the Board to deny compensation to victim/claimants in certain situations.

The purpose of the Board's proposed amendment is in compliance with A-4819, P.L. 1991, c.329, which was signed into law on December 23, 1991 and became effective immediately upon signing.

The proposed amendment provides for denying payment to victim/claimants who have not satisfied any and all Violent Crimes Compensation Board assessments imposed pursuant to N.J.S.A. 2C:43-3.1 and restitution ordered by the courts, and denying victim/claimants compensation during any period of their incarceration until their release.

Additionally, the amendment further provides that the Board shall not compensate victim/claimants for injuries sustained while incarcerated for the conviction of a crime on or after December 23, 1991.

Social Impact

The proposed amendment will allow the Board to retain and reserve funds so that it can compensate a greater number of innocent victims who are law abiding citizens of the state.

The Criminal Injuries Compensation Act of 1971, when enacted, intended to compensate innocent victims of violent crimes.

The Legislature by enactment of A-4819, P.L. 1991, c.329, clearly re-emphasizes that intention by not having the program be accessible to individuals injured while incarcerated for acts committed in violation of society's law. Additionally, A-4819, P.L. 1991, c.329, authorizes the Board to deny claims in situations where the victim/claimant has not complied with the Judge's order in either paying the V.C.C.B. fine imposed and/or restitution ordered at the time of sentencing.

Economic Impact

Since money used to compensate victims and claimants is continually evaporating due to cutbacks in funding, increased medical costs and an ever increasing number of applicants, the Board is taking measures to limit payment to innocent victims.

Regulatory Flexibility Statement

The Violent Crimes Compensation Board's rules govern the process by which victims of violent crimes and their attorneys may make claims for compensation.

The proposed amendment imposes no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:4B-16 et seq., since they establish a compensation eligibility criteria for individual victims. Therefore, a regulatory flexibility analysis is not required.

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

13:75-1.7 Compensable damages

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

(k) The Board may deny compensation to a claimant unless the claimant has satisfied any and all Violent Crimes Compensation Board assessments imposed pursuant to N.J.S.A. 2C:43-3.1 and restitution ordered by the courts to be paid specifically to the Board until such time as proper proof is submitted verifying satisfaction of said obligations.

1. Where possible the Board may forward the amount of the outstanding assessment and/or restitution directly to the proper collection authority from any proceeds of the award of compensation the Board may make to or on behalf of the victim or claimant.

(l) The Board shall make no award for compensation to or on behalf of a victim or claimant during any period of their incarceration and may close the claim without prejudice. Upon release from any period of incarceration the claimant may petition the Board to reopen the claim.

1. No compensation shall be awarded for incidents occurring on or after December 23, 1991 if the victim sustained injuries while incarcerated for the conviction of a crime. Factors to be considered in determining incarceration shall include, but not be limited to, restraints placed on personal liberty; freedom from mobility; and whether the individual is under the care, custody and control of any penal institution or similar institution.

2. Where a victim is injured while serving a non-custodial sentence or while incarcerated for reasons other than conviction of a crime, or injured while incarcerated prior to December 23, 1991, the Board shall take all relevant matters into consideration including, but not limited to, the following:

i. The provisions of N.J.S.A. 52:4B-9 requiring the Board to consider the availability of funds as appropriated by the State in awarding compensation;

ii. Whether the victim assumed a reasonable risk of injury under all the circumstances of the case;

iii. Whether the victim had reason to believe that his or her actions would result in arrest, conviction, sentence and incarceration;

iv. The likelihood of the victim's conviction for the allegations serving as the basis for the victim's incarceration;

v. The nature of the offense and the sentence imposed; and

vi. The disposition of the charges by the criminal justice system.

PUBLIC UTILITIES

(b)

BOARD OF REGULATORY COMMISSIONERS
Notice of Pre-Proposal
Inspection and Operation of Master Meter Systems
N.J.A.C. 14:6-5

Authorized By: Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman, Jeremiah F. O'Connor and Carmen J. Armenti, Commissioners.
Authority: Part 192 of Title 49 of the Code of Federal Regulations (49 CFR 192); N.J.S.A. 48:2-13.
BRC Docket Number: GX92040458.
Pre-Proposal Number: PPR 1992-4.

Take notice that, pursuant to the safety standards for the distribution of natural gas by pipeline systems established by the United States Department of Transportation, as set forth in Part 192 of Title 49 of the Code of Federal Regulations (49 CFR 192), the New Jersey Board of Regulatory Commissioners (hereinafter "Board") is considering the promulgation of rules that would govern the inspection and operation of Master Meter Systems within this State.

For the purpose of this pre-proposal, the term "Master Meter System" shall refer to any underground gas pipeline system operated by a residential or commercial customer of a New Jersey gas utility, which is utilized for the distribution of gas to ultimate consumers within, but not limited to, a definable area, such as a mobile home park, a housing project or an apartment complex, where the operator purchases metered gas from a public utility for resale through the operator's own underground gas distribution pipeline system, where such system is beyond the control of the utility. The ultimate consumers served by such a distribution pipeline system will purchase the gas directly though a meter or by other means, such as through rents.

Pursuant to the Board's proposal, no regulated gas utility would accept an application for service from any customer to serve any Master Meter System, as defined above, that had not been in operation prior to the effective date of the new rules. The Board's proposal is as follows:

1. After January 1, 1993, no gas utility in this State shall provide gas service to newly developed units for any new residential or commercial customer or to any customer who in turn supplies gas service to residential or commercial customers unless each dwelling unit or commercial establishment is individually metered;

2. After January 1, 1993, no gas utility in this State shall continue to provide gas service to any master-metered residential or commercial customer unless the utility is provided by the owner of such a master-metered system with an annual certification from a licensed professional engineer, that the system has been inspected within the last six months and that it complies with all applicable safety requirements, including the requirements of both the Building Officials and Code Administrators, Inc. (BOCA) and the Federal Pipeline Safety Code, 49 CFR 192. A copy of such certificate shall be submitted to the Board.

3. If the results of the initial inspection reveal that the master-metered system does not satisfy the requirements of the Federal Pipeline Safety Code, 49 CFR 192, but meets all other applicable safety standards, the owner of such system shall furnish the utility with a copy of the inspection report and shall submit a detailed plan of action to bring the master-metered system into compliance with the requirements of the Federal Pipeline Safety Code, 49 CFR 192, within 12 months. The owner shall submit to the utility proof of compliance with the requirements of the Federal Pipeline Safety Code, 49 CFR 192, within the 12 month period. A copy of such compliance shall be forwarded to the Board.

4. If the owner of the master-metered system does not comply with Sections 2 or 3 above, the utility shall attempt to arrange with the owner of the master-metered system to take over the master-metered system and make corrections to bring the system into compliance with all applicable safety standards, including BOCA and the Federal Pipeline Safety Code, 49 CFR 192, at the expense of the owner. If such an arrangement cannot be worked out, the utility shall petition the Board for permission, upon notice and hearing, to discontinue service to such a master-metered system.

The Board has determined to solicit comments from the public prior to the formal proposal of rules pertaining to the inspection and operation of Master Meter Systems.

Interested persons may submit written comments on any issue raised by this pre-proposal.

Submit comments by June 17, 1992 to:

Nusha Wyner, Director
Division of Gas
Board of Regulatory Commissioners
CN-350
Trenton, New Jersey 08625

This is a notice of pre-proposal for a rule (see N.J.A.C. 1:30-3.2). Any rule concerning the subject of this pre-proposal must still comply with the rulemaking provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(a)

BOARD OF REGULATORY COMMISSIONERS

Private Domestic Wastewater Treatment Work Facilities

Proposed New Rules: N.J.A.C. 14:9B

Authorized By: Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman, Jeremiah F. O'Connor and Carmen J. Armenti, Commissioners.

Authority: N.J.S.A. 48:2-13 and 48:2-21.

BPU Docket Number: W091091480.

Proposal Number: PRN 1992-174.

A **public hearing** concerning this proposal will be held on Wednesday, July 8, 1992 at 1:00 P.M. at:

Board of Regulatory Commissioners
10th Floor Hearing Room
Two Gateway Center
Newark, New Jersey 07102

Submit written comments by July 24, 1992, to:

I. Paul Slevin, Director
Division of Water and Sewer
Board of Regulatory Commissioners
44 South Clinton Avenue
CN 350
Trenton, New Jersey 08625

The Agency proposal follows:

Summary

These proposed new rules would establish a system whereby the owners of private domestic treatment work (DTW) facilities which are subject to the jurisdiction of the Board of Regulatory Commissioners (Board) will provide financial assurances, provided that these facilities are owned and/or operated by any association, whether incorporated or unincorporated, and are not operated incidental to a dominant landlord-tenant relationship.

The goal of the Board of Regulatory Commissioners is to ensure safe, adequate and proper service and operation of these facilities in an environmentally sound manner over time. This is accomplished by ensuring that adequate financial resources are immediately available to make rapid repairs, and to perform maintenance or replacement in cases of operational failures, which, due to the nature of these facilities, would present an immediate threat to the surface water and ground water resources of the State of New Jersey and the health of its citizens.

These proposed new rules would require owners of the affected private domestic treatment work facilities to deposit funds sufficient to provide for one year of system maintenance and future system replacement costs. The required escrowed funds would be deposited in Board monitored escrow accounts and the amount would vary depending on the size, type, age and operating history of the domestic treatment work facility.

The premise is to take the present value of the future cost of replacing a domestic treatment works facility and spread this amount over the expected remaining life of the existing DTW facility. The sum of yearly escrow contributions would earn interest over the remaining life of the facility. Contributions of constant payments into the escrow fund over the useful life of the facility would have the effect of front loading the payments into the initial years. The real cost of the escrow payments would decline over time. The rationale for this approach is that operating and maintenance costs are lower in the early years of the facility thereby keeping total costs relatively constant and, since the life of the facility is not known with certainty, this method would provide some built-in assurance in the case of premature failure or obsolescence. Despite this built-in assurance, however, there still might arise situations wherein the escrow account may be insufficient such as in the case of catastrophic failure of the system, for example, a fire. These occurrences will likely be covered by property insurance. In all events, however, the escrow fund is not to be considered a limitation on the owner's duty to provide safe, proper and adequate service; to comply fully with all other statutes, regulations or permit conditions; or to constitute a defense or limitation in case of civil or criminal liability in any suit by any party.

The authority for these proposed new rules derives from the Board of Regulatory Commissioner's overall jurisdiction over public utilities under Title 48 New Jersey Statutes Annotated. Specifically, the Board believes that its authority pursuant to Title 48 extends over domestic treatment works facilities operated by associations which meet the definition of "for public use" under N.J.S.A. 48:2-13, and are not operated incidental to a dominant landlord-tenant relationship. The Board has memorialized its position in an Order dated September 12, 1991, I/M/O the Board of Regulatory Commissioners' Jurisdiction over Certain Domestic Treatment Works (DTW) Facilities, Docket No. WO91091480. The Board caused this decision to be published in the New Jersey Register on November 4, 1991, to ensure the widest notice to interested parties. These proposed new rules are the result of that Order.

Application of the Board's jurisdiction to DTW facilities means that these domestic treatment work facilities are public utilities with all the attendant duties of safe, adequate, and proper service, recordkeeping, etc. These new proposed rules attempt to provide a streamlined regulatory scheme by which to limit any administrative burden or cost. A sample tariff is proposed as part of the rules.

Detailed rules are provided for the deposit and withdrawal of escrow funds, consistent with the goal of providing financial assurance to ensure safe, adequate and proper service and operation of these facilities in an environmentally sound manner.

Social Impact

The proposed new rules will provide a system of financial assurance to ensure the safe, adequate and proper service and operation of regulated domestic treatment work facilities.

These rules will promote the enforcement by the Department of Environmental Protection and Energy (DEPE) of water quality standards throughout the State, and relieve the taxpayer of possible emergent repair and replacement expenses by providing adequate user self-financing.

Economic Impact

The proposed new rules will necessitate the set aside and probable expenditure of the required escrow funds and administrative costs to comply with the proposed new rules including legal, engineering and accounting expenses over time.

These funds and costs may represent a considerable expense to the current and future owners of private domestic treatment work facilities, depending on the size, type, age, and operating history of the facility.

In the proposed rules, the Board has streamlined normal public utility reporting and bookkeeping requirements as much as possible in recognition of the limited resources of the affected "association" owners. Further use of domestic treatment works facilities may be discouraged as the costs of these facilities permitted use are increased.

The proposed new rules will require the expenditure of additional time, effort and resources by the Board and its Staff. The estimate of these costs is approximately $275,000 per year.

Regulatory Flexibility Analysis

The proposed new rules will affect approximately 20 existing domestic treatment works which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and require financial assurances from the owners of these existing facilities. There are approximately 25 proposed new domestic treatment works which have permit applications pending before the DEPE which also may be affected if determined to be public utilities under these proposed new rules. The number of future domestic treatment works permit applications which may be affected cannot be estimated at this time.

The Board is of the opinion that the requirements set out in the rules are necessary to allow domestic treatment work facilities to provide safe, adequate and proper service. Accordingly, the Board has endeavored in the preparation of these proposed new rules to streamline utility recordkeeping, reporting and filing procedures for private domestic treatment works owners and thus minimize the administrative costs necessary to comply with the provisions of these proposed new rules. It is anticipated that all domestic treatment works owners, subject to Board regulation under these proposed new rules, are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, no differing standards based on business size are established.

Full text of the proposed new rules follows:

CHAPTER 9B
DOMESTIC WASTEWATER TREATMENT FACILITIES

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

14:9B-1.1 Purpose and scope

The Board of Regulatory Commissioners believes that it is in the public interest to ensure that private domestic treatment works owned or operated by any association, whether incorporated or unincorporated, and subject to its jurisdiction are at all times able to provide safe, adequate and proper utility service in an environmentally sound manner. The rules contained in this chapter are designed to provide a mechanism whereby private domestic treatment works owned or operated by an association, whether incorporated or unincorporated, and subject to the Board's jurisdiction ("DTW facilities") will be required to provide financial assurances, as a condition to being permitted to operate, that adequate funds are available for the ongoing maintenance of these systems and their potential replacement. The rules also set forth escrow account reporting requirements and guidelines in order to provide the Board with timely information related to the oversight management and the release of these funds.

14:9B-1.2 Definitions

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

"Board" means the New Jersey Board of Regulatory Commissioners or its successor.

"DAC" means Discharge Allocation Certificate as defined under N.J.A.C. 7:14A-1.9.

"DEPE" means the New Jersey Department of Environmental Protection and Energy or its successor.

"DGW Permit" means a permit for a discharge to ground water issued pursuant to N.J.A.C. 7:14A.

"DSW permit" means a permit for a discharge to surface water issued pursuant to N.J.A.C. 7:14A.

"DTW" means domestic treatment works as defined in N.J.A.C. 7:14A-1.9.

"DTW facilities" mean all private domestic treatment works owned and/or operated by any association, whether incorporated or unincorporated, and subject to the Board's jurisdiction, excluding sewerage collection systems and pumping stations.

"NJPDES" means the New Jersey Pollutant Discharge Elimination System (N.J.A.C. 7:14A).

"Public Advocate" means the New Jersey Department of the Public Advocate.

"TWA" means Treatment Works Approval as defined in N.J.A.C. 7:14A-1.9.

SUBCHAPTER 2. ESTABLISHMENT OF ESCROW ACCOUNTS

14:9B-2.1 Filings

(a) Every New Jersey DTW facility that has obtained from the DEPE a draft or final DAC, DSW permit, or DGW permit pursuant to the NJPDES shall initially file with the Board by January 1, 1993:

1. A petition for approval of grants of franchise and privileges to public utilities pursuant to N.J.A.C. 14:11-1.5;

2. A petition for approval of public utility tariffs pursuant to N.J.A.C. 14:11-7; and

3. A petition for approval of maintenance and system replacement escrow accounts.

(b) Each time thereafter that the DEPE may renew such permits, every DTW facility shall file a petition for approval of a maintenance and system replacement escrow account and if necessary, a petition for approval of public utility tariffs.

(c) The provisions of (a) above shall apply to DTW facilities that exist at the time this rule is adopted and that require a DAC, DSW permit, or DGW permit, even if a draft DAC or permit has not been obtained. If a proposed new DTW facility has not obtained a final DAC or DGW permit by January 1, 1993, then filing with the Board must occur before the DEPE issues a Stage II TWA approval on construction, installation, or modification of the facility.

(d) If a DTW facility applicant does not require a DAC or NJPDES discharge permit, the applicant, prior to the issuance by DEPE of a treatment work approval (TWA) for construction, installation or modification of the treatment works (stage II) under N.J.A.C. 7:14A, shall file with the Board a petition for approval of those items specified in (a) above.

14:9B-2.2 Filing requirements

(a) The initial filing shall consist of the following elements, which shall be accompanied by appropriate support sufficient to provide the Board with a basis to evaluate the filing:

1. A statement of notices given, together with a copy of the text of each notice as described in N.J.A.C. 14:9B-3.1(a) and (b);

2. All information required pursuant to N.J.A.C. 14:1-5.12;

3. A statement reflecting the proposed replacement costs for the facility supported by all documentation utilized in making this determination;

4. A statement as to the anticipated State and Federal taxes applicable to the escrow funds, including the interest earned thereon;

APPENDIX A
FORMS ILLUSTRATIVE OF TARIFF SHEET REQUIREMENTS

B.R.C. No. 1—Sewer

STANDARD DTW FACILITY
TARIFF
for
SEWER SERVICE
Applicable in
STANDARD PARK
MONMOUTH COUNTY, NEW JERSEY

Issued: (date) Effective: (date)

By: John Doe, President
691 Broadway
Colts Neck, N.J.

Original Sheet No. 1

STANDARD DTW FACILITY
B.R.C. No. 1

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Issued by: John Doe, President
691 Broadway
Colts Neck, N.J.

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STANDARD DTW FACILITY
B.R.C. NO. 1—SEWER

TERRITORY SERVED

Describe here all territory covered by the tariff by naming the cities, villages, towns and hamlets. Indicate the counties and municipalities in which such places are situated. A map showing the territory to be served is desirable but not required.

Date of Issue: (date) Effective: (date)

Issued by: John Doe, President
691 Broadway
Colts Neck, N.J.

STANDARD DTW FACILITY Original Sheet No. 3
B.R.C. NO. 1—SEWER

STANDARD TERMS AND CONDITIONS

(a) A full and complete statement of all rules, regulations, terms and conditions relating to charges of service used or to be used which apply generally in connection with the service supplied together with all general privileges and facilities granted or allowed. Each such rule, regulation, etc. shall constitute a separate section or paragraph. The paragraphs shall be numbered consecutively and where possible shall be given appropriate headings such as: 2. Definitions—(Mark sub-paragraph 2.1, 2.2, 2.3, etc.); 3. Applications; 4. Customers' Deposits; etc.

(b) General rules and regulations as to services, meters, connection and disconnection of service (not including detailed specifications, which may be included in a separate pamphlet and referred to herein).

(c) Such other information in regard to escrow charges or service, or practices relative thereto as in the opinion of the issuing DTW facility should be published. This information shall be paragraphed and numbered under suitable headings.

Date of Issue: (date) Effective: (date)

Issued by: John Doe, President
691 Broadway
Colts Neck, N.J.

STANDARD DTW FACILITY Original Sheet No. 4
B.R.C. NO. 1—SEWER

SCHEDULE NO. 1 ANNUAL SYSTEM REPLACEMENT ESCROW
(or other designation)

Annual Escrow Amount—$

Date of Issue: (date)

Issued by: John Doe, President Effective: (date)
691 Broadway
Colts Neck, N.J.

STANDARD DTW FACILITY Original Sheet No. 5
B.R.C. NO. 1—SEWER

SCHEDULE NO. 2 ANNUAL SYSTEM MAINTENANCE ESCROW
(or other designation)

Annual Escrow Amount—$

Date of Issue: (date)

Issued by: John Doe, President Effective: (date)
691 Broadway
Colts Neck, N.J.

5. Documentation indicating the original cost of the DTW which shall include a complete description of all plant facilities, along with their respective dates of installation or proposed installation;
6. A statement as to the determination of the anticipated useful life of the facility;
7. A statement projecting the anticipated annual maintenance expense related to the facility which shall include, but not be limited to, the following:
i. Materials;
ii. Labor;
iii. Outside services; and
iv. Replacement of equipment and parts to ensure effective and dependable operation; and
8. Tariff sheets which shall contain the following:
i. A title page;
ii. A table of contents;
iii. A description of territories served;
iv. The standard terms and conditions governing service; and
v. A schedule indicating the proposed escrow amounts.
vi. Forms illustrative of requirements (a)8i through v above, may be found in Appendix A of this chapter, incorporated herein by reference.

(b) Each DTW facility that makes a filing pursuant to this section shall, unless otherwise ordered or permitted by the Board, give notice thereof as follows:
1. Serve a copy of the petition upon the municipal clerk in each of the municipalities in which service is rendered; and
2. Serve two copies of the petition on the Commissioner, DEPE and the Director, Division of Rate Counsel, Department of the Public Advocate.

(c) Upon renewal of a DAC, DGW or DSW permit, subsequent filings shall be made which include all information described in (a) and (b) above with the exception of the requirements set forth in N.J.A.C. 14:1-5.12. In addition, anticipated annual maintenance expenses shall be accompanied by actual maintenance costs for the last three years.

(d) Any change in the escrow deposit established pursuant to N.J.A.C. 14:9B-1 shall comply with the filing requirements set forth in (a) and (b) above.

SUBCHAPTER 3. ESTABLISHMENT OF ESCROW ACCOUNT PROCEDURES

14:9B-3.1 Public notification

(a) Concurrent with the filing with the Board, as required by this chapter, each DTW facility shall provide public notice of said filing in newspapers of general circulation in its service territory, in a form deemed appropriate by the Board.

(b) Notice of the filing shall also be provided to the Public Advocate and DEPE.

(c) Each DTW facility shall make available for distribution to members of the public upon request an Executive Summary of the filing made pursuant to this chapter. Said Executive Summary shall:
1. Summarize the information supplied pursuant to each section of N.J.A.C. 14:9B-1 and 2;
2. Indicate procedures for comment as set forth in N.J.A.C. 14:9B-3.2; and
3. Not exceed five pages in length.

14:9B-3.2 Comment period and Board review

(a) For a period ending 60 days from filing or as otherwise extended by action of the Board, interested parties may submit comments to the Board.

(b) Upon receipt and review of comments as well as other related additional information as requested, the Board may, if necessary, initiate a proceeding to formally review the funding level for any of the escrows. Such a determination shall be based upon the following considerations:
1. A sufficient showing to provide a reasonable basis for the consistency of the proposed funding levels with the most up-to-date estimates for maintenance and replacement costs; and
2. A sufficient showing to provide a reasonable basis for the expected useful life of the DTW facility.

(c) In the event that the Board determines a need for a formal proceeding, said proceeding shall follow the procedures set forth in N.J.A.C. 14:9B-3.3 to 3.6.

14:9B-3.3 Party status and intervention

(a) The Public Advocate and the DEPE shall be granted party status.

(b) Any person may make a Motion for Intervention to the Board with respect to the Escrow proceeding. Such Motion shall be filed and decided pursuant to N.J.A.C. 1:1-16, the Uniform Administrative Procedure Rules, Intervention and Participation.

14:9B-3.4 Discovery

(a) Any party or intervenor as established in N.J.A.C. 14:9B-3.3 may propound discovery upon any association regarding its respective filings.

(b) The schedule for the filing of supplemental information, testimony or for propounding of discovery and for responses thereto shall be established by the Board subsequent to its determination as to the need for a formal proceeding.

14:9B-3.5 Public and evidentiary hearings

(a) Within 90 days of the initiation of a formal proceeding, the Board shall schedule and convene a public hearing at which members of the public and interested parties shall be provided the opportunity to submit comments with respect to the filing.

(b) The Board shall convene evidentiary hearings and additional public hearings concerning the filing, if necessary, and entertain written position papers from the parties.

14:9B-3.6 Findings

(a) Subsequent to the conclusion of the initial proceeding, the Board shall issue a Decision and Order which addresses the following issues:
1. The DTW facility's request for approval of the grant of municipal consents;
2. The appropriate level of the Annual System Replacement Escrow Accounts and the procedures utilized for release of these funds;
3. The appropriate level of the Annual Maintenance System Escrow Accounts and the procedures utilized for release of these funds; and
4. The DTW facility's request for approval of an applicable tariff.

(b) Subsequent to the conclusion of the renewal proceedings the Board shall issue a Decision and Order which will address issues described in (a) above with the exception of the DTW facility's request for approval of grants of municipal consents.

SUBCHAPTER 4. ESCROW ACCOUNT MANAGEMENT AND RELEASE OF FUNDS

14:9B-4.1 Selection of escrow agent

(a) The DTW facility shall file with the Board proposals from at least three State or Federally regulated financial institutions for the investment portfolio management of said escrow account. At least two of said institutions shall be New Jersey financial institutions.

(b) Each proposal shall include the following information:
1. The name of the financial institutions;
2. The address of the principal New Jersey office of each financial institution;
3. A current five year historical summary of each institution's portfolio management performance, for similar accounts;
4. An auditor's report to shareholders of each institution for the last three years, including all notes thereto;
5. The proposed fee schedules; and
6. The identification of any prior, existing or prospective relationship, financial or otherwise, between the financial institutions, their directors, officers, or personnel and the DTW facility.
(c) The Board shall review the qualifications of said financial institutions, and, if acceptable to the Board, the DTW facility shall be permitted to select the financial institution where the escrow account is to be established and maintained.
(d) The escrow agreement for every escrow account, and any revisions thereto, shall be approved by and filed with the Board by the accredited financial institution, as escrow agent.
(e) The DTW facility shall notify the Board, in writing, of the institution selected to manage the escrow account, and submit an executed standardized Board approved escrow agreement, within 45 business days of the Board's written authorization designating the escrow agent.

14:9B-4.2 General requirements
(a) The escrow account shall be kept separate and apart from all other accounts maintained by the DTW facility. The fact that the DTW facility may have previously established an escrow account (reserve account) pursuant to any other law, rule or regulation, does not alleviate its responsibility to establish an escrow account under these rules.
(b) The escrow agreement and any other document(s) evidencing the existence of the escrow account must contain a reference to the purpose of the account that will put the creditors of the DTW facility on notice as to the nature of the account. The escrow account shall not constitute an asset of the DTW facility or its owner of record and shall be established in such a manner as to ensure that the funds in the account will not be available to any creditor other than the Board in the event of bankruptcy or reorganization of the DTW facility or its owner of record. Any DTW facility named as debtor in bankruptcy proceedings must notify the Board within seven days of the commencement of such proceedings.
(c) All funds deposited in the escrow account must be readily available in the event that circumstances necessitate the maintenance or replacement of the DTW system prior to the date originally contemplated.
(d) The methodology to arrive at the proper escrow account funding level shall be as follows:
1. For system replacement escrow, the premise will be to take the present value of the estimated future cost of replacing a domestic treatment works facility and to spread this amount over the expected remaining life of the existing DTW facility.
2. For maintenance escrow, the value of one year's expected operating and maintenance expenses shall be deposited in this escrow account.
(e) In the event that the Board or a DTW facility seeks to adjust the amount of the escrow account deposits, a hearing shall be held pursuant to the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Any adjustment made shall be based on, but not limited to, actual cost data, changes in permit requirements, operating regulations or standards, economic conditions and facility operating history.
(f) In the event of the termination of the escrow account(s) subject to prior Board approval, the unexpended balances shall revert without further restrictions to the owner of the escrow account or its successor under law.

14:9B-4.3 Deposit requirement
(a) The DTW facility shall deposit in the Board approved escrow account, on or before the 20th of each month, an amount as determined by the Board.
(b) Funds deposited pursuant to (a) above, shall be deemed trust funds and shall be utilized exclusively for the maintenance or replacement of the DTW system, as defined in N.J.A.C. 14:9B-1.2.
(c) In its determination of the approved escrow deposit, the Board shall include consideration of the applicability of all Federal and State tax laws and regulations.

14:9B-4.4 Investment criteria
(a) The escrow agent shall use all reasonable efforts to invest said funds in investments of high quality and minimum risk, as defined by Moody's Ratings and Standard and Poor ratings of Aa and AA or higher, respectively.
(b) Investments shall be made consistent with the timing of escrow fund withdrawal requirements. These include the following:
1. Obligations issued or guaranteed by an instrumentality or agency of the United States, whether now existing or hereafter organized;
2. Obligations issued or guaranteed by any State of the United States or the District of Columbia;
3. Repurchase agreements, including repurchase agreements of the escrow agent which are fully secured by obligations of the kind specified in (b)1 and 2 above;
4. Money market funds invested in obligations specified in (b)1 and 2 above, which may include those of the escrow agent;
5. Common funds of the escrow agent invested in obligations specified in (b)1 and 2 above; and
6. Interest bearing deposits in any bank or trust company, which may include the escrow agent, which has combined capital surplus and retained earnings of at least $50,000,000.
(c) Investments of the types set out in (b)4, 5, and 6 above shall be limited in dollar amount to comply with Federal Savings and Loan Insurance Corporation (FSLIC) insured limit restrictions as exist currently, or as hereafter may be modified.
(d) To facilitate these investments, the DTW facility shall provide the escrow agent and the Board of Regulatory Commissioners, Director, Division of Audits, Two Gateway Center, Newark, New Jersey 07102, with a schedule of anticipated escrow account withdrawals of said funds for each successive 90 day period, 30 days in advance of said period. Said schedule shall be solely for the guidance of the escrow agent for investment purposes and shall not be considered as a firm escrow withdrawal schedule.
(e) All interest or other income that results from investment of funds in the escrow account shall be deposited into the escrow account and subjected to the same restrictions as the principal.

14:9B-4.5 Reporting requirements
(a) The DTW facility shall file with the Board's Audit Division, on a monthly basis within 20 days after the close of the calendar quarter:
1. A written statement of amounts received in payment of said Board approved escrow rates; and
2. The deposits made to the escrow account for the respective quarter.
(b) The escrow agent shall file with the Board's Audit Division, on a monthly basis, within 10 calendar days of the close of the accounting period, the following:
1. A Summary of Transactions detailing the opening balance, all receipts, disbursements and security transactions, and the closing balance for the reporting period;
2. A Statement of Principal and Income Transactions and Invested Income Transactions detailing daily transaction activities for the reporting period, including:
i. Beginning balance;
ii. Dividend cash receipts;
iii. Investment income earned;
iv. Deposits to the account;
v. Asset purchases, description of units purchased, transaction dates, prices per unit, and any commissions, if applicable;
vi. Distributions, identifying payees;
vii. Trustee fees assessed; and
viii. Closing balance; and
3. A statement of Principal Assets and Invested Income Assets detailing account holdings by asset type, as follows:

i. The number of shares held, par value, or units of each security; and

ii. An asset description including:

(1) Carrying value;

(2) Unit price (Market Value);

(3) Market value;

(4) Cost (adjusted tax basis);

(5) Estimated annual income; and

(6) Current yield.

(c) The DTW facility shall file with the Board Audit Division an annual audit of all deposits to and withdrawals from the escrow account for the year reported on. The annual audit shall be conducted by a New Jersey licensed Certified Public Accountant and shall be filed with the Board no later than January 31 for the calendar year preceding, or by the 30th of the month following the end of the fiscal year.

14:9B-4.6 Procedures for the release of escrow funds

(a) The DTW facility shall file with the Board's Audit Division and the Board's Water and Sewer Division all requests for the release of escrow funds.

(b) All requests for the release of escrow funds shall include:

1. A detailed itemization of costs incurred or to be incurred for materials, supplies, labor, equipment and other associated costs;

2. All invoices or contracts supporting the costs itemized in (b)1 above;

3. Upon completion of all work performed necessary to provide safe, adequate and proper service, the project engineer shall certify that:

i. The work or services have been performed in accordance with DEPE mandated requirements;

ii. The materials or equipment are in place and in working order;

iii. The costs of the work or services are reasonable in accordance with costs for similar repair, maintenance or construction activities; and

iv. The work or services were performed as previously approved by the Board.

(c) Expenses incurred by the DTW facility in the form of professional fees rendered by accountants, attorneys and engineers, shall not be payable from said escrow account unless said expenses have been specifically approved by the Board to be funded from the escrow account.

(d) The escrow agent is authorized and empowered to release and pay over to the DTW facility or its designee up to an aggregate total of $25,000 from the escrow account without a certification(s) having been filed with the Board, DEPE and the escrow agent. The monies so released and paid under this paragraph shall reduce the escrow agent's authority under this paragraph by the amount so released and paid until such time as a certification(s) covering part or all of the amount(s) so paid or released has been filed with the Board, DEPE and the escrow agent. If the DTW facility fails to file a certification(s) for monies released and paid under this paragraph within 30 days of the release of payment, the DTW facility shall immediately deposit with the escrow agent and replenish the escrow account with a sum of money equal to that for which no certification(s) had been filed.

(e) Any disputes concerning the repair or replacement of the DTW facility shall be submitted to the Board for resolution. The Board shall conduct a hearing, pursuant to the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 and shall issue such orders as it deems appropriate, including, but not limited to, an order directing the DTW facility to perform the required repair or replacement.

(f) The escrow agent shall be compensated for its services in accordance with the escrow agent's customary charges for like services.

(g) No withdrawals from the escrow account may be made without written approval of the Board or its designee, except as otherwise provided for hereinabove.

(h) All certifications and associated costs or expenses shall be subject to accountability and audit by the Board Staff at any time.

14:9B-4.7 Provision for alternative financial assurance

In keeping with the limited resources and special circumstances of these facilities, alternative means of providing necessary financial assurance may be considered by the Board. The Board will consider financial assurance alternatives such as insurance, manufacturers guarantees, performance bonds, operations bonds, letters of credit or equivalent financial instruments. These alternatives, either individually or in combination, must equal the value of the required escrow amounts. Any Board accepted financial alternative(s) shall not relieve the DTW facility owner of its full responsibility to provide safe, adequate and proper service.

(a)

BOARD OF REGULATORY COMMISSIONERS

Regulation of Competitive Telecommunications Services

Proposed Repeal and New Rules: N.J.A.C. 14:10-5

Authorized By: Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman, Jeremiah F. O'Connor and Carmen J. Armenti, Commissioners.

Authority: N.J.S.A. 48:2-13 and 48:2-21.16 et seq. (P.L. 1991, c.428).

BRC Docket Number: TX92020201.

Proposal Number: PRN 1992-204.

A **public hearing** on the proposed rulemaking will be held June 15, 1992 at 10:00 A.M. at the following location:

Board of Regulatory Commissioners
First Floor Hearing Room
44 South Clinton Ave.
Trenton, New Jersey 08625

Interested persons may submit written comments at the hearing or by mail until June 30, 1992. The comments on the proposed rules should be addressed to:

Chrys Wilson, Secretary
Board of Regulatory Commissioners
44 South Clinton Avenue
CN-350
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On January 17, 1992, Title 48 of the New Jersey Revised Statutes was amended by the adoption of the Telecommunications Act of 1992 (Act), P.L. 1991, c.428. This legislation significantly alters the regulatory mechanism for telecommunications carriers operating in the State of New Jersey. Section 4(a) of the Act precludes the Board of Regulatory Commissioners (Board) from regulating the rates, rate structures, terms and conditions of service, rate base, rate of return and cost of service for competitive telecommunications services. The Act, however, does not remove carriers which provide such services from the Board's regulatory authority. On February 27, 1992, the Board issued an Order adopting interim procedures to be followed by all carriers offering competitive services. While noting the appropriateness of initiating a rulemaking proceeding to revise the regulatory structure for all carriers in order to conform with the provisions of the newly adopted legislation, the Board deemed it necessary to institute interim procedures until final rules could be adopted and take effect.

The Board has formulated proposed rules in accordance with the mandates contained in the Telecommunications Act of 1992. These new rules, which will replace those rules presently contained in the New Jersey Administrative Code at N.J.A.C. 14:10-5, are intended to meet the needs of competitive service providers, both local exchange and interexchange carriers, and will apply only to competitive services as defined therein.

The proposed new rules require informational tariffs to be filed for all competitive services which must contain:

1. Specific intrastate usage rates;

2. Every intrastate service offered;

3. Clear descriptions and terms and conditions for each intrastate service; and

4. Cross-references to Federal Communications Commission interstate tariffs which would be permitted for volume discounts, optional features and other provisions not specifically required to be included in the intrastate tariff.

In addition, the following provisions pertaining to new and existing services as well as initial tariff filings are contained in the proposal.

1. Permits rate increases to take effect on not less than 14 days notice to the Board. Affected customers must receive notice by direct mail or newspaper publication within 24 hours of notice to the Board;

2. Permits rate decreases to take effect on not less than one day notice to the Board.

3. Proposed rate revisions must also be served on the Division of Rate Counsel and all other tariffed carriers offering competitive services, including local exchange carriers and interexchange carriers, within 24 hours of filing with the Board;

4. New competitive service offerings will be permitted to become effective seven days after filing with the Board, without the requirement of prior Board approval. Such revisions must be served on Rate Counsel within 24 hours of filing with the Board and copies of proposed tariffs must be submitted to all other carriers providing competitive services, on or before the effective date of the new service;

5. New competitive services must be submitted by means of a letter petition setting forth a description of the new service and tariff pages containing all terms and conditions;

6. The letter petition must be supplemented by a written schedule providing, as a minimum, the prospective customer base and an indication of other services that are similarly competitive, through the use of tables or charts describing competitive services and/or alternatives;

7. In addition to the requirements above, interexchange carriers must:

a. Submit documentation related to intraLATA call completion capability and an agreement by the interexchange carrier to block such calls or evidence that intraLATA minutes of use will be reported and compensation will be paid to the affected local exchange carrier where appropriate; and

b. Submit copies of proposed tariffs to the local exchange carrier to be compensated, inclusive of adequate descriptions of services that complete intraLATA calling, if applicable, within 24 hours of filing with the Board;

8. Permits initial tariffs for carriers not previously authorized by the Board to provide intrastate service to go into effect on not less than 30 days notice but in no case prior to Board approval. In addition to all filing requirements contained in N.J.A.C. 14:1-5.11, the petitioner will be required to include the information described above for new competitive services, as well as financial information necessary for the Board to consider the financial stability of the petitioner and evaluate its capacity to provide safe, proper and adequate service.

The proposed new rules contain reporting requirements which are to be filed with the Board on a quarterly basis and would apply to every carrier providing competitive intrastate telecommunications services. These include: (1) total number of customers by service category; (2) total minutes of use by service category; (3) total number of calls by service category; (4) a description of each service offering; (5) a description of each complaint by service category; and (6) any further support deemed necessary by the Board.

This data is necessary for the Board to monitor the level of competitiveness by service and to provide the necessary information for a report to the Governor and the Legislature on the success of the deregulation of competitive services, as mandated by the newly adopted legislation.

In addition to the quarterly information required above, each carrier will be required to provide to the Board, on an annual basis, the total change in individual prices for each service category for the preceding 12 month period. The current annual financial reporting requirements will remain in full force and effect.

To determine the competitiveness of services, the rules propose that the Board may: (1) use information collected (as described above) to conduct an analysis as to whether services are becoming more or less competitive and specifically monitor the market shares of carriers as measured by number of calls, minutes of use, number of customers and customer complaints; (2) consider using an economic measure of concentration or any other appropriate economic indicator to measure market share and the competitiveness of individual services; or (3) consider using a customer survey to solicit information related to the perception of the level of competition by actual telecommunications users.

The subject legislation allows the Board to reclassify a service that had previously been found to be competitive if certain situations arise. These events, which are contained in the proposed rules, are as follows: (1) the market concentration for an individual carrier results in a service no longer being sufficiently competitive; (2) significant barriers to market entry exist; (3) there is no significant presence of competitors; (4) there is a lack of like or substitute services in the relevant geographic area; or (5) the Board finds that a carrier is not providing safe, adequate or proper service.

Finally, the proposed rules state that any carrier providing competitiveness services may, upon 30 days notice to the Board and its customers, discontinue any competitive service offering. However, service offerings provided solely by a single carrier may be discontinued only upon approval of the Board.

The Board notes that some of the information which is required to be supplied to the Board may be considered to be proprietary information by the carrier supplying the information. Therefore, the proposed rules specifically permit carriers to seek protection of proprietary information. This mechanism will allow the Board to appropriately balance the need for maximizing public disclosure of information on file with the agency with the legitimate interests of the carriers in safeguarding sensitive market and financial information from disclosure to competitors.

Social Impact

The proposed new rules affect the procedures competitive service providers must follow in implementing rate adjustments and the introduction of new service offerings. Restrictions on seeking prior Board approval are removed and additional reporting requirements are imposed. Competitive service providers will have complete pricing flexibility for their services under the proposed rules.

Economic Impact

The proposed new rules will require competitive service providers to incur recordkeeping and administrative costs and the Board will be required to check and monitor the reports filed and the information contained in those reports. However, the Board anticipates that these costs will be more than offset by corresponding reductions in costs from the relaxation of the necessity of filing for and obtaining prior Board approval for revisions to existing competitive services and the introduction of new competitive services. The proposed rules will permit carriers to implement price changes to customers subject to the notice requirements set forth in the rules without prior approval from the Board.

It is anticipated that the consumer will enjoy a broader range of services at competitive prices.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed rules do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The businesses affected by these rules either employ more than 100 people or are not located in New Jersey. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 14:10-5.

Full text of the proposed new rules follow:

SUBCHAPTER 5. REGULATION OF COMPETITIVE TELECOMMUNICATIONS SERVICES

14:10-5.1 Scope

The rules in this subchapter govern the provision of competitive telecommunications services, as defined below, subject to the jurisdiction of the New Jersey Board of Regulatory Commissioners. The rules will apply to all local exchange carriers and intrastate interexchange carriers offering competitive services.

14:10-5.2 Definitions

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

"Competitive telecommunications services" means any telecommunications service determined to be competitive by the Board and/or pursuant to P.L. 1991, c.428.

"Interexchange carrier" means a carrier, other than a local exchange telecommunications company authorized by the Board to provide long-distance telecommunications services.

"Local exchange carrier" means a carrier authorized by the Board to provide local telecommunications services.

"Local telecommunications services" means telecommunications services provided solely within a local access and transport area, that is, intraLATA calls.

14:10-5.3 Informational tariff filings

(a) Tariffs shall be filed for all competitive services. Such tariffs shall:

1. Contain specific intrastate usage rates;
2. Contain every intrastate service offered;
3. Clearly and sufficiently provide descriptions and terms and conditions for each intrastate service;
4. Be consistent with all provisions of this subchapter; and
5. Be considered public records.

(b) Cross-references to Federal Communications Commission interstate tariffs are permitted for volume discounts, optional features and other provisions not specifically required to be included in intrastate tariffs pursuant to (a) above.

14:10-5.4 Requirements for tariff revisions to existing services which create increased charges to any customer

(a) Tariff revisions to existing competitive services which create increased charges to any customer shall become effective 14 days after notice of the proposed revision as described in (b) below, without the requirement of prior Board approval.

(b) The notice requirement for a tariff revision, as described in (a) above, shall be by direct mail to all affected customers or by publication in newspapers of general circulation throughout the affected service area, within 24 hours of the filing of revised tariff pages with the Board.

(c) Proposed revisions as decribed in (a) above shall be served on the Division of Rate Counsel and all other tariffed carriers offering competitive services, including local exchange carriers and interexchange carriers, within 24 hours of filing with the Board.

14:10-5.5 Requirements for tariff revisions to existing services which do not create increased charges to any customer

(a) Tariff revisions to existing services which do not create increased charges to any customer shall become effective one day after the filing of revised tariff pages with the Board, without the requirement of prior Board approval.

(b) Proposed revisions as described in (a) above shall be served on the Division of Rate Counsel and all other tariffed carriers offering competitive services, including local exchange carriers and interexchange carriers, within 24 hours of filing with the Board.

14:10-5.6 Requirements for new service offerings for existing carriers

(a) New competitive service offerings shall become effective seven days after filing with the Board, without the requirement of prior Board approval.

(b) Proposed revisions as described in (a) above shall be served on the Division of Rate Counsel within 24 hours of filing with the Board. In addition, copies of the proposed tariffs must be submitted to all other tariffed carriers offering competitive services, including local exchange carriers and interexchange carriers, on or before the effective date of the new service.

(c) The filing requirements for new competitive services are:

1. All competitive service providers shall submit a letter petition containing:

i. A description of the new service; and

ii. Tariff pages with all terms and conditions.

2. The letter petition must be supplemented by a written schedule, providing, as a minimum, the following additional information:

i. The prospective customer base; and

ii. An indication of other services that are similarly competitive, through the use of tables or charts describing competitive services and/or alternatives.

3. If the supplemental written schedule contains sensitive information that would qualify under law for protective treatment as proprietary information, such schedule may be provided to the Board as a proprietary document bearing suitable markings, if accompanied by a motion as described at N.J.A.C. 14:10-5.8(d). Until the Board rules on the motion, the supplemental schedule shall not be disclosed to the public.

4. In addition to the requirements contained in (c), 1, 2 and 3 above, interexchange carriers shall:

i. Submit documentation related to intraLATA call completion capability and an agreement by the interexchange carrier to block such calls or evidence that intraLATA minutes of use will be reported and compensation will be paid to the affected local exchange carrier where appropriate; and

ii. Submit copies of proposed tariffs to the local exchange carrier to be compensated, inclusive of adequate descriptions of services that complete intraLATA calling, if applicable, within 24 hours of filing with the Board.

(d) The Board shall retain its authority to investigate and suspend, if necessary, all aspects of any competitive service if the filing violates any Board rule or are otherwise not in conformance with law.

14:10-5.7 Requirements for interexchange carriers initial tariff filings

Initial tariffs of interexchange carriers that have not previously been authorized by the Board to provide intrastate service in New Jersey, shall go into effect on not less than 30 days notice but in no case prior to Board approval. In addition to all filing requirements contained in N.J.A.C. 14:1-5.11, the petition must include the information required in N.J.A.C. 14:10-5.6(c), as well as financial information necessary for the Board to determine the financial stability of the petitioner and whether it is capable of providing safe, proper and adequate service.

14:10-5.8 Reporting requirements

(a) Every local exchange carrier and interexchange carrier providing competitive intrastate telecommunications services shall provide to the Board information on a quarterly basis which shall include:

1. Total number of customers by service category;
2. Total minutes of use by service category;
3. Total number of calls by service category;
4. A description of each service offering;
5. A description of each complaint by service category; and
6. Any further information deemed necessary by the Board to fulfill the mandates of P.L. 1991, c.428.

(b) In addition to the quarterly information required in (a) above, every local exchange carrier and interexchange carrier providing competitive intrastate telecommunications services shall provide to the Board, on an annual basis, the total change in individual prices for each service category for the preceding 12 month period.

(c) All background and supporting documentation used to develop the information required by (a) above shall be maintained during the pendency of these rules and shall be available for inspection by the Board, its staff or its designees, upon request.

(d) Any carrier is permitted to file with the Board a motion for a protective order to protect any and/or all of the information required by (a) or (b) above from public disclosure. Any such motion shall be supported by affidavit which shall delineate the specific basis for the request for the protective order.

1. In the event the Board issues a protective order, the Board's staff shall take appropriate measures to maintain the confidentiality of the records and access to such records shall be limited to agents, employees, and attorneys of the Board, and, in the discretion of the Board, to any other appropriate governmental agency. All such governmental agencies shall be subject to the confidentiality requirements contained in this subsection. In addition, the Director of the Division of Rate Counsel shall be permitted to receive copies of such reports provided that the Director treats the information contained in the reports in a proprietary and confidential manner.

(e) The annual financial reporting requirement shall remain in full force and effect. Such annual reports shall be filed on or before March 31.

14:10-5.9 Standards for monitoring the competitiveness of services

(a) In determining the competitiveness of services, the Board may:

1. Use information collected pursuant to N.J.A.C. 14:10-5.8 to conduct an analysis as to whether services are becoming more or less competitive; specifically, monitor the market shares of carriers as measured by number of calls, minutes of use, number of customers and customer complaints;

2. Consider using an economic measure of concentration or any other appropriate economic indicator to measure market share and the competitiveness of individual services; or

3. Consider using a customer survey to solicit information related to the perception of the level of competition by actual telecommunications users.

(b) The Board may reclassify a service that had previously been found to be competitive, if the Board finds:

1. That the market concentration for an individual carrier results in a service no longer being sufficiently competitive;

2. That significant barriers to market entry exist;

3. That there is a lack of significant presence of competitors;

4. That there is a lack of like or substitute services in the relevant geographic area; or

5. That a carrier is not providing safe, adequate or proper service.

14:10-5.10 Discontinuance of service offerings

(a) Any carrier providing competitive services may, upon 30 days notice to the Board and its customers, discontinue any competitive service offering.

(b) Service offerings provided solely by a single carrier may be discontinued only upon the approval of the Board.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Gaming Equipment
Rules of the Games
Roulette Table; Physical Characteristics
Roulette; Payout Odds
Proposed Amendments: N.J.A.C. 19:46-1.7 and 19:47-5.2

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-69(a), 70(f) and 100(e).

Proposal Number: PRN 1992-207.

Submit comments by June 17, 1992 to:
Seth H. Briliant, Assistant Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendments would permit a new type of wager in the game of roulette, known as a quadrant wager. Casino licensees offering such a wager would use a double zero roulette wheel marked to indicate four quadrants, with each quadrant consisting of the nine consecutive pockets located in that specific quadrant on the wheel. Neither the single zero nor the double zero pocket would be included within any of the quadrants; if the roulette ball comes to rest in either of those pockets, one-half of a quadrant wager would be lost. The proposed amendments also include the changes that must be made to a double-zero roulette wheel and the roulette layout if quadrant wagers are offered by a casino licensee.

The proposed amendment to N.J.A.C. 19:47-5.2 provides that a winning quadrant wager be paid off at odds of 3 to 1.

Social Impact

The proposed amendments are not expected to have any significant social impact. By allowing casino licensees to offer a new wager in the game of roulette, the proposed amendments may increase interest and participation among casino patrons in the game.

Economic Impact

The introduction of various innovations in the rules of approved table games, such as the proposed quadrant wager in roulette, may generate additional interest in casino gaming, and may possibly have a positive economic impact upon the casino industry, Atlantic City and the State of New Jersey. However, any attempt to predict the impact of quadrant wagers would be highly speculative; the actual economic impact of such bets upon the casino industry is unknown at this time.

Regulatory Flexibility Statement

The proposed amendments affect only casino licensees, none of which qualify as a small business under 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 amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

19:46-1.7 Roulette table; physical characteristics

(a) (No change.)

(b) Each roulette wheel shall be of a single zero variety or a double zero variety as described and depicted below:

1. (No change.)

2. Each double zero roulette wheel shall have 38 equally spaced pockets around the wheel where the roulette ball shall come to rest. The roulette wheel shall also have a ring of 38 equally spaced areas to correspond to the position of the pockets with one marked zero and colored green, one marked double zero (00) and colored green and others marked 1 to 36 and colored alternately red and black which numbers shall be arranged around the wheel as depicted in the following diagram unless otherwise approved by the Commission. The color of each pocket shall either be a corresponding color to those depicted on the ring or a neutral color as approved by the Commission.

3. Each double zero roulette wheel with quadrant wagers shall, in addition to the pockets and areas required by (b)2 above, be marked to indicate four quadrants, as approved by the Commission. Each quadrant shall consist of nine consecutive pockets, except that the pockets corresponding to the areas marked zero and double zero (00) shall not be included in any quadrant.

(c) Unless otherwise approved by the Commission, the layout of each roulette table shall have the name of the casino imprinted thereon and appear as depicted in the following diagrams according to whether the roulette wheel at such table is a single-zero or double-zero wheel:

Editors Note; Graphics concerning the single and double roulette wheel and table layouts were adopted with these rules but are not reproduced herein. Further information on these graphics may be obtained from the Casino Control Commission, [Building 5, 3131 Princeton Pike Office Park, Trenton, New Jersey 08625] **Arcade Building, Tennessee Avenue and the Boardwalk, Atlantic City, New Jersey 08401.**

(d) In addition to complying with the requirements of (c) above, the layout of each roulette table on which quadrant wagers are offered shall include four separate betting areas, designated Quad I, Quad II, Quad III and Quad IV, which correspond to the quadrant bets designated on the roulette wheel.

19:47-5.2 Roulette; payout odds

(a) No casino licensee, his employees or agents shall pay off winning wagers at the game of roulette at less than the odds listed below:

BETS	PAYOUT ODDS
Straight	35 to 1
Split	17 to 1
3-Number	11 to 1
4-Number	8 to 1
5-Number	6 to 1
6-Number	5 to 1
Quadrant	**3 to 1**
Column	2 to 1
Dozen	2 to 1
Red	1 to 1
Black	1 to 1
Odd	1 to 1
Even	1 to 1
Low	1 to 1
High	1 to 1

(b) When roulette is played on a double zero wheel and the roulette ball comes to rest around the wheel in a compartment marked zero (0) or double zero (00), wagers on red, black, odd, even, 1 to 18, [and] 19 to 36, **and any quadrant** shall not be lost, but each player having such a wager shall surrender half the amount on such bet and remove the remaining half.

(c) (No change.)

(a)

CASINO CONTROL COMMISSION

Rules of the Games
Blackjack; Splitting Pairs
Proposed Amendment: N.J.A.C. 19:47-2.11

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63, 69, 70(f) and 100 (e).

Proposal Number: PRN 1992-206.

Submit comments by June 17, 1992 to:

Catherine A. Walker, Senior Assistant Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

Under the current provisions of N.J.A.C. 19:47-2.11, casino licensees have the option of permitting a player to split pairs of cards of identical value more than once. On a blackjack table with six or less player boxes, a player can split pairs three times so as to result in four separate hands. On a blackjack table with seven player boxes, a player can split pairs twice so as to result in three separate hands. The proposed amendment would give a casino licensee the discretion to prohibit a player from splitting a pair of aces more than once. Any casino licensee choosing to make use of this option would have to provide notice of this limitation on the splitting of pairs in accordance with N.J.A.C. 19:47-8.3.

Social Impact

The proposed amendment is not expected to have any significant social impact since it merely gives casino licensees another gaming option in the game of blackjack.

Economic Impact

It is possible that the availability of this option will affect the casino's advantage in the game of blackjack as well as the amount of money won by the casino from blackjack. It is anticipated that implementation of the proposed option may decrease the player's chance of winning more hands when resplitting pairs is offered as an option by a casino licensee. Any attempt to quantify the effect of the rule on gross revenue would be speculative at best. The proposed rule amendment is not expected to have any effect on the cost of the regulatory agencies.

Regulatory Flexibility Statement

A regulatory flexibility statement is not required since this proposal will only affect the operation of New Jersey casino licensees, none of which qualify as a small business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:47-2.11 Splitting pairs

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

(e) Notwithstanding the provisions of (c)1 above, a casino licensee may, at its discretion, permit a player to split pairs up to three times (a total of four hands) at a blackjack table with up to six player boxes or twice (a total of three hands) at a blackjack table with seven player boxes if notice of the option is provided as set forth in N.J.A.C. 19:47-8.3. **If a casino licensee elects to offer this option, it may, at its discretion, prohibit a player from splitting a pair of aces more than once (a total of two hands) if notice is provided as set forth in N.J.A.C. 19:47-8.3.** All other requirements of this section shall apply to each hand which is formed as a result of splitting pairs more than once.

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules
Discovery in Conference Hearings
Adopted Amendment: N.J.A.C. 1:1-10.6

Proposed: March 2, 1992 at 24 N.J.R. 675(a).
Adopted: April 20, 1992 by Jaynee LaVecchia, Director, Office of Administrative Law.
Filed: April 20, 1992 as R.1992 d.212, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:3-4.3).

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

Effective Date: May 18, 1992.
Expiration Date: April 21, 1997.

Summary of Public Comments and Agency Responses:

Comments were received from the Department of Personnel, the Communications Workers of America and the American Federation of State, County and Municipal Employees (AFSCME).

The Department of Personnel submitted a comment supporting the proposed change to the conference hearing process. The Communications Workers of America also supported the proposal, while suggesting that additional amendments to widen the scope of discovery in conference hearings be considered.

At this time the OAL believes that the proposed change in the discovery process adequately balances the parties' need for information with the need for a less formal, less time-consuming process. If additional discovery is warranted in a particular case, the matter can be converted to a plenary hearing.

AFSCME indicated that the amendment would be beneficial to the process. AFSCME questioned whether the provision providing access to the agency's file extended to appeals brought by employees of State government.

The rule, N.J.A.C. 1:1-10.6(a), applies when an agency or county or local governmental entity is a party; it provides access to the agency's or entity's file. State agencies are included in the term agency. N.J.A.C. 1:1-2.1. Thus, the rule applies whether the appointing authority is the state or a local entity.

Full text of the adoption follows.

1:1-10.6 Discovery *[and]* ***in*** conference hearings; no discovery in mediation

(a) If an agency or a county/local governmental entity is a party to a conference hearing and the subject of the case is the county/local entity's or agency's action, proposed action or refusal to act, a party shall be permitted to review the entity's or agency's entire file or files on the matter. Copies of any document in the file or files shall be provided to the party upon the party's request and for reasonable copying charge. See, N.J.S.A. 47:1A-2. The agency or county/local entity may refuse to disclose any document subject to a bonafide claim of privilege.

(b) In any matter scheduled as a conference hearing, each party shall provide each other party copies of any documents and a list with names, addresses and telephone numbers of any witnesses including experts which the party intends to introduce at the hearing. A summary of the testimony expected to be provided by each witness shall be included. These items shall be exchanged at least five days prior to the hearing, unless the judge determines that the information could not have reasonably been disclosed within that time.

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

(b)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules
Special Hearing Rules
Readoption with Amendments: N.J.A.C. 1:1, 1:6, 1:7, 1:10, 1:11, 1:13, 1:20, 1:21 and 1:31
Adopted Repeal: N.J.A.C. 1:10A

Proposed: February 3, 1992 at 24 N.J.R. 321(a).
Adopted: April 20, 1992 by Jaynee LaVecchia, Director, Office of Administrative Law.
Filed: April 21, 1992 as R.1992 d.213, **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. 52:14F-5(e), (f) and (g).

Effective Date: April 21, 1992, Readoption:
May 18, 1992, Amendments and Repeal.
Expiration Date: April 21, 1997.

Summary of Public Comments and Agency Responses:

The OAL received one comment concerning the proposed readoption of the Uniform Administrative Procedure Rules and one comment concerning the proposed readoption of the special hearing rules for education budget cases.

Public Service Electric and Gas objected to the proposed amendment modifying the standard for subsequent extensions from "only in the case of extraordinary circumstances" to "for good causes shown." The commenter felt that lessening the standard to good cause ignores the public interest in providing expeditious administrative decision-making, as well as the financial impact which may result to parties from delayed decisions. The commenter felt that the existing rule provided sufficient flexibility to provide extensions when warranted.

Upon reconsideration, the OAL has decided not to proceed with the proposed amendment. In view of the intent of the Administrative Procedure Act to provide an expeditious adjudication, repeated extensions of the 45-day time frame for decision should be granted only in extraordinary circumstances as the existing rule requires. OAL will not change the practice which it and agencies have been utilizing.

The Department of Education suggested several changes to the special rules for budget hearings, N.J.A.C. 1:6, to conform with revisions to N.J.A.C. 6:24-7.1 et seq. The Department suggested that the reference in N.J.A.C. 1:6-5.1 be changed from N.J.A.C. 6:24-7.7(b) to N.J.A.C. 6:24-7.8(a)7.

The OAL agrees that the suggested change is necessary (OAL presumes that the citation to N.J.A.C. 1:6-5.1 was intended to be N.J.A.C. 1:6-8.1).

The Department suggested that the language of N.J.A.C. 1:6-11.1(a) and (b) (sic) be amended to require submission of the required documents only if the Commissioner of Education has not transmitted them to the OAL. The Department's rules, N.J.A.C. 6:24-7.7 and 7.2, require submission of the same documents.

OAL agrees that submission of duplicative information is an unnecessary burden upon the parties. However, since the parties do not receive copies of the transmittal from the agency, they do not know what documents have been forwarded. As amended upon adoption, N.J.A.C. 1:6-10.1 provides that documentation submitted by the parties to the agency as part of the pleadings need not be resubmitted to the OAL. Pleadings and attachments are forwarded by the agency as part of the case transmittal.

Finally, the Department suggests that N.J.A.C. 1:6-11.1(c) (sic) be amended to add "or bodies" to the term "governing body."

"Governing body" is referred to throughout the special budget hearing rules and has always been construed without difficulty. Therefore, this change is not necessary.

Summary of Agency-Initiated Changes

New rule N.J.A.C. 1:1-7.5 permitting filing by facsimile transmission and providing that faxes are filed as of the day of receipt has been

clarified. Filing will be as of the day of receipt if the complete transmittal is received by 5:00 P.M.

Full text of the readoptions can be found in the New Jersey Administrative Code at N.J.A.C. 1:1, 1:6, 1:7, 1:10, 1:11, 1:13, 1:20, 1:21 and 1:31.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

1:1-1.3 Construction and relaxation

(a) This chapter shall be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. In the absence of a rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with these purposes. Court rules regarding third party practices and class action designations may not be applied unless such procedures are specifically statutorily authorized in administrative hearings.

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

1:1-5.4 Representation by non-lawyers; authorized situations, applications, approval procedures

(a) In conformity with New Jersey Court Rule R.1:21-1(e), the following non-lawyers may apply for permission to represent a party at a contested case hearing:

1. Persons whose appearance is required by Federal law;
2. State agency employees;
3. County or municipal welfare agency employees;
4. Legal services paralegals or assistants;
5. Close corporation principals;
6. Union representatives in Civil Service cases; and
7. Individuals representing parents or children in special education proceedings.

(b) The non-lawyer applicants in (a) above may apply for permission to appear by supplying the following information and by complying with the following procedures:

1. Oral applications at the hearing may be made in Division of Economic Assistance, Division of Medical Assistance and Health Services and Division of Youth and Family Services cases.

i.-iii. (No change.)

iv. At the hearing, a non-lawyer applicant seeking to represent the Division of Economic Assistance, the Division of Medical Assistance and Health Services or the Division of Youth and Family Services shall state how he or she satisfies the requirements of representation set forth in (b)2i below.

2. A written Notice of Appearance/Application on forms supplied by the Office of Administrative Law shall be required in cases where a non-lawyer employee seeks to represent a State agency; in Civil Service cases, where a union representative seeks to represent a State, county or local government employee; where a non-lawyer seeks to represent a party in a special education hearing; where a principal seeks to represent a close corporation, and where a non-lawyer from a legal services program seeks to represent an indigent. A non-lawyer from a legal services program seeking to represent a recipient or applicant for services in Division of Economic Assistance, Division of Medical Assistance and Health Services and Division of Youth and Family Services cases may make oral application to represent the recipient or applicant by complying with the requirements of (b)1 above.

i.-iii. (No change.)

iv. In special education hearings the non-lawyer applicant shall include in his or her Notice an explanation of how he or she has knowledge or training with respect to handicapped pupils and their educational needs so as to facilitate the presentation of the claims or defenses of the parent or child. The applicant shall describe his or her relevant education, work experience or other qualifications related to the child's condition.

v. (No change.)

vi. Any non-lawyer applicant filing a Notice of Appearance/Application shall submit a certification with the Notice stating that he or she is not a disbarred or suspended attorney and is not receiving a fee for the appearance.

vii.-viii. (No change.)

1:1-5.5 Conduct of non-lawyer representatives; limitations on practice

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

(g) Non-lawyer representatives are expected to be guided in their behavior by appropriate standards of conduct, such as contained in the following Rules of Professional Conduct for attorneys: RPC 1.2 (Scope of Representation); RPC 1.3 (Diligence); RPC 1.4 (Communication); RPC 3.2 (Expediting Litigation); RPC 3.3 (Candor Toward the Tribunal); RPC 3.4 (Fairness to Opposing Party and Counsel); RPC 3.5 (Impartiality and Decorum of the Tribunal); and RPC 4.1 (Truthfulness in Statements to Others). For failure to comply with these standards, the judge may revoke a non-lawyer representative's right to appear in a case or may order sanctions as provided in (c) above.

1:1-7.5 Filing by facsimile transmission

(a) A paper may be filed by facsimile transmission if:

1. It is an application for or response to a request for emergency relief pursuant to N.J.A.C. 1:1-12.6; or
2. When permitted by the judge for good cause shown upon timely application.

(b) Facsimile transmissions must comply with all requirements of this subchapter except N.J.A.C. 1:1-7.3(c) and 1:1-7.4(b).

(c) The party filing a document by facsimile transmission must include a certification indicating the method of service upon each party and stating that the original document is available for filing if requested by court or a party.

(d) Facsimile transmittals are filed as of the date of receipt by the Clerk or the judge***, provided that the complete transmittal is received by 5:00 P.M. Facsimile transmittals received after 5:00 P.M. shall be deemed to be filed as of the next business day****.

(e) A party requesting a facsimile transmittal from the Clerk or the judge shall be assessed a charge at the rate provided in the Right to Know Law, N.J.S.A. 47:1A-1 et seq.

1:1-9.1 Scheduling of proceedings

(a) When a contested case is filed, it may be scheduled for mediation, settlement conference, prehearing conference, proceeding on the papers, conference hearing, telephone hearing, plenary hearing or other proceeding.

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

1:1-11.1 Subpoenas for attendance of witnesses; production of documentary evidence; issuance; contents; facsimile transmittals.

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

(d) Upon request by a party, subpoena issued by the Clerk or by a judge may be forwarded to that party by facsimile transmission. Facsimile transmitted subpoenas shall be served in the same manner and shall have the same force and effect as any other subpoena pursuant to this subchapter. A party requesting a facsimile transmittal shall be charged for such transmittal pursuant to N.J.A.C. 1:1-7.5(e).

1:1-18.8 Extensions of time limits

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

(c) Requests to extend the time limit for initial decisions shall be submitted in writing to the Director of the Office of Administrative Law. If the Director concurs in the request, he or she shall sign a proposed order no later than the date the time limit for the initial decision is due to expire and shall forward the proposed order to the transmitting agency head and serve copies on all parties. If the agency head approves the request, he or she shall within 10 days of receipt of the proposed order sign the proposed order and return it to the Director, who shall issue the order and cause it to be served on all parties.

(d) (No change.)

(e) If the agency head requests an extension of the time limit for filing a final decision, he or she shall sign and forward a proposed order to the Director of the Office of Administrative Law and serve

copies on all parties. If the Director approves the request, he or she shall within 10 days of receipt of the proposed order sign and issue the order and cause it to be served on all parties.

(f) Any order granting an extension must set forth the factual basis constituting good cause for the extension, set forth the dates of any previous extensions, and establish a new time for filing the decision or exceptions and replies. Extensions for filing initial or final decisions may not exceed 45 days from the original decision due date. Additional extensions of not more than 45 days each may be granted *[for good cause]* ***only in the case of extraordinary circumstances***.

1:6-8.1 Transmission of cases; material to be submitted

When a case is transmitted to the Office of Administrative Law, as provided by N.J.A.C. 6:24-*[7.7(b)]* ***7.8(a)7***, the Commissioner of Education shall forward along with the transmittal form any material submitted by the district board of education or board of school estimate or any decisions by the Commissioner relating to any request for a cap waiver by the district board.

1:6-10.1 Discovery; exchange of documents

(a) *[Within]* ***Unless already provided to the Department of Education as part of the pleadings in the case within*** 10 days of receipt of notice of filing of the contested case before the Office of Administrative Law, the governing body shall forward to the Clerk of the Office of Administrative Law a copy of the information which was given to the district board of education when the reduction was made, including the following documents;

1.-2. (No change.)

(b) *[Within]* ***Unless already provided to the Department of Education as part of the pleadings in the case, within*** 20 days of receipt of notice of filing of the contested case, the district board of education shall forward a copy to the governing body and two copies to the Clerk of the Office of Administrative Law of each of the following:

1.-9. (No change.)

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

1:21-1.1 Applicability

The rules in this chapter shall apply to any hearing concerning the validity of a trade secret claim. 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 rules are inconsistent with the U.A.P.R., these rules shall apply.

1:21-8.1 Transmission of cases; the trade secret documentation of information

When a case is transmitted to the Office of Administrative Law involving a trade secret claim, any information or documentation which reveals the trade secret shall not be transmitted with the case file.

1:21-8.2 Custody of the trade secret information or documentation; no copying

(a) Any information or documentation which reveals the trade secret shall remain throughout the hearing in the physical custody of the representatives of the transmitting agency.

(b)-(e) (No change.)

1:21-12.1 Written motions

Written motions shall be made directly to the judge.

1:31-1.1 Functions of the Office

(a) The Office of Administrative Law (OAL), created by statute in 1978, is independent of any executive department, board, division, commission, agency, council, authority, office or officer of the State of New Jersey. The OAL performs four major functions:

1. Conducts contested case hearings, as provided in N.J.S.A. 52:14B-10 and N.J.S.A. 52:14F-8, and with the consent of the Director conducts other administrative hearings if requested by an agency head. In general, the Office of Administrative Law acquires contested case jurisdiction over a matter after an agency head determines that a contested case exists and subsequently files the case with the OAL, as provided in N.J.A.C. 1:1-1;

2. Promulgates rules for the conduct of contested case hearings. Rules are promulgated to assist judges, attorneys, and contested case parties by clarifying legal requirements;

3. Supervises, coordinates and records rulemaking proceedings within the Executive Branch. Under the authority of N.J.S.A. 52:14F-5(f), the OAL oversees agency compliance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.) and through N.J.A.C. 1:30-1 has established standards to guide agency rulemaking.

4. Publishes the New Jersey Register, and the New Jersey Administrative Code; distributes New Jersey Administrative Reports, Volumes 1-13; and contracts with a private vendor to publish New Jersey Administrative Reports Second. The publication function of the OAL is multifaceted:

i. Publication of proposed rules in the New Jersey Register gives an interested person an opportunity to comment and object;

ii. Publication of adopted rules in both the New Jersey Register and New Jersey Administrative Code provides a ready, updated reference to State agency rules; and

iii. Publication of contested cases in the New Jersey Administrative Reports and New Jersey Administrative Reports Second provides the public with access to administrative adjudications.

1:31-1.3 Public information requests and submissions

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

(c) Any person may obtain copies of initial decisions or State agency rules, or may obtain information about or subscriptions to the New Jersey Register, Administrative Code or Administrative Reports by written request to Administrative Publications and Filings, Quakerbridge Plaza, Building No. 9, CN 301, Trenton, New Jersey 08625. Copies of decisions published in the New Jersey Administrative Reports Second and subscription information may be obtained by contacting Barclays Law Publishers, File No. 52030, P.O. Box 60000, San Francisco, CA 94160-2030.

(d) (No change.)

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND ENFORCEMENT

Notice of Administrative Correction

Uniform Fire Code

Fire Prevention Code

N.J.A.C. 5:18-3

Take notice that the Department of Community Affairs has discovered numerous errors in cross-referencing and codification which arose in both the proposal and adoption of N.J.A.C. 5:18-3 (see 23 N.J.R. 2335(a) and 24 N.J.R. 740(a)). In addition, obviously missing text in the first sentence of N.J.A.C. 5:18-3.17(b)2 ("flame resistive materials or materials treated to render the material" between "constructed of" and "flame resistant"), which clarifies but does not alter the regulatory significance of the provision, needs to be included. Also, N.J.A.C. 5:18-3.33 contains two subsections (c), the first of which, containing an introductory line and a single paragraph 1 which duplicates N.J.A.C. 5:18-3.33(c)9i, is a printing error to be deleted. Lastly, NFPA 120-88, Coal Preparation Plants, Standards for, which is cited at N.J.A.C. 5:18-3.10(a), needs to be included in Appendix 3-A. 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]):

5:18-3.3 General precautions against fire

(a)-(u) (No change.)

(v) The following apply to HVAC and mechanical equipment:

1. (No change.)

2. All emergency controls shall be maintained and tested in accordance with N.J.A.C. 5:18-3.4[(d)] (c). All fire and smoke dampers shall be free at all times of obstruction that prevent proper operations.

3. (No change.)

5:18-3.4 Fire protection systems

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

(c) The following apply to periodic inspections and tests:

1.-7. (No change.)

8. Smoke control systems shall be tested annually in accordance with (c)8i through iv below.

i. Smoke detection systems utilized to activate smoke control systems shall be tested in accordance with [(f)6] **(c)6** above.

ii.-iv. (No change.)

9.-17. (No change.)

(d) (No change.)

(e) The following apply to five suppression systems for cooking operations:

1.-4. (No change.)

5. When an existing kitchen exhaust suppression system discharges, the protected cooking appliances shall not be operated until the suppression system has been recharged and placed back in service. When the system is recharged, it shall be tested in accordance with [(h)10] **(c)** above.

(f) The following apply to portable fire extinguishers:

1. (No change.)

2. Portable fire extinguishers shall be provided in all buildings and structures except Use Group R-2 and R-3 as set forth in (f)2i through vi below.

i.-v. (No change.)

vi. Where required in other sections of this Code as outlined by Table 3.4(f)2 below:

TABLE 3.4(f)2
PORTABLE FIRE EXTINGUISHERS

Code Section	Description
3.3(d)1	Torches for removing paint
3.3(n)4	Asphalt (tar) kettles
3.4(e)[3]**4**	Cooking operations
3.6(e)1	Airports
3.6(e)2	Aircraft towing vehicles
3.6(e)3	Welding apparatus
3.6(e)4	Aircraft refueler
3.6(e)5	Aircraft service areas
3.7(c)9	Spray finishing
3.7(d)8	Dip tanks
3.9(b)3	Dry cleaning plants
3.13(b)7	Lumber yards
3.13(c)2	Woodworking machines
3.16(e)6	Service stations
3.17(d)6	Tents, air supported and other temporary structures
3.20(d)4	Welding and cutting operations
3.25(e)2	Cryogenic liquid tank vehicles
3.28(h)1	Flammable and combustible liquid storage
3.28(h)1i	Interior storage rooms
3.28(h)1ii	Inside storage
3.31(d)2	Magnesium processing
3.33(b)3	Organic coatings manufacturing

3.-6. (No change.)

(g) (No change.)

5:18-3.17 Tents and air-supported and other temporary structures

(a) (No change.)

(b) Construction requirements are as follows:

1. (No change.)

2. All membrane shall be constructed of **flame resistive materials or materials treated to render the material** flame resistant in a manner approved by the fire official. The membrane material shall be either noncombustible as defined in N.J.A.C. 5:18-3.2 or flame resistant conforming to NFPA 701 listed in Appendix 3-A, incorporated herein by reference.

3.-5. (No change.)

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

5:18-3.26 Explosives, ammunition and blasting agents

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

(d) Requirements for storage of explosives are as follows:

1.-4. (No change.)

[4.]**5.** Location of ammonium nitrate and blasting agents from high explosives or blasting agents shall be as follows:

i.-vi. (No change.)

Recodify existing 5. as **6.** (No change in text.)

[6.] **7.** A Type 2 outdoor magazine shall be a box, trailer, semi-trailer, or other mobile facility. It shall be resistant to fire, theft, bullets and the weather and shall be supported in such a manner as to prevent direct contact with the ground. If less than one cubic yard in size, it shall be securely fastened to a fixed object to prevent theft of the entire magazine. Materials and methods of construction shall be as follows:

i. (No change.)

ii. Hinges and hasps, locks, padlocks, padlock protection, and sparking materials shall comply with the applicable provisions of (d)[5]**6** above.

Recodify existing 7.-15. as **8.-16.** (No change in text.)

[16.]**17.** Sign requirements are as follows:

i.-iii. (No change.)

iv. The provisions of (d)[16]**17** above shall not apply when it is deemed by the fire official that a warning sign would have counterproductive results.

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

5:18-3.28 Flammable and combustible liquids

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

(f) The following apply to containers and portable tanks:

1.-3. (No change.)

[3.]**4.** Inside storage and handling rooms shall be enclosed with assemblies having a fire resistance rating of not less than two hours when quantities of more than 100 gallons are involved or such storage shall be in a separate exterior storage building constructed in accordance with the building code in effect at the time of first occupancy.

Recodify existing 4. and 5. as **5. and 6.** (No change in text.)

(g) Quantity requirements are as follows:

1. (No change.)

[1.]**2.** Storage in excess of five gallons of flammable liquids or 60 gallons of combustible liquids shall be prohibited in buildings of Use Group R-3 and accompanying attached detached garages, with the exception of owner occupied one-and-two-family dwellings.

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

(h)-(i) (No change.)

5:18-3.29 Hazardous materials and chemicals

(a) The provisions of this section shall apply to hazardous materials which are not otherwise covered in this Code which are highly flammable, or which may react to cause fires or explosions, or which by their presence create or augment a fire or explosion hazard, or which because of their toxicity, flammability, or liability to explosion render fire fighting abnormally dangerous or difficult; also to flammable liquids which are chemically unstable and which may spontaneously form explosive compounds, or undergo spontaneous reactions of explosive violence or with sufficient evolution of heat to be a fire hazard. Hazardous chemicals shall include such materials as flammable solids, corrosive liquids, radioactive materials, oxidizing materials, potentially explosive chemicals, highly toxic materials, and poisonous gases, as defined in [(b) below] **N.J.A.C. 5:18-3.2.**

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

5:18-3.33 Organic coatings

(a) (No change.)

(b) Fire safety requirements are as follows:

1.-4. (No change.)

Recodify existing 6.-9. as **5.-8.** (No change in text.)

[(c) Static protection requirements are as follows:

1. Emergency drainage systems containing flammable and combustible liquids connected to public sewers or discharging into public waterways shall be equipped with traps or separator tanks.]

(c) (No change.)
(d) The following apply to the process building:
1.-3. (No change.)
4. Where topographical conditions are such that flammable and combustible liquids may flow from the organic coating manufacturing operation so as to constitute a fire hazard to properties of others, drainage facilities shall be provided in accordance with N.J.A.C. 5:18-3.33[(b)9 and (b)9i] **(b)8 and (b)8i.**
5.-7. (No change.)
(e)-(i) (No change.)

APPENDIX 3-A

The following is a list of the standards referenced in this Code, the effective date of the standard, the promulgating agency of the standard and the section(s) of this Code that refer to the standard.

ANSI American National Standards Institute, Inc.
1430 Broadway
New York, New York 10018

Standard reference number	Title	*Referenced in Code Section number
K61.1-81	Anhydrous Ammonia-Safety Regulations for the Storage and Handling of	3.24(c)2 3.24(c)7
C-95-4	Safety Guide for the Prevention of Radio Frequency Radiation Hazards, IME No. 20-1981	3.26(g)6iii

ASME American Society of Mechanical Engineers
345 East 47th Street
New York, New York 10017

Standard reference number	Title	Referenced in Code Section number
A17.1-1987	Safety Code for Elevators and Escalators	4.17(e)

ASTM American Society for Testing & Materials
1913 Race Street
Philadelphia, PA 19103

Standard reference number	Title	Referenced in Code Section number
D-56-87	Flash Point by Tag Closed Tester-Test method for	3.2[(a)] [3.9(2)i]**3.9(a)2i**
D86-82	Distillation of Petroleum Products—Test method for	3.2[(a)]
D93-85	Flash Point by Pensky—Martens Closed Tester—Test method for	3.2[(a)]
D323-82	Vapor Pressure of Petroleum Products (Reid Method)—Test method for	3.2[(a)]
E84-87	Surface Burning Characteristics of Building Materials—Test method for	3.2[(a)]
E136-82	Behavior of Materials in a Vertical Tube Furnance at 75°C—Test method for	3.2[(a)]

BOCA Building Officials & Code Administrators, International
4051 West Flossmoor Road
Country Club Hills, Illinois 60477

Standard reference number	Title	Referenced in Code Section number
BOCA 84	Basic/National Mechanical Code	3.7(c)7 3.7(d)3

DOT Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20234

Standard reference number	Title	Referenced in Code Section number
49-CFR	Explosive and Other Dangerous Articles, Shipping Containers-Specifications for Transportation of, Parts 100/199 ..	3.2 [3:20(e)12]**3.20(e)12** 3.24(c)2 3.24(c)3 3.25(e)1 3.25(e)2 3.26(a)1 3.26(a)3vii 3.26(a)3viii 3.26(a)3ix 3.30(f)3

NFPA National Fire Protection Association
Batterymarch Park
Quincy, Massachusetts 02269

Standard reference number	Title	Referenced in Code Section number
10-88	Extinguishers, Portable Fire—Standard for The Installation Maintenance and Use of	3.4(f)1 3.4(f)2v 3.7(d)8 3.16(e)6
11-88	Standard for Low Expansion Foam and Combined Agent Systems	[34.(c)10]**3.4(c)11**
11A-88	Foam Systems, Medium and High Expansion—Standard for	3.4(c)[10]**11**
12-89	Carbon Dioxide Extinguishing System—Standard for	3.4(c)[11]**12**
12A-87	Halogenated Extinguishing Agent Systems—Halon 1301	3.4(c)[12]**13**
12B-85	Halogenated Extinguishing Agent Systems—Halon 1211	3.4(c)[12]**13**
13-89	Sprinkler Systems—Standards for the Installation of	3.4(a)1
13A-87	Sprinkler Systems—Inspection, Testing and Maintenance	3.4(a)1
14-86	Standpipe and Hose Systems—Standard for the Installation of	3.4(a)1
15-85	Water Spray Fixed Systems for Fire Protection—Standard for	3.4(a)1 3.4(c)[15]**16**
16-86	Deluge Foam-Water Sprinkler Systems and Foam-Water Spray Systems—Standard for the Installation of	3.4(c)[10]**11**
17-85	Dry Chemical Extinguishing Systems—Standard for	3.4(c)[13]**14**
17A-86	Wet Chemical Extinguishing Systems	3.4(c)[14]**15**
20-87	Pumps, Centrifugal Fire—Standard for the Installation of	3.4(a)1 3.4(c)5
22-87	Water Tanks for Private Fire Protection—Standard for	3.4(a)1
24-87	Installation and Private Fire Service Mains and Their Appurtenances—Standard for	3.4(a)1
30-87	Liquid, Flammable and Combustible—Code for	3.28(a)1 3.28(b)2 3.28(c) 3.28(f)[5]**6**
30A-87	Automotive and Marine Service Station Code	3.16(a)1 3.16(f)
32-85	Dry Cleaning Plants—Standard for	3.9(a)1
33-85	Spray Application Using Flammable and Combustible Materials—Standard for	3.7(b)1
34-87	Dipping and Coating Processes Using Flammable or Combustible Liquids—Standard for	3.7(b)1
35-87	Coatings, Organic—Standard for the Manufacture of	3.33(b)1

40-88	Film Motion Picture, Cellulose Nitrate—Standard for the Storage and Handling of	3.21(a)
40E-86	Pyroxylin Plastics—Code for Storage of	3.22(a)
46-85	Forest Products—Recommended Safe Practice for Storage of	3.13(b)1
50-85	Oxygen Bulk Systems, at Consumer Sites—Standard for	3.24(a) 3.24(c)2 3.24(c)6 3.25(a) 3.25(c)2
50A-89	Hydrogen Systems, Gaseous, at Consumer Sites—Standard for	3.24(c)2 3.24(c)[7]**8** 3.25(a)
50B-89	Hydrogen Systems, Liquefied, at Consumer Sites—Standard for	3.25(a) 3.25(c)2
51-87	Gas Systems, Oxygen-Fuel for Welding, Cutting—Standard for the Installation and Operation of	3.20(a)
54-88	National Fuel Gas Code	3.3(i)1 3.16(g)3
58-89	Gases, Liquefied Petroleum—Standard for the Storage and Handling of	3.16(g)2 3.30(a) 3.30(d)1 3.30(e)1iii 3.30(e)1v 3.30(f)2 3.30(f)3i
59-89	Gases, Liquefied Petroleum at Utility Plants—Standard for the Storage and Handling of	3.30(f)2
59A-85	Gas, Liquefied Natural—Standard for the Production, Storage and Handling of	3.25(c)2
61A-85	Manufacturing and Handling Starch	3.10(a)[1]
61B-89	Dust Explosions in Grain Elevators and Bulk Grain Handling Facilities—Prevention of Fire	3.10(a)[1]
61C-89	Dust Explosions in Feed Mills—Prevention of Fire	3.10(a)[1]
65-87	Aluminum—Standard for the Processing and Finishing of	3.10(a)[1]
68-88	Venting of Deflagrations—Guide for	3.10(a)[1]
69-86	Explosion Prevention Systems—Standards On	3.10(a)[1]
70-87	Electrical Code, National	3.7(b)3 3.7(c)5ii 3.7(d)6i 3.7(d)[6ii]**6iii** 3.10(c)2 3.11(b)3 3.12(b)2i 3.20(e)2i 3.31(c)1iv
71-87	Signaling Systems, Central Station—Standard for	3.4(a)1
72A-87	Signaling Systems, Local Protective—Standard for	3.4(a)1
72B-86	Signaling Systems, Auxiliary Protective, for Fire Alarm Service	3.4(a)1
72C-86	Signaling Systems, Remote Station Protective—Standard for	3.4(a)1
72D-86	Signaling Systems, Proprietary Protective—Standard for	3.4(a)1
77-88	Static Electricity—Recommended Practice for	3.9(e)2 3.9(f)2 3.9(g)2 3.9(h)2 3.28(h)4
80-86	Fire Doors and Windows—Standard for	3.5(f)1
85F-88	Fuel Systems, Pulverized—Standard for the Installation and Operation of	3.10(a)[1]
86-85	Industrial Furnace Design, Location and Equipment—Standard for	3.14(a)1
91-83	Blower and Exhaust Systems for Dust, Stock and Vapor Removal or Conveying—Standard for the Installation of	3.10(a)[1] 3.13(c)3 3.18(b)4
99-87	Health Care Facilities—Standards for	3.24(a) 3.24(c)2 3.24(c)5
99C-87	Gas and Vacuum Systems	**3.24(a)** 3.24(c)2
102-88	Tents, Grandstands and Air Supported Structures, Used For Places of Assembly—Standard for	3.17(b)1
120-88	**Coal Preparation Plants—Standards for**	**3.10(a)**
211-88	Chimneys, Fireplaces and Venting Systems—Standard for	3.3(i)1
231-87	General Storage, Indoors—Standard for	3.4(a)1
231C-86	Rack Storage—Standard for	3.4(a)1
231D-86	Storage of Rubber Tires—Standard for	3.4(a)1
303-86	Marinas and Boatyards, Fire Protection—Standard for	3.16(f)
385-85	Liquids, Flammable and Combustible—Tank Vehicles—Recommended Regulatory Standard for	3.28(i)2 3.28(i)3
407-85	Aircraft Fuel Servicing—Standard for	3.6(b)1 3.6(e)5
490-86	Ammonium Nitrate—Code for the Storage of	3.10(a)[1]
495-85	Explosives and Blasting Agents—Code for the Manufacture, Transportation, Storage and Use of	3.26(a)1
651-87	Aluminum or Magnesium Powder—Standard for the Manufacture of	3.10(a)[1] 3.31(d)1
654-88	Dust Explosions in the Plastics Industry—Prevention of	3.10(a)[1]
655-88	Prevention of Sulfur Fires and Explosions	3.10(a)[1]
664-87	Dust Explosions in Woodworking and Wood Flour Manufacturing Plants—Prevention of	3.13(c)3
701-77	Fire Tests for Flame Resistant Textiles and Films—Standard Method for	3.15(c)1 3.15(c)2 3.17(b)2
704-85	Identification of the Fire Hazards of Materials	3.29(c)7
801-86	Radioactive Materials, Facilities Handling Recommended Fire Protection Practice for	3.29(f)1
1123-90	Fireworks, Public Display of—Standard for	3.27(b)1
1124-88	Fireworks, Manufacture, Transportation and Storage of—Code for	3.27(b)1

*All code references refer to, and should be preceded by, N.J.A.C. 5:18-

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
One and Two-Family Dwelling Subcode
Adopted Amendment: N.J.A.C. 5:23-3.21

Proposed: March 2, 1992 at 24 N.J.R. 680(a).
Adopted: April 10, 1992 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: April 16, 1992 as R.1992 d.208, **without change**.

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

Effective Date: May 18, 1992.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:23-3.21 One and two family dwelling subcode
(a) (No change.)
(b) The following articles or sections of the one and two family dwelling subcode are modified as follows:
1. Chapter 1 entitled "Administrative" is amended as follows:
i. Sections R-101 and R-102 are deleted and substitute in lieu thereof UCC regulations.
ii. Section R-103 is deleted and the following substituted in lieu thereof: "The provisions of this code apply only to the construction, alteration, repair or increase in size of detached one or two family dwellings of use group R-4 of type 5B construction not more than 2 stories or 35 feet in height and 4,800 square feet in area per floor, and not located in areas prone to flooding. Dwellings to be erected in areas identified as prone to flooding by the most recent Flood Insurance Rate Map published by the Federal Emergency Management Agency shall be constructed in conformity with the building subcode, and the option to use the one and two-family dwelling subcode as an alternative to the building subcode shall not apply.
iii. Sections R-104 through R-114 are deleted.
Recodify existing ii. as iv. (No change in text.)
2. Chapter 2 entitled "Building Planning" is amended as follows:
i.-viii. (No change.)
3. Chapter 3 is amended as follows:
i. (No change.)
ii. Add new section R-310 "Pile Foundations," reading as follows:
"Where buildings are constructed under the scope of this subcode that utilize pile foundations, article 12 of the building subcode shall apply."
4.-11. (No change.)
(c) The 1990 and 1991 Amendments to "The CABO One and Two Family Dwelling Code/1989" are adopted with the following modifications:
1. The following amendments are made to chapter 1 entitled "Administration":
i. Section R-113 is deleted.
2. The following amendments are made to Chapter 2 Entitled "Building Planning."
i. Table No. R-201.2 Page 9. Revise Footnote 2 to read, "Weathering may require a higher strength concrete or grade of masonry than necessary to satisfy structural requirements of this code. The grade of masonry units shall be determined from ASTM C34, C55, C62, C73, C90, C129, C145, C216, or C652 listed in S-26.201. The frost line depth may require deeper footings than indicated in Figure No. R-303."
ii. Sec. R-209 Opening Protection: Delete and substitute in lieu thereof the following: "Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid core wood doors not less than 1¾ inches in thickness or approved equivalent. The sills of all door openings between the garage and adjacent spaces shall be raised not less than 4 inches (102 mm) above the garage floor."
iii.-iv. (No change.)
v. Sections R-218.2, R-218.2.1, R-218.2.2, and R-218.2.3 are deleted in their entirety.
Recodify existing 2.-4. as 3.-5. (No change in text.)
6. The following amendments are made to Chapter 9 entitled "Chimneys and Fireplaces":
i. Section R-902 is amended to add the sentence "Factory built chimneys shall conform to UL 103."
Recodify existing 5.-6. as 7.-8. (No change in text.)
9. The following amendment is made to Appendix A:
i. Wind Probability Map is deleted.
10. Appendix F is deleted in its entirety.

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Administrative Correction
Uniform Construction Code
Fees
N.J.A.C. 5:23-4.20

Take notice that the Department of Community Affairs has discovered an error in the current text of N.J.A.C. 5:23-4.20(c)2iii(1). As proposed and adopted (see 23 N.J.R. 257(b) and 1029(a)), this subparagraph establishes a fee of $5.00 for each 25 receptacles or fixtures in excess of 50. However, as published in the 7-15-91 Code update, the fee is incorrectly listed as "$4.00." 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]).

5:23-4.20 Departmental fees
(a)-(b) (No change.)
(c) Departmental (enforcing agency) fees shall be as follows:
1. (No change.)
2. The basic construction fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and pieces of equipment, the number of electrical fixtures and devices and the number of sprinklers, standpipes, and detectors (smoke and heat) at the unit rates provided herein plus any special fees. The minimum fee for a basic construction permit covering any or all of building, plumbing, electrical, or fire protection work shall be $43.00.
i.-ii. (No change.)
iii. Electrical fixtures and devices: The fees shall be as follows:
(1) For from one to 50 receptacles or fixtures, the fee shall be in the amount of $33.00; for each 25 receptacles or fixtures in addition to this, the fee shall be in the amount of [$4.00] **$5.00;** for the purpose of computing this fee, receptacles or fixtures shall include lighting outlets, wall switches, fluorescent fixtures, convenience receptacle or similar fixture, and motors or devices of less than one horsepower or one kilowatt or less.
(2)-(6) (No change).
iv. (No change.)
3.-8. (No change.)

(a)

DIVISION ON AGING

Congregate Housing Services Program

Readoption with Amendments: N.J.A.C. 5:70

Proposed: February 18, 1992 at 24 N.J.R. 513(a).
Adopted: April 16, 1992, by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: April 22, 1992 as R.1992 d.214, **without change.**

Authority: N.J.S.A. 52:27D-188.

Effective Date: April 22, 1992, Readoption.
May 18, 1992, Amendments.
Expiration Date: April 22, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:70.

Full text of the adopted amendments follows.

5:70-2.1 Definitions

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

...

"Adjusted income" means annual income minus the allowances determined in accordance with N.J.A.C. 5:70-6.3(b).

...

"Disposable Income (DI)" is the income of a participant determined by deducting rent from the individual's adjusted income.

...

5:70-4.1 General requirements

(a) The provision of Congregate Housing Services under the Act shall include a program of supportive services including the provision of meals, housekeeping assistance and personal assistance. However, if one or more of these supportive services is provided at an eligible facility by another agency or program, the Division may, upon application of the program sponsor, waive the aforesaid requirement that the sponsor provide such service or services as part of the sponsor's congregate housing services program.

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

5:70-4.4 Housekeeping and Personal Services

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

(c) The minimal functional abilities of program participants eligible for supportive services are defined as:

1.-4. (No change.)

5. Home Management Activities: May need assistance in doing housework or laundry or getting to and from one location to another, for activities such as going to the doctor or shopping, but must be mobile. The mobility requirement does not exclude persons in wheelchairs or those requiring mobility devices.

5:70-6.3 Income, program costs, and service subsidy formula

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

(e) Service subsidies for eligible program participants will be provided in accordance with the following formula:

1. Step I

ADJUSTED INCOME	– RENT =	DISPOSABLE INCOME
(AI)	– (R) =	(D.I.)

2. The following STEP II shall be operative from January 1, 1992 through December 31, 1992:

D.I. of $0.00 to $191.00: SERVICE SUBSIDY = 95 percent of PROGRAM COST: PARTICIPANT PAYMENT = 5 percent of PROGRAM COST (CATEGORY A.)

D.I. of $191.01 to $320.00: SERVICE SUBSIDY = 80 percent of PROGRAM COST: PARTICIPANT PAYMENT = 20 percent of PROGRAM COST (CATEGORY B.)

D.I. of $320.01 to $451.00: SERVICE SUBSIDY = 60 percent of PROGRAM COST: PARTICIPANT PAYMENT = 40 percent of PROGRAM COST (CATEGORY C.)

D.I. of $451.01 to $581.00: SERVICE SUBSIDY = 40 percent of PROGRAM COST: PARTICIPANT PAYMENT = 60 percent of PROGRAM COST (CATEGORY D.)

D.I. of $581.01 to $711.00: SERVICE SUBSIDY = 20 percent of PROGRAM COST: PARTICIPANT PAYMENT = 80 percent of PROGRAM COST (CATEGORY E.)

3. The following STEP II shall be operative from January 1, 1993 through December 31, 1993

D.I. of $0.00 to $198.00: SERVICE SUBSIDY = 95 percent of PROGRAM COST; PARTICIPANT PAYMENT = 5 percent of PROGRAM COST (CATEGORY A.)

D.I. of $198.01 to $332.00: SERVICE SUBSIDY = 80 percent of PROGRAM COST; PARTICIPANT PAYMENT = 20 percent of PROGRAM COST (CATEGORY B.)

D.I. of $332.01 to $468.00: SERVICE SUBSIDY = 60 percent of PROGRAM COST; PARTICIPANT PAYMENT = 40 percent of PROGRAM COST (CATEGORY C.)

D.I. of $468.01 to $602.00: SERVICE SUBSIDY = 40 percent of PROGRAM COST; PARTICIPANT PAYMENT = 60 percent of PROGRAM COST (CATEGORY D.)

D.I. of $602.01 to $737.00: SERVICE SUBSIDY = 20 percent of PROGRAM COST; PARTICIPANT PAYMENT = 80 percent of PROGRAM COST (CATEGORY E.)

(b)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Residual Receipts

Adopted New Rules: N.J.A.C. 5:80-30

Proposed: December 16, 1991 at 23 N.J.R. 3733(a).
Adopted: April 24, 1992 by the Board of Directors of the New Jersey Housing and Mortgage Finance Agency, Kevin Quince, Executive Director.
Filed: April 27, 1992 as R.1992 d.216, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: May 18, 1992.
Expiration Date: April 20, 1995.

Summary of Public Comments and Agency Responses:

The New Jersey Housing and Mortgage Finance Agency received comments from the following persons:

Kevin Kelly, President, Leon N. Weiner & Associates, Inc.; Terrance L. Blackburn, First National Properties, Inc.; Leonard Fishman, New Jersey Association of Nonprofit Homes for the Aging; Stephen J. Edwards, Esq., representing Westfield Senior Citizens Housing Corporation; Michael J. Pasnik, Esq., representing Ridge Oak Housing, Inc.; Fred Baldinger, Pequannock Township Senior Citizens Housing; Walter Lynch, President, Sparta Ecumenical Council on Senior Citizen Housing; James M. McGrath, PRO Management, Inc.; H. Wolborsky, Parkview Towers Co.; Charles H. Brandt, Esq., representing Town of Westfield; James H. Ross, Orange Senior Citizens Housing Company; and John V. Kelly, Assemblyman, 36th District.

As many of the commenters presented the same comment on several aspects of the rules, comments have been grouped by subject rather than by the individual commenter.

COMMENT: **Residual Receipts Definition** Residual receipts is defined as the balance of funds remaining after deducting, among other items, three months (for senior projects) or six months (for family projects) operating expenses based on the following year's budget. A commenter suggested that the Agency consider using the current year's budget if the request came in early in the fiscal year, as the following year's budget would not be available at that time.

RESPONSE: The rule has been amended to use the latest Agency approved budget.

COMMENT: **N.J.A.C. 5:80-30.2(b) and (c)** A commenter suggested there was an inconsistency in that subsection (b) seems to limit uses to mortgages, operating deficiency reserves and loans, while section (c) includes grants. The commenter also suggests that subsection (b) be eliminated to permit the qualifying development more flexibility in determining the nature of funding since it is using its own funds.

RESPONSE: Subsection (b) has been modified to clear up any confusion. However, the Agency does not believe it would be appropriate to eliminate subsection (b). While the sponsor has a variety of choices available to assist in the production of housing (for example, grants, loans, subsidies), the Agency believes it is necessary to review and limit the means of assistance to assure that residual receipts are used wisely, efficiently and in a manner which would most effectively result in the production of affordable housing.

COMMENT: **N.J.A.C. 5:80-30.3(c)** A commenter suggests that the certification should also be submitted by the entity receiving the funds.

RESPONSE: If the receiving entity will be developing housing, that entity will be required to provide various development services which are identical or similar to development services provided by sponsors developing Agency financed projects. Agency policy has always permitted development fees in such cases and believes such fees would be appropriate where residual receipts are used to provide additional housing. In certain cases (for example, when the qualifying entity is providing an operating deficit reserve or funding a housing related service such as medical assistance) a fee to the receiving entity might not be appropriate. Accordingly, the rule has been revised to require the receiving entity to file the certification, where appropriate, as determined by the Agency.

COMMENT: **N.J.A.C. 5:80-30.4(c)** Two commenters questioned the need for a bond counsel opinion for each proposed use of residual receipts. It was suggested that once a bond counsel opinion is obtained, it should be used for all subsequent requests by the same or other projects funded out of the same bond issue. Another suggestion was to limit bond counsel rates to the same hourly rates imposed upon qualifying developments. A final suggestion was to shift the qualifying development's counsel fees to the entity receiving the residual receipts.

RESPONSE: N.J.A.C. 5:80-30.4(c)(1) has been amended to delete the word "proposed." This will make it clear that the Agency is seeking an opinion that the use of residual receipts, in general, is permissible. It is not intended that a separate bond counsel opinion be obtained for each specific use that is requested. With respect to the cost of opinions, the Agency does not feel it is appropriate to regulate counsel fees. Such attorney fees are not analogous to the attorney fees that are regulated for project services. In the latter case, attorneys will be providing services on an ongoing basis or for significant/timely matters. Additionally, projects have a wide selection of attorneys/firms to choose from. In the case of the bond counsel opinion, there are a limited number of firms to choose from and the services/fee will be relatively minor. Accordingly, the Agency does not recommend limits on such fees.

COMMENT: **N.J.A.C. 5:80-30.3** A commenter suggests that the request for use of residual receipts be submitted and approved in one total package. For example, if the request is for acquisition of land and new construction, the procedure should not be segmented to consider the land acquisition first and the construction later. The commenter contends that a total package submission and approval saves time and money.

RESPONSE: The Agency does not believe it is appropriate to make this limitation. If an entire package is available, the Agency can review it at one time. However, the Agency does not wish to preclude qualifying developments from submitting requests and using funds in stages, if that approach is more practical or feasible.

COMMENT: **N.J.A.C. 5:80-30.4(d)** Several commenters objected to the $3,500 fee. The objections ranged from eliminating the fee entirely, citing that the Agency already receives an annual servicing fee to monitor the project. They argue that much of the work involved in processing the approval of residual receipts is already done by the Agency in the course of its routine oversight of the project. They also argue that the fee only depletes the funds available to develop additional housing. One speculated that the Agency is only trying to collect fees. Other comments suggest a percentage fee not to exceed $3,500, as there is a difference in the Agency's role in reviewing a $10,000 request as opposed to a $1,000,000 request. Others have suggested a waiver for lower cost programs.

RESPONSE: The Agency established the fee to reimburse itself for staff's time and expenses incurred in reviewing and processing the request for residual receipts. The processing of a request, as outlined in the rules, goes well beyond the services currently provided by the Agency with respect to projects financed. $3,500 was established in an effort to keep the fee as low as possible. In most cases, actual reimbursement of Agency expenses will exceed $3,500. A waiver or partial waiver of any of the Agency's rules is already obtainable pursuant to N.J.A.C. 5:80-19 and can be sought if circumstances warrant. Accordingly, the Agency does not recommend any changes to the rule with regard to the fee provision.

COMMENT: **N.J.A.C. 5:80-30.5** Several commenters objected to the requirement that residual receipts be transferred to the Agency for disbursement. Those comments expressed concerns about the loss of interest on those funds. Most felt that they had managed their property and accounts efficiently, which enabled them to generate residual receipts. As the Agency currently maintains control over these funds, the Agency should be able to maintain the desired controls by simply requiring any disbursements of residual receipts to be subject to Agency approval. Another suggestion was to allow the Sponsor to retain the residual receipts in their own account until requisitions are submitted to and approved by the qualifying development and Agency. The funds would be transferred to the Agency for disbursement at that time.

RESPONSE: The Agency feels that a transfer of the funds to the Agency for disbursement establishes prudent fiscal control and segregates the funds for accounting purposes. The account will earn interest, which will be credited to the sponsor. Any interest earned or funds not used will be transferred back to the sponsor. The Agency does not recommend changes to this section based on comments received.

COMMENT: **Limited Dividend Sponsors** Two commenters expressed interest in having the rule expanded to apply to limited dividend sponsors.

RESPONSE: The Agency is currently examining the possibility of expanding the rule for participation by limited dividend sponsors. Limited dividend sponsors are not now included due to issues affecting such sponsors (for example, return on equity restrictions) which do not apply to nonprofit sponsors. Once the issues are resolved, an expanded version of the rule will be circulated to housing sponsors for comment and sent to the Office of Administrative Law for publication in the New Jersey Register.

Summary of Agency Initiated Changes:

N.J.A.C. 5:80-30.4(c)2 A technical change was made solely to clarify the language in this section.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*.

SUBCHAPTER 30. RESIDUAL RECEIPTS

5:80-30.1 Definitions

The following terms, when used in this subchapter, shall have the following meanings:

"Qualifying development" means an Agency-financed housing project owned by a nonprofit sponsor, except for projects receiving Section 8 subsidies pursuant to an Annual Contributions Contract executed after the adoption of regulations by the U.S. Department of Housing and Urban Development on February 29, 1980, at 24 CFR 883, which has:

1. Produced a positive cash flow from operations in each of the past three fiscal years; and
2. Been current in all escrow and debt service payments for the past three fiscal years.

"Residual receipts" means the balance of funds remaining after the deduction of the following items from the cash and the investment accounts of a qualifying development:

1. Debt service arrearages;
2. Current unpaid invoices;
3. *[For senior citizen projects, three]* ***Three*** months of operating expenses ***(for senior citizen projects) or six months of operating expenses (for family projects)***, which includes debt service and reserve payments, of the ***latest Agency approved annual budget*** *[ensuing year's budget or, for family projects, six months of the following year's budget of operating expense]*;
4. Full funding of all required reserve accounts;
5. Anticipated or proposed capital improvements; and
6. Any other current obligations of the qualifying development.

5:80-30.2 Uses of residual receipts

(a) For qualifying developments, residual receipts may be used:

1. To provide funding to expand the supply of "affordable rental housing" or to render financial assistance to other Agency financed or "affordable housing projects" (the terms "affordable rental housing" and "affordable housing project" shall mean housing with income unit distribution consistent with the requirements of tax-exempt financing pursuant to the then-current Internal Revenue Code);

2. For funding of supplementary services to the qualifying development, such as free senior citizens transportation, medical assistance and other social services programs and activities; and

3. For other uses as may from time to time, be requested, which will enhance the feasibility of a new project or the financial and social condition of an existing project.

(b) Residual receipt funding may include any one or more of the following:

1. First and supplemental mortgages, including construction mortgages;

2. Operating deficit subsidies;

3. Seed money loans*[.]* ***; and***

4. Grants.

(c) Disbursements of residual receipts shall be in the form of a loan, grant or equity contribution, as approved by the Agency, from the nonprofit sponsor to the entity receiving the funds. However, for all sponsors formed under N.J.S.A. 55:16-1 et seq., approval by the Public Housing Development Authority is required with respect to the form of the disbursement.

5:80-30.3 Request for use of residual receipts

(a) All requests to use residual receipts funds must be approved by the Agency in advance. Requests shall be made in writing by the sponsor of a qualifying development and submitted to the Agency's Director of Management.

(b) The request shall specify the purpose, amount and payee. The request shall be accompanied by a resolution of the nonprofit sponsor's board of directors. If the request is for social services or professional services, the request shall also be accompanied by a proposal outlining the services and the cost. If the request involves payment to a third party, an Administrative Questionnaire, completed by the third party, shall also accompany the request.

(c) The officers, directors and principals of the qualifying development shall submit certifications that they will not receive any fee or compensation, other than reimbursement for out-of-pocket expenses, for services performed in connection with the use of residual receipts. ***Such certification may also be required for the officers, directors and principals of the entity receiving the funds, as determined by the Agency.***

5:80-30.4 Agency review and approval

(a) Upon receipt of a complete request package as delineated in N.J.A.C. 5:80-30.3, the Agency will review the request to determine whether the requested use of funds falls within the permissible uses set forth in N.J.A.C 5:80-30.2(a) and whether there are sufficient residual receipts to fund the undertaking requested. The Agency will also evaluate the requested undertaking for feasibility.

(b) If the use of the receipts is for total funds of $25,000 or less, it may be approved by the Executive Director of the Agency. If the request is for funds in excess of $25,000, the recommendation and request package shall be submitted to the Agency Board of Directors for approval.

(c) Agency approval will be subject to receipt of:

1. An opinion from Agency bond counsel that the proposed use of residual receipts is permitted under the terms of the Bond Resolution and other Bond documents in connection with the Bonds issued to finance the qualifying development; and

2. An opinion by ***counsel for*** the qualifying *[development's counsel]* ***development*** that the sponsor's formation documents and the laws under which the sponsor was formed permit the proposed use of residual receipts.

(d) Agency review will be subject to the payment of a $3,500 fee to the Agency to cover administrative costs in reviewing and processing the use of residual receipts and to maintain the account established pursuant to N.J.A.C. 5:80-30.5. In addition, Agency review is subject to the payment of Agency bond counsel costs. Payment may be made by the entity receiving the residual receipts or the qualifying development's sponsor.

5:80-30.5 Disbursement of residual receipts

(a) Upon approval of a request for the use of residual receipts, the sponsor of the qualifying development shall transfer the residual receipts to the Agency. The Agency shall maintain the residual receipts in a separate account and shall make all disbursements from the account to pay for the cost of the approved undertaking. The Agency shall maintain accounting records reflecting the disbursement.

(b) Prior to the disbursement of any residual receipts, the Agency will require acceptable documentation of expenses associated with the undertaking being financed with residual receipts.

EDUCATION

(a)

DIVISION OF EXECUTIVE SERVICES

Notice of Administrative Correction

Business Services

Method of Determining Tuition Rates for County Special Services Schools

N.J.A.C. 6:20-3.4

Take notice that the Department of Education has discovered an error in the text of N.J.A.C. 6:20-3.4(e). The word "on" in the phrase "for the year the tuition rate applies on ending general fund free balance . . ." is a typographic error. The word should be "an" as appears in the original proposal document (PRN 1991-456) for the rule. 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]):

6:20-3.4 Method of determining tuition rates for county special services schools

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

(e) The net cost determined for each tuition category in (d) above shall be adjusted as appropriate to include in the certified maximum tuition rate for each category an amount which will permit the county special services school district to maintain at its discretion for the year the tuition rate applies [on] **an** ending general fund free balance not to exceed 7.5 percent of the district's net budget as defined in N.J.S.A. 18A:7D-3 which is consistent with the excess surplus provision of N.J.S.A. 18A:7D-4.

1.-2. (No change.)

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

(b)

STATE BOARD OF EDUCATION

Notice of Administrative Correction

School Facility Planning Service

Emergency Provisions for Accommodation of School Pupils in Substandard School Facilities

N.J.A.C. 6:22-6.1

Take notice that the Department of Education has discovered an error in the text of N.J.A.C. 6:22-6.1(g)2ii(5). The term "slip resistant," as stated in response to a comment received concerning amendments to the rule and as also stated in the Summary of changes upon adoption in the notice of adoption for such amendments (see 23 N.J.R. 2502(a)), should be deleted from the subparagraph. This deletion is depicted in the original notice of adoption document, R.1991 d.443, but was in-

advertently not published in the New Jersey Register or the Code. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (deletion indicated in brackets [thus]):

6:22-6.1 Emergency provisions for accommodation of school pupils in substandard school facilities

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

(g) In making a determination upon any application for the use of emergency substandard facilities, the following factors shall be taken into account:

1. (No change.)

2. Emergency provisions for accommodation of school pupils in off-site, rented or leased buildings:

i. (No change.)

ii. Safety factors:

(1)-(4) (No change.)

(5) Concrete floors in all instructional areas, except shops, shall be covered with a [slip resistant] resilient floor covering;

(6)-(8) (No change.)

iii.-x. (No change.)

(a)

STATE BOARD OF EDUCATION

Notice of Administrative Correction

Private Vocational Schools

Chapter Expiration Date

Readoption: N.J.A.C. 6:46

Take notice that the Department of Education has discovered an error in the notice of readoption for N.J.A.C. 6:46 published in the May 4, 1992 New Jersey Register at 24 N.J.R. 1793(a). The notice heading states that the new expiration date for this chapter is April 10, 1997. However, as stated in the Summary of the proposed readoption (see 24 N.J.R. 514(a), 515), the Department intended for this chapter to be effective for only two years upon readoption. Through this notice of administrative correction, pursuant to N.J.A.C. 1:30-2.7, the published expiration date is corrected to **April 10, 1994.**

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

DIVISION OF SCIENCE AND RESEARCH

Industrial Survey Project Rules

Readoption with Amendments: N.J.A.C. 7:1F

Adopted Repeals: N.J.A.C. 7:1F-1.1, 1.2, 1.6, 1.7

Proposed: March 2, 1992 at 24 N.J.R. 717(a)

Adopted: April 15, 1992, by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: April 16, 1992 as R.1992 d.209, **without change.**

Authority: N.J.S.A. 13:1D-9; N.J.S.A. 26:2C-1 et seq.; and N.J.S.A. 58:10A-1 et seq.

DEPE Docket Number: 05-92-01.

Effective Date: April 16, 1992, Readoption.
May 18, 1992, Amendments and Repeals.

Expiration Date: April 16, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:1F.

Full text of the adopted amendments follows.

7:1F-1.3 Scope

This chapter sets forth the procedures to be followed by the Department to protect from public disclosure any information entitled to confidential treatment obtained from any respondent as a result of the Industrial Survey. This chapter also sets forth penalties for Department personnel or contractors who violate security restrictions.

7:1F-1.5 Definitions

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

"Commissioner" means the Commissioner of Environmental Protection and Energy or his or her authorized representative.

...

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

"Director" means the Director of the Division of Science and Research or the person authorized in writing by the Commissioner to serve in place of the Director for the purposes of this chapter.

...

7:1F-2.1 Confidentiality claims

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

(g) Packages shall be sent to:

Industrial Survey Project
CN 409
Trenton, New Jersey 08625
Tel. (609) 984-6070

7:1F-2.2 Access to information; non-disclosure; hearing before disclosure

(a) Except as otherwise provided in this chapter, only persons authorized in writing by the Director shall be permitted to have access to any information for which a confidentiality claim has been made. Except as otherwise provided in this chapter, access will be limited to Department employees, contractors and their employees whose duties in the conduct of the Industrial Survey project necessitate such access. No disclosure of information for which a confidentiality claim has been asserted shall be made to any other persons except as specifically allowed by some provision of this chapter. 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 after consultation with the respondent, the Department determines that such disclosure is not in a form that would foreseeably allow persons outside the Department, not otherwise having knowledge of such confidential information, to deduce from it the confidential information, or the identity of the respondent who supplied it to the Department.

(b) A respondent may request an adjudicatory hearing to contest disclosure of any information for which a confidentiality claim has been made, at any time before disclosure. The request shall be in writing, delivered to the Department at the following address:

Department of Environmental Protection
and Energy
Office of Legal Affairs
Attention: Adjudicatory Hearing Requests—Industrial Survey Confidentiality
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

(c) A request for an adjudicatory hearing under (b) above shall contain the following information:

1. The name, address, and telephone number of the respondent;

2. Information supporting the request, and specific references to or copies of other documents relied upon to support the request;

3. An estimate of the time required for the hearing (in days and/or hours); and

4. A request, if necessary, for a barrier-free hearing location.

(d) The Department may deny a request for an adjudicatory hearing under (b) above if:

1. The respondent fails to provide all information required under (c) above;
2. The Department receives the request after disclosure of the assertedly confidential information occurs;
3. The Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure; or
4. The Department determines that disclosure is necessary to alleviate an imminent danger to the environment or to public health or safety, as provided in N.J.A.C. 7:1F-2.7.

(e) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(f) At the adjudicatory hearing, the respondent shall have the burden of showing that the proposed disclosure is not in accordance with this N.J.A.C. 7:1F.

(g) Pending the completion of the adjudicatory hearing, the Department will refrain from disclosing the assertedly confidential information, unless:

1. The Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure; or
2. The Department determines that disclosure is necessary to alleviate an imminent danger to the environment or to public health or safety.

7:1F-2.3 Confidentiality determinations

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

(c) The Director shall make the initial determination of whether information is or is not entitled to confidential treatment.

1. (No change.)
2. In all other cases, if the Director determines that information is not entitled to confidential treatment he or she shall so notify the respondent who submitted the information. Such notice shall state the identity of the person or persons, if any, to whom the Director intends to disclose the information.

3.-4. (No change.)

(d)-(g) (No change.)

7:1F-2.5 Disclosure of confidential information to other agencies

(a) The Director may disclose confidential information to persons other than Department employees, contractors or agents directly involved in conducting the Industrial Survey only as provided in this section or N.J.A.C. 7:1F-2.7.

(b) The Director may disclose confidential information obtained through the Industrial Survey to other officers, employees or agencies of the Department or the Department of Health if:

1.-3. (No change.)

(c) The Director may disclose confidential information to any other State agency or to a Federal agency if:

1. The Director 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 Director notifies the other agency of his or her determination that the information is entitled to confidential treatment, or of any unresolved confidentiality claim covering the information;
4. The other agency has first furnished to the Director a written opinion from the agency's chief legal officer or counsel stating in writing 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. (No change.)
6. The Director is satisfied that the other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure, and the other agency agrees with the Department in writing to refrain from disclosure and to safeguard the information in accordance with the requirements of this N.J.A.C. 7:1F-2.

(d) The Director may disclose any confidential information to any person if he or she has obtained the written consent of the respondent to such disclosure. The giving of consent by a respondent to a disclosure 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.

(e) Except as otherwise provided in the section on emergency disclosure (N.J.A.C. 7:1F-2.7), the Director shall notify in writing the respondent who supplied the confidential information of his or her intention to disclose it to any agency, other than an agency of the Department or the Department of Health, at least 10 working days in advance of the disclosure.

1. The Director shall notify in writing the respondent who supplied the confidential information of any disclosure made to any agency of the Department or the Department of Health other than those employees, contractors or agencies of the Department participating in the conduct of the Industrial Survey.
2. (No change.)

7:1F-2.6 Disclosure of confidential information to contractors

(a) The Director may disclose confidential information to a contractor of the Department if he or she determines that such disclosure is necessary in order for the contractor to carry out work related to the Industrial Survey.

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

(d) Before disclosing confidential information to a contractor under (a) above, the Department shall notify the respondent of the proposed disclosure in writing, delivered by certified mail, return receipt requested, at least 14 days before making the disclosure. The notice shall state the information to be disclosed, the identity of the contractor, and the scheduled date of disclosure. If, at least three working days before the scheduled date of disclosure, the claimant delivers to the Department information sufficient to establish that the proposed disclosure would be likely to cause substantial harm to its competitive position, the Department shall refrain from making the disclosure.

7:1F-2.7 Emergency disclosure

(a) If the Director finds that disclosure of confidential information would serve to alleviate an imminent and substantial danger to public health or safety he or she may:

1. Prescribe and make known to the respondent such shorter comment period (N.J.A.C. 7:1F-2.3(d)), post-determination waiting period (N.J.A.C. 7:1F-2.3(f)), or both, as he or she finds necessary under the circumstances; or
2. (No change.)

(b) (No change.)

7:1F-2.9 Wrongful access or disclosure; penalties

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

(c) If the Director finds that any person has violated the regulations of this subchapter, he or she may:

1. (No change.)
2. Pursue any other remedy available by law.

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

(a)

ENVIRONMENTAL REGULATION

Water Pollution Control

Minimum Treatment Requirements

Adopted Amendment: N.J.A.C. 7:9-5.8

Proposed: May 20, 1991 at 23 N.J.R. 1493(a).

Adopted: April 27, 1992 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: April 27, 1992 as R.1992 d.219, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3, 13:1D-1 et seq., 58:10A-1 et seq., 58:11A-1 et seq.

DEPE Docket Number: 021-91-04.

Effective Date: May 18, 1992.

Expiration Date: January 18, 1996.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection and Energy ("Department") is adopting an amendment of N.J.A.C. 7:9-5.8, which amendment was proposed on May 20, 1991 at 23 N.J.R. 1493(a). The amendment as adopted differs from the proposal only in that two clarifying changes have been made. First, in response to a public comment, the adopted rule contains language making it absolutely clear that the requirements of N.J.A.C. 7:9-5.8 are not water quality based effluent limitations. Second, on its own initiative, the Department has changed the rule so that it refers to a "monthly average" rather than a "30-day average."

The public comment period regarding the proposed amendment expired on June 20, 1991. Comments were received from:

Gerald M. Hansler, Executive Director
Delaware River Basin Commission

Gary D. Marshall, Executive Director
Bayshore Regional Sewerage Authority
& Coastal Wastewater Authorities' Group

Public agencies comprising the Coastal Wastewater Authorities' Group:

Robert J. Eckert, Executive Director
Township of Middletown Sewerage Authority

Richard Ellison, Executive Director
Monmouth County Bayshore Outfall Authority

Michael J. Lyons, Executive Director
Northeast Monmouth County Regional Sewerage Authority

Francis A. Hayes, Executive Director
Long Branch Sewerage Authority

Vernon Brikowski, Executive Director
Township of Neptune Sewerage Authority

Samuel Addeo
City of Asbury Park

Peter E. Genecki, Executive Director
Township of Ocean Sewerage Authority

John Haggerty
South Monmouth Regional Sewerage Authority

Robert H. Karen, President
New Jersey Builders Association

William W. Cathcart, Chief
Operations & Maintenance
Cape May County Municipal Utilities Authority

COMMENT 1: The Delaware River Basin Commission commented that the proposed amendment is consistent with the Commission's requirement of a minimum of 85 percent reduction as a 30-day average. The Commission supports the adoption as proposed.

RESPONSE: The Department acknowledges the support of the Delaware River Basin Commission and thanks it for its comment.

COMMENT 2: The Coastal Wastewater Authorities Group (the "Group") applauds the determination by the Department (1) "to remove the four-hour requirement" of N.J.A.C. 7:9-5.8, and (2) to make the State minimum requirements for coastal dischargers conform to the minimum Federal requirements. The Cape May County Municipal Utilities Authority (CMCMUA) also supports the proposed amendment.

RESPONSE: The Department acknowledges the support of the Group and the CMCMUA, and thanks them for their comments.

COMMENT 3: Notwithstanding the full agreement of the Group with the Department on the issues set forth in the proposed rulemaking, it commented that not all of the problems with N.J.A.C. 7:9-5.8 are addressed. The Group urged DEPE to expand the proposed rulemaking to fully correct N.J.A.C. 7:9-5.8. Its specific comments are discussed at Comments 3, 4, 5, and 6.

Implementation Of The Rulemaking Change

The Group commented that the proposal fails to address how the Department intends to implement its proposal to delete the four-hour requirements of N.J.A.C. 7:9-5.8. Implementation of the rule should be by rulemaking. The final rule should explicitly state that the so-called four-hour conditions that are found in current permits are immediately null and void and are not enforceable. This would clarify that permittees do not have to formally request permit modifications in order to delete these requirements.

This clarification would reduce the Department's workload by eliminating the need to modify every permit containing four-hour requirements. Furthermore, dischargers would benefit because the risk of an enforcement action would be eliminated immediately. Even if the Department were to agree not to enforce these four-hour conditions, the current proposal would leave permittees exposed to citizen suits until their permit was formally modified. Accordingly, the final rule should clarify that the four-hour requirements are no longer enforceable permit conditions and that these conditions are null and void.

RESPONSE: The Department agrees that NJPDES permit changes reflecting the present amendment should be made effective as soon as possible. Accordingly, it plans to modify most, if not all, of the affected permits through a "mass modification." In a "mass modification," there is only a single public notice and comment period, thus substantially reducing the amount of time and resources necessary to implement the modification. However, more than one "mass modification" may be necessary because many different situations exist regarding how the affected limitations are included in NJPDES permits. These "mass modifications" will be issued in draft no later than May 31, 1992. The Department will forward the public notice to the major newspapers throughout the State once the "mass modifications" have been issued in draft. The appearance of the public notice in the newspapers marks the beginning of the 30 day public comment period required by N.J.A.C. 7:14A-8.1. During the public comment period, the permittees and any other interested persons may offer comments regarding the terms and conditions of the draft modification. All comments shall be submitted in writing to the Department. Provided that excessive comments are not received on the draft, the Department has estimated that the "mass modification" should be issued in final by August 31, 1992.

The Department seriously considered the Group's suggestion to delete the four-hour requirement by rule. However, it has determined that the ultimate goal of deleting the requirement from permits could be achieved more quickly through the "mass modification" process because the suggested rule change would have required reproposal and readoption. See N.J.A.C. 1:30-4.3.

The Department may find during the preparation of the draft "mass modifications" that there are a few unique cases that do not lend themselves to a "mass modification." In those cases, the Department will issue individual permit modifications on about the same schedule as the "mass modifications."

COMMENT 4: Application of Federal Secondary Treatment Variance

The Group commented that the Federal secondary treatment regulation provides certain variances from its percent removal conditions that are not expressly allowed under N.J.A.C. 7:9-5.8. Of particular concern to the Group is the variance from the percent removal requirements because of weak wastewater influent that is allowed under 40 C.F.R. 133.103(d).

All members of the Coastal Wastewater Authorities Group, who discharge into the ocean, treat weak wastewater influent that typically ranges from 70 to 140mg/l. Permit exceedances of the percent removal condition have been reported by these dischargers even though compliance with the concentration limitations is simultaneously reported. If the basis of the permit is the Federal secondary treatment regulation, these dischargers may petition for a variance from the percent removal limitation. However, it is uncertain whether a corresponding right is available should DEPE impose the same limitations because of N.J.A.C. 7:9-5.8.

Because the Department has recognized the appropriateness of conforming State minimum requirements to Federal requirements, the Department should include the variance procedures of that rule. Otherwise, dischargers will need to construct unnecessary facilities to meet the percent removal condition. This does not appear to be the intent of N.J.A.C. 7:9-5.8.

In sum, the final rule should clarify that dischargers treating weak wastewater influent may petition DEPE for a variance that may allow a lower percent removal as provided for under Federal regulations at 40 C.F.R. 133.103(d).

RESPONSE: The Department shares the Group's desire to avoid the imposition of unnecessarily stringent requirements and their related costs. It also agrees that weak influent can make it difficult to meet the usual percent removal requirements even though concentration limitations are being met. Accordingly, where a permittee's percent removal requirement is equal to the 85 percent removal requirement in 40 C.F.R. 133, the Department has for some time considered substitution of lower percent removal requirements for permittees that can meet the require-

ments of 40 C.F.R. 133.103(d). The Department intends to continue this practice in cases where the percent removal limitation is based on either N.J.A.C. 7:9-5.8 or on 40 C.F.R. 133.103(d) or (e). The Department does not believe it is necessary to amend its rules to reflect its common sense application of the Federal rule.

However, some percent removal limitations set forth in N.J.A.C. 7:9-5.8 are more stringent than those set forth at 40 C.F.R. 133 (that is, 85 percent). As to those, the Department is evaluating the appropriateness of allowing the substitution of lower percent removal limitations for those set in accordance with N.J.A.C. 7:9-5.8. It will complete that evaluation within the context of the revisions to the overall NJPDES regulations which is discussed further in response to Comment 11.

The Department notes that where effluent limitations based on acceptable water quality studies have been included in the permit, N.J.A.C. 7:9-5.8 does not apply, and the BOD_5 percent removal is set at 85 percent in accordance with 40 C.F.R. 133. Therefore, the provisions of 40 C.F.R. 133.103 can apply. (The substitution of such lower percent removal limitations is also contingent upon meeting any percent removal requirements of any other agency(ies) having jurisdiction over the treatment facility. If another agency does have jurisdiction, the Department would require its written consent to the proposed substitution.)

In order for a treatment facility to qualify for the percent removal substitution, all of the conditions of 40 C.F.R. 133.103(d) for treatment facilities served by separate sewer (or 40 C.F.R. 133.103(e) for treatment facilities served by combined sewers) must be met. The conditions for separate sewers are summarized as follows:

(1) The percent removal limitations must be consistent with the secondary treatment requirements as set forth in 40 C.F.R. 133.102(a)(3), 133.102(a)(4)(iii), 133.102(b)(3), 102.105(a)(3)[sic], 133.105(b)(3), and 133.105(e)(1)(iii);

(2) The treatment facility is, or will be able to, consistently achieve compliance with the effluent concentration limits, but the percent removal limitations cannot be met due to less concentrated influent;

(3) The treatment facility would have to achieve significantly more stringent concentrations than those required by the NJPDES permit in order to be able to achieve compliance with the percent removal limitations; and

(4) The less concentrated influent is not the result of excessive Inflow and/or Infiltration (I/I). The definition of excessive I/I may be found at 40 C.F.R. 35.2005(b)(16). In addition, inflow is considered to be nonexcessive if the total flow (wastewater plus inflow and infiltration) to the treatment facility is less than 275 gallons per capita per day.

Thus, in order to meet conditions nos. 2 and 3, a facility must achieve, or be able to achieve, compliance with the concentration limitations, but not be able to achieve compliance with the percent removal limitations. Therefore, a facility that was not in compliance with its concentration limitations and/or was in compliance with its percent removal limitations would not qualify for the percent removal substitution.

Regarding requirement no. 4 above, permittees should be aware that any treatment facilities which were constructed with a Federal Construction Grant (Grant) were required to conduct an I/I evaluation as part of the Grant application review process. The evaluation was to determine if the I/I was excessive. The United States Environmental Protection Agency in the Federal Register (50 F.R. 23381, 23386 (June 3, 1985)) stated, "If non-excessive flows were determined correctly, provided no major changes have occurred in the sewer system, then the previous grant determination will satisfy the non-excessive I/I requirements of 133.103(d)(3)." Therefore, a treatment facility which received a grant would have to demonstrate that its I/I is non-excessive by demonstrating that the situation regarding I/I has not changed since the grant application was submitted. (The foregoing discussion does not apply directly to facilities with combined sewers, whose substitution requests must meet the criteria of 40 C.F.R. 133.103(e).)

Processing of requests for less stringent percent removals will be dependent on the Department's workload, but the Department will propose the substitution of the lower percent removal limitation(s) if appropriate into the affected NJPDES permit(s) no later than at the date of permit renewal.

COMMENT 5: Percent Removal Is A Dependent Condition

The Group commented that the available history of the State minimum treatment requirements shows that the percent removal condition was derived from assumptions about the average influent BOD. Those assumptions—assumed influent wastewater strength of 250-300 mg/l—are not accurate. In most instances the wastewater influent concentration is significantly less than the assumed 250 mg/l. For these dischargers compliance with the concentration limitation is achieved but compliance with the corresponding percent removal condition is not feasible. Where available, actual influent data should replace the assumptions that are built into the N.J.A.C. 7:9-5.8 requirements. A variance procedure would allow this.

The percent removal conditions of N.J.A.C. 7:9-5.8 are dependent conditions. The independent conditions—concentration limitations—were presumed to provide the necessary protection for water quality, absent site-specific information. The predecessor rule to N.J.A.C. 7:9-5.8 clearly stated that the percent removal limitations were intended to produce a specific concentration limitation. See N.J.A.C. 7:9-5.11 (1981). When the minimum treatment requirements were reissued in 1985, a single table was promulgated which included concentration limitations as a separate requirement. Unfortunately, the table failed to include the original language stating that the percent removal limitations were only intended to produce specific effluent concentration values. This oversight requires correction.

In sum, the percent removal condition is a dependent of the concentration limitation. It is the latter permit condition that reflects the level of treatment that may be necessary to protect the environment. The percent removal condition is calculated to correspond to the amount of treatment necessary to discharge the specific concentration limitation. Therefore, the Department should allow variances from the minimum percent removal condition when a discharger can demonstrate compliance with the concentration limitation but not the percent removal condition.

RESPONSE: As was set forth in its response to Comment 4, the Department agrees that the substitution of less stringent percent removal limitations should be available, but they should be available only when a discharger satisfies the conditions set forth at 40 C.F.R. 133.103(d). For example, it would not be appropriate to grant such a substitution to a discharger whose weak influent is due to excessive I/I. Further, the Department does not agree that the percent removal requirements are strictly a means to achieving specific concentration limits. Instead, they also in part reflect an independent goal that a well-designed and operated plant can achieve. Therefore, a discharger should not automatically be granted a substitution of a less stringent percent removal limitation when it demonstrates merely that it meets the applicable concentration limits.

COMMENT 6: State Minimum Treatment Requirements Are Not Water Quality Based Effluent Limitations

The Group commented that the final rule should also clarify that the State minimum treatment requirements of N.J.A.C. 7:9-5.8 are not water quality based effluent limitations. These limitations, which were initially promulgated before the Federal Clean Water Act was enacted, were not derived through the Section 303 water quality standards process. 33 U.S.C. Section 1313. This clarification is necessary to implement the above variance procedures and other regulatory amendments without triggering the Federal anti-backsliding provisions.

It is the Group's understanding that the Bureau of Systems Analysis and Wasteload Allocation concurs with this conclusion. In the final rule, the Department should confirm that these limitations are promulgated under CWA Section 510, 33 U.S.C. Section 1370 and are not part of the Section 303(d) process.

RESPONSE: The Department agrees that the N.J.A.C. 7:9-5.8 limits are not water quality based. Although it believed that the current role was sufficiently clear on that point, it has added language to the rule to make the point absolutely clear.

Although the Department agrees that different anti-backsliding rules may apply to water quality based limits as compared to other limits, it does not agree that anti-backsliding regulations apply solely to water quality based effluent limitations. Therefore, the Department can not state categorically that the relaxation of percent removal limitations is never subject to the anti-backsliding regulations. See N.J.A.C. 7:14A-3.13 and Sections 303 and 402 of the Federal Clean Water Act, 33 U.S.C.A. Sections 1313 and 1342.

COMMENT 7: The New Jersey Builders Association (the "NJBA") commented that it strongly supports the proposed amendment to remove the four-hour requirement in favor of a 30 day average. Use of the 30 day average for NJPDES permit effluent limits is consistent with Federal guidance on the subject from the U.S. Environmental Protection Agency.

This proposed change, aside from having no adverse impact on the State's waterways, will also help to minimize any unnecessary expansion of wastewater treatment facilities. This will, in turn, lessen the incidence of unnecessary sewer moratoria and inflated housing costs.

RESPONSE: The Department acknowledges the support of the New Jersey Builders Association and thanks it for its comment.

Comments 8 through 19 do not specifically concern the subject proposed amendment to N.J.A.C. 7:9-5.8, and therefore do not require response. The Department nonetheless has attempted to provide the fullest possible responses to these wide-ranging comments.

COMMENT 8: The NJBA also commented that there are numerous other problems that exist with N.J.A.C. 7:9 that have been called to the Department's attention over the last few years. Many of the detailed technical and regulatory concerns that have been identified in various papers and letters to the Department have demonstrated that several of the Department's rules found in N.J.A.C. 7:9 are outdated and unnecessary for the purpose of protecting the environment. Several of these problems are outlined in a white paper entitled, "Review of the New Jersey Department of Environmental Protection NJPDES Permitting Rules and Practices" prepared by Mr. John Hall, who at the time was with the law firm of Zorc, Rissetto, Weaver and Rosen. This white paper was prepared for the Authorities Association of New Jersey and submitted to the Department in January of 1989.

RESPONSE: The Department responded to the white paper on August 24, 1989 via correspondence from Jorge H. Berkowitz, Ph.D., then Acting Director of the Division of Water Resources, to Ellen Gulbinsky of the Authorities Association of New Jersey (now the Association of Environmental Authorities). The issues raised in the white paper, as well as those raised by other interested parties, have been, and will continue to be, considered by the Department as it revamps its Wastewater Regulation Programs and reviews its regulations, including N.J.A.C. 7:9.

For example, on February 3, 1992, the Department proposed a set of revisions to N.J.A.C. 7:14A which included the revocation of certain duplicate SIU permits and the refunding of associated permit fees. In addition, the Department has issued a "Working Paper on Sewer Ban and Treatment Works Approval Programs," addressing and soliciting comments on these programs. Finally, it is committed to proposing, in early 1993, a new set of regulations clarifying how water quality based effluent limits should be set. In developing these proposals, the Department will consider the public comments that it has already received, and it will seek and consider both informal and formal public comments.

COMMENT 9: NJBA recommends that the Department prioritize its work load.

RESPONSE: The Department does prioritize its work load. In doing so in the context of the NJPDES program, it considers such factors as State and Federal statutory mandates, major/minor permit classifications, Wastewater Treatment Trust funding, the quality and classification of the receiving watersheds, the environmental significance of the subject action, enforcement actions and the amount of time that a particular project is otherwise anticipated to take. Considering the factors listed above, each NJPDES permitting Bureau prepares an annual "Work Plan" which lists the permit actions which are anticipated to be completed in the upcoming fiscal year. Each Bureau then prepares monthly, quarterly and annual progress reports, evaluates the progress made in achieving the "Work Plan" projections, and may readjust priorities and individual workloads based on any new information received since the last progress report.

COMMENT 10: NJBA recommends that the Department hire sufficient expertise or subcontract to handle the work load.

RESPONSE: The Department is about to issue a Request for Proposal ("RFP") for subcontractors to prepare certain objective portions of 100 NJPDES permits in State fiscal year 1993 in order to expedite the permitting process. If successful, the Department will expand the usage of contractors in State fiscal year 1994. As always, the Department will not subcontract its public decision making nor its policy setting responsibilities.

COMMENT 11: NJBA recommends that the Department adopt standards that are rational and attainable.

RESPONSE: The Department strives to adopt standards that are rational and attainable. As time passes and the environmental sciences advance, it is critical that regulations be reviewed periodically and updated as appropriate. The Department recognizes that it has at times failed to keep all of its regulations up to date. In an attempt to keep current, the Department is currently reviewing many of its regulations to identify portions in need of updating. For example, the Department is currently engaged in a cooperative effort with the United States Environmental Protection Agency, which effort will identify those portions of the NJPDES regulations that are inconsistent with current Federal regulations. In addition, the Department has just proposed new Ground Water Quality Standards, and it is about to propose new Surface Water Quality Standards. The Department welcomes any specific suggestions as to particular standards that should be re-evaluated.

COMMENT 12: NJBA recommends that the Department standardize reviews for routine type permits (for example, expansions).

RESPONSE: The NJPDES permitting program does utilize standard review processes to the extent possible to do so. However, because of the number of interrelated factors that must be considered in most permitting decisions, they generally cannot be considered "routine."

COMMENT 13: NJBA recommends that the Department issue permits within the same drainage basin that are consistent with one another.

RESPONSE: The NJPDES discharge to surface water permitting groups have begun to implement a program which will have all of the permits for discharges into a particular river basin being issued together, before starting a new river basin. This does not necessarily mean, however, that a permit for a discharge into a different river basin could not be issued independently of all of the other permits for that particular river basin. This new approach to permitting should provide for greater consistency between permits issued within particular river basins, and it should enable the Department to issue permits more efficiently.

COMMENT 14: NJBA recommends that the Department issue a notice of completeness based on a published checklist upon filing permits.

RESPONSE: The Department has for some time utilized the NJPDES application forms that in part function as a checklist. When the applications are submitted, the Department reviews them for administrative completeness and then informs the applicant of the results of that review.

On January 17, 1992, P.L. 1991, c.418 and P.L. 1991, c.421 were adopted. In implementing these statutes, the Department will prepare checklists for most types of permit applications and will notify applicants as to whether their applications are complete within 30 days of the application's submission. The Department is currently preparing these checklists as one of a series of actions to improve the permitting process. Examples of other actions it is taking to improve this process include the following:

(a) An outreach program which was initiated by the Department to rectify errors within permits and discharge monitoring reports (DMRs);

(b) The Department is considering expanding the number and type of general permits to cover a greater universe of discharges which lend themselves to proper regulation under general permits;

(c) The Department is currently soliciting bids from contractors to assist the Department in the permit development process (this issue has been addressed further in response to Comment 10) and, if this program proves to be successful, the Department intends to expand the use of contract services;

(d) As discussed above in response to Comment 11, the Department is currently evaluating, along with EPA, what long term changes need to be made to the NJPDES regulations, and will begin to prepare the necessary changes as they are identified;

(e) The Department has published a working paper concerning the sewer moratorium and the treatment works approval process and is soliciting public comments on this paper in an effort to streamline the current treatment works approval process (this issue has been addressed in response to Comment 8); and

(f) The Department is proposing enhancements to the NJPDES computerized tracking system which is controlled by the Department in order to provide for more automation and increase the amount of information available within the system (this has been further addressed in response to Comment 16).

COMMENT 15: NJBA recommends that the Department adhere to a schedule for permit review that includes the issuance of a draft permit within a set time frame.

RESPONSE: The Department has for some time utilized formal Work Plans as a mechanism for setting schedules for its NJPDES permitting process. However, because of the complexity of that process and the difficulty of foreseeing changing circumstances (including Federal requirements), these Work Plans necessarily have included a good deal of flexibility.

On January 17, 1992, P.L. 1991, c.423 was adopted. It requires the Department to adopt guidelines establishing permit review schedules, which guidelines are to serve as goals of the Department. The Department is currently reviewing its various types of permits and will, in accordance with the statutory schedule, assign each to a particular processing time category (for example, 90 days). The processing time

category will then become the target processing time frame, and the basis for tracking permit workloads.

COMMENT 16: NJBA recommends that the Department implement a computerized tracking system to allow ready access to permit information.

RESPONSE: There are two systems, the National Permit Compliance System (PCS) and the NJPDES system. The NJPDES system is the hands-on operational system that passes information on to the PCS system. Both systems are accessible to the Department and provide a multitude of information about NJPDES permits and permit compliance. To obtain information, one should contact the Bureau of Permit Management at the following address:

Wastewater Facilities Regulation Program
CN-029
Trenton, New Jersey 08625
Phone No. (609) 984-4428

COMMENT 17: NJBA recommends that the Department publish all technical standards, policies and requirements and subject them to rulemaking.

RESPONSE: The Department is aware of its obligation to comply with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and it strives to include all of its generally applicable standards, policies, and requirements in published rules. However, it also recognizes that at times it may not always be aware that it has made or is making policy in a way that should be subjected to notice-and-comment rulemaking. The Department welcomes any suggestions as to any specific policies that should be subjected to the notice-and-comment procedure.

COMMENT 18: NJBA recommends that the Department assure that complete applications are processed to the standards and policies in effect at the time of their submission (vesting rights).

RESPONSE: The Department does not always have this ability since most State and Federal environmental statutes do not contain "grandfather" clauses. Where it does have discretion in this area, the Department attempts on a case-by-case basis to weigh the effect on the environment against the burden placed on the regulated community. In the context of NJPDES permit determinations, the Department is required to apply the law in effect at the time the permit is issued. See N.J.A.C. 7:14A-2.5(a)1, 2.6(b)1, and 3.13(a)2.

COMMENT 19: NJBA recommends that the Department process applications for permit modification (re-rating) independently of the application for expansion.

RESPONSE: Applications for re-rating of permitted design flows, expansions of treatment plants, and/or modifications of other NJPDES permit conditions are generally considered to be separate issues and those applications would be processed separately. However, the Department will, if circumstances allow, process multiple permit modification requests simultaneously at the permittee's request.

COMMENT 20: The CMCMUA commented that in the "Summary" of the proposed rule, the NJDEP states "other issues in N.J.A.C. 7:9-5 will be addressed in other proposed regulatory amendments in the near future". The CMCMUA requests that the NJDEP provide a listing of the additional issues to be addressed, and a timetable for the proposed regulatory amendments.

RESPONSE: As was set forth in the responses to Comments 8 and 11, the Department, on February 3, 1992, proposed a fairly comprehensive set of revisions to N.J.A.C. 7:14A (NJPDES), on February 18, 1992 it released a "Working Paper on Sewer Bans and Treatment Works Approval Programs," it has just proposed new Ground Water Quality Standards, and it expects to propose updated Surface Water Quality Standards this spring.

COMMENT 21: The CMCMUA commented that the minimum Federal Secondary Treatment Regulations specifically allow a relaxation of the percent removal requirements whenever influent concentrations fall below 200 mg/l BOD or SS. The CMCMUA requests that the NJDEP clarify the proposed limitations to indicate that the percent removal limitations only apply when influent concentrations are 200 mg/1, or greater.

RESPONSE: Although the Department agrees that weak influent may under certain circumstances justify a variance from the usual percent removal requirements, it also notes that the Federal regulations do not specifically allow for a reduction in the percent removal limitation whenever the influent concentrations fall below 200 mg/l. Instead, the conditions which apply to the percent removal reduction are outlined at 40 C.F.R. Section 133.103(d). This issue has been addressed in greater detail in response to Comments 4, 5, and 6.

COMMENT 22: The CMCMUA requests that Carbonaceous Biological Oxygen Demand (CBOD) be permitted as an alternative to BOD as the capability of a secondary treatment system to achieve nitrification, especially during low flow periods, should not be a cause for the Wastewater Treatment Facility to violate its permit.

RESPONSE: The Department agrees that under many circumstances it may be acceptable to replace BOD_5 limitations with $CBOD_5$ limitations. Accordingly, it has modified some permits to that effect. If CMCMUA or any other permittee desires such a modification to its permit, it should apply for same in accordance with N.J.A.C. 7:14A.

Summary of Agency-Initiated Changes:

The term "30-day average" has been revised to "monthly average" to clarify the Department's intention to require averaging data over a month, regardless of the number of days in that month.

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

7:9-5.8 Minimum Treatment Requirements

These minimum treatment requirements apply to all discharges where effluent limitations based upon water quality studies acceptable to the Department have not been developed and are required by N.J.A.C. 7:9-4.5(e)4 or 4.6(a). ***These requirements are not water quality based effluent limitations.*** In the case where a water quality study has been accepted and approved by the Department, and water quality based effluent limitations have been established by the Department based upon the study, then the minimum treatment requirements shall no longer apply, unless required by another regulatory agency. Requests to modify existing NJPDES permits containing minimum treatment requirements shall be submitted to the Department in writing in accordance with N.J.A.C. 7:14A-2.12.

Watershed	Classifications	% BOD_5 Removal[1]	BOD_5 Maximum (mg/L)[2]	Discharge Type
Atlantic Coastal Plain	FW2, SE1	95	15	All
	SC	85	30	Domestic or Domestic in combination with Industrial
	SC	85	—	Industrial
Delaware River Basin	FW2, SE1, SE2	90	25	All
	Main Stem—All Zones	As set forth in Water Quality Standards for the Delaware River Basin; Resolution 67-7 of the DRBC; April 26, 1967 and subsequent revisions.		All
Hackensack River Basin	FW2, SE1	90	25	All
	SE2, SE3	85	30	All
Passaic River Basin (including Newark Bay)	FW2	90	25	All
	SE2, SE3	85	30	All
Raritan River Basin (including Raritan Bay and Sandy Hook Bay)	FW2	90	—	All
	SE1	85	—	All
Wallkill River Basin	FW2	95	15	All
Hudson River, Kill Van Kull, and Arthur Kill Basins	FW2, SE2, SE3	85	—	All

[1]Minimum percent reduction as a *[30-day]* ***monthly*** average.
[2]Maximum *[30-day]* ***monthly*** average.

(a)

POLICY AND PLANNING

Notice of Administrative Correction

Control and Prohibition of Air Pollution by Volatile Organic Compounds

N.J.A.C. 7:27-16.1, 16.3, 16.4, 16.5

Take notice that the Department of Environmental Protection and Energy (the Department) has discovered several errors in the Code at N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Compounds, and is providing herein notice of correction of these errors.

At N.J.A.C. 7:27-16.1, eight definitions are revised. In the definition of the term "conservation vent," a typographical error was made in the adoption notice of March 2, 1992, at 24 N.J.R. 807; the word "use" should be "used" and is corrected through this notice. In the definition of the term "cutback asphalt," the word "liquified" is misspelled and is changed to its correct spelling: "liquefied." The definition of the term "Department" is changed to reflect the new title of the Department: the New Jersey Department of Environmental Protection and Energy. In the definition of the term "fabric printing operation," the adjective used to modify the word "enhancement" is incorrectly spelled; through this notice the misspelled word "decoration" is changed to "decorative." In the definition of the term "graphic arts," the word "urethan" is misspelled and is changed to "urethane." In the adoption notice of March 2, 1992, at 24 N.J.R. 808, a typographical error was made; the term "storage tanks" should be "storage tank" and is corrected through this notice. In the definition of the term "vapor balance system," the term "VOS" is changed to "VOC" as intended by the rulemaking proposed on June 17, 1991, at 23 N.J.R. 1858(b), and adopted effective March 2, 1992, at 24 N.J.R. 808. In the notice of adoption of March 2, 1992, at 24 N.J.R. 809, the definition of the term "vapor pressure" was incorrectly added, for the definition of the term was previously a part of the code; the duplicate definition was not included in the 3-16-92 update to the Code.

The Department has discovered one error in the text of N.J.A.C. 7:27-16.3(i)3. The apostrophe in the word "testers' " was misplaced and is corrected to "tester's."

The Department has discovered three errors in the text of N.J.A.C. 7:27-16.4. The first two errors occur at paragraph (f)6. The word "VOS" is changed to "VOC," as intended by the rulemaking proposed on June 17, 1991, at 23 N.J.R. 1858(b), and adopted effective March 2, 1992, at 24 N.J.R. 808. Also, a comma is inserted after the year "1979." The third error occurs at paragraph (g)6. The word "a," which precedes the words "silhouette cutouts," is removed.

The Department has discovered four errors in the text of N.J.A.C. 7:27-16.5. The first error occurs in the equation at paragraph (a)2. In the numerator of the equation, "$(c_1)(v_1)$" is moved on the same line as the "Σ", from where shown in the adoption notice at 24 N.J.R. 812 on the same line as "i = 1." The second error occurs in the "actual daily emissions" equation at subparagraph (a)3iii. The variables "Nc" and "Nd" which appear in the adoption notice at 24 N.J.R. 813 are changed to "η_c" and "η_d" respectively. These variables are lower case greek etas, which are common engineering symbols for efficiency. The third error occurs at paragraph (a)4. The phrase ", pursuant to N.J.A.C. 7:27-16.6(c)4-6" is removed as indicated in the filed adoption document, R.1992 d.102. The fourth error occurs at paragraph (k)2. The conversion from gallons to liters is incorrect. 50 gallons is equal to approximately 189 liters, not 200 liters as shown.

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

7:27-16.1 Definitions

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

. . .

"Conservation vent" means any valve designed and [use] **used** to reduce evaporation losses of any VOC by limiting the amount of air admitted to, or vapors released from, the vapor space of a closed storage vessel.

. . .

"Cutback asphalt" means any paving asphalt which has been [liquified] **liquefied** by blending with petroleum solvents, or produced directly from the distillation of petroleum having vaporization properties similar to the blended and liquefied asphalt.

...

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

...

"Fabric printing operation" means the [decoration] **decorative** enhancement of knit or woven cloth including webs, sheets and towels, by applying a pattern or colored design with inks, dyes, or print pastes by techniques including, but not limited to, roller, flat screen, rotary system, and silk screen printing.

...

"Graphic arts" means retrogravure and flexographic printing used to produce published material and packaging for commercial or industrial purposes, rotogravure and flexographic printing on vinyl or [urethan] **urethane** coated fabric or sheets, and fabric printing operations.

...

"Storage [tanks] **tank**" means any tank, reservoir, or vessel which is a container for liquids or gases, wherein:

1. through 2. (No change.)

...

"Vapor balance system" means a system for controlling vapor losses during the transfer of a [VOS] **VOC** liquid from one vessel to another vessel or tank by means of the simultaneous countertransfer of displaced vapors from the receiving vessel to the vessel supplying the liquid.

...

7:27-16.3 Transfer operations

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

(i) No person shall cause, suffer, allow, or permit any delivery vessel having a maximum total capacity of 2,000 gallons (7,570 liters) or greater to contain gasoline unless such delivery vessel:

1.-2. (No change.)

3. Has a record of certification which shall be kept with the delivery vessel at all times and made available upon request by the Department. The record of certification shall include the test title, delivery vessel owner and address, delivery vessel identification number, testing location, date of test, [testers'] **tester's** name and signature, and test results. The provision of this paragraph shall become effective December 31, 1986.

(j)-(w) (No change.)

7:27-16.4 Open top tanks and surface cleaners

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

(f) No person shall cause, suffer, allow, or permit the use of any VOC in an unheated conveyorized surface cleaner unless such cleaner:

1.-5. (No change.)

6. Is equipped with a vapor control system which reduces the total emission of [VOS] **VOC** from the cleaner by at least 85 percent by volume. Cleaners installed before December 17, 1979, are not subject to this requirement.

(g) No person shall cause, suffer, allow, or permit the use of any VOC in a conveyorized heated surface cleaner which is operated at a temperature lower than the boiling point of such VOC, unless such cleaner:

1.-5. (No change.)

6. Is protected from drafts when in active use by the installation of [a] silhouette cutouts or hanging flaps to minimize the effective openings around the conveyor inlet and conveyor outlet ports; and

7. (No change.)

(n)-(o) (No change.)

7:27-16.5 Surface coating and graphic arts operations

(a) No person shall cause, suffer, allow, or permit the use of any surface coating operation unless:

1. (No change.)

2. If more than one surface coating formulation subject to the same maximum allowable VOC content limit as set forth in the applicable table is applied by a single surface coating operation, the daily weighted mean of the VOC content of the coatings as applied does not exceed the maximum allowable VOC content as set forth in Table 3A, 3B, 3C, 3D or 3E, as calculated using the following equation:

$$\text{Daily mean VOC content} = \frac{\sum_{i=1}^{n} (c_1)(v_1)}{\sum_{i=1}^{n} [(c_1)(v_1)]}$$

where n = number of coatings, subject to the same maximum allowable VOC content standard, applied in one day;

i = subscript denoting an individual surface coating formulation;

c_1 = maximum actual VOC content per volume of coating of each coating (minus water) applied in one day, in pounds per gallon or kilograms per liter; and

v_1 = volume of each coating (minus water) applied in one day, in gallons or liters; or

3. If the surface coating operation is served by VOC control apparatus:

i.-ii. (No change.)

iii. For a surface coating operation that applies more than one surface coating formulation subject to the same maximum allowable VOC content limit as set forth in the applicable table, the control apparatus collects and prevents VOC from being discharged into the outdoor atmosphere so that the actual daily emissions are less than the allowable daily emissions as calculated below:

$$\text{Actual daily emissions} = (1-[NcNd]\eta_c\eta_d)(VOC_a)(V)$$

where

VOC_a = daily mean VOC content of the surface coating formulations as calculated by 2 above;

V = total daily volume of the surface coating formulations, as applied;

$[Nc]\eta_c$ = capture efficiency, i.e. the ratio of the VOC collected by the control apparatus to the VOC in the surface coating formulations as applied, as determined by a method approved by the Department and EPA; and

$[Nd]\eta_d$ = destruction efficiency of the control apparatus, i.e. the ratio of the VOC prevented from being discharged into the outdoor atmosphere to the VOC collected by the control apparatus, as determined by a method approved by the Department and EPA; and

$$\text{Allowable daily emissions} = (1-VOC_a/d)\ (V)\ (x)/(1-x/d)$$

where: x = maximum allowable VOC content per volume of coating (minus water), in pounds per gallon (lb/gal) or kilograms per liter (kg/l) as set forth in Table 3A, 3B, 3C, 3D, or 3E of this section;

d = density of the VOC of the applied surface coating formulations in pounds per gallon (lb/gal) or kilograms per liter (kg/l);

V = total daily volume, in gallons or liters, of the surface coating formulations (minus water) as applied per day; and

VOC_a = daily mean VOC content of the surface coating formulations as calculated by 2 above; or

4. Until March 28, 1994, the surface coating operation is included in a mathematical combination of sources which was approved by the Department prior to March 28, 1992[, pursuant to N.J.A.C. 7:27-16.6(c)4-6].

(b)-(j) (No change.)
(k) The provisions of this section shall not apply to:
1. (No change.)
2. The refinishing of automobiles, if coating use is less than 50 gallons ([200]**189** liters) per week;
3. through 4. (No change.)
(l)-(n) (No change.)

(a)

PINELANDS COMMISSION

Notice of Administrative Correction
Pinelands Comprehensive Management Plan
Effect of Grant Waiver; Expiration; Recordation; Effective Date

Adopted Amendment: N.J.A.C. 7:50-4.70

Take notice that the Pinelands Commission has discovered an error in the section heading of N.J.A.C. 7:50-4.70, as amended effective March 2, 1992 and published in the March 2, 1992 New Jersey Register at 24 N.J.R. 832(a), 839. The word "recodification" in the section heading is a printing error; as set forth in the notice of adoption (R.1992 d.91), the word should be "recordation." 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]):

7:50-4.70 Effect of grant waiver; expiration; [recodification] **recordation;** effective date
(a)-(e) (No change.)

HEALTH

(b)

DIVISION OF AIDS PREVENTION AND CONTROL

State Sanitary Code
Acquired Immunodeficiency Syndrome; Reporting of Acquired Immunodeficiency Syndrome and Infection with Human Immunodeficiency Virus

Adopted Amendments: N.J.A.C. 8:57-2.1, 2.2 and 2.3

Proposed: December 16, 1991 at 23 N.J.R. 3735(a) (see also 24 N.J.R. 59(a)).
Adopted: April 13, 1992 by Public Health Council, Louise Chut, Ph.D., M.P.H., Chairperson.
Filed: April 24, 1992 as R.1992 d.215, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:1A-7 and 26:2-104.

Effective Date: May 18, 1992.
Expiration Date: April 20, 1995.

Summary of Public Comments and Agency Responses:

The proposed amendments to N.J.A.C. 8:57-2.1, 2.2 and 2.3 appeared in the New Jersey Register on December 16, 1991, at 23 N.J.R. 3735(a). In addition, notice of the proposal was mailed to all of the grantees of the Division of AIDS Prevention and Control, New Jersey Department of Health, and to directors of all clinical laboratories in New Jersey, with a request that the recipients of the notice share it with any interested parties. A notice of the Public Hearing was published in three major newspapers in the State of New Jersey and the Department issued a press release announcing the Public Hearing. The Public Hearing was held on January 13, 1992 at the Auditorium, Health-Agriculture Building, John Fitch Plaza, Trenton, New Jersey.

Drs. Louise Chut and Milton Prystowsky served as hearing officers, representing the Public Health Council. The hearing officers recommended that all comments be evaluated by the Department's Division of AIDS Prevention and Control and that each comment receive due consideration. The responses to the comments received during the Public Hearing have been incorporated in the Summary of Comments and Agency Responses which follows. The record of the Public Hearing and copies of the written comments may be reviewed by the public at the office of the Administrative Practice Officer, New Jersey Department of Health, Health-Agriculture Building, Trenton, New Jersey.

The oral commenters were: Neil Weisfeld, Medical Society of New Jersey; Marion D. Banzhaf, New Jersey Women and AIDS Network; Denise McFadden, Roche Biomedical Laboratories; and Susan Silver, representing the Public Advocate.

Written comments were received from the Medical Society of New Jersey, represented by Joseph A. Riggs; Bio-Reference Laboratories, represented by Thomas Scott Croxson; New Jersey Women and AIDS Network, represented by Marion D. Banzhaf; National Association of Social Workers, Inc., New Jersey Chapter, represented by Lynn E. Pistolas and Barry Moore; Roche Biomedical Laboratories, represented by Anne M. Johnston; American Civil Liberties Union, AIDS Project, and the Civil Liberties Union of New Jersey, represented by Elizabeth B. Cooper and Deborah A. Ellis; Raritan Bay Medical Center, Treatment Assessment Program, represented by Sandra Nilsson; American Red Cross, Penn-Jersey Region, represented by Donna Venuto; Hemophilia Association of New Jersey, represented by Elena Bostick; University of Medicine and Dentistry, Robert Wood Johnson Medical School, New Jersey Regional Hemophilia Program, represented by Parvin Saidi; Department of the Public Advocate, Wilfredo Caraballo, Public Advocate, represented by Linda D. Headley.

1. COMMENT: Bio-Reference Laboratories felt that the change in the AIDS definition, to include patients with a CD4 count under 200, was long overdue. However, concern was expressed over the proposed reporting requirements. In particular, the CD4 count is considered to be a therapeutic monitoring tool, which is repeated many times on the same patient. This will result in very many previously reported cases which will have to be excluded by expensive investigations. Although diagnostic tests, such as antibody detection, are often done under code, therapeutic monitoring tests, such as CD4 counts, are difficult to do under code, particularly because of the need to bill patients or insurance carriers directly. Patients fear information leaks, and will be driven from their health care carriers and from diagnostic tests by the proposed reporting requirements. The new reporting requirements, which require reporting individual tests, particularly the CD4 count, will require additional software, which will increase the cost of testing. This increase was estimated at 10 percent of the cost of lymphocyte subset enumeration. The commenter also noted there is no advantage to counting of patients, and that the resources of the system should be used for therapy and improved access, not epidemiology.

RESPONSE: If the definition of AIDS changes to include a low CD4 count as an AIDS-defining event, then it will be required that all HIV-infected persons with a low CD4 count be reported as AIDS cases. Since HIV-infected persons with a low CD4 count will have to be reported to the Department by their health care provider, then the fact that reporting will also be done by laboratories should not divert people away from necessary care and laboratory procedures any more than would be the case with reporting by other health care providers, which is already required. The Department is also concerned about multiple reports of CD4 counts on the same person, in terms of the resources necessary to investigate reports on individuals who have previously been reported, in terms of increased possibility of breaches of confidentiality with multiple investigations, and in terms of increased cost to laboratories. The Department will work with laboratories to identify instances of reports of low CD4 counts when the laboratory is aware that a low CD4 count has been reported on a different specimen from the same individual, thus diminishing the number of investigations that have to be done. In its discussions with laboratories, the Department has ascertained that many laboratories will have adequate software so that multiple test results on the same individual can be identified. The Department is aware that reporting of laboratory results will somewhat increase the cost of laboratory testing, but feels that, once appropriate software is developed, the generation of reports will largely be done by computer and that the increase in cost noted by the commenter is exaggerated. The Department strongly disagrees with the commenter that there is no need to develop data on the extent and characteristics of the AIDS epidemic, and that funds should not be used for epidemiology, but should go to therapy and access to treatment. The Department is very aware of the need for AIDS preventive services and care and treatment of HIV-infected persons, but such prevention and treatment can only be appropriately directed if the epidemiology of the disease is known.

2. COMMENT: Roche Biomedical Laboratories noted that they did a count of the number of patients who had CD4 counts over a two month period, and found that over 1400, or 33 percent of the tests performed, had a CD4 count of less than 200. About 45 percent of the patients tested were being monitored on a weekly basis during treatment with anti-viral drugs. Roche does not have a current mechanism for tracking patients who are being tested repeatedly. They would also be reporting patients who are not HIV-infected who have a CD4 count done, since the laboratory does not have access to clinical data on the patients. Roche feels that it is more appropriate for the physician who ordered the CD4 count to report the case to the Department than for the laboratory to report.

RESPONSE: The Department is aware of the problem of duplicate reporting of low CD4 counts on the same individual, and has addressed this issue in the response to Comment 1 above. The Department agrees that the primary reporting responsibility rests with physicians and institutions, but the Department feels that laboratory reporting will significantly help to assure completeness of reporting, and therefore be an important surveillance tool and a method of increasing the ability of the Department to see that services are offered to HIV-infected people.

3. COMMENT: The Public Advocate noted that there were two aspects to the proposed amendments, namely, expanding the definition of AIDS, and reporting by laboratories. The commenter noted that the CDC proposal to change the definition of AIDS to include people who have a CD4 count below 200 has met with much resistance. Changing the definition will have broad policy implications, and the commenter felt that any change in the definition should await a change by CDC. The commenter noted that the AIDS diagnosis should say that there should be reliable laboratory evidence of HIV antibodies along with a specified CD4 count. The commenter thought the phrase "laboratory results indicative of HIV infection" was too vague, and that certain conditions, such as Kaposi's sarcoma or pneumocystic carinii pneumonia, could be considered laboratory results indicative of HIV infection. The Public Advocate would endorse the proposed expansion of the definition of AIDS only if it resulted in increased services and benefits to people with HIV infection. However, the commenter does not think such services or benefits would be forthcoming at the present time, and therefore opposes changing the definition of AIDS. The commenter believes that laboratory reporting will have an adverse effect on epidemiological research, drive up health care costs, and endanger individuals. Since there is reporting of HIV infection and AIDS by physicians and institutions, the commenter felt that laboratory reporting was duplicative. The commenter felt that there would be reporting of people who have conditions other than HIV infection which lead to immunosuppression, and might potentially misidentify such people as having HIV infection or AIDS. The commenter also felt that there might be a great deal of duplicative reporting, as many individuals have many CD4 counts performed on them. Such duplication would be costly to laboratories and burdensome to the Department. The commenter also noted that laboratories would have to report any identifying information on the person from whom the laboratory specimen was obtained. The commenter felt that such information could include employment and insurance information, and that requiring all identifying information to be reported might circumvent the purpose of allowing anonymous testing. The commenter felt that physicians may choose not to treat patients whose laboratory results might be reported to the Department, as physicians might not be willing to deal with increased regulatory oversight. The commenter felt that the proposed amendments would increase the cost of health care, as laboratories will have to employ additional staff to meet the reporting requirements, and that laboratories will have to obtain insurance against erroneous reporting which might cause individuals to take legal action against them. The commenter felt that the proposed amendments will increase the opportunities for breaches in confidentiality. Such breaches might occur in the Department's efforts to trace suspected cases through physicians' offices. The commenter also felt that reporting with expanded identifiers might be used to restrain the liberty or invade the privacy of people with HIV. The commenter noted that the proposed rules do not require informed consent, thus supposedly eviscerating the protection of the anonymous testing program. The commenter also felt that the rules should include strict penalties for breaches of confidentiality. Finally, the commenter noted that at a time of State budgetary stringency, money should be spent on providing services, rather than on new and costly programs with little public benefit.

RESPONSE: Many commenters included comments to the effect that the changes in the definition proposed by CDC will have broad implications, and that CDC has extended its comment period for the change in definition. The Department agrees with the commenters that the change in the definition of AIDS will have significant implications, both for the individuals affected by the change, and in surveillance of AIDS. When these amendments were originally proposed, the best indication available to the Department was that the change in the AIDS definition to make a low CD4 count an AIDS-defining event would be forthcoming from CDC before April 1992, and that the changes in the definition proposed in the amendments would only precede the CDC changes by a few months at most. The Department agrees with the commenters that there is now some uncertainty when and if CDC will change the definition of AIDS. The amendments have been changed to drop the section changing the definition of AIDS. The original wording of the rules which adopts the CDC definition of AIDS by reference, will remain in effect. The definition of AIDS will not change until such time as CDC changes that definition throughout the United States. As a result, reporting of a low CD4 count by laboratories will not be required until such time as the CDC definition of AIDS includes a low CD4 count.

The Department disagrees that the term "laboratory results indicative of HIV infection" is too vague. The term was not introduced by these amendments, but was already in the rules. The terms refers to the fact that several types of laboratory results would indicate HIV infection, and that there might be additional indicative laboratory results in the future, with scientific advances. The Department has already sent a communication to physicians and other health care providers stating that laboratory evidence of HIV infection would consist either of a positive viral culture of HIV, indication of the presence p24 HIV antigen, evidence of HIV genetic material by polymerase chain reaction, or a specific group of tests demonstrating anti-HIV antibodies. The Department agrees that the primary reporting of any disease or condition should be by physicians or other health care providers. However, extensive public health experience has shown that such reporting is often incomplete, and that reporting of laboratory results, where feasible, is a valuable public health tool to ensure completeness of reporting. The Department has been aware that some people with immunosuppression not caused by HIV infection will initially be reported to the Department because of reporting by laboratories of low CD4 counts, but the Department believes that relatively few such people will be reported and the Department will institute a data system that will not carry such people as HIV-infected individuals. The issue of duplicate reporting on the same individual is addressed in the response to Comment 1 above. In response to the commenter's concern that requiring laboratories to report any identifying information on individuals from whom a specimen was obtained might result in employment and insurance information being reported, the word "any" has been removed from both sections on reporting by laboratories. The Department feels that, since physicians are already required to report conditions where laboratory reporting will be required, that fact that there will be laboratory reporting will not deter physicians from treating patients. Physicians would be subject to regulatory oversight in this situation if they failed to report a condition for which reporting is required. The issue of the cost to laboratories is addressed in the response to Comment 1 above. Since reporting by laboratories will be essentially done by computer, additional staff will not be required. Laboratories are always subject to liability if they incorrectly report results, but the Department feels that the comment that costs will be increased because laboratories will have to get more liability insurance because of the necessity of reporting results to the Department is rather far-fetched. The Department is also concerned about the possibility of breaches of confidentiality because laboratory reporting will involve inquiries about some of the individuals reported. The Department will carefully monitor the methods by which it investigates case reports and take the necessary steps to minimize the possibility of breaches of confidentiality. The comment on the use of reported information to restrain the liberty or invade the confidentiality of people with HIV is not germane to these amendments, as the amendments do not increase the number of people who should be reported, but only affect the method of reporting. The Department does not understand the comment that the amendments would eviscerate the protection of the anonymous testing program, as the amendments do not in any way affect anonymous testing for HIV, the only area in which there is an anonymous testing program. The issue of penalties for breaches of confidentiality are addressed in N.J.S.A. 26:5C-5 et seq. and are not necessary in these rules. The issue on the use of limited budgetary resources is addressed at the end of the response to Comment 1 above.

4. COMMENT: The National Association of Social Workers, Inc.—New Jersey Chapter felt that the proposed amendments would only exacerbate existing rules, which the commenter thought were flawed. The commenter sent a copy of the comments that they sent on August 13, 1991 in response to amendments being proposed to these rules at that time.

The commenter felt that it was essential that people have maximum opportunity for anonymous testing, and that two classes of HIV-infected persons were emerging, namely, those knowledgeable enough to have anonymous testing and those not. The commenter noted that the Department recognized the need for confidentiality, but proposed no method to protect individuals who might adversely be affected by confidentiality breaches. The commenter was also concerned with the amount of funding going to surveillance, when so much funding is needed for care, treatment, and services to meet survival needs.

RESPONSE: Most of the concerns of the commenter relate to rules that have already been adopted, and not to these amendments. Along with the commenter, the Department recognizes the need to prevent discrimination against HIV-infected individuals, whether due to breaches in confidentiality or through other means. However, the Department feels that such protections are beyond the scope of these amendments. The comment about the funding of surveillance is addressed in the response to Comment 1 above.

5. COMMENT: The Civil Liberties Union of New Jersey and the AIDS Project of the American Civil Liberties Union noted that they have been leading advocates on behalf of people with HIV disease, have litigated precedent-setting lawsuits, and have been leading advocates for the privacy right of people with HIV infection. The commenter noted that the Department presented no compelling reason for adoption of the proposed amendments, and felt that harm could result from them. The commenter noted that the Department would have to show a compelling interest for adopting this method of surveillance, which the commenter seemed to define as "list keeping." The commenter noted that the reasons given for the proposed amendments are to obtain funding from CDC and to adopt a less labor-intensive method of surveillance, neither of which the commenter considered compelling reasons. The commenter noted that when individuals fear that their confidentiality may be compromised, they are less likely to seek HIV-antibody testing. It was noted that individuals who have a primary care physician will not be able to obtain anonymous HIV testing through their physician, which may lead patients not to discuss HIV-related health care concerns with their physicians, thereby harming the patients' health status. The commenter noted that breaches of confidentiality do occur and can lead to discrimination against people with HIV infection. The commenter also noted that it is not unreasonable for persons to fear how the State may use such lists, citing that the Illinois legislature adopted a provision calling for identification of all persons in the AIDS register who were health care workers, so that the patients of such persons could be contacted. The commenter noted that abuse of a list has more potential to cause harm to asymptomatic or mildly symptomatic HIV-infected persons than to persons with full-blown AIDS. The commenter noted that the change in the CDC definition is only proposed, and that it is premature for the Department to make changes in the definition prior to adoption of a change by CDC. The commenter noted that there are changes that the Department must institute if the proposed amendments are adopted, such as maintaining anonymous test sites, making "copious" efforts to maintain confidentiality, and informing patients of the availability of anonymous test sites. The commenter noted that the Department has an obligation to create anonymous test sites for CD4 counts. The commenter felt that it was unclear whether or not the Department intended to create such sites, but since the Department intended to use a diagnostic test for surveillance purposes, such sites should be created. Failure to establish such sites will result in fewer patients getting a CD4 count. The commenter noted that patients must be informed that CD4 tests would be reported to the Department (unless done at an anonymous site as suggested above). The commenter felt that the Department might become more proficient at counting heads than providing health care. The commenter submitted copies of various articles to support the above positions.

RESPONSE: The Department feels that it stated the reasons for adopting the amendments in the proposal, and that these reasons are appropriate. The reason for adoption of the amendments is to ensure completeness of reporting so that both the provision of services to HIV-infected persons and the surveillance of HIV/AIDS in New Jersey can be enhanced. The Department considers this a sufficiently compelling reason for adoption of the amendments. The issue of funding from CDC related to the early change in the definition of AIDS. Since, as noted in the response to Comment 3 above, this has been removed from the amendments, the issue of CDC funding is moot. Most of comments concerning anonymous testing and confidentiality breaches relate to rules already in place and not to the amendments. The issue of improper use of information on reported individuals is not directly relevant to these amendments, as noted in the response to Comment 3 above, as the AIDS case definition is now to be identical to that of the CDC, and reporting by laboratories should not result in any more cases being carried as HIV infected or as AIDS than should be the case if there were complete reporting by physicians and other health care providers. The issue of the change in the definition of AIDS has been addressed in the response to Comment 3 above. The issue of anonymous test sites is not addressed in these amendments, and the Department intends to maintain such sites. Since AIDS has always been reportable with identifiers, and a low CD4 count in an HIV-infected person would be indicative of AIDS, then the Department does not recognize the obligation or desirability of anonymous CD4 test sites. The Department agrees that it is appropriate that health care providers ordering a CD4 count inform the patient that a low count will be reported to Department, but does not feel that a rule to that effect should be enacted at this time. The issue of resources for surveillance and for care has been addressed in the response to Comment 1.

6. COMMENT: The New Jersey Women and AIDS Network opposed the proposed amendments. The commenter stated that the proposed amendments infringe on the rights of privacy and undermine access to anonymity. The commenter felt that the Department has been eroding rights to privacy by requiring reporting of HIV infection with identifiers and by restricting anonymous test sites. The commenter felt that the proposed amendments would eliminate a person's right to privacy. The commenter noted that when anonymity is threatened, people do not seek HIV testing. The commenter felt that the Department was overstepping its bounds by encouraging confidential over anonymous HIV testing, and that essentially neutral explanations should be given to people concerning anonymous and confidential testing. The commenter felt that the bias for confidential testing is unethical. The commenter noted that if a person is tested anonymously and is found to be infected with HIV, and then goes for further medical care, at which time a CD4 test is done, the person will lose his or her right to privacy. Since there are no provisions for informed consent for a CD4 count, the person's test results and name and address will be reported to the Department without his or her knowledge. The commenter felt that better informed persons would seek a CD4 count in New York or Philadelphia or have their health care provider use an anonymous code. The commenter felt that the proposed amendments violate the relationship between a physician and patient, because physicians do not have time to inform patients about reporting CD4 results, and this will erode patients' trust in their health care provider. The commenter felt that the proposed amendments would result in breaches of confidentiality, as laboratory personnel would be processing confidential information without mandating which personnel would be responsible or providing penalties for violation of confidentiality. The commenter noted that the proposed amendments would increase that cost of CD4 tests, and that the cost of the test is prohibitive to many people now, especially women. The commenter noted that the Department will be questioning health care providers about the necessity of a case report when a laboratory report is received, and that this might breach confidentiality and be labor intensive, and therefore be costly. It was implied that much effort goes into completing a surveillance form, and that this effort will still be necessary under the proposed amendments. The money spent on this effort could better be allocated for the provision of better services. The commenter felt that the Department was premature in changing the AIDS definition before CDC institutes a definition change. The proposed changes in the CDC definition are still open to comment, and the commenter has reservations about the proposed changes, and would like the Department not to make changes in the definition before CDC makes such changes. The commenter said that many people considered that the proposed amendments were police tactics and a way to capture those people who test anonymously. The commenter noted that many people "in the field" felt that reporting identifiers was wrong, a violation of people's rights, and would keep people from being tested. The commenter urged the Public Health Council to reject the proposed amendments.

RESPONSE: As noted in several of responses above, many of the issues in the comments do not relate specifically to the amendments,

but to the rules concerning reporting which have already been adopted. As noted in the responses to Comments 3 and 5 above, laboratory reporting will not increase the number of people listed as HIV-infected or having AIDS if physicians and other health care providers reported all the individuals that they are required to report. The Department does not feel that appropriate care can be given with anonymous testing, and therefore feels that it is most appropriate that the Department encourage confidential rather than anonymous testing. The Department strongly disagrees with the commenter that encouraging confidential testing is unethical. The issue of informed consent for CD4 testing is addressed in the response to Comment 5 above. As noted above, issues of whether or not people will seek care elsewhere or will use fictitious identifiers are not specific to reporting by laboratories and are covered above. Disease reporting has been used for decades in public health and is considered legally and ethically to be a necessary breach in the complete confidentiality between physician and patient for the protection of the public health. Laboratory personnel will possess no more or less confidential information as a result of reporting by laboratories. The issue of the effect of reporting on the cost of testing is addressed in the response to Comment 1 above. The issue of maintaining confidentiality in the Department investigation of reported cases is addressed in the response to Comment 3 above, the issue of money spent on surveillance versus services is addressed in the response to Comment 1 above, and the issue of the change in the AIDS definition is addressed in the response to Comment 3 above. The Department does not consider that the amendments are police tactics, but that they are appropriate public health measures.

7. COMMENT: The Medical Society of New Jersey supported the proposed amendments. The commenter felt that the proposed amendments might generate some concern about confidentiality, but that prevention has a higher priority than confidentiality, and that HIV cases must be properly identified so that infected persons can be counseled in safe behaviors and so that contact tracing, partner notification, education, research, and epidemiologically-based health planning can occur.

RESPONSE: The Department appreciates the support of the commenter.

8. COMMENT: The American Red Cross, Penn Jersey Region, sent questions and suggestions about implementation of the proposed amendments rather than comments on the proposal. The commenter noted that the Department has not provided forms for individual case reports. Since the commenter is a blood bank, it questioned whether or not it should report residents of other states who might attempt to donate blood in New Jersey and were found to be infected with HIV. The commenter also questioned whether supplying the number of the specimen would fulfill the reporting requirements. The commenter felt that specific guidelines should be developed related to method of notification, to whom notification should be sent and methods to maintain donor confidentiality. The commenter also felt that notification and counseling methods should be described.

RESPONSE: As noted above, these comments relate to implementation of the amendments. The Department has provided individual case reporting forms for currently required reporting, and would provide appropriate forms if these amendments are adopted. The amendments call for reporting of appropriate laboratory results from specimens from physicians and institutions in New Jersey, irrespective of the residence of the individual from whom the specimen was obtained. The amendments would require reporting of the best identifying information that is available to the laboratory. The Department developed specific guidelines in the past for HIV/AIDS reporting, and would develop and distribute additional guidelines if these amendments were adopted.

9. COMMENT: Raritan Bay Medical Center, Treatment Assessment Program, felt that the proposed amendments invade the privacy right of individuals living with HIV/AIDS. The commenter noted that many factors contribute to fluctuations in the CD4 level, and listed many of these factors. The commenter stated that because of these fluctuations, disease progression cannot be determined on the basis of CD4 count, and that the scientific basis for reporting on the basis of CD4 count seems flawed. The commenter felt that the proposed amendments might create an invasion of privacy for those who have an HIV test done anonymously, as there is no mechanism for CD4 testing to be done anonymously. The commenter felt that it was unfair to "tease" people with the necessity of periodic monitoring and then threaten them with a reporting requirement. The commenter stated that people were leaving New Jersey and going to New York for care, which the commenter felt was a poor reflection on the Department. The commenter felt that a message was being delivered that individual rights are not as important as the Department's need to know. The commenter noted that the cost of a CD4 count is between $110.00 and $350.00 a test, and that a slight increase in cost for the test, as was mentioned as a possibility in the impact statement, might deter people from getting a CD4 count. The commenter noted that the Department is "infamous" in stating that it is aware of the need to maintain strict confidentiality. The commenter stated that this was the "rhetoric" of the staff of the Department. The commenter stated that the "legal and personal accountability laws" are weak and difficult to implement. The commenter noted that the adverse consequences of breaches of confidentiality are more personal and touching when one deals with real people. The commenter noted that the proposed amendments would involve more individuals handling sensitive information, and questioned what were the penalties for those who breach confidentiality. The commenter felt that the proposed amendments will negatively affect those providing and receiving care, and are focused not on clients, but on statistical data collection and on new surveillance techniques. The commenter felt the proposed amendments involve prying in individuals' private business, breaching the physician-patient relationship, and creating a paper trail on individuals with AIDS. The commenter noted that resources should be going to supporting individuals with HIV/AIDS rather than creating an atmosphere of fear.

RESPONSE: The commenter appears to be opposing disease reporting in general, and specifically reporting of HIV infection and AIDS with identifiers. Many of the comments are related to the concept of reporting, which is already covered by regulation, and the comments are not specific to the amendments. As noted in the response to Comment 3 above, the Department will not independently consider a low CD4 count as an AIDS-defining event. A low CD4 will be used as a criterion for defining AIDS only if and when it is so adopted by the Centers for Disease Control. Therefore, the commenter's concerns related to using a low CD4 to define AIDS are better directed to CDC than to these amendments. The issue of anonymous CD4 testing is addressed in the response to Comment 5 above. The Department does not feel that disease reporting is teasing people, and is not aware of documentation that people are leaving New Jersey for care. The Department feels that disease reporting is a necessary and appropriate public health measure. The issue of the effect of the requirements on the cost of CD4 testing has been addressed in the response to Comment 1 above. The Department takes its responsibilities regarding confidentiality very seriously and feels it has an excellent record in maintaining confidentiality. The Department feels that the language of the commenter in this regard is inappropriate and unwarranted. The Department feels that the laws regarding confidentiality of HIV/AIDS information, N.J.S.A. 26:5C-5 et seq., are not weak, and contain penalties for breaches of confidentiality. The Department realizes that breaches of confidentiality are more touching when one personally deals with the people on whom confidentiality has been breached, but confidentiality breaches have not been the result of reporting to the Department. The issue of an increased number of persons handling confidential information has been addressed in the response to Comment 3 above. The Department disagrees with the commenter that reporting HIV infection or conditions related to HIV infection improperly involves prying into private affairs, is an improper breach of the physician-patient relationship or creates an atmosphere of fear. Reporting of disease is a long-established public health procedure and has not interfered with the care of patients.

10. COMMENT: The Hemophilia Association of New Jersey opposed the proposed amendments, as it felt that the decision to include a CD4 count in the AIDS definition, which is still being evaluated by CDC, was hasty and ill-conceived. The commenter noted that the social and economic impact of the proposed amendments are inadequately addressed, particularly concerns of confidentiality. The commenter questioned what modalities of health care would be available as a result of the proposed amendments, and what mechanisms were in place to deal with the tremendous psychosocial ramifications of the proposed amendments. The commenter estimated that the hemophilia community will experience a tripling of the number of AIDS cases by the proposed new definition of AIDS, and questioned what provision have been made to address the emotional and physical disability caused by expanding the definition of AIDS. The commenter stated that many persons with HIV infection have a CD4 count under 200 for years with no HIV-associated medical problems. The commenter noted that the Department made no mention of dealing with fluctuating CD4 counts, nor did the Department mention methods for increased protection of confidentiality. The commenter felt that the desire of the Department to participate in a CDC

cooperative agreement did not justify the havoc that will be created by this "experiment," nor does that desire consider the privacy rights of still productive HIV-infected citizens.

RESPONSE: The issue of the use of a CD4 count as an AIDS-defining event has been addressed in the responses to Comments 3 and 9 above. The Department is working to increase that availability of care to persons with HIV infection, but realizes that there will still be some deficiencies in the care-delivery system. The issues of the psychosocial ramifications and of possible physical and emotional harm of using a low CD4 count as an AIDS-defining event now relate to changes being made in the AIDS definition by CDC, and has been addressed above. The issue of changing the AIDS definition in order to participate in a cooperative agreement from CDC is addressed in the response to Comment 5 above.

11. COMMENT: The New Jersey Regional Hemophilia Program described the delays in its receipt of notification of the proposed amendments, and stated that there should be adequate time for consideration and deliberation of such important items. The commenter felt that these proposed amendments came too soon after the adoption of new HIV reporting amendments, and there should be time before the consideration of a new AIDS case definition and a new mechanism of reporting. The commenter urged further discussion of the proposed amendments with interested individuals before possible adoption.

RESPONSE: The Department believes that notification of the proposed amendments was given in adequate time for comments, and that some of the delay described by the commenter relates to the mail system in her organization. The Department realizes that these amendments come shortly after the adoption of other amendments to these rules, but feels that changes in HIV/AIDS surveillance that are occurring nationally and in New Jersey make the proposed amendments appropriate at this time. There has been ample time for public comment and discussion and the Department believes it is appropriate to adopt the changes to N.J.A.C. 8:57-2.1, 2.2 and 2.3 at this time.

Summary of Agency-Initiated Changes:

1. The change in the definition of AIDS to include a low CD4 count has been eliminated. The definition of AIDS will continue to be determined by criteria specified by the Centers for Disease Control, which may, in the future, include a low CD4 count. Technical changes in the remainder of the amendments as a result of this change have been made.

2. The word "any," preceding identifying information that laboratories have to report on a person from whom a specimen with a reportable laboratory result has been obtained, has been eliminated in both sections on laboratory reporting, in response to commenters' concerns.

3. N.J.A.C. 8:57-2.3(c) contained a typographical error, which has been corrected to read "CD4 count." Additionally, the Department has clarified the text by the addition of "absolute or relative", to require explicitly that all results shall be reported.

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

8:57-2.1 Applicability; definition of AIDS *[and]**,* HIV infection ***, and CD4 count***

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

(c) Acquired immunodeficiency syndrome (AIDS) means a condition affecting a person who has a reliably diagnosed disease that meets the criteria for AIDS specified by the Centers for Disease Control of the United States Public Health Services*[, or a condition in a person with laboratory results indicative of infection with HIV who has an absolute CD4 count and/or relative CD4 count below a level designated by the State Commissioner of Health based on currently available medical data]*.

[1.] ***(d)*** A CD4 count means a count of lymphocytes containing the CD4 epitope as determined by the results of lymphocyte phenotyping. An absolute CD4 count means the number of lymphocytes containing the CD4 epitope per cubic millimeter. A relative CD4 count means the number of such cells expressed as a percentage of total lymphocytes.

8:57-2.2 Reporting HIV infection

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

(c) Every clinical laboratory shall, within five working days of completion of a laboratory test which has results indicative of infection with HIV, report in writing such results to the State Department of Health. The report shall include the name and address of the clinical laboratory, the name and address of the submitter of the laboratory specimen, any identifying information the laboratory may have on the person from whom the laboratory specimen was obtained, including the unique code if a code is the only information identifying the person from whom the laboratory specimen was obtained, and other epidemiological information as may be required by the State Department of Health on a general or a case-by-case basis. Only specimens sent to the laboratory from physicians' offices in New Jersey or from institutions in New Jersey should be reported.

8:57-2.3 Reporting AIDS

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

(c) Every clinical laboratory shall, within five working days of completion of a CD***4*** count which has ***absolute or relative*** results below a level specified by the *[State Commissioner of Health]* ***Centers for Disease Control as criteria for defining AIDS***, report in writing such results to the State Department of Health. The report shall include the name and address of the clinical laboratory, the name and address of the submitter of the laboratory specimen, *[any]* identifying information the laboratory may have on the person from whom the laboratory specimen was obtained, including the unique code if a code is the only information identifying the person from whom the laboratory specimen was obtained, and other epidemiological information as may be required by the State Department of Health on a general or a case-by-case basis. Only specimens sent to the laboratory from physicians' offices in New Jersey or from institutions in New Jersey should be reported.

(a)

HEALTH FACILITIES AND LICENSING

Office of Drug Control

Notice of Amendment: N.J.A.C. 8:65-10.8

Controlled Dangerous Substances; Exempt Chemical Preparations

Authority: N.J.S.A. 24:21-3.

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

Take notice that, effective February 18, 1992, a list of exempt chemical preparations and mixtures containing controlled dangerous substances has replaced all previous lists of such preparations and mixtures in Schedule VIII of the Controlled Dangerous Substances Act.

This action has been taken in accordance with N.J.S.A. 24:21-3, which provides that a substance scheduled under Federal law shall be similarly scheduled by the Commissioner of the Department of Health.

A final order scheduling the list of exempt chemical preparations was published in the Federal Register on February 18, 1992 (see 57 F.R. 5818 and 21 C.F.R. 1308.24).

A list of the exempt chemical preparations and mixtures may be reviewed at:

Office of Drug Control
Department of Health
300 Whitehead Road
Trenton, New Jersey 08625
(8:30 AM to 4:30 PM)

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

8:65-10.8 Exempt chemical preparations

(a) A list of **exempt** preparations and mixtures [in 21 C.F.R. 1308.24(i) as amended through Volume 48, No. 199, of the Federal Register dated October 13, 1983] **as shown in 21 C.F.R. 1308.24, as amended by a final order published in the Federal Register on February 18, 1992 (see 57 F.R. 5818)** which in the form and quantity listed in the application (indicated as the "date of application") are designated exempt chemical preparations and are not subject to the provisions of the New Jersey Controlled Dangerous Substances Act.

(b) A complete listing of [these preparations and mixtures subject to the proposal may be reviewed at the Office of Drug Control,

Consumer Health Services, CN 362, Trenton, N.J. 08625 (609-984-1308)] **the exempt preparations and mixtures may be reviewed at:**

Office of Drug Control
Department of Health
300 Whitehead Road
CN 362
Trenton, N.J. 08625

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: March 2, 1992 at 24 N.J.R. 735(a).

Adopted: April 15, 1992, by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: April 27, 1992, as R.1992 d.220, **with portions of the proposal not adopted and portions not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: May 18, 1992.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

The Drug Utilization Review Council received the following comments pertaining to the products affected by this adoption.

COMMENT: In opposition to Mutual's atenolol/chlorthalidone tablets 50/25 and 100/25, ICI Pharmaceuticals Group stated that a court of law ruled that Tenormin's patent indication for the treatment of hypertension was invalid. However, this court ruling was not a final order and is being challenged. ICI added that no ANDA has been approved for any generic version of Tenoretic to treat hypertension. In addition, ICI noted that approval from the FDA has been required by the Council before addition into the Formulary.

RESPONSE: The DURC does not consider matters of patents in reviewing applications for the inclusion of drug products in the Formulary. The Attorney General's Office has advised that there is generally no legal impediment to the Council including potentially patent infringing drug products into the Formulary.

The Council deferred taking action on Mutual's atenolol/chlorthalidone tablets 50/25 and 100/25 pending FDA approval.

COMMENT: In opposition to the albuterol sulfate solution for inhalation 0.5%, 20ml by Copley Pharmaceutical Co., Schering Laboratories informed the Council that although the FDA has rated this product, "AN" no in vivo data has been presented. Schering added that the ANDA for Copley's product was granted by the FDA based solely on in vitro comparison of the contents of the bottle of the generic relative to the innovator. Schering recommended that the Council postpone consideration of Copley's product to allow practitioners to gain experience using the generic formulation.

RESPONSE: The Council agreed that Copley's albuterol sulfate solution 0.5% has received an "AN" rating from the FDA. The Council was cognizant that solutions intended for aerosolization that are marketed for use in any of several delivery systems are considered to be pharmaceutically and therapeutically equivalent are encoded "AN". Uncertainty regarding the therapeutic equivalence of aerosolized products arises primarily because of differences in the drug delivery system. Since Copley's product will be utilized in the same drug delivery system (nebulization) as Schering's Proventil solution for inhalation, there should be no difference in the treatment outcome using either product. In addition, both products are manufactured in accordance with Federal Current Good Manufacturing Practice regulations to ensure pharmaceutical equivalency.

However, action was not taken on Copley's albuterol sulfate solution 0.5% because a quorum was not constituted after one Council member recused himself due to a conflict of interest. Consideration of this product will be deferred until the next Drug Utilization Review Council meeting scheduled for June 9, 1992.

COMMENT: Regarding trazodone tablets, Mutual Pharmaceutical, its manufacturer, pointed out that its product, trazodone tabs 100mg, was misprinted as "Trazodone tabs 1000mg". Mutual pointed out that there is no "1000mg" strength of trazodone tablets.

RESPONSE: The Council agreed and will consider this product under the correct strength, trazodone 100 mg tablets. However, this product was deferred, pending FDA approval.

COMMENT: In support of Creighton Products Corporation's nortriptyline caps 10 mg, 25 mg, 50 mg, 75 mg and Danbury's HCTZ tabs 25 mg and 100 mg, Danbury Pharmacal, Inc. informed the Council that Sandoz is the parent company of Creighton as well as the innovator of the brand Pamelor. Danbury added that it will be the distributor of Creighton's nortriptyline and that Creighton will change its name to Ex-Lax.

Danbury reminded the Council of its precedents with Penn Labs' Dyazide substitute which was accepted in to the Formulary without bioequivalency data and Rugby's Genora substitute for Ortho-Novum manufactured by Syntex which also included without bioequivalency data with the notation printed in the Formulary "Distributed by Rugby as Genora brand".

Danbury requested the same consideration with the Creighton Ex-Lax nortriptyline capsules in that no bioequivalency data be required and that a notation be included that the product is distributed by Schein and Danbury.

Danbury noted that the Council has previously approved its HCTZ 50 mg tablet and that comparative dissolution data was submitted in support of its HCTZ 25 mg and 100 mg tablets.

RESPONSE: The Council verified that Creighton Products Corporation is a wholly owned subsidiary of Sandoz Pharmaceuticals Corporation, the innovator of the nortriptyline capsules brand Pamelor. It was confirmed that Creighton will manufacture its nortriptyline capsules under Sandoz' NDA at the same manufacturing site. Creighton affirmed that its nortriptyline product is the same as Pamelor. In addition, the Council verified that the label will identify Creighton Products Corporation as the manufacturer. (Creighton will not use the name Ex-Lax).

However, action was not taken on Creighton Products Corporation's nortriptyline caps 10 mg, 25 mg, 50 mg, 75 mg because a quorum was not constituted after one Council member recused himself due to a conflict of interest. Consideration of this product will be deferred until the next Drug Utilization Review Council meeting, scheduled for June 9, 1992.

The Council approved Danbury's HCTZ tabs 25 and 100 mg based on the comparative dissolution information and previous approval of Danbury's 50 mg tablets.

COMMENT: In opposition to Warner Chilcott's loperamide caps 2 mg, Johnson & Johnson (J&J), on behalf of Janssen Pharmaceutica, stated that, to the best of their knowledge, Warner Chilcott (W-C) has not received FDA approval for its loperamide caps.

J&J stated that the Council should consider "patient factors" as well as bioequivalency. J&J reminds the Council that physicians have indicated that they are uncomfortable switching a patient from brand name to generic once control has been attained.

J&J pointed out that W-C's loperamide biodata shows statistically significant difference in elimination half life when compared to the brand Imodium. J&J contended that there was a lack of specificity of metabolites in the assay, which invalidated the entire study.

RESPONSE: The Council deferred taking action on this product, pending FDA approval.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on March 23, 1992. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. Four persons attended the hearing. Five comments were received as summarized above. The hearing officer recommended that the decisions be made based upon the available biodata, and that, in regard to Warner Chilcott's loperamide 2 mg capsules further explanation of its bioequivalency data be supplied. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study.

A record of the public hearing may be reviewed or obtained by contacting:

Dorothy Barker, Administrative Practice Officer
Department of Health
CN 360
Trenton, N.J. 08625

The following products and their manufacturers were **adopted:**

Amiloride/HCTZ tabs 5/50	Geneva
Atenolol tabs 50 mg, 100 mg	Lederle
Atenolol tabs 50 mg, 100 mg	Bristol-Myers
Chloral hydrate syrup 500 mg/5 ml	Liquipharm
Cyclobenzaprine tabs 10 mg	Watson
Fluocinonide ointment 0.05%	Lemmon
HCTZ tabs 25 mg, 100 mg	Danbury
Naldecon pediatric drops substitute	Liquipharm
Phos Flur oral rinse substitute	Copley
Phos Flur oral rinse substitute	Liquipharm
Potassium Cl powder packets 20 mEq	KV Pharm
Potassium Cl powder packets 20 mEq	Tower
Quinine sulfate tabs 260 mg	Vitarine
Rynatan pediatric susp. substitute	Liquipharm
Rynatan tabs substitute	Vitarine
Salsalate tabs 500 mg, 750 mg	Vitarine
Sulindac tabs 150 mg, 200 mg	Lemmon
Trilisate tabs substitute 1000 mg	Vitarine
Trilisate tabs substitute 500 mg, 750 mg	Vitarine

The following products and their manufacturers were **not adopted:**

Asbron G elixir substitute	Liquipharm
Hyoscyamine sulfate drops 0.125 mg/ml	Liquipharm
Iodoquinol tabs 650 mg	Liquipharm
Morphine sulfate oral soln 2 mg/ml	Liquipharm
Podoben liquid substitute	Liquipharm
Triaminic infant drops substitute	Liquipharm
Trihexyphenidyl HCl elixir 2 mg/5 ml	Liquipharm

The following products were **not adopted but are still pending:**

Albuterol sulfate inhalation soln 0.5%	Copley
Albuterol sulfate tabs 2 mg, 4 mg	Liquipharm
Atenolol tabs 50 mg, 100 mg	Mutual
Atenolol/chlorthalidone tabs 50/25, 100/25	Mutual
Cefadroxil caps 500 mg	Zenith
Cefadroxil caps 1000 mg	Zenith
Clemastine fumarate syrup 0.76mg/5ml	Lemmon
Fluphenazine HCl oral soln 5mg/ml	Copley
Leucovorin tabs 25 mg	W-C
Loperamide caps 2 mg	W-C
Metaproterenol syrup 10 mg/5 ml	Copley
Methocarbamol tabs 500 mg, 750 mg	Mutual
Minocycline tabs 50 mg, 100 mg	W-C
Minoxidil tabs 2.5 mg, 10 mg	Mutual
Nortriptyline caps 10 mg, 25 mg	Creighton
Nortriptyline caps 50 mg, 75 mg	Creighton
Pindolol tabs 5 mg, 10 mg	Purepac
Piroxicam caps 10 mg, 20 mg	Mutual
Piroxicam caps 10 mg, 20 mg	W-C
Propoxyphene naps/APAP tabs 50/325, 100/650	Mutual
Stuartnatal 1+1 tabs substitute	Vitarine
Timolol maleate tabs 5 mg, 10 mg, 20 mg	W-C
Tolmetin tabs 600 mg	Purepac
Trazodone tabs 50 mg, 150 mg, 1000 mg	Mutual

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 871

Proposed: January 6, 1992 at 24 N.J.R. 61(a).

Adopted: April 15, 1992 by the Drug Utilization Review Council, Robert Kowlaski, Chairman.

Filed: April 27, 1992 as R.1992 d.221, **with portions of the proposal not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: May 18, 1992.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

No comments were received regarding the adopted products.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the list of interchangeable drug products was held on January 27, 1992. Mark A. Strollo, R.Ph., M.S., served as hearing officer. Five persons attended the hearing. Seven comments were offered as summarized in the New Jersey Registers at 24 N.J.R. 947(b). The hearing officer recommended that the decisions made be based upon available biodata. The Council adopted the products specified as "adopted" and referred the products indentified as "pending" for further study.

The following products and their manufacturer were **adopted**:

Nortryptylline HCl caps 10mg, 25mg, 50mg, 75mg	Danbury

The following drugs were **not adopted but are still pending:**

Amoxapine tabs 25mg, 50mg, 100mg, 150mg	Danbury
Atenolol tab 25mg	Geneva
Atenolol/chlorthalidone tabs 50/25, 100/25	Danbury
Bromocriptine mesylate tabs 2.5mg	Danbury
Chlorzoxazone tabs 250mg, 500mg	Ohm
Clorazepate tabs 3.75mg, 7.5mg, 15mg	Danbury
Desipramine HCl tabs 10mg, 25mg, 50mg	Danbury
Desipramine HCl tabs 75mg, 100mg, 150mg	Danbury
Fiorinal tabs substitute	Danbury
Fluphenazine HCl Oral Soln 5mg/ml	Copley
Fluphenazine HCl tabs 1mg, 2.5mg, 5mg, 10mg	Danbury
Gemfibrozil caps 300mg	Danbury
Guaifenesin tabs 600mg	DURA
Ibuprofen tabs 300mg	Danbury
Isosorbide Dinitrate tabs 20mg, 30mg, 40mg	Danbury
Loperamide HCl caps 2mg	Danbury
Loxapine succinate caps 5mg, 10mg, 25mg, 50m	Danbury
Methylprednisolone tabs 4mg, 16mg	Danbury
Metoclopramide HCl tabs 5mg	Danbury
Minocycline HCl caps 50mg, 100mg	Danbury
Nadolol tabs 40mg, 80mg, 120mg	Danbury
Nitrofurantoin caps 25mg, 50mg, 100mg	Danbury
Propoxyphene naps/APAP tabs 100/650	Danbury
Spironolactone tabs 25mg, 50mg, 100mg	Danbury
Spironolactone/HCTZ tabs 50/50	Danbury
Temezepam caps 15mg, 30mg	Danbury
Tolmetin sodium caps 400mg	Danbury
Tolmetin sodium tabs 200mg	Danbury
Trazodone HCl tabs 150mg	Danbury

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notice of adoption at 24 N.J.R. 947(b).

(b)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: May 20, 1991 at 23 N.J.R. 1509(a).

Adopted: April 15, 1992, by the Drug Utilization Review Council, Robert Kowalski, Chairman

Filed: April 27, 1992 as R.1992 d.222, **with portions of the proposal not adopted but still pending.**

Authority: N.J.S.A.24:6E-6(b).

Effective Date: May 18, 1992.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

No comments were received regarding the adopted products.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the list of interchangeable drug products was held on June 11, 1991. Thomas T. Culkin, Pharm. D., M.P.H., served as hearing officer. Four persons attended the hearing. Six comments were offered as summarized in previous New Jersey Registers (see 23 N.J.R. 3336(a) and 24 N.J.R. 145 (a)). The hearing officer recommended that the decisions made be based

upon available biodata. The Council adopted the products specified as "adopted" and referred the products indentified as "pending" for further study.

The following products and their manufacturer were **adopted:**

Cyclandelate caps 200, 400 mg	Amide

The following products and their manufacturer were **not adopted but are still pending:**

Amiloride/HCTZ tbs 5/50	Danbury
Betamethasone valerate lotion 0.1%	Clay-Park
Clorazepate tabs 3.75, 7.5, 15 mg	Danbury
Desoximetasone cream 0.05, 0.25%	Taro
Dipyridamole tabs 25, 50, 75 mg	Lederle
Duofilm substitute	C&M
Entex LA tabs substitute	Sidmak
Fenoprofen tabs 200 mg, caps 300, 600 mg	W-C
Iodinated glycerol soln 50 mg/5 ml	Cenci
Leucovorin tabs 25 mg	W-C
Loperamide caps 2 mg	W-C
Lorazepam tabs 0.5, 1, 2 mg	Mutual
Minocycline caps 100 mg	Danbury
Natalins RX tabs substitute	Amide
Propranolol/HCTZ tabs 40/25, 80/25	Danbury
Stuartnatal 1+1 tabs substitute	Amide
Sulindac tabs 150, 200 mg	W-C
Temazepam caps 15, 30 mg	Danbury
Timolol maleate tabs 5, 10, 20 mg	Danbury
Tolmetin tabs 200 mg, caps 400 mg	W-C

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 23 N.J.R. 3336(a) and 24 N.J.R. 145(a).

HIGHER EDUCATION

(a)

BOARD OF DIRECTORS OF THE EDUCATIONAL OPPORTUNITY FUND

Financial Eligibility for Undergraduate Grants

Adopted Amendment: N.J.A.C. 9:11-1.5

Proposed: June 3, 1991 at 23 N.J.R. 1739(a).
Adopted: April 27, 1992 by the Board of Directors of the Educational Opportunity Fund, Delbert Payne, Chairperson.
Filed: April 28, 1992 as R.1992 d.223, **without change.**

Authority: N.J.S.A. 18A:71-33.

Effective Date: May 18, 1992.
Expiration Date: April 17, 1994.

Summary of Public Comments and Agency Response:
No comments were received.

Full text of the adoption follows.

9:11-1.5 Financial eligibility for undergraduate grants

(a) A dependent student is financially eligible for an initial E.O.F. grant if the gross income of his or her parent(s) or guardian(s) does not exceed the applicable amount set forth below in the E.O.F. Income Eligibility Scale. Where the dependent student's parent(s) or guardian(s) are receiving welfare as the primary means of family support, the student is presumed to be eligible without regard to the amount of primary welfare support.

1. E.O.F. Dependent Student Eligibility Scale:

Applicants With a Household of:	Gross Income (Not to Exceed):
2 persons	$15,320
3 persons	17,650
4 persons	19,980
5 persons	22,310
6 persons	24,640
7 persons	26,970

2. For each additional member of the household, an allowance of $2,330 shall be added to this amount in order to determine eligibility for E.O.F. for the 1991-92 Academic Year. This allowance shall be adjusted annually to reflect changes in the Standard Maintenance Allowance as published by the College Scholarship Service. In addition, the gross income level for each household size also shall be adjusted to reflect the change in the annual Standard Maintenance Allowance.

3. (No change.)

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

(d) An independent student is financially eligible for an E.O.F. grant providing his or her gross annual income (including spouse) for the calendar year prior to the academic year for which aid is requested and the calendar year during which aid is received does not exceed the following schedule:

1. $9,450 family size (including student) 1;
2. $11,780 family size (including spouse) 2;
3. $14,110 family size (including spouse) 3;
4. $16,440 family size (including spouse) 4;
5. $2,330 for each additional dependent. This amount should be adjusted annually to reflect changes in the Independent Student Allowance as published by the College Scholarship Service.
6. (No change.)

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

INSURANCE

(b)

DIVISION OF ADMINISTRATION

Standards for Written Notice: Buyer's Guide and Coverage Selection Form

Adopted Amendments: N.J.A.C. 11:3-15.6, 15.7 and 15.9

Proposed: February 18, 1992 at 24 N.J.R. 523(a).
Adopted: April 27, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: April 27, 1992 as R.1992 d.218, **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, N.J.S.A. 17:1C-6e, N.J.S.A. 17:33B-34, N.J.S.A. 17:33B-44, N.J.S.A. 39:6A-4; N.J.S.A. 39:6A-10; and N.J.S.A. 39:6A-23.

Effective Date: May 18, 1992.
Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

The proposed amendments were published on February 18, 1992. During the comment period, which closed on March 19, 1992, eight comments were submitted from insurance companies (Allstate Insurance Company, Atlantic Mutual Companies, New Jersey Manufacturers Insurance Company, The Prudential Property and Casualty Insurance Company, Selective Insurance Company of America and State Farm Insurance Companies), an insurance trade association (Alliance of America Insurers) and the Market Transition Facility of New Jersey. These comments and the Department's responses are summarized below:

COMMENT: A number of commenters proposed changes to both the Buyer's Guide and the Coverage Selection Form to add language, for example, to explain more fully the types and amounts of coverages available.

RESPONSE: The Department notes that the language contained in the Buyer's Guide and the Coverage Selection Form represents, at a minimum, what must be contained in each form. As noted at N.J.A.C. 11:3-15.6(c), "[i]nsurance companies may add information to the Buyer's Guide [and Coverage Selection Form] provided that the additional information is consistent with the purpose of the written notice." Insurers may propose additional, and more descriptive language, subject to prior approval from the Department.

COMMENT: One commenter suggested that the summary to the Buyer's Guide did not clarify which coverages the proposal affects nor

did it sufficiently explain the impact of the proposal on medical expense, income continuation and essential service expense benefits.

RESPONSE: It is not clear what specific changes the commenter seeks. The Department notes, however, that the summary fulfills the purpose for which it was intended and that the impact of the specific coverages is adequate as it stands. Insurers are free to propose additional language pursuant to N.J.A.C. 11:3-15.6(c), subject to prior approval from the Department.

COMMENT: One commenter noted that it maintains separate companies for its standard and non-standard business and does not subject its standard policyholders to surcharges. It, therefore, suggested that the third paragraph of the Buyer's Guide would mislead policyholders of standard policies to believe that they were subject to a surcharge for an accident. The commenter, therefore, recommended that companies that do not impose surcharges be permitted to delete the last sentence of the third paragraph. That provision recommends that consumers contact the Department of Insurance if they believe that their insurance company improperly charged them for an at-fault accident.

RESPONSE: The Department notes the importance of consumers being made aware that their complaints, including those for improper charges, will be investigated. Insurers can include language to indicate, where applicable, that they do not employ non-standard rates in their individual company's rating system.

COMMENT: One commenter suggested that the provision in the Buyer's Guide which indicates that the Department will investigate improper charges for "at-fault" accidents is beyond the Department's authority to determine an insured's legal liability.

RESPONSE: The Department agrees that it does not have the authority to determine an insured's legal liability for an at-fault accident. It does, however, have the authority to determine whether an insurer charged an improper rate to an insured. The Department has, in the past, and will continue, in the future, to investigate all valid complaints against insurers.

COMMENT: One commenter suggested that the use of the phrase "COST SAVER" throughout the Buyer's Guide is misleading where it only refers to saving premium dollars and that the insured may ultimately incur greater costs associated with, for example, a higher deductible. It, therefore, recommended, as an alternative, the use of the phrase "PREMIUM COST SAVER."

RESPONSE: The Department agrees with the recommendation and adopts the revised language.

COMMENT: One commenter noted that under the section entitled **Cost Saver: PIP Medical Expense Only Coverage,** the subsection captioned **Additional Medical Expense Coverage** is too vague to be of benefit to the consumer. It suggested that the specifics of the coverage offered by the insurer should be discussed more fully, as it has done in its own Buyer's Guide. It recommended the following language:

State law mandates that medical expense benefits are now capped at a per person, per accident limit of $250,000. However, for an additional premium, a $1,000,000 per person, per accident medical expense benefits limit is available. If you choose the $1,000,000 limit, the amount in excess of $250,000 shall apply to injuries sustained by **only** you and members of your family who reside in your household.

RESPONSE: The Department notes that the suggested language describes more fully the coverage made available by this insurer-commenter. Similar language may be incorporated by other insurers, into their Buyer's Guide, pursuant to N.J.A.C. 11:3-15.6(c) to set forth the details of their own additional medical expense coverage. However, because the language currently contained in the Buyer's Guide is accurate, the Department does not mandate any supplementation thereto.

COMMENT: One commenter stated that the fourth paragraph under the section entitled **PIP Medical Expense Deductible** is inaccurate because unlimited PIP medical benefits expired in 1991. The commenter recommended that each insurance company tailor its language to reflect that medical bills above $5,000 will be paid in full up to the PIP medical expense limit selected by the insured.

RESPONSE: The Department agrees with the recommendation and adopts the change. Insurers which provide more coverage can supplement their Buyer's Guides to reflect same, with language consistent with that already contained in the Buyer's Guide. All such modifications are subject to prior approval from the Department.

COMMENT: One commenter claimed that the safety feature discount section is misleading to policyholders of companies that use make and model rating in pricing collision coverage because the safety system is already incorporated into the basic rate. It, therefore, recommended that companies utilizing the system be permitted to delete the Safety Feature Discount section.

RESPONSE: The Department believes that consumers should be made aware of the safety feature discount. Additional language has been added, however, to alert purchasers that some companies already incorporate the discount into the rate.

COMMENT: One commenter suggested that under the **Mandatory Insurance Inspection** section of the Buyer's Guide, the words "insurance agent" should be substituted in place of "insurance company," because many companies rely upon their agents for direct contact with insureds.

RESPONSE: Insurers may make this substitution, subject to their respective practices and submit the change for approval by the Department.

COMMENT: Several commenters claimed that in the Coverage Selection Form, the warning contained in items 7 and 8, that collision and comprehensive coverage may not be added to an existing policy for existing or additional vehicles unless the vehicles are inspected, is inaccurate. These commenters noted that coverage can be provided automatically for three days if the policyholder is replacing a vehicle and notifies the insurer. Moreover, the insurer can waiver the inspection requirement if the policyholder has been insured with the company for at least four years. Because the law does not permit the addition of physical damage coverage until the insurer has been notified, one commenter felt that the following language would be a better warning to consumers:

WARNING: UNDER NEW JERSEY LAW IF YOU DO NOT NOTIFY YOUR INSURER IMMEDIATELY WHEN YOU OBTAIN A VEHICLE, IT MAY NOT HAVE COLLISION OR COMPREHENSIVE COVERAGE. STATE LAW MAY ALSO REQUIRE AN INSURANCE INSPECTION. CONTACT YOUR COMPANY OR AGENT PROMPTLY.

Commenters also expressed the belief that a single warning was sufficient for both types of coverages.

RESPONSE: The Department notes that an insurer may waive a mandatory inspection pursuant to the provisions of N.J.A.C. 11:3-36.4. The following change to the warnings contained in items 7 and 8 are therefore deemed sufficient: "YOU MAY NOT **BE ABLE TO** ADD COMPREHENSIVE/COLLISION ... WITHOUT **FIRST** HAVING THAT VEHICLE INSPECTED ..." The Department emphasizes that, for purposes of clarity to the consumer, the warning must be included for each coverage, at items 7 and 8.

COMMENT: One commenter recommended including "replacement" vehicle to the warnings contained in items 7 and 8 of the Coverage Selection Form and also suggested that the form should include a section to indicate which type of policy (new, mid-term or renewal) will be effected by the form.

RESPONSE: The Department adopts the recommendations.

COMMENT: One commenter objected to the use of the phrase "Additional PIP" in the fourth paragraph of the initial summary to the proposed amendments. It claims that the use of the phrase "Additional PIP," to describe PIP benefits in excess of $250,000, is inappropriate because historically the phrase has been used to describe the offer of non-medical benefits beyond the amounts provided by Basic PIP.

RESPONSE: This coverage is referenced in the Buyer's Guide as "Additional Medical Expense Coverage." No change is necessary.

COMMENT: One commenter suggested that section 8 of the Coverage Selection Form should include as an option, for full comprehensive coverage as follows: "Yes, with no deductible."

RESPONSE: The Department will not amend the form to reflect this change. Insurers which offer no deductible or a $0 deductible, may include it in the optional, lower deductibles, where indicated, in accordance with the NOTE set forth below section 8.

COMMENT: One commenter recommended that language similar to that required on motor vehicle insurance application forms, pursuant to P.L. 1991, c.331, regarding the false representation of one's state of residence or domicile, should also be included in the Buyer's Guide and Coverage Selection Forms. The recommended language is:

Any person who knowingly makes an application for motor vehicle insurance coverage containing any statement that the applicant resides or is domiciled in this State when, in fact, that applicant resides or is domiciled in a state other than this State, is subject to criminal and civil penalties.

RESPONSE: The Department adopts the recommendation and has inserted the language, but only in the Coverage Selection Form.

COMMENT: One commenter suggested that the Coverage Selection Form include a section to indicate whether it is being submitted together

with a new application, or for a mid-term or renewal change. It stated that such information will simplify the processing of changes received when a renewal is pending.

RESPONSE: The Department agrees and has included this notation at the end of the form.

COMMENT: Several commenters suggested that sufficient "lead time" be provided to insurers to implement the changes required pursuant to these rules or, alternatively, that the Department delay the effective date of the rules.

RESPONSE: On February 14, 1992, Bulletin No. 91-5 was issued to all insurers transacting the business of private passenger automobile insurance in New Jersey, to advise them of various proposed revisions to be made to their Buyer's Guide and Coverage Selection Form and to instruct them that their revisions were to be expeditiously implemented and filed with the Department. On April 24, 1992, Bulletin No. 92-12 was also forwarded to insurers setting forth additional, minor changes to both forms included in these rules as adopted. The Bulletins were forwarded in an effort to implement the changes as quickly as possible, upon the adoption of the rule amendments.

The Department finds that the changes to the Buyer's Guide and Coverage Selection Form are minimal in nature and must be made immediately to alert consumers of their rights and obligations. Consumer awareness overrides any **de minimus** inconvenience in implementing these changes. Moreover, insurers have known of these changes for a significant period of time and were notified to prepare to submit new Buyer's Guides and Coverage Selection Forms for Department review, upon receipt of the February 1992 Bulletin. The most recent amendments were distributed with Bulletin 92-12, and are effective immediately upon publication of the notice of adoption. Insurers are therefore urged to submit their changes to the Department immediately, if they have not already done so.

Summary of Agency-Initiated Changes.

Minor editorial nonsubstantive changes, in addition to those commented upon, were also made in the Buyer's Guide and Coverage Selection Form.

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

11:3-15.6 Minimum standards for New Jersey Auto Insurance Buyer's Guide

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

(c) In preparing the Buyer's Guide, insurance companies shall use the text provided in this subchapter. Insurance companies which do not offer all the coverages described in the Buyer's Guide shall delete those sections and shall indicate clearly that they do not offer those coverages. Insurance companies may add information to the Buyer's Guide provided that the additional information is consistent with the purpose of the written notice.

(d)-(m) (No change.)

(n) An insurance company which does not offer additional medical expense benefits above limits of $250,000 per person, per accident, shall not include any reference to this optional coverage in its Buyer's Guide, nor shall any reference be made to such coverage in its Coverage Selection Form.

(o) The text of the New Jersey Auto Insurance Auto Buyer's Guide follows:

AGENCY NOTE: The text of the current Buyer's Guide is reproduced below with additions indicated in boldface italics with asterisks ***thus*** and deletions in brackets with asterisks *[thus]*. For purposees of this publication in the New Jersey Register, those words appearing in the following new text in standard type boldface **thus** appear as they should in the actual Buyer's Guide, and do not signify proposed additions.

New Jersey
Auto Insurance
Buyer's Guide

This contains only general information and is not a legal document*.*

Summary

There have been several important changes in New Jersey law that affect your insurance coverage.

The changes give New Jersey consumers additional rights.

For instance, if the insurance company you choose *[won't]* ***will not*** sell you auto insurance, the company has to tell you why, and, if you request it, the company has to respond in writing. If *[you're]* ***you are*** not satisfied, you can ask the New Jersey Department of Insurance for help. Under certain circumstances, you may also ask for a hearing. Any consumer who believes his *[or]* */* her insurance company has improperly charged *[them]* ***him/her*** for an at-fault accident can contact the Department, which will investigate the allegations.

The insurance agent or the insurance company also must tell you whether you qualify for auto insurance from one of its other insurance companies or affiliates. *[Any insurance]* ***Insurance*** applicants with eight or fewer eligibility points can obtain coverage from the company to which they apply, providing they fulfill all other eligibility requirements.

You also have the right to receive from your agent auto insurance premium rates from **all** the insurance companies he represents for which you qualify.

The law requires that you maintain auto liability coverage which, subject to the terms and limits of the policy, protects you in case you are sued, and pays for damages that you cause to someone else's property. **Please see page XX.**

You are also required to purchase personal injury protection which pays the auto accident-related medical bills *[of]* ***for*** you and your family. **Please see page XX.**

You can choose whether your health insurance will pay first for injuries stemming from auto accidents (if you have health insurance which pays for such injuries), or whether you want your auto insurer to pay medical expenses first. You may save on your auto premiums by choosing the health insurance option. To find out more about this option, please see the section beginning on **page XX.**

Your medical benefits are capped at $250,000. That means your auto insurer can only pay up to $250,000 per person, per accident. But, for an additional premium, you may be able ***to*** purchase more coverage for yourself or your family.

You must also carry uninsured motorist coverage, which pays for damages caused by a driver who has no insurance. **Please see page XX.**

If you want additional coverage, you can buy collision or comprehensive which pay***s*** for damages to your own car or for auto theft. These will add to your total insurance cost. In many cases, State law requires a special insurance inspection of a vehicle before this coverage takes effect. You can save on your collision or comprehensive coverage by choosing higher deductibles. **Please see page XX.**

The law also allows you to choose whether you want an unlimited right to sue for auto-related damages—the "no threshold" option—or to save money by limiting your right to sue for serious injuries only—the "lawsuit threshold" option (also known as the "verbal threshold"). **Please see page XX.**

The Buyer's Guide will explain each of these terms. It will help you fill out the Coverage Selection Form. You can also learn how to get a comparison of premiums for all auto insurers **(page XX).**

Explanation of Coverages

Your auto insurance policy is actually several kinds of policies, or coverages, rolled into one.

For each coverage, you are charged a separate price which is known as the premium.

You pay only one price for auto insurance, but that price is determined by adding the premiums for all the coverages you buy.

Use your Coverage Selection Form to indicate what coverages you will buy in accordance with New Jersey law.

The coverages are:

LIABILITY
PERSONAL INJURY PROTECTION
UNINSURED/UNDERINSURED MOTORIST
COLLISION
COMPREHENSIVE

Use these explanations to help you complete the Coverage Selection Form.

Liability Coverage
(Required by Law)
Item 1 on the Coverage Selection Form

Liability coverage pays for injuries to other people or damages to their property if you are legally responsible for their losses. The company will pay damages only up to the amount of coverage you have chosen.

There are two kinds of liability coverage:

Bodily injury coverage involves cases in which another person is hurt or dies as a result of an auto accident. If you are legally responsible, it will compensate for pain, suffering or other personal hardships, and will also pay for some economic damages such as lost wages.

Property damage coverage will reimburse other people if you are legally liable for damage to their belongings as a result of an auto accident.

If a liability claim is filed against you, your insurance company will investigate the claim and will decide whether it should be paid, negotiated, or defended in court. Your insurance company will pay the legal bills.

Under *[state]* ***State*** law, you must buy coverage which will pay, for each accident, at least ***in*** the following amounts:

- $15,000 for any one person's injuries;
- $30,000 when more than one person is injured;
- $ 5,000 for property damage.

Some companies sell a combined single limit which must be at least $35,000 per accident.

Higher limits of liability coverage are available at relatively low cost.

If you cause an accident and *[don't]* ***do not*** have enough insurance to cover your legal responsibilities, you then are personally responsible and could lose some of your assets or spend years paying this debt.

PREMIUM **COST SAVER: Lawsuit Threshold (Verbal Threshold)**
Item 2 on the Coverage Selection Form

In order to hold down insurance premiums, New Jersey motorists may choose to limit when they may sue for non-economic loss which means pain, suffering and inconvenience resulting from an auto accident.

The **"Lawsuit Threshold"** option, also known as the **"Verbal Threshold,"** uses words, rather than a dollar amount of medical bills, to describe when a suit may be filed. If you select this limitation, then you, your spouse and children living with you who are not covered by name by another auto insurance policy will not be able to sue unless the injury sustained appears on this list:

- ***["]* death;**
- **dismemberment;**
- **significant disfigurement;**
- **a fracture;**
- **loss of a fetus;**
- **permanent loss of use of a body organ, member, function or system;**
- **permanent consequential limitation of use of a body organ or member;**
- **significant limitation of use of a body function or system; or**
- **a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute that person's usual and customary daily activities for not less than 90 days during the 180 days immediately following the occurrence of the injury or impairment.*["]* (N.J.S.A. 39:6A-8, effective January 1, 1989)**

You can reject this threshold and retain the right to sue for any auto-related injury. This option, called **"No Threshold,"** will increase the price of your insurance policy.

Under state law, you must choose either the Lawsuit Threshold or the No Threshold option. The same choice should be made under all policies that you have. **If you do not choose one of these options, you are considered by law to have selected the Lawsuit Threshold option.**

Personal Injury Protection (PIP)
(Required by Law)
Item 3 on the Coverage Selection Form

New Jersey law requires Personal Injury Protection, sometimes called PIP or no-fault coverage, which pays all reasonable medical bills up to a maximum of $250,000 per person, per accident regardless of who caused an auto accident.

However, you may also have the option to select your health insurer or health maintenance organization to pay your auto accident no-fault claims.

Basic PIP Coverage provides:

- **Medical Expenses: Payment of reasonable and necessary medical expenses within certain limits set by state law—a $250 deductible for each accident, only 80 percent reimbursement for the expenses from $251 through $5,000 for each accident, and a maximum benefit of $250,000 per person per accident.**
- **Income *[Contribution]* ***Continuation***:** If you *[can't]* ***cannot*** work because of an auto accident injury, you can collect up to $100 a week up to a total limit of $5,200 for lost wages.
- **Essential Services:** You can collect as much as $12 a day up to a total limit of $4,380 *,* to pay someone to do necessary services that you normally do yourself, such as cleaning your house, mowing your lawn, shoveling snow or doing laundry.
- **Death Benefit:** If you die from auto accident injuries, your family or estate will receive any benefits you *[haven't]* ***have not*** already collected under the income continuation and essential services coverages.
- **Funeral Expense Benefit:** In addition to the death benefit, reasonable funeral expenses are covered up to $1,000.

PREMIUM **COST SAVER: PIP Medical Expenses Only Coverage**

If you wish, you can buy PIP medical coverage without any income continuation, essential services, death benefits and funeral expense benefits. This is called PIP Medical Expenses Only.

You might want this cost-saving option if you and relatives who live with you *[wouldn't]* ***would not*** lose income if any of you were disabled by an auto accident. For example, this option should be considered if your sources of income are pensions, Social Security or investments which would continue regardless of an auto accident, and if someone is always available to care for your personal needs, and if your funeral expenses are covered in some other way.

But the option is a package deal. Either you keep all four of these non-medical expense PIP benefits, or you drop them all. You *[can't]* ***cannot*** pick and choose.

Additional PIP Coverage

On the other hand, you and relatives who live with you and who do not have their own auto insurance policies might want higher benefits. You can purchase higher benefits for income protection and essential services, funeral expenses and higher death benefits, than the amounts provided in the basic PIP plan.

Additional Medical Expense Coverage

Your auto insurance company may also offer additional medical expense benefits above limits of $250,000 per person, per accident.

If you buy additional benefits, the price of your insurance will be higher.

(NOTE: Reference to Additional Medical Expense Coverage shall be deleted by those companies which do not offer the coverage.)

Personal Injury Protection (PIP)
Health Insurance Option *Premium* (Cost Saving Option)
Item 4 on Coverage Selection Form

Most New Jersey residents have the option of selecting their health coverage provider, rather than their auto insurance company, to pay for their no-fault medical expense claims. A health coverage provider may be an insurance company, an HMO or some other type of benefit plan provided by your employer.

Medicare and Medicaid will NOT provide primary coverage. If your health benefits are provided by either Medicare or Medicaid, you cannot choose this option.

If you select your health coverage provider to be the primary payer of auto no-fault claims, you may save on your auto premium. **Before selecting this option, however, check to make sure that your health coverage provider will pay for auto accident injury treatment expenses.** If your employer supplies your health coverage, your company should be able to give you this information; otherwise, check with your health coverage provider directly.

Deductibles and co-pays of your health policy or plan will still apply. And coverage limits of your health policy or plan will be in effect.

Most HMOs offer unlimited coverage. Most other health coverage providers offer lifetime benefit limits of $1 million.

That means the health coverage provider will pay all eligible health claims, as long as they do not total more than $1 million during your lifetime. **Be sure to ask your health coverage provider what limits apply under your policy or plan.**

Your health policy or plan may not cover all procedures or treatments. Exclusions listed in your policy or plan will apply. But your auto insurer should pay for necessary expenses not covered by your health policy or plan.

If you choose your health coverage provider to be responsible for paying auto accident-related medical bills, you must provide the name of your health coverage provider and the policy, plan, membership or group certificate number on the Coverage Selection Form. You must also maintain your health coverage.

If you are in an accident and your health coverage is no longer in effect, your auto insurer must pay PIP medical benefits. However, you will be required to pay a $750 additional deductible.

PIP Medical Expenses Deductible
Auto Insurer Option
Item 5 on Coverage Selection Form

This option involves only the medical bills paid by PIP, not the income continuation, essential services, death benefits or funeral expense benefits, which will be paid under Basic PIP coverage regardless of whether you select your health insurer or auto insurer to be the primary payer of your auto-accident related medical bills.

Under New Jersey law, unless you choose your health insurer to pay your auto-accident related medical bills, your auto insurance policy will cover your reasonable and necessary medical bills up to a maximum of $250,000 per person, per accident, if you are injured in an auto accident.

However, for the first $5,000 of medical bills per accident, your auto policy will pay only part of the cost of your treatment or the treatment of others covered by your policy. There is a $250 deductible, meaning the first $250 will not be covered. The deductible applies only once per accident regardless of the number of people injured.

There is also a 20 percent co-payment which means that for the bills from $251 to $5,000, the policy will pay only 80 percent. Medical bills above $5,000 are paid *[in full by the policy]* ***up to $250,000 per person, per accident****.

(NOTE: Companies offering higher PIP limits may state that benefits above $5,000 are paid up to the limit selected.)

You can choose a $250 deductible, a $500 deductible, a $1,000 deductible or a $2,500 deductible. A way to lower the price of your auto insurance is to have a larger PIP deductible. The 20 percent co-payment still applies to expenses between the deductible chosen and $5,000.

You should consider the $2,500 PIP deductible if you are already covered by a health insurance policy or a health maintenance organization (HMO). In most cases, those plans will pay part of the medical bills which auto insurance *[won't]* ***will not**** pay.

Before taking this option, ask your health insurance company or HMO two things:

Will your health policy or HMO cover auto-related medical bills not paid by auto insurance? The Department of Insurance requires that health insurance sold in New Jersey cover treatment for auto-related injuries the same as other injuries. But your policy may not follow this rule because you may be covered by a health insurance group sold out of state or ***by**** an employer self-insurance plan. Find out.

What are your health policy's or HMO's own deductible, co-payments and exclusions? Find out what your health plan covers. For instance, it may cover only hospitalization but not doctor visits. Also, your health insurance or HMO has its own rules regarding what you pay out of your pocket for medical treatment. Those rules will apply if you use your health plan to cover the PIP deductible.

Uninsured *//Underinsured** **Motorist Coverage**
(Required by Law)
Item 6 on the Coverage Selection Form

Despite New Jersey law, which requires auto insurance, many cars are not covered by insurance. Some motorists break the law. Many other motorists are residents of other states which *[don't]* ***do not**** require auto insurance by law.

Because these motorists can cause accidents, you are required to buy uninsured motorist coverage. This coverage does not benefit the uninsured driver. It will provide benefits to **you**, your passengers or relatives living with you if a motorist without insurance is legally liable for injuries to these persons or for damage to your car or its contents.

There are other motorists who have auto insurance coverage but with very low limits. When you buy uninsured motorist coverage, you are also provided coverage to protect you from those motorists who are underinsured. If you are in an accident caused by such a motorist, underinsured motorist coverage will pay damages up to the difference between your underinsured motorist coverage limit and the other driver's liability coverage limit.

You must by law purchase uninsured motorist coverage which will pay, for each accident, at least the following amounts:

- $15,000 for any one person's injuries;
- $30,000 when more than one person is injured;
- $ 5,000 for property damage.

Many companies sell a combined single limit which must be at least $35,000. The property damage coverage has a basic $500 deductible, which means you pay the first $500 of a claim under that coverage.

You can buy higher uninsured/underinsured motorist coverage limits, but only as high as the liability coverages you have purchased. Most companies sell up to $250,000/$500,000/$100,000 coverage or a combined single limit of $500,000.

Collision and Comprehensive Coverages
(Optional)
Items 7 and 8 on Coverage Selection Form

Collision coverage and comprehensive (also known as "other than collision") coverage pay for damage to your car. These coverages will pay to repair your car or pay for its value at the time of the loss if it is stolen or declared a total loss.

These coverages are **not** required by law. But, if you borrowed money to buy your car or if you are leasing the car, the lender or lessor may require you to buy these coverages. Note that some companies will provide collision coverage only if you buy comprehensive coverage too. Contact your company for details.

Collision pays for damage to your car caused by your car hitting things like other cars, trees or telephone poles, or for the car overturning, or for other moving objects hitting your car.

Comprehensive insurance pays for nearly every other kind of damage to your car, such as fire, theft, flood, vandalism, or contact with a bird or animal.

In order to obtain collision or comprehensive coverage for a newly insured vehicle, you must notify your auto insurance company **immediately.** Under a new State law, in most cases, collision or comprehensive coverage cannot be provided on a newly acquired vehicle until the auto insurance company is notified. Also, many such vehicles must be inspected for insurance purposes before coverage can be provided. See the section entitled "Mandatory Insurance Inspection" for more details.

PREMIUM* **COST SAVER: No Collision or No Comprehensive**

If your car is older and is paid for, consider eliminating collision or comprehensive coverage, or both. This decision will reduce your premium.

To make the decision, consider what you will pay for these coverages versus the possible benefit if you file a claim.

Collision and comprehensive coverage will reimburse you only up to the actual cash value of your car. The insurance payment probably will be less than the actual cash value because of deductibles.

***PREMIUM* COST SAVER: Collision and Comprehensive Deductibles**

If you decide that you need collision or comprehensive coverage or both, a significant way to hold down the price of your insurance policy is to select higher deductibles.

If you file a claim, a deductible is the amount of money you will pay before the insurance company starts paying. Deductibles are a way of reducing insurance company costs, and thereby lowering the price of your insurance policy.

The standard deductible for auto insurance in New Jersey is $500. You still have the right to buy collision or comprehensive coverage with higher or lower deductibles. The lower the deductible, the higher the price of your insurance policy.

MANDATORY INSURANCE INSPECTION
For Newly Insured Vehicles

Under the new State law, many vehicles to be insured for collision or comprehensive (also known as "other than collision") coverage must first be inspected for insurance purposes. The law is intended to reduce insurance fraud by documenting the condition of newly insured private passenger automobiles.

Whenever you acquire a vehicle and desire collision or comprehensive coverage on it, the most important thing to do is to notify your auto insurance company **immediately**. They will tell you everything necessary to comply with the law and obtain the coverage you desire.

Until you notify your auto insurance company the vehicle may not be covered for collision or comprehensive.

It is important to understand that the Mandatory Insurance Inspection is in addition to the Motor Vehicle Inspection program conducted by the State of New Jersey. Two separate inspections take place.

In many cases, an insurance inspection may not be necessary. The law says that insurance inspections may be waived for vehicles which are older than seven model years. The law also says that an insurance inspection may not be necessary for a "new automobile" purchased from a franchised dealer if you submit an invoice documenting your purchase. If your auto insurance policy has been in effect for four years or longer, an inspection may not be required by law. Your auto insurance company will explain when you call.

Otherwise, an inspection is required for newly insured vehicles. If your vehicle must be inspected, your auto insurance company can provide temporary coverage for only seven days after the day you notify them about the vehicle.

The only way to make sure that you meet the State requirements and receive the coverage you want is to call your auto insurance company before or as soon as any change of a vehicle occurs.

Anti-Theft Device Discount—Your auto insurance company encourages the use of anti-theft and vehicle recovery devices as another means to reduce losses. The following types of devices are among those which may qualify for a reduction in the Comprehensive premium:

1. Alarm System;
2. Fuel Cut-Off;
3. Hydraulic Brake Lock;
4. Ignition or Starter Cut-Off;
5. Steering Wheel Collar;
6. Transmitter which enables the location of the vehicle to be traced; or
7. Window Etching Vehicle Identification System.

Other types may also qualify.

If your auto is equipped with an anti-theft or vehicle recovery device, contact your auto insurance company for more details and an Anti-Theft Questionnaire.

Safety Feature Discount—Your auto insurance company encourages the use of safety features as another means to reduce losses. The following types of safety features are among those which may qualify for a reduction in the Collision premium.

1. Anti-Lock Braking System;
2. Traction Control Systems;
3. Five mile per hour bumpers;

Other types may also qualify.

If your auto is equipped with a safety feature, contact your auto insurance company for more details. ****The rates of insurers which use make and model rating for collision coverage already include these discounts.****

Price Comparison

If you would like a copy of the annual auto insurance premium comparison published by the New Jersey Department of Insurance, please send a stamped, self-addressed envelope to:

Auto Comparison
Division of Public Affairs
NJ Department of Insurance
CN 325
Trenton, NJ 08625-0325

Recodify existing (o)-(r) as **(p)-(s)** (No change in text.)

11:3-15.7 Minimum standards for Coverage Selection Form

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

(h) The text of the Coverage Selection Form follows:

(NOTE: Company's name may be included here.)

(NOTE: If a company has more than two percent of the New Jersey private passenger automobile market, it shall include its name and toll-free number here.)

COVERAGE SELECTION FORM

Name: _____

For new policies, you must choose one option for each item below. For changes upon renewal and mid-term policy changes, you must use this Form when you:

(a) elect the "No Threshold" option;

(b) change from the "No Threshold" option to the "Lawsuit Threshold" option;

(c) desire collision or comprehensive deductibles other than $500;

(d) desire to change to the $500 deductible for collision or comprehensive coverage;

(e) desire your health insurer to be the primary insurer to pay for your auto accident-related medical bills; or

(f) desire your auto insurance carrier to be the primary insurer for your auto accident-related medical bills.

The following item numbers match the explanations in the New Jersey Auto Insurance Buyer's Guide. Read the Buyer's Guide for information and help in completing this form.

1. Liability Coverage

How much coverage do you choose for damage you may do to others?

☐ _____
☐ _____
☐ _____
☐ _____

(NOTE: At least four of the most popular coverage limits shall be listed, including the lowest limit offered)

(NOTE: If a complete list is not provided, state that other coverage limits are available.)

2. Lawsuit Threshold (Otherwise known as the "Verbal Threshold")

Do you accept the basic limit on the right to sue if injured in an auto accident?

☐ Yes. I want the Lawsuit Threshold.

☐ No. I want No Threshold. My bodily injury liability premium will be ___% to ___% higher if I select the No Threshold option instead of the Lawsuit Threshold, depending upon where my car is garaged, my bodily injury liability coverage limit, and other factors. Per vehicle, my bodily injury liability premium at current rates will be $ ___ to $ ___ higher on each _____ renewal of my policy

if I select the No Threshold option instead of the Lawsuit Threshold. I understand that I can contract my insurance company or my insurance producer i.e., agent or broker) for specific details.

(Note: Insurance companies writing six month policies should insert the word "semi-annual" in the blank space above. Companies writing 12 month policies should insert the word "annual.")

(Note: Insurance companies writing single limit liability coverage may add a footnote to inform insureds that the policy declaration page will not include a specific premium for "bodily injury liability" coverage.)

3. Personal Injury Protection (PIP). Choose the kind of coverage you want.

☐ Basic PIP Coverage which includes income continuation, essential services, death benefits and funeral expense benefits as well as medical expense benefits, or

☐ PIP Medical Expenses Only Coverage, for a ___ % to ___ % savings in the _____ premium. (NOTE: Include the range of percentage savings and the base, i.e., basic PIP premium.);

☐ Additional PIP Coverage at an extra cost. Note: This option is not available if you have selected PIP Medical Expenses Only coverage. Contact your insurance company or insurance producer (i.e., agent or broker) for details. (NOTE: Company's name may be used here or a chart listing options may be enclosed.)

☐ Additional Medical Expense Coverage.

(NOTE: Reference to Additional Medical Expense Coverage shall be deleted by those companies which do not offer the coverage.)

4. PIP Health Insurance Option. Choose if you want your health insurer, other than Medicare or Medicaid, to be your primary carrier to pay your auto accident-related medical benefits. Check with your employer or health insurer to see if you are eligible and request an answer in writing. To choose this option, health coverage must cover the named insured and members of his family residing in the household.

☐ Yes, I choose the PIP health insurer option.

(NOTE: Your auto insurance company may invalidate this option selection and request payment of the discounted premium amount if it checks but cannot verify that (1) your health coverage is in effect, and (2) your health insurer will provide primary coverage for your auto accident-related medical expenses.

The name of my health insurer(s) is (are):

1. _____

Number: _____
Policy, Plan, Membership or Group Certificate Number (circle one)

2. _____

Number: _____
Policy, Plan, Membership or Group Certificate Number (circle one)

☐ No, I do not want the PIP health insurer option.

5. PIP Medical Expenses Deductible. Choose only one:

☐ $250 deductible, minimum required by law.

☐ $500 deductible, for a ___% to ___% reduction in the ***Basic PIP*** premium.

☐ $1,000 deductible, for a ___ % to ___ % reduction in the ***Basic PIP*** premium.

☐ $2,500 deductible, for a ___ % to ___ % reduction in the ***Basic PIP*** premium.

6. Uninsured/Underinsured Motorists Coverage

How much coverage do you choose for damage which another driver who has little or no insurance may do to your car, your family, your passengers or yourself? Your auto insurance company must offer this coverage up to the bodily injury and property damage liability limits you have selected.

☐ _____
☐ _____
☐ _____
☐ _____

(NOTE: List the same options available for liability coverage above. Other options may also be listed.)

7. Do you choose "collision" coverage?

☐ No. I do not wish to be covered for collision damage.

☐ Yes, with the basic $500 deductible.

☐ Yes, with the deductible circled here: $1,000, $1,500 or $2,000. This premium will be proportionately **less** than the premium with the basic $500 deductible. Details available from company or insurance producer (i.e., agent or broker).

☐ Yes, with the deductible circled here: $100, $150, $200 or $250. This premium will be proportionately **more** than the premium with the basic $500 deductible. Details available from company or insurance producer (i.e., agent or broker).

(WARNING: YOU MAY NOT ***BE ABLE TO*** ADD COLLISION COVERAGE TO AN EXISTING VEHICLE OR ***TO*** ADD AN ADDITIONAL ***OR REPLACEMENT*** VEHICLE TO YOUR EXISTING POLICY WITHOUT ***FIRST*** HAVING THAT VEHICLE INSPECTED; CONTACT YOUR INSURANCE COMPANY OR INSURANCE AGENT IMMEDIATELY.)

8. Do you choose "comprehensive" coverage? (NOTE: If appropriate, use the term "other than collision" coverage throughout this section.)

☐ No. I do not wish to be covered for comprehensive damage.

☐ Yes, with the basic $500 deductible.

☐ Yes, with the deductible circled here: $1,000, $1,500 or $2,000. This premium will be proportionately **less** than the premium with the basic $500 deductible. Details available from company or insurance producer (i.e., agent or broker).

☐ Yes, with the deductible circled here: $50, $100, $150, $200 or $250. This premium will be proportionately **more** than the premium with the basic $500 deductible. Details available from company or insurance producer (i.e., agent or broker).

(NOTE: For both collision and comprehensive, if either the $200 deductible or $250 deductible is not offered, that option may be deleted from this form. Also, all other available collision and comprehensive deductibles shall be listed where appropriate.)

(WARNING: YOU MAY NOT ***BE ABLE TO*** ADD COMPREHENSIVE COVERAGE TO AN EXISTING VEHICLE OR ***TO*** ADD AN ADDITIONAL ***OR REPLACEMENT*** VEHICLE TO YOUR EXISTING POLICY WITHOUT ***FIRST*** HAVING THAT VEHICLE INSPECTED; CONTACT YOUR INSURANCE COMPANY OR INSURANCE AGENT IMMEDIATELY.)

I have read the Buyer's Guide outlining the coverage options available to me. My choices are shown above. I agree that each of these choices will apply for all vehicles insured by my policy and to each subsequent renewal, continuation, replacement or amendment until the insurance company or its insurance producer (i.e., agent or broker) with the company's binding authority receives my request that a change be made.

For new policyholders, I understand that:

(a) if I do not make a written choice for Item 2, I will receive the Lawsuit Threshold option;

(b) if I carry collision or comprehensive coverage without making a written choice for Item 7 or Item 8, I will receive the $500 deductible; and

(c) if I do not make a written choice for the PIP health insurer option in Item 4, my auto insurer will be the primary health insurer for PIP medical expense benefits.

I understand that if this is a policy renewal and I do not complete choices, I will receive the same coverage as in my previous policy except when changes are required by a law becoming effective during the term of my previous policy.

I understand that these choices take effect in the following manner:

(1) for new policies and mid-term policy changes, the choices on this Form are effective the day following the date of postmark or,

when personal delivery is made or the postmark is illegible, the day following receipt of this Form by the insurance company or by an insurance producer (i.e., agent or broker) with the company's binding authority; and

(2) for changes upon renewal, the changes to be made on this Form are effective on the date of the next policy renewal if postmarked or received by the insurance company or by an insurance producer (i.e., agent or broker) with the company's binding authority prior to the renewal date.

ANY PERSON WHO KNOWINGLY MAKES AN APPLICATION FOR MOTOR VEHICLE INSURANCE COVERAGE CONTAINING ANY STATEMENT THAT THE APPLICANT RESIDES OR IS DOMICILED IN THIS STATE WHEN, IN FACT, THAT APPLICANT RESIDES OR IS DOMICILED IN A STATE OTHER THAN THIS STATE, IS SUBJECT TO CRIMINAL AND CIVIL PENALTIES.*

Please check the appropriate box to which this form applies

☐ *NEW POLICY* ☐ *Mid-Term Change* ☐ *Renewal Change**

SIGNATURE _____ DATE _____

(i)-(k) (No change.)

11:3-15.9 Use of Coverage Selection Form

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

(c) The coverage changes in (b)1i through vi above shall become effective in the following manner, except when coverage for comprehensive or collision is effected by a required inspection pursuant to N.J.A.C. 11:3-36.

1.-2. (No change.)

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS
Notice of Stay of Operative Date
Professional Practice Structure
Professional Fees and Investments, Prohibition of Kickbacks
N.J.A.C. 13:35-6.17(e)

Take notice that on April 8, 1992, the Board of Medical Examiners voted to stay the April 15, 1992 operative date of N.J.A.C. 13:35-6.17(e) until July 15, 1992. This subsection of the Board's new corporate practice regulations addresses fees which may be charged by a licensee prescribing and then selling to a patient medications, vitamins and food supplements, and medical goods and devices (see 24 N.J.R. 626(a), 641.) The Board determined to stay the operative date of this subsection following its review of an appeal and motion for stay filed in the Superior Court of New Jersey on April 6, 1992 by the New Jersey Academy of Ophthalmology and Otolaryngology (NJAOO).

Take further notice that the Board has invited the NJAOO to file, during the 90-day period of the stay, a Petition for Rulemaking and documentation to support the assertions set forth in its appeal.

TRANSPORTATION

(b)

New Jersey Transit Corporation
Reduced Fare Transportation Program for the Elderly and Handicapped
Adopted New Rules: N.J.A.C 16:73

Proposed: February 18, 1992 at 24 N.J.R. 556(b).
Adopted: April 17, 1992 by the New Jersey Transit Corporation, Shirley A. DeLibero, Executive Director
Filed: April 27, 1992 as R.1992 d.217, **without change.**

Authority: N.J.S.A. 27:25-5(e) and 27:1A-68

Effective Date: May 18, 1992
Expiration Date: May 18, 1997

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adopted new rules may be found in the New Jersey Administrative Code at N.J.A.C. 16:73.

OTHER AGENCIES

(c)

NEW JERSEY TURNPIKE AUTHORITY
Limitations on Use of the Turnpike
Adopted Amendment: N.J.A.C. 19:9-1.9

Proposed: March 16, 1992 at 24 N.J.R. 931(a)
Adopted: April 17, 1992 by the New Jersey Turnpike Authority, Herbert I. Olarsch, Administrative Procedures Officer, Director of Law.
Filed: April 20, 1992 as R.1992 d.211, **without change.**

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

Effective Date: May 18, 1992.
Expiration Date: October 17, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

19:9-1.9 Limitations on use of turnpike

(a) Use of the New Jersey Turnpike and entry thereon by the following is prohibited:

1.-11. (No change.)

12. Vehicles or combinations of vehicles, including any load thereon, exceeding the following extreme overall dimensions[1] or weights:

i.-ii. (No change.)

iii. Length: semitrailer in excess of 53 feet in length when in a tractor-semitrailer combination;

iv.-vi. (No change.)

13.-25. (No change.)

(b) (No change.)

[1]No private utility, house-type-semitrailer or trailer with a maximum length for a single vehicle of more than 35 feet, a maximum length for a semitrailer and its towing vehicle of more than 45 feet and a maximum length for a trailer and its towing vehicle of more than 50 feet shall be operated on the New Jersey Turnpike.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Gaming Equipment
Slot Machines and Bill Changers; Identification; Signs; Meters Computer Recordation and Monitoring of Slot Machines
Slot Machines and Bill Changers; Identification; Signs; Meters; Other Devices
Adopted Amendments: N.J.A.C. 19:45-1.37 and 1.44 and N.J.A.C. 19:46-1.26

Proposed: January 6, 1992 at 24 N.J.R. 58(a).
Adopted: April 15, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: April 20, 1992 as R.1992 d.210, **without change.**

Authority: N.J.S.A. 5:12-63(c) and 70(j).

Effective Date: May 18, 1992.
Expiration Date: March 24, 1993, N.J.A.C. 19:45.
April 28, 1993, N.J.A.C. 19:46.

Summary of Public Comment and Agency Response:
COMMENT: Marina Associates and the Division of Gaming Enforcement support the proposed amendement, as published.
RESPONSE: Accepted.

Full text of the adoption follows.

19:45-1.37 Slot machines and bill changers; identification; signs; meters

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

(e) Unless otherwise authorized by the Commission, each slot machine that has an attached bill changer shall be equipped with the following:

1. A mechanical, electrical or electronic device, to be known as a "change meter," that continuously and automatically counts the number of coins or slot tokens vended from the slot machine's hopper to make change; and

2. A number of mechanical, electrical or electronic devices, to be known as "bill meters," that continuously, automatically and separately count the number of bills for each denomination of currency accepted into the bill changer.

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

19:45-1.44 Computer recordation and monitoring of slot machines

(a) (No change.)

(b) The computer permitted by (a) above shall be designed and operated to automatically perform the function relating to slot machine meters in the casino as follows:

1.-6. (No change.)

7. Record the total value of each denomination of currency accepted and stored in the slot cash storage box.

(c) (No change.)

19:46-1.26 Slot machines and bill changers; identification; signs; meters; other devices

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

(d) Unless otherwise authorized by the Commission, each slot machine that has an attached bill changer shall be equipped with the following:

1. A mechanical, electrical or electronic device, to be known as a "change meter," that continuously and automatically counts the number of coins or slot tokens vended from the slot machine's hopper to make change; and

2. A number of mechanical, electrical or electronic devices, to be known as "bill meters," that continuously, automatically and separately count the number of bills for each denomination of currency accepted into the bill changer.

(e)-(i) (No change.)

PUBLIC NOTICES

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Notice of Code Change Proposal Hearing

Take notice that the Construction Code Element of the Division of Housing and Development, Department of Community Affairs, has scheduled its **annual code change proposal hearing** for the building, mechanical, electrical, fire protection, energy and one- and two-family dwelling subcodes, pursuant to N.J.S.A. 52:27D-123, for Friday, July 31, 1992, beginning at 9:30 A.M., in the first floor conference room of Building 3 of 3131 Princeton Pike, Lawrenceville, New Jersey.

Persons wishing to present code change proposals for the respective model codes, which have been adopted by reference as subcodes of the State Uniform Construction Code, or those in need of further information, may telephone the Element at (609) 530-8789.

Proposals may be mailed or faxed to:

"Code Changes"
Department of Community Affairs
Bureau of Technical Services
CN 816
Trenton, NJ 08625-0816
Fax Number: (609) 530-8858

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

DIVISION OF ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL PROGRAMS

Notice of Public Hearings

New Jersey Radiological Emergency Response Plan

Take notice that pursuant to the "Radiation Accident Response Act," N.J.S.A. 26:2D-37 et seq., the Department of Environmental Protection and Energy in cooperation with the Division of State Police will hold **public hearings** to determine the adequacy and effectiveness of the New Jersey Radiological Emergency Response Plan. The hearings will be held on the following dates:

Thursday, July 14, 1992
7:00 P.M.-9:00 P.M.
Fire Training Center
Cemetery Road, Mannington Township, New Jersey

Tuesday, July 21, 1992
7:00 P.M.-9:00 P.M.
Greenwich Fire Station, Greenwich, New Jersey

Tuesday, July 28, 1992
7:00 P.M.-9:00 P.M.
Ocean County Office of Emergency Services
Robert J. Miller Air Park, Route 530
Berkeley Township

In addition to accepting public comments, the following speakers will appear at the hearing: the Manager of the Bureau of Nuclear Engineering, Department of Environmental Protection and Energy, and the Director of the Office of Emergency Management, Division of State Police.

Copies of the New Jersey Radiological Emergency Response Plan are available at the following locations:

Office of Emergency Management
State Police Headquarters, West Trenton, New Jersey

Salem County Emergency Management Office
Cemetery Road, Mannington Township, New Jersey

Cumberland County Office of Emergency Management
Bridgeton Avenue, Bridgeton, New Jersey

Ocean County Office of Emergency Management
Robert J. Miller Air Park, Route 530
Berkeley Township, New Jersey

For additional information contact:

Department of Environmental Protection and Energy
c/o Nicholas DePierro, Bureau of Nuclear Engineering
CN 415, Princeton, New Jersey 08540
Telephone (609) 987-2032

(c)

ENFORCEMENT POLICY

Notice of Action on Petition for Rulemaking Penalties for Air Pollution in Violation of N.J.A.C. 7:27-5.1 et seq.

Petitioners: Middlesex County Utilities Authority
Bayshore Regional Sewerage Authority
Cape May County Municipal Utilities Authority
Cumberland County Utilities Authority
Ewing-Lawrence Sewerage Authority
Linden Roselle Sewerage Authority
North East Monmouth County Regional Sewerage Authority
Randolph Township Municipal Utilities Authority
Secaucus Municipal Utilities Authority
South Monmouth Regional Sewerage Authority
Two Bridges Sewerage Authority
Warren/Pequest River Municipal Utilities Authority
Western Monmouth Utilities Authority
New Jersey League of Municipalities
Association of Environmental Authorities
New Jersey Alliance for Action

Authority: N.J.S.A. 13:1D-1 et seq. and 26:2C-1 et seq.

Take notice that on March 17, 1992, the Department of Environmental Protection and Energy (Department) received a petition for rulemaking concerning the Department's regulations governing the assessment and payment of civil administrative penalties for causing suffering, allowing or permitting air pollution, as defined in and prohibited by N.J.A.C. 7:27-5.1 et seq. (see 24 N.J.R. 1642(c)). Petitioners own and/or operate sewerage treatment plants and other waste disposal facilities and recycling facilities. The amendments which petitioners request concern violations by public entities of N.J.A.C. 7:27-5.1 et seq., by reason of an odor (a "public entity odor violation").

Specifically, the petitioners propose promulgation of a new section, N.J.A.C. 7:2A-3.3(c), providing for the notification of the owner/operator of a public entity by the Department immediately upon receipt of a complaint of an odor violation, permitting a representative of the owner/operator to accompany Department staff during an investigation of an odor violation, and providing the owner/operator with the findings and conclusions of the Department staff immediately upon completion of the investigation. Petitioners further petition the Department to amend N.J.A.C. 7:27A-3.10(e)5(3) to add a new paragraph (3) to define a public entity, to establish five levels of odor to be applied to public entities, and to provide for reduced penalties for violations by public entities based upon the duration of the odor violation and the intent or foreseeability of the public entity. Petitioners also petition the Department to promulgate a new section, N.J.A.C. 7:27A-3.13, providing that penalties assessed and collected against a public entity be escrowed and refunded upon the implementation of adequate odor controls by the public entity.

After due consideration of the petition pursuant to law, the Department has deferred the petition for further deliberation, to conclude by May 11, 1992. The further deliberation will include the following:

The Department will consider whether the circumstances cited by petitioners constitute sufficient basis to establish a separate penalty policy for public entities and whether the proposed amendments adequately ensure accountability.

(a)

DIVISION OF ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL PROGRAMS

Notice of Action on Petition for Rulemaking N.J.A.C. 7:1E-4.6

Petitioner: Fuel Merchants Association of New Jersey.

Take notice that on February 10, 1992, the Fuel Merchants Association of New Jersey filed a petition for rulemaking with the Department of Environmental Protection and Energy (department) requesting an amendment extending the deadline for submitting the maps to be included in the discharge prevention, containment and countermeasure (DPCC) and discharge cleanup and removal (DCR) plans required under N.J.A.C. 7:1E-4 (see 24 N.J.R. 1122(d)). All facilities with a storage capacity for hazardous substances of all kinds of at least 300,000 gallons, but less than one million gallons, were required by N.J.A.C. 7:1E-4.6 to submit DPCC and DCR plans to the department by February 1, 1992. The petitioner asserts that the maps required to be included in DPCC and DCR plans cannot be promptly and economically created, because there is a lack of commercially available basemaps, and because the Department has not issued a guideline document.

The Department has duly considered the petition pursuant to law, and has denied it for the reasons discussed below. The Department has found that no extension of the deadline is required, because N.J.A.C. 7:1E-4.7(c) already contains a provision allowing additional time to complete the maps. This provision states:

The Department may conditionally approve a plan if the maps required pursuant to N.J.A.C. 7:1E-4.3(b)5 or 6 are incomplete or are not in the format prescribed by N.J.A.C. 7:1E-4.10. The Department shall grant such conditional approval if the Department determines that:

1. The plan otherwise satisfies all the requirements of this subchapter; and

2. The owner or operator is making a good faith effort to provide complete, acceptable maps.

This provision obviates any need to grant a general extension for plan submission based on the requirement for maps.

The Department also notes that the basemaps to which the petitioner refers have been commercially available from several sources. For example, orthophoto quarterquad basemaps meeting the standards in the rule have been available for the entire state since 1987. In addition, topographic maps issued by the U.S. Geological Survey, which can be photoenlarged or digitally enlarged to meet the standards in the rule, are commonly available.

The petitioner also states that an extension of the time limit in the rule is necessary because the department has not issued a guideline document. Though the applicable statutes and regulations do not require the Department to develop such a document, the Department has issued a mapping guidance document intended to assist the regulated community in preparing the required maps by presenting sources of information, explanations of data to be delineated on the maps, and answers to commonly asked questions. Though the document was published only recently, the Department began making the information in the document freely available even before adopting N.J.A.C. 7:1E in August, 1991. For example, information on the location of prime fishing areas has been available from Division of Fish, Game and Wildlife since 1982. Other information was available shortly after the adoption, such as a directory of areas included in the definition of wilderness areas available from the New Jersey Natural Lands Trust since September 1991.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

(b)

DIVISION OF ENVIRONMENTAL QUALITY

Notice of Receipt of Petition for Rulemaking Noise Control at Motor Vehicle Race Tracks N.J.A.C. 7:29-1.4(a)5

Petitioner: Township of Manalapan, Monmouth County, New Jersey.

Take notice that on April 20, 1991, the Department of Environmental Protection and Energy (Department) received a petition for rulemaking concerning the amendment of the Department's regulations governing noise control.

The petitioner requests that the Department promulgate reasonable rules and regulations respecting the noise levels and noise control pertaining to motor vehicle race tracks in the State. The Department's current regulations governing noise control provide that the operational standards established in N.J.A.C. 7:29-1 do not apply to motor vehicle race tracks. Petitioner states that there is such a facility affecting petitioner's residents; petitioner has unsuccessfully attempted to reduce the noise levels from the facility through litigation.

The Department is currently considering a similar petition by the Township of Waterford. See 24 N.J.R. 304(b). Petitioner has adopted by reference the Township of Waterford petition.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Northeast and Upper Raritan Water Quality Management Plans Public Notice

Take notice that on February 25, 1992, pursuant to the provisions of the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.), and the Statewide Water Quality Planning Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Northeast and Upper Raritan Water Quality Management Plans was adopted by the Department. This amendment, which was submitted by the Bernards Township Sewerage Authority (BTSA), adopts a Wastewater Management Plan (WMP) for the BTSA. The WMP provides for expansion of the sewer service area within Bernards Township served by the Environmental Disposal Corporation (EDC) Sewage Treatment Plant (STP) located in Bedminster Township. The WMP also updates the delineation of the sewer service area of the BTSA Harrison Brook STP and specifies an ultimate projected wastewater flow of 2.652 million gallons per day from this area.

In addition, the WMP delineates the area of Bernards Township which is currently served by the Warren Township Stage IV STP and proposed to be served by the Somerset Raritan Valley Sewerage Authority STP, and the sewer service area of the Veterans Administration STP. The rest of Bernards Township is included in the individual subsurface sewage disposal system service area.

This amendment proposal was noticed in the New Jersey Register on October 7, 1991. Three comments were received during the public comment period and are summarized below with the Department's responses.

COMMENT: The proposed amendment allows for additional development which will produce nonpoint source pollution, a known water quality problem in the Upper Passaic River Basin. Also, wastewater from the development will be discharged to surface water in the Raritan Watershed. The issue of transferring wastewater from one drainage basin to another should be fully investigated.

RESPONSE: The Department is working on a nonpoint source program to address these concerns. At this time, however, these specific impacts are not required to be addressed through the WMP and can be addressed through other means such as municipal stormwater control ordinances and New Jersey Pollutant Discharge Elimination System stormwater permits for industrial facilities.

In regard to the second concern, there actually will not be a transfer of water from one basin to another as the same basin which supplies the water, the Raritan River basin, will be the basin which will receive the wastewater discharge.

COMMENT: Bedminster Township refused to endorse the BTSA WMP which provides for areas of Bernards to be served by the EDC STP since Bedminster Township is the only municipal co-permittee for the EDC STP. The Township would endorse the amendment if Bernards Township was added as a co-permittee or Bedminster Township was deleted as co-permittee.

RESPONSE: In order to address the concerns of the Bedminster Township officials, the Department is proceeding with modification of the EDC STP New Jersey Pollutant Discharge Elimination System permit to delete Bedminster Township as the co-permittee.

COMMENT: The wastewater from the Exxon Service station on King George Road, Block 182, Lot 1 in Bernards Township is treated by the Warren Township Sewerage Authority's Stage IV STP.

RESPONSE: In conjunction with adoption of the BTSA WMP, the BTSA WMP and the Warren Township Sewerage Authority WMP are revised to identify the above existing situation.

(a)

OFFICE OF REGULATORY POLICY

Amendment to the Monmouth County Water Quality Management Plan
Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking comment on a proposed amendment to the Monmouth County Water Quality Management (WQM) Plan. The amendment request was submitted by Maser Sosinski and Associates on behalf of Delicious Orchards. This amendment would designate the site of Delicious Orchards, Block 46, Lot 15 in Colts Neck, as the service area for an on-site treatment facility with groundwater discharge (less than 20,000 GPD). It is proposed that the existing treatment facility be replaced and expanded. The projected wastewater flow is approximately 8,000 GPD.

This notice is being given to inform the public that a plan amendment has been proposed for the Monmouth County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, CN-029, 401 East State Street, Third Floor, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

Interested persons should submit written comments on the amendment to Mr. Ed Frankel, Office of Regulatory Policy, at the NJDEPE address cited above. A copy of the comments should be sent to John VanDorpe, Maser Sosinski and Associates, 70 East Water Street, PO Box 5310, Toms River, New Jersey 08754. 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 NJDEPE with respect to the amendment request.

Any interested person may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment (or extend the public comment period in this notice up to 30 additional days). These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this public notice to Mr. Ed Frankel at the NJDEPE address cited above. If a public hearing is held, the public comment period in this notice shall be extended to close 15 days after the date of the public hearing.

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Tri-County Water Quality Management Plan
Public Notice

Take notice that on April 16, 1992, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. The amendment was proposed by Keystone Cogeneration Systems, Inc. This amendment identifies a new zero discharge wastewater treatment facility (WTF) with a design capacity of 1.44 million gallons per day to serve the proposed Keystone Cogeneration Systems, Inc. coal-fired cogeneration facility to be located at Block 1, Lot 2 of Logan Township, Gloucester County. The proposed WTF will collect cooling tower and boiler blowdown, process wastewater, coal pile runoff, treated sanitary wastewater and stormwater runoff in a wastewater holdup basin. The wastewater from this basin will then be treated and reused within the cogeneration facility. This system will not discharge any water back to the Delaware River other than stormwater runoff.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Lower Delaware Water Quality Management Plan
Public Notice

Take notice that on April 21, 1992, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Lower Delaware Water Quality Management Plan was adopted by the Department. This amendment proposal was submitted by John Helbig of Adams, Rehmann and Heggan Associates, Inc. on behalf of the Deerfield Township Board of Education. This amendment identifies an on-site expansion of the existing groundwater discharge from the Deerfield Township Elementary School located at Block 44, Lot 16, in Deerfield Township, Cumberland County to serve a proposed 24,400 square foot building addition. The proposed school expansion will bring the total functional school capacity to 560 students and staff.

(d)

ENVIRONMENTAL REGULATION

Notice of Adoption of 1991-92 New Jersey Pollutant Discharge Elimination System (NJPDES) Annual Fee Report and Fee Schedule

Take notice that the Department of Environmental Protection and Energy (Department) hereby adopts the 1991-92 Annual Fee Report and Fee Schedule (Annual Fee Report). In accordance with N.J.A.C. 7:14A-1.8, publication of this notice marks the completion of the 1991-92 budgeting process.

The Department held a public hearing on February 24, 1992 at the Labor Education Center, Cook College Campus, Rutgers University, New Brunswick, New Jersey. The public hearing was attended by 22 people. Oral testimony was provided by four people. The public comment period closed on March 2, 1992. Written comments were submitted by 14 people. The following is a list of those persons that provided written and oral comments concerning the Annual Fee Report and Fee Schedule, general comments concerning the fee assessment methodology, the proposed budget, actual expenditures, program goals and accomplishments to the department:

Sandra Grenci, Rahway Valley Sewerage Authority
Arnold Mitnaul, West New York M.U.A.
Robert Dixon, Gloucester County U.A.
W.L. Taetzsch, Exxon Company, USA
James A. Shissias, New Jersey State Chamber of Commerce
James A. Shissias, Public Service Electric and Gas
Mark Dulberg, Pyrolac Corporation
Ezra L. Bixby, Stony Brook Regional Sewerage Authority
Alfred H. Pagano, DuPont—Chambers Works
Donald C. Hoegel, Monsanto
Ernest R. Leonelli, Four Star Products, Inc.
Dennis M. Toft, for IMTT Bayonne
Jack Kace, Hoffmann-LaRoche
John D. Alexander, Hoffmann-LaRoche
Paul & Linda Baston, Pin-ups Salon
Scott Rios, Georgia-Pacific Corporation
Joseph Brancato, Georgia-Pacific Corporation
Carmine Catalana, Cumberland Dairy

Dennis Hart, Administrator of the Wastewater Facilities Regulation Program, Department of Environmental Protection and Energy served as hearing officer at the February 24, 1992 public hearing on the 1991-92 Annual Fee Report and Fee Schedule. After reviewing the testimony presented at the public hearing Dennis Hart recommended that the Department adopt the 1991-92 Annual Fee Report and Fee Schedule as proposed for all discharge categories except Significant Indirect Users (SIU).

The original SIU budget proposal was based on the Department inspecting all permitted SIUs and issuing SIU permits to unregulated facilities. On March 1, 1992, the Department proposed revoking NJPDES/SIU permits issued to facilities that discharge wastewater into

delegated local agencies with full permitting and enforcement authority. The revised budget and fee schedule are based on the projected number of inspections that were already conducted in delegated service areas and inspecting all NJPDES/SIU permits in non-delegated service areas. The total SIU budget for FY92 has been reduced $111,189 from $1,369,307 to $1,258,118. The portion of the SIU budget to be funded through permit fees in FY92 has been further reduced to $578,734. This decision reflects the percentage of facilities that will be assessed fees in FY92 as compared to the universe of SIUs. The Department will use $679,364 from the Clean Water Enforcement Fund to supplement the SIU budget in FY92.

A copy of the record of the public hearing which includes the transcript from the public hearing is available upon payment of the Department's normal charges for copying. Persons requesting copies should contact:

Samuel A. Wolfe, Esq.
Department of Environmental Protection and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625

Several commenters recommended changes to the fee assessment methodology. The methodology the Department has used for the adopted fee schedule is the one under N.J.A.C. 7:14A-1.8; accordingly, the Department cannot make the recommended changes in this adopted fee schedule. However, the Department agrees that some of the suggested changes to the existing methodology are necessary, and therefore, will propose amendments to N.J.A.C. 7:14A-1.8 by July 1, 1992. The Department expects to adopt amendments before publishing the 1992-93 Annual Fee Report and Fee Schedule. For long-term improvements in the fee assessment methodology, the Department believes that a task force comprised of members from the regulated community and the general public can be of great assistance in this process. A task force will be convened by the Department in July 1992 to address this issue. The Department anticipates that the task force's recommendations will be incorporated into the FY94 fee schedule.

Some commenters and other permittees identified errors in the proposed fee schedule. The Department has corrected those errors upon adoption of the fee schedule. In addition, the Department has reviewed the environmental impact calculations for NJPDES permittees to ensure that fee assessments reflect the calculated environmental impact. As a result of this review, the Department has revised the rates for all discharge categories. The revised rates and amount to be billed in FY92 are as follows:

	Proposed	Final	Amount Billed
Municipal Surface Water	.411457	.421189	$6,549,470
Municipal Ground Water	8847.35	9470.84	418,051
Residuals	.378347	.378953	125,000
Industrial Surface Water	1.63501	1.73549	7,529,807
Industrial Ground Water	3059.90	6017.02	232,880
SIU	7.70834	4.76431	578,734
Landfills	4.50813	4.80414	1,408,604
Ground Water Remediation	.000754	.000975	4,470,848

Summary of Public Comments and Agency Responses

1. COMMENT: Three years ago my facility was assessed $54,457 while Passaic Valley Sewerage Commission (PVSC) was assessed $162,000. The environmental impact from PVSC was three times the environmental impact from my facility. These fee assessments appear to be reasonable. Both facilities are now assessed the maximum fee of $654,947. PVSC is being extended preferential treatment at the expense of other permittees. (Arnold Mitnaul, West New York MUA)

RESPONSE: Annual permit fees are determined in accordance with the formula at N.J.A.C. 7:14A-1.8(a)9. In the past three years, the Department had phased out the cube root factor, which benefited large dischargers, and imposed a maximum fee equal to 10 percent of the budget. In the municipal program, three things occurred which directly impact the increase in fee assessments. First, many primary wastewater treatment plants were upgraded or abandoned. As a result several facilities that were paying relatively high permit fees are no longer in the fee system or as a result of wastewater treatment improvements are now paying significantly reduced fees, and the total number of municipal fee payers decreased from 312 to 252. Others have dramatically reduced their environmental impact through treatment plant upgrades. Second, the Department's municipal budget for 1991-92 has increased from $5 million in FY89 to $7 million in FY92. A significant portion of this increase can be attributed directly to the implementation of the Clean Water Enforcement Act which mandated annual inspections and sampling at all major and one-third of the minor discharges and increased discharge reporting frequency and data management. The budget also includes work activities performed by the Office of Administrative Law and the USGS contract which were previously funded through direct State appropriations. Third, the change in N.J.A.C. 7:14A-1.8(a)10, to calculate pollutant loadings on a linear basis rather than applying a cube root or square root function, significantly increased the percentage of the NJPDES program costs paid by large dischargers. In 1990, the Department adopted the provision to establish a maximum fee based on 10 percent of the program budget.

2. COMMENT: The Department must explain how our municipal fee assessment could increase 400 percent while our flow increased only 20 percent over the past four years. (Robert Dixon, Gloucester County Utilities Authority).

RESPONSE: The increase in municipal permit fees are a direct result of the changes which have been described above. The environmental impact of this facility was not as significant when many of the sewage treatment plants were only providing primary treatment. As the primary plants tied into regional facilities, the relative environmental impact from the regional plants increased, resulting in higher fees.

3. COMMENT: My facility's 1991-92 fee is 6.6 times more than the 1989-90 fee assessment. Our pollutant loadings have not changed. A major portion of this increase is directly related to the maximum fee of 10 percent. The present method is not equitable for all permittees. (Donald Hoegel, Monsanto)

RESPONSE: The Department disagrees with the commenter's assertion. The commenter's fee increase results primarily from factors unrelated to the 10 percent maximum permit fee, which factors are explained above. However, the Department recognizes that certain changes to the fee assessment methodology are necessary, and, as discussed above, will propose changes to N.J.A.C. 7:14A-1.8 by July 1, 1992.

4. COMMENT: The fee assessment for our facility has increased from five percent of our operating and maintenance budget to 44 percent of our budget. Our facility is currently under a Sewer Moratorium and therefore, cannot increase the population base paying into our budget. The Department must consider the current state of the national, State, and local economy. (Arnold Mitnaul, West New York MUA)

RESPONSE: A facility which is under a Sewer Moratorium is not meeting its NJPDES permit limits. Therefore, an upgrade of the treatment plant is required. This action would decrease the facility's environmental impact and the fee assessment. In addition, the Department amended N.J.A.C. 7:14A-1.8 in 1991, to implement a methodology which would reduce the share of the NJPDES program costs paid by small and/or efficient dischargers. The Department originally used a cube root factor, then a square root factor when calculating permit fees to compress the total weighted loads. The Department acknowledged that using cube and square root factors resulted in small and/or efficient dischargers paying a disproportionate share of the NJPDES program costs. It was also noted that basing fees on the actual quantity of pollutants would result in dramatic increases for those facilities with large environmental impacts.

5. COMMENT: The Department issued our facility a NJPDES permit for an industrial discharge to ground water five years ago. While many businesses discharge similar wastewater to ground water only two companies have been issued NJPDES permits. Selective enforcement on a few small businesses is causing owners significant mental and financial anguish. (Paul and Linda Baston, Pin-ups Salon)

RESPONSE: The Department disagrees with the assertion that it is selectively enforcing the Water Pollution Control Act against a few small businesses. The Water Pollution Control Act requires the Department to regulate all discharges of wastewater to the waters of the State. These discharges are regulated through the NJPDES permit program. The Department has a backlog of applications for NJPDES ground water discharge permits. Eventually all on-going ground water dischargers will be regulated through the NJPDES permit program.

6. COMMENT: The Department should demonstrate its commitment to results by publishing planned output targets and the actual outputs on a weekly basis in newspapers throughout the State. (Ezra Bixby, Stony Brook Regional Sewerage Authority)

RESPONSE: The Department is focusing on becoming more productive and responsive to the regulated community. Several major changes

to the NJPDES permitting program are expected within the next six months.

1. In accordance with P.L.1991, c.417, the Department will be preparing semi-annual reports on the permit processing times, number of applications received, the elapsed time between the receipt of applications and administrative review, number of permit actions finalized, and number of staff assigned to permit writing. This report will also require an analysis of actions to be taken by the Department to eliminate backlogs.

2. P.L.1991, c.422 requires the Department to prepare new technical manuals to assist applicants filing for NJPDES permit actions. This should improve the quality of applications submitted and reduce the need to return deficient permit applications.

3. The Department is required to provide continuing education seminars to permit applicants in accordance with P.L.1991, c.419.

4. P.L.1991, c.418 requires the Department to review permit applications submitted to the Department within 30 days.

5. The Department is currently finalizing the request for proposal to obtain contractors to assist the department in the permit writing process. This arrangement is expected to generate 100 final permits in FY93, and if it proves to be successful with respect to the backlog, the Department intends to expand the use of contract services consistent with the terms of P.L.1991, c.424. The contract will be funded with penalties collected pursuant to the Clean Water Enforcement Act.

6. The Department has the authority to issue general permits to regulate a group of similar discharges. A general permit contains effluent limitations, monitoring and reporting requirements which are then applied to all similar facilities. General permits have already been issued for non-contact cooling water, uncontaminated storm water runoff, and fuel remediation. The Department, through rulemaking with public comments, intends to expand the number and type of general permits.

7. COMMENT: One commenter suggested that the Department organize and classify work to increase productivity per unit of manpower available. (Ezra Bixby, Stony Brook Regional Sewerage Authority)

RESPONSE: The Department and the Wastewater Facilities Regulation Program are reorganizing to increase productivity. Work efforts performed on behalf of the NJPDES permit program involve more than just the issuance of NJPDES permits. The Department has assigned 42 work years to permit issuance. Our goal for FY92 is to issue 315 final permit actions or 7.5 actions per work year. The Department provided information in the 1991-92 Annual Fee Report on the current work year allocation assigned to NJPDES work tasks. Actual permit issuance accounts for only 22.5 percent of the NJPDES work years. The Department allocates 25.4 percent to management and clerical for all aspects of the NJPDES permitting program, 11.9 percent to program development including rule writing and quality assurance, 14 percent to information management, 20.9 percent to site inspections, compliance sampling, and permit enforcement, and 5.5 percent to sludge and pretreatment activities. In response to the P.L.1991, c.417, the Department is required to report to the Legislature on permit related outputs.

8. COMMENT: The Department has allocated 82 work years to the municipal program. However, only 8.28 or 10 percent are actually assigned to write 34 municipal permits. Twice that number are buried in management overhead. By my count, there are two managers and/or clerks for every permit writer. Production must be improved and managers must write permits. The Department will never achieve its output objective of timely permit renewals with this level of outputs. (Ezra Bixby, Stony Brook Regional Sewerage Authority)

RESPONSE: As stated above, the NJPDES permit program is more than simple permit issuance. The Department has allocated 82 workyears to process, monitor and administer municipal permits and only 8.28 are dedicated to actually writing municipal surface water permits. The 17.55 workyears for management/clerical are distributed to all municipal work activities including sludge planning, POTW oversight, technical assistance, program/rule development, biomonitoring, and Stormwater Combined Sewer Overflow (CSO) Strategy. Of the 24 work years assigned to the municipal surface water section, there are two supervisors and three clerical staff. The Department agrees with the commenter that rate of permit production must improve.

9. COMMENT: The Department should create a policy making system that is not allowed to change from permit to permit without ample opportunity for public notice, public comment and formal promulgation of rules supporting the policy. (Ezra Bixby, Stony Brook Regional Sewerage Authority)

RESPONSE: Long term changes to the NJPDES permitting program are being investigated through a "Program Improvement Initiative" and implemented by rewriting the NJPDES regulations. The Program Improvement Initiative in being conducted jointly by the USEPA headquarters in Washington, D.C., USEPA Region II in New York and the Department. This effort will review the Department's current NJPDES permitting program and determine whether the Department is correctly interpreting USEPA guidance and regulations. Once the program review is completed, which is expected in April 1992, the Department will begin the first major rewrite of the NJPDES regulations. The Department's policies on anti-degradation, anti-backsliding, water quality based effluent limitations and other permit related policies will be incorporated in the new regulations.

10. COMMENT: One commenter obtained a list of permit actions in October 1991. Some of the final permit actions were not contained in Appendix K of the 1991-92 Annual Fee Report. What permit actions were actually completed in FY91? (Ezra Bixby, Stony Brook Regional Sewerage Authority)

RESPONSE: The list of final permit actions in Appendix K includes those actions which became effective during the period July 1, 1990 through June 30, 1991. Permits which were issued but not effective until after June 30, are not listed in Appendix K. Many of the minor modifications issued do not require a change in the computer system and are therefore not tracked. One of the permit actions was actually a discharge allocation certificate (DAC) for an existing discharger. Since the limits in effect reflect the old permit, it was not listed in Appendix K. Only one final municipal permit was not listed in Appendix K. This oversight has since been corrected.

11. COMMENT: The Department has proposed a 29.6 percent increase in the Industrial budget for 1991-92. The proposed fees for many facilities are exorbitant. This rapid growth and the associated costs probably has led to inefficiencies that the NJPDES permit holders must bear. The Department does not present sufficient information in its Annual Fee Report to determine if the costs are being prudently managed. Several commenters recommended that an independent organization audit the NJPDES program and report its findings back to the NJPDES permit holders. (W.L. Taetzsch, Exxon Company, USA, James Shissias, New Jersey Chamber of Commerce, James Shissias, Public Service Electric and Gas)

RESPONSE: P.L.1991, c.427 requires the Department to report to the Governor, the Legislature, and the State Auditor annually on the imposition, collection, and expenditure of fees imposed by the Department. The State Auditor is also required to conduct a post-audit of all fee accounts to ensure that the fees conform to the requirements of the statute or rule imposing the fee; to verify that the method of calculation reflects the cost of regulation, services or other activity for which the fee is being imposed; to check the extent to which revenues accruing to the Department from each fee are expended for the regulation, service, or other activity for which it is imposed; and to document surpluses and the transfer of fee revenues.

12. COMMENT: One permittee commented that the Department has improperly used the NJPDES permit program to regulate historic ground water contamination at their facility. The Department should have addressed this problem through the Spill Compensation Act, N.J.S.A. 58:10-23.11(a) et seq. The permittee stated that the fee assessed by the Department is inappropriate because the Department utilized the wrong regulatory program. (Dennis Toft, for IMTT Bayonne)

RESPONSE: The Department has consistently used the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A et seq.) and its implementing regulations (N.J.A.C. 7:14A) to monitor and control historic ground water pollution. This is clearly reflected in the fee regulations. Fee factors such as "post-closure" or "post-remediation monitoring" and areal extent of a plume of contaminated ground water clearly speak to historic ground water pollution. N.J.A.C. 7:14A-6.1(a) establishes "requirements for ground water monitoring programs for all discharges, past or present, actual or potential of pollutants, including hazardous and non-hazardous waste ... to ground water or onto land which might flow or drain to waters of the state."

13. COMMENT: The Department certainly cannot expend 10 percent of its administrative time on one permit. It would be more reasonable to distribute costs on a per capita basis, rather than attempting without justification to differentiate between facilities on an environmental basis particularly where the permittee is not responsible for the ground water contamination. (Dennis Toft, for IMTT Bayonne)

RESPONSE: The Department has adopted a fee assessment methodology based on the environmental impact posed by the regulated

discharge rather than electing a per capita basis on the philosophy that those facilities whose actions are subject to the statutorily directed regulatory activities should pay for the cost of such regulation. Assessing fees on an environmental impact basis distributes costs to those facilities that require the greatest level of regulation. NJPDES permits are issued to facilities to allow for the discharge of pollutants from their facility. Since the permittee owns the property with ground water contamination, the permittee is responsible for the discharge.

14. COMMENT: *Public Service Electric and Gas v. New Jersey Department of Environmental Protection,* 101 *N.J.* 95 (1985), and *GAF Corp. v. Department of Environmental Protection,* 214 *N.J. Super.* 446 (App. Div. 1986) which allows the Department to include an environmental component in its fee assessment methodology are being misapplied in the context of historic ground water contamination which was not caused by the permittee. While the inclusion of an environmental component in the surface water formula provides a permittee incentive to better control its discharge, no such incentive exists in the ground water formula. These cases cannot be used by the Department as justification for the outrageous charge since the environmental component is not our company's responsibility. (Dennis Toft, for IMTT Bayonne)

RESPONSE: The issue of the fee methodology has been litigated many times and is clearly established in N.J.A.C. 7:14A-1.8. The ground water permittee is provided ample opportunity in the fee formula to reduce environmental impact and thus the permit fee, by defining the areal extent of ground water contamination and actually initiating ground water remediation. The Department uses the average pollutant concentrations where permittees have defined the areal extent of contamination rather than the average concentration from the most contaminated well. The Department also applies a lower ground water monitoring status and minimum fee once the permittee has initiated ground water remediation.

15. COMMENT: No present discharge to ground water exists at our site and our facility cannot be held responsible under the Water Pollution Control Act for past discharges which occurred before we leased the property. The Department's authority to use the NJPDES permit program as a mechanism to remediate past discharge activities is questionable in light of *Vi-Concrete Co. v. Department of Environmental Protection,* 115 *N.J.* 1 (1989). The Department is attempting to use the NJPDES program because of its fee generation provisions under the Water Pollution Control Act without legislative authority. (Dennis Toft, for IMTT Bayonne)

RESPONSE: The Department maintains that the pollutants present at the site represent a discharge and that polluted water (both ground water and rainwater infiltrating through the soil) is a non-point source discharge requiring a permit as defined at N.J.S.A. 58:10A-6. The Department does not believe that this interpretation is inconsistent with the decision in *Vi-Concrete v. Department of Environmental Protection* 115 *N.J.* 1 (1989).

16. COMMENT: The Department has not treated all neighboring property owners who are part of this industrial complex and have similar ground water contamination the same way. These other property owners have not been issued NJPDES ground water permits. The Department should revoke our facility's NJPDES permit and treat all property owners the same. (Dennis Toft, for IMTT Bayonne)

RESPONSE: The commenter is correct in stating that not all facilities with major contamination of soil and ground water caused by petroleum products are currently undergoing site evaluation or cleanup. NJPDES ground water monitoring permits have been issued to those facilities which utilized land disposal units, such as infiltration/percolation lagoons as part of its wastewater treatment, as these facilities presented the greatest potential risk for ground water contamination. In this case, a site inspection conducted by the Department in 1983 identified a waste lagoon at the facility. In accordance with the NJPDES regulations, the facility was instructed to submit an application for a NJPDES ground water permit. A NJPDES ground water permit was issued in 1986.

17. COMMENT: Our facility implemented the required ground water monitoring program. As a result, our fee increased dramatically because of an apparent change from detection monitoring to corrective action although the same environmental conditions exist. This fee assessment represents a penalty for complying with the requirements with the requirements of our ground water permit. (Dennis Toft, IMTT Bayonne)

RESPONSE: The NJPDES ground water permit system is clearly designed to have a facility monitor its site for ground water pollution through "detection monitoring", then study and evaluate the site when ground water contamination is detected (compliance monitoring), and then begin cleanup activities (corrective action). In this case, the permittee was notified by letter that ground water contamination was detected and that site evaluation through compliance monitoring was required. The Appellate Division in *In Re NJPDES Permit Fee Regulations,* Dkt. No. A-4908-89T1, held that the Department's ground water fee schedule, which assesses fees based on the level of ground water monitoring, was reasonable.

18. COMMENT: This fee assessment will leave our facility with less funds available to devote to ground water remediation at the site which is presumably the only mechanism to reduce future fee assessments. Assessing extremely high fees to facilities with ground water contamination will encourage other companies to resist the Department's efforts to implement ground water remediation through the NJPDES permit program. (Dennis Toft, IMTT Bayonne)

RESPONSE: The Department disagrees with that commenter. The ground water fee assessment methodology provides facilities with a financial incentive to implement corrective measures, including source removal and ground water remediation, when ground water monitoring results indicate that ground water contamination has occurred at the site.

19. COMMENT: The Department has clearly stated that protecting, improving and enhancing the water resources of the State for the benefit and enjoyment of all state residents is a key goal. The NJPDES program is a keystone in achieving the department's goal. However, the entire NJPDES permit program will be financed through permit fees and penalty assessments paid by public and private entities holding NJPDES permits. About 30 percent of the State's residents not serviced by public wastewater systems also benefit from cleaner water resources. The NJPDES budget should reflect a combination of funding sources reflecting the equitable distribution of benefits and costs. (Robert Dixon, Gloucester County Utilities Authority)

RESPONSE: The commenter is correct, in that the goals of the Water Pollution Control Act are to protect, improve and enhance the quality of the waters in the State. The New Jersey Legislature has chosen not to distribute the costs of implementing the Water Pollution Control Act among the taxpayers at large. The Department does not receive any general State funds to implement the NJPDES permit requirements identified in the New Jersey Water Pollution Control Act. Furthermore, the Department is authorized to distribute the cost to process, monitor and administer the NJPDES program through a fee schedule. The assessment of NJPDES fees based upon environmental impact reflects the Department's philosophy to distribute program costs to those facilities whose actions are subject to Department directed regulatory activities.

20. COMMENT: One commenter expressed concern that the Department's fee structure constitutes a tax based upon pollutant loadings from a particular discharger. The Department has never presented evidence that the cost of processing, monitoring and administering any given permit is even remotely related to the quantity of pollutants discharged. The 1991-92 fee proposal runs afoul of the basic statutory mandate that the fees be "reasonable." Another commenter stated that the current fee assessment methodology in N.J.A.C. 7:14A-1.8 results in fees so totally removed from the cost of administering each individual permit that the current fee system fails to meet the reasonable standard in the statute. (Jack Kace, Hoffmann-LaRoche, John Alexander, Hoffmann-LaRoche)

RESPONSE: The Department has established the 1991-92 fee schedule in accordance with N.J.S.A. 58:10A-9, based upon the estimated cost of processing, monitoring, and administering NJPDES permits by discharge type. These estimated costs are distributed among NJPDES permittees based upon environmental impact as defined in the NJPDES regulations. Under the Water Pollution Control Act, the Department is not required to assess fees based upon the cost to issue and administer an individual permit. Further, in *Rahway Valley Sewerage Authority v. New Jersey Department of Environmental Protection,* Dkt. No. A-4924-89T5, the Appellate Division made it clear that the Department did not have to document NJPDES permit costs with the precision of an audit. The Department does, in fact, evaluate the actual cost incurred by discharge categories against the revenue received from permittees in that category of discharge and does extend a credit where appropriate.

21. COMMENT: The Department should develop a more equitable and rational system for assessing permit fees based at least in part on the costs of permit administration. The commenter recommended that the Department consider that a certain fee be set to cover permit administration and that additional fees be set for inspections, sampling and testing. Higher fees should be imposed for re-inspections as a result

of violations of the Clean Water Enforcement Act. This would result in all permittees paying more of their fair share.

RESPONSE: The Department has plans to address the minimum fee schedule in N.J.A.C. 7:14A-1.8(h) in a rule proposal in June, 1992. Costs which can be applied on an annual basis to all permit holders will be included in the minimum fee. The portion of NJPDES program costs covered through minimum fees paid by all NJPDES permittees will increase because the Department plans to include more activities which are performed annually for every permittee on behalf of all permittees. Concurrently, the costs distributed based upon environmental impact will decrease. As a result, the minimum fees are expected to increase dramatically from the current $500.00.

22. COMMENT: The fee assessment methodology has been changed three times in the last three years. Permittees have no way of knowing their facility's impact until the entire fee assessment process is completed. (Donald Hoegel, Monsanto)

RESPONSE: The commenter is correct. The Department has developed a fee assessment methodology based upon environmental impact. Over the years, based on public comment and programmatic changes, the Department has amended the environmental impact calculation. While these changes have resulted in fee increases for some facilities, it also resulted in decreased fees for others. The Department believes that the evolution of the fee assessment methodology has resulted in a more equitable assessment of fees and is consistent with its responsibilities under the Water Pollution Control Act.

23. COMMENT: The effect of the change to a linear value for toxicity has been that dischargers, whose pollutant loadings have been decreasing over time, are now paying fees which have been increasing significantly from year to year strictly on a change in the formula that does not take into account for these decreased loadings, and penalizes permittees with many parameters. (Jack Kace, Hoffmann-LaRoche, John Alexander, Hoffmann-LaRoche)

RESPONSE: Overall, permittees have been reducing the quantity of conventional pollutants discharged as required by their NJPDES permits. The Federal Clean Water Act amendments in 1987 required the Department to establish effluent limitations for many previously unregulated toxics. As a result, the overall cost to issue permits has increased. The rate used to assess fees in N.J.A.C. 7:14A-1.8(a), is a function of the budget and the total environmental impact. Therefore, the combination of an increasing budget and decreasing environmental impact has resulted in higher fees for those facilities that have reduced the quantity of pollutants discharged. Only those facilities that radically reduce environmental impact as would occur when a treatment plant implements secondary treatment would experience a reduction in their fee assessment.

24. COMMENT: The Department's failure to issue a great number of new permits and upgrade existing permits to include additional pollutants renders the entire NJPDES permit fee system fundamentally unfair and unreasonable. Older permits contain a limited number of parameters which results in very low environmental impacts for these facilities. The Department formerly recognized this problem by applying a cube root or square root factor as a statistical means of fee distribution so that large dischargers with very sophisticated permits and extensive monitoring requirements would not pay a disproportionately high share of the NJPDES program costs. (Jack Kace, Hoffmann-LaRoche, John Alexander, Hoffmann-LaRoche)

RESPONSE: The Department agrees that the number of permit outputs has been poor. However, the number of permit actions finalized by the Department in the first six months of FY92 were equal or greater than in all of FY91. The Department has also developed an action plan to dramatically improve permit outputs. The commenter is partially correct that older permits contain fewer effluent limits; however, this does not automatically result in a very low environmental impact. Older permits generally have less stringent limits than would be permitted to be discharged today. New permits contain effluent limitations for many previously unregulated pollutants and may significantly reduce the concentration of previously regulated pollutants. It should be noted that increased monitoring does not impact the fee assessment, as the Department only includes those pollutants with effluent limitations. Furthermore, N.J.A.C. 7:14A-1.8(c) allows the Department to drop volatile organic compounds, acid extractable compounds, base neutral compounds, PCBs and pesticides which are monitored but never detected from the total weighted load. Experience has shown that compliance with these new permits requires the permittee to perform additional wastewater treatment to reduce pollutant concentration to be in compliance with permit conditions. Therefore, it is very likely that facilities with less sophisticated NJPDES permits will continue to pay high fees.

25. COMMENT: The Department's fee assessment methodology worked reasonably well during the era of technology based permits. However, new water quality based permits are being issued based on effluent characterizations. These permits contain discharge limits on many toxic pollutants. As a result, facilities that are issued new permits with the additional requirements will be assessed a greater share of the NJPDES program costs than those permittees with older permits that do not contain toxics. Fees should be based on the actual pollutant loading on the environmental rather than the comprehensiveness of a permittee's permit. The Department should consider assessing fees on an equivalent basis, such as pre-existing conditions, until all permits are similar. Another commenter suggested that an alternative mechanism should be investigated to more accurately compute fees in proportion to the loading on the environment. (W.L. Taetzsch, Exxon Company, USA, James Shissias, New Jersey Chamber of Commerce, James Shissias, Public Service Electric and Gas)

RESPONSE: In the next permit cycle, the Department will be upgrading NJPDES permits to include previously unregulated toxic pollutants. The Department has prioritized permit issuance activities through Section 304(l) of the Federal Clean Water Act, 33 U.S.C. 1314, for those dischargers on waterways impacted by toxics. Effluent limits for the first round of 304(l) permits are not in effect at this time. Therefore, as stated above, a new permit will not automatically result in higher fees. In addition, the Department believes that revisions to the minimum fee schedule at N.J.A.C. 7:14A-1.8(h) will distribute some of the administrative cost associated with implementing water quality based effluent limits for toxics. The Department will consider the commenter's suggestion in the next rule proposal in July 1992.

26. COMMENT: The Department should establish committees with members representing the regulated community and the department to review program objectives on a regular basis to propose changes so as to arrive at equitable and appropriate fees for all NJPDES permit holders. (Alfred Pagano, DuPont Chambers Works)

RESPONSE: Wherever practical, the Department has worked with task forces composed of members of the regulated community, environmental groups and the Department. A task force will be used in the rewriting of the NJPDES regulations. The fee rules currently in effect were the subject of pre-proposal prior to developing the actual rules. The Department plans to continue the use of informal public meetings to assist in the development of rules. A task force will be established to evaluate the NJPDES fee assessment methodology and recommend long-term improvements to N.J.A.C. 7:14A-1.8.

27. COMMENT: The New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-9) requires that the Department "establish and charge reasonable annual administrative fees, which shall be based upon, and shall not exceed the estimated cost of processing, monitoring and administering the NJPDES permits." The Department has included numerous activities outside the intended scope of the Act, in particular the cost of enforcement activities. Further, as a result of the Clean Water Enforcement Act, the cost associated with enforcement activities has increased dramatically. (Sandra Grenci, Rahway Valley Sewerage Authority)

RESPONSE: The Department includes in the NJPDES fee schedule costs associated with activities which are part of processing, monitoring and administering NJPDES permits. The Clean Water Enforcement Act requires the Department to inspect every permitted facility once a year, and sample all major and about one-third of the minor discharges annually. These inspection and sampling activities have always been included as a monitoring cost to the NJPDES program. The CWEA increased the number of inspection and sampling activities that the Department must conduct annually. The Appellate Division in *Rahway Valley Sewerage Authority v. New Jersey Department of Environmental Protection*, Dkt. No. A-4924-89T5, upheld the inclusion of activities related to permit compliance, such as inspections, sampling and the issuance of enforcement actions, in the NJPDES budget.

28. COMMENT: The Department has distributed 30 percent of the municipal budget to three facilities by assessing each facility the maximum fee of 10 percent. Passaic Valley Sewerage Commission (PVSC) has an environmental impact nearly five times more than West New York and discharges 25 times the volume of wastewater and possesses a much larger population base. If the Department has calculated fees based on the polluter pays philosophy, then assessing a maximum fee of 10 percent to my facility is not appropriate. (Arnold Mitnaul, West New York MUA)

RESPONSE: NJPDES fee assessments are based upon the discharger's environmental impact in accordance with N.J.A.C. 7:14A-1.8(c). NJPDES fees are not based on the volume of wastewater discharged. Although PVSC discharges about 300 million gallons per day (MGD) and West New York MUA discharges only about 10 MGD, their environmental impacts are 13,662,776 for PVSC compared to 2,812,942 for West New York MUA. The average environmental impact for all municipal facilities is 145,845. The fee schedule distributes NJPDES program costs to those facilities with the greatest environmental impact. The maximum fee of 10 percent ensures that the fee schedule is reasonable. Facilities that have been assessed maximum fees do contribute significant environmental impact and directly benefit from the 10 percent provision.

29. COMMENT: One commenter stated that the present concept of a maximum fee equal to 10 percent of the budget is excellent and making the fee program work. However, the commenter suggested that the 10 percent maximum fee is too high and should be based on the environmental impact rather than the budget. (Alfred Pagano, DuPont Chambers Works)

RESPONSE: The Department has not proposed a change to the maximum fee provision in N.J.A.C. 7:14A-1.8(a)10. The Department selected 10 percent for the maximum fee to preserve the distribution of costs based on environmental impact while decreasing the proportional share of NJPDES costs paid by small and/or efficient dischargers. Selecting a percentage less than 10 percent would have increased the fees assessed to very small facilities.

30. COMMENT: The Department has not adequately discussed or documented the apparent reduction in "total environmental impact" or the significant increase in the "rate." The Department should spend more time on a meaningful and factual comparison of true factors resulting in the rate increase instead of including superfluous information currently contained in the fee report. (Sandra Grenci, Rahway Valley Sewerage Authority)

RESPONSE: The Department has provided the information used to determine the "rate" used to calculate permit fees in the fee schedule. The department disagrees with the commenter's assertion that most of the information is superfluous. The fee schedule is required by N.J.A.C. 7:14A-1.8(b). However, the Department does agree that more discussion should be incorporated into the fee report on the overall impact of the NJPDES permit program in terms of environmental impact. This will be accomplished in the 1992-93 Annual Fee Report.

31. COMMENT: The Department has attempted to distribute the costs associated with the NJPDES program among these dischargers who contribute the greatest "environmental impact." It is unclear how many of the excessive fees listed in the 1991-92 fee schedule can be justified in terms of the amount of NJPDES related activities. (Sandra Grenci, Rahway Valley Sewerage Authority)

RESPONSE: The Department distributes NJPDES program costs based upon environmental impact in accordance with the formula provided in N.J.A.C. 7:14A-1.8(c) through (g). The maximum fee of 10 percent was included in N.J.A.C. 7:14A-1.8(a)10 to ensure that fee assessments would be reasonable. The actual cost to administer an individual NJPDES permit is not a factor in the NJPDES fee schedule. This is consistent with several Appellate Division opinions.

32. COMMENT: Fee increases of several hundred to several thousand percent over the past several years cannot by any means be correlated with similar increases in associated NJPDES discharger activity or substantial changes in environmental impacts. (Sandra Grenci, Rahway Valley Sewerage Authority)

RESPONSE: In accordance with N.J.S.A. 58:10A-9, the Department is authorized to develop a fee schedule to cover the estimated cost to process, monitor and administer NJPDES permits. The fee assessment methodology has been adopted in regulations provided at N.J.A.C. 7:14A-1.8. The Department has amended these regulations several times over the past few years in an effort to better distribute the costs of the NJPDES program based upon environmental impact. Fees have increased for large municipal dischargers because of the change from a geometric to a linear fee assessment methodology. In addition, the reduction in the number of fee payers, wastewater treatment improvements which have reduced the total quantity of pollutants discharged by all dischargers, and the increase in the Department's municipal budget have also affected fees for large municipal dischargers. As a result, facilities similar to the commenter's, which did not make any improvements to the quality of its wastewater discharge or reductions in the quantity of pollutants discharged, and that formerly benefited from the cube root factor, have experienced significant fee increases.

33. COMMENT: The maximum fee of 10 percent in N.J.A.C. 7:14A-1.8(a)10 does not preserve the integrity of the environmental impact calculations. The two major facilities assessed the maximum fee of 10 percent are, in fact, responsible for 61 percent of the total environmental impact in the industrial surface water program. One is a very successful commercial waste treatment operation. The two capped facilities are not being assessed their fare share of the NJPDES program costs. Our fee now represents 20 percent of our wastewater treatment plant's operational cost. Once the Department decided to assess fees on a "purely linear" distribution of fees, a maximum fee should not have been used. (Donald Hoegel, Monsanto)

RESPONSE: The maximum fee, in conjunction with the linear system (rather than the square root or cube root system), is necessary to ensure that no single facility is bearing an unreasonable portion of the NJPDES program cost. The linear system ensures that NJPDES permittees pay the same rate for each unit of environmental impact.

34. COMMENT: The maximum fee of 10 percent is extremely unfair to the next tier of industrial facilities. The next four facilities account for 29.5 percent of the environmental impact and 29.7 percent of the industrial budget. Obviously, these facilities are bearing the burden of the 10 percent cap. The commenter stated that this cap must be eliminated. (Donald Hoegel, Monsanto)

RESPONSE: The Department disagrees with the commenter's statement that these four facilities are being assessed a disproportionate share of the industrial program costs. These facilities contribute approximately 30 percent of the environmental impact and will pay 30 percent of the budget.

35. COMMENT: The Surface Water Rating Factor assesses receiving water quality, designated uses and the attainment of designated uses. A discharger is effectively penalized for the quality of the receiving water into which it discharges. This is unfair since the dischargers may in no way be contributing to the level of pollution existing in the receiving water and may be complying with all conditions of their NJPDES permits. This appears to be in direct opposition to one of the primary aims of the NJPDES Fee program, which is supposedly to assess the program costs in direct proportion to the degree of environmental impact. Another commenter stated that companies should not be penalized by the luck of where they are happened to be located, or whether they are located near a POTW to handle their wastewater. (Sandra Grenci, Rahway Valley Sewerage Authority)

RESPONSE: Fee assessments are primarily based upon the quality of pollutants discharged by a facility to the surface waters of the State. The three components of the Surface Water Rating Factor balance existing water quality, existing water use, and the attainment of designated uses. This factor has a theoretical range between zero to four. The stream rating factor is a reasonable measure of environmental impact. Streams with high stream rating factors have the greatest potential for affecting the public. These waterways have the highest use, and therefore, the greatest potential for impact if polluted or unable to meet the designated uses expected. The fee schedule does not automatically penalize a permittee, through a higher fee assessment, because of poor water quality. This issue was argued in the *Rahway Valley Sewerage Authority v. DEPE*, Dkt. No. A-4924-89T5, on January 29, 1992. The Appellate Division told the Department that it can consider the quality of the receiving stream in the environmental impact calculation. No changes have been proposed to the fee assessment methodology.

36. COMMENT: One commenter stated that it could be argued that effectively treated discharges could serve to dilute an otherwise polluted waterbody. (Sandra Grenci, Rahway Valley Sewerage Authority)

RESPONSE: The NJPDES surface water permitting program sets limitations based on current technology and/or receiving water quality. As time progresses and technological and scientific information improves, the USEPA requires more stringent permit limits. Thus, the discharge limits in NJPDES permits become more stringent. The Department clearly does not have the authority to exempt individual discharges from the most stringent applicable limitations simply because they discharge to a polluted waterway.

37. COMMENT: In receiving waters regulated by the Interstate Sanitation Commission (ISC), water quality is impacted by past and present point and non-point source discharges regulated, in varying degrees, by more than one regulatory authority. A fully compliant discharger in New Jersey is penalized due to non-compliant dischargers in other states, over which it has no control. (Sandra Grenci, Rahway Valley Sewerage Authority)

RESPONSE: As stated above, the major factors used to determine an individual fee assessment are based upon factors which are within

the permittee's control, primarily the quantity of pollutants discharged and the toxicity of the discharge. The Department is aware of this interstate problem and is in the process of developing "Total Maximum Daily Loads" to be divided between the states to ensure that each state receives the appropriate "loading" to calculate water quality based effluent limits. This allocation of loadings should improve discharge compliance in adjoining states.

38.COMMENT: The "bioassay factor" included in the NJPDES surface water environmental impact calculation should be reevaluated in relation to the "stream rating factor." It is not clear how the bioassay factor relates to the quality and characteristics of the permittee's receiving water. (Sandra Grenci, Rahway Valley Sewerage Authority)

RESPONSE: The bioassay factor has no relationship to the quality and characteristics of the receiving water. The bioassay factor evaluates the overall synergistic and antagonistic effects of the effluent as measured by whole effluent toxicity testing. The stream rating factor is based on existing water quality, exisiting water use and the attainment of designated uses. It is possible for a discharge to be assigned a high bioassay factor and a low stream rating factor, and vice versa. The two factors are totally independent of each other.

39. COMMENT: The Department uses one-half of the method detection level concentration to calculate the "total weighted pollutant load" when the compound is detected in one or more samples over the monitoring period. The commenter suggested that the Department use "zero" when the compound is detected but at concentration below the analytical detection limit. This would help to avoid situations where inflated laboratory detection limits, due to interferences or other analytical problems, would unnecessarily contribute to increases in total pollutant loading calculations. (Sandra Grenci, Rahway Valley Sewerage Authority)

RESPONSE: The Department uses those parameters for which effluent limitations have been established. Limits are imposed where the presence of the regulated compound is suspected. Therefore, using one-half the minimum detection limit is more appropriate than "zero" since the presence of the compound is anticipated in wastewater. The analytical methods and minimum detection limits are now specified in individual NJPDES permits. The Department has also published a Discharge Monitoring Reports (DMRs) Manual and held several training sessions to instruct permittees in the correct completion of DMRs.

40. COMMENT: Our facility discharges within 500 feet of another stream segment with a much lower stream rating factor. As a result, our facility is being penalized through an increased fee assessed because of the location of our discharge. (Donald Hoegel, Monsanto)

RESPONSE: The stream rating factors have been assigned to individual permits based upon location. The commenter suggests that the Department use a stream rating factor for another segment of the river based on the close location. However, this section of the river is tidal. The commenter's discharge affects the river upstream and well as downstream.

41. COMMENT: Our facility complies with effluent limitations required by our NJPDES permit. The facility is being unduly penalized for discharging into a region of the Delaware River for which we have no control. The stream rating factor of 1.72 for zones 3 and 4 of the Delaware River are impacted heavily by Philadelphia-Camden effluents. Our facility has no way of influencing the negative effects of the major population centers discharging to zones 3 and 4. (Donald Hoegel, Monsanto)

RESPONSE: NJPDES fee assessments are based primarily upon the quantity of polluants discharged by the facility into the surface waters of the State. The stream rating factor measures the existing water quality, water use and the attainment of designated uses. The stream rating factor applied to the Delaware River for zones 3 and 4, reflects the conditions present, that is, poor water quality, no water use, and failure to meet the designated uses.

42. COMMENT: The Department should reevaluate and document the merit and basis for the stream rating factors since the individual permittee has no way of impacting its discharge zone. The permittee questioned whether the use of a stream rating factor was a fair and appropriate method to distribute costs to permit holders. (Donald Hoegel, Monsanto)

RESPONSE: The surface water fee assessment formula at N.J.A.C. 7:14A-1.8(c) was amended in 1988 to incorporate a stream rating factor. This factor was intended to evaluate the overall impact of the wastewater discharge to the environment. The three components of the stream rating factor, when considered together, evaluate the potential impact on human health and the environment. Those streams with poor water quality, significant amount of usage, and which do not allow for the designated uses are assigned the highest stream rating factors. Those streams with excellent water quality, no water use and which meet all designated uses are assigned the lowest ratings. The theoretical stream rating values range from 0 to 4. The average is 0.786. The Department believes that using a balanced stream rating factor does distribute costs to those that pose the greatest risk to the environment as required by N.J.A.C. 7:14A-1.8 as it currently stands.

43. COMMENT: The risk factors assigned in N.J.A.C. 7:14A-1.8—Table II should be reevaluated to reflect a more realistic toxicity (that is, cube root or square root of the current values). When the Department phased out the cube root factor in 1990, the actual risk associated with the discharge of a pollutant increased exponentially. (Jack Kace, Hoffmann-LaRoche, John Alexander, Hoffman-LaRoche)

RESPONSE: The Department plans to reevaluate risk factors contained in N.J.A.C. 7:14A-1.8 Table II in the rule proposal anticipated in June 1992. This change will not affect the 1991-92 fees.

44. COMMENT: The Water Use Index for our receiving water increased from 2 in 1990-91 to 37 in 1991-92. The 1990 New Jersey Water Quality Inventory Report indicates that there has been no degradation in water quality over the years. The change increased our stream rating from .17 to .87 and drastically increased our fee assessment. A comparison of the 1988 and 1990 New Jersey Water Quality Inventory Reports failed to provide any evidence which would warrant the increase in the Water Use Index. (Jack Kace, Hoffmann-LaRoche, John Alexander, Hoffmann-LaRoche)

RESPONSE: The Department's Water Use Index is the sum of four components: fishing use, primary contact use (swimming), shellfish use, and potable use. Fishing use is based upon the numbers of fish stocked by the Division of Fish, Game and Wildlife into the waterway. Stocking figures are considered quite accurate in reflecting the relative value of a waterway as a fishing resource. Because the Upper Delaware had limited fish stocking it was assigned a low value in 1988. In 1990, the Department determined that stocking figures failed to accurately measure the true degree of use in the Upper Delaware River. This river has one of the finest natural fishery resources in the east coast. Primary contact use is evaluated based upon the number of official bathing beaches with lifeguards. The section of the Delaware has "open access" throughout most of its length and is used by enormous numbers of swimmers, tubers, jet skiers and kayakers. The Water Use Index of 37 assigned to the Upper Delaware River in the 1990 New Jersey Water Quality Inventory Report now accurately reflects the extensive use of the river by the public for recreation. The permittees discharging to Upper Delaware River should have been assessed higher NJPDES permit fees in 1989-90 and 1990-91.

45. COMMENT: Surface Water permit fees should not be based entirely on toxicity or pollutant loadings because there are too many statistical inconsistencies and practical inequities with this methodology.

RESPONSE: The present fee assessment methodology is based primarily on the quantity of pollutants discharged by the facility. New permits contain ever more stringent effluent limitations. Some permits now contain effluent limitations that are lower than the method detection limits. The Department has published a Discharge Monitoring Report (DMR) Manual to assist NJPDES permittees in proper reporting. This manual should resolve issues on statistical inconsistencies. The Department believes that the inclusion of all limited pollutants is necessary to accurately calculate the environmental impact of a discharge and equitably distributes the costs of the NJPDES program.

46. COMMENT: The commenter stated that the assignment of risk factors for SIU's are oversimplified. The listed fates of pollutants entering a POTW are generalized and do not take into account differences in treatment plant operations, level of treatment, ultimate method of sludge disposal and various site-specific conditions that would affect the true "environmental risk" of these compounds. (Sandra Grenci, Rahway Valley Sewerage Authority)

RESPONSE: The Department does not agree that the risk factors are over simplified. The SIU risk factors evaluate the potential environmental impact of a pollutant originating from a NJPDES permitted SIU. Consistent with Section 510 of the Federal Clean Water Act and 40 CFR Part 403, the regulation of pollutants by POTWs or the Department as incorporated into SIU permits is based upon the individual POTW's capabilities. As such, the environmental risk of these compounds is assessed based upon a given POTW's sludge disposal methods, receiving water, and treatment capabilities.

47. COMMENT: Publication of SIU risk factors should be subject to considerable scientific peer review and scrutiny prior to incorporation into the NJPDES rule. (Sandra Grenci, Rahway Valley Sewerage Authority)

RESPONSE: The Department agrees that risks factors as well as other factors used in the fee assessment methodology should be subject to public review. Prior to adoption, the Department published a preproposal and proposal and two public hearings. The Department plans to propose amendments to the existing fee assessment methodology in July 1992. Furthermore, the task force will be established to review the risk factors, as well as other parts of the fee assessment methodology.

48. COMMENT: A food processor with a NJPDES/SIU permit stated that his fee assessment, which is based on the discharge of oil and grease, is incorrect because the Department's rules at N.J.A.C. 7:14A-14.4 preclude the imposition of an oil and grease limit for food processors. (Ernest Leonelli, Four Star Products)

RESPONSE: In accordance with N.J.A.C. 7:14A-14.4(d), the Department is required to impose limits established by the local sewerage treatment plant or the Federal limits, whichever is more stringent, in NJPDES/SIU permits. However, after further analysis, the Department believes that the risk factor assigned to oil and grease from food processing facilities is incorrect. A risk factor of 1, consistent with the risk factors assigned to other biodegradable, conventional pollutants such as Biochemical Oxygen Demand (BOD), Chemical Oxygen Demand (COD), and Total Suspended Solids (TSS) appears to be appropriate for this type of Oil and Grease discharge. SIUs discharge their wastewater to sewerage treatment plants designed to treat and remove these pollutants from the environment. The Department plans to amend Table II of N.J.A.C. 7:14A-1.8 to add "animal and vegetable oil and grease from food processors" and apply this provision retroactively. Therefore, the Department has reduced the risk factor in calculating the FY92 fee assessments for 11 affected food processors. This results in a total fee reduction of $102,364 for these facilities.

49. COMMENT: The Department has explained that NJPDES program costs fund the review of applications, the development of permit conditions including, limitations, monitoring, bioassay testing, computer modelling, compliance inspections and general administrative oversight. These activities presumably apply to all NJPDES permits. The Department's minimum fee of $500.00 appears to be unreasonably too low. Facilities holding permits with broad monitoring requirements are subsidizing the cost of administering the NJPDES permit program. Another commenter stated that currently 105 municipal surface water dischargers are assessed permit fees less than $1,000. The Department should not totally ignore the time costs of administering each permit, much like the way the Department allocates its budget between major permit categories. Has the Department given any consideration to increasing the minimum fee from the current $500.00? (Jack Kace, Hoffmann-LaRoche, John Alexander, Hoffmann-LaRoche, Arnold Mitnaul, West New York MUA)

RESPONSE: The Department agrees with the commenters that the current minimum fee of $500.00 does not cover the basic cost to administer NJPDES permits. The Department plans to include many activities including annual inspections, sampling and data management in the minimum fee schedule. A revised minimum fee schedule will be proposed by July 1992.

50. COMMENT: The Department should utilize an inflation factor to increase minimum permit fees in N.J.A.C. 7:14A-1.8(h). The current structure is unfair to "large" permittees and results in a disproportional increase in the fees to facilities with higher environmental impacts. (Alfred Pagano, DuPont Chambers Works)

RESPONSE: As stated above, the Department has not proposed any changes to the existing rule. The Department will consider including an inflation factor in the next rule proposal.

51. COMMENT: It appears that the Department has an adequate source of revenue considering that penalties totalling $29 million were assessed and $6 million was collected. (Arnold Mitnaul, West New York MUA)

RESPONSE: The Department has assessed penalties in the amount of $29 million. However, since most of these penalties have been contested, this total amount will not be realized this fiscal year and may be reduced through the administrative adjudication process. The Department can only expend monies that are anticipated to be collected or have actually been paid. In FY92, the Department has dedicated $6 million in penalties collected and deposited into the Clean Water Enforcement Fund to fund NJPDES activities which otherwise would have been funded with NJPDES fees. Penalties collected in the future wi be used to offset NJPDES program costs.

52. COMMENT: It appears that the Department is "fattening up at the expense of permittees. Violators have been assessed civil penalties non-compliance penalty assessments, and NJPDES permit fees based o the same information. How many times must a permittee pay for th same offense? (Arnold Mitnaul, West New York MUA)

RESPONSE: The Clean Water Enforcement Act (CWEA) require the Department to assess mandatory penalties for reporting violations effluent violations in excess of 20 percent for hazardous pollutants o 40 percent for non-hazardous pollutants. Permit fees are based upo the actual quantity of pollutants discharged. Effluent violations resul in higher fee assessments for facilities which violate their NJPDE permit. The Department is using the penalties collected pursuant to th CWEA to offset NJPDES program costs. Therefore, the Department' fee schedule provides an economic incentive to all permittees to compl with the discharge limits in their NJPDES permits. Facilities whic violate effluent limits will be assessed higher fees and penalties for no complying with NJPDES permit conditions. The Department may alsc issue Administrative Consent Orders (ACO) with penalties to a facilit unable to comply with their NJPDES effluent requirements. ACO ensure permit compliance through agreed upon construction schedule for upgrading wastewater discharges and by establishing interim effluen limitations. Continuing effluent violations of NJPDES permit limits are not subject to penalties; however, the Department does assess additiona penalties for violations of ACO limits and compliance schedules. These facilities are assessed permit fees based on their actual discharge.

53. COMMENT: During debates prior to the Clean Water Enforcement Act, the Department referred to the collection of fines at a higher amount to offset the costs of the increased enforcement efforts. The proposed budget includes many of those costs, but there was a decrease in the penalties collected. If this is true, the increased enforcement costs should come from other sources and not the NJPDES permit holders who apparently are not violating their NJPDES permits in the manner proposed by the Act. (W.L. Taetzsch, Exxon Company, USA)

RESPONSE: The Clean Water Enforcement Act directed the Department to conduct annual compliance inspections and sample all major and some minor dischargers every year. These monitoring costs have been included in the NJPDES budget. The Department implemented significant outreach efforts prior to the enactment of the Clean Water Enforcement Act. Many permittees entered in Administrative Consent Orders (ACOs) with the Department to resolve actual and potential compliance programs. Permittees also implemented changes to better meet the requirements of the Clean Water Enforcement Act. These actions resulted in a higher rate of permit compliance and the assessment of less than projected penalties.

54. COMMENT: The Department has included the costs of water quality studies in the proposed NJPDES budget for 1991-92. These studies benefit the general public and a significant amount of the degradation to the waterways is caused by non-point sources that are not subject to NJPDES permits. The commenter recommended that the costs of water quality studies be charged to general revenue and not paid by NJPDES permit holders. (W.L. Taetzsch, Exxon Company, USA)

RESPONSE: The proposed water quality study will be used by the Department to develop a wasteload allocation for the Maurice River. From this study, the Department will establish water quality based effluent limitations for all regulated dischargers in the watershed. The Department therefore contends that these costs are appropriate and necessary to develop NJPDES permits.

55. COMMENT: The "Computer Enhancement" was not included in the 1990-91 surface water budget, so why has $400,000 been included this year? Why are these "enhancements" necessary immediately following the completion of the Department's "Cornell" system which was funded through NJPDES permit fees? (Jack Kace, Hoffmann-LaRoche, John Alexander, Hoffmann-LaRoche)

RESPONSE: The Department is pursing enhancements to the NJPDES database on two tracks. Primarily, the Department is involved in efforts to enhance the NJPDES System so as to implement new legislation, the Clean Water Enforcement Act (CWEA), in an automated fashion. Secondary to this effort, the Department is making modifications to some of the computer programs that only involve permit processing and tracking. NJPDES fees will only fund this secondary effort. Historically, the NJPDES program relied on many separate data systems and paper files. Specifically, there was a system for Enforcement, Surface Water Permits, Ground Water Permits, SIU Permits, Fees, and Com-

pliance. In February 1990, the Department brought on line the NJPDES System. This was the beginning phase of developing one comprehensive data system for the NJPDES program. Several changes to the existing computer programs have been recommended over the past year and half. For example, one program change would allow for DMR data to be received by the department via telephone line. Another change would provide for more efficient entry of permit requirements, reducing the amount of staff required and lessening the overall time required to process NJPDES permits. These types of refinements were not envisioned when the system was initially designed in 1989. It should be noted that the Department satisfies many requests for information received from the regulated community with the current NJPDES system. The enhancement project schedule was developed in 1990 and included three contracts. The first contract covered the conversion to an upgraded program language which was completed in March 1991. The second contract was issued to assist the Department in preparing detailed specifications to be used to write computer code. This contract will be completed in April 1992. The third contract will engage consultant services to write the computer code developed in the second contract. This work is scheduled to begin in June 1992.

56. COMMENT: The Department has proposed to expend $1.7 million for computer enhancements. The purpose of the enhancement is to track and identify non-compliers in a quicker and a more efficient manner. The commenter stated that the Department is currently performing the function more than adequately, judging by the record penalties assessed in 1990 and 1991. (Arnold Mitnaul, West New York MUA)

RESPONSE: Current enforcement is man-power intensive. The Department is required by the Clean Water Enforcement Act (P.L. 1990, c.28) to conduct at least one inspection per year. Prior to initiating enforcement action, the Department conducts a second inspection. The NJPDES program is a self-monitoring program. Therefore, the Department should be able to take an enforcement action based on reported monitoring results submitted to the Department on Discharge Monitoring Reports (DMRs). The enhancement will allow the Department to rely on computer records for enforcement purposes.

57. COMMENT: The Department is updating their computer database to make the Clean Water Enforcement Act more manageable and less manpower intensive. How many times do the permittees have to pay for the enhancement? If the Department truly needs this computer enhancement, then it should be funded through penalties and deleted from the NJPDES budget proposal. (Arnold Mitnaul, West New York MUA)

RESPONSE: The computer enhancement is being funded with $1.3 million in penalties deposited into the Clean Water Enforcement Fund and $0.4 million in NJPDES permit fees. As stated above, part of the enhancement will improve permit processing.

58. COMMENT: The maximum fee of $654,947 for municipal surface water dischargers represents a 27.5 percent increase in the budget. The Department has not increased service, accessibility, support, or assistance. The only perceptible change is in the area of enforcement and related activities. (Arnold Mitnaul, West New York MUA)

RESPONSE: The 1991-92 NJPDES budget presented in Appendix F of the 1991-92 Annual Fee Report represents a 27.5 percent increase over 1990-91. Most of the budget increase is directly related to non-permit issuance activities such as compliance inspections and data management. This budget reflects the hiring of staff into positions which were vacant in the 1990-91 budget. Had the Department filled these positions last year, the adopted fee schedule for 1990-91 would have been more and the percent increase for 1991-92 would not have been as great.

59. COMMENT: The municipal program is charged a lower fee than the industrial program for the pollutants discharged. Under the "polluter pays" concept, equivalent pollutant dischargers should be assessed at the same rate. (W.L. Taetzsch, Exxon Company, USA)

RESPONSE: The rate for each category of discharge is calculated based upon the total environmental impact for the category and the budget required to process, monitor and administer these permits. Separate budgets for the muncipal and industrial programs have been established. The rate for each discharge category is determined using the formula at N.J.A.C. 7:14A-1.8(a)9. While the commenter is correct that the two categories are assessed fees at a different rate for each unit of environmental impact, the "polluter pays" concept is still functioning within the subset of NJPDES permits.

60. COMMENT: One commenter stated that the status of the prior year's fee collection is of concern. Uncollected fees are significant and increase the proposed fees. Unpaid fees should not be charged to those permit holders that have been paying their fees. The additional cost from the Department's inefficiencies in collecting fees should not be passed along to the permit holder that pays on time. (W.L. Taetzsch, Exxon Company, USA)

RESPONSE: The Department pursues uncollected fees through the issuance of Administrative Orders and Notices of Civil Administrative Penalties. The Department funds this activity from penalties collected through the Clean Water Enforcement Fund. Therefore, these costs are not passed on to NJPDES permittees. Recalculations requested by permittees are of more concern to the Department. Reductions in one permittee's fee reduces the amount to be received that year. For this reason the Department has used a voluntary "pre-billing" process to minimize these losses. The Department plans to evaluate these issues in the next rule proposal.

61. COMMENT: The Department has included additional budget categories in the 1991-92 Annual Fee Report and Fee Schedule. This action has the potential to result in fairer allocation of the NJPDES program costs. The commenter commended the Department for the actions taken thus far and encouraged the further regroupings be considered. (Alfred Pagano, DuPont Chambers Works)

RESPONSE: The 1991-92 Annual Fee Report contained separate fee schedules for facilities with permits for on-going ground water discharges and those with ground water remediation activities. The Department separated general permits for fuel cleanups, non-contact cooling water and stormwater runoff from other industrial discharges. While all these facilities are assessed fees utilizing the formula at N.J.A.C. 7:14A-1.8(c), separate schedules make it easier to compare like dischargers.

62. COMMENT: The rate used to calculate industrial surface water permit fees increased 87 percent from 1990-91, however, the industrial budget increased only 45 percent. As the Department's budget increases, the rate will continue to increase to compensate for those permittees at the maximum fee of 10 percent. The Department should establish a separate category for commercial treatment plants operated for profit, which necessarily require large amounts of regulatory attention. (Jack Kace, Hoffman-LaRoche, John Alexander, Hoffmann-LaRoche)

RESPONSE: The Department has not found that commercial treatment plants require more of the Department's attention. Therefore, a separate fee category is not necessary at this time. The maximum fee of 10 percent was included in the fee assessment rules to prevent any one facility from paying a disproportionate share of the NJPDES program cost and totally eliminating the distribution of costs based on environmental impact. The Department plans to address this concern through amendments to the minimum fee schedule at N.J.A.C. 7:14A-1.8(h) in the next rule proposal. Increasing the percentage of costs paid through the minimum fees will reduce the rate.

63. COMMENT: The Annual Fee Report does not provide an explanation of a reported payment for "Treasury Anticipation." Is this the same as the "OTIS" line item in the budget? What services are rendered to the NJPDES program by the "Treasury Assessment" expenditure? What cost accounting and time accounting is done to document the services rendered to the NJPDES program for this expenditure by the Department of Treasury? The expenditure was $554,263 in FY90 and $536,000 in FY91. These costs have not be included in the NJPDES budget proposals and are listed in addition to indirect costs. The "Treasury Anticipation" appears to be inappropriate and should not be included in NJPDES costs. (Jack Kace, Hoffman-LaRoche, John Alexander, Hoffmann-LaRoche)

RESPONSE: The "Treasury Anticipation" line as referenced in Appendix J of the Annual Fee Report represents those fees collected on behalf of the Surface Water program which must be transmitted to the General Fund as required by the New Jersey State Legislature. In FY90, $554,263 was remitted to Treasury, while in FY91, $536,000 was remitted from the Surface Water program. These anticipations were added during the course of the appropriation process and represent the difference between what is directly appropriated to the program for expenditures versus what is due, per the Appropriations Act, to the General Fund. It should be noted that the FY93 Budget does not contain such an anticipated difference since funds appropriated for the program use equal fees that must be remitted to the General Fund. This anticipation by Treasury is not the same as the line item for "OTIS." Further, since this amount represents a revenue anticipation to the General Fund, there is no direct cost accounting associated with this item. The commenter

further cites that the "Treasury Anticipation" appears to be inappropriate and should not be included. However, since it is included in the Appropriation Act, the Department is required by law to remit those funds to the General Fund out of receipts from the program.

64. COMMENT: The Department has included a budget item for "OTIS" (Office of Telecommunications and Information Systems). The commenter requested that the Department explain what services are being provided to the NJPDES program and how are these services accounted for. (Jack Kace, Hoffman-LaRoche, John Alexander, Hoffmann-LaRoche)

RESPONSE: The Office of Telecommunications and Information Systems (OTIS) is the State agency responsible for providing central mainframe data processing services, including in this case, program development, and operation and maintenance of the NJPDES database. OTIS maintains a cost accounting system from which regular billings are generated and which directly accounts for time attributable to the NJPDES program. Accordingly, payments to OTIS are based on those cost accounting reports/billings as presented to the Department.

65. COMMENT: Why did the Department increase the budget for the purchase of computer equipment from $51,558 in FY91 to $386,078 in FY92? (Jack Kace, Hoffman-LaRoche, John Alexander, Hoffman-LaRoche)

RESPONSE: The Department has spent a significant amount of money of the development of a computerized permit and enforcement tracking system. Computer workstations and additional hardware must be purchased to network together staff in Trenton and the regional field offices. This will allow all Department staff access to the same information.

66. COMMENT: The Department has included costs for the Office of Administrative Law, the USGS/DEPE contract, a Fish Consumption Study and Computer Enhancement. The commenter asked if these items were previously funded through other funding sources, such as Federal grants, State appropriations, or other fee programs. (Jack Kace, Hoffmann-LaRoche, John Alexander, Hoffmann-LaRoche)

RESPONSE: The Office of Administrative Law and USGS were previously funded through direct State appropriations. The Fish Consumption study is a new initiative for one year. The cost justification for the computer enhancement has been explained in the above responses.

67. COMMENT: The NJPDES Surface Water budget allocates $50,000 for a Fish Consumption Study. What is the purpose of this study and how does this relate to the development of NJPDES permit? (Jack Kace, Hoffmann-LaRoche, John Alexander, Hoffmann-LaRoche)

RESPONSE: Accurate quantitative information regarding fish consumption rates in New Jersey is essential for the development of human health based Surface Water Quality Criteria. This study will provide the Department with information which will be used by the Department to develop surface water quality criteria based on local, rather than national human health assessment. The study will generate accurate rates of consumption for users of both freshwater and saltwater resources, determine the percentage of anglers in the general population, and determine the distribution of fish consumed from commercial and recreational caught sources.

68. COMMENT: The Department has included $287,657 for the USGS/DEPE contract and $250,000 for the Office of Administrative Law (OAL) in the 1991-92 NJPDES Surface Water budget. These programs have been on-going for many years and benefit a wide variety of State programs. How were these costs determined and what cost accounting is used to link these efforts to the surface water program? (Jack Kace, Hoffmann-LaRoche, John Alexander, Hoffmann-LaRoche)

RESPONSE: The commenter is correct in stating that both the USGS and OAL programs have been ongoing for many years. However, Fiscal Year 1992 has witnessed significant reductions in General State Funds available to the department for USGS contracts, as well as to the Office of Administrative Law (OAL) for services previously rendered to the Department for a fee program such as the NJPDES program. Administrative Law Judges at the OAL are required to keep a cost accounting of their time as it relates to specific cases covered by the Surface Water program. The Department in turn reviews a monthly detailed billing which allocates the costs of OAL judges among our various fee programs. Accordingly, there is a close accounting which is used to link specific efforts of that office to this program. Recent budgets have also seen a reduction in State funds for the USGS efforts of the Department. The $287,567 contained in the budget proposal represents but a portion of the overall $1.6 million of these ongoing efforts. The allocation to the NJPDES program is based on, and includes only those USGS effort which directly benefit the Surface Water Program.

69. COMMENT: The Department lists 246 municipal ground wate permittees in the fee schedule. Another 18 private commercial facilitie are included in the Residuals fee schedule. Why are these facilities whic are obviously private commercial and/or industrial facilities, included i the municipal ground water fee schedule? (Robert Dixon, Glouceste County Utilities Authority)

RESPONSE: The "Municipal" ground water permit section regulate the discharge of sanitary wastewater to the ground waters of the State The term municipal should not be construed to omit sources of sanitar wastewater from commercial or industrial facilities. However, th presence of any wastewater from a non-sanitary source requires regula tion through the Department's industrial program. In the residuals pro gram, half of the commercial operations are applying residuals whic were originally generated by sewerage treatment plants. The remainin industrial/commercial facilities apply food waste, such as tomato skins and require a low level of Department effort. As part of the next rule proposal, the inclusion of these facilities in the industrial budget wil be evaluated.

70. COMMENT: The Department has inflated its municipal work load projection by including work to be performed in the permitting of facilities that are private and/or commercial facilities. It appears that municipal dischargers are subsidizing this portion of the NJPDES program. (Robert Dixon, Gloucester County Utilities Authority)

RESPONSE: The Department disagrees with the commenter. The Department has allocated NJPDES program costs and developed fee schedules based upon the work performed at similar types of facilities. As stated above, the Department has included the costs to regulate sanitary wastewater discharge to the ground water of the State in the municipal budget. These permittees are not subsidizing industrial permitting.

71. COMMENT: Although the number of municipal surface water permittees has decreased from 316 in 1988-89 to 252 in 1991-92, the cost needed to support the municipal program has increased. The Department has indicated that the fastest growing segment of the NJPDES program is the Industrial and Site Remediation programs. Are municipal permittees subsidizing the NJPDES program? (Robert Dixon, Gloucester County Utilities Authority)

RESPONSE: The municipal permits issued by the Department over the past few years have increased dramatically in complexity. The Department is imposing effluent limitations on many more parameters rather than simply technology based effluent limits. Consequently, permit preparation takes much longer. Additionally, many of the requirements now being imposed by the Department are new. These conditions have increased the number and complexity of permit adjudication requests. Both of these changes have resulted in a need for more rather than less staff in the municipal permitting program.

72. COMMENT: When West New York's new plant comes on line, they will no longer be assessed a maximum fee. These costs will be distributed to all permittees unless the Department streamlines the permitting program. The NJPDES budget must be reduced. (Ezra Bixby, Stony Brook Regional Sewerage Authority)

RESPONSE: The commenter is correct. West New York's new wastewater treatment system will drastically reduce their environmental impact and the share of the NJPDES program costs they currently are assessed. The costs of the NJPDES program will continue to be distributed to NJPDES permittees in accordance with the rules provided at N.J.A.C. 7:14A-1.8. The Department has proposed and will continue to propose a budget which reflects the level of effort required to process, monitor and administer NJPDES permits.

73. COMMENT: The Department has included two work years in the municipal program for Capacity Assurance. This activity should be covered through the Treatment Works Approval program. Further, it should not require two work years to check whether flows are within permitted limits. The Department's computer system should be able to do that. (Ezra Bixby, Stony Brook Regional Sewerage Authority)

RESPONSE: Capacity Assurance Program is a monitoring requirement imposed on NJPDES facilities whenever the committed flow reaches or exceeds 80 percent of the permitted flow. Although the program is found in subchapter 12 of N.J.A.C. 7:14A, Requirements for a Treatment Works Approval, the intent of Capacity Assurance is to prevent the facility from overloading and/or violating effluent limitations contained in their NJPDES permit. While the computer can identify those facilities that must implement a Capacity Assurance Program,

Department staff must review the plans which may include water conservation measures, infiltration and inflow reductions, changes to wastewater treatment, plant construction and impositions of self-imposed sewer connection bans as required by N.J.A.C. 7:14A-12.21 when the committed flow reaches 100 percent of capacity.

74. COMMENT: The computer enhancement is primarily for the benefit of the Clean Water Enforcement Act and should be fully funded from that program. To date, in the NJPDES program, we have seen no benefit from any of the computerization that has occurred in the past and see no reason for contributing significant amounts of money to the computer enhancement. (Ezra Bixby, Stony Brook Regional Sewerage Authority)

RESPONSE: The computer enhancement will enable the Department to efficiently manage the Water Pollution Control Act (WPCA) and the Clean Water Enforcement Act (CWEA). Since the implementation of the CWEA was a major reason for the data base enhancement, $1.3 of the $1.7 million project will be funded from penalties collected for water pollution violations. Upon completion, the currently manual compliance evaluation will be completed by the computer system.

75. COMMENT: Our fee increased from $33,000 in 1990-91 to a proposed fee of $96,000 for 1991-92. Our plant is a small operation and is struggling right now running about 10 days per month. We have done everything to comply with the Department's requirement. We have reduced our flow, our labor forces, and our expenses. We have reviewed the Department's fee calculation and found it to be correct. In our case, this fee assessment could put our company out of business. (Scott Rios, Georgia-Pacific, Joseph Brancato, Georgia-Pacific)

RESPONSE: The Department has adopted rules at N.J.A.C. 7:14A-1.8 to ensure that the fee schedule imposed by the Department distributes costs fairly among NJPDES permittees. Environmental impact for 1991-92 fees is based on data from the period January 1990 through December 1990.

76. COMMENT: Our fee has increased about 1,000 percent from $10,000 to over $100,000 for 1991-92. The SIU rate increased from 1.42 to 7.7. As a businessman struggling to make a living, we have had to cut back on our work force and our expenses. If the Department needs more money, it just assesses the regulated community. Has the Department considered that there may be no industry left in the State of New Jersey? (Carmine Catalana, Cumberland Dairy)

RESPONSE: The Department is required pursuant to the Water Pollution Control Act to assess the regulated community for the operating costs incurred by the NJPDES permit program. The rules for assessing permit fees establish a fair system for allocating NJPDES program costs based on environmental impact for the discharge. The Department has reduced the budget for the SIU discharge category which reduced the rate from 7.7 to 4.76431 for FY92.

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of Receipt of Petition for Rulemaking

Elimination of Discounts Between Hospitals and Payors

Petitioner: New Jersey Hospital Association.

Take notice that on March 24, 1992 the New Jersey Hospital Association filed a petition for rulemaking with the Department of Health requesting the promulgation of a regulation which would ban negotiated discounts secured by various payers from hospitals.

Promulgation of a rule banning negotiated discounts would, on its face, appear contrary to the intentions expressed in the Health Care Cost Reduction Act, P.L. 1991, c.187, §§ 5 and 37, which expressly notes the existence of these discounts and requires that they be reported to the Hospital Rate Setting Commission. Presently, the Commission's staff is collecting this information.

Furthermore, in preparation for a comprehensive review of the payer differentials that have been granted, the Hospital Rate Setting Commission has requested that its staff convene a hospital-payer task force to review a number of different issues related to payer differentials, including the practice of hospitals and payers negotiating discounts privately. Since the New Jersey Hospital Association is a participant, they are aware that this task force is actively reviewing this matter and that it anticipates a report back to the Hospital Rate Setting Commission within a few months.

Given these activities, it would be premature to promulgate a rule at this time. It is the intention of the Department of Health to review the information collected as a result of these fact finding efforts, as well as the deliberations of the Hospital Rate Setting Commission, before considering any regulatory action in this matter.

LABOR

(b)

OFFICE OF GRANTS AND SPECIAL PROJECTS

Notice of Self-Evaluation Plan and Transition Plan under the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 et seq., 28 CFR Sec. 35.105 and 35.150

Take notice that the State of New Jersey Department of Labor is seeking public comment from interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in this Department's development of its self-evaluation plan and transition plan under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Sec. 12101 et seq., 28 CFR Sec. 35.105, 35.150.

The Department, as a public entity under the ADA, is required to evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of the ADA and Federal implementing regulations, and, to the extent modification of any such services, policies, and practices is required, must proceed to make the necessary modifications by January 26, 1993. 28 CFR Sec. 35.105(a). In the event that structural changes to facilities must be undertaken to achieve program accessibility, this Department shall, by July 26, 1992, develop a transition plan setting forth the steps necessary to complete such changes. 28 CFR Sec. 35.150(d). Under the ADA, the State must provide interested persons an opportunity to participate in the Department's development of both its self-evaluation plan and its transition plan by submitting comments. 28 CFR Sec. 35.105(b), 35.150(d).

Interested persons should submit written comments on **the transition plan** by June 17, 1992 to:

Linda Flores, Special Assistant
Office of External and Regulatory Affairs
Department of Labor—CN 110
Trenton, New Jersey 08625-0110
and
Howard Luckett, Special Assistant to the Commissioner
Office of the Commissioner
Department of Labor—CN 110
Trenton, New Jersey 08625-0110

Interested persons should submit written comments on **the self-evaluation plan** by August 1, 1992 to:

Linda Flores, Special Assistant
Office of External and Regulatory Affairs
Department of Labor—CN 110
Trenton, New Jersey 08625-0110
and
Howard Luckett, Special Assistant to the Commissioner
Office of the Commissioner
Department of Labor—CN 110
Trenton, New Jersey 08625-0110

All comments timely submitted by interested persons in response to this notice shall be considered by the Department with respect to its self-evaluation plan and transition plan.

PUBLIC ADVOCATE

(a)

THE PUBLIC ADVOCATE

Notice of Self-Evaluation Plan and Transition Plan under The Americans with Disabilities Act of 1990, 42 *U.S.C.* Sec. 12101 *et seq.*, 28 CFR Subsection 35.105 and 35.150

Take notice that the State of New Jersey Department of the Public Advocate is seeking public comment from interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in this Department's development of its self-evaluation plan and transition plan under the Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. Sec. 12101 et seq., 28 CFR subsection 35.105, 35.150.

The Department, as a public entity under the ADA, shall by January 26, 1993, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of the ADA and Federal implementing regulations, and, to the extent modification of any such services, policies, and practices is required, shall proceed to make the necessary modifications. 28 CFR Sec. 35.105(a). In the event that structural changes to facilities will be undertaken to achieve program accessibility, this Department shall, by July 26, 1992, develop a transition plan setting forth the steps necessary to complete such changes. 28 CFR Sec. 35.150(d). Under the ADA, the State must provide interested persons an opportunity to participate in its development of its self-evaluation plan and its transition plan by submitting comments. 28 CFR subsection 35.105(b), 35.150(d).

Interested persons should submit written comments by June 17, 1992 to:

State of New Jersey
Department of the Public Advocate
CN 850
Trenton, New Jersey 08625
Attention: Joseph F. Suozzo,
Deputy Public Advocate

All comments timely submitted by interested person in response to this notice shall be considered by the Department with respect to its self-evaluation plan and transition plan.

STATE OF NEW JERSEY

(b)

DEPARTMENTS OF AGRICULTURE, BANKING, COMMERCE AND ECONOMIC DEVELOPMENT, COMMUNITY AFFAIRS, CORRECTIONS, EDUCATION, ENVIRONMENTAL PROTECTION AND ENERGY, HEALTH, HIGHER EDUCATION, HUMAN SERVICES, INSURANCE, LABOR, LAW AND PUBLIC SAFETY, MILITARY AND VETERANS AFFAIRS, PERSONNEL, PUBLIC ADVOCATE, STATE, TRANSPORTATION, TREASURY, OFFICE OF MANAGEMENT AND BUDGET, ADMINISTRATIVE OFFICE OF THE COURTS, AND OFFICE OF LEGISLATIVE SERVICES (INCLUDING THE NEW JERSEY SENATE AND THE NEW JERSEY GENERAL ASSEMBLY)

Notice of Public Hearing for June 17, 1992

Self-Evaluation Plan and Transition Plan under the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq., 28 CFR §§35.105 and 35.150

Take notice that the State of New Jersey, Departments of Agriculture, Banking, Commerce and Economic Development, Community Affairs, Corrections, Education, Environmental Protection and Energy, Health, Higher Education, Human Services, Insurance, Labor, Law and Publ Safety, Military and Veterans Affairs, Personnel, Public Advocate, Stat Transportation, Treasury, Office of Management and Budget, Admini trative Office of the Courts and Office of Legislative Services (includir the New Jersey Senate and the New Jersey General Assembly) is seekir public comment from interested persons, including individuals with di abilities or organizations representing individuals with disabilities, t participate in the State of New Jersey's self-evaluation plans and trans tion plans under the Americans With Disabilities Act of 1990 ("ADA" 42 U.S.C. §12101 et seq., 28 CFR §§35.105, 35.150.

Under the ADA, the State of New Jersey is required, by January 2(1993, to evaluate its current services, policies and practices, and th effects thereof, that do or may not meet the requirements of the AD/ and Federal implementing regulations, and, to the extent modificatio of any such services, policies, and practices is required, to proceed t make the necessary modifications. 28 CFR §35.105(a). In the event tha structural changes to facilities will be undertaken to achieve prograr accessibility, transition plans setting forth the steps necessary to complet such changes are to be developed by July 26, 1992. 28 CFR §35.150(d) Under the ADA, the State must provide interested persons an opportuni ty to participate in the development of its self-evaluation plan and it transition plan by submitting comments. 28 CFR §§35.105(b), 35.150(d)

The **public hearing** will be held on June 17, 1992 from 10:00 A.M to 5:00 P.M. at the Brower Student Center, Room 202, at Trenton Stat College, Trenton, New Jersey.

Interested persons can submit written comments by June 17, 1992 to

State of New Jersey
Department of Law and Public Safety
CN 080
Trenton, New Jersey 08625
Attention: Special Assistant Patricia T. Leuzzi
(609) 984-9582

All comments timely submitted by interested persons in response to this notice shall be considered with respect to the self-evaluation and transition plans.

For planning purposes, **persons wishing to speak** at the public hearing are requested to provide their names and affiliations, if any, by June 10, 1992. In order to encourage full participation in this opportunity for public comment, please submit any requests for accommodation of the disabled to the designated State official and address above by June 10, 1992.

OTHER AGENCIES

(c)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Notice of Receipt of Petition for Rulemaking

Official Zoning Map

N.J.A.C. 19:4-6.28

Petitioners: J.J. Realty Co., Joseph Supor and Universal Flavors, Inc.

Authority: N.J.S.A. 13:17-1 et seq.

Take notice that on April 14, 1992, petitioners completed a petition with the Hackensack Meadowlands Development Commission requesting an amendment to N.J.A.C. 19:4-6.28, the Official Zoning Map.

Specifically, petitioners are requesting a rezoning of Block 286, Lots 5, 6A, 7 and 9, in Kearny, New Jersey, from Highway Commercial to Heavy Industrial. The site is presently bounded by various existing heavy industrial uses located in an adjacent Heavy Industrial Zone. The 18 acre tract is located on the north side of Harrison Avenue and west of the Route 280 and New Jersey Turnpike interchanges. Universal Flavors, one of the petitioners, operates a manufacturing facility on one of the 4 parcels, Block 286, Lot 7. The remaining 3 parcels are vacant.

After due notice, this petition will be considered by the Hackensack Meadowlands Development Commission in accordance with the provisions of N.J.S.A. 13:17-1 et seq.

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 April 6, 1992 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1992 d.1 means the first rule adopted in 1992.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT MARCH 16, 1992

NEXT UPDATE: SUPPLEMENT APRIL 20, 1992

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
23 N.J.R. 1227 and 1482	May 6, 1991	23 N.J.R. 3403 and 3548	November 18, 1991
23 N.J.R. 1483 and 1722	May 20, 1991	23 N.J.R. 3549 and 3678	December 2, 1991
23 N.J.R. 1723 and 1854	June 3, 1991	23 N.J.R. 3679 and 3840	December 16, 1991
23 N.J.R. 1855 and 1980	June 17, 1991	24 N.J.R. 1 and 164	January 6, 1992
23 N.J.R. 1981 and 2071	July 1, 1991	24 N.J.R. 165 and 318	January 21, 1992
23 N.J.R. 2079 and 2204	July 15, 1991	24 N.J.R. 319 and 508	February 3, 1992
23 N.J.R. 2205 and 2446	August 5, 1991	24 N.J.R. 509 and 672	February 18, 1992
23 N.J.R. 2447 and 2560	August 19, 1991	24 N.J.R. 673 and 888	March 2, 1992
23 N.J.R. 2561 and 2806	September 3, 1991	24 N.J.R. 889 and 1138	March 16, 1992
23 N.J.R. 2807 and 2898	September 16, 1991	24 N.J.R. 1139 and 1416	April 6, 1992
23 N.J.R. 2899 and 3060	October 7, 1991	24 N.J.R. 1417 and 1658	April 20, 1992
23 N.J.R. 3061 and 3192	October 21, 1991	24 N.J.R. 1659 and 1840	May 4, 1992
23 N.J.R. 3193 and 3402	November 4, 1991	24 N.J.R. 1841 and 1932	May 18, 1992

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	Uniform administrative procedure	24 N.J.R. 321(a)	R.1992 d.213	24 N.J.R. 1873(b)
1:1-10.6	Discovery in conference hearings	24 N.J.R. 675(a)	R.1992 d.212	24 N.J.R. 1873(a)
1:6, 1:7, 1:10, 1:10A, 1:11, 1:13, 1:20, 1:21	Special hearing rules	24 N.J.R. 321(a)	R.1992 d.213	24 N.J.R. 1873(b)
1:13A-18.2	Lemon Law hearings: exception to initial decision	23 N.J.R. 3682(a)		
1:31	Organization of OAL	24 N.J.R. 321(a)	R.1992 d.213	24 N.J.R. 1873(a)
	Most recent update to Title 1: TRANSMITTAL 1992-2 (supplement February 18, 1992)			
AGRICULTURE—TITLE 2				
2:22	Insect control	24 N.J.R. 1662(a)		
2:24-4	Volunteer Inspector Program: noncommercial apiaries and bees	24 N.J.R. 1140(a)		
2:32	Sire Stakes Program	24 N.J.R. 1142(a)		
2:50	Milk producers	24 N.J.R. 893(a)		
2:76-3.12, 4.11	Farmland Preservation Program: pre-existing nonagricultural uses of enrolled lands	24 N.J.R. 893(b)		
2:76-6.15	Farmland Preservation Program: pre-existing nonagricultural uses on lands permanently deed restricted	24 N.J.R. 896(a)		
	Most recent update to Title 2: TRANSMITTAL 1991-6 (supplement August 19, 1991)			
BANKING—TITLE 3				
3:1-6.6	Entity examination charges	24 N.J.R. 1420(a)		
3:1-16	Mortgage processing rules	23 N.J.R. 2613(b)	R.1992 d.149	24 N.J.R. 1380(a)
3:1-16	Mortgage processing rules: extension of comment period	24 N.J.R. 3(a)		
3:1-16.1	Mortgage processing: administrative change regarding definition of "receipt"	————	————	24 N.J.R. 1791(a)
3:1-19	Consumer checking accounts	24 N.J.R. 1662(b)		
3:4-1	Capital requirements for depository institutions	24 N.J.R. 1665(a)		
3:12-1.1, 1.2, 1.3, 2.1, 2.2, 2.3, 2.5, 3.1, 3.2, 3.3, 4.1, 4.2, 4.3, 5.1–5.5, 5.7	Qualified corporations as fiscal or transfer agents	24 N.J.R. 675(b)		
3:23	Department license fees	24 N.J.R. 1667(a)		
3:38-1.1, 1.9, 4.1, 5	Mortgage financing activities and real estate licensees	23 N.J.R. 3406(b)		
3:38-1.1, 1.9, 4.1, 5	Mortgage financing activities and real estate licensees: extension of comment period	23 N.J.R. 3686(c)		
	Most recent update to Title 3: TRANSMITTAL 1992-3 (supplement March 16, 1992)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)			

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PERSONNEL—TITLE 4A				
4A:1, 2, 5, 7, 9, 10	Preproposal regarding readoption of chapters	24 N.J.R. 1667(b)		
4A:2-2.13	Expungement from personnel files of references to disciplinary action	23 N.J.R. 2906(a)		
4A:4-7.10, 7.12	Reinstatement following disability retirement	23 N.J.R. 2907(a)		
4A:4-7.11	Retention of rights by transferred employees	23 N.J.R. 1984(b)		
	Most recent update to Title 4A: TRANSMITTAL 1992-1 (supplement January 21, 1992)			
COMMUNITY AFFAIRS—TITLE 5				
5:10-1.3	Maintenance of hotels and multiple dwellings: administrative correction regarding completion of inspections by municipality or county	———	———	24 N.J.R. 1791(b)
5:12-2.1	Homelessness Prevention Program: eligibility	23 N.J.R. 3439(a)		
5:13	Limited dividend and nonprofit housing corporations and associations	24 N.J.R. 1668(a)		
5:14-1.1–1.6, 2.1, 2.2, 2.3, 3.1–3.12, 3A, 4.10, App. A–D	Neighborhood Preservation Balanced Housing Program	23 N.J.R. 1075(a)	R.1992 d.144	24 N.J.R. 1385(a)
5:14-1.6, 2.2, 3.1, 4.1, 4.5, 4.6, 4.7	Neighborhood Preservation Balanced Housing Program: per unit developer fees and costs; other revisions	24 N.J.R. 1144(a)		
5:18-1.5, 4.7	Uniform Fire Code: eating and drinking establishments; exemption from fire suppression system equipment	24 N.J.R. 677(a)		
5:18-2.4A	Uniform Fire Code: administrative correction concerning Type Ac life hazard uses	———	———	24 N.J.R. 1475(a)
5:18-2.4A, 2.4B, 2.7	Uniform Fire Code: life hazard uses; permits	23 N.J.R. 2999(a)		
5:18-3	State Fire Prevention Code: administrative corrections	———	———	24 N.J.R. 1875(a)
5:18A-2.9, 4.6	Fire Code enforcement: conflict of interest	24 N.J.R. 678(a)		
5:18C-4.2	Firefighter I certification	23 N.J.R. 2084(a)		
5:19	Continuing care retirement communities	24 N.J.R. 1146(a)		
5:22-1, 2	Rehabilitation of one and two-unit residences and multiple dwellings: exemptions from taxation	24 N.J.R. 1669(a)		
5:23	Uniform Construction Code	24 N.J.R. 1420(b)		
5:23-1.1, 3.4, 3.11, 3.20, 3.20A	Uniform Construction Code: indoor air quality	24 N.J.R. 167(a)	R.1992 d.183	24 N.J.R. 1475(b)
5:23-2.1, 2.15	Uniform Construction Code: licensing disputes	24 N.J.R. 4(a)		
5:23-2.5	UCC: increase in building size	24 N.J.R. 1421(a)		
5:23-2.15, 2.18, 2.20, 3.14	Uniform Construction Code: special inspections	24 N.J.R. 1147(a)		
5:23-2.17, 8	Asbestos Hazard Abatement Subcode	24 N.J.R. 1422(a)		
5:23-2.23, 3.4, 3.11, 4.24, 12.4, 12.5, 12.6	Elevator Safety Subcode: exempt structures	24 N.J.R. 170(a)	R.1992 d.147	24 N.J.R. 1397(a)
5:23-3.10, 5	UCC: enforcing agency classification; licensing of enforcement officials	24 N.J.R. 1446(a)		
5:23-3.21	UCC: one and two family dwelling subcode	23 N.J.R. 3444(b)		
5:23-3.21	Uniform Construction Code: one and two-family dwellings in flood zones	24 N.J.R. 680(a)	R.1992 d.208	24 N.J.R. 1879(a)
5:23-4.3	Elevator Safety Subcode: enforcement	24 N.J.R. 1148(a)		
5:23-4.5	Municipal enforcing agencies: UCC standardized forms	24 N.J.R. 168(a)		
5:23-4.5, 4.11, 4.14	UCC enforcement: conflict of interest	24 N.J.R. 678(a)		
5:23-4.17	Municipal construction officials: annual budget report	24 N.J.R. 169(a)	R.1992 d.148	24 N.J.R. 1399(a)
5:23-4.18, 4.20	UCC enforcing agencies: minimum fees	24 N.J.R. 169(b)		
5:23-4.20	Departmental fees: administrative correction regarding electrical fixtures and receptacles	———	———	24 N.J.R. 1879(b)
5:23-5.4	Uniform Construction Code: enforcement interns	24 N.J.R. 1669(b)		
5:23-12.2	Elevator Safety Subcode: referenced standards	23 N.J.R. 2046(a)		
5:24-3	Protected housing tenancy in qualified counties and in planned real estate developments	24 N.J.R. 1453(a)		
5:25-1.3	New home warranties: "major structural defect"	23 N.J.R. 3603(a)	R.1992 d.188	24 N.J.R. 1476(a)
5:25-2.5, 5.2, 5.4, 5.5	New home warranty and builders' registration: violations and penalties; claim eligibility	24 N.J.R. 1149(a)		
5:25A	Fire retardant treated (FRT) plywood roof sheathing failures: alternative claim procedures	23 N.J.R. 3603(a)	R.1992 d.188	24 N.J.R. 1476(a)
5:26-9.1, 9.2	Protected housing tenancy in qualified counties and in planned real estate developments	24 N.J.R. 1453(a)		
5:33-4	Property tax and mortgage escrow account transactions	23 N.J.R. 1903(a)		
5:70	Congregate Housing Services Program	24 N.J.R. 513(a)	R.1992 d.214	24 N.J.R. 1880(a)
5:80-30	Housing and Mortgage Finance Agency: residual receipts	23 N.J.R. 3733(a)	R.1992 d.216	24 N.J.R. 1880(b)
5:100-2.3, 2.4, 2.5	Ombudsman for Institutionalized Elderly: resident advance directives	24 N.J.R. 1455(a)		
	Most recent update to Title 5: TRANSMITTAL 1992-3 (supplement March 16, 1992)			

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	Most recent update to Title 5A: TRANSMITTAL 1992-1 (supplement February 18, 1992)			
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6:11-6.2	Early childhood instructional certificate	23 N.J.R. 2210(b)		
6:20-3.4	Tuition rates for county special services schools: administrative correction	———	———	24 N.J.R. 1882(a)
6:21-5, 6, 6A, 6B, 6C, 8, 9	Pupil transportation: school bus and small vehicle standards	24 N.J.R. 898(a)		
6:22-6.1	Accommodation of pupils in substandard school facilities: administrative correction	———	———	24 N.J.R. 1882(b)
6:26	Establishment of pupil assistance committees	24 N.J.R. 1670(a)		
6:28	Special education	24 N.J.R. 1150(a)		
6:46	Private vocational schools	24 N.J.R. 514(a)	R.1992 d.203	24 N.J.R. 1793(a)
6:46	Private vocational schools: correction to chapter expiration date	———	———	24 N.J.R. 1883(a)
6:53	Vocational education safety and health standards	24 N.J.R. 516(a)	R.1992 d.204	24 N.J.R. 1793(b)
6:79-1	Child nutrition programs (recodify to 6:20-9)	24 N.J.R. 324(a)	R.1992 d.202	24 N.J.R. 1791(c)
	Most recent update to Title 6: TRANSMITTAL 1992-1 (supplement January 21, 1992)			
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7:1-1.3, 1.4	Delegations of authority within the Department	23 N.J.R. 3276(a)		
7:1-2	Third-party appeals of permit decisions	23 N.J.R. 3278(a)		
7:1A	Water supply loan programs	24 N.J.R. 707(a)		
7:1E-1.6, 1.9, 7, 8, 9, 10	Discharges of petroleum and other hazardous substances: confidentiality of information	23 N.J.R. 2848(a)	R.1992 d.186	24 N.J.R. 1484(a)
7:1F	Industrial Survey Project	24 N.J.R. 717(a)	R.1992 d.209	24 N.J.R. 1883(b)
7:1H	County environmental health standards: request for public input	23 N.J.R. 2237(a)		
7:1J	Spill Compensation and Control Act: processing of damage claims (repeal 17:26)	24 N.J.R. 1255(a)		
7:1K	Pollution prevention program requirements: preproposed new rules	24 N.J.R. 178(b)		
7:4	New Jersey Register of Historic Places: procedures for listing of historic places	23 N.J.R. 2103(a)		
7:6-1.24, 9.2	Boating rules: rotating lights; "personal watercraft"	24 N.J.R. 1694(a)		
7:7-4.5, 4.6	Coastal Permit Program: public hearings; final review of applications	23 N.J.R. 3280(a)		
7:7A	Freshwater Wetlands Protection Act rules: waiver of sunset provision of Executive Order No. 66(1978)	24 N.J.R. 912(a)		
7:7A1.4, 2.7, 8.10	Freshwater wetlands protection: project permit exemptions; hearings on contested letters of interpretation	24 N.J.R. 912(b)		
7:7A-9.2	Freshwater wetlands protection: public hearing and request for public comment on Statewide general permits	24 N.J.R. 975(a)		
7:7A-17.3	Freshwater wetlands protection: administrative correction regarding civil administrative penalties	———	———	24 N.J.R. 1333(a)
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)	R.1992 d.219	24 N.J.R. 1884(a)
7:9-6	Ground water quality standards	24 N.J.R. 181(a)		
7:9A-3.2, 3.16	Individual subsurface sewage disposal systems	24 N.J.R. 202(a)	R.1992 d.187	24 N.J.R. 1491(a)
7:11-2.2, 2.3, 2.9	Sale of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoirs System	23 N.J.R. 3686(d)		
7:11-4.3, 4.4, 4.9, 4.13	Sale of water from Manasquan Reservoir Water Supply System	23 N.J.R. 3688(a)		
7:11-4.3, 4.4, 4.9, 4.13	Sale of water from Manasquan Reservoir Water Supply System: change of public hearing and extension of comment period	24 N.J.R. 344(a)		
7:13	Flood hazard area control: opportunity to comment on draft revisions	23 N.J.R. 1989(a)		
7:13-7.1	Redelineation of Coles Brook in Hackensack and River Edge	23 N.J.R. 647(a)	R.1992 d.146	24 N.J.R. 1333(b)
7:13-7.1	Redelineation of East Ditch in Pequannock Township, Morris County	24 N.J.R. 203(a)	R.1992 d.173	24 N.J.R. 1493(a)
7:14-8.2, 8.5	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)	R.1992 d.145	24 N.J.R. 1334(a)
7:14-8.13	Water Pollution Control Act: request for public input regarding economic benefit derived from noncompliance and determination of civil administrative penalties	23 N.J.R. 2241(a)		
7:14A-1, 2, 3, 5–14, App. F	NJPDES program and Clean Water Enforcement Act requirements	24 N.J.R. 344(b)		
7:14A-1.9, 3.10	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)	R.1992 d.145	24 N.J.R. 1334(a)

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7:14A-2.5	NJPDES program: administrative correction regarding permit conditions	_____	_____	24 N.J.R. 1493(b)
7:15-1.5, 3.4, 3.6, 4.1, 5.22	Statewide water quality management planning	24 N.J.R. 344(b)		
7:25-16.1	Defining freshwater fishing lines	24 N.J.R. 204(a)		
7:25-18.1	Filleting of flatfish at sea	24 N.J.R. 1456(a)		
7:25-18.1, 18.5	Atlantic sturgeon management	24 N.J.R. 205(a)		
7:25-18.5	Haul seining and fyke netting regulation	24 N.J.R. 207(a)		
7:26-2.4	Small scale solid waste facility permits: request for comment on draft revisions	23 N.J.R. 2458(a)		
7:26-4.6	Solid waste program fees	23 N.J.R. 3690(a)		
7:26-4.6	Solid waste program fees: extension of comment period	24 N.J.R. 1458(a)		
7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies	23 N.J.R. 3607(a)		
7:26-8.2	Hazardous waste exclusions: household waste	23 N.J.R. 3410(a)		
7:26-8.2	Hazardous waste exclusions: used chlorofluorocarbon refrigerants	23 N.J.R. 3692(a)		
7:26-8.16	Hazardous constituents in waste streams	23 N.J.R. 3093(b)		
7:26B	Environmental Cleanup Responsibility Act rules: extension of comment period	24 N.J.R. 1281(a)		
7:26B-1.3, 1.5, 1.6, 1.8, 1.9, 1.10, 1.13, 5.4, 13.1, App. A	Environmental Cleanup Responsibility Act rules	24 N.J.R. 720(a)		
7:26B-7, 9.3	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26C	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26D	Cleanup standards for contaminated sites	24 N.J.R. 373(a)		
7:26D	Cleanup standards for contaminated sites: additional public hearing and extension of comment period	24 N.J.R. 1458(b)		
7:26E	Technical requirements for contaminated site remediation	24 N.J.R. 1695(a)		
7:27-16.1, 16.3, 16.4, 16.5	Air pollution by volatile organic compounds: administrative corrections	_____	_____	24 N.J.R. 1889(a)
7:27-26	Low Emissions Vehicle Program	24 N.J.R. 1315(a)		
7:27-26	Low Emissions Vehicle Program: correction to proposal	24 N.J.R. 1458(c)		
7:27B-3.10	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:28-14.4	Therapeutic x-ray and accelerator installations: administrative correction	_____	_____	24 N.J.R. 1494(a)
7:50-4.70	Pinelands Comprehensive Management Plan: administrative correction	_____	_____	24 N.J.R. 1891(a)
	Most recent update to Title 7: TRANSMITTAL 1992-3 (supplement March 16, 1992)			
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8:20-1.2	Birth Defects Registry: reporting requirements	24 N.J.R. 171(a)	R.1992 d.184	24 N.J.R. 1494(b)
8:24-1.3, 2.5, 3.3, 13.2	Retail food establishments: "community residence"; eggs and egg dishes	24 N.J.R. 915(a)		
8:31A-7.4, 7.5	SHARE Hospital system: rebasing and Minimum Base Period Challenge	24 N.J.R. 734(b)		
8:31B-4.40	Uncompensated care collection procedures	24 N.J.R. 1124(c)		
8:31C-1	Residential alcoholism treatment facilities: cost accounting and rate evaluation	23 N.J.R. 3609(a)	R.1992 d.185	24 N.J.R. 1495(a)
8:31C-1.5, 1.6	Residential alcoholism treatment facilities: target occupancy penalty	24 N.J.R. 1463(a)		
8:33-5.1	Certificate of Need moratorium: exceptions	24 N.J.R. 173(a)	R.1992 d.172	24 N.J.R. 1496(a)
8:33I	Megavoltage radiation oncology units	23 N.J.R. 1906(a)		
8:33J-1.1, 1.2, 1.3, 1.6	Magnetic Resonance Imaging (MRI) services	23 N.J.R. 1906(b)		
8:33M-1.6	Adult comprehensive rehabilitation services: bed need methodology	23 N.J.R. 1908(a)		
8:40-3.3, 5.2, 6.14	Licensure of invalid coach and ambulance services	_____	_____	24 N.J.R. 1498(a)
8:57-2.1, 2.2, 2.3	AIDS prevention and control: reporting requirements	23 N.J.R. 3735(a)	R.1992 d.215	24 N.J.R. 1891(b)
8:57-2.1, 2.2, 2.3	AIDS prevention and control: clarification of proposal summary regarding reporting of HIV infection	24 N.J.R. 59(a)		
8:65-2.5	Controlled Dangerous Substances: physical security controls	24 N.J.R. 174(a)		
8:65-2.4, 2.5, 6.6, 6.13, 6.16	Controlled dangerous substances: handling of carfentanil, etorphine hydrochloride, and diprenorphine	23 N.J.R. 1911(a)		
8:65-7.5, 7.10	Controlled dangerous substances: partial filling of prescriptions for Schedule II substances	23 N.J.R. 3618(a)	R.1992 d.205	24 N.J.R. 1795(a)
8:65-10.8	Controlled dangerous substances: exempt chemical preparations	_____	_____	24 N.J.R. 1895(a)

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8:71	Interchangeable drug products (see 23 N.J.R. 3336(a); 24 N.J.R. 145(a))	23 N.J.R. 1509(a)	R.1992 d.222	24 N.J.R. 1897(b)
8:71	Interchangeable drug products (see 23 N.J.R. 3334(b); 24 N.J.R. 144(b))	23 N.J.R. 2610(a)	R.1992 d.135	24 N.J.R. 948(a)
8:71	Interchangeable drug products (see 24 N.J.R. 145(b))	23 N.J.R. 3258(a)	R.1992 d.136	24 N.J.R. 948(b)
8:71	Interchangeable drug products	24 N.J.R. 59(b)	R.1992 d.137	24 N.J.R. 949(a)
8:71	Interchangeable drug products (see 24 N.J.R. 947(b))	24 N.J.R. 61(a)	R.1992 d.221	24 N.J.R. 1897(a)
8:71	Interchangeable drug products	24 N.J.R. 735(a)	R.1992 d.220	24 N.J.R. 1896(a)
8:71	Interchangeable drug products	24 N.J.R. 1673(a)		
8:71	Interchangeable drug products	24 N.J.R. 1674(a)		
8:80	HealthStart Plus: eligibility criteria	24 N.J.R. 62(a)	R.1992 d.160	24 N.J.R. 1338(a)
8:100	State Health Plan	24 N.J.R. 1164(a)		
8:100-16	State Health Plan regarding Long-Term Care Services: correction to Economic Impact statement	24 N.J.R. 1675(a)		

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9:1-1.2, 3.1, 3.2, 3.4, 3.5	Teaching university	24 N.J.R. 1464(a)		
9:4-1.12	Capital projects at county colleges	23 N.J.R. 3196(b)	R.1992 d.163	24 N.J.R. 1340(a)
9:7-9.1, 9.2, 9.4, 9.8	Paul Douglas Teacher Scholarship Program	24 N.J.R. 8(a)	R.1992 d.164	24 N.J.R. 1341(a)
9:9-7.2, 7.3, 7.8	NJCLASS program: family income limit, maximum loan amount, repayment	24 N.J.R. 1675(b)		
9:11-1.5	Educational Opportunity Fund Program: financial eligibility for undergraduate grants	23 N.J.R. 1739(a)	R.1992 d.223	24 N.J.R. 1898(a)
9:16-1	Primary Care Physician and Dentist Loan Redemption Program	24 N.J.R. 1192(a)		

Most recent update to Title 9: TRANSMITTAL 1991-7 (supplement December 16, 1991)

HUMAN SERVICES—TITLE 10

10:8	Administration of State-provided Personal Needs Allowance	24 N.J.R. 681(a)		
10:16	Child Death and Critical Incident Review Board concerning children under DYFS supervision	23 N.J.R. 3417(a)		
10:35	County psychiatric facilities	24 N.J.R. 208(a)		
10:36	Patient supervision of State psychiatric hospitals	24 N.J.R. 1728(a)		
10:46-1.3, 2.1, 3.2, 4.1, 5	Developmental Disabilities: determination of eligibility for division services	24 N.J.R. 211(a)		
10:49	New Jersey Medicaid Program: basic requirements for recipients and providers	24 N.J.R. 1728(b)		
10:49-10	Prepaid health care services for Medicaid eligibles	24 N.J.R. 64(a)	R.1992 d.167	24 N.J.R. 1342(a)
10:52-1.6	Medicaid reimbursement for outpatient laboratory services	24 N.J.R. 917(a)		
10:53-1.5	Medicaid reimbursement for outpatient laboratory services	24 N.J.R. 917(a)		
10:71-4.8, 5.4, 5.5, 5.6, 5.9	Medicaid Only eligibility computation amounts and income standards	24 N.J.R. 651(a)	R.1992 d.191	24 N.J.R. 1498(b)
10:81-11.7	Child support and paternity: administrative correction	———	———	24 N.J.R. 1499(a)
10:82-1.2, 1.6, 1.7, 1.10, 1.11, 2.1, 2.2, 2.3, 2.6–2.9, 2.11–2.14, 2.19, 2.20, 3.13, 3.14, 4.4, 4.5, 4.15, 5.10, 5.11	Assistance Standards Handbook: AFDC program revisions regarding Standard of Need, prospective budgeting, and AFDC-N equalization	24 N.J.R. 1194(a)		
10:82-5.3	Assistance Standards Handbook: child care rates	24 N.J.R. 213(a)	R.1992 d.175	24 N.J.R. 1500(a)
10:82-5.11	AFDC supplemental payments: administrative correction	———	———	24 N.J.R. 1499(a)
10:83-1.2	Emergency Assistance benefits for SSI recipients	24 N.J.R. 326(a)		
10:83-1.2	Emergency Assistance benefits for SSI recipients: public hearing and extension of comment period	24 N.J.R. 1204(a)		
10:84-1	Efficiency and effectiveness of program operations	23 N.J.R. 1740(a)		
10:84-1	Efficiency and effectiveness of program operations: public hearing and extension of comment period	23 N.J.R. 2220(b)		
10:85-3.1, 3.3, 4.1	General Assistance allowance determination: household size concept	24 N.J.R. 926(a)		
10:89-3.4	Emergency energy assistance: administrative change	———	———	24 N.J.R. 1502(a)
10:120-1.2	Youth and Family Services: scope of responsibilities and services	23 N.J.R. 3420(b)		
10:122-2.1, 2.8	Child care centers: licensing fees	24 N.J.R. 71(a)	R.1992 d.176	24 N.J.R. 1502(b)
10:122B	Division of Youth and Family Services: requirements for foster care	23 N.J.R. 3693(a)		
10:122C	DYFS: approval of foster homes	23 N.J.R. 3696(a)		
10:122D	DYFS: foster care services	23 N.J.R. 3703(a)		

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10:122E	DYFS: removal of foster children and closure of foster homes	23 N.J.R. 3708(a)		
10:123-3.4	Personal needs allowance for SSI and General Assistance recipients in residential health care facilities and boarding houses	24 N.J.R. 330(a)	R.1992 d.177	24 N.J.R. 1503(a)
10:123A	Youth and Family Services: Personal Attendant Services Program	23 N.J.R. 2091(b)		
10:133	DYFS: initial response and service delivery	23 N.J.R. 3714(a)		
10:133A	DYFS: initial response and screening	23 N.J.R. 3717(a)		
10:133B	DYFS: information and referral	23 N.J.R. 3720(a)		
10:133C-3	DYFS: assessment of family service needs	24 N.J.R. 217(a)		
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10A:1	Department administration, organization, and management	24 N.J.R. 1465(a)		
10A:5-1.3, 7	Temporary close custody	24 N.J.R. 1676(a)		
10A:16	Medical and health services	24 N.J.R. 1677(a)		
10A:18	Inmate mail, visits, and telephone use	24 N.J.R. 1204(b)		
10A:20-4	Residential Community Release Agreement Programs: administrative correction to adoption notice	————	————	24 N.J.R. 953(a)
10A:23	Lethal injection	24 N.J.R. 1677(a)		
10A:34	Municipal and county correctional facilities	24 N.J.R. 683(a)	R.1992 d.193	24 N.J.R. 1796(a)
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11:1-31	Surplus lines insurer eligibility	24 N.J.R. 9(a)		
11:1-32.4	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)		
11:2-17.7	Payment of health insurance claims	23 N.J.R. 3196(c)		
11:2-17.11	Payment of third-party claims: written notice to claimant	24 N.J.R. 522(a)		
11:2-27	Determination of insurers in hazardous financial condition	23 N.J.R. 3197(a)		
11:3-2	Personal automobile insurance plan	24 N.J.R. 331(a)		
11:3-3	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)		
11:3-15.6, 15.7, 15.9	Automobile insurance Buyer's Guide and Coverage Selection Form	24 N.J.R. 523(a)	R.1992 d.218	24 N.J.R. 1898(b)
11:3-16.5, 16.8, 16.10, 16.11, App.	Private passenger automobile insurance: rate filing requirements	23 N.J.R. 3199(a)	R.1992 d.189	24 N.J.R. 1504(a)
11:3-20.5, App.	Automobile insurance: Excess Profits Report	24 N.J.R. 529(a)		
11:3-29.2, 29.4, 29.6	Automobile PIP coverage: medical fee schedules	23 N.J.R. 3203(a)	R.1992 d.170	24 N.J.R. 1347(a)
11:3-33	Appeals from denial of automobile insurance	24 N.J.R. 546(a)	R.1992 d.192	24 N.J.R. 1510(a)
11:3-40	Insurers required to provide automobile coverage to eligible persons	24 N.J.R. 336(a)	R.1992 d.207	24 N.J.R. 1796(b)
11:3-41	Association Producer Voluntary Placement Plan	23 N.J.R. 2275(a)		
11:3-42	Association Producer Assignment Program	23 N.J.R. 2297(a)		
11:3-43	Private passenger automobile insurance: personal lines rating plans	23 N.J.R. 3221(a)		
11:4-14.1, 15.1, 16.2, 19.2, 28.3, 36	BASIC health care coverage	24 N.J.R. 1205(a)		
11:4-16.5	Individual health insurance: disability income benefits riders	24 N.J.R. 338(a)		
11:4-16.8, 23, 25	Medicare supplement coverage: minimum standards	24 N.J.R. 12(a)		
11:5-1.27	Real Estate Commission: administrative correction concerning requirements for broker's licensure examination	————	————	24 N.J.R. 1799(a)
11:5-1.38–1.42	Real Estate Commission: dual agency for dual compensation practices; kickbacks for referrals; written disclosures; exclusion of outside mortgage lenders	23 N.J.R. 3424(b)		
11:5-1.38–1.42	Real Estate Commission: extension of comment period regarding dual agency for dual compensation practices; kickbacks for referrals; written disclosures; exclusion of outside mortgage lenders	23 N.J.R. 3739(b)		
11:16-4	Automobile insurance: fraud and theft prevention/ detection plans	23 N.J.R. 3236(a)	R.1992 d.190	24 N.J.R. 1505(a)
11:17A-1.2, 1.7	Appeals from denial of automobile insurance	24 N.J.R. 546(a)	R.1992 d.192	24 N.J.R. 1510(a)
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12:51	Vocational Rehabilitation Services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 1893(a)		

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12:100-4.2, 10, 17.1, 17.3	Safety standards for firefighters	24 N.J.R. 73(a)		
12:235-9.4	Workers' Compensation: appeal procedures regarding discrimination complaint decisions	24 N.J.R. 1684(a)		

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13:18-6.9	Replacement license plates fee upon verification of motor vehicle liability coverage	24 N.J.R. 1467(a)		
13:20-34.2, 34.3, 34.5, 34.7	License plate identifying marks	24 N.J.R. 1467(b)		
13:20-42	Purple Heart emblems on license plates	24 N.J.R. 219(a)	R.1992 d.168	24 N.J.R. 1365(a)
13:30-8.4	Announcement of practice in special area of dentistry	23 N.J.R. 3429(a)	R.1992 d.165	24 N.J.R. 1365(b)
13:31-1.11, 1.17	Electrical contractor's business permit: telecommunications wiring exemption	24 N.J.R. 339(a)		
13:35-2.5	Medical standards for screening and diagnostic testing offices	23 N.J.R. 2858(a)	R.1992 d.169	24 N.J.R. 1367(a)
13:35-2.6–2.12, 2.14, 2A	Certified nurse midwife practice	23 N.J.R. 3632(a)		
13:35-6.5	Medical practice: preparation of patient records	24 N.J.R. 50(a)		
13:35-6.17	Corporate medical practice: stay of operative date regarding allowable fees for medications and health aids	————	————	24 N.J.R. 1905(a)
13:35-6A	Medical practice: declaration of death upon basis of neurological criteria	23 N.J.R. 3635(a)		
13:36-7	Board of Mortuary Science: practice regarding persons who died of infectious or contagious disease	23 N.J.R. 1517(a)		
13:36-10	Mortuary science licensees: continuing education	23 N.J.R. 1277(a)	Expired	
13:38-1.2, 1.3	Practice of optometry: permissible advertising	23 N.J.R. 2002(a)		
13:39-3.9	Pharmaceutical practice: reciprocal registration	24 N.J.R. 553(a)		
13:39-5.8	Prescriptions and medication orders transmitted by technological devices	23 N.J.R. 2469(a)	R.1992 d.166	24 N.J.R. 1371(a)
13:40-5.1	Land surveys: setting of corner markers	24 N.J.R. 51(a)		
13:40-5.1	Land surveys: extension of comment period regarding setting of corner markers	24 N.J.R. 554(a)		
13:40-6.1	Board of Professional Engineers and Land Surveyors: fee schedule	24 N.J.R. 1231(a)		
13:41-3.2	Board of Professional Planners: fee schedule	24 N.J.R. 554(b)		
13:43-3.1, 4.1	Board of Shorthand Reporting: fee schedule	24 N.J.R. 1232(a)		
13:44D-1.1, 2.1, 4.6	Public movers and warehousemen: moving vehicle requirement	24 N.J.R. 341(a)	R.1992 d.199	24 N.J.R. 1800(a)
13:44E-2.3	Chiropractic practice: insurance claim forms	23 N.J.R. 1279(b)	Expired	
13:44E-2.6	Chiropractic practice identification	23 N.J.R. 1896(a)		
13:44E-2.7	Chiropractic practice: referral fees	24 N.J.R. 1470(a)		
13:44F-8.1	Board of Respiratory Care: fee schedule	24 N.J.R. 52(a)		
13:45A-9.2, 9.3, 9.4	Advertising of merchandise by manufacturer	24 N.J.R. 684(a)		
13:45A-26.1, 26.2, 26.4, 26.14	Automotive dispute resolution: motor vehicles purchased or leased in State	24 N.J.R. 53(a)		
13:45B	Employment and personnel services	23 N.J.R. 2470(a)		
13:45B	Employment and personnel services: extension of comment period	23 N.J.R. 2919(a)		
13:47K-5.2	Weights and measures: magnitude of allowable variations for packaged commodities	24 N.J.R. 1233(a)		
13:70-13A.8	Thoroughbred racing: stay pending appeal of officials' decision	24 N.J.R. 555(a)		
13:70-29.57	Thoroughbred racing: pick-seven wager on Breeders' Cup	23 N.J.R. 1769(b)	R.1992 d.200	24 N.J.R. 1800(b)
13:71-3.3	Harness racing: stewards appeal hearings	24 N.J.R. 555(b)		
13:71-3.8	Harness racing: stay pending appeal of officials' decision	24 N.J.R. 556(a)		
13:71-20.6	Harness racing: passing lane in homestretch	24 N.J.R. 686(a)		
13:71-27.55	Harness racing: pick-eight wager on Breeders' Crown	23 N.J.R. 1770(a)	R.1992 d.201	24 N.J.R. 1801(a)
13:75-1.6	Violent Crimes Compensation Board: eligibility of claims	24 N.J.R. 54(a)	R.1992 d.155	24 N.J.R. 1373(a)
13:75-1.7	Violent Crimes Compensation Board: reimbursement for loss of earnings	24 N.J.R. 54(b)	R.1992 d.156	24 N.J.R. 1373(b)
13:75-1.29	Violent Crimes Compensation Board: petitions for rulemaking	24 N.J.R. 55(a)	R.1992 d.157	24 N.J.R. 1374(a)
13:75-1.30	Violent Crimes Compensation Board: burden of proof	24 N.J.R. 55(b)	R.1992 d.158	24 N.J.R. 1374(b)

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14:0	Open Network Architecture (ONA): preproposal and public hearing regarding Board regulation of enhanced telecommunications services	23 N.J.R. 3239(a)		
14:1	Rules of practice of Board of Public Utilities	23 N.J.R. 2487(a)		
14:3-7.5	Interest rate on customer deposits	24 N.J.R. 686(b)		
14:3-11	Solid waste collection regulatory reform	24 N.J.R. 1459(a)		
14:5A	Nuclear generating plant decommissioning: periodic cost review and trust funding reporting	23 N.J.R. 3239(b)		
14:10-7	Telephone access to adult-oriented information	24 N.J.R. 1238(a)		
14:11	Board of Regulatory Commissioners: administrative orders	24 N.J.R. 1684(b)		
14:12-6.1	Release of customer lists and billing information for demand-side management projects	23 N.J.R. 1282(b)	Expired	
14:18-3.19	Cable television: interest on uncorrected billing errors	24 N.J.R. 1470(b)		
	Most recent update to Title 14: TRANSMITTAL 1991-11 (supplement December 16, 1991)			
ENERGY—TITLE 14A				
14A:11-2	Reporting of energy information by home heating oil suppliers	23 N.J.R. 2830(b)		
	Most recent update to Title 14A: TRANSMITTAL 1991-5 (supplement December 16, 1991)			
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15:2-4	Commercial recording: designation of agent to accept service of process	23 N.J.R. 2483(a)		
15:5	Division of the State Museum	24 N.J.R. 1239(a)		
15:10-1.5, 7	Distribution of voter registration forms through public agencies	24 N.J.R. 736(a)		
15:10-1.5, 7	Distribution of voter registration forms through public agencies: extension of comment period	24 N.J.R. 1688(a)		
	Most recent update to Title 15: TRANSMITTAL 1991-2 (supplement August 19, 1991)			
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16:25-1.1, 1.7, 2.1, 7A.1, 7A.3, 7A.4, 11.3	Utility accommodation	23 N.J.R. 3739(c)	R.1992 d.194	24 N.J.R. 1801(b)
16:28-1.6, 1.56	Speed limit zones along U.S. 40 in Salem, Gloucester, and Atlantic counties; and along U.S. 40 and 322 in Atlantic County	24 N.J.R. 687(a)	R.1992 d.198	24 N.J.R. 1803(a)
16:28-1.25	Speed limit zones along Route 23 in Wayne	24 N.J.R. 1688(b)		
16:28-1.41	Speed limit zone along U.S. 9 and parts of Route 444 in Bass River Township	24 N.J.R. 342(a)	R.1992 d.171	24 N.J.R. 1518(a)
16:28-1.44, 1.72	Speed limit zones along Route 27 in Princeton, Franklin Township, and South Brunswick, and U.S. 206 in Trenton and Lawrence Township	24 N.J.R. 342(b)	R.1992 d.159	24 N.J.R. 1374(c)
16:28-1.113	Speed limits along Route 139 in Jersey City	24 N.J.R. 928(a)		
16:28A-1.7, 1.19, 1.20, 1.46, 1.57, 1.100	Restricted parking and stopping along U.S. 9 in Cape May, Route 28 in Elizabeth, Route 29 in West Amwell, U.S. 130 in South Brunswick, U.S. 206 in Mercer County, and Route 50 in Atlantic and Cape May counties	24 N.J.R. 689(a)	R.1992 d.195	24 N.J.R. 1804(a)
16:28A-1.15, 1.54	No stopping or standing zones along Route 23 in Hardyston Township and Route 181 in Jefferson Township	24 N.J.R. 1240(a)		
16:28A-1.18	Bus stop zone along Route 27 in Rahway	24 N.J.R. 692(a)	R.1992 d.196	24 N.J.R. 1806(a)
16:28A-1.32	No stopping or standing zones along U.S. 46 in Clifton	24 N.J.R. 1689(a)		
16:28A-1.36, 1.55, 1.64, 1.73, 1.97	Restricted parking and stopping along Route 57 in Warren County, U.S. 202 in Bernardsville, Route 41 in Cherry Hill, Route 32 in South Brunswick, and U.S. 1 Business in Lawrence Township	24 N.J.R. 693(a)	R.1992 d.197	24 N.J.R. 1806(b)
16:28A-1.57	No stopping or standing zone along U.S. 206 in Lawrence Township	24 N.J.R. 929(a)		
16:32-1	Designated routes for double-trailer trucks	24 N.J.R. 929(b)		
16:41-2.2	State Highway Access Management Code	23 N.J.R. 1525(a)	R.1992 d.181	24 N.J.R. 1518(b)
16:41-2.2	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:41-8	Repeal (see 16:41C)	24 N.J.R. 695(a)	R.1992 d.206	24 N.J.R. 1807(a)
16:41A	Repeal (see 16:41C)	24 N.J.R. 695(a)	R.1992 d.206	24 N.J.R. 1807(a)
16:41C	Roadside sign control and outdoor advertising	24 N.J.R. 695(a)	R.1992 d.206	24 N.J.R. 1807(a)
16:44-1.8	Renewal of contractor classification rating	24 N.J.R. 703(a)		
16:47	State Highway Access Management Code	23 N.J.R. 1525(a)	R.1992 d.181	24 N.J.R. 1518(b)

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16:47	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:47-App. B, E, E1, J	State Highway Access Management Code	23 N.J.R. 2831(b)	R.1992 d.182	24 N.J.R. 1631(a)
16:54	Licensing of aeronautical and aerospace facilities: preproposed new rules	24 N.J.R. 80(a)		
16:73	NJ TRANSIT: Reduced Fare Transportation Program for Elderly and Handicapped	24 N.J.R. 556(b)	R.1992 d.217	24 N.J.R. 1905(b)
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17:3-4.1	Teachers' Pension and Annuity Fund: creditable salary	23 N.J.R. 3274(a)		
17:9-4.1, 4.5	State Health Benefits Program: "appointive officer"	23 N.J.R. 2612(b)		
17:16-20.1, 20.3	State Investment Council: international government and agency obligations	24 N.J.R. 1690(a)		
17:26	Repeal interim rules regarding Spill Compensation and Control Act (see 7:1J)	24 N.J.R. 1255(a)		
17:30	Urban Enterprise Zone Authority	24 N.J.R. 343(a)	R.1992 d.161	24 N.J.R. 1375(a)
17:32-6, 7, 8	State Planning Rules: letters of clarification; consistency review of plans; Resource Planning and Management Map	24 N.J.R. 1241(a)		
	Most recent update to Title 17: TRANSMITTAL 1992-2 (supplement February 18, 1992)			
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18:3-2.1	Tax rates on alcoholic beverages	23 N.J.R. 3433(a)	R.1992 d.162	24 N.J.R. 1375(b)
18:7-4.5, 5.2	Corporation Business Tax: indebtedness and entire net worth	24 N.J.R. 175(a)		
18:7-5.1, 5.10, 14.17	Corporation Business Tax: intercompany and shareholder transactions	23 N.J.R. 1522(a)		
18:7-13.1	Corporation Business Tax: abatements of penalty and interest	23 N.J.R. 3275(a)		
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19:8-1.1, 2.11	Garden State Arts Center: admission and activity restrictions	24 N.J.R. 557(a)	R.1992 d.178	24 N.J.R. 1515(a)
19:8-2.12	Emergency services charges on Garden State Parkway	24 N.J.R. 557(b)	R.1992 d.179	24 N.J.R. 1516(a)
19:9-1.9	Turnpike Authority: 53-foot semitrailers	24 N.J.R. 931(a)	R.1992 d.211	24 N.J.R. 1905(c)
19:16	PERS: labor disputes in public fire and police departments: preproposal regarding compulsory interest arbitration	23 N.J.R. 2486(a)		
19:16	Compulsory interest arbitration of labor disputes in public fire and police departments: summary of public comments and agency responses to preproposal	24 N.J.R. 704(a)		
19:25-20.8, 20.19	ELEC: legislative agent annual registration and filing fee	24 N.J.R. 1245(a)		
19:25-20.8, 20.19	Legislative agent annual registration and filing fee: extension of comment period	24 N.J.R. 1692(a)		
19:61-2.2	Executive Commission on Ethical Standards: agency codes of ethics	23 N.J.R. 3436(b)	R.1992 d.180	24 N.J.R. 1517(b)
19:65	Casino Reinvestment Development Authority: project criteria and conditions	24 N.J.R. 1692(b)		
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19:40-2.1	Organization of Commission	Exempt	R.1992 d.150	24 N.J.R. 1375(c)
19:41-2.2	Surveillance of gaming operations	24 N.J.R. 1246(a)		
19:41-9.4–9,7, 9.11, 9.11A, 9.12, 9.20	Fees for services of Commission and Division of Gaming Enforcement	24 N.J.R. 1247(a)		
19:42-10	Administrative suspension of license or registration, or dismissal of application upon determination of unpaid fees or civil penalties	23 N.J.R. 3249(a)		
19:42-10.4	Disposition of fee matters and penalties: administrative correction	_____	_____	24 N.J.R. 1516(b)
19:43-1.2	Determination of casino service industries	23 N.J.R. 1963(a)		
19:43-1.3	Application for casino service industry license	24 N.J.R. 1249(a)		
19:44-8.3	Implementation of pai gow	24 N.J.R. 558(a)		
19:44-8.3	Implementation of pai gow poker	24 N.J.R. 569(a)		
19:44-8.3	Pai gow poker: temporary adoption of amendments	_____	_____	24 N.J.R. 1517(a)
19:44-9.4	Gaming school tables	24 N.J.R. 1471(a)		
19:45-1.1, 1.2, 1.46, 1.47	Complimentary distribution programs	23 N.J.R. 1308(a)	Expired	

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19:45-1.1, 1.14, 1.15, 1.34	Master coin bank and coin vaults	23 N.J.R. 3085(a)		
19:45-1.10, 1.11, 1.46A	Location and surveillance of automated coupon redemption machines	24 N.J.R. 1472(a)		
19:45-1.11	Casino management information systems department	23 N.J.R. 3434(a)	R.1992 d.151	24 N.J.R. 1376(a)
19:45-1.11, 1.12	Implementation of pai gow	24 N.J.R. 558(a)		
19:45-1.11, 1.12	Implementation of pai gow poker	24 N.J.R. 569(a)		
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