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## THE JOURNAL OF STATE AGENCY RULEMAKING

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NEXT UPDATE: SUPPLEMENT JANUARY 21, 1992

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# RULE PROPOSALS

## ADMINISTRATIVE LAW

### (a)

#### OFFICE OF ADMINISTRATIVE LAW Uniform Administrative Procedure Rules Discovery in Conference Hearings Proposed Amendment: N.J.A.C. 1:1-10.6

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

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

Proposal Number: PRN 1992-89.

Submit comments by April 1, 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 has established a conference hearing process which is intended to be less formal than the usual plenary hearing by limiting motions, discovery and post-hearing submissions. While OAL still intends to provide the conference hearing alternative as a less formal process, some questions concerning the current rules on discovery have been raised. Often these limitations on discovery result in motions to convert the matter to a plenary hearing.

The current conference hearing discovery rule provides for access to a county or local governmental entity's or agency's "relevant" files when some action taken by that entity is the subject of the hearing. In other cases, parties must exchange documents and a list of witnesses which will be introduced at the hearing. The proposed amendment attempts to balance the need for additional information with the need for a less formal hearing process. It requires an exchange of documents and witness lists in all cases. It also provides a party with access to an agency's entire file concerning the matter. In some cases, a party has construed the requirement to provide the "relevant" file very narrowly, resulting in discovery problems. The proposed amendment intends to make clear that a party is entitled to all documents in the agency's possession which concern the matter and not only to those which are "relevant" in the sense of legal admissibility.

This proposed amendment will primarily affect Department of Personnel cases scheduled as conference hearings pursuant to N.J.A.C. 1:1-9.1(f). While Special Education hearings and Division of Economic Assistance cases are also scheduled as conference hearings, these cases are already subject to special discovery provisions. N.J.A.C. 1:6-10.1 and 1:10-10.1.

#### Social Impact

The proposed amendment widens the scope of discovery available in conference hearings and so may impose minimal additional work on some parties. However, it should also reduce the number of cases which must be converted from conference to plenary hearing in order to obtain adequate discovery. It seeks to ensure that all parties in conference hearings have access to adequate information to fully present a case.

#### Economic Impact

The proposed amendment may cause some parties to incur additional costs in providing the additional information required by the amendment. However, it should ensure that all parties have sufficient information to proceed with the case and should reduce the number of motions filed to convert a hearing to a plenary matter. For those parties, some costs will be avoided.

#### Regulatory Flexibility Statement

The regulatory flexibility analysis is not required because the proposed amendment does 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 proposed amendment expands the discovery available to parties in a conference hearing.

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

1:1-10.6 Discovery and 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 [relevant] **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) [If the subject of a conference hearing is not a county/local entity's or agency's action, proposed action or refusal to act] **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 reasonably been disclosed within that time.

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

## BANKING

### (b)

#### DIVISION OF REGULATORY AFFAIRS

##### Qualified Corporations

**Proposed Amendments: N.J.A.C. 3:12-2.1, 2.2, 2.3, 2.5, 3.1, 3.2, 3.3, 4.1, 4.2, 4.3, 5.1 through 5.5 and 5.7**

**Proposed Repeal: N.J.A.C. 3:12-1.1, 1.2, and 1.3**

**Proposed New Rules: N.J.A.C. 3:12-1.1 and 1.2**

Authorized By: Jeff Connor, Commissioner, New Jersey

Department of Banking.

Authority: N.J.S.A. 17:9A-213.

Proposal Number: PRN 1992-94.

Submit comments by April 1, 1992 to:

Robert M. Jaworski  
Deputy Commissioner  
Department of Banking  
CN 040  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

Prior to 1985, only banks, savings banks and certain qualified corporations were permitted to act as fiscal or transfer agents. Qualifying corporations were those organized under the laws of this State prior to January 1, 1972 or authorized to transact business in this State prior to January 1, 1972, which were organized expressly to act as fiscal or transfer agents. The only exception to this was that corporations which were organized and authorized prior to March 24, 1989 to act as transfer agents did not need to be qualified corporations and could continue to act as transfer agents.

In 1985, with the signing of P.L. 1985, c.267, all qualified corporations were permitted to act as fiscal and transfer agents for affiliates, including investment companies and unit investment trusts. Public Law 1989, c.262, effective January 4, 1990, expanded the 1985 law by allowing an approved qualified corporation to act as a fiscal or transfer agent without limiting this activity to that involving affiliated companies.

These proposed new rules and amendments first specify the items which must accompany an application to become a qualified corporation.

## BANKING

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In particular, the application must contain: (1) the address of the principal corporate office; (2) the address of all offices located in this State; (3) the names of corporate directors and executive officers; (4) a financial statement; (5) insurance coverage; and (6) the filing fee of \$100.00. The information must be certified to by the president or vice president of the corporation. This information, along with the fee, must be filed with the Department on a yearly basis as of December 31 or as of such other time as the Commissioner may require. The filing must be made on or before April 1, or within 90 days of the date specified by the Commissioner. The filing requirements exist in current rules.

In addition, the proposed amendments to these rules increase the minimum capital requirements for qualified corporations. Current rules require capital equal to \$2,000 for each corporate issuer serviced or \$5,000, whichever is greater, until capital of \$20,000 is attained. Upon reaching \$20,000 required capital, an additional \$1,000 is required for each additional corporate issuer, but no qualified corporation is normally required to maintain capital in excess of \$500,000.

These amounts are increased in the proposed amendments to the rules so that a qualified corporation must maintain capital of \$5,000 for each corporate issuer serviced or \$100,000, whichever is greater, but no qualified corporation shall normally be required to maintain capital in excess of \$1,000,000.

The proposed new rules clarify that they have no effect upon depository institutions authorized to transact business in this State as qualified corporations, consistent with N.J.S.A. 17:9A-213.

#### Social Impact

Consistent with P.L. 1989, c.262, these proposed amendments and new rules allow all qualifying corporations to act as fiscal or transfer agents. This should have a beneficial social impact of making these services more widely available.

#### Economic Impact

By increasing the net worth requirement for qualifying corporations, the proposed amendments may prohibit certain corporations from acting as registrars, transfer agents or fiscal agents, and this may have a negative economic impact on these corporations.

The \$100.00 filing fee is the minimum set by statute. N.J.S.A. 17:9A-333(15). Accordingly, the codification of this fee by rule will not have a negative economic impact.

#### Regulatory Flexibility Analysis

It is estimated that at least one-half of all qualified corporations are small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rules and amendments require an annual filing with the Department, along with a \$100.00 filing fee. No differentiation is made based on business size because it is necessary for the Department to review the financial statements of all corporations engaging in these activities to confirm compliance with these rules.

In addition, the amendments will exclude small businesses with a net worth of less than \$100,000 from engaging as qualified corporations under this chapter. The Department believes that imposition of higher net worth requirements will improve the viability of companies acting as qualified corporations by ensuring that they operate with sufficient capital to allow them to survive difficult times. However, the amendments recognize that typically larger qualified corporations that service more corporate issuers must have a higher minimum net worth above \$100,000. To this extent, differentiation is made based on business size.

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

### SUBCHAPTER 1. [DEFINITIONS] GENERAL PROVISIONS

#### [3:12-1.1 Registrar

As used in this Chapter, unless otherwise expressly provided, the term "registrar" shall mean a domestic or foreign corporation, authorized to transact business in this State, which acts as a registrar for other corporations pursuant to N.J.S.A. 17:9A-213.

#### 3:12-1.2 Transfer agent

As used in this Chapter, unless otherwise expressly provided, the term "transfer agent" shall mean a domestic or foreign corporation, authorized to transact business in this State, which acts as a transfer agent for other corporations pursuant to N.J.S.A. 17:9A-213.

#### 3:12-1.3 Capital

As used in this Chapter, unless otherwise expressly provided, the term "capital" or "capitalization" shall mean the aggregate of capital stock, surplus, undivided profits and unsecured subordinated capital notes or debentures.]

#### 3:12-1.1 Definitions

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

"Capital" or "capitalization" means the aggregate of capital stock, surplus, undivided profits and unsecured subordinated capital notes or debentures.

"Fiscal agent" means a domestic corporation, or a foreign corporation authorized to transact business in this State, which transacts business in this State as a fiscal agent for other corporations, as defined in N.J.S.A. 17:9A-25(13).

"Qualified corporation" means a domestic corporation, or a foreign corporation authorized to transact business in this State, which registers with the Department to act as a registrar, transfer agent and/or fiscal agent.

"Registrar" means a domestic corporation, or a foreign corporation authorized to transact business in this State, which transacts business in this State as a registrar for other corporations, as defined in N.J.S.A. 17:9A-28(3).

"Transfer agent" means a domestic corporation, or a foreign corporation authorized to transact business in this State, which transacts business in this State as a transfer agent for other corporations, as defined in N.J.S.A. 17:9A-28(3).

#### 3:12-1.2 Effect of rules upon depository institutions

Nothing in this chapter shall be construed as expanding or restricting the powers otherwise conferred by law upon a depository institution, such as a bank or savings bank, to engage in activities as a registrar, transfer agent or fiscal agent, and no such depository institution, in exercising any power otherwise conferred upon it, shall be subject to any provision of this chapter.

#### 3:12-2.1 Filing a certified statement with the Commissioner of Banking

[(a) A registrar or transfer agent shall file with the Commissioner of Banking, on forms furnished by the Commissioner, a certified statement signed by its president or vice president.

(b) The certified statement shall include:]

(a) **Prior to transacting business as a registrar, transfer agent or fiscal agent, a corporation shall obtain approval from the Department to act as a qualified corporation. The application to act as a qualified corporation shall contain the following:**

1. The address of the principal corporate office;
2. Address of [any office] **all offices** located in this State;
3. Names of corporate directors and **executive** officers;
4. Financial statement;
5. Insurance coverage;
6. **The filing fee of \$100.00; and**

[6.]7. Other information which may be required by the Commissioner from time to time to determine compliance with [regulations] **these rules.**

(b) **The president or vice president of the corporation shall certify that the information contained on the application is true to the best of his or her knowledge and belief.**

(c) **The application and certified statement shall be filed as of December 31 of each year, or [at] as of such other time[s] as the Commissioner may require.**

(d) **The application, certified statement and \$100.00 filing fee shall be filed in the Department of Banking [within 30 days after the specified filing date] on or before April 1 of each year, or within 90 days of the specified date set by the Commissioner in (c) above.**

#### 3:12-2.2 Public disclosure of financial information

A [registrar or transfer agent] **qualified corporation**, upon request by a corporate client, shall disclose its assets, liabilities, capital and fidelity insurance coverage. Information disclosed, as of the same

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**COMMUNITY AFFAIRS**

date as a filed certified statement pursuant to this [Chapter] **chapter**, shall not vary in any material respect with the balance sheet of said certified statement. No information shall be disclosed as of any other date which does not itemize assets, liabilities, capital and insurance coverage in the same manner as required by this [Chapter] **chapter**.

3:12-2.3 Examination by a public accountant

(a) The directors of a [registrar or transfer agent] **qualified corporation** shall cause the examination of the [registrar's or transfer agent's] **qualified corporation's** records by a public accountant at least once in each calendar year. The scope of said examination shall include an inventory verification of unissued stock certificates and a confirmation of the last certificate number issued with the corporate issuer. The verifications and confirmations shall not be less than five percent of the accounts serviced or [ten] **10** corporate issuers whichever is greater.

(b) The public accountant shall render an opinion on the financial statement, the sufficiency of internal controls and the adequacy of the separation of [registrar] functions [from functions of the transfer agent].

3:12-2.5 Examination by the Commissioner of Banking

The Commissioner of Banking may at any time, either personally or by a person or persons duly designated by him or her, examine the records of a [registrar or transfer agent] **qualified corporation**. The costs of such examination shall be borne by the [registrar or transfer agent] **qualified corporation** so examined.

3:12-3.1 Minimum capital

A [registrar or transfer agent] **qualified corporation** shall maintain capital equal to [\$2,000] **\$5,000** for each corporate issuer serviced or [\$5,000] **\$100,000** whichever is greater [until capital of \$20,000 is attained. When a registrar or transfer agent attains capital of \$20,000, he shall be required to maintain an additional \$1,000 capital for each additional corporate issuer serviced]. Unless otherwise directed by the Commissioner of Banking, no [registrar or transfer agent] **qualified corporation** shall be required to maintain capital in excess of [\$500,000] **\$1,000,000**.

3:12-3.2 Restriction on new accounts for deficient capitalization

A [registrar or transfer agent who] **qualified corporation which** does not meet the minimum capitalization as required by this [Chapter] **chapter** shall not enter into a service agreement or contract with a corporate issuer to act as a **registrar**, transfer agent or **fiscal agent**. Renewals of existing contracts or agreements are not subject to this regulation.

3:12-3.3 Maximum time period for deficient capitalization

A [registrar or transfer agent] **qualified corporation** shall not remain in a deficient capital position as calculated by standards prescribed by this [Chapter] **chapter** for a period of time in excess of 12 months or such other period of time as the Commissioner may prescribe.

3:12-4.1 Minimum fidelity insurance coverage

(a) A [registrar or transfer agent] **qualified corporation** shall obtain a bankers or stockbrokers blanket bond which covers:

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

3:12-4.2 Mail insurance

A [registrar or transfer agent] **qualified corporation** shall provide insurance to cover securities in transit by mail.

3:12-4.3 Director's review of insurance

Insurance coverages maintained by a [registrar or transfer agent] **qualified corporation** shall be reviewed annually by the board of directors to determine the sufficiency of coverages maintained based on the [volume] **volume** and nature of operations.

3:12-5.1 Establishment of a place of business

A [registrar or transfer agent] **qualified corporation** shall maintain a place of business in the State of New Jersey and establish hours at which time business will be transacted.

3:12-5.2 Vault protection

A [registrar or transfer agent] **qualified corporation** shall provide a vault for the storage and adequate protection, as determined by the Commissioner, of all stock certificates except those certificates which have been cancelled as a result of a complete transfer transaction.

3:12-5.3 Reconstruction of records

A [registrar or transfer agent who] **qualified corporation which** maintains the corporate issuer's stockholder records or ledger shall develop, implement and maintain a system providing for the reconstruction of the stockholders ledger.

3:12-5.4 Safekeeping; stock certificates

(a) A **qualified corporation acting as a** transfer agent shall provide safekeeping facilities for undeliverable stock certificates.  
(b) (No change.)

3:12-5.5 Safekeeping unclaimed cash dividends

(a) A **qualified corporation acting as a** transfer agent shall provide for the adequate protection of unclaimed cash dividends.  
(b) (No change.)

3:12-5.7 Transfer transaction journal

A **qualified corporation acting as a** transfer agent shall, based on the volume of transactions, periodically, but at least once in a 12-month period, provide the corporate issuer with a copy of the corporate issuer's transfer transaction journal.

**COMMUNITY AFFAIRS**

**(a)**

**DIVISION OF HOUSING AND DEVELOPMENT**

**Uniform Fire Code**

**Use Group Definitions; Fire Suppression Systems**

**Proposed Amendments: N.J.A.C. 5:18-1.5 and 4.7**

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

Department of Community Affairs.

Authority: N.J.S.A. 52:27D-198.

Proposal Number PRN 1992-95.

Submit comments by April 1, 1992 to:  
Michael L. Ticktin, Esq.  
Chief, Legislative Analysis  
Department of Community Affairs  
CN 802  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The definition of Use Group A-2 is expanded to include eating and drinking establishments, and similar occupancies, in which the established maximum permitted occupant load exceeds the number of seats provided by more than 30 percent. Exemption from fire suppression system requirements is provided for buildings with a permitted occupancy under 300 in which the entire required means of egress is on the same level as the use and no exit is more than five feet above, or two feet below, the adjacent grade and for buildings with a permitted occupancy under 200 in which no portion of the required means of egress is either more than one level above, or more than two feet below, the adjacent grade.

**Social Impact**

The amendment to the definition of Use Group A-2 will render moot any dispute as to whether or not an establishment meeting the new definition is a "night club." Persons in occupancies in which there are over 30 percent more people than there are seats require the same protection against fire hazards regardless of whether and when entertainment is being provided. The amendments to the fire suppression system requirement will allow smaller facilities in Use Group A-2 to operate without installing fire suppression systems if there are adequate exitways. The Department is satisfied that this exemption can be allowed under these circumstances without compromising public safety.

**Economic Impact**

Owners of properties for which Use Group A-2 classification was previously questionable will now have to comply with all fire safety requirements applicable to that use group, including those concerning exitways and fire suppression systems, the cost of which will vary depending on the size and configuration of the area in which the use is located. However, as a result of the amendment to N.J.A.C. 5:18-4.7, smaller facilities with adequate exitways will be spared this additional expense.

**Regulatory Flexibility Analysis**

The proposed amendments add an exemption from fire suppression system requirements for those A-2 Use Group businesses with a permitted occupancy of fewer than 300 people, if certain exit requirements are met. Occupancies in which the maximum permitted load exceeds the number of seats provided by more than 30 percent are included in the A-2 requirements. Some of the businesses affected by the amendments may be small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; however, neither the number of such businesses, nor their distribution among businesses with a permitted occupancy of less than 300, is known. Similarly, the costs of complying with the amendments are not known, as individual site situations and the costs of construction vary. The protection of lives and property from fire is a matter that directly affects the health and welfare of the public. While the size of a building or a use area is relevant to the level of protection required, the form and nature of the business that owns or operates it is not. For that reason, the Department has provided no exemption in these amendments for small businesses.

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

## 5:18-1.5 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise. All definitions found in the Uniform Fire Safety Act, P.L. 1983, c.383, N.J.S.A. 52:27D-192 et seq., shall be applicable to this chapter. When a term is not defined in this section or in the Uniform Fire Safety Act, then the definition of that term found in the Uniform Construction Code at N.J.A.C. 5:23-1.4 shall govern.

...  
 "Use" or "Use Group" means the use to which a building, portion of a building, or premises, is put as follows. It shall also mean and include any place, whether constructed, manufactured or naturally occurring, whether fixed or mobile, which is used for human purpose or occupancy which use would subject it to the provisions of this Code if it were a building or premises.

1.-2. (No change.)

3. "Use Group A-2": This Use Group shall include all buildings and places or public assembly, without theatrical stage accessories, designed for use as dance halls, night clubs [as defined in N.J.A.C. 5:18-1.5, and for similar purposes, including], **and eating and/or drinking establishments, and similar occupancies, in which the established maximum permitted occupant load exceeds the number of seats provided by more than 30 percent, and shall include all rooms, lobbies and other spaces connected thereto with a common means of egress and entrance.**

4.-18. (No change.)

## 5:18-4.7 Fire suppression systems

(a) All buildings of Use Group A-2, or portions thereof when separated in accordance with (k) below, with a permitted occupant load of 50 or more, shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

1. **The following are exceptions to (a) above:**

i. **Buildings with a permitted occupancy of fewer than 300 having all components of the required means of egress on the same level as the use and having all such exits discharging not more than five feet above, nor more than two feet below, the adjacent grade;**

ii. **Buildings with a permitted occupancy of fewer than 200 having no portion of the required means of egress located more than one level above, or more than two feet below, the adjacent grade.**

(b)-(k) (No change.)

(a)

**DIVISION OF HOUSING AND DEVELOPMENT**  
**Fire Code Administration; Uniform Construction Code**

**Conflict of Interest**

**Proposed Amendments: N.J.A.C. 5:18A-2.9 and 4.6;**  
**5:23-4.5, 4.11 and 4.14**

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

Authority: N.J.S.A. 52:27D-124 and 198.

Proposal Number: PRN 1992-96.

Submit written comments by April 1, 1992 to:

Michael L. Ticktin, Esq.  
 Chief, Legislative Analysis  
 Department of Community Affairs  
 CN 802  
 Trenton, NJ 08625

The agency proposal follows:

**Summary**

Officials and inspectors enforcing both the fire and construction codes are forbidden to hold outside employment as paid expert witnesses against other officials, inspectors or enforcing agencies in proceedings relative to the enforcement of the Uniform Fire Code or the Uniform Construction Code, whether in court or before any construction board of appeals. In the Department's judgment, it is an inappropriate conflict of interest for licensees employed by enforcing agencies to hold such employment with the regulated community and use their credentials in a way that is detrimental to the efforts of other enforcing agencies. A similar prohibition, it should be noted, has been established by the Division of Taxation for assessors.

Limitations on code-related employment that now apply to municipal construction code enforcement personnel are extended to fire officials and inspectors so that, as with construction code enforcement, the person citing the violation should have no reasonable expectation of deriving financial gain from the abatement of the violation. Income from properties subject to the respective code is required to be reported in the case of both codes.

The prohibition regarding employment as a paid expert does not apply to testimony that is on behalf of another enforcing agency, or as a court-appointed witness, or in litigation not dealing with code enforcement, or as a fact witness, nor does it apply to activities unrelated to a code enforcement action or an appeal of such action.

Current requirements that both the source and amount of other income be disclosed are proposed to be amended to require disclosure of the source only.

Other changes are also made in order to make the conflict of interest rules for construction code and fire code enforcement personnel equivalent.

**Social Impact**

These amendments will strengthen code enforcement by preventing the abuse of official credentials in order to undermine the code enforcement efforts of other enforcing agencies and will create parity between fire and construction code enforcing personnel, since the same principles will apply to both.

**Economic Impact**

Any fire or construction code enforcement personnel who have been earning additional income through outside employment as experts on behalf of property owners charged with violations of the code and against other enforcing agencies will no longer be able to do so. Fire code enforcement personnel who are engaged in business or employment related to the Uniform Fire Code in the municipality in which they serve or an adjacent municipality will have to discontinue such business or employment.

**Regulatory Flexibility Statement**

These amendments concern the conduct of code enforcement personnel and do not impose any requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., other than those that might be owned by code enforcement personnel and

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might therefore have to be sold, moved or discontinued. Therefore, a regulatory flexibility analysis is not required.

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

5:18A-2.9 Conflict of interest

(a) No person employed by an enforcing agency[, whether paid or unpaid,] as a fire official or fire inspector shall carry out any inspection or enforcement procedure with respect to any property or business in which he or she, or a member of his or her immediate family, has an economic interest.

Recodify existing (b) as 1. (No change in text.)

(b) No person employed by an enforcing agency as a fire official or fire inspector shall engage in, or otherwise be connected directly or indirectly for purposes of economic gain with, any business or employment furnishing labor, materials, products or services related in any way to fire safety within any municipality in which he or she is employed by an enforcing agency or in any municipality adjacent to any municipality in which he or she is thus employed.

(c) Persons subject to this section shall annually report any income or benefits received from any property or business subject to the Code, or from any business furnishing materials, products, labor or services for types of work subject to the Code, to the municipal governing body. This report shall [list the sum total of such income received and each source] include a list of all sources of income, but need not list the amount.

(d) No person employed by a municipal enforcing agency as a fire official or fire inspector shall be employed to appear before any construction board of appeals, or be involved in any court proceeding within the State, as a paid expert witness, or in any other compensated capacity, in any proceeding involving the enforcement of the Uniform Fire Code except on behalf of another enforcing agency, or as a court-appointed witness.

1. This prohibition shall not apply to any litigation not involving enforcement of the Code, or to appearance as a fact witness; nor shall it apply to any activities unrelated to an action for, or an appeal of, enforcement of the Code.

[(d)](e) This section shall not apply to:

[i.]1. [the] The ownership of stock or other investment instrument of any corporation listed on any national stock exchange;

2. Any business or employment outside the State;

3. Dual employment by two or more enforcing agencies;

4. Any business or employment that is not subject to the Code;

or  
5. Service as an instructor in a code enforcement training program.

Recodify existing (e) as (f) (No change in text.)

5:18A-4.6 Revocation of certifications and alternative sanctions

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

(d) Any sanctions imposed by the Construction Code Enforcement Element, pursuant to N.J.S.A. 52:27D-119 et seq., shall constitute grounds for imposition of sanctions under this section.

(e) (No change.)

5:23-4.5 Municipal enforcing agencies—administration and enforcement

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

(j) Conflict of interest:

1. No person employed by an enforcing agency as a construction or subcode official or as an inspector shall carry out any inspection or enforcement procedure with respect to any property or business in which he or she, or a member of his or her immediate family, has an economic interest.

i. Where an inspection or enforcement procedure is necessary or required in any such property or business, the official or inspector shall arrange for the inspection or enforcement to be carried out either by another local enforcing agency or by the Department.

Recodify existing 1. as 2. (No change in text.)

[2. Further rules are:

1.]3. Persons subject to [(h) above,] this subsection shall annually report any income or benefits received from any business or property

subject to the Code, or from any business furnishing materials, products, labor or services for types of work subject to the Uniform Construction Code regulations, to the municipal governing body. This report shall include [the sum total of all income so received and] a list of all sources of income, but need not list the amount. [This reporting shall commence on July 1, 1978, and shall cover the preceding six months, and thereafter shall be required annually.]

[ii. Nothing herein shall prohibit a municipality from establishing by ordinance more restrictive provisions covering conflict of interest.]

4. No person employed by a municipal enforcing agency as a construction official, subcode official or inspector shall be employed to appear before any construction board of appeals, or be involved in any court proceeding within the State, as a paid expert witness, or in any other compensated capacity in any proceeding involving the enforcement of the Uniform Construction Code except on behalf of another enforcing agency, or as a court-appointed witness.

i. This prohibition shall not apply to any litigation not involving enforcement of the Code, or to an appearance as a fact witness; nor shall it apply to any activities unrelated to an action for, or an appeal of, enforcement of the Code.

[3.]5. This section shall not apply to:

i.-iv. (No change.)

v. Service as an instructor in a code enforcement training program.

6. Nothing herein shall prohibit a municipality from establishing by ordinance more restrictive provisions covering conflict of interest.

Recodify existing 4. as 7. (No change in text.)

5:23-4.11 State enforcing agencies—administration and enforcement

(a) Department of Community Affairs: The [Bureau of] Construction Code Element shall administer and enforce the regulations, insofar as is practicable, in the same manner as a municipal enforcing agency.

1. (No change.)

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

5:23-4.14 Private enforcing agencies—administration and enforcement

[(a) Private on site inspection and plan review agencies.]

Recodify 1. as (a) (No change in text.)

[2.](b) The on-site inspection agency shall provide the department with the following:

Recodify i.-iii. as 1.-3. (No change in text.)

Recodify 3.-4. as (c)-(d) (No change in text.)

[5.](e) Each on-site inspection agency shall have the following responsibilities:

Recodify i.-xv. as 1.-15. (No change in text.)

[6.](f) No person employed by an on-site inspection agency as an employee, officer, director, partner or manager shall engage in, or otherwise be connected directly or indirectly, for purposes of economic gain[, with, any business or employment furnishing labor, materials, products or services for the construction, alteration or demolition of buildings within the State. Nor shall any such [official] officer, director, partner, manager or employee engage in any other work [which] that conflicts with his or her official duties, including, without limitation, employment or appear before any construction board of appeals, or to be involved in any court proceeding within the State, or as a paid expert witness against any construction official, subcode official, inspector or enforcing agency, or in any other compensated capacity except on behalf of an enforcing agency, or as a court-appointed witness.

1. This prohibition shall not apply to any litigation not involving enforcement of the Code, or as a fact witness; nor shall it apply to any activities unrelated to an action for, or an appeal of, enforcement of the Code.

[i.]2. This [section] subsection shall not apply to:

Recodify (1)-(3) as i.-iii. (No change in text.)

## COMMUNITY AFFAIRS

## PROPOSALS

[ii.]3. An on-site inspection agency may employ municipal subcode officials and inspectors on a part-time basis. This employment, however, shall be subject to the following conditions:

Recodify (1)-(5) as i.-v. (No change in text.)

## (a)

## DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code  
One and Two-Family Dwelling Subcode

## Proposed Amendment: N.J.A.C. 5:23-3.21

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

Department of Community Affairs.

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

Proposal Number: PRN 1992-97.

Submit comments by April 1, 1992 to:

Michael L. Tickin, Esq.

Chief, Legislative Analysis

Department of Community Affairs

CN 802

Trenton, New Jersey 08625

The agency proposal follows:

## Summary

This proposed amendment prohibits the use of the Council of American Building Officials' (CABO) One and Two-Family Dwelling Code for those structures that are located in a flood zone, or that utilize pilings. The CABO code does not contain provisions for construction in flood zones, nor does it address construction using pilings. The amendment would therefore mandate that structures falling into these categories conform to the Building Officials and Code Administrators (BOCA) National Building Code, which is the adopted building subcode (see N.J.A.C. 5:23-3.14). Federal Flood Insurance requirements make necessary consistent regulatory provisions controlling construction in flood zones.

In addition, certain sections of the 1990 and 1991 amendments to the CABO One and Two-Family Dwelling Code are amended in order to reconcile these provisions of the CABO Code with the BOCA Code. This will eliminate confusion caused by conflicting code requirements.

## Social Impact

This amendment should clarify for code officials and applicants, whether builders or homeowners, what code provisions apply in flood hazard zones. Previous ambiguity in this area did not provide needed regulatory guidance and would not have prevented the construction of unsafe structures in flood zones.

## Economic Impact

This amendment may appear to have a short-term impact on applicants by requiring more complex foundations in flood hazard zones. However, there is an ultimate saving due to increased life safety and prevention of property damage. The need for appropriate insurance necessitates these amendments.

## Regulatory Flexibility Analysis

The proposed amendments require one and two-family dwelling structures which are built in flood zones to conform to the requirements of the BOCA found at N.J.A.C. 5:23-3.14. The builders of such homes, many of whom may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are, therefore, required to follow the BOCA. In order to protect the safety of the occupants, and of the public generally, no exemption from the standard has been made.

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

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 [through R-114] 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.)

[xi. Add new section R-220 "Height and Area Limitations."

The provisions of this subcode are limited to Use Group R-4 (detached one and two family dwellings), 5B construction, with no more than two stories or 35 feet in height, and 4,800 square feet in area per floor.]"

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.

[1.]2. The following amendments are made to Chapter 2 Entitled "Building Planning."

i. [(Reserved)] 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. [(Reserved)] 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.)

[7.-8. (Reserved)]

9. The following amendment is made to Appendix A:

i. Wind Probability Map is deleted.

10. Appendix F is deleted in its entirety.

## HUMAN SERVICES

### (a)

#### OFFICE OF FINANCE AND ACCOUNTING

#### Administration of State Provided Personal Needs Allowance

#### Proposed New Rules: N.J.A.C. 10:8

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-2 and 30:4-68.2.

Proposal Number: PRN 1992-54.

Submit comments by April 1, 1992 to:

Paul W. Maksimow, Director  
Office of Finance and Accounting  
Department of Human Services  
222 South Warren Street, 4th Floor  
CN 700  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

These new rules were first proposed April 20, 1987 in the New Jersey Register at 19 N.J.R. 617(a), but never promulgated. They are now being proposed to comply with a practice already being utilized.

The purpose of these proposed new rules is to set forth rules governing the payment of the State provided required minimum monthly personal needs allowance (PNA) to all clients who qualify as follows:

1. Do not have the available financial resources to provide a monthly amount equal to the required minimum monthly personal needs allowance;

2. Are not eligible for Medicaid or Supplemental Security Income (SSI) assistance; and

3. Are residing in State psychiatric hospitals, county psychiatric facilities, State developmental centers, and other residential placements for the developmentally disabled.

Since 1974, the Federal government has provided a monthly \$25.00 personal needs allowance (PNA) to SSI recipients residing in nursing facilities and State and county long-term care facilities. The State of New Jersey has maintained a policy of PNA equity. This means that the amount of PNA paid to clients residing in these facilities who are not SSI recipients, is equal to the amount of PNA being received by clients who are SSI recipients.

In 1985, due to rapid increases in the cost of living, the New Jersey Legislature approved an increase of \$10.00 per month personal needs allowance for all clients in State psychiatric hospitals, county psychiatric facilities, State developmental centers, and other residential placements for the developmentally disabled. In July 1988, the Federal government supplemented the SSI recipient's PNA by an additional \$5.00. However, this increase was contingent upon the condition that the State would not decrease any supplement it was already providing. Therefore, SSI recipients now receive a total monthly PNA consisting of the current SSI PNA plus the State's PNA supplement, mandated in 1985. In order to continue the policy of PNA equity among clients, the State set the PNA for non-SSI recipients to the same total amount received by SSI recipients, including the State's supplement.

#### Social Impact

These rules affect an average of some 2,865 clients, who do not qualify for Medicaid or SSI, residing in State psychiatric hospitals, county psychiatric facilities, State developmental centers, and other residential placements for the developmentally disabled. The State provided personal needs allowance is intended to meet the needs of clients who do not have the available financial resources from which to fund their PNA.

Examples of such needs are deodorant, cosmetics, special soaps, tobacco, articles of clothing, long distance telephone calls and bedspreads.

#### Economic Impact

The total annual State provided PNA program cost will be approximately \$1,375,000. Since the clients involved do not qualify for Federal assistance, Federal financial matching is not available. For those qualified clients residing in the county psychiatric facilities, the county of legal

settlement shall share in the payment of their PNA, utilizing the percentages established by law for sharing the cost of clients' care and maintenance.

#### Regulatory Flexibility Analysis

The proposed new rules affect primarily State psychiatric hospitals, county psychiatric facilities and State developmental centers, none of which are considered small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In the event that a client is placed in another residential placement for the developmentally disabled, for example a boarding home, these rules would apply to that situation and may therefore be construed as affecting a small business. However, the incidence of these placements by qualified clients is limited to perhaps as few as two or three in any given month and the rules are not so burdensome as to necessitate separate standards for these limited circumstances. Furthermore, the rules are designed to protect the well being of the client and as such warrant standard compliance.

Full text of the proposed new rules follows:

### CHAPTER 8 ADMINISTRATION OF STATE PROVIDED PERSONAL NEEDS ALLOWANCE

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 10:8-1.1 Scope

(a) The rules in this chapter regulate the administration of State provided Personal Needs Allowance (PNA) for clients who:

1. Do not have the available financial resources to provide a monthly amount equal to the required minimum monthly personal needs allowance;

2. Are not eligible for Medicaid or Supplemental Security Income (SSI) assistance; and

3. Are residing in State psychiatric hospitals, county psychiatric facilities, State developmental centers, and other residential placements for the developmentally disabled.

##### 10:8-1.2 Purpose

(a) This chapter sets forth rules for the provision of a required minimum monthly State provided personal needs allowance for clients with no available financial resources to provide for their day-to-day personal needs while residing in State psychiatric hospitals, county psychiatric facilities, State developmental centers, and other residential placements for the developmentally disabled.

1. Any situation, condition or terminology not specifically addressed or defined by these rules shall be guided by the provisions of N.J.S.A. 30:4-24 et seq.

2. If any provision of these rules or application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the rules.

##### 10:8-1.3 Definitions

The following words or terms, when used in this chapter, shall have the following meanings, unless the context indicates otherwise:

"County psychiatric facility" means a county operated psychiatric facility which participates in the State Aid Program of the Department of Human Services, Division of Mental Health and Hospitals.

"Client" means an individual admitted/committed to residential care in a State psychiatric hospital, county psychiatric facility, State developmental center, or other residential placement for the developmentally disabled.

"Developmental center" means a State residential facility operated by the Department of Human Services, Division of Developmental Disabilities.

"Medicaid" means a program established under Title XIX of the Social Security Act, and financed by Federal, State, and local tax dollars, that provides health care and medical services to financially eligible persons unable to pay for health services.

"Other residential placement for the developmentally disabled" means the residential placement of a developmentally disabled client, by the Department of Human Services, Division of Developmental Disabilities, in a living arrangement other than a State developmental center.

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“Personal needs allowance (PNA)” means those funds intended to meet the clients’ personal needs which are not furnished as part of the care and maintenance furnished to clients.

“Qualified client” means a client who is eligible to receive the required minimum monthly State provided Personal Needs Allowance.

“Required minimum monthly PNA” means the amount of monthly PNA, paid to qualified clients, determined by adding the Federal mandated Supplemental Security Income (SSI) PNA to the State mandated PNA supplement. (N.J.S.A. 30:4-68.2.)

“State provided PNA” means the personal needs allowance provided by the State of New Jersey to qualified clients who do not have the available financial resources equal to the required minimum monthly PNA.

“State psychiatric hospital” means a psychiatric facility listed in N.J.S.A. 30:1-7 and being utilized by the Department of Human Services, Division of Mental Health and Hospitals.

“Supplemental Security Income (SSI)” means a Federal assistance program of monthly income paid to individuals who are aged, blind, or disabled and who meet specific financial requirements. It is authorized under Title XVI of the Social Security Act.

**SUBCHAPTER 2. FURNISHING STATE PROVIDED PERSONAL NEEDS ALLOWANCE**

**10:8-2.1 Requirements**

(a) State provided PNA shall not be distributed by the State psychiatric hospitals, county psychiatric facilities, State developmental centers, and other residential placements for the developmentally disabled to clients who have available financial resources to supply them with the required minimum monthly PNA. These financial resources include, but are not limited to, personal income, Federal benefits (Supplemental Security Income, Social Security, Veterans’, Railroad Retirement, etc.), trusts and inheritances.

(b) Those clients with inadequate or no available financial resources shall be provided with State PNA up to the required minimum monthly PNA amount. The State psychiatric hospitals, county psychiatric facilities, State developmental centers, and other residential placements for the developmentally disabled shall provide the required minimum monthly State provided PNA to qualified clients as soon as possible after admission.

(c) It is possible that under extraordinary circumstances, a client may be authorized additional State provided PNA over and above the required minimum monthly State provided PNA during the same month. If the circumstances warrant an additional State provided PNA distribution to the same client for the same month, it shall be authorized in writing by the chief fiscal officer/business manager, or equivalent, at the State psychiatric hospital, county psychiatric facility, State developmental center, and other residential placement for the developmentally disabled.

**10:8-2.2 Cost sharing with counties**

(a) In county psychiatric facilities, the State will reimburse the facility for the appropriate share of the required minimum monthly State provided PNA paid for qualified county settlement clients. This reimbursement will utilize the percentages established by law for sharing the cost of client’s care and maintenance. In accordance with N.J.S.A. 30:4-78:

“The State share of payments to the several county psychiatric facilities on behalf of the reasonable cost of maintenance of patients shall be at the rate of 130 percent during the period July 1 through December 31 of each year and at the rate of 50 percent during the period January 1 through June 30 of each year; provided that the total amount to be paid by the State in each year shall not exceed 90 percent of the total reasonable per capita cost for the period January 1 through December 31 of each year.”

(b) In county psychiatric facilities, the State will reimburse the facility for 100 percent of the required minimum monthly State provided PNA paid to the qualified clients with no legal settlement in a county. (N.J.S.A. 30:4-49 through 52.)

(c) Those counties with county psychiatric facilities shall report monthly the payment of the minimum required monthly State

provided PNA to qualified clients. This shall be reported on the New Jersey Department of Human Services form, “State Aid Reimbursement Form for County Psychiatric Hospitals” utilizing item 7, Adjustments. Copies of this form can be obtained from the Division of Mental Health and Hospitals, Office of Fiscal and Management Operations, CN 727, Trenton, NJ 08625-0727.

**10:8-2.3 Full payment by the State**

In State psychiatric hospitals and State developmental centers and other residential placements for the developmentally disabled, the State will pay 100 percent of the required minimum monthly State provided PNA to qualified clients.

**10:8-2.4 Accumulation of payments**

In those circumstances where the agency holds the minimum required monthly State provided PNA in trust for the clients, the minimum required monthly State provided PNA balances shall be accumulated, maintained and released. Any balance of a client’s minimum required monthly State provided PNA, in the possession of the agency, shall be released to the client upon his or her discharge or transfer.

**SUBCHAPTER 3. DETERMINING PAYMENT OF STATE PROVIDED PERSONAL NEEDS ALLOWANCE**

**10:8-3.1 Initial assessment**

(a) The State psychiatric hospital, county psychiatric facility, State developmental center, or other residential placement for the developmentally disabled, shall make an initial assessment on a case-by-case basis, within seven calendar days of admission, to determine if the client admitted has available financial resources to satisfy the required minimum monthly PNA.

(b) If the initial assessment determines that the client does not have sufficient available financial resources, then the State psychiatric hospital, county psychiatric facility, State developmental center, or other residential placement for the developmentally disabled shall provide the required minimum monthly State provided PNA.

(c) Written documentation of the initial assessment shall be kept in the client’s file.

**10:8-3.2 Schedule of payments**

(a) Each qualified client admitted/committed to a State psychiatric hospital, county psychiatric facility, State developmental center, or other residential placement for the developmentally disabled shall be provided the required minimum monthly State provided PNA as soon as possible.

1. If a client is admitted/committed during the first 25 days of any calendar month, the required minimum monthly State provided PNA shall be paid to the client and considered applicable to the month of admission.

2. If the client is admitted/committed after the 25th day of any calendar month, the required minimum monthly State provided PNA shall be paid to the client and considered applicable to the following month.

(b) The payment of the required minimum monthly State provided PNA after the initial payment shall be made monthly.

(c) The required minimum monthly State provided PNA payment shall not be prorated.

**10:8-3.3 Adjustment or termination of payments**

If there is a change in the financial status of a qualified client, residing in a State psychiatric hospital, county psychiatric facility, State developmental center, or other residential placement for the developmentally disabled, which would enable the client to begin funding a part, an increased amount or all of his/her monthly PNA, the required minimum monthly amount of State provided PNA paid to the client shall be adjusted or terminated.

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**CORRECTIONS**

**SUBCHAPTER 4. PERSONAL NEEDS ITEMS**

**10:8-4.1 Acceptable personal needs items**

(a) The following list, which is not all inclusive, indicates those personal needs items which are acceptable uses for State provided PNA. This listing shall be utilized in counseling clients in the proper use of their State provided PNA funds. State provided PNA funds are not intended to be used to purchase durable medical equipment, such as standard wheelchairs, which are considered routinely used equipment essential to the clients' care and maintenance.

1. Small purchases: Deodorant, cosmetics, electric shavers, hair spray, lotions, powders, special soaps, hair or clothes brushes, tobacco, candies, ice cream.
2. Personal items: Articles of clothing, jewelry, watches, accessories, haircuts, beauty parlor, newspaper and magazines.
3. Contacts with the community: Home visiting, luggage for home visit, trips to special events or places of interest, long distance telephone calls, personal stationery, postage stamps, gifts for the family.
4. Personalization of living areas: Clients may wish to make their living area more "home-like" with a colorful bedspread, rug, picture, personally owned chair, chest, or other items not furnished by the facility.
5. Recreation and hobbies: Games, photographic materials, aquariums, plants, radios, recorders, television sets.

**SUBCHAPTER 5. SANCTIONS/APEAL PROCEDURES**

**10:8-5.1 Scope**

These sanctions shall only apply to those counties with county psychiatric facilities. Since the distribution of State provided PNA for the State psychiatric hospitals, State developmental centers, and other residential placements for the developmentally disabled is accomplished through a centralized automated banking system located at the Department of Human Services, Office of Finance and Accounting, there is no need for sanctions/appeals.

**10:8-5.2 Sanctions for non-compliance with Federal and State laws and regulations**

The county governing body and/or the county psychiatric facility shall assure compliance with Federal and State laws and this chapter or appropriate sanctions may be applied. A county's governing body and/or county psychiatric facility's failure to submit required financial reports and make PNA payments as specified in the rules and within the required time periods may result in the imposition or initiation of sanctions by the Commissioner of the Department of Human Services. Notice will be provided to the county governing body and/or county psychiatric facility prior to imposition of sanctions when the county governing body and/or county psychiatric facility is found to not be in compliance with these rules. Sanctions shall be initiated at the Commissioner's discretion on a case-by-case basis. Sanctions may be administrative and/or financial. Administrative sanctions may be, but are not limited to, letters of warning and/or notice to the county governing body and/or county psychiatric facility for non-compliance and/or referral to the Attorney General for advice and/or action. Financial sanctions may be, but are not limited to, the withholding of funds from the county governing body and/or the county psychiatric facility.

**10:8-5.3 Procedures for appeals from sanctions**

(a) The county governing body and/or the county psychiatric facility shall be afforded an opportunity to appeal any sanction imposed. Appeals will not be expected to resolve issues which have policy implications or broader applicability. There are two levels of appeal available:

1. Level 1: A request for a Level 1 appeal will be considered timely filed if it is submitted in writing to the Department of Human Services, Director of the Division of Mental Health and Hospitals within 30 days of receipt of the State applied sanctions.
  - i. The first level of appeal represents an informal administrative process. The appeal will be heard by the Director of the Division of Mental Health and Hospitals and appropriate staff within 60 days of receipt.

- ii. The county governing body and/or the county psychiatric facility should be prepared to present such substantiating materials as may be required for an informal discussion of the subject matter.
  - iii. This level of appeal will attempt to reach equitable resolutions of the matters under dispute.
  - iv. Notice of the decision relating to the first level of appeal will be provided to the county governing body and/or county psychiatric facility when the level 1 appeals process is completed.
2. Level 2: If the county governing body and/or the county psychiatric facility is not satisfied with the results of the first level of appeal, a second level may be requested. A request for a Level 2 appeal will be considered timely filed if it is submitted in writing to the Commissioner, Department of Human Services within 60 days of receipt of notification of the results of the Level 1 appeal.
- i. The second level appeal will be heard by a panel of representatives from the Department of Human Services consisting of the Commissioner or designee, the Assistant Commissioner of Budget, Finance and Administration or designee, and the Director of the Office of Finance and Accounting. The Department will schedule an appropriate time and place for the panel to hear the appeal within 60 days of receipt.
  - ii. Notice of the decision relating to the second level of appeal will be provided to the county governing body and/or county psychiatric facility when the level 2 appeals process is completed.
- (b) Any financial adjustments resulting from an appeal will be determined during the appeals process and depend on the specific situation.
- (c) The date of submission is defined as the date received by the Department.

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**CORRECTIONS**

**(a)**

**THE COMMISSIONER**

**New Jersey Municipal and County Correctional Facilities**

**Proposed Readoption with Amendments: N.J.A.C. 10A:34**

Authorized By: William H. Fauver, Commissioner, Department of Corrections.  
Authority: N.J.S.A. 30:1B-6, 30:1B-10 and 2A:4A-37.  
Proposal Number: PRN 1992-93.

Submit comments by April 1, 1992 to:  
Elaine W. Ballai, Esq.  
Regulatory Officer, Standards Development Unit  
Department of Corrections  
CN 863  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10A:34, New Jersey Municipal and County Correctional Facilities, expires April 6, 1992. The Department of Corrections has reviewed these rules and, with the amendments in subchapter 2, has determined these rules to be necessary, reasonable and proper for the purpose for which these rules were originally promulgated, and is, therefore, proposing them for re-adoption at this time.

Subchapter 2 establishes minimum standards for the construction, alteration, addition, repair and administration of municipal detention facilities. These rules also provide specifications for cells, corridors, holding rooms, monitoring systems and sallyports and the guidelines for fire safety, sanitation, security and control and the supervision and care of detainees within municipal detention facilities. An amendment to N.J.A.C. 10A:34-2.7 adds the word "type" after the words "tool resistant." "Tool resistant" can be a soft steel. A harder steel is used when the term "tool resistant type" is specified. The word "combination" has been deleted from N.J.A.C. 10A:34-2.8(c) since many cells now have single unit detention type toilets and lavatories. N.J.A.C. 10A:34-2.9(b)

**LAW AND PUBLIC SAFETY****PROPOSALS**

has been revised to specify the types of bunks which can be installed in holding rooms. An amendment to N.J.A.C. 10A:34-2.10 recodifies subsections (g) through (l) as (h) through (m) and adds a new subsection (g) which specifies that "cell corridor ceilings in new or renovated municipal detention facilities shall be constructed of pre-cast concrete slabs or reinforced concrete." An amendment has been added to N.J.A.C. 10A:34-2.11(b) which states that "the monitoring systems shall remain activated at all times when detainees are present." N.J.A.C. 10A:34-2.19, Juvenile detainees, has been deleted as a result of the promulgation of N.J.A.C. 10A:34-3. A new section N.J.A.C. 10A:34-2.19, Suicide prevention and control, has been added which establishes the minimum policies and procedures needed to govern the identification, placement and monitoring of detainees who are deemed to be at a risk for suicide. A new section, N.J.A.C. 10A:34-2.21, has been added which requires each municipal detention facility to prepare written policies and procedures consistent with subchapter 2 and that these policies and procedures be available during inspection by the New Jersey Department of Corrections.

Subchapter 3, Processing and Housing Juveniles in Municipal Detention Facilities, sets forth the process and physical conditions under which juveniles may be detained and supervised in municipal detention facilities, the monitoring of these facilities by the Department of Corrections and the reporting requirements for unusual incidents.

**Social Impact**

The readoption of N.J.A.C. 10A:34 will continue to promote uniformity among municipal detention facilities in the State of New Jersey. The use of these rules will assist municipalities in processing and confining detainees; providing care and treatment to detainees; and managing detainees in order that the security and orderly operation of the municipal detention facilities can be maintained.

**Economic Impact**

The economic impact will be minimal for those municipal detention facilities which have been constructed or renovated in accordance with Department of Corrections requirements. However, for those municipal detention facilities that have fallen far below Department of Corrections' requirements, there will be a more significant economic impact as the facilities seek to come into conformity with the requirements. When a municipality elects to construct a new municipal detention facility, the cost of such a project may result in an increase in taxes or reduction in services or other circumstances which have a financial impact on the municipality.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed rules for readoption with amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules impact on detainees (juvenile and adult), municipal detention facilities, municipalities and the New Jersey Department of Corrections and have no effect on small businesses.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:34.

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

**10A:34-2.7 Cells specifications**

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

(f) Cell fronts shall be constructed of six inch reinforced concrete or eight inch concrete block filled with cement containing reinforcement rods every 12 inches, or metal bars spaced not more than four inches on center. The bars shall be of a tool resistant **type** steel construction not less than seven-eighths inch thick.

(g) Cell doors shall be either barred or security type hollow core metal (minimum 12 gauge) steel. The doors shall slide or swing into the cell corridor and contain a standard food passage and pull type safety door handle. If barred, the doors shall be of a tool resistant **type** steel construction with the bars spaced not more than four inches on center and no less than seven-eighths inch thick. If the doors are security type hollow core metal, the doors shall provide an observation port of security glass at least nine-sixteenths inch thick or security type lexan at least one half inch thick. Doors shall be secured with detention type locks (preferably lever tumbler with paracentric keyway) with independent dead bolts.

(h) Natural light is recommended for each cell. All windows in the cell block area shall be of the approved security type (a tool resistant **type** steel frame with nine-sixteenths inch security glazing or one-half inch security type lexan).

(i) (No change.)

**10A:34-2.8 Cell equipment**

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

(c) Cells shall be equipped with a detention type [combination] toilet [/] and lavatory with drinking font, preferably of stainless steel construction.

(d)-(f) (No change.)

**10A:34-2.9 Holding rooms**

(a) (No change.)

(b) Construction and equipment of holding rooms shall be the same as required in N.J.A.C. 10A:34-2.7 and N.J.A.C. 10A:34-2.8[. Instead of a], **except the bunk**, a hardwood bench firmly affixed to the floor shall be installed in the holding room] **shall be either:**

1. A steel bench firmly affixed to the floor, wall, or both; or
2. A raised concrete platform.

(c) **The hardwood topping on the steel bench or concrete platform shall be firmly affixed.**

**10A:34-2.10 Cell corridors**

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

(g) **Cell corridor ceilings in new or renovated municipal detention facilities shall be constructed of pre-cast concrete slabs or reinforced concrete.**

Recodify existing (g) through (l) as (h) through (m) (No change in text.)

**10A:34-2.11 Monitoring systems**

(a) (No change.)

(b) The monitoring systems provide an added measure of safety and security but shall not be used as a substitute for physical cell checks of detainees. **The monitoring system shall remain activated at all times when detainees are present.**

(c) (No change.)

**[10A:34-2.19 Juvenile detainees**

Juveniles shall be detained in accordance with N.J.S.A. 2A:4A-32, 33 and 34.]

**10A:34-2.19 Suicide prevention and control**

(a) **Each municipal detention facility shall develop written policies and procedures to govern the identification, placement and monitoring of detainees who are deemed to be at a risk for suicide. These policies and procedures shall include, but not be limited to;**

1. Evaluation procedures at admission;
2. Close observation procedures for those deemed at risk; and
3. Procedures for handling attempts to commit suicide.

**10A:34-2.21 Written policy and procedures**

(a) **Each municipal detention facility shall be responsible for developing written policies and procedures consistent with this subchapter.**

(b) **All written policies and procedures shall be available during inspection by the New Jersey Department of Corrections.**

**LAW AND PUBLIC SAFETY****(a)****DIVISION OF CONSUMER AFFAIRS****Merchandise Advertising****Proposed Amendments: N.J.A.C. 13:45A-9.2, 9.3 and 9.4**

Authorized By: Emma Byrne, Director, Division of Consumer Affairs.

Authority: N.J.S.A. 56:8-4 and 52:17B-1.24.

Proposal Number: PRN 1992-98.

**PROPOSALS****Interested Persons see Inside Front Cover****LAW AND PUBLIC SAFETY**

Submit written comments by April 1, 1992 to:

Emma Byrne, Director  
Division of Consumer Affairs  
Post Office Box 45027  
Newark, New Jersey 07101

The agency proposal follows:

**Summary**

The Division of Consumer Affairs is proposing to amend N.J.A.C. 13:45A-9, which concerns merchandise advertising, in order to specifically include within the scope of this subchapter advertisements placed by manufacturers of merchandise. The proposed amendments would also expressly prohibit the advertising of a comparison to a manufacturer's suggested retail price that directly or indirectly compares the cost of supply to the retailer and the retail price to the public for the advertised merchandise.

The proposed amendments are responsive to the decision of the Appellate Division of the New Jersey Superior Court in *Division of Consumer Affairs v. General Electric Company*, 244 N.J. Super. 349 (App. Div. 1990). The issue addressed by the Appellate Division was whether a manufacturer is engaged in the sale of merchandise at retail under N.J.A.C. 13:45A-9.1 by reason of its advertisement seeking to promote retail sales by its independent retailers. It was the Division's interpretation in that case, and it has always been the Division's interpretation, that a manufacturer who voluntarily advertises to promote the retail sales of its products is an "advertiser" within the meaning of N.J.A.C. 13:45A-9.1, a determination with which the administrative law judge in this matter concurred. On appeal, however, the Appellate Division found, based upon "the plain meaning of the language employed," that the regulation was expressly limited to "the sale or rental of merchandise at retail" and did not encompass manufacturers who seek to promote the retail sale of their products through advertising. (*Id.* at 6, emphasis in original.) While recognizing that the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., encompasses the acts of remote suppliers whose products are passed on to a buyer and whose representations are made to or intended to be conveyed to the buyer, the Appellate Division nonetheless found that it was not at liberty to read the phrase "at retail" out of the regulation and was therefore "obliged to apply the regulation in a manner that comports with the plain meaning of the language employed." *Ibid.* Accordingly, the amendment proposed to N.J.A.C. 13:45A-9.4 expressly reaffirms the Division's continuous interpretation that a manufacturer is deemed to be an advertiser within the meaning of this subchapter when it prepares or places an advertisement for publication.

The amendments proposed to N.J.A.C. 13:45A-9.2 and 9.3 will expressly prohibit any advertising that directly or indirectly compares the cost of supply to the actual retail price of the advertised merchandise. Because numerous factors can affect the ultimate price to the consumer, reductions in the cost of supply in many instances do not result in a corresponding reduction in the retail price of the advertised merchandise to the public. Therefore, any price comparison may have the capacity to mislead the public, in violation of the Consumer Fraud Act. The Division believes this amendment is essential in order to ensure compliance with the Consumer Fraud Act, which is intended to promote the disclosure of relevant information to enable the public to make intelligent decisions in the selection of products and services.

**Social Impact**

In prohibiting disclosure of information which may have the capacity to mislead the consuming public, the proposed amendments will facilitate intelligent decision-making in the selection of products. In clarifying that manufacturers who advertise to promote the retail sales of merchandise by retail sellers are "advertisers" for the purposes of this subchapter and are therefore subject to all of the provisions of the subchapter, the amendments extend to the public the assurance that advertising manufacturers must advertise in a clear and truthful manner. Non-compliance allows a consumer to seek clear-cut redress and allows the Division to seek specific sanctions under the Consumer Fraud Act.

**Economic Impact**

The proposed amendments give consumers the economic advantage inherent in informed decision-making in the selection of products. The amendments will save time and expense for consumers, who can avoid unnecessary trips seeking merchandise which has not been clearly or truthfully advertised. The proposed amendments should not create any additional expense for advertisers, now clarified to expressly include

manufacturers who advertise on behalf of sellers; the amendments merely prohibit comparison between the cost of supply and the retail price of advertised merchandise and clarify that manufacturers are considered "advertisers" for purposes of this subchapter and are therefore subject to all of its provisions. With minor exceptions, the subchapter merely prohibits deceptive statements and does not impose difficult or costly compliance requirements.

**Regulatory Flexibility Analysis**

The proposed amendments will apply to hundreds of thousands of retail businesses which advertise in various media as well as to manufacturers who act on behalf of an advertising retail seller. The Division estimates that the majority of these entities would be classified as small businesses within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Compliance with the proposed amendments requires advertisers, now defined to expressly include manufacturers who act on behalf of an advertising seller, to refrain from advertising any comparison between the cost of supply and the retail price of an advertised product. The amendments also clarify that manufacturers are subject to the provisions of this subchapter; with minor exceptions, however, the subchapter merely prohibits deceptive statements and does not impose difficult or costly compliance requirements. There are no reporting requirements and neither capital investment nor professional services are necessary in order to comply. Because the intent of the proposed amendments is to promote clear and truthful advertising, no exemption based upon business size is possible.

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

13:45A-92 General advertising practices

(a) Without limiting the application of N.J.S.A. 56:8-1[,] et seq., the following practices shall be unlawful with respect to all advertisements:

1.-10. (No change.)

**11. The use, directly or indirectly, of a comparison to a suggested retail price, inventory price, invoice price or similar terms that directly or indirectly compare or suggest the comparison between the cost of supply and the price at retail for the advertised merchandise.**

13:45A-9.3 Price reduction advertisements

(a) Without limiting the application of N.J.S.A. 56:8-1[,] et seq., in addition to those practices referred to in [section 2 of this subchapter] N.J.A.C. 13:45A-9.2, the following practices shall be unlawful with respect to price reduction advertisements:

1.-2. (No change.)

3. For any specifically advertised merchandise items advertised for sale at a price of \$100.00 or more, the failure to conspicuously set forth a reference price or price range based upon either:

i. The advertiser's usual selling price or price range for the identical merchandise or for comparable merchandise of like grade or quality; or

ii. A usual selling price charged by competitors in the advertiser's trade area for the identical merchandise or for comparable merchandise of like grade or quality[; or].

[iii. The manufacturer's suggested retail price for the identical merchandise or for comparable merchandise of like grade quality.]

4. The failure of the disclosure of the reference price or price range to adhere to the following conditions:

i.-iii. (No change.)

iv. With regard to the price comparison required by this subsection, the advertisement shall clearly and conspicuously disclose in close proximity to the reference price or price range the basis for such reference as set forth in [paragraph 3 of this subsection] **(a)3 above**. In this regard, terms such as "comparable value," "competitor's price," ["manufacturer's list price,"] "our regular price" or words of similar import shall be used to designate the basis for the reference price.

5. The failure of an advertiser to prove the validity of its claim of a price reduction based on one of the bases [therefore] **therefor** as set forth in [paragraph 3 of this subsection] **(a)3 above** to the Division or its designee, regardless of whether or not a reference

**PUBLIC UTILITIES**

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price need be set forth in the advertisement. This substantiation shall adhere to the 60 day periods established by this section.

6. (No change.)

7. The use of the terms "cost," "wholesale" or other similar terms to describe an advertised price where such price is not equal to or less than the price per unit [pay] paid by the advertiser to the manufacturer or distributor of the merchandise. In the computation of the price per unit of the advertised merchandise, freight may be included if the advertiser pays for same and is not reimbursed therefor, but handling and all overhead or operating expenses shall be excluded.

8. (No change.)

13:45A-9.4 Application of regulation

(a) (No change.)

(b) An advertiser, a manufacturer, an advertising agency and the owner or publisher of a newspaper, magazine, periodical, circular, billboard or radio or television station acting on behalf of an advertising seller shall be deemed an advertiser within the meaning of this subchapter, when such entity prepares or places an advertisement for publication. No such entity shall be liable for a violation of this subchapter when the entity reasonably relies upon data, information or materials supplied by an advertising seller for whom the advertisement is prepared or placed or when the violation is caused by an act, error or omission beyond the entity's control, including but not limited to, the post-publication performance of the advertising seller. Notwithstanding that an advertisement has been prepared or placed for publication by one of the aforementioned entities, the advertiser on whose behalf such advertisement was placed may be liable for any violation of this subchapter.

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

**(a)**

**NEW JERSEY RACING COMMISSION  
Harness Rules  
Racing and Track Rules; Driving Procedures  
Proposed Amendment: N.J.A.C. 13:71-20.6**

Authorized By: New Jersey Racing Commission,  
Frank Zanzuccki, Executive Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1992-106.

Submit written comments by April 1, 1992 to:  
Frank Zanzuccki, Executive Director  
New Jersey Racing Commission  
CN 088  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendment to the driving procedures is to create a passing lane in the stretch to allow horses that would normally be locked in from improving their position by horses on the outside, to do so by entering a passing lane in the open stretch located inside the existing pylons. The pylons would be moved seven to 10 feet to the left of their present position in order to create this lane. This amendment will enable horses that are locked in coming down the stretch the opportunity to pass front-running horses on this extended lane. This will allow more horses a favorable chance to win during the finish of the race.

**Social Impact**

The proposed amendment would create a positive social impact on the horsemen driving in the race since they will be able to utilize a passing lane and better their performance. In addition, patron enthusiasm and interest will be increased because the passing lane will provide a more competitive finish in a race. This amendment will also increase the public's perception of the integrity in racing by permitting drivers to pass in the stretch and not remain locked in among other horses. Often times horses that are locked in from improving their position are perceived by the public as a demonstration of a lack of effort by a driver.

**Economic Impact**

The proposed amendment may have a positive economic impact on the State, track associations, and standardbred horsemen's group. The use of open stretch racing should heighten patron interest in standardbred racing, thereby increasing attendance and pari-mutuel wagering. In addition, because the State, track associations, and horsemen's groups receive a percentage of the dollars wagered, they would benefit by an increase in wagering.

**Regulatory Flexibility Statement**

The proposed amendment does not impose reporting, recordkeeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment permits track associations to extend homestretch widths up to 10 feet inward, and imposes requirements on horses (to be effected by their drivers) running in an expanded homestretch. As track associations employ more than 100 persons, and drivers are individuals, neither are small businesses under the Act. Therefore, a regulatory flexibility analysis is not required.

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

13:71-20.6 Racing and track rules; driving procedures

(a) (No change.)

(b) **With the approval of the Racing Commission, a track may extend the width of its homestretch up to 10 feet inward in relation to the width of the rest of the racetrack. In the event the homestretch is expanded pursuant to this subsection, the following shall apply:**

1. **No horse shall pass on the extended inside lane except when entering the final homestretch run;**
2. **The lead horse in the homestretch shall maintain as straight a course as possible while allowing trailing horses full access to the extended inside lane; and**
3. **Judge's discretion shall prevail in all instances regarding the open stretch.**

**PUBLIC UTILITIES  
(b)**

**BOARD OF REGULATORY COMMISSIONERS  
Return of Deposits**

**Proposed Amendment: N.J.A.C. 14:3-7.5**

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 48:2-29.5.

BRC Docket Number: AX91121774.

Proposal Number: PRN 1992-91.

Submit written comments by April 1, 1992 to:

Edward D. Beslow, Legal Specialist  
Board of Regulatory Commissioners  
Two Gateway Center  
Newark, New Jersey 07102

The agency proposal follows:

**Summary**

Presently, N.J.A.C. 14:3-7.5(c) provides, in pertinent part, that all customer deposits held by a utility for at least three months will earn "[s]imple interest at a rate equal to the average yields on new six month Treasury Bills for the 12 month period ending each September 30 . . . Said rate, which shall be rounded up or down to the nearest half percent, shall become effective on January 1 of the following year . . ."

Originally, the rounding of the interest rate up or down to the nearest half percent was included only for the purpose of administrative ease. The Board, however, is now of the opinion that it is more appropriate and just as easy to reflect the actual interest rate. Accordingly, the purpose of the proposed amendment is simply to eliminate the need to round the applicable interest rate up or down to the nearest half percent.

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**TRANSPORTATION**

**Social Impact**

The proposed amendment will provide for the setting of a slightly more accurate rate of interest for customer deposits reflecting the cost of money based upon the standards established by the Board.

**Economic Impact**

The proposed amendment will have only a slight impact, up or down, on the amount of interest that may be earned on any particular customer deposit in any particular year. There should be no additional costs incurred by any affected utility in implementing the proposed amendment.

**Regulatory Flexibility Statement**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Board has determined that the proposed amendment will not impose additional reporting, recordkeeping or other compliance requirements on small businesses as all utilities will continue to utilize an interest rate that is supplied to them by the Board. The amendment involves the calculation the Board will make in order to supply the figure.

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

14:3-7.5 Return of deposits

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

(c) Simple interest at a rate equal to the average yields on new six month Treasury Bills for the 12 month period ending each September 30 shall be paid by the utility on all deposits held by it, provided the deposit has remained with the utility for at least three months. Said rate[, which shall be rounded up or down to the nearest half percent,] shall become effective on January 1 of the following year. The Board shall perform the annual calculation to determine the applicable interest rate and shall notify the affected public utilities of said rate.

1-3. (No change.)

conducted traffic investigations. The traffic investigations proved that the establishment of the revised "speed limit" zones along Routes U.S. 40 in Salem and Gloucester Counties and U.S. 40 and U.S. 322 in Atlantic County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.6 and to repeal N.J.A.C. 16:28-1.56, replacing it with new text, based upon the traffic investigations.

Additionally, the speed zones have been revised by changing their locations and designating them by mileposts, in addition to other landmarks within the respective counties, by municipalities.

**Social Impact**

The proposed amendment and new rule will establish revised "speed limit" zones along Routes U.S. 40 in Carneys Point Township, Pilesgrove Township, Woodstown Boro, Upper Pittsgrove Township, the Boro of Elmer, and Pittsgrove Township in Salem County and Franklin Township in Gloucester County; and U.S. 40 and U.S. 322 in the Cities of Pleasantville and Atlantic City, Atlantic County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

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

**Regulatory Flexibility Statement**

The proposed amendment and new rule do not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment and new rule primarily affect the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28-1.6 Route [US] U.S. 40<sup>1</sup>

(a) The rate of speed designated for the certain [part] parts of State highway Route [US] U.S. 40 described in this subsection shall be established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

[i. Zone 1: 50 miles per hour in Franklin Township and Newfield Borough from the Atlantic County-Gloucester County line to 600 feet east of Dutch Mill Road; thence

ii. Zone 2: 40 miles per hour in Franklin Township to the bridge at Malage Pond; thence

iii. Zone 3: 50 miles per hour in Franklin Township-Pittsgrove Township to 200 feet east of the bridge over Elmer Pond; thence

iv. Zone 4: 40 miles per hour in Elmer Borough to 650 feet west of Fourth Street; thence

v. Zone 5:

(1) 50 miles per hour in Elmer Borough and Upper Pittsgrove Township, Salem County, to 150 feet east of Kresswold Lane; thence

(2) 40 miles per hour in Pilesgrove Township and Woodstown Borough, Salem County, between East Lake Drive and Kresswood Avenue; thence

vi. Zone 6: 35 miles per hour in Woodstown Borough to East Wilson Lane; thence

vii. Zone 7: 30 miles per hour to 150 feet south of Green Street; thence

viii. Zone 8: 45 miles per hour in Woodstown Borough-Pilesgrove Township to Sharptown Road; thence

ix. Zone 9: 50 miles per hour in Pilesgrove Township-Upper Penns Neck Township to Route 48; thence

x. Zone 10: 55 miles per hour to County Road 540;

xi. School Zone: 25 miles per hour in the Woodstown High School zone, in Zone 6, during recess or while children are going to or leaving school, during opening or closing hours.]

**TRANSPORTATION**

**(a)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID**

**Speed Limits**

**Routes U.S. 40 in Salem, Gloucester, and Atlantic Counties; U.S. 40 and U.S. 322 in Atlantic County**

**Proposed Amendment: N.J.A.C. 16:28-1.6**

**Proposed Repeal and New Rule: N.J.A.C. 16:28-1.56**

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Proposal Number: PRN 1992-102.

Submit comments by April 1, 1992 to:

Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
Bureau of Policy and Legislative Analysis  
1035 Parkway Avenue  
CN 600  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendments and new rule will establish revised "speed limit" zones along Routes U.S. 40 in Carneys Point Township, Pilesgrove Township, Woodstown Boro, Upper Pittsgrove Township, the Boro of Elmer and Pittsgrove Township in Salem County and Franklin Township, Gloucester County; and U.S. 40 and U.S. 322 in the Cities of Pleasantville and Atlantic City, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

The Department's Bureau of Traffic Engineering and Safety Programs in the interest of safety, and as part of a review of current conditions,

## TRANSPORTATION

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## i. In Salem County:

## (1) Carneys Point Township:

(A) Zone 1: 55 miles per hour between the New Jersey Department of Transportation—New Jersey Turnpike Jurisdiction and Route N.J. 48 (approximate mileposts 1.85 to 5.47); thence

(B) Zone 2: 50 miles per hour between Route N.J. 48 and the Carneys Point Township-Pilesgrove Township line (approximate mileposts 5.47 to 6.30); thence

## (2) Pilesgrove Township:

(A) Zone 1: 50 miles per hour between the Pilesgrove Township-Carneys Point Township line and Sharptown Auburn Road (approximate mileposts 6.30 to 8.03); thence

(B) Zone 2: 45 miles per hour between Sharptown Auburn Road and Green Street (approximate mileposts 8.03 to 8.25); thence

(C) Zone 3: 40 miles per hour between Green Street and the bridge at the Salem Creek (approximate mileposts 8.25 to 8.55); thence

(D) Zone 4: 50 miles per hour between the bridge at the Salem Creek and Route N.J. 45 (approximate mileposts 8.55 to 10.02); thence

(E) Zone 5: 45 miles per hour between N.J. 45 and Pilesgrove Township-Woodstown Borough line (approximate mileposts 10.02 to 10.22); thence

## (3) Woodstown Boro:

(A) Zone 1: 45 miles per hour between the westernmost Woodstown Boro-Pilesgrove Township line and 100 feet west of Green Street (approximate mileposts 10.22 to 10.41); thence

(B) Zone 2: 30 miles per hour between 100 feet west of Green Street and East Wilson Avenue, except with a "25 MPH WHEN FLASHING" School Speed zone within the Woodstown High School Zone (approximate mileposts 10.41 to 10.86); thence

(C) Zone 3: 35 miles per hour between East Wilson Avenue and Kesswood Avenue (approximate mileposts 10.86 to 11.20); thence

(D) Zone 4: 45 miles per hour between Kesswood Avenue and the easternmost Pilesgrove Township-Woodstown Boro line (approximate mileposts 11.20 to 11.30); thence

## (4) Pilesgrove Township:

(A) Zone 6: 45 miles per hour between the easternmost Woodstown Borough-Pilesgrove Township line and East Lake Drive (approximate mileposts 11.30 to 11.66); thence

(B) Zone 7: 50 miles per hour between East Lake Drive and the Pilesgrove Township-Upper Pittsgrove Township line (approximate mileposts 11.66 to 14.38); thence

## (5) Upper Pittsgrove Township:

(A) Zone 1: 50 miles per hour between the Pilesgrove Township line and the Upper Pittsgrove Township-Elmer Boro line (approximate mileposts 14.38 to 19.46); thence

## (6) Boro of Elmer:

(A) Zone 1: 50 miles per hour between the Upper Pittsgrove Township-Elmer Boro line and 650 feet west of Fourth Street (approximate mileposts 19.46 to 19.54); thence

(B) Zone 2: 40 miles per hour between 650 feet west of Fourth Street and Second Street (approximate mileposts 19.54 to 19.82); thence

(C) Zone 3: 35 miles per hour between Second Street and 700 feet east of County Road 648 (approximate mileposts 19.82 to 20.18); thence

(D) Zone 4: 40 miles per hour between 200 feet east of County Road 648 and the Elmer Boro—Upper Pittsgrove Township-Pittsgrove Township line (bridge at Elmer Lake) (approximate mileposts 20.18 to 20.27); thence

## (7) Upper Pittsgrove Township and Pittsgrove Township:

(A) Zone 2: 50 miles per hour between the Elmer Boro—Upper Pittsgrove Township-Pittsgrove Township line (bridge at Elmer Lake) and the Salem County-Gloucester County line (approximate mileposts 20.27 to 24.58); thence

## ii. In Gloucester County:

## (1) Franklin Township:

(A) Zone 1: 50 miles per hour between the Salem County-Gloucester County line and the bridge at Malaga Lake (approximate mileposts 24.58 to 26.42); thence

(B) Zone 2: 40 miles per hour between the bridge at Malaga Lake and 400 feet east of Elmwood Avenue (approximate mileposts 26.42 to 27.37); thence

(C) Zone 3: 50 miles per hour between 400 feet east of Elmwood Avenue and the Gloucester County-Atlantic County line (approximate mileposts 27.37 to 32.55); thence

## iii. In Atlantic County:

## (1) Boro of Buena:

(A) Zone 1: 50 miles per hour between the Gloucester County-Atlantic County line and Melini Avenue (approximate mileposts 32.55 to 33.79); thence

(B) Zone 2: 40 miles per hour between Melini Avenue and 300 feet east of Summer Avenue (County Road 682) (approximate mileposts 33.79 to 34.40); thence

(C) Zone 3: 45 miles per hour between 300 feet east of Summer Avenue (County Road 682) and the Buena Vista Township-Buena Boro line (approximate mileposts 34.40 to 35.16); thence

## (2) Buena Vista Township:

(A) Zone 1: 45 miles per hour between the Buena Boro-Buena Vista Township line and Buena-Tuckahoe Road (County Road 557) (approximate mileposts 35.16 to 35.21); thence

(B) Zone 2: 50 miles per hour between Buena-Tuckahoe Road (County Road 557) and 400 feet west of Cedar Avenue (County Road 540) (approximate mileposts 35.21 to 38.12); thence

(C) Zone 3: 45 miles per hour between 400 feet west of Cedar Avenue (County Road 540) and Holly Avenue (approximate mileposts 38.12 to 38.62); thence

(D) Zone 4: 50 miles per hour between Holly Avenue and the Buena Vista Township-Hamilton Township line (approximate mileposts 38.62 to 39.14).

<sup>1</sup>See also N.J.A.C. 16:28-1.56 and 1.118.

[16:28-1.56 Route US 40 and US 322

(a) The rate of speed designated for the certain part of State highway route number US 40 and US 322 described in this section shall be and hereby is established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic in Egg Harbor Township, Pleasantville City and Atlantic City in Atlantic County:

i. 50 miles per hour from the Atlantic County-Gloucester County line to a point 600 feet west of Grove Road in Buena Borough; thence

ii. 40 miles per hour to a point 300 feet east of Summer Avenue; thence

iii. 45 miles per hour to a point 200 feet east of Route 54 intersection in Buena Vista Township; thence

iv. 55 miles per hour to a point 400 feet west of Atlantic County Road number 540 (Cedar Avenue); thence

v. 45 miles per hour to a point 400 feet east of Greenbriar Avenue; thence

vi. 55 miles to a point 500 feet west of the center line of Route 50 in Hamilton Township; thence

vii. 40 miles per hour to a point 200 feet west of River Drive; thence

viii. 30 miles per hour to a point 100 feet west of Linwood Avenue; thence

ix. 40 miles per hour to a point 600 feet east of Babcock Creek (Watering Race Branch) Bridge; thence

x. 50 miles per hour to a point 50 feet east of milepost 48; thence

xi. 50 miles per hour to a point 700 feet east of Pineview Avenue and Washington Avenue (milepost 56.58 to 56.94);

xii. 45 miles per hour between Washington Avenue and Searstown Circle (milepost 56.94 to 57.40);

xiii. 50 miles per hour between Searstown Circle and the Egg Harbor Township-westernmost Pleasantville City Line (milepost 57.40 to 58.50);

xiv. 50 miles per hour between Egg Harbor Township-westernmost Pleasantville City Line and 400 feet west of Route US 9 (milepost 58.50 to 59.10);

xv. 40 miles per hour to a point 400 feet west of Route US 9 and Egg Harbor Township-easternmost Pleasantville City Line (milepost 59.10 to 59.92);

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**TRANSPORTATION**

xvi. 40 miles per hour between the Egg Harbor Township-easternmost Pleasantville City Line and 100 feet west of Athens Avenue (milepost 59.92 to 60.48);

xvii. 45 miles per hour to a point 100 feet west of Athens Avenue and the Jonathan Thorofare (Atlantic City corporate line) (milepost 60.48 to 61.74);

xviii. 50 miles per hour between the Jonathan Thorofare and 100 feet west of West End Avenue (milepost 61.74 to 63.54).]

**16:28-1.56 Route U.S. 40 and U.S. 322**

(a) The rate of speed designated for the certain parts of State highway U.S. 40 and U.S. 322 described in this subsection shall be established and adopted as the maximum legal rate of speed.

**1. For both directions of traffic:**

**i. In Atlantic County:**

**(1) Egg Harbor Township:**

(A) Zone 1: 55 miles per hour between the Hamilton Township-Egg Harbor Township line and 700 feet east of Pineview Avenue (approximate mileposts 53.15 to 56.48); thence

(B) Zone 2: 50 miles per hour between 700 feet east of Pineview Avenue and Washington Avenue (County Road 608) (approximate mileposts 56.48 to 56.86); thence

(C) Zone 3: 45 miles per hour between Washington Avenue (County Road 608) and the Garden State Parkway overpass (approximate mileposts 56.86 to 57.41); thence

(D) Zone 4: 50 miles per hour between the Garden State Parkway overpass and the westernmost Egg Harbor Township-Pleasantville City line (approximate mileposts 57.41 to 58.40); thence

**(2) City of Pleasantville:**

(A) Zone 1: 50 miles per hour between the westernmost Egg Harbor Township-Pleasantville City line and 400 feet west of Route U.S. 9 (approximate mileposts 58.40 to 59.02); thence

(B) Zone 2: 40 miles per hour between 400 feet west of Route U.S. 9 and the easternmost Pleasantville City-Egg Harbor Township line (approximate mileposts 59.02 to 59.82); thence

**(3) Egg Harbor Township:**

(A) Zone 5: 40 miles per hour between the easternmost Pleasantville City-Egg Harbor Township line and Athens Avenue (approximate mileposts 59.82 to 60.37); thence

(B) Zone 6: 45 miles per hour between Athens Avenue and Egg Harbor Township-Atlantic City line (Jonathan Thorofare) approximate mileposts 60.37 to 61.63); thence

**(4) Atlantic City:**

(A) Zone 1: 50 miles per hour between the Egg Harbor Township-Atlantic City line (Jonathan Thorofare) and West End Avenue (approximate mileposts 61.63 to 63.48); thence

(B) Zone 2: 40 miles per hour between West End Avenue and the New Jersey Department of Transportation-Atlantic City Jurisdiction (approximate mileposts 63.48 to 64.05).

**(a)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID**

**Restricted Parking and Stopping**

**Routes U.S. 9 in Cape May County; N.J. 28 in Union County; N.J. 29 in Hunterdon County; U.S. 130 in Middlesex County; U.S. 206 in Mercer County and N.J. 50 in Atlantic County**

**Proposed Amendments: N.J.A.C. 16:28A-1.7, 1.19, 1.20, 1.46, 1.57, and 1.100**

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.

Proposal Number: PRN 1992-90.

Submit comments by April 1, 1992 to:

Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
Bureau of Policy and Legislative Analysis  
1035 Parkway Avenue  
CN 600  
Trenton, N.J. 08625

The agency proposal follows:

**Summary**

The proposed amendments will establish "no stopping or standing" zones along Routes U.S. 9 in Upper Township, Cape May County; N.J. 28 in Elizabeth City, Union County; N.J. 29 in West Amwell Township, Hunterdon County; U.S. 130 in South Brunswick Township, Middlesex County; and N.J. 50 in Weymouth Township, Atlantic County; and revised "no parking" bus stop zones along Route U.S. 206 in Lawrence Township, Mercer County, for the efficient flow of traffic, the enhancement of safety, the safe on and off loading of passengers at established bus stops, and the well-being of the populace.

Based upon requests from the local governments in the interest of safety, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of the "no stopping and standing" zones along Routes U.S. 9 in Upper Township, Cape May County; N.J. 28 in Elizabeth City, Union County; N.J. 29 in West Amwell Township, Hunterdon County; U.S. 130 in South Brunswick Township, Middlesex County; and N.J. 50 in Weymouth Township, Atlantic County; and revised "no parking" bus stop zones along Route U.S. 206 in Lawrence Township, Mercer County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.7, 1.19, 1.20, 1.21, 1.57, and 1.100, based upon the requests from the local governments and the traffic investigations. Additionally, the rules have been recodified to indicate the restrictions by municipalities within the respective counties, in accordance with the Department's rulemaking format.

**Social Impact**

The proposed amendments will establish "no stopping or standing" zones along Routes U.S. 9 in Upper Township, Cape May County; N.J. 28 in Elizabeth City, Union County; N.J. 29 in West Amwell Township, Hunterdon County; U.S. 130 in South Brunswick Township, Middlesex County; and N.J. 50 in Weymouth Township, Atlantic County; and revised "no parking" bus stop zones along Route U.S. 206 in Lawrence Township, Mercer County, for the efficient flow of traffic, the safe off and on loading of passengers at established bus stops, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" and the local government "no parking" bus stop zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

**Regulatory Flexibility Statement**

The proposed amendments do not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments primarily affect the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28A-1.7 Route U.S. 9

(a) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no stopping or standing" zones.

1.-13. (No change.)

**TRANSPORTATION**

**PROPOSALS**

14. No stopping or standing in Upper Township, Cape May County[:

- i. Along both sides:
  - (1) Between Tuckahoe Road (Co. Rd. 631) and Roosevelt Boulevard (Co. Rd. 623).
  - (2) From the center line of Harbor Road to a point 475 feet north of the centerline of Harbor Road.] **along both sides for the entire length within the corporate limits of Upper Township, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation, except in approved designated bus stops and time limit parking areas.**

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

16:28A-1.19 Route 28

(a) The certain parts of State highway Route 28 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1. No stopping or standing in the City of Elizabeth, Union County: [along the northerly side beginning at a point 475 feet west of the westerly curb line of Cherry Street to a point 95 feet easterly therefrom.]

i. Along the northerly side:

(1) **Beginning at a point 475 feet west of the westerly curb line of Cherry Street to a point 95 feet westerly therefrom.**

ii. Along both sides:

(1) **Westfield Avenue—Beginning from the easterly curb line of Galloping Hill Road and extending 400 feet east therefrom.**

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

16:28A-1.20 Route 29

The certain parts of State highway Route 29 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-3. (No change.)

4. No stopping or standing in West Amwell Township, Hunterdon County[:

i. Along the northbound side:

(1) From the center line of Valley Road, to a point 275 feet south of the center line of Old River Road.

(2) Beginning at the Mercer-Hunterdon Line and extending 775 feet north therefrom.] **along both sides for the entire length within the corporate limits of the Township of West Amwell, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation, except in approved designated bus stops and time limit parking zones.**

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

16:28A-1.46 Route U.S. 130

The certain parts of State highway Route U.S. 130 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited.

1.-5. (No change.)

6. No stopping or standing in South Brunswick Township, Middlesex County[:

i. Along both sides:

(1) Between the North Brunswick Township-South Brunswick Township corporate line and the bridge over Davidsons Mill Pond.

ii. Along the westerly (southbound) side:

(1) **Between the intersections of Broadway Road and Dey Road.] along both sides for the entire length within the corporate limits of South Brunswick Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation except in approved designated bus stops and time limit parking areas.**

7.-9. (No change.)

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

16:28A-1.57 Route U.S. 206

(a) (No change.)

[(b) The certain parts of State highway Route US 206 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with

the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1. Along the easterly (northbound) side in Lawrence Township:

i. Far side bus stops:

- (1) Maplewood Avenue (105 feet);
- (2) Princeton Avenue (105 feet);
- (3) Notre Dame High School (north entrance) (105 feet);
- (4) Fairfield Avenue (105 feet);
- (5) Devon Avenue (105 feet);
- (6) Brearly Avenue (105 feet);
- (7) Roxboro Road (105 feet);
- (8) Marlboro Road (105 feet);
- (9) Millerick Avenue (105 feet);
- (10) Berwyn Place (105 feet);
- (11) Eggerts Crossing Road (105 feet);
- (12) Oaklyn Terrace (105 feet);
- (13) Darrah Lane (105 feet);
- (14) Lombard Avenue (105 feet);
- (15) Vanderveer Drive (105 feet);
- (16) West Long Drive (105 feet);
- (17) Green Avenue (105 feet);
- (18) Titus Avenue (105 feet);
- (19) Lawrenceville School (main entrance) (105 feet);
- (20) Phillips Avenue (105 feet);
- (21) Manning Lane (105 feet);
- (22) Cold Soil Road (105 feet);
- (23) Greenwood Avenue (105 feet);

ii. Near side bus stops:

- (1) Municipal Building (South Drive) (120 feet);
- (2) Franklin Corner Road (120 feet);
- (3) Monroe Street (120 feet);
- (4) Carter Road (120 feet);

2. Along the westerly (southbound) side in Lawrence Township:

i. Far side bus stops:

- (1) Carter Road (105 feet);
- (2) Greenwood Avenue (105 feet);
- (3) Cold Soil Road (105 feet);
- (4) Manning Lane (105 feet);
- (5) Phillips Avenue (105 feet);
- (6) Craven Lane (105 feet);
- (7) Titus Avenue (105 feet);
- (8) Green Avenue (105 feet);
- (9) Monroe Street (105 feet);
- (10) Franklin Corner Road (105 feet);
- (11) Municipal Building (South Dr.) (105 feet);
- (12) West Long Drive (105 feet);
- (13) Skillman Avenue (105 feet);
- (14) Darrah Lane (105 feet);
- (15) Oaklyn Terrace (105 feet);
- (16) Eggerts Crossing Road (105 feet);
- (17) Berwyn Place (105 feet);
- (18) Billerick Avenue (105 feet);
- (19) Altamawr Avenue (105 feet);
- (20) Lawn Park Avenue (105 feet);
- (21) Meadowbrook Avenue (105 feet);
- (22) Brearly Avenue (105 feet);
- (23) Fernwood Lane (105 feet);
- (24) Fairfield Avenue (105 feet);
- (25) Princeton Avenue (105 feet);
- (26) Maplewood Avenue (105 feet);
- (27) Lanning Avenue (105 feet);
- (28) Pine Street (105 feet);

ii. Near side bus stops:

- (1) Morris Hall Driveway (120 feet);
- (2) Main entrance to Rider College (120 feet);
- (3) Notre Dame High School (north entrance) (120 feet);
- (4) Plum Street (120 feet);
- (5) Mulberry Street (120 feet);
- (6) Spruce Street (120 feet);

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**TRANSPORTATION**

(b) The certain parts of State highway Route U.S. 206 described in this subsection shall be designated and established as "no parking" bus stop zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. Along the easterly (northbound) side in Lawrence Township, Mercer County:

i. Far side bus stops:

(1) Maplewood Avenue—Beginning at a point 35 feet north of the northerly curb line of Maplewood Avenue and extending 75 feet northerly therefrom.

(2) Irwin Place—Beginning at a point 35 feet north of the northerly curb line of Irwin Place and extending 75 feet northerly therefrom.

(3) Brearley Avenue—Beginning at a point 115 feet north of the prolongation of the northerly curb line of Brearley Avenue and extending 75 feet northerly therefrom.

(4) Roxboro Road—Beginning at a point 35 feet north of the northerly curb line of Roxboro Road and extending 85 feet northerly therefrom.

(5) Gainsboro Road—Beginning at a point 35 feet north of the northerly curb line of Gainsboro Road and extending 85 feet northerly therefrom.

(6) Millerick Avenue—Beginning at a point 35 feet north of the northerly curb line of Millerick Avenue and extending 75 feet northerly therefrom.

(7) Berwyn Place—Beginning at a point 35 feet north of the northerly curb line of Berwyn Place and extending 75 feet northerly therefrom.

(8) Windwood Road—Beginning at a point 35 feet north of the northerly curb line of Windwood Road and extending 75 feet northerly therefrom.

(9) Darrah Lane—Beginning at a point 35 feet north of the northerly curb line of Darrah Lane and extending 75 feet northerly therefrom.

(10) Skillman Avenue—Beginning at a point 35 feet north of the prolongation of the northerly curb line of Skillman Avenue and extending 75 feet northerly therefrom.

(11) Vanderveer Drive—Beginning at a point 35 feet north of the northerly curb line of Vanderveer Drive and extending 65 feet northerly therefrom.

(12) West Long Drive—Beginning at a point 129 feet north of the northerly curb line of West Long Drive and extending 75 feet northerly therefrom.

(13) Manning Lane—Beginning at a point 45 feet north of the prolongation of the northerly curb line of Manning Lane and extending 85 feet northerly therefrom.

(14) Greenwood Avenue—Beginning at a point 35 feet north of the northerly curb line of Greenwood Avenue and extending 75 feet northerly therefrom.

ii. Mid-block bus stops:

(1) Princeton Pike—Beginning at a point 220 feet north of the prolongation of the northerly curb line of Princeton Pike and extending 75 feet northerly therefrom.

(2) Between Princeton Pike and Fairfield Avenue—Beginning at a point 1589 feet north of the prolongation of the northerly curb line of Princeton Pike and extending 135 feet northerly therefrom.

(3) Monroe Avenue—Beginning at a point 168 feet south of the prolongation of the southerly curb line of Monroe Avenue and extending 95 feet southerly therefrom.

(4) Cold Soil Road—Beginning at a point 142 feet north of the prolongation of the northerly curb line of Cold Soil Road and extending 85 feet northerly therefrom.

(5) Between Carter Road and Provinceline Road—Beginning at a point 1560 feet south of the southerly curb line of Provinceline Road and extending 135 feet southerly therefrom.

iii. Near side bus stops:

(1) Franklin Corner Road—Beginning at a point 25 feet south of the southerly curb line of Franklin Corner Road and extending 95 feet southerly therefrom.

(2) Craven Lane—Beginning at a point 35 feet south of the southerly curb line of Craven Lane and extending 95 feet southerly therefrom.

(3) Gordon Avenue—Beginning at a point 50 feet south of the prolongation of the southerly curb line of Gordon Avenue and extending 95 feet southerly therefrom.

(4) Carter Road—Beginning at a point 35 feet south of the prolongation of the southerly curb line of Carter Road and extending 85 feet southerly therefrom.

2. Along the westerly (southbound) side in Lawrence Township, Mercer County:

i. Far side bus stops:

(1) Greenwood Avenue—Beginning at a point 35 feet south of the southerly curb line of Greenwood Avenue and extending 75 feet southerly therefrom.

(2) Manning Lane—Beginning at a point 35 feet south of the southerly curb line of Manning Lane and extending 75 feet southerly therefrom.

(3) Phillips Avenue—Beginning at a point 25 feet south of the southerly curb line of Phillips Avenue and extending 85 feet southerly therefrom.

(4) Craven Lane—Beginning at a point 35 feet south of the southerly curb line of Craven Lane and extending 75 feet southerly therefrom.

(5) Monroe Avenue—Beginning at a point 35 feet south of the southerly curb line of Monroe Avenue and extending 75 feet southerly therefrom.

(6) Municipal Drive North—Beginning at a point 35 feet south of the southerly curb line of Municipal Drive North and extending 75 feet southerly therefrom.

(7) Oaklyn Terrace—Beginning at a point 125 feet south of the prolongation of the southerly curb line of Oaklyn Terrace and extending 75 feet southerly therefrom.

(8) Review Avenue—Beginning at a point 61 feet south of the prolongation of the southerly curb line of Review Avenue and extending 85 feet southerly therefrom.

(9) Pilla Avenue—Beginning at a point 35 feet south of the prolongation of the southerly curb line of Pilla Avenue and extending 75 feet southerly therefrom.

(10) Meadowbrook Avenue—Beginning at a point 35 feet south of the southerly curb line of Meadowbrook Avenue and extending 75 feet southerly therefrom.

(11) Fernwood Lane—Beginning at a point 35 feet south of the southerly curb line of Fernwood Lane and extending 75 feet southerly therefrom.

(12) Wittenborn Drive—Beginning at a point 35 feet south of the prolongation of the southerly curb line of Wittenborn Drive and extending 75 feet southerly therefrom.

(13) Brunswick Circle—Beginning at a point 120 feet south of the southerly curb line of Brunswick Circle and extending 110 feet southerly therefrom.

ii. Mid-block bus stops:

(1) Between Carter Road and Provinceline Road—Beginning at a point 1235 feet south of the southerly curb line of Provinceline Road and extending 135 feet southerly therefrom.

(2) Franklin Corner Road—Beginning at a point 318 feet south of the southerly curb line of Franklin Corner Road and extending 85 feet southerly therefrom.

(3) Between Fairfield Avenue and Princeton Pike—Beginning at a point 582 feet south of the prolongation of the southerly curb line of Fairfield Avenue and extending 135 feet southerly therefrom.

iii. Near side bus stops:

(1) Carter Road—Beginning at a point 35 feet north of the northerly curb line of Carter Road and extending 85 feet northerly therefrom.

(2) Cold Soil Road—Beginning at a point 35 feet north of the northerly curb line of Cold Soil Road and extending 85 feet northerly therefrom.

(3) Vanderveer Drive—Beginning at a point 45 feet north of the prolongation of the northerly curb line of Vanderveer Drive and extending 85 feet northerly therefrom.

**TRANSPORTATION**

**PROPOSALS**

(4) Skillman Avenue—Beginning at a point 35 feet north of the northerly curb line of Skillman Avenue and extending 85 feet northerly therefrom.

(5) Princeton Avenue—Beginning at a point 35 feet north of the westerly curb line of Princeton Avenue and extending 85 feet northerly therefrom.

(6) Lanning Avenue—Beginning at a point 35 feet north of the northerly curb line of Lanning Avenue and extending 85 feet northerly therefrom.

(7) Mulberry Street—Beginning at a point 35 feet north of the northerly curb line of Mulberry Street and extending 85 feet northerly therefrom.

(8) Myrtle Avenue—Beginning at a point 35 feet north of the northerly curb line of Myrtle Avenue and extending 85 feet northerly therefrom.

3. Along the northbound side in Princeton Borough, Mercer County:

i. (No change.)

4. Along the southbound side in Princeton Borough, Mercer County:

i.-ii. (No change.)

5. Along the northbound side in Princeton Township, Mercer County:

i.-iii. (No change.)

6. Along the southbound side in Princeton Township, Mercer County:

i.-iii. (No change.)

7.-12. (No change.)

(c) (No change.)

16:28A-1.100 Route 50

(a) The certain parts of State highway Route 50 described in this subsection shall be designated and established as “no stopping or standing” zones where stopping or standing is prohibited at all times **except as provided in N.J.S.A. 39:4-139.**

[1. No stopping or standing in Egg Harbor City, Atlantic County:

i. Along both sides for a distance of 95 feet south of the southerly curb line of Route U.S. 30.

2. No stopping or standing in Upper Township, Cape May County:

i. Along both sides from Dennisville Road—School House Lane Reading Road to the Upper Township—Corbin City corporate line.

3. No stopping or standing in Hamilton Township, Atlantic County.

i. Along both sides beginning 200 feet south of the southerly curb line of Third Street to the northerly curb line of Fourth Street.]

1. **No stopping or standing in Atlantic County:**

i. **Along both sides:**

(1) **In Egg Harbor City:**

(A) **For a distance of 95 feet south of the southerly curb line of Route U.S. 30.**

(2) **In Hamilton Township:**

(A) **Beginning at a point 200 feet south of the southerly curb line of Third Street to the northerly curb line of Fourth Street.**

(3) **In Weymouth Township:**

(A) **For the entire length within the corporate limits of Weymouth Township, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation, except in approved designated Bus Stops and Time Limit parking areas.**

2. **No stopping or standing in Cape May County:**

i. **Along both sides:**

(1) **In Upper Township:**

(A) **From Dennisville Road—School House Lane Reading Road to the Upper Township—Corbin City corporate line.**

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID**

**Restricted Stopping and Parking Route N.J. 27 in Union County**

**Proposed Amendment: N.J.A.C. 16:28A-1.18**

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.

Proposal Number: PRN 1992-103.

Submit comments by April 1, 1992 to:

Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
Bureau of Policy and Legislative Analysis  
1035 Parkway Avenue  
CN 600  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendment will establish a revised “no parking” bus stop zone along Route N.J. 27 in the City of Rahway, Union County, for the efficient flow of traffic, the enhancement of safety, the safe on and off loading of passengers, and the well-being of the populace.

Based upon a request from the local government in the interest of safety, and as part of a review of current conditions, the Department’s Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of the revised “no parking” bus stop zone along Route N.J. 27 in the City of Rahway, Union County, was warranted. The present far side bus stop on Linden Avenue presents safety problems in the safe on and off loading passengers at said bus stop. In view of this, the bus stop is being made a near side bus stop to eliminate this problem.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.18, based upon the request from the local government, and the traffic investigation.

**Social Impact**

The proposed amendment will establish a revised “no parking” bus stop zone along Route N.J. 27 in the City of Rahway, Union County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of “no parking” bus stop zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the “Statewide Violations Bureau Schedule,” issued under New Jersey Court Rule 7:7-3.

**Regulatory Flexibility Statement**

The proposed amendment does not place any bookkeeping, recordkeeping or compliance requirement on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rule.

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

16:28A-1.18 Route 27

(a) (No change.)

(b) The certain parts of State highway Route 27 described in this subsection shall be designated and established as “no parking” zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate private signs at the following established bus stops:

1.-10. (No change.)

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**TRANSPORTATION**

- 11. Along the northbound side in the City of Rahway, **Union County**:
  - i. Far side bus stops:
    - (1)-(12) (No change.)
    - [(13) Linden Avenue (105 feet).]
  - ii. Near side bus stops:
    - (1) **Linden Avenue (105 feet).**
- 12. Along the southbound side in the City of Rahway, **Union County**:
  - i. (No change.)
- 13.-24. (No change.)
- (c)-(e) (No change.)

**(a)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID**

**Restricted Stopping and Parking  
Route N.J. 57 in Warren County; U.S. 202 in Somerset County; N.J. 41 in Camden County; N.J. 32 in Middlesex County; U.S. 1 Business in Mercer County**

**Proposed Amendments: N.J.A.C. 16:28A-1.36, 1.55, 1.64, 1.73 and 1.97**

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.

Proposal Number: PRN 1992-104.

Submit comments by April 1, 1992 to:  
 Charles L. Meyers  
 Administrative Practice Officer  
 Department of Transportation  
 Bureau of Policy and Legislative Analysis  
 1035 Parkway Avenue  
 CN 600  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendments will establish "restricted stopping or standing" zones along Route N.J. 32 in South Brunswick Township, Middlesex County; "no parking" bus stop zones along Route U.S. 202 in Bernardsville Borough, Somerset County; "no parking" bus stop zones along Route N.J. 41 in Cherry Hill Township, Camden County; and revised "no parking" bus stop zones along Route U.S. 1 Business in Lawrence Township, Mercer County. These traffic control measures will provide for a more efficient flow of traffic, facilitate the safe off and on loading of passengers at established bus stops, and contribute to the general enhancement of safety and the well-being of the populace.

In addition, the following administrative amendments are changed to conform to the Department's current rulemaking format:

- N.J.A.C. 16:28A-1.36, Route 57, has been amended to change "no parking" to "no stopping or standing" zones.
- N.J.A.C. 16:28A-1.97(a)1i, Route U.S. 1 Business, formerly Route U.S. 1 Alternate, has been amended to redesignate "U.S. 1 Alternate" to "U.S. 1 Business"; to change "no parking" to "no stopping or standing" zones; and to rename "Brunswick Circle" zones to "U.S. 1 Freeway" zones.

Based upon requests from local government, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the following traffic control measures were warranted:

- The establishment of a "no stopping or standing" zone for the entire length of Route N.J. 32 in South Brunswick Township, Middlesex County;
- The establishment of a "no parking" bus stop zone along Route U.S. 202 in Bernardsville Borough, Somerset County;
- The establishment of a "no parking" bus stop zone along Route N.J. 41 in Cherry Hill Township, Camden County; and

- The establishment of revised bus stop zones along Route U.S. 1 Business in Lawrence Township, Mercer County.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.36, 1.55, 1.64, 1.73, and 1.97, based upon requests from local government and the traffic investigation.

**Social Impact**

The proposed amendments will establish a "no stopping or standing" zone along Route N.J. 32 in South Brunswick Township, Middlesex County; "no parking" bus stop zones along Route U.S. 202 in Bernardsville Borough, Somerset County; "no parking" bus stop zones along Route N.J. 41 in Cherry Hill Township, Camden County; and revised bus stop zones along Route U.S. 1 Business in Lawrence Township, Mercer County. These traffic control measures will contribute to a more efficient flow of traffic, the enhancement of safety, the safe on and off loading of passengers at established bus stops, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local governments will both incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will pay for the installation of "no stopping and standing" zone signs. Local governments will pay for the "no parking" bus stop zone signs. The costs involved in the installation and procurement of signs vary, dependent upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

**Regulatory Flexibility Statement**

The proposed amendments do not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments primarily affect the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28A-1.36 Route 57

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

(c) The certain parts of State highway Route 57 described in this subsection are designated and established as "no [parking] **stopping or standing** during certain hours" zones where [parking] **stopping or standing** is prohibited as specified. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs.

- 1. No [parking] **stopping or standing** during certain hours in Washington Borough, Warren County:
  - i. (No change.)

16:28A-1.55 Route U.S. 202

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

(c) The certain parts of State highway Route U.S. 202 described in this subsection shall be designated and established as "no parking **bus stop**" zones where parking is prohibited at all times. In accordance with N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-5. (No change.)

**6. Along (Mine Brook Road) the easterly (northbound) side in Bernardsville Borough, Somerset County:**

**i. Far side bus stop:**

(1) **Depot Square—Beginning at the northerly curbline of Depot Square and extending 100 feet northerly therefrom.**

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

16:28A-1.64 Route 41

(a) (No change.)

(b) The certain parts of State highway Route 41 described in this [section] subsection shall be designated and established as "no parking **bus stop**" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. (No change.)

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2. Along the westerly (southbound) side in Cherry Hill Township, Camden County:

i.-ii. (No change.)

iii. **Far side bus stop:**

(1) **Chelton Parkway—Beginning at the prolongation of the southerly curb line of Chelton Parkway and extending 135 feet south therefrom.**

16:28A-1.73 Route 32

(a) The certain parts of State highway Route 32 described in [(a) of] this [section] **subsection** shall be designated and established as “no [parking] **stopping or standing**” zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1. No stopping or standing in South Brunswick Township, Middlesex County[:

i. Along both sides:

(1) **Between a point 500 feet east of the easterly shoulder edge of Middlesex County Road 535 and a point 500 feet west of the westerly shoulder edge of Middlesex County Road 535.] along both sides for the entire length within the corporate limits of the Township of South Brunswick, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in approved designated Bus Stops and Time Limit Parking areas.**

16:28A-1.97 Route U.S. 1 [Alternate] Business

(a) The certain parts of State highway Route U.S. 1 [Alternate] **Business** described in this subsection shall be designated and established as “no [parking] **stopping or standing**” zones where stopping or standing is prohibited at all [time] **times** except as provided in N.J.S.A. 39:4-139.

1. No stopping or standing in Lawrence Township, Mercer County:

i. Along both sides:

(1) Beginning at [a point of mile post] **milepost 0.0** at the [northerly] intersection of the [Brunswick Circle] **U.S. 1 Freeway** to the northerly curbline of Carnegie Road ([mile post] **milepost 2.31**) Lawrence Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

[(b) The certain parts of State highway Route U.S. 1 Alternate described in this subsection are designated and established as “no parking” zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. Along the easterly (northbound) side in Lawrence Township, Mercer County:

i. Far side bus stops:

- (1) Pear Street:
- (2) Puritan Avenue:
- (3) Putnam Avenue:
- (4) Trumbull Avenue:
- (5) Cherry Tree Lane:
- (6) Whitehead Road:
- (7) Bunker Hill Avenue:
- (8) Lake Drive:
- (9) Colonial Drive:

(10) Between a point 200 feet north of the northerly abutment of the bridge crossing the Shabakunk Creek and 100 feet northerly thereof.

(2) Along the westerly (southbound) side in Lawrence Township, Mercer County:

i. Far side bus stops:

- (1) President Avenue:
- (2) Mayflower Avenue:
- (3) Graf Avenue:
- (4) Slack Avenue:
- (5) Trumbull Avenue:
- (6) Maplewood Avenue:

(7) Between points 220 feet north of, and 75 feet north of the northerly curb line of Lake Drive.

ii. Near side bus stop:

(1) Hope Street:

(2) Bunker Hill—Beginning at the northerly curb line of Bunker Hill and extending 105 feet northerly therefrom.

3. All far side bus stops shall be 105 feet in length, all near side bus stops shall be 120 feet in length and all mid-block bus stops shall be 130 feet in length, measured from the curb line of the intersecting street, or the prolongation of the curb line of the street which intersects, where the bus stops are established.

4. Along Brunswick Avenue (Alternate Route 1) northbound on the easterly side in Lawrence Township, Mercer County at the far side stop on President Avenue.

5. Along Brunswick Avenue (Alternate Route 1) southbound on the easterly side in Lawrence Township, Mercer County at the near bus stop on Hope Street.]

(b) **The certain parts of State highway Route U.S. 1 Business described in this subsection shall be designated and established as “no parking” bus stop zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:**

1. In Lawrence Township, Mercer County:

i. Along the westerly (southbound) side:

(A) Mid-block bus stop:

(1) **Lake Drive Jughandle—Beginning at a point 515 feet north of the northerly curbline of the Lake Drive jughandle at the Traffic Signal and extending 85 feet northerly therefrom.**

(B) Near side bus stops:

(1) **Lake Drive—Beginning at a point 35 feet north of the northerly curb line of Lake Drive and extending 85 feet northerly therefrom.**

(2) **Bunker Hill Avenue—Beginning at a point 35 feet north of the northerly curb line of Bunker Hill Avenue and extending 85 feet northerly therefrom.**

(3) **Hope Street—Beginning at a point 35 feet north of the northerly curb line of Hope Street and extending 85 feet northerly therefrom.**

(C) Far side bus stops:

(1) **Cherry Tree Lane—Beginning at a point 35 feet south of the southerly curb line of Cherry Tree Lane and extending 75 feet southerly therefrom.**

(2) **Maplewood Avenue—Beginning at a point 35 feet south of the southerly curb line of Maplewood Avenue and extending 75 feet southerly therefrom.**

ii. Along the easterly (northbound) side:

(A) Mid-block bus stop:

(1) **Colonial Lake Drive—Beginning at a point 249 feet south of the southerly curb line of Colonial Lake Drive and extending 85 feet southerly therefrom.**

(B) Far side bus stops:

(1) **Puritan Avenue—Beginning at a point 35 feet north of the northerly curb line of Puritan Avenue and extending 75 feet northerly therefrom.**

(2) **Trumbull Avenue—Beginning at a point 35 feet north of the northerly curb line of Trumbull Avenue and extending 75 feet northerly therefrom.**

(3) **Mayflower Avenue—Beginning at a point 35 feet north of the northerly curb line of Mayflower Avenue and extending 75 feet northerly therefrom.**

(4) **Lake Drive—Beginning at a point 35 feet north of the northerly curb line of Lake Drive and extending 75 feet northerly therefrom.**

(C) Near side bus stops:

(1) **Putnam Avenue—Beginning at a point 35 feet south of the southerly curb line of Putnam Avenue and extending 85 feet southerly therefrom.**

(2) **Texas Avenue Jughandle—Beginning at a point 35 feet south of the southerly curb line of Texas Avenue Jughandle and extending 85 feet southerly therefrom.**

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**Interested Persons see Inside Front Cover**

**TRANSPORTATION**

**(a)**

**DIVISION OF CONSTRUCTION AND MAINTENANCE  
ENGINEERING SUPPORT**

**Roadside Sign Control and Outdoor Advertising**

**Proposed New Rules: N.J.A.C. 16:41C**

**Proposed Repeals: N.J.A.C. 16:41-8 and 16:41A**

Authorized By: George Warrington, Deputy Commissioner,  
Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and the Roadside Sign  
Control and Outdoor Advertising Act, N.J.S.A. 27:5-5 et seq.  
(P.L. 1991, c.413).

Proposal Number: PRN 1992-105.

A **public hearing** concerning the proposed new rules will be held on  
Thursday, March 19, 1992 at 1:00 P.M. to 4:00 P.M., at the following  
address:

New Jersey Department of Transportation  
Engineering and Operations Building  
Multi-Purpose Room, 1st floor  
1035 Parkway Avenue  
Trenton, New Jersey 08625

The hearing record closes April 1, 1992.

Submit written comments by April 1, 1992 to:

Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
Bureau of Policy and Legislative Analysis  
1035 Parkway Avenue  
CN 600  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The regulation of roadside signs and outdoor advertising in New Jersey is administered by the Department of Transportation. A comprehensive new law has been enacted regarding roadside signs and outdoor advertising. The new law is the Roadside Sign Control and Outdoor Advertising Act, P.L. 1991, c.413, compiled as N.J.S.A. 27:5-5 to 27:5-26. It repeals two similar, but separate, outdoor advertising laws that date back to the 1950's and 1960's. In their place, there is enacted a single contemporary statutory program for the control of roadside signs and outdoor advertising. The repealed outdoor advertising statutory programs were found at N.J.S.A. 27:7A-11 et seq. and 54:40-50 et seq.

The new law substantially reenacts many provisions of the prior statutes with regard to license and permit requirements, conditions and restrictions for signs, and Federal compliance requirements. It also gives the Department of Transportation broader regulatory authority and flexibility to respond to changes and innovations that may develop in respect to outdoor advertising and technology. The Department is also empowered to set permit fees by regulation as may be necessary to recover the cost of administering its outdoor advertising program obligations.

Existing outdoor advertising rules promulgated under the repealed statutory programs can be found at N.J.A.C. 16:41-8 (Interstate and Federal Aid Primary Highways) and 16:41A (all other roadways). Section 20 of the newly enacted law provides, in part, that "existing rules or regulations adopted by the Commissioner concerning outdoor advertising shall remain in effect until they are revised or superseded" by new outdoor advertising rules. This means that the rules which implemented the old laws remain in full effect until such time as new rules, which implement the new law, are adopted. Under this proposal, N.J.A.C. 16:41-8 and N.J.A.C. 16:41A would be repealed and N.J.A.C. 16:41C adopted in their place. The proposed N.J.A.C. 16:41C implements provisions of the new statute.

The existence of two separate statutory and Administrative Code regulatory programs for outdoor advertising has proven confusing. In general, the proposed new rules merge various provisions of N.J.A.C. 16:41A and 16:41-8 into a single new chapter. The proposed rules (N.J.A.C. 16:41C) include, with clarifications and refinements, the fundamental elements of the prior regulatory program(s). The largest single change from the prior rules is a significant increase in outdoor advertising license fees and sign permit fees. These increases were authorized under

section 14 of the new law. Additionally, both the new law and the proposed rules are more permissive towards the use of new technologies and the utilization of modern designs and innovations. The proposed rules comprehensively clarify and establish guidelines, standards and requirements to be followed and adhered to in roadside sign control, outdoor advertising and related activities along the roadways of the State of New Jersey. Applicable procedures are outlined in detail. Implementation of this program shall be done in a manner compatible with all applicable United States Department of Transportation and Federal Highway Administration requirements.

The proposed new chapter is summarized as follows:

Subchapter 1 provides the definitions and their meanings as used throughout the rule.

Subchapter 2 outlines the general provisions of the rules.

Subchapter 3 prescribes the general restrictions in the erecting of signs and requirements for same.

Subchapter 4 defines the licensing provisions, when licensing is required, application and fees, duration, and bond requirements for nonresidents.

Subchapter 5 outlines the permit provisions, types of signs permitted, application process, surface alteration and requirements for the name of the holder of the permit.

Subchapter 6 depicts and outlines fees, the general requirements, "no fee" permits, late charges, and duration and renewal of permits.

Subchapter 7 outlines the general requirements for vegetation control.

Subchapter 8 establishes the standard requirements for signage to include types of on and off premises and interpretations.

Subchapter 9 provides the general provisions for nonconforming sign structures.

Subchapter 10 establishes penalties for violating established rules, notice and nature of hearings, removal provisions and causes for revocation of license or permit.

**Social Impact**

The rules contained in this chapter apply to all public, private and cooperatively owned businesses engaged in outdoor advertising. The proposed rules will directly affect persons in the business of outdoor advertising and those seeking to be engaged in the outdoor advertising business. Consistent with the statutory mandates, the proposed rules recognize both that there exist a "commercial, public and social value" to messages conveyed through the medium of roadside signs and outdoor advertising and that regulation of this medium shall take into account safety and natural scenic beauty. The rules are expected to encourage outdoor advertising businesses to evaluate new technologies and innovations. Implementation of these rules will conform with applicable Federal requirements.

**Economic Impact**

Those persons engaged in outdoor advertising and governed by these rules will be required to pay increased application, license, and permit fees for the signs on the roadway system. The total amount of fees collected is expected to rise from the current annual level of \$250,000 ± to approximately \$675,000 annually. The increase in fees recovers the annual cost of DOT administration of the statutory outdoor advertising program. Anticipated utilization of new technologies by outdoor advertisers may increase the commercial value of the medium and thereby offer the potential to increase industry revenues. Such impacts, however, can not be quantified and would be long term and incremental in nature.

**Regulatory Flexibility Analysis**

The proposed new rules contain a number of requirements from previously promulgated N.J.A.C. 16:41A and N.J.A.C. 16:41-8, as well as clarifying the requirements of recent legislation, P.L. 1991, chapter 413, the Roadside Sign Control and Outdoor Advertising Act. The rules provide standards for licensing, permitting, fees and penalties, maintenance requirements, and the construction of signs to be permitted or licensed. While some of the applicants for licenses or permits may be small businesses, as defined by N.J.A.C. 52:14B-16 et seq., the number cannot be determined precisely. An applicant may elect to use the services of design, advertising or other professionals, but these services are not required by the rules. For those applicants located out of the State of New Jersey, bonding and a designate for service of papers are required. The fee structure for licensing differentiates between those applicants having up to 50 signs and those having more than 50. The fee structure for permits includes lower rates for smaller signs. This

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provision was included to assist the small business owner. The Act balances issues of safety, convenience and enjoyment of travel and the protection of the recreational value of the land with the expression of free speech and the promotion of development and economic vitality. In developing the rules implementing the Act, the Department believes that the size of the business applying for a permit or license for outdoor advertising is not relevant. Therefore, no exemption specifically designed for small businesses has been made, although the fee structure tends to benefit such businesses.

Full text of the proposed repeals appears in the New Jersey Administrative Code at N.J.A.C. 16:41A and N.J.A.C. 16:41-8.

Full text of the proposed new rules follows:

CHAPTER 41C  
ROADSIDE SIGN CONTROL AND OUTDOOR  
ADVERTISING

## SUBCHAPTER 1. DEFINITIONS

## 16:41C-1.1 Definitions

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

“Act” means section 131 of Title 23, United States Code (1965), commonly referred to as Title 1 of the Highway Beautification Act of 1965.

“Advertisement” means the use of any outdoor display or sign upon real property within public view, which is intended to invite or draw the attention of the public to any goods, merchandise, property, business, services, entertainment, amusement or other commercial or noncommercial messages.

“Advertising structure” means any rigid or semi-rigid material, with or without advertisement displayed thereon, situated upon or attached to real property outdoors, primarily or principally for the purpose of furnishing a background or base or support upon which an advertisement may be posted or displayed.

“Advertising surface” means the total surface area of a sign upon which advertising may be placed, including cutouts and extensions, but excluding decorative bases and supports.

“Area of advertising surface” means the area in square feet measured by the smallest rectangle which will encompass the entire sign including cutouts and extensions.

“Back to back sign”—See “back up.”

“Back up” means an advertising structure erected upon the ground in the rear of another structure, at a distance of not more than 25 feet to allow for crossbraces, which conforms with the lines and measurements of the other structure.

“Business of outdoor advertising” means the engaging by any person in the sale of outdoor advertising for profit through the erection, use or maintenance of advertising structures or spaces, or the placement of advertisements.

“Commercial or industrial activities for purposes of unzoned commercial or industrial areas” means those activities generally recognized as commercial or industrial by zoning authorities in this State, except that none of the following activities shall be considered commercial or industrial:

1. Outdoor advertising activities;
2. Agricultural, forestry, ranching, grazing, farming and related activities, including, but not limited to, wayside fresh produce stands;
3. Transient or temporary activities;
4. Activities not visible from the main traveled way;
5. Activities more than 600 feet from the nearest edge of the right of way; and
6. Activities conducted in a building principally used as a residence.

“Commissioner” means the Commissioner of Transportation.

“Controlled portion of the Interstate System” means any portion of an interstate highway which is constructed upon any part of right-of-way, the entire width of which was acquired subsequent to July 1, 1956, excluding those segments which traverse commercial or industrial zones within the boundaries existing on September 21,

1959, wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, and which traverse other areas where the land use, as of September 21, 1959, was clearly established by the laws of the State as industrial or commercial.

“Customary maintenance” means all manner of reasonable repair or maintenance of an advertising structure, including replacement of worn or damaged portions of the structure.

“Cutouts/extensions” means any attachment or addition to the original sign that increase or enhance the advertisement on the sign.

“Department” means the New Jersey Department of Transportation.

“Entrance roadway” means any public road or turning roadway, including acceleration lanes, by which traffic may enter the main-traveled way of any limited access or non-limited access highway from the general road system, irrespective of whether traffic may also leave the main-traveled way by such road or turning roadway.

“Erect” means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish, but it shall not include any of the foregoing activities when performed as incidental to the change of an advertising message or the normal maintenance or repair of a sign or sign structure.

“Exit roadway” means any public road or turning roadway, including deceleration lanes, by which traffic may leave the main-traveled way of a limited access or non-limited access highway to reach the general road system, irrespective of whether traffic may also enter the main-traveled way of such road or turning roadway.

“Expressway” means the Atlantic City Expressway and any other highway especially designed for through mixed traffic over which abutters have no easement or right of light, air, or direct access, by reason of the fact that their property abuts upon such way.

“Federal-aid primary highway” means any highway within that portion of the State highway system as designated or as may hereafter be so designated by the State, which has been approved by the Secretary of Transportation pursuant to subsection (b) of Section 103 of Title 23, United States Code.

“Freeway” means a State highway especially designed for through mixed traffic over which abutters have no easement or right of light, air or direct access, by reason of the fact that their property abuts upon such way.

“Ground structure” means any advertising structure or display erected upon the ground, however supported thereon.

“Highway” means any road, thoroughfare, street, boulevard, lane, court, railway, right-of-way or easement used for, or laid out and intended for public passage of vehicles or people.

“Imprint” means the name, mark, symbol, seal or signature of a licensee.

“Incorporated municipalities” means cities, towns, townships, villages, boroughs and municipalities governed by a Board of Commissioners or an Improvement Commission.

“Informational site” means an area or a site established and maintained within or adjacent to the right-of-way of a limited access highway by or under the supervision or control of the Department of Transportation, wherein panels for display of advertising and informational signs may be erected and maintained.

“Interstate System” means those highways constructed within this State and approved by the Secretary of Transportation of the United States as an official portion of the National System of Interstate and Defense Highways pursuant to the provisions of Title 23, “Highways” of the United States Code, as amended.

“Licensee” means any person, firm, corporation, co-partnership or association which is the holder of any valid and unrevoked license to engage in the outdoor advertising business in this State.

“Limited access highway” means a highway especially designed for through traffic, over which abutters have no easement or right of light, air or direct access by reason of the fact that their property abuts upon such limited access highway. For purposes of these rules, interstate highways, parkways, expressways and freeways shall be considered limited access highways.

“Main-traveled way” means the traveled way of a highway on which through traffic is carried. In the case of a divided highway,

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the traveled way of each separate roadway carrying traffic in opposite directions is a main-traveled way. Main-traveled way shall not include frontage roads, turning roadways, or parking areas.

"Multiple message sign" means a sign, display or device which changes message or copy electronically or by the movement or rotation of panels or slats.

"Natural area" means any area measured along one side of a highway between two commercial or industrial points separated by a distance of one mile or more.

"Non-limited access highway" means any highway, excluding freeways, expressways, parkways and the interstate system, where the right of access is permitted.

"Nonconforming sign" means a sign, display or device which was lawfully erected and maintained prior to the enactment, revision or amendment of N.J.S.A. 27:7A-11 et seq. (P.L. 1971, c.371), or of the rules promulgated thereto, but which fails to conform with requirements of said statute, rules, revisions or amendments.

"Outdoor Advertising Act" means the Roadside Sign Control and Outdoor Advertising Act of 1991, P.L. 1991, c.413.

"Parkway" means a State highway especially designed for through passenger traffic over which abutters have no easement or right of light, air, or direct access, by reason of the fact that their property abuts upon such way.

"Permit" means a certificate, issued by the Department, granting permission to erect a sign at the location described thereon.

"Permitted location" means a place, spot, site or space for which an outdoor advertising permit has been duly issued for the erection or maintenance of an advertising structure or display to be used for advertising purposes without regard to whether the same has actually been constructed, painted or posted.

"Permittee" means any person holding a valid and unrevoked outdoor advertising permit.

"Person" means any individual, group, corporation, partnership, association or combination thereof.

"Premises" means that portion of the property wherein any industry, commerce, business, occupation, trade or service is conducted.

"Protected areas" means all areas inside the boundaries of this State which are adjacent to and within 660 feet of the edge of the right-of-way of highways in the Interstate and Primary Systems and those areas inside the boundaries of this State which are visible from the highway but beyond 660 feet of the edge of the right-of-way of the Interstate and Primary Systems and are outside urban areas.

"Ramp" means either an "entrance roadway" or an "exit roadway."

"Route" means a highway or set of highways, including roads, streets, boulevards, parkways, bridges, and culverts needed to provide direct commutation between designated points.

"Safety rest area" means an area or site established and maintained within or adjacent to the highway right-of-way and under public supervision or control, for the convenience of the traveling public.

"Scenic area" means any public park or area of scenic beauty or historical significance, as designated by the Commissioner of Transportation or other State agency having and exercising such authority.

"Sign" means any outdoor display or advertising on real property within public view which is intended to attract, or which does attract, the attention of pedestrians or the operators, attendants, or passengers of motor vehicles using the roads, highways, and other public thoroughfares and places, and shall include any writing, printing, painting, display, emblem, drawing, sign, or other device whether placed on the ground, rocks, trees, tree stumps or other natural structures, or on a building, structure, signboard, billboard, wallboard, roofboard, frame, support, fence, or elsewhere, and any lighting or other accessories used in conjunction therewith.

"Space" means the surface area used or to be used for each advertisement. A double-faced sign is deemed to have two spaces.

"State highway" means a road taken over, controlled, built, maintained, or otherwise under the jurisdiction of the State.

"Thickly settled district" means a commercial or industrial zoned or unzoned area where business buildings or houses are less than 200 feet apart along the street for at least one-quarter mile.

"Trade name" means the brand name, trademark, distinctive symbol or any other device used to identify particular products or services.

"Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

"Turnpike" means the New Jersey Turnpike.

"Unzoned commercial or industrial areas" means those areas which are not zoned by State or local law, rule or ordinance, and on which there are located one or more permanent structures devoted to commercial or industrial activity or on which a commercial or industrial activity is actually conducted, whether or not a permanent structure is located thereon, and the area along the highway extending outward 800 feet from and beyond the edge of such activity. Each side of the highway will be considered separately in applying this definition. All measurements shall be from the outer edges of the regularly used buildings, parking lots, storage or processing and landscaped areas of the commercial or industrial activities, not from the property lines of the activities, and shall be along or parallel to the edge or pavement of the highway.

"Urban area" means a place designated by the U.S. Bureau of the Census as having a population of 5,000 or more within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary of Transportation of the United States. The boundaries shall, at a minimum, encompass the entire place designated by the U.S. Bureau of the Census.

"Visible" means capable of being seen and comprehended without visual aid by persons traveling on the highway.

"V-type construction" means a single structure having two faces in the shape of the letter "V" when viewed from above, with the faces oriented in opposite directions.

"Zoned commercial or industrial areas" means those areas which are zoned for business, industry, commerce, office, or trade pursuant to a State or local zoning ordinance or rule, or those areas other than residential, agriculture, forest, conservation, recreation, education or preservation where the prevalent land use is business, industry, commerce, office or trade.

## SUBCHAPTER 2. GENERAL PROVISIONS

### 16:41C-2.1 Purpose

(a) The purpose of this chapter is to balance the need to control and regulate roadside signs and outdoor advertising, promote the scenic beauty of the State, provide for the safety and convenience of the public, and the need to stimulate economic and commercial activity within the State of New Jersey. This chapter requires and provides for the issuing of licenses and permits for roadside signs and outdoor advertising and their establishment, use, maintenance and removal.

(b) Consistent with the Act and Outdoor Advertising Act, the Commissioner is authorized to promulgate rules, in a manner consistent with the Administrative Procedure Act, governing outdoor advertising including spacing, size, lighting and other requirements pertaining to the issuance or denial of permits for the erection or maintenance of outdoor advertising signs within protected areas of limited access and non-limited access highways, prescribing the number, locations and types of and specifications for outdoor advertising signs, and designating the conditions under which outdoor advertising signs may be erected and maintained.

(c) In connection with the issuance of permits for outdoor advertising signs, the Commissioner is authorized to charge and collect fees in such amounts as set forth in N.J.A.C. 16:41C-6, Fees, for the issuance of such permits. The moneys received from such fees shall be deposited with the State Treasurer, and be subject to disbursement on order of the Commissioner to defray the expense of administering the provisions of this chapter.

(d) The Commissioner is authorized to designate certain roadside areas as "safety rest areas" or "informational sites" and to provide by rules for the erection and maintenance of signs in such areas.

## TRANSPORTATION

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(e) The Commissioner is authorized to acquire by gift, purchase or condemnation, real and personal property or the right to maintain outdoor advertising signs in any protected area of limited access and non-limited access highways for the purpose of implementing the rules in this chapter. All persons whose property is purchased or otherwise acquired, except by gift to the State of New Jersey, shall receive just compensation therefor.

### 16:41C-2.2 License and permit effectiveness and expiration date

All licenses and permits issued prior to March 31, 1992 shall remain in effect until May 15, 1992. Thereafter, all licenses and permits will expire on May 15 following the date of issue or renewal, unless earlier revoked or cancelled.

## SUBCHAPTER 3. RESTRICTIONS

### 16:41C-3.1 General restriction

No outdoor advertising signs shall be erected or maintained within the right-of-way of any portion of limited access or non-limited access highways within the State of New Jersey, except that this prohibition shall not apply to signs, public notices or markers erected or maintained by the Department of Transportation, or to signs erected or maintained at the "informational sites" designated by the Commissioner pursuant to N.J.A.C. 16:41C-2.1(d).

### 16:41C-3.2 Sign requirements

(a) Any roadside signs allowed by N.J.A.C. 16:41C-5 shall be by permit from the Commissioner and consistent with the conditions set forth in such permits and the standards set forth below:

1. No off-premise outdoor advertising sign shall be erected along the Garden State Parkway or along portions of the New Jersey Turnpike which are not incorporated into the Federal Aid Interstate Highway System.

2. No outdoor advertising sign shall interfere or be likely to interfere with the ability of the operator of a motor vehicle to have a clear and unobstructed view of streets or highways ahead, approaching, merging or intersecting traffic, or official signs, signals or traffic control devices.

3. No outdoor advertising sign shall direct or appear to direct the movement of traffic or interfere with, imitate, or resemble any official traffic sign, signal or device.

4. Illumination of outdoor advertising signs shall be effectively shielded so as to prevent light from being directed at any portion of the main-traveled way of the street or highway, or if not so shielded, be of such low intensity or brilliance as not to cause glare or impair the vision of operators of motor vehicles on such street or highway, or otherwise impair the operation of a motor vehicle. All such lighting shall also be subject to any other provision relating to lighting of signs applicable to highways under the jurisdiction of the State of New Jersey.

5. Signs which contain, include or are illuminated by any flashing, intermittent, scrolling or moving light or lights shall be prohibited, except those giving time, date and/or temperature.

6. No outdoor advertising sign shall be painted, drawn, erected or maintained upon trees, rocks or other natural features.

7. No outdoor advertising sign shall be of such a type, size, or character as will endanger or injure public safety, health, or morals or be injurious to property in the vicinity thereof.

8. No outdoor advertising sign shall be permitted which advertises activities that are illegal under Federal, State or local law in effect at the location of those signs or at the location of those activities.

9. No outdoor advertising sign shall be permitted which has any animated or moving parts.

10. No outdoor advertising sign shall be permitted which contains reflectorized materials that move or distract, such as discs, beads or other attachments to the advertising surface.

11. Multiple message signs shall be prohibited on the Interstate System.

12. Multiple message signs shall be permitted on Federal Aid Primary and other highways under the following conditions:

- i. Each message shall remain fixed for at least 2.5 minutes.
- ii. When the message is to be changed, it shall be accomplished in one second or less with all panels/parts changing simultaneously.

When panels are rotated to effect a message change, they shall rotate in the same direction as nearside traffic.

iii. Multiple message signs shall be prohibited within 500 feet of a traffic signal or ramp.

iv. Multiple message signs shall not be placed within 5,000 feet of each other along the same roadway traveling in the same direction.

v. Multiple message signs shall contain a default design that will freeze the sign in one position if a malfunction occurs.

vi. If a multiple message sign on a Federal Aid Primary or other highway is in violation of any of the above conditions, its permit shall be revoked and the sign removed. If a licensed dealer accumulates five violations for multiple message signs, his Outdoor Advertising License shall be suspended for one year. During the appeal of any of the above violations, the signs shall remain fixed until the matter is resolved.

13. All outdoor advertising signs shall be maintained in a safe condition with due regard for climate, weather and terrain.

14. All advertising signs shall be clean or in good condition.

15. The permit shall be revoked for any advertising structure which remains abandoned, unused, destroyed or in disrepair for a period of one year after being cited by the Outdoor Advertising Section.

i. A sign shall be considered abandoned or destroyed when it is structurally unsound, as determined by a licensed professional engineer, or it is in an aesthetically blighted condition. An aesthetically blighted condition exists when 25 percent of the surface requires a reconditioning of the protective or decorative coating as evidenced by, but not limited to, peeling or flaking paint.

ii. A sign which remains blank or void of advertising copy for a period of one year shall be considered unused.

16. No outdoor advertising sign will be permitted which would adversely affect the public interest. In determining whether the issuance of a permit would adversely affect the public interest, the Administrator of Outdoor Advertising shall consider the purpose of the Federal and State Acts, these rules and public sentiment as expressed by the governing authorities and agencies of the United States, State of New Jersey or the county or municipality within whose boundaries the application is made or by residents of those counties or municipalities.

17. Off-premise advertising signs will only be permitted in zoned or unzoned commercial and industrial areas. Under no circumstances will signs be permitted in areas zoned residential, agricultural, recreational, educational or conservation. Along the Interstate System, off-premise signs may only be erected in areas zoned commercial or industrial prior to September 21, 1959.

18. Adjustment, alteration, or removal of existing natural landscape within the right-of-way in order to increase or enhance the visibility of an advertising structure is prohibited unless accomplished pursuant to this chapter.

19. The maximum area for the advertising surface of any one sign shall be 1,000 square feet. The advertising surface of the sign shall not exceed a maximum height of 25 feet and a maximum length of 60 feet, except where the sign is erected upon or attached to a building. In such event, the maximum area of a wall or roof mounted sign may be 1,200 square feet, the maximum height 30 feet and the maximum length 60 feet. All dimensions include border, trim, cutouts and extensions, but exclude decorative bases and supports.

20. The maximum size limitations shall apply to each side of a sign structure. If two signs are placed back-to-back, side-by-side or in a V-type construction, the maximum advertising surface area allowed shall be 1,000 square feet each direction of travel.

21. Signs that are erected side-by-side must be equal in size and dimensions. Signs erected back-to-back or in a V-type construction must be equal in size and dimensions, excluding temporary cutouts or extensions.

22. The provisions relating to the spacing between structures do not apply to structures separated by a building or other obstructions in such a manner that only one sign facing located within the spacing distances is visible from the highway at any one time.

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**TRANSPORTATION**

**SUBCHAPTER 4. LICENSE PROVISIONS**

**16:41C-4.1 When license required**

Any person, municipality or other jurisdictional authority which shall engage in the business of outdoor advertising for compensation received for the erection, use or maintenance of outdoor advertising structures and other objects upon real property within public view is required to obtain a license.

**16:41C-4.2 Applications and fees**

(a) An application for a license may be obtained from the New Jersey Department of Transportation, Outdoor Advertising Section.

(b) The annual fee for an outdoor advertising license shall be as follows:

Number of Signs	Annual Fee
0-50	\$250.00
51 and over	\$500.00

**16:41C-4.3 Duration**

A license shall remain in effect until May 15 following the date of issue or renewal, unless earlier revoked or cancelled. An application for renewal shall be filed with the Department on or before May 1 preceding expiration of the license.

**16:41C-4.4 Bond for non-resident**

If a licensee does not reside in New Jersey or is a foreign corporation not authorized to do business in this State, it shall file with its application a bond running to the State in the sum of \$5,000, satisfactory to the Commissioner and with surety approved, conditioned upon the observing and fulfilling by the applicant of all the provisions of the law and the rules contained in this chapter. Upon default in the condition of such bond, appropriate action shall be taken to enforce the collection thereof in a court of competent jurisdiction. A bond shall remain in full force and effect so long as any obligation to the State in such license shall remain unsatisfied.

**SUBCHAPTER 5. PERMITS**

**16:41C-5.1 Types of signs permitted**

(a) No permit shall be issued by the Commissioner for outdoor advertising signs to be erected or maintained in any protected area visible from the main-traveled way of any portion of limited access or non-limited access highways except such signs as set forth in (a)1 through 5 below. All such signs are subject to all of the rules in this chapter.

1. Directional and other official signs and notices outside the State right-of-way. These signs are categorized as follows:

i. Directional signs: Signs deemed by the Commissioner to be in the interest of the traveling public and containing directional information about public places owned or operated by Federal, State or local governments or their agencies; publicly or privately-owned natural phenomena; historic, cultural, scientific, educational and religious sites; and areas of natural scenic beauty or those naturally suited for outdoor recreation;

ii. Official signs and notices: Signs and notices erected and maintained by public officers of public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with Federal, State or local law. Historical markers authorized by State law and erected by State or local governmental agencies or nonprofit historical societies may be considered official signs;

iii. Public utility signs: Warning signs, informational signs, notices or markers which are customarily erected and maintained by publicly or privately owned public utilities and are essential to their operation;

iv. Service club and religious notices: Signs and notices whose erection is permitted by law, relating to meetings of nonprofit service clubs, charitable associations or religious services; and

v. Public service signs: Signs located off the right-of-way on benches or school bus stop shelters, which are authorized or approved by city, county or State law, regulation or ordinance, and at places approved by the city, county or State agency controlling the highway involved.

2. On-premise signs, which may be categorized as follows:  
i. Signs advertising the sale or lease of property on which they are located; and

ii. Signs advertising activities conducted on the property on which they are located.

3. Off-premise advertising signs within the protected area of the Interstate System may be permitted in the following areas:

i. Commercial or industrial zones within the boundaries of incorporated municipalities as they existed on September 21, 1959;

ii. Areas where the land use as of September 21, 1959, was clearly established by State law as commercial or industrial within 660 feet of the nearest edge of the right-of-way; and

iii. Zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way, any part of which was acquired on or before July 1, 1956.

4. Off-premise advertising signs within the protected area on the Primary System may be permitted in the following areas:

i. Areas which are zoned industrial or commercial under the authority of State law; and

ii. Signs located in areas determined to be industrial or commercial pursuant to State law.

5. Off-premise signs in any other area not covered by (a)3 or 4 above may be permitted as follows:

i. Signs located in areas which are zoned industrial or commercial pursuant to State law; and

ii. Signs located in areas determined to be industrial or commercial pursuant to State law.

6. In those instances where the Commissioner deems it to be in the public interest, he or she may issue a permit for a sign on public property which would not otherwise be permitted under the provision of the State Act and impose conditions as he or she deems appropriate.

**16:41C-5.2 Permit requirements**

(a) Any person, municipality or other jurisdictional authority whether required to be licensed or not, must obtain a permit from the Department for each outdoor advertising display before erecting, maintaining or using any outdoor advertising structure or other object other than those erected by the Department and directional and other official signs and notices for the display of outdoor advertising.

(b) No permit issued to a person required to obtain a license pursuant to this chapter shall be valid unless the license is in full force and effect.

(c) A permit shall be in force from the date issued to the following May 15, unless revoked.

**16:41C-5.3 Permit applications**

(a) An application for a permit may be obtained from the New Jersey Department of Transportation, Outdoor Advertising Section. Completed applications should be returned to the New Jersey Department of Transportation, Outdoor Advertising Section.

(b) Each application shall specify the location where the sign is to be placed and maintained. If, after approval of such application and issuance of a permit, the sign is removed or placed in a different location from the approved location, such permit shall be null and void.

(c) Each application shall contain a certification signed by the property owner or his agent granting permission to the applicant to erect a sign on the property and granting right of entry to the Department for inspection of the sign during and after erection. In lieu of said certification the Department will accept a signed lease between the applicant and the property owner granting the Department the same right of entry.

(d) An application for a permit shall be accompanied by a drawing or sketch of the structure (that is, pylon, tower, and the like) indicating what area of it will be put to advertising use.

(e) If the name or address of a permittee changes, notice of the change shall be filed with the Department's Outdoor Advertising Section within thirty days of the change.

**TRANSPORTATION**

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(f) A single application may cover a double-faced, back-to-back, side-by-side or V-type sign. The fee charged will be for the total advertising surface area at the permitted location.

**16:41C-5.4 Alteration of surface area**

(a) Multiple message signs are limited to the restrictions of N.J.A.C. 16:41C-3.2(a)12.

(b) When a permittee desires to enlarge or reduce the surface area of a sign, an application for a new permit shall be made and the applicable application and permit fees shall be paid.

(c) Any permittee seeking to add one or more panels to an already existing advertising structure or object for which he has a valid permit shall apply for a new permit and pay the applicable application and permit fees. Additional panels shall have measurements identical with those of the existing panels.

(d) Cutouts and/or extensions may be added to an existing conforming sign, provided the sign's permit authorizes an area equal to or larger than the smallest rectangle enclosing the sign and all cutouts. The area of the sign including cutouts shall not exceed 1,000 square feet for ground mounted signs or 1,200 square feet for wall or roof mounted signs. The advertising surface of the sign, including cutouts, shall not exceed 25 feet in height (30 feet for wall or roof mounted signs) or 60 feet in width.

i. When cutouts are added to signs with back-ups, their back side shall be painted to blend in with the existing backdrop.

ii. The dimension of conforming signs authorized by a permit of 1,000 square feet (1,200 square feet for wall or roof) or less will be allowed to vary in order to accommodate cutouts and/or extensions. Up to an additional 2.5 feet will be allowed on either side as well as 5.5 feet on the top and two feet on the bottom of the existing sign providing all additions are within the rectangular envelope authorized by the sign's permit.

**16:41C-5.5 Permit holders**

(a) The name of the permittee and the application number of the sign shall be placed in a conspicuous location on the sign structure within 30 days after issuance of the permit or erection of the sign, whichever is sooner, except as specified in (b) below.

(b) If a ground structure is not built within 60 days of the date of issuance of the permit, the permittee must place a sign 18 inches by 24 inches at the site parallel to the roadway and within 10 feet of the right-of-way line. The sign must be fabricated on aluminum, fiberglass or approved equal with two inch black letters on a white background. It shall contain the name of the permit holder and application number for the sign. The sign shall be mounted on a steel post at a height seven feet above ground.

**SUBCHAPTER 6. FEES**

**16:41C-6.1 Permit application fees**

(a) A \$50.00 application fee shall be submitted with each new application for an off-premise outdoor advertising permit for signs with an advertising surface area of 50 square feet or less.

(b) A \$200.00 application fee shall be submitted with each new application for an off-premise outdoor advertising permit for signs with an advertising surface area exceeding 50 square feet.

(c) No application fee will be charged for a change of name or address or no fee permits.

(d) No refund will be made after an application for a permit has been filed.

(e) If an outdoor advertising sign is erected or modified prior to submitting an application and obtaining a permit for same, the following late application charges shall be imposed in addition to the regular fees:

When The Annual Fee Is More Than	But Less Than	Late Filing Charge Is
\$0.00	\$50.00	\$50.00
\$50.00	\$100.00	\$100.00
\$100.00	\$150.00	\$150.00
\$150.00		\$200.00

**16:41C-6.2 Permit fees**

(a) If an application for an off-premise advertising permit is approved, the permit fee based on the advertising surface area must be submitted prior to issuance of the permit and, thereafter, on an annual basis.

(b) The annual permit fee for each sign requiring a permit will be based upon the size of the advertising surface area as follows:

Advertising Surface Area In Square Feet		Annual Fee
Over	Not More Than	
0	50	\$5.00
50	100	\$15.00
100	300	\$35.00
300	450	\$65.00
450	600	\$100.00
600	750	\$125.00
750	900	\$150.00
900	1,000	\$175.00
1,000 or more		\$350.00

(c) A no-fee permit shall be issued to educational, veterans, religious, charitable or civic organizations, providing the signs are erected and maintained in accordance with the provisions of this chapter and advertising space is not being sold or leased.

(d) A no fee permit shall be granted for directional signs and notices as detailed in N.J.A.C. 16:41C-5.1.

1. An application for a no fee permit may be obtained from the Department of Transportation, Outdoor Advertising Section.

2. Before a no fee permit is issued, the sign must be in conformance with the applicable provisions of the law and this chapter. The permit is subject to the same terms and conditions regarding revocation set forth in this chapter.

3. A no fee permit shall remain in effect until May 15, following date of issue or renewal, unless earlier revoked or cancelled.

4. A no fee permit may be renewed by filing with the Outdoor Advertising Section on or before May 1, preceding its expiration, an application for renewal on forms available from the Outdoor Advertising Section.

**16:41C-6.3 Renewal of permits and late renewal charges**

(a) Permits for signs erected and maintained with a valid permit issued before the effective date of the Outdoor Advertising Act shall be renewed, unless the Commissioner finds that a statement made in the permit application is materially false or the sign has been erected or maintained contrary to the terms of the issued permit, in the event of which the Commissioner may take any appropriate action under the authority of the act or regulations promulgated thereof.

(b) Renewal of any permit may be refused for any ground sufficient for the revocation of a permit.

(c) If an application for the renewal of a permit is made after the expiration date of the last valid permit, the following late charges shall be imposed in addition to the regular fees:

When Annual Fee Is More Than	But Less Than	Reinstatement Charge
\$0.00	\$50.00	\$20.00
\$50.00	\$100.00	\$30.00
\$100.00		\$50.00

(d) A permittee who chooses not to renew a permit shall be required to remove the sign not later than the expiration date of the permit.

**SUBCHAPTER 7. VEGETATION CONTROL**

**16:41C-7.1 Control of vegetation**

A temporary permit issued in accordance with N.J.A.C. 16:41 by the Department's Regional Permits Office is required before anyone may perform control of vegetation on State right-of-way. An application with appropriate fee should be submitted to the Regional Maintenance Office.

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**TRANSPORTATION**

**SUBCHAPTER 8. STANDARD REQUIREMENTS**

**16:41C-8.1 General requirements**

A sign is subject to the requirements of its type as indicated in this subchapter. In those cases where a sign is erected so that it is visible to two or more types of roadways, the more stringent requirements shall be applicable.

**16:41C-8.2 Directional signs**

(a) Activities or attractions eligible for directional signing shall be limited to natural wonders, scenic attractions, historical attractions, educational, cultural, scientific and religious institutions or activities, and outdoor recreational areas.

(b) To be eligible, privately-owned attractions or activities must be nationally or regionally known and of outstanding interest to the traveling public. Final determination of eligibility shall be made by the Commissioner.

(c) The message on directional signs shall be limited to the identification of the attraction or activity and directional information which is useful to the traveler in locating the attraction. Superfluous information or pictorial or photographic representation of the activity or its environs shall be prohibited.

(d) Directional signs shall not exceed 20 feet in length, width or height, or 150 square feet in area including border, trim, cutouts and extensions, but excluding decorative bases and supports.

(e) Double-faced, back-to-back or V-type signs shall be considered as two signs. Maximum size of signs shall apply to each face.

(f) Illumination of directional signs is permitted as set forth in N.J.A.C. 16:41C-3.2.

(g) Each location of a directional sign shall be submitted to the Commissioner for his or her approval.

(h) No directional sign shall be located within 2,000 feet of an interchange or intersection at grade along a limited access highway or within 500 feet of an interchange or intersection at grade along a non-limited access highway (measured along the highway from the nearest tip of the gore or comparable point).

(i) Signs shall not be located within 2,000 feet of any of the following areas or sites which are adjacent to limited access highways or within 500 feet of any of the following areas or sites:

1. Scenic areas designated as such by the Commissioner or other State agency having and exercising such authority;
2. Safety rest areas; or
3. Informational sites.

(j) No two directional signs facing the same direction of travel shall be spaced less than one mile apart.

(k) Not more than three directional signs pertaining to the same activity and facing the same direction shall be erected along a single route approaching the activity.

(l) Directional signs on limited access highways shall be within 75 miles of the activity and directional signs on non-limited access highways shall be within 50 miles of the activity.

**16:41C-8.3 Public utility signs**

(a) The Commissioner shall determine the size, spacing, lighting, location and number of public utility signs, notices or markers on limited access and non-limited access highways, essential to the operation of a particular public utility installation.

(b) In no event shall public utility signs exceed 10 feet in length, width or height or 100 square feet in area, including border, trim, cutouts and extensions, but excluding decorative bases and supports.

**16:41C-8.4 Service club and religious notices**

(a) No more than one service club or religious sign or notice shall be erected on each side of a highway.

(b) Such signs shall be located no further than two miles from the organization or activity and shall not exceed eight square feet in area.

(c) No sign shall be located within 2,000 feet of an interchange or intersection at grade along a limited access highway or within 500 feet of an interchange or intersection at grade along a non-limited access highway (measured along the highway from the nearest tip of the gore or comparable point).

(d) Illumination of these signs is permitted, subject to the general restrictions outlined in N.J.A.C. 16:41C-3.2.

(e) No sign shall be located within 500 feet of any of the following areas or sites adjacent to the highway:

1. Scenic areas designated as such by the Commissioner or other State agency authorized to make such determinations;
2. Safety rest areas; or
3. Informational sites.

(f) Double-faced, back-to-back or V-type signs shall be prohibited.

**16:41C-8.5 Public service signs on bus stop shelters**

(a) No public service signs on bus stop shelters shall be permitted on the Interstate System.

(b) Public service signs on bus stop shelters adjacent to the Primary System shall not exceed 32 square feet, 50 percent of which must contain safety slogans or messages.

(c) Signs adjacent to all other roads shall not exceed 32 square feet of advertising copy and shall also contain a public safety slogan or message.

(d) Not more than one sign on each shelter shall face in any one direction.

**16:41C-8.6 On-premise signs on limited access and non-limited access highways**

(a) A sign shall be considered to be an on-premise sign if it has as its purpose the identification of the activity located on the premises, its product or services, or the sale or lease of the property on which the sign is located, rather than the business of outdoor advertising.

(b) When a sign brings rental income to the property owner, consists principally of brand name or trade advertising, or the product or service advertised is only incidental to the principal activity on the premises, it shall be considered the business of outdoor advertising and not an on-premise sign.

(c) The premises on which an activity is conducted shall be determined by physical facts rather than property lines. The following will not be considered to be part of the premises on which the activity is conducted and any signs located on such lands will be considered off-premises advertising:

1. Land separated by a roadway, highway or other obstruction;
2. Undeveloped land or land not used by the activity that may be contiguous to the land actually used by such activity; or
3. Narrow strips of land that are contiguous to the property but separated from the activity.

(d) Not more than one on-premise sign shall be erected at a distance greater than 50 feet from the advertised activity. If, however, such property fronts on more than one street, such a sign may be erected on each street frontage. Such signs shall not exceed 20 feet in length, width or height, or 150 square feet in area, including border, trim, cutouts and extensions.

(e) Not more than one sign shall be erected within 50 feet of the advertised activity. Signs erected within 50 feet of the advertised activity shall not exceed 25 feet in height or 60 feet in horizontal dimensions or 1,000 square feet in area, including borders, trim, cutouts and extensions.

(f) Illumination and writings or other advertisements on these signs shall be subject to the general restrictions set forth in N.J.A.C. 16:41C-3.2.

(g) When the advertised activity is business, commercial or industrial land use, the sign distance shall be measured from the regularly used buildings, parking lots, storage or other structures which are essential and customary to the conduct of the business.

(h) No on-premise advertising sign or structure shall be owned by a licensee, except when the sign is erected on his or her property and advertises his or her business.

1. No fees shall be required or permits issued for on-premise signs.

**TRANSPORTATION****PROPOSALS**

16:41C-8.7 Off-premise advertising signs permitted within the uncontrolled portion of Interstate Highways and within the protected area of all other Limited Access Highways in zoned and unzoned commercial or industrial areas

(a) Off-premise advertising signs permitted within the uncontrolled portion of Interstate Highways and within the protected area of all other Limited Access Highways in zoned and unzoned commercial or industrial areas shall not be located within 2,000 feet of any of the following areas or sites adjacent to the highway:

1. Scenic areas designated as such by the Commissioner or other State agency authorized to make such designations;

2. Safety rest areas; or

3. Informational sites.

(b) Spacing between signs along each side of the highway shall be a minimum of 1,000 feet.

(c) No sign shall be located within 2,000 feet of an interchange or intersection at grade (measured along the Limited Access Highway or freeway from the nearest tip of the gore or comparable point).

(d) Illumination of such signs is permitted, subject to the general restrictions outlined in N.J.A.C. 16:41C-3.2.

16:41C-8.8 Off-premise advertising signs erected within the protected area of Non-Limited Access State and Federal Aid Primary highways in zoned and unzoned commercial or industrial areas

(a) Off-premise advertising signs erected within the protected area of Non-Limited Access State and Federal Aid Primary highways in zoned and unzoned commercial or industrial areas shall not be located within 500 feet of any of the following which are adjacent to the highways:

1. Scenic areas designated as such by the Commissioner or other State agency authorized to make such designations;

2. Safety rest areas; or

3. Informational sites.

(b) Outside of all incorporated cities and/or thickly settled districts, no two signs shall be spaced less than 300 feet apart. Within the thickly settled districts of incorporated cities, no two signs shall be spaced less than 100 feet apart.

(c) Illumination of these types of signs is permitted, subject to the general restrictions outlined in N.J.A.C. 16:41C-3.2.

16:41C-8.9 Off-premise advertising signs along all other highways

(a) Outside of all incorporated cities and/or thickly settled districts, no two off-premise advertising signs shall be spaced less than 500 feet apart. Within the thickly settled districts of incorporated cities, no two off-premise advertising signs shall be spaced less than 100 feet apart.

(b) An application for a permit to erect an off-premise advertising sign will not be granted if it would be in a defined natural area.

16:41C-8.10 General standards

(a) Official and on-premise signs, as defined in N.J.A.C. 16:41C-5.1, shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.

(b) The minimum distance between structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway and shall apply only to structures located on the same side of the highway.

(c) The provisions contained herein pertaining to size, lighting and spacing of outdoor advertising signs permitted in zoned and unzoned commercial and industrial areas shall apply only to those signs erected subsequent to the effective date of P.L. 1971, c.353, December 15, 1971.

**SUBCHAPTER 9. NONCONFORMING SIGN STRUCTURES**

16:41C-9.1 General provisions

(a) A sign erected and maintained with a valid permit issued before the effective date of the Outdoor Advertising Act, January 17, 1992, which does not comply with the Act or the rules adopted

pursuant to it, may continue to be maintained, repaired and restored under the following criteria:

1. The sign shall be lawfully erected and shall continue to be maintained, in accordance with this chapter.

2. The sign has not been destroyed, abandoned or unused.

3. The sign's size is the same as it was on the effective date of the adoption, revision or amendment of the law or regulation which rendered the sign nonconforming.

4. Its basic structure remains the same as on the effective date of the adoption, revision, or amendment of the law or regulation which rendered the sign nonconforming.

(b) Cutouts and/or extensions may not be added to a nonconforming sign. However, the advertising surface of a nonconforming sign may be reduced (and later rebuilt) to allow for cutouts and/or extensions to be added within its permitted rectangular envelope.

(c) Customary maintenance of a nonconforming sign structure will be permitted in order to maintain the sign's structural integrity, safety and aesthetics. Approval of the Department shall be obtained prior to any maintenance involving more than 25 percent of the sign at one time, except for emergency repairs.

**SUBCHAPTER 10. VIOLATIONS AND PENALTIES**

16:41C-10.1 Notice and hearings

(a) When it shall appear to the Administrator of Outdoor Advertising that any person, municipality, or jurisdictional authority has committed a violation or offense as defined in N.J.A.C. 16:41C-10.3, such person, municipality or authority will be given a written notice of violation or revocation, including a copy of the violation report stating the violation or offense, and within 30 days, such person, municipality or authority shall:

1. Correct the violation, if same is subject to correction or compliance;

2. Remove all signs, spaces, advertisements and advertising structures; or

3. File a protest in writing signed by the protestor or a duly authorized agent, stating the reason for protest.

(b) If requested by the protestor, the Administrator of Outdoor Advertising shall schedule an informal hearing or formal hearing.

(c) An informal hearing shall be scheduled within 30 days of receipt of such request.

(d) If the protestor requests a formal hearing, the Administrator of Outdoor Advertising shall transmit the matter to the Office of Administrative Law within 30 days of receiving the request.

(e) The filing of a protest and request for an informal hearing or formal hearing does not abate any penalties due, nor stay the right of the Administrator of Outdoor Advertising to remove any signs, space, advertisements and advertising structures within 30 days of giving of notice, unless the licensee furnishes security of the kind and in an amount satisfactory to the Administrator of Outdoor Advertising.

16:41C-10.2 Nature of hearings

(a) An informal hearing before the Administrator of Outdoor Advertising may be with or without representation on behalf of the licensee or protestor.

(b) Within 15 days of an informal hearing, the Administrator of Outdoor Advertising shall issue a written decision confirming, modifying or vacating any finding or determination of the Outdoor Advertising Section.

(c) Within 30 days of receipt of the Administrator's written decision, a protestor may appeal the decision by requesting the Administrator of Outdoor Advertising to transmit the matter to the Office of Administrative Law for a formal hearing.

(d) All formal 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.

16:41C-10.3 Causes for revocation of license or permit

(a) A license may be revoked for any of the following reasons:

1. Whenever any statement made in the application for a license or permit is materially false;

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**TRANSPORTATION**

2. Whenever a sign has been erected contrary to the approved application and conditions of the permit;
3. Whenever a sign has been erected without first obtaining a permit;
4. Whenever a licensee has established a history of multiple violations which demonstrate disregard of the outdoor advertising law and rules;
5. Whenever a violation has not been corrected and/or applicable penalties paid;
6. Whenever the existing natural landscape of the right-of-way has been trimmed, altered, or destroyed in any way by the licensee or agent thereof, without the approval of the Department; or
7. Whenever any provision of the Roadside Sign Control and Outdoor Advertising Act is violated.
  - (b) A permit may be revoked for any of the following reasons:
    1. Whenever a statement in the application is materially false;
    2. Whenever a sign has been erected contrary to the approved application and conditions of the permit;
    3. Whenever a sign has been cited for the same violation more than twice;
    4. Whenever any provision of the law or rules contained in this chapter is violated;
    5. Whenever the advertising area used is in excess of the permitted area;
    6. Whenever a permitted structure is not maintained in a safe, sound and good condition;
    7. Whenever a permitted display is being maintained upon public property without the express permission of the governing authority;
    8. Whenever the permitted display is being maintained without the consent of the owner of the property or a duly authorized agent;
    9. Whenever the existing natural landscape of the right-of-way has been trimmed, altered or destroyed in any way by the permittee or agent thereof, without approval of the Department;
    10. Whenever any violation has not been corrected within 30 days of notification; or
    11. Whenever a permittee fails to place his name and the sign's application number on the structure at the location authorized by the permit.

**16:41C-10.4 Removal provisions**

- (a) If, within 30 days of mailing of a notice of revocation of license or permit, or a notice of violation, the violation or offense cited has not been corrected to the satisfaction of the Administrator of Outdoor Advertising, the Commissioner may order the immediate removal of the advertising structure or other object used or to be used for the display of outdoor advertising and may recover from the owner or person, in addition to any other penalties provided by law, the cost of removal or the sum of \$500.00, whichever is greater.
- (b) Whenever the power of removal is exercised, the Commissioner may, without further notice to the owner of the unlawful structure, deputize any person or persons to enter upon private property, without liability, to effect said removal.

**16:41C-10.5 Penalties**

- (a) In addition to all penalties set forth in this chapter, any person who erects, uses or maintains any sign, structure, or other object covered by the Outdoor Advertising Act and this chapter, or authorizes the use of his name in connection therewith, in violation of any of the provisions of the act and these regulations, is liable to a penalty of not less than \$50.00, nor more than \$500.00, per day for each day the sign, structure, or object covered by these regulations remains in violation. However, except for cases where the violation is egregious, the maximum penalties assessed shall not exceed the gross income of the sign.
- (b) A penalty of not less than \$50.00 shall be assessed for all violations. Liability for penalties in excess of \$50.00, and the per diem accumulation thereof provided for in (a) above, shall begin 30 days from the date of service, by the Commissioner on the person in violation, of written Notice of Violation, unless the accumulation of penalties has been stayed, or rolled back, by consent, injunction

- or order, or the violation has been corrected prior to the accumulation of any penalties.
- (c) In the interest of equity, the Commissioner shall have the power, at any time, to abate all or any portion of penalties that may have accrued.
- (d) In determining the amount of any penalty assessed, or to be assessed, for violating any rule contained in this chapter, the Commissioner shall consider, among other facts, the gross income and net profit produced by the sign, structure or object in violation, the egregiousness of the violation, whether the violation was intentional or accidental, whether the violator has a history of repeated violations, and the egregiousness thereof, and such other facts as will assist in arriving at a penalty commensurate with the violation.

**(a)**

**DIVISION OF PROCUREMENT  
BUREAU OF CONSTRUCTION SERVICES  
PROCUREMENT**

**Classification of Prospective Bidders  
Renewal of Classification Rating  
Proposed Amendment: N.J.A.C. 16:44-1.8**

Authorized By: George Warrington, Deputy Commissioner,  
Department of Transportation.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-2.1 and 27:7-35.2 et seq.  
Proposal Number: PRN 1992-110.  
Submit comments by April 1, 1992 to:  
Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
Bureau of Policy and Legislative Analysis  
1035 Parkway Avenue  
CN 600  
Trenton, New Jersey 08625  
(609) 530-2041

The agency proposal follows:

**Summary**

On November 4, 1991, the Department proposed new rules N.J.A.C. 16:44-1.8, Classification of Prospective Bidders, which appeared at 23 N.J.R. 3270(a) and were adopted at 24 N.J.R. 115(c). Further review and analysis by the staff of the Division of Construction and Maintenance Engineering Support indicated that the language as originally proposed in N.J.A.C. 16:44-1.8(c)1 did not totally meet the requirements and general intent of the Department in that the language did not account for renewal of classification ratings for all possible contractor's performance ratings.

As proposed, the text allowed a gap to exist such that the rule did not cover contractors with performance ratings between the average of all contractors who had received performance ratings from the Department within the last four years and five points below the average for all such contractors. The amendment changes the text at N.J.A.C. 16:41-1.8(c)1 to include all contractors, whatever performance rating they may have received.

**Social Impact**

The proposed amendment will clarify the rule and account for renewal of classification ratings for all possible contractor ratings. Contractors classified will benefit by knowing that the Department does account for all possible contractor performance ratings.

**Economic Impact**

The proposed amendment has no economic impact on contractors, and no additional administrative costs are anticipated, except that incurred by the Department for the publication of this rule.

**Regulatory Flexibility Statement**

The proposed amendment does not require any additional recordkeeping reporting or other compliance requirements on small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., although some contractors can be considered small businesses.

**OTHER AGENCIES**

No changes in requirements imposed on contractors or in their initial or annual costs are anticipated as a result of this amendment.

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

16:44-1.8 Renewal of classification ratings

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

(c) Upon renewal of classification, contractors with a NJDOT past performance rating within the previous four years will be evaluated on the basis of their average performance rating and a Project Rating will be established in the following manner:

1. If a contractor's average performance rating [is five points or more below the average performance rating of all contractors that have received a NJDOT performance rating within the previous four years.] **does not meet the criteria of (c)2, 3, or 4 below**, the contractor's average past performance percentage will be multiplied by a dollar level equal to three times the largest successfully completed NJDOT or equivalent contract performed during the prior four years. The contractor's Project Rating will be determined by applying the resulting dollar figure to Table I at N.J.A.C. 16:44-1.4(e).

2.-4. (No change.)

**OTHER AGENCIES**

**(a)**

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

**Summary of Public Comments and Agency Responses to Pre-Proposal**

**Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments**

**N.J.A.C. 19:16**

Authorized By: Public Employment Relations Commission, James W. Mastriani, Chairman.

Authority: N.J.S.A. 34:13A-5.4(e), 34:13A-6(b), 34:13A-11 and 34:13A-14 et seq.

Persons submitting comments prior to the readoption of N.J.A.C. 19:16 (see 23 N.J.R. 2525(a)) advocated changes in the procedures used to administer compulsory interest arbitration of labor disputes in public police and fire departments. Many of the comments addressed issues which could only be affected by legislative action and those making such comments by and large acknowledged the Commission's inability to make such changes. The Commission readopted the rules to prevent their expiration. However, in order to receive additional input on all aspects of the interest arbitration process which rulemaking could affect, a Notice of Pre-proposal was published at 23 N.J.R. 2486(a).

As a result of the comments received in response to the proposed readoption and the pre-proposal, the Commission is implementing internal administrative changes, not requiring rule amendments, which affect arbitrator selection. The Commission has begun to submit computer-generated, seven-member lists of arbitrators to the parties from which they can indicate their preferences pursuant to N.J.A.C. 19:16-5.6(b). The computer method is expected to achieve more random groupings of arbitrators for selection by the parties.

During the period of public comment on the Commission's proposed readoption of N.J.A.C. 19:16, written comments were submitted by:

James M. Davy, Township Manager, Township of West Milford.  
James J. Pascale, legislative liaison to the New Jersey Municipal Managers Association.

David W. Carew, business administrator, Township of Maplewood.  
M. Joan Foster, Esq., of Grotta, Glassman and Hoffman.  
The Morris County Board of Chosen Freeholders.  
The Morris County Park Commission.

Stephen J. Cuccio, Business Administrator, Township of Wayne.  
During the comment period provided after the pre-proposal was published in the New Jersey Register, the Commission received written comments from:

John K. D'Auria, Personnel Director of the City of Newark.  
S.C. Iannaccone, Township Committeeman, Township of Hanover.  
John Dean DeRienzo, Mayor, Borough of Haworth.

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David A. Wallace, Esq., of Stiles and Wallace.  
Joseph S. Rompala, Borough Administrator, Borough of Hillsdale.  
Bud Heymann, Labor Chairman, New Jersey State Firemen's Mutual Benevolent Association.

**Summary of Public Comments and Agency Response:**

The New Jersey State Firemen's Mutual Benevolent Association was the only public employee organization submitting a comment. All other comments were from public employers, municipal officials and attorneys who serve as labor relations counsel to public employers. By letter dated June 7, 1991, M. Joan Foster, Esq., requested that the Commission hold a public hearing in connection with its readoption of N.J.A.C. 19:16. Because holding a public hearing would have prevented re-adoption of the rules before their expiration date, and because N.J.A.C. 1:30-3.3A did not mandate that a public hearing be held, the Commission did not grant that request.

COMMENT: All those submitting comments except the FMBA suggested changes in the way arbitrators are selected and assigned.

Mr. Cuccio asserted that arbitrators' decisions "have been predominantly in favor of PBA (Policemen's Benevolent Association) Bargaining Units." He contends that because PBA attorneys represent more than one local, those attorneys tend to select arbitrators who will rule in favor of the PBA. He suggests the Commission simply assign arbitrators by random selection.

Mr. Davy asserts that the present selection methods favor labor. He contends that the system allows arbitrators to be unduly influenced by labor lawyers with a large clientele, because the arbitrators' ability to obtain future work may be affected by how they are viewed by such lawyers. He suggests that N.J.A.C. 19:16-5.6 be amended to provide for the automatic appointment of arbitrators in the same way that mediators are assigned to negotiations impasses. Mr. Pascale adopted Mr. Davy's comments.

Borough Administrator Rompala also asserted that arbitrators can be influenced by lawyers who represent many police unions. He favors direct appointment of arbitrators.

Attorney Wallace asserts that under the current system arbitrators are affected by the knowledge that their ability to earn a living is dependent on their acceptability to the few practitioners who represent an overwhelming number of clients. Mr. Wallace suggests that this problem can be cured by no longer allowing the parties to strike the names of arbitrators who are unacceptable to them.

Mayor DeRienzo made comments and suggestions substantially similar to those of Attorney Wallace.

Mr. Carew suggested that assignment of arbitrators be by rotation with the proviso that an arbitrator not be assigned to the same jurisdiction more than once in a five year period.

The Morris County Board of Chosen Freeholders and the Morris County Park Commission also made comments regarding arbitrators being influenced by labor attorneys. They also suggested that the selection of arbitrators be by rotation. They assert that the Commission has sufficient regulatory flexibility under N.J.S.A. 34:13A-16(e) to alter its current method of selection.

Attorney Foster also favors assignment of arbitrators by rotation "to eliminate any pressures placed upon arbitrators to find in favor of either party."

Committeeman Iannaccone also suggests that arbitrators be appointed to disputes by rotation.

RESPONSE: The Commission is implementing internal administrative changes not requiring rule amendments. These changes should achieve more random groupings of arbitrators.

COMMENT: Several comments addressed the composition and training of the Commission's special panel of interest arbitrators.

The Morris County Board of Chosen Freeholders and the Morris County Park Commission suggested that the "special panel" be enlarged.

Mr. D'Auria asserted that expanding the panel of interest arbitrators would broaden its "collective objectivity."

Attorney Foster suggested that public employers and public employee unions have a voice in determining the special panel of arbitrators. She also suggested that public employers be allowed to participate in the training of arbitrators and that training include guidelines concerning the legal scope of negotiations.

Township Committeeman Iannaccone suggests that a screening committee made up of labor government representatives be used to insure that the panel of arbitrators is composed of an equal number of "fiscal liberals" and "fiscal conservatives."

**PROPOSALS****Interested Persons see Inside Front Cover****OTHER AGENCIES**

**RESPONSE:** The Commission is a tripartite body composed of two management representatives, two labor representatives and three public representatives. Accordingly it acts with input from both labor and management. The Commission screens arbitrators for initial appointment to and renewal of their three year terms in accordance with N.J.S.A. 34:13A-16(e). The Commission conducts annual training sessions for its interest arbitrators which include presentations on municipal finance and all recent decisions affecting interest arbitration.

**COMMENT:** Mr. Carew suggested that interest arbitrators be grouped in panels of three to work in teams hearing and deciding the cases and that the panels be composed of full-time Commission employees.

**RESPONSE:** The cost of these suggestions would be prohibitive and could lead to extensive scheduling delays. However, N.J.A.C. 19:16-5.2(a)2 allows parties to a particular dispute to jointly request the Director to approve a terminal procedure which incorporates Mr. Carew's suggestion. The parties may also agree to a panel of arbitrators.

**COMMENT:** Some comments assert that interest arbitrators do not properly apply the criteria listed in N.J.A.C. 19:16-5.9 and N.J.S.A. 34:13A-16(g).

The Morris County Board of Chosen Freeholders and the Morris County Park Commission assert that these criteria are frequently overlooked by arbitrators or treated superficially:

- g(1) the interests and welfare of the public
- g(5) the lawful authority of the employer
- g(6) the financial impact on the governing unit, its residents and taxpayers.

These bodies recommend that in view of mandated CAPs on local spending increases and other limitations on local government spending, the regulations be amended to stress the importance of ability-to-pay factors and to require a specific reference to the applicable CAP annual index rate in every opinion and award together with specific and cogent reasons for the relationship between the award and the index.

Attorney Foster asserts that "arbitrators with few exceptions give short shrift to a municipality's ability to pay, and, instead, give 99 percent of weight to 'comparability', which they define as the percentage increases given to other municipal police and fire units in the respective county, regardless of differences in size, ability to pay, circumstances, wages given other employee bargaining units, the state of the economy, the tax burden of residents, and the public interest."

Borough Administrator Rompala also asserted that arbitrators place too much weight on comparisons of settlements in the police units in neighboring communities and not enough attention to the settlements in the civilian bargaining units.

Mayor DeRienzo similarly believes that awards are too heavily based upon the percentage increases granted in neighboring communities. He suggests that N.J.A.C. 19:16-5.9 be amended to "provide that each factor be accorded not only due weight, but weight within a range," and that each award "should specify in detail what weight has been accorded to each of the factors . . ." The Mayor concludes:

By providing a broad range, however, whereby a minimum and a maximum is set, the arbitrator will, in fact, be forced to consciously consider each criterion and describe in writing the reason that criterion was given greater or lesser consideration in a particular case.

Township Committeeman Iannaccone asserts that in many municipalities officials will agree to inflated salary increases to enhance their chances for reelection. Accordingly he states that "comparability" is not a reliable factor in determining what a particular municipality's employees should be paid. He suggests that consideration should instead be given to whether the municipality has historically ranked among the highest or lowest in salaries and whether its current offer would maintain or alter that position.

Mr. D'Auria suggests that the parties to an interest arbitration be required to explain in their submissions to the arbitrator how the CAP law affects their positions and that the arbitrator should be required to address this issue in the award.

**RESPONSE:** Modifications to the statutory criteria or the relative weight given to one or more of the criteria requires legislative action. Regulations cannot change the relative importance of the statutory criteria to one another. N.J.S.A. 34:13A-16(g) does not stress the importance of one criterion above all others but rather directs arbitrators to give "due weight to those factors listed below that are judged relevant for the resolution of the specific dispute." This language allows an arbitrator to place more importance on ability to pay than comparability

if the former factor is more relevant to the resolution of a particular dispute than the latter.

Regarding the suggestion that the rule be amended to require recitation of specific ability to pay limitations in awards, current practice, which is required by both the Commission and the Supreme Court, is that arbitration awards must specifically discuss the enumerated statutory criteria. Arbitration awards which fail to do so can be and have been overturned when challenged in court. See *N.J. State PBA, Loc. 29 v. Town of Irvington*, 80 N.J. 271, 293 (1979). Awards commonly discuss the CAP law because N.J.S.A. 34:13A-16(g) requires that the arbitrator consider "(1) The interests and welfare of the public, (5) The lawful authority of the employer," and "(6) The financial impact on the governing unit, its residents and taxpayers." The Commission believes that no further rulemaking is necessary regarding the content of an award. Awards which any party believes do not comply with the statute are reviewable in Superior Court.

**COMMENT:** The Morris County Board of Chosen Freeholders and the Morris County Park Commission assert that time limits on the commencement of negotiations and submission of required filings, which are geared to public employer budget submission dates, are not being observed. They suggest that the rules setting forth these time limits be amended to include sanctions for noncompliance.

Borough Administrator Rompala also observed that the time limits are being flouted and asserted that it has taken longer to reach an agreement under the interest arbitration law than it did before.

**RESPONSE:** The vast majority of the parties do follow the time limits regarding commencement of negotiations and submission of required filings. There is no need to modify the rules in this area.

**COMMENT:** Attorney Foster and Borough Administrator Rompala addressed the perceived impact of interest arbitration on the use of other impasse resolution procedures and on the ability of the parties to engage in collective negotiations.

Rompala comments that a union will announce its intent to use arbitration after only one or two negotiations sessions.

Foster asserts that the current system of interest arbitration does not allow sufficient opportunity for effective mediation and that the current system favors litigation and arbitration as opposed to settlement. She suggests that increased use of PERC mediators prior to arbitration would produce more settlements.

Foster suggests that allowing an arbitrator to act as a mediator compromises the position of a party which discloses its best offer to an arbitrator acting as a mediator. If mediation fails, Foster asserts, the arbitrator will not take seriously any offer other than the one disclosed during mediation.

**RESPONSE:** The agency has appointed mediators prior to arbitration upon request. The interest arbitrator also has the authority to assist the parties reach a voluntary settlement. This authority has been successfully used in the majority of negotiations disputes. Voluntary resolution of negotiations disputes is a major goal of the Act. The statute contemplates that arbitrators can and should act as mediators. See N.J.S.A. 34:13A-16(f)(3). The Supreme Court has stated that a purpose of the interest arbitration law is to allow parties to further narrow their differences even after interest arbitration hearings have begun. See *Newark Firemen's Mutual Benev. Ass'n, Loc. No. 4 v. Newark*, 90 N.J. 44, 54 (1982).

**COMMENT:** Mr. D'Auria suggested that N.J.A.C. 19:16-5.7(e) be amended to provide that when the parties shall fail to agree on a terminal procedure, conventional arbitration shall be used.

**RESPONSE:** N.J.S.A. 34:13A-16(d) requires that final offer arbitration be used if the parties do not agree on a terminal procedure. A change in the statute would be necessary to implement this suggestion.

**COMMENT:** Township Committeeman Iannaccone suggests that the State-mandated cap on municipal budgets be applied to salaries.

**RESPONSE:** The relationship of the interest arbitration law and the CAP law was clarified by the Supreme Court in *City of Atlantic City v. Laezza*, 80 N.J. 255 (1979) and *N.J. State PBA, Loc. 29 v. Town of Irvington*, 80 N.J. 271 (1979). These decisions do not require that the percentage increase in municipal salaries be limited by the maximum percentage increase in the overall budget as controlled by the cap. See *Irvington* at 281. A change in the statute would be necessary to implement Committeeman Iannaccone's suggestion.

**COMMENT:** Township Committeeman Iannaccone suggests that mediation be used to resolve negotiations impasses and that the system of arbitration should be abolished.

**RESPONSE:** This proposal is beyond the authority of the Commission. However, while the interest arbitration law has been in effect,

negotiations or mediation has resolved the vast majority of contract impasses.

COMMENT: Mr. Heymann of the FMBA praised the present interest arbitration law and the manner in which the Commission has administered it. He suggested that arbitrators could improve the process by writing awards which are "crystal clear in its meaning and intent and address all the criteria."

RESPONSE: Given the nature of the comment, no agency response is required.

(a)

**CASINO CONTROL COMMISSION**

**Gaming Equipment**

**Slot Machine Areas; Density; Arrangement; Floor Plans; Slot Stools**

**Proposed Amendment: N.J.A.C. 19:46-1.27**

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

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

Proposal Number: PRN 1992-92.

Submit comments by April 1, 1992 to:

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

The agency proposal follows:

**Summary**

The proposed amendments to N.J.A.C. 19:46-1.27 implement recent legislative amendments (P.L. 1991, c.182) to the Casino Control Act, N.J.S.A. 5:12-1 et seq., which increased the amount of casino floor space which a casino licensee may dedicate to slot machines. Pursuant to the legislative amendments, slot machines and the walkways between them may now occupy a maximum of 45 percent of the first 50,000 square feet of casino floor space, and up to 32 percent of additional casino floor space, in the case of a casino hotel with fewer than 1,200 qualifying sleeping units, or up to 45 percent of such additional casino floor space, in the case of a casino hotel with at least 1,200 qualifying sleeping units. N.J.S.A. 5:12-100(h).

The Casino Control Commission, by regulation, has required that a casino licensee devote 10 square feet of casino floor space to each slot machine. The use of this figure to determine the number of slot machines which a casino licensee may install and operate on its casino floor in conjunction with the subsection 100(h) calculation, provides an administratively convenient method for determining the maximum number of slot machines that can be located in the casino. The present proposal retains this long-standing interpretation of the statute and regulations.

Subsection 100(h) of the Act also directs the Commission, however, to promulgate rules determining the permissible density of slot machines, so as to "create and maintain a gracious playing environment in the casino and to avoid deception or frequent distraction to players at gaming tables." The proposed amendments acknowledge for the first time that, in order to provide a secure, comfortable and gracious playing environment, the amount of casino floor space which is dedicated to slot machines must also include a reasonable amount of circulation space. The proposed amendments allow casino floor space in an amount equal to 150 percent of the casino floor space allocated to slot machines and the walkways between them by N.J.S.A. 5:12-100(h) to be used for slot machines, walkways and circulation and slot support space. Any casino floor space not occupied by slot machines, walkways and slot circulation and support space is to be allocated to table games and table game circulation and support areas.

For purposes of clarity and consistency, the proposed amendment also reorganizes and recodifies many of the current design requirements, including rules regarding placement of slot stools, slot aisle dimensions, and submission of floors plans. The language of these provisions has been modified so as to clarify and simplify the implementation process.

**Social Impact**

The proposed amendments enable the Commission to fulfill its statutory mandate to regulate slot machine density so as to "create and maintain a gracious playing environment in the casino." N.J.S.A. 5:12-100(h). The revised rules will benefit both the casino industry and gaming patrons by recognizing that, in order to ensure a secure and comfortable environment, the amount of casino floor space allocated to slot machines must include reasonable circulation space.

**Economic Impact**

The proposed amendment is not anticipated to have any significant economic impact. The proposed amendments merely set forth the method of calculation that will be used to determine compliance with subsection 100(h) of the Casino Control Act.

**Regulatory Flexibility Statement**

This proposed amendment will only affect the operations of New Jersey casino licensees, none of which qualifies 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; deletions indicated in brackets [thus]).

19:46-1.27 [Aisles, grating; electrical outlets; denominations] **Slot machine areas; density; [floor space;] arrangement; floor plans; slot stools**

(a) **Each casino licensee shall be permitted to install and operate one slot machine for every 10 square feet of its casino floor space which may be allocated to slot machines and the walkways between them pursuant to subsection 100(h) of the Act; provided, however, that any casino licensed as of June 29, 1991 shall request Commission approval for the installation of additional slot machines in accordance with the maximum annual increments set forth in subsection 100(h) of the Act.**

(b) **Slot machines used in the conduct of gaming shall be located and arranged in such a manner so as to:**

1. **Promote optimum security for the casino operation;**
2. **Avoid deception or frequent distraction to players at gaming tables;**
3. **Maximize the comfort of patrons; and**
4. **Create and maintain a gracious playing environment in the casino.**

(c) **Each casino licensee shall comply with the following design requirements in arranging its floor plan:**

[(a)]1. [Unless otherwise approved by the Commission, the] **The slot aisle [space] or walkway between any two rows of slot machines facing each other shall be at least six feet in width. A slot aisle or walkway shall be defined as the space between a row of slot machines and any obstruction, including other slot machines, immediately opposite that row;**

2. **Whenever a row of slot machines without slot stools faces an obstruction other than the front of another slot machine, there shall be a walkway between the slot machines and the obstruction of at least three feet in width;**

[(b)]3. **Whenever one row of slot machines in a casino is lined up back to back with another row of machines, the two rows shall be separated by a metal [or other] grating or other type of barrier, as approved by the Commission, that will prohibit a person from placing his or her hand between [said] the rows of machines[.]; and**

[(c) **No casino licensee shall permit any exposed electrical outlet to exist in the slot machine area of the casino.**

(d) **Unless otherwise approved by the Commission, no casino licensee shall be permitted to use in the conduct of gaming any number of slot machines which creates a density of greater than one machine for every 10 square feet of the floor space of its casino authorized by the Commission to be occupied by slot machines.**

(e) **Slot machines, including the walkways between them, may not occupy more than 30 percent of the first 50,000 square feet of floor space of a casino larger than 50,000 square feet.**

(f) **Slot machines used in the conduct of gaming shall be arranged in such a manner as to promote optimum security for the casino operation and maximum comfort for the patrons and as to create and maintain a gracious playing environment in the casino and avoid deception or frequent distraction to players at gaming tables.]**

**PROPOSALS**

Interested Persons see Inside Front Cover

**ENVIRONMENTAL PROTECTION**

4. The placement of slot stools on the casino floor shall comply with the following requirements:

- i. Slot stools shall only be located on one side of a slot aisle between two rows of slot machines that measures less than seven feet in width;
- ii. Slot stools shall only be located in every other slot aisle, unless the width of each slot aisle is seven feet or greater;
- iii. Slot stools shall only be located in slot aisles where there is a distance of at least four feet between the back of each slot stool and the slot machine or other obstruction immediately opposite that stool; and
- iv. Slot stools shall only be of the spindle-type and must be securely fastened to the floor or the slot base.

(d) Each casino licensee may, in furtherance of the objectives identified in (b) above, allocate additional casino floor space to provide adequate slot machine support space and circulation space in excess of the floor space authorized for slot machines and the walkways between them pursuant to subsection 100(h) of the Act. For the purposes of this section, "slot machine support space and circulation space" shall include slot booths; change booths; change machines; slot carousels; walls, columns or other architectural structures, and any other structures or areas which are reasonably related to, and contained within casino floor space which is dedicated to, the use of slot machines.

(e) The total amount of casino floor space that a casino licensee may utilize for slot machine support space and circulation space shall not exceed 50 percent of the maximum allowable space that may be allocated to slot machines and the walkways between them pursuant to subsection 100(h) of the Act. The total of these two areas shall be known as the "Slot Area." An example of the Slot Area calculation is as follows:

For a casino hotel with less than 1,200 qualifying sleeping units and operating an authorized casino room of 60,000 square feet, there may be a maximum of 2,570 slot machines located within a total Slot Area that does not exceed 38,550 square feet, computed as follows:

(calculation pursuant to subsection 100(h) of the Act)	45 percent of 50,000 = 22,500
	+ 32 percent of 10,000 = 3,200
	25,700 square feet
(calculation pursuant to this subsection)	+ 50 percent of 25,700 square feet = 12,850 square feet
	Total Permissible Slot Area 38,550 square feet
(calculation pursuant to subsection (a) hereof)	25,700 divided by 10 square feet = Maximum Number of Slot Machines Permitted 2,570

(f) The total amount of casino floor space dedicated to the Slot Area, which includes slot machines, the walkways between them and slot support and circulation space, shall be measured by identifying the perimeter of each such area on the casino floor plan, with the exception of certain slot aisle or walkway areas located between a row of slot machines and a wall, column or other architectural structure, as approved by the Commission.

(g) Any casino floor space which may not be used for slot machines, the walkways between them or slot support or circulation space pursuant to (f) above shall be dedicated to table games and table game support and circulation space.

[(g) In requesting Commission approval for its proposed arrangement of slot machines, each] (h) Each casino licensee [and] or applicant [for a casino license] shall submit to the Commission a detailed floor plan, drawn to scale, depicting its proposed arrangement of slot machines [and indicating thereon], slot stools and table games. Such plan shall indicate all relevant floor space square footage[,]; density information[, and]; and aisle dimensions, including the dimensions of aisles between rows of slot machines facing each other[,]; of distances in front of slot machines not directly facing another slot machine, and of distances between slot stools and other obstructions or slot machines. [and of walkways between rows of slot machines. It shall be the obligation of each] Each casino licensee

[to] shall maintain on file with the Commission a current [such] floor plan certified as to its accuracy.

(i) Each casino licensee or applicant seeking approval for a proposed arrangement of slot machines shall submit to the Commission a detailed floorplan, drawn to scale, depicting its proposed arrangement of slot machines, slot stools and table games and shaded to include all areas covered by subsection (f) above. Such plans or attachments thereto shall indicate the amount of casino floor space by slot zone, or other subdivision of the total area included in the calculation required by (f) above, as approved by the Commission, and the total of such areas. Each casino licensee shall maintain on file with the Commission a current shaded floorplan certified as to its accuracy.

[(h) In requesting Commission approval for the installation of slot stools, each casino licensee shall submit to the Commission and the Division an egress study which shall consist of a detailed floor plan depicting:

- 1. The maximum number of persons that can be reasonably expected to occupy all locations of the casino floor, including the area immediately surrounding all table games and slot machines;
- 2. The logical flow of traffic through all major egress aisles in emergency circumstances; and
- 3. The maximum number of people that can pass, travel and/or exit through various points along the major egress aisles.

(i) Prior to the installation of slot stools, the casino licensee shall submit to the Commission for approval a detailed floor plan which depicts, to scale, the proposed location of each slot stool and the remaining aisle space.

(j) The placement of slot stools on the casino floor shall comply with the following requirements:

- 1. Slot stools shall be located on only one side of a slot aisle that measures less than seven feet in width. A slot aisle shall be defined as the space between a row of slot machines and any obstructions immediately opposite that row;
- 2. Whenever slot stools are placed in slot aisles, a minimum of four feet clearance shall exist between the back of each slot stool and the slot machine or other obstructions immediately opposite that stool;
- 3. Slot stools shall only be located in every other slot aisle, unless the aisle width between facing machines is seven feet or greater;
- 4. Slot stools shall only be of the spindle-type and must be securely fastened to the floor or the slot base; and
- 5. Slot stools shall not be permitted to be located in major egress aisles unless the casino licensee clearly demonstrates that the placement of the stools in these aisles will not interfere with emergency egress capabilities from the casino floor.]

**ENVIRONMENTAL PROTECTION AND ENERGY**

(a)

**WATER SUPPLY ELEMENT**

**Water Supply Bond Loan Programs**

**Proposed Readoption with Amendments: N.J.A.C. 7:1A**

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

Authority: Water Supply Bond Act of 1981, P.L. 1981, c.261, as amended by P.L. 1983, c.355; N.J.S.A. 13:1B-3; 13:1D-9; 40A:11-1 et seq.; 58:1A-1 et seq.; N.J.S.A. 58:12A-1 et seq.; N.J.S.A. 58:12A-22 through 58:12A-25; and N.J.A.C. 5:34.

DEPE Docket Number: 04-92-01.  
Proposal Number: PRN 1992-107.

**ENVIRONMENTAL PROTECTION****PROPOSALS**

A public hearing concerning the proposed readoption with amendments will be held as follows:

Wednesday, March 18, 1992 at 1:00 P.M.  
Large Conference Room  
1333 Brunswick Avenue  
Trenton, New Jersey

Submit written comments by April 1, 1992 to:  
Samuel A. Wolfe, Esq.  
Administrative Practice Officer  
Department of Environmental Protection and Energy  
CN 402  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Pursuant to the requirements of Executive Order No. 66(1978), N.J.A.C. 7:1A is set to expire on June 5, 1992. As required by the Executive Order, the Department of Environmental Protection and Energy (Department) has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. Accordingly, the Department proposes to readopt this chapter with several amendments intended to clarify and update the rules.

The Water Supply Bond Act of 1981 (Bond Act), P.L. 1981, c.261, as amended by P.L. 1983, c.355, authorizes the issuance of \$350 million in State bonds to fund State or local projects for (1) the rehabilitation or repair of antiquated, obsolete, damaged or inadequately operating publicly owned water supply facilities, (2) the interconnection of unconnected or inadequately connected water supply systems, and (3) the planning, design, acquisition and construction of State water supply facilities, all as recommended by the New Jersey Statewide Water Supply Plan. In 1983, the Bond Act was amended to authorize the use of water supply bond funds for local projects to plan, design and construct water supply facilities to address contamination problems as identified by the Department. See P.L. 1983, c.355.

The Water Supply Replacement Trust Act (Trust Act), P.L. 1988, c.106 (codified at N.J.S.A. 58:12A-22 through 58:12A-25) created the Water Supply Replacement Trust Fund (Trust Fund) to be used in part to provide loans to municipalities or municipally-owned public water systems (as defined at N.J.S.A. 58:12A-3) for the purpose of providing a permanent alternate water supply to persons whose principal source of potable water is contaminated or is threatened with contamination by hazardous substances as identified by the Department. In 1989, the Trust Act was amended to authorize the use of the Trust Fund for loans to privately-owned public water supply systems, and in situations where a principal source of potable water fails to meet the State primary drinking water standards as established by the Department by regulation. See P.L. 1989, c.311.

The water supply loan program rules at N.J.A.C. 7:1A establish consolidated loan application procedures, minimum standards of conduct for borrowers, and performance standards for work funded under the water supply loan programs. A summary of the text of each subchapter and the significant sections in N.J.A.C. 7:1A follows:

Subchapter 1, General Provisions, contains the general provisions of these rules, including their scope, construction, purpose, and severability, and the practice to be followed where the rules do not govern. In particular, N.J.A.C. 7:1A-1.4 requires the Commissioner to submit an annual budget request pursuant to the Bond Act and to plan for the expenditure of water supply bond funds in each fiscal year.

Subchapter 2, Loan Procedures and Requirements, sets forth the detailed procedures and requirements applicable to obtaining a loan under the Bond Act or the Trust Act. Among other provisions, this subchapter prescribes mandatory preapplication and application procedures; procedures for the Department's determination of loan amount and eligible project costs; procedures for the disposition of unused loan funds; a requirement for recycling of loan repayments to the Bond Fund and the Trust Fund; a prohibition against fraud and other unlawful or corrupt practices; and debarment guidelines. This subchapter also specifies standard loan conditions applicable to all loans issued under this chapter; conditions for release of State funds to borrowers; rights and remedies for noncompliance; conditions under which funds may be withheld by the State; and procedures and standards for: project changes and loan modifications, administrative loan changes, the issuance of stop work orders, amendment and termination of loans, and appeals and administrative hearings.

Subchapter 3, Rehabilitation, sets forth the eligibility criteria and priority point ranking system pursuant to which an applicant may obtain a loan under the Bond Act for the rehabilitation of an antiquated, obsolete, damaged or inadequately operating water supply transmission facility.

Subchapter 4, Interconnection, sets forth the eligibility criteria and priority point ranking system pursuant to which an applicant may obtain a loan under the Bond Act for the interconnection of unconnected or inadequately connected water supply systems.

Subchapter 5, Water Supply Replacement Projects (Type A Loans and Type B Loans), sets forth the eligibility criteria and priority point ranking system pursuant to which a local unit which has received notification from the Department that ground water supply contamination problems exist within its jurisdiction adversely affecting the potable water service of at least three dwelling units, may obtain a loan under the Bond Act for a water supply project designed to relieve the impact of the contaminated groundwater upon the existing water supply. This type of water supply replacement loan is designated under these rules as a Type A loan. This subchapter also sets forth the eligibility criteria and priority point ranking system pursuant to which a municipality or municipally-owned public water system may obtain a loan under the Trust Act for a water supply project designed to address contamination problems. This type of water supply replacement loan is designated under these rules as a Type B loan.

Subchapter 6, Emergency Interim Rehabilitation Loan Procedures, prescribes detailed procedures and requirements pursuant to which a publicly owned water supply facility may obtain an emergency interim rehabilitation loan under the Bond Act for the purpose of interim rehabilitation and repair of critical water supply service disruptions.

Subchapter 7, Water Supply Replacement Projects (Type B Loans or Type C Loans), governs the disposition of the Trust Fund, the amount and terms of Type B and Type C water supply replacement loans, eligibility criteria for Type B water supply replacement loans, and the priority point ranking system for Type B and Type C water supply replacement loans. Under this subchapter, a water supply replacement loan for a water supply project to address contamination problems may be awarded from the Trust Fund to a municipality meeting special criteria at N.J.A.C. 7:1A-7.4(b). See also N.J.S.A. 58:12A-25. This type of water supply replacement loan is designated under these rules as a Type C loan.

As noted, the Bond Act requires the Department to fund projects in accordance with the recommendations of the New Jersey Statewide Water Supply Plan (Plan). The Plan currently recommends appropriation levels of \$4100 million in rehabilitation funding, \$15 million in interconnection funding, and \$25 million in replacement funding as necessary to meet the State's water supply goals.

To date, the Legislature has appropriated to the Department \$75 million in Bond Act funds for water supply rehabilitation loans. The Department has executed 75 water supply rehabilitation loan agreements committing \$49 million of the \$75 million in appropriations, and has applications pending for the balance of the \$75 million in appropriations (less administrative expenditures). The Legislature has also recently approved, consistent with the recommendations of the Plan, an appropriation to the Department of an additional \$25 million in Bond Act funds for water supply rehabilitation loans.

The Legislature has also appropriated to the Department \$8 million in Bond Act funds for water supply interconnection loans. Although the Department has not yet executed any water supply interconnection loan agreements, it has notified one applicant of its intent to award a \$275,000 interconnection loan, and has applications pending for an additional \$2,725,000 in interconnection funding. Since the original appropriation for this category of projects has not yet been committed, there are no additional appropriation bills pending at this time for interconnection funding.

To date, the Legislature has also appropriated to the Department \$20 million under the Bond Act and \$2 million from other sources for Type A water supply replacement loans. The Department has executed 12 water supply replacement loan agreements committing \$7.2 of this \$22 million in appropriations, and has issued notice of its intent to award an additional \$12.7 million in Type A water supply replacement loans. The Legislature has also recently approved, consistent with the recommendations of the Plan, an appropriation to the Department of an additional \$5 million in Bond Act funds for water supply replacement loans.

The Department has also already executed one Type B and one Type C water supply replacement loan to a municipality meeting the N.J.A.C. 7:1A-7.4 criteria, for a total commitment of \$11 million in funding under the Trust Act. The status of further funding of Type B and Type C water supply replacement loans is currently uncertain because of reappropriation by the Legislature of the balance of the Trust's \$60 million funding.

Thus, the N.J.A.C. 7:1A rules continue to be necessary to enable the Department to administer past loans over the length of the loan repayment period, and to process and administer pending loan agreements and loan agreements expected to be executed under future appropriations.

The Department is proposing a number of minor amendments to correct, clarify and update these rules, as follows:

1. The word "Bond" has been deleted from the title of this chapter since these rules also apply to non-bond loans awarded under the Trust Act.

2. Changes have been made throughout this chapter to reflect the renaming of part of the former Board of Public Utilities as the Board of Regulatory Commissioners, the consolidation of part of the former Board of Public Utilities with the former Department of Environmental Protection to produce the Department of Environmental Protection and Energy, and organizational changes within the Department of Environmental Protection and Energy.

3. N.J.A.C. 7:1A-1.1, 1.2 and the definition of "Act" at N.J.A.C. 7:1A-2.2 have been amended to correctly reference the 1983 Bond Act amendments as P.L. 1983, c.355; the former citation, P.L. 1983, c.499, was to a 1983 appropriation under the Bond Act. These three sections have also been amended to update the references to P.L. 1988, c.106, which was codified at N.J.S.A. 58:12A-22 through 58:12A-25 and then amended by P.L. 1989, c.311.

4. Changes have been made throughout this chapter in order to implement P.L. 1989, c.311, which amended the Trust Act to authorize the use of the Trust Fund for loans to privately-owned public water systems. In particular, the definition of "applicant" at N.J.A.C. 7:1A-2.2 has been expanded to include all possible types of bond and non-bond loan applicants, consistent with the use of the term "applicant" in the general provisions of these rules, N.J.A.C. 7:1A-2 and 7:1A-5. Likewise, the term "local unit" has been substituted for "applicant" throughout N.J.A.C. 7:1A-3 and 7:1A-4 in order to clarify that these subchapters only apply to potential local unit bond loan recipients. The statutory definition of "public water system" from N.J.S.A. 58:12A-3 has also been incorporated into these rules at N.J.A.C. 7:1A-2.2.

5. The definition of "construct" or "construction" at N.J.A.C. 7:1A-2.2, 2.13(c) and 2.13(f)3i have been amended to either add or correct citations the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the Local Public Contracts rules, N.J.A.C. 5:34.

6. A reference to the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., particularly 58:12A-6, has been added to the definition of "contamination problems" at N.J.A.C. 7:1A-2.2 to maintain consistency with Section 1 of P.L. 1989, c.311 (N.J.S.A. 58:12A-22).

7. The term "resolve" has been changed to "address" in the definitions of "eligible project scope" and "project" at N.J.A.C. 7:1A-2.2 because the term "address" is used throughout the remainder of this chapter to express the same intent.

8. The definition of "eligible project scope" at N.J.A.C. 7:1A-2.2 has been amended to clarify that an applicant's project must conform to one of the criteria listed in this definition in order to be funded under N.J.A.C. 7:1A.

9. References to interim action levels for hazardous contaminants in drinking water have been deleted from the definition of "residences with contaminated wells" at N.J.A.C. 7:1A-2.2 and from N.J.A.C. 7:1A-7.4(b)7; these classifications no longer exist.

10. The application closing dates listed at N.J.A.C. 7:1A-2.4(d) have been adjusted to the closing dates currently in use by the Department. In addition, a new provision is proposed at N.J.A.C. 7:1A-2.4(d)4 in order to allow the Department, after public notice, to suspend the application period under any of these loan programs if it determines that funds are not sufficient to award any loans in a particular category in a given fiscal year. This provision is intended to save applicants the time and expense of preparing applications in years when the Department is not able to fund projects due to a shortfall in appropriations.

11. N.J.A.C. 7:1A-2.10(b) has been modified to eliminate the Department's ability to increase the loan award amount for the costs of subsequent repair, replacement or rebuilding of funded interconnections. The

Department has determined that such circumstances do not justify amending executed loan agreements.

12. The list of ineligible project costs at N.J.A.C. 7:1A-2.13(b)4 has been amended to eliminate the Department's ability to approve funding for salaries, equipment, and other force account expenses. The Department's past experience with loan recipients utilizing their own work force to perform work required under the loan has proven unsuccessful due to poor recordkeeping by the loan recipients.

13. The loan condition at N.J.A.C. 7:1A-2.17(a)3 concerning maintenance of financial records has been amended to require compliance with accounting principles required by New Jersey law instead of "generally accepted" accounting principles. This change is consistent with the terminology use in the Department's water supply loan agreements and in other loan programs administered by the Department.

14. The age categories accompanying the priority point values for water supply rehabilitation loans at N.J.A.C. 7:1A-3.2(f) have been updated by 10 years because 10 years have elapsed since the passage of the 1981 Bond Act and the original formulation of these categories. A new Table 1 is being proposed to incorporate these date changes and to correct a number of errors in the current table.

15. The maximum loan amounts allowed by N.J.A.C. 7:1A-4.2(e) for subcategory of interconnection loan projects have been increased on the basis of current Department estimates of construction and administrative costs.

16. N.J.A.C. 7:1A-4.2(f)1 and (f)2 have been amended to clarify that the system capacities described in these sections are minimum criteria.

17. The denominator in the priority point ranking system ratio at N.J.A.C. 7:1A-4.2(h)5 has been decreased from 500,000 to 100,000 to allow for reasonably higher priority points for large systems seeking water supply interconnection loans. This change corrects a deficiency in the calculation of priority points particular to large systems which previously did not allow large systems to qualify for the full loan amount allowed by these rules. This change has no effect on the calculation of priority points for other systems.

18. N.J.A.C. 7:1A-5.1(b) has been modified to require the applicant, and not the Department, to hold a public meeting on a water supply loan application. This change is not expected to be overly burdensome since applicants normally conduct public meetings when undertaking system improvement projects that require increases to customers' water bills. The Department feels that the public should be made aware of information pertinent to the loan application and believes that holding the public meeting should be the responsibility of the party seeking funding from the Department.

19. The denominators in the priority point ranking system ratios for severity at N.J.A.C. 7:1A-5.2(g)1 and affected services at N.J.A.C. 7:1A-5.2(g)2 have been altered to account for additional sources of water supply, that is, wells, surface water, and bulk purchase interconnections, that may be components of an applicant's water supply system. This change is expected to result in lower priority points for applicants who happen to have sources of water supply other than the contaminated wells for which loan funds are requested. This is intended to benefit applicants whose water supply system consists entirely of a contaminated well system, consistent with the intent of the Bond Act and the Trust Act.

20. The emergency loan application procedure at N.J.A.C. 7:1A-6.3(b) has been amended to delete a reference to an application period of 60 days from the original effective date of N.J.A.C. 7:1A-6. However, emergency loan applications are still required to be submitted within 60 days of the applicable critical water supply service disruption.

#### Social Impact

The Department anticipates that a positive social impact will result from the proposed re adoption and amendments. To date, the water supply loan program has executed almost 90 loan agreements for the improvement of water supply systems throughout the State. As a result, the quality of life has improved in many communities formerly burdened with antiquated, obsolete, damaged or inadequately operating water supply facilities or whose water supply was contaminated by hazardous substances. In addition to protecting public health and safety, the improvements financed under this chapter have also served to protect property values, allow development and revitalization, and lessen future water supply maintenance and repair costs in these communities. In some cases, this has allowed municipalities to focus their attention and expenditures on other social programs within their communities. The proposed re adoption with amendments will continue these beneficial social impacts.

**Economic Impact**

The Department anticipates that a number of positive economic impacts will result from the proposed readoption with amendments. The primary beneficial economic impact of the readopted rules will be the continued provision of low-interest loans to eligible applicants for water supply projects. The interest rate for Bond Act loans is set annually by the State Treasurer and is currently two percent for replacement loans and four and one-half percent for rehabilitation and interconnection loans. The interest rate for Trust Act loans is currently set by statute at two percent. These interest rates are well below the interest rate of other financing available to municipalities and municipal utility authorities. This has allowed recipient communities to decrease their debt burden by substituting less expensive financing for planned water supply work. This has also allowed less affluent communities to undertake water supply rehabilitation and replacement work that might otherwise have been deferred.

While water supply loans require repayment in accordance with the Bond Act, the Trust Act, and these rules, the affected communities have still realized economic benefits through the improvement of their water supply facilities. In addition to protecting public health and safety, these improvements have served to protect property values, allow development and revitalization, stabilize or reduce water utility rates, and lessen future water supply-related maintenance, repair and response costs in these communities.

The \$65 million in water supply financing awarded over the past 10 years has also had a beneficial secondary impact throughout the State by making subcontracts available for the capital construction and engineering aspects of funded water supply projects. In many cases, the pass-through of water supply loan funds has been to small business contracting firms. This positive secondary economic impact will continue to be realized since the Department expects to award more than \$50 million in water supply loans in the next several fiscal years.

In addition, if Trust Act funding is available in future fiscal years, the 1989 amendments to the Trust Act will allow the Department to award water supply loans directly to private sector investor-owned utilities. See P.L. 1989, c.311. This is expected to have a positive economic impact on the utilities, their subcontractors, and the residents and businesses served by the utilities.

The cost to the Department of administering the water supply loan program has been and will continue to be funded from appropriations under the Bond Act and the Trust Act. Therefore, although the Department incurs administrative expenses and allocates staff time for the purpose of administering this program, an adverse economic impact on the Department is not expected.

**Environmental Impact**

The Department anticipates that the proposed readoption with amendments will have a positive environmental impact. To date, the water supply loan program has executed almost 90 loan agreements for the improvement of water supply systems throughout the State. In addition to assuring that the public has a suitable supply of potable water, the rehabilitation, replacement and interconnection of water supply systems financed under these rules has served to conserve potable water supplies throughout the State.

**Regulatory Flexibility Analysis**

In accordance with the New Jersey Regulatory Flexibility Act (Act), N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed readoption with amendments will not impose reporting, recordkeeping, or other compliance requirements on small business as defined by the Act, other than requirements already imposed on these businesses by the Bond Act, the Trust Act, the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., the Local Public Contracts Rules, N.J.A.C. 5:34, and accounting principles required by State law. The Bond Act provisions of these rules only apply to publicly owned water purveyors seeking to obtain loans from the Department to finance water supply projects; these entities do not qualify as "small businesses" as defined by the Act. Likewise, municipalities and municipally owned public water systems applying for funding under the Trust Act provisions of these rules also do not qualify as "small businesses." However, it is possible that the operators of privately owned public water systems, which are now eligible for Trust Act funding, may meet the Act's definition of "small businesses."

In the event that a private owner of a public water system qualifies as a small business under the Act, the Department has determined that these rules impose reporting, recordkeeping or other compliance require-

ments only to the extent necessary for compliance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., the Local Public Contracts Rules, N.J.A.C. 5:34, accounting principles required by State law, and general State contracting procedures. Therefore, these rules do not contain exemptions from coverage or differential requirements for small businesses as defined by the Act.

Typically, the planning, design and construction of water supply improvement projects requires geological, hydrological, engineering, inspection, legal, financial and other professional services. However, these professional services are necessary for the planning, design and construction of any water supply improvement project and the need for these services is only minimally increased by the loan application process under N.J.A.C. 7:1A.

The rules in this chapter require water supply loan applications to be signed by a designated agent authorized by resolution or ordinance to: file the loan application, represent the loan applicant in all matters relating to the application process, and obligate the loan applicant to the terms and conditions of the loan award document. The loan applicant may designate any individual as its agent for the purposes of the loan application process. Because of the extensive engineering involved in planning, designing and constructing water supply improvement projects, most loan applicants select as their designated agent the professional engineer responsible for supervising the project to be funded by the loan. In this manner, the cost to the applicant of filing and processing the loan application is minimized.

The Department estimates that the initial cost to a water supply loan applicant of filing and processing a loan application, obtaining a loan, and receiving loan disbursements from the Department is approximately \$3,000 to \$10,000. This amount varies with the complexity of the applicant's water supply improvement project, and cannot be correlated to a fixed percentage of project costs or loan amount. Once a water supply loan has been fully disbursed by the Department, this chapter does not impose additional recordkeeping or compliance requirements except as related to the processing of loan repayments and recordkeeping required by State law. Therefore, the Department estimates that annual compliance costs are negligible and that professional services will not need to be maintained during the loan repayment period.

**Full text** of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:1A.

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

## CHAPTER 1A WATER SUPPLY [BOND] LOAN PROGRAMS

**7:1A-1.1** Scope and construction of rules

(a) The following shall constitute the rules governing loans for State or local projects for the rehabilitation or repair of antiquated, obsolete damaged or inadequately operating publicly owned water supply facilities, for the interconnection of unconnected or inadequately connected water systems, and **for the construction of water supply facilities or public water systems** to address contamination problems as identified by the Department, pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the Water Supply Bond Act of 1981, P.L. 1981, c.261, **as amended by P.L. 1983, c.[499]; 355, [P.L. 1988, c.106] N.J.S.A. 58:12A-22 through 58:12A-25**, and as recommended by the New Jersey Statewide Water Supply Plan. These rules prescribe procedures, minimum standards for conduct of borrowers, and standards for obtaining loans for the rehabilitation of water supply facilities, for interconnections between water supply systems, and **for the construction of water supply facilities or public water systems** to address contamination problems **as identified by the Department.**

(b) (No change.)

**7:1A-1.2** Purpose of rules

(a) These rules are promulgated for the following purposes:

1. To implement the purposes and objectives of the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the Water Supply Bond Act of 1981, P.L. 1981, c.261[;], **as amended by P.L. 1983, c.355, [P.L. 1988, c. 106] N.J.S.A. 58:12A-22 through 58:12A-25**, and the New Jersey Statewide Water Supply Plan; and amendments.

2. To establish policies and procedures for administration of funds appropriated pursuant to the above acts for the purpose of making State loans for State or local projects for the rehabilitation or repair of antiquated, obsolete, damaged or inadequately operating water supply transmission facilities, for the interconnection of unconnected or inadequately connected water supply systems, and for the construction of water supply facilities or public water systems to address contamination problems identified by the Department;

3.-6. (No change.)

7:1A-2.1 Scope

This subchapter shall prescribe procedures and requirements [of] for the award [for] of State loans for projects which will effectuate the purposes of the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., [P.L. 1988, c. 106] N.J.S.A. 58:12A-22 through 58:12A-25, and [Section 4 of] the Water Supply Bond Act of 1981, P.L. 1981, c.261, as amended by P.L. 1983, c.355, and as recommended by the New Jersey Statewide Water Supply Plan.

7:1A-2.2 Definitions

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

“Act” means the Water Supply Bond Act of 1981, P.L. 1981, c.261, as amended by P.L. 1983, c.355, the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., [P.L. 1988, c.106] N.J.S.A. 58:12A-22 through 58:12A-25, and such other acts and appropriations provided to the Department for the purposes provided in this chapter.

“Administrator” means the Assistant Director of the Water Supply Element of the [Division of Water Resources of the] Department [of Environmental Protection] or the person designated by the Commissioner to carry out the functions of the Administrator for the purposes of this chapter.

“Applicant” means any [political subdivision of the State or agency thereof] local unit, municipality, municipally-owned public water system or privately-owned public water system that applies for a loan pursuant to the provisions of these rules and regulations.

“Commissioner” means the Commissioner of the [New Jersey] Department [of Environmental Protection] or his or her designated representative.

“Construct” and “Construction” mean, in addition to the usual meaning thereof, acts of construction, re-construction, replacement, improvement, betterment and the solicitation of bids in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the Local Public Contracts rules, N.J.A.C. 5:34.

“Contamination problems” means an existing potable groundwater supply whose physical, chemical, microbiological or radiological condition, is or may reasonably be expected to become, such that its continued use is detrimental to public health in accordance with the New Jersey Safe Drinking Water Act Regulations, N.J.A.C. 7:10, or in accordance with the Safe Drinking Water Act N.J.S.A. 58:12A-1 et seq., particularly 58:12A-6, as applicable.

“Department” means the New Jersey Department of Environmental Protection and Energy.

[“Division” means the Division of Water Resources of the Department of Environmental Protection.]

“Eligible project scope” means: (1) the repair, replacement or reconstruction of antiquated, obsolete, damaged or inadequately operating water supply transmission facilities consisting of pipes and appurtenances including, but not limited to, pump stations, valves, surge chambers, existing interconnections and storage tanks which convey water; or (2) the construction, repair, replacement or reconstruction of parts of an inadequate or nonexistent water supply system interconnection; or (3) the planning, design and construction of water supply facilities or public water systems to [resolve] address contamination problems as identified by the Department. The applicant’s project scope must conform to one of these [definitions] criteria to be funded pursuant to this chapter.

“Local unit” means any political subdivision of the State or agency thereof [that applies for rehabilitation, interconnection or water supply replacement Type A funding under the Water Supply Bond Act of 1981].

“Municipality” means any city, town, township, borough or village or any agency or instrumentality of one or more thereof [that applies for Type B or Type C Funding].

“Project” means any work relating to the rehabilitation of water supply transmission facilities, the construction or rehabilitation of interconnections between water supply systems, or construction of water supply facilities or public water systems to [resolve] address contamination problems.

“Public water system” means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. Such term includes:

1. Any collection, treatment, storage and distribution facilities under control of the operator of such system and used primarily in connection with such system; and

2. Any collection or pre-treatment storage facilities not under such control which are used primarily in connection with such system.

“Residences with contaminated wells” means residences in a residential area of more than 1,500 residential units that has been found by the local department of health, or board of health, and the county board of health, or department of health, to have at least 25 percent of the wells supplying potable water to the area with contaminants [at the Class II, Class III or Class IV interim action levels for hazardous contaminants in drinking water of the Department of Environmental Protection, or] in excess of the maximum contaminant levels adopted by the Department pursuant to P.L. 1983, c.443 (N.J.S.A. 58:12A-2 et seq.), as [may be] applicable.

“Type B Funding” means loans awarded to municipalities, [or] municipally owned public water systems, or privately owned public water systems as defined at N.J.S.A. 58:12A-3, out of appropriations other than appropriations made pursuant to the Water Supply Bond Act, P.L. 1981, c.261, as amended, or other bond acts, to plan, design and construct projects to address contamination problems as identified by the Department other than those addressed under Type C Funding (see this subchapter and N.J.A.C. 7:1A-7).

7:1A-2.3 Preapplication procedures

(a) Every applicant shall request an informal conference prior to making a formal application for a loan. During the conference the [Division] Department shall identify and explain all loan application documents. It shall also identify and answer questions concerning other Departmental permits the applicant must obtain prior to being awarded a loan. This conference is not part of the application procedure and verbal statements made during the conference shall not bind the Department. Such conferences may be waived at the discretion of the Department.

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

Department of Environmental Protection and Energy  
[Division of Water Resources]  
Water Supply Element  
CN-029  
[401 East State Street]  
Trenton, New Jersey 08625

7:1A-2.4 Application procedures

(a) To apply for a water supply loan, an applicant shall comply with all the pertinent requirements of this section. The application shall be submitted to the [Division] Department on the forms provided for that purpose.

(b) An applicant for a water supply loan shall submit:

1.-6. (No change.)

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7. Proposed financial arrangements for both construction of the project and sale of water between the purveyors concerned, if any, and written confirmation that the proposed arrangements are acceptable to both purveyors and the New Jersey Board of [Public Utilities] **Regulatory Commissioners**, if applicable;

8.-12. (No change.)

(c) (No change.)

(d) Applications should be submitted well in advance of the application closing date for the application period in which the applicant wishes to be awarded a loan. There shall be at least one application period in each fiscal year. For the rehabilitation loan program, the application closing date for the [initial] application period [for each year of the program] shall be [October 1] **June 30** [of the appropriate fiscal year].

1. For the interconnection[s] loan program, the application closing date for the [initial] application period shall be [June 18, 1984] **June 30**. In the case of loans for addressing water supply contamination problems, two annual application periods will be established with closing dates of December 31 and June 30 respectively. However, applications will be received and reviewed on a continuous basis. Those projects meeting exigency standards, as defined at N.J.A.C. 7:1A-5.2(b), shall be processed for immediate funding if available.

2. Additional application periods may be established as deemed necessary by the [Division] **Department** upon publication of a notice of the details of the additional application period in the New Jersey Register.

3. The application closing date for any application period may be extended, if deemed necessary by the [Division] **Department**, upon publication of a notice of extension in the New Jersey Register.

4. **If the Department determines that funds are not available to award any loans in a given fiscal year, it may suspend the application period by providing notice of such suspension in the New Jersey Register by April 30.**

(e) (No change.)

(f) Applications shall be sent to:

**Department of Environmental Protection and Energy**  
[Division of Water Resources]  
Water Supply Element  
CN-029  
[401 East State Street]  
Trenton, New Jersey 08625

## 7:1A-2.5 Use and disclosure of information

All loan applications, preapplications, and other submittals, when received by the [Division] **Department**, constitute public records. The [Division] **Department** shall make them available to persons who request their release, to the extent allowed by New Jersey and [federal] **Federal** law.

## 7:1A-2.6 Evaluation of application

(a) The [Division] **Department** shall notify the applicant that it has received the application and is evaluating it pursuant to this section. Each application shall be subjected to:

1. (No change.)

2. Program, technical, scientific and environmental evaluation to determine the merit and relevance of the project to the [Department of Environmental Protection] **Department's** program objectives, especially those recommendations described in the New Jersey Statewide Water Supply Plan;

3.-5. (No change.)

## 7:1A-2.7 Department approval/disapproval

(a) After a full review and evaluation of an application, the [Division] **Department** shall take one of the following actions:

1.-3. (No change.)

(b) (No change.)

## 7:1A-2.8 Amount and terms of loan

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

(d) A rate schedule setting [for] **forth** the amounts charged for sale of water by the borrower shall be established for each rehabilitation, interconnection or water supply replacement loan. For all borrowers, a portion of receipts, as stipulated by the loan award document, shall be dedicated to a specific fund for the purpose of

assuring repayment of the loan by the borrower. The Department may require additional collateral to secure [to] **the** loan when deemed necessary.

1. When applicable, a New Jersey Board of [Public Utilities] **Regulatory Commissioners** approved rate schedule setting forth the amounts charged for the sale of water by the borrower shall be established.

(e) (No change.)

## 7:1A-2.9 Loan award document

(a) The [Division] **Department** shall prepare and transmit four copies of the loan award document to the applicant.

1.-4. (No change.)

## 7:1A-2.10 Effect of loan award

(a) (No change.)

(b) The award of the loan shall not commit or obligate the Department to award any continuation loan to cover cost overruns for any project. The Department's policy is that cost overruns for any project or portion thereof are solely the responsibility of the borrower. [However, if the award covers testing of an interconnection, the costs of subsequent repair, replacement or rebuilding of that interconnection may be allowed as an addition to the contract amount subject to the provisions of N.J.A.C. 7:1A-4.2(e) and if approved by the Department.]

## 7:1A-2.11 Notice of intent

(a) (No change.)

(b) The applicants receiving a Notice of Intent to Award a loan shall obtain all necessary Federal, State and local permits and approvals within six months of receipt of the Notice of Intent to Award a loan. Failure to obtain the required permits within the required time period shall make the project ineligible for a loan for that application period unless prior approval for an extension has been granted by the [Division] **Department** pursuant to N.J.A.C. 7:1A-2.12(h).

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

## 7:1A-2.12 Project development phase of water supply loan program

(a) Each applicant receiving a Notice of Intent to Award a loan shall arrange to have a pre-design conference within 30 days after receipt of the notice, [with personnel of the Division] and shall submit all materials required by this section to the [Division] **Department** within six months after receipt of the notice or within the time limits of any extension granted pursuant to (h) below.

(b) During the pre-design conference the [Division personnel] **Department** shall identify and explain the requirements of this section, including design criteria and review of the requirements of the Environmental Assessment specified in (d) below. Based on information furnished by the applicant, [Division personnel] **the Department** shall also determine if an approval is required for the project or any portion thereof pursuant to the Standards for Construction of Public Community Water Systems, N.J.A.C. 7:10-11[.1 et seq].

1. (No change.)

2. If an approval is required pursuant to the construction standards referred to in (b) above, the [Division] **Department** shall provide reasonable assistance to the applicant to insure compliance with the requirements of said construction standards as applicable. The Department reserves the right to require approval in accordance with said construction standards at a later date should revised or additional information so indicate.

(c) All applicants for water supply loans shall submit all materials required by this subsection, prepared in accordance with accepted engineering practices, within the specified time period.

1. (No change.)

2. The plans for the water supply bond loan project shall be prepared by an engineer licensed by the State of New Jersey. Each drawing shall be signed and sealed and shall have a title block giving the name and location of the project, the scale or scales used, date, the name of the engineer and his or her license number. Plans shall show clearly the datum to which evaluations shown are referred. The National Geodetic Vertical Datum of 1929, (U.S.G.S.), should be used wherever possible or an equation converting to that datum

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given. The plans shall clearly reflect and label all existing and proposed features and shall include but not be limited to:

i. (No change.)

ii. A profile and plan, if required in the judgment of the [Division] Department, of the entire transmission-grid system that is to be constructed. The plan shall include, but not be limited to, an index map, water mains, service connections, fire hydrants, [gauge] gate valves, blowoff valves, air relief valves, pressure reducing valves, pumping stations, surge chambers and storage tanks. The Plan shall also include, but not be limited to, the location of all utilities and sewer lines, that is, pipelines, telegraph and telephone lines, electrical conduits, and sanitary and storm sewers that will have an effect on the project implementation.

iii. If required by the [Division] Department, a topographic and pressure contour map of the transmission grid system showing ground elevations[,] and water pressure at various points in the system.

iv.-vi. (No change.)

3.-7. (No change.)

(d) The Department reserves the right to waive any of the submission requirements of [N.J.A.C. 7:1A-2.12] (c) above, subject to the provisions of the Standards for Construction of Public Community Water Systems, N.J.A.C. [7:10-1.1 et seq.] 7:10-11, when it has determined that submission of such information is not required or necessary in order for the Department to enter into a Loan Agreement with the applicant.

(e)-(h) (No change.)

## 7:1A-2.13 Eligible project costs

(a) Project costs shall be allowed to the extent permitted by this chapter and the loan award document. Eligible project costs shall be those costs set forth below:

1. Repair, replacement, or reconstruction of all or part of any obsolete, damaged, antiquated, or inadequately operating water supply transmission system, or any obsolete or antiquated water supply interconnection or construction of a new interconnection, or the planning, design and construction of water supply facilities or public water systems to address contamination problems as identified by the Department, within the scope of the approved feasibility study, including planning costs when so approved by the Department;

2.-7. (No change.)

(b) Ineligible project costs shall be those costs set forth below:

1.-3. (No change.)

4. Salaries of regular water purveyor employees, expenses for governmentally owned or purveyor owned equipment, and other such force account expenses[, except upon sufficient justification to and special approval of the Department]; and

5. (No change.)

(c) Development and [Construction] construction project contracts must be awarded in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. [and the rules and regulations adopted pursuant thereto, N.J.A.C. 5:30-14.1 et seq.], and the Local Public Contracts rules, N.J.A.C. 5:34.

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

(f) Prior to any final award of bids for construction contracts the borrower shall submit for [departmental] the Department's review and approval the final construction contracts with work specifications detailing any changes made since the Department's previous [departmental] design approval.

1.-2. (No change.)

3. The borrower shall certify to the Department the following:

i. The borrower's compliance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the Local Public Contracts rules, N.J.S.A. 5:34;

ii.-iii. (No change.)

(g) (No change.)

## 7:1A-2.17 Loan conditions

(a) The following requirements, in addition to such other statutes, rules, terms and conditions as may be applicable to particular loans, are conditions of each loan and conditions precedent to each payment under a loan award document:

1.-2. (No change.)

3. The borrower shall certify that it and its contractors and subcontractors are maintaining their financial records in accordance with [generally accepted] accounting principles required by New Jersey law.

4. (No change.)

5. The borrower shall certify that the borrower includes in all its construction or development contracts for the project a requirement that the contractor post a performance bond or other performance guarantee in an amount equal to the full cost of the project.

i. This performance bond or guarantee shall remain in effect until the [Division's] Department's final inspection of the project and determination in writing that the project is satisfactorily completed.

ii. (No change.)

6.-8. (No change.)

## 7:1A-2.22 Publicity and signs

(a) (No change.)

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblem of the [New Jersey] Department [of Environmental Protection], shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, State loan support, and other information as required by the [Division] Department.

## 7:1A-2.34 Administrative hearings

(a) The [Director of the Division] Administrator shall make the initial decision regarding all disputes arising under a loan. The borrower shall be required to specify in writing and in detail the basis for its appeal. When a borrower so requests, the [Division] Administrator shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the borrower.

(b) A borrower may request a hearing within 15 days of a decision by the [Director of the Division] Administrator. The hearing request shall be addressed to: Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402. The request for a hearing shall specify in detail the basis for the appeal.

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

## 7:1A-3.1 Eligibility and criteria

(a) Any [applicant] local unit operating an antiquated, obsolete, damaged or inadequately operating water supply transmission facility in need of rehabilitation or repair is eligible for a loan in any application period where it satisfactorily completes the loan application process in a timely manner, meets the eligibility criteria set forth in this subchapter, receives the minimum priority score, and ranks high enough on the priority list to be funded. To receive a loan the project shall meet the following criteria to the satisfaction of the Department.

1.-4. (No change.)

5. The application must be accompanied by adequate explanation of how the [applicant] local unit plans to repay the loan and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan and the steps it plans to take before receiving the loan that will guarantee that at the time of the signing of the loan award document it will be irrevocably committed to repay the loan and pay any other expenses necessary to fully complete and implement the project. The [applicant] local unit must comply with all standard loan provisions of the State of New Jersey.

6. (No change.)

## 7:1A-3.2 Priority determination

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

(e) A maximum loan amount for each project shall be set for each of the three categories of projects as follows:

1.-3. (No change.)

4. Any loan funds appropriated for a project in excess of the actual costs spent for the completed project shall be returned to the Water Supply Fund created pursuant to the [act] Act within [thirty] 30 days of final inspection of the project by the Department.

(f) Priority points shall be given for the following factors and in the amount shown below:

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1. [An applicant] A local unit shall receive priority points listed in priority categories set forth in [subsections] (f)2, 3, 4, 5, 6 and 9 below only if the project scope includes the actual repair, rehabilitation, or correction of a problem item clearly related to said priority categories.
2. Priority points shall be awarded for the age of transmission lines and appurtenances including interconnections and surge tanks to be rehabilitated.
  - i. Two points shall be awarded for transmission lines and appurtenances constructed between the years [1966 through 1970] **1976 through 1980**;
  - ii. Four points shall be awarded for transmission lines and appurtenances constructed between the years [1951 through 1965] **1961 through 1975**;
  - iii. Eight points shall be awarded for transmission lines and appurtenances constructed between the years [1926 through 1950] **1936 through 1960**;
  - iv. Twelve points shall be awarded for transmission lines and appurtenances constructed between the years [1901 through 1925] **1911 through 1935**;
  - v. Sixteen points shall be awarded for transmission lines and appurtenances constructed in or before the year [1900] **1910**.
3. The [applicant] local unit shall be required to submit justification to the satisfaction of the Department before priority points are awarded under priority categories (f)4 and 5 below. The justification may consist of, but not be limited to, a technical analysis, a professional certification, unresolved Departmental administrative orders, unresolved Departmental directive letters, verifiable system failures and malfunctions, or other justifications as deemed acceptable by the Department.

4. Priority points shall be awarded, subject to (f)3 above, for the age of the pump station(s) to be rehabilitated.
  - i. Two points shall be awarded for each pump station constructed between the year [1960-65.] **1970 through 1975**;
  - ii. Four points shall be awarded for each pump station constructed between the year [1955-59.] **1965 through 1969**;
  - iii. Eight points shall be awarded for each pump station constructed between the year [1950-54.] **1960 through 1964**;
  - iv. Twelve points shall be awarded for each pump station constructed before the year [1950] **1960**.
5. Priority points shall be awarded, subject to (f)3 above, for the age of storage tank(s) to be rehabilitated.
  - i. Two points shall be awarded for each storage tank constructed between the year [1960-65] **1970 through 1975**;
  - ii. Four points shall be awarded for each storage tank constructed between the year [1955-1959] **1965 through 1969**;
  - iii. Eight points shall be awarded for each storage tank constructed between the [1950-54] **1960 through 1964**;
  - iv. Twelve points shall be awarded for each storage tank constructed before the year [1950] **1960**.
6. In the instance where the project scope includes rehabilitation of different items, items of different ages, or both, the total points awarded under priority categories in (f)1, 2, 3, 4 and 5 above shall be the weighted average in accordance with the capital value associated with each item. Capital value is defined as the estimated installed cost of an existing item in its new state at the present time. As an example see Table 1 below:

TABLE 1

[Item]	Age Subcategory	Points	New Cap. Cost (Million \$)	Fraction Total Cost	Points (weighted)
lines	1951-65	4	.5M	.213	.852
lines	1926-50	4	1.0	.426	3.408
tank	1950-54	8	.50	.213	1.704
pump sta.	1955-59	4	.10	.106	.848
pump sta.	1950-54	8	2.35M	1.001	6.984
					weighted ave.]

Item	Age Subcategory	Points	New Cap. Cost (Million \$)	Fraction Total Cost	Points (weighted)
lines	1961-75	4	0.5	0.213	0.852
lines	1936-60	8	1.0	0.426	3.408
tank	1960-64	8	0.5	0.213	1.704
pump sta.	1965-69	4	0.1	0.043	0.172
pump sta.	1960-64	8	0.25	0.106	0.848
	<b>total</b>		<b>2.35</b>	<b>1.001</b>	<b>Weighted Average 6.984</b>

- i. (No change.)
7. Priority points shall be awarded for the percentage of the present daily demand of the [applicant's] local unit's water supply system that can be augmented from usable interconnections with other water systems. The present daily demand for the [applicant's] local unit's service area shall be calculated by totaling the daily water supply demand over a one year period ending in the month of the submission of the [applicant's] local unit's rehabilitation loan application and dividing this sum by 365.
  - i.-iv. (No change.)
  - 8.-10. (No change.)
  - (g) Total priority points shall be determined by totaling all the points awarded [an applicant] a local unit by (f) above.
  - (h) The [Division] Department shall establish and maintain a separate priority list for each application period for each of the size groups as set forth in this section in accordance with the number of priority points awarded each project pursuant to this section.

- 7:1A-4.1 Eligibility and criteria
  - (a) Any [applicant] local unit whose system includes an antiquated, damaged, or inadequate water supply interconnection in need of rehabilitation, or repair or consolidation, or whose system lacks interconnections which qualify either as Class A or as Class B interconnections, as further defined in N.J.A.C. 7:1A-4.2, is eligible for a loan in any application period where it satisfactorily completes the loan application process in a timely manner, meets the eligibility criteria set forth in this subchapter, receives the minimum priority score, and ranks high enough on the priority list to be funded. [An applicant] A local unit may apply for interconnections with privately owned as well as publicly owned systems. To receive a loan the project shall meet the following criteria to the satisfaction of the Department:
    - 1.-4. (No change.)
    5. The application shall be accompanied by adequate explanation of how the [applicant] local unit plans to repay the loan and pay

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any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan, and the steps it plans to take before receiving the loan that will guarantee that at the time of the signing of the loan award document it will be irrevocably committed to repay the loan and pay any other expenses necessary to fully complete and implement the project. The [applicant] **local unit** shall comply with all standard loan provisions of the State of New Jersey.

6.-7. (No change.)

**7:1A-4.2 Priority determination**

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

(c) Three separate priority lists shall be established in each application period according to the size of water supply systems as set forth in (a) above. Appropriations for each of the priority lists shall be determined as a percentage of the total periodic appropriations by the Legislature to the Department for the purpose of implementing this chapter. An interconnection **project** shall be placed into its appropriate category according to the residential population served by the [borrower] **local unit's water supply system**.

1.-3. (No change.)

(d) (No change.)

(e) A maximum loan amount for each project shall be set for each of the three categories of projects as follows:

1. A water supply system serving 10,000 or fewer residents may receive a loan of up to [\$150,000] **\$300,000** maximum;
2. A water supply system serving between 10,001 and 50,000 residents may receive a loan of up to [\$300,000] **\$500,000** maximum;
3. A water supply system serving greater than 50,000 residents may receive a loan of up to [\$600,000] **\$800,000** maximum;
4. Any loan funds appropriated for a project in excess of the actual costs spent for the completed project shall be returned to the Water Supply Fund pursuant to the [act] **Act** within [thirty] **30** days of final inspection of the project by the Department.

(f) The specific goal of interconnections is to bring all purveyor systems as far as practicable into either Condition A or Condition B, as specified below.

1. In Condition A, a system shall have interconnection capacity from adjacent systems sufficient to maintain its water supply at a **minimum** of 75 percent of its average water supply demand while burdening no one adjacent system for more than 25 percent of its (the adjacent system's) average water supply demand.

2. In Condition B, when Condition A is impracticable to achieve, the system shall have sufficient interconnection capacity from adjacent systems to maintain its water supply at a **minimum** of 50 percent of its average water supply demand while burdening no one adjacent system for more than 35 percent of its (the adjacent system's) average water supply demand.

3. The average water supply demand for the [applicant's] **local unit's** and interconnected purveyors service areas shall be calculated by totaling the daily water supply demand over a one year period ending in the month of the submission of the [applicant's] **local unit's** interconnection loan application and dividing this sum by 365.

4. In instances where Condition A is impractical to achieve, the [applicant] **local unit** shall provide justification to the satisfaction of the Department why Condition A cannot be achieved.

5. If an interconnection project results in a burden upon any adjacent supplying system in excess of 25[%] **percent** under Condition A or 35[%] **percent** under Condition B, said project shall not be eligible for an interconnection loan. An interconnection project that will increase the total interconnection capacity of a system significantly in excess of Condition A criteria shall not be fully eligible for interconnection loan funding. An interconnection project that will increase the total interconnection capacity of a system significantly in excess of [the] Condition B criteria [of 50%] shall not be fully eligible for interconnection loan funding except when the project serves to decrease the reliance of the benefiting system on adjacent systems to significantly less than 35[%] **percent**.

(g) (No change.)

(h) Priority points shall be governed by the following:

1.-2. (No change.)

3. Priority points shall be awarded in the amount of 10 priority points for any administrative order issued by the Department to the [applicant] **local unit** requiring an interconnection, provided that the [applicant's] **local unit's** project scope provides for the implementation of the actions ordered by the Department in such relevant administrative order. Priority points shall also be awarded in the amount of five priority points for any directive or recommendation to provide and improve an interconnection provided that the [applicant's] **local unit's** project scope provides for the implementation of the actions directed by the Department in such relevant directive or recommendation letter.

i. No administrative order, directive or recommendation issued subsequent to September 20, 1982 may be counted towards the [applicant's] **local unit's** priority point total except for those orders issued in accordance with the procedures established by N.J.S.A. 58:1A-15e.

4. (No change.)

5. A second ratio will be estimated of the residents served divided by 10,000 for small systems, 50,000 for intermediate systems, and [500,000] **100,000** for the largest systems.

6. (No change.)

**7:1A-5.1 Eligibility and criteria (Type A and Type B loans)**

(a) Any local unit which has received notification from the Water Supply Element[, Division of Water Resources] **of the Department** that groundwater supply contamination problems exist within [their] **its** jurisdiction which adversely affect the potable water service of at least three dwelling units is eligible for a Type A loan, provided it satisfactorily completes the loan application, meets the eligibility criteria set forth in this subchapter, receives the minimum priority score and ranks high enough on the priority list (as applicable) to be funded. The above requirements shall also apply to any municipality, [or] municipally owned public water system **or privately owned public water system** seeking a Type B loan. To receive a Type A or Type B loan the project shall meet the following criteria to the satisfaction of the Department:

1.-3. (No change.)

4. The maximum loan amount for any one project shall be \$3,000,000. In awarding a water supply loan, the Department may consider project expense and the degree of environmental impact which the project may have. Any [local unit, municipality, or municipally owned public water system] **applicant** may be eligible to apply for one loan in any application period.

5.-9. (No change.)

(b) A public meeting shall be held and pertinent project information disseminated to the public. The [Department] **applicant** shall be responsible for holding this meeting.

(c) The [local unit, municipality, or municipally owned public water system] **applicant** shall be required to pass **or to obtain from the local unit or municipality in which the applicant is located** a mandatory connection ordinance prior to issuance of the loan award agreement by the Department. The [local unit, municipality, or municipally owned public water system] **applicant** shall be required to pass **or to obtain from the local unit or municipality in which the applicant is located** a mandatory well sealing ordinance when in the judgment of the Department such well sealings are necessary to prevent additional migration of contaminants or the potential exists for additional contamination from wells which remain unused and not sealed.

(d) In the event a [local unit, municipality or municipally owned public water system] **borrower** has received approval for a grant, claim, payment, award or other loans from the State for the same project funded pursuant to this chapter, said payment shall be directly credited towards pre-payment of any outstanding principal and interest of the loan to the extent of payment received. As applicable, the outstanding principal and interest on the water supply loan shall be reduced to the amount received from the borrower and a revised repayment schedule shall be issued by the Department for the remaining maturity period of the loan.

(e) In the event a [local unit, municipality or municipally owned public water system] **borrower** receives a grant, claim, payment, award, loan or any form of payment from any government agency

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or receives payment for damages relating to the same project funded pursuant to this chapter, the [local unit, municipality or municipally owned public water system] **borrower** shall pre-pay, within 30 days of receipt of such grant, claim, award, loan, payment or damage payment, any outstanding principal and interest of the loan to the extent of payment received. As applicable, the outstanding principal and interest on the water supply loan shall be reduced to the amount received from the borrower and a revised payment schedule shall be issued by the Department for the remaining maturity period of the loan.

## 7:1A-5.2 Priority determination (Type A and Type B loans)

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

(f) Priority points for water supply replacement projects to address nonpublic wells with contamination problems shall be awarded based on the three factors of severity, public hardship, and population served, as indicated below:

1. (No change.)

2. In considering financial hardship, project costs and the relative income levels of those affected will be considered.

i. (No change.)

ii. The State Median Family Income Level and Median Family Income Level as reported in the latest census for the [municipality or local unit applying for the loan] **applicant** shall be determined.

iii.-iv. (No change.)

3. (No change.)

(g) Priority points to address contamination problems related to publicly owned wells shall be awarded based on the three factors of severity, public hardship and population served, as indicated below:

1. Subject to a wellfield sampling program approved by the Department, the following shall address severity:

i. The rated well pump capacity tested and found to be [at or] greater than the maximum contaminant level divided by the total rated [well pump capacity tested] **system capacity (including wells, surface water, and bulk purchase interconnections)** multiplied by 100.

ii. The rated well pump capacity tested and found to be [at or] greater than two times the maximum contaminant level divided by the total rated [well pump capacity tested] **system capacity (including wells, surface water, and bulk purchase interconnections)** multiplied by 100.

iii. [Rated] **The rated well pump capacity that may be affected in the future divided by the total [system rated well pump capacity] rated system capacity (including wells, surface water, and bulk purchase interconnections)** multiplied by 100.

iv.-vi. (No change.)

2. In considering financial hardship, project costs and the relative income levels of those affected will be considered.

i. (No change.)

ii. The State Median Family Income Level and Median Family Income Level as reported in the latest census for the [municipality or local unit applying for the loan] **applicant** shall be determined.

iii. A point system reflecting the degree of hardship will be used according to the following schedule:

Incremental annual project cost per affected service:

0—\$ 25/yr: 0 pts.

\$ 26—\$ 75/yr: 15 pts.

\$ 76—\$125/yr: 30 pts.

\$126—\$175/yr: 45 pts.

over [-\$176] \$175/yr: 60 pts.

Affected services = Total Services × (present rated well pump capacity of wells presently contaminated plus wells anticipated to be contaminated, as estimated by the Department, divided by present rated [well pump capacity of total system] **system capacity (including wells, surface water, and bulk purchase interconnections)**).

iv. (No change.)

3. (No change.)

(h) (No change.)

## 7:1A-6.3 Application procedures

(a) To apply for an emergency interim rehabilitation loan, an emergency loan applicant shall comply with all the pertinent require-

ments of this section. The application shall be submitted to the [Division] **Department** on forms provided for that purpose.

(b) An emergency loan applicant for an emergency interim rehabilitation loan shall submit to the [Division] **Department** within 60 days of the critical water supply service disruption [or within 60 days of the effective date of this subchapter,] documented information fulfilling all the following criteria to the satisfaction of the Department.

1. Establish that a critical water supply service disruption occurred within the previous 60 days[, or occurred no more than 12 months prior to the effective date of this subchapter,] to the emergency loan applicant's water supply system;

2.-10. (No change.)

## 7:1A-7.1 Water Supply Replacement Trust Fund

(a) Funds appropriated to the Department from acts other than the Water Supply Bond Act of 1981, P.L. 1981, c.261, as amended, or other bond acts, for the purpose of providing loans for alternative water supplies when contamination problems exist shall be deposited in the Water Supply Replacement Trust Fund. The funds in the Water Supply Replacement Trust Fund are specifically dedicated for the purpose of making Type B and Type C Loans to municipalities, [or] municipally owned public water systems, or **privately owned public water systems** to plan, design and construct projects to address contamination problems as identified by the Department pursuant to this chapter.

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

(f) Where the area of actual or anticipated contamination extends beyond the limits of a single municipality, **the applicant shall develop a single plan [shall be developed]** covering the entire area, on the basis of which the optimum plan shall be prepared, covering the entire area. Municipalities shall enter into an agreement for the joint administration of planning and/or design and construction to the extent feasible. Such agreement shall be subject to approval by the Department, and shall at a minimum, prescribe arrangements for the procurement, contracting and payment of joint debt and construction services as well as designate [a single municipality] **the applicant** to administer the planning, design and construction of the entire project.

## 7:1A-7.2 Amount and terms of loan

(a) Funds made available for Type B and Type C Loans under this subchapter shall be subject to the following conditions:

1. Such loans shall bear interest at a rate fixed by the Department of the Treasury, and shall not exceed the rate of two percent per annum. Under hardship circumstances, subject to approval by the Department of Treasury, loans may be given at interest rates below two percent, based on the percentage of the [local unit's municipal] **municipality's** median family income level required to plan, design, construct and operate the project.

2.-4. (No change.)

## 7:1A-7.3 Eligibility and criteria (Type B loans)

For Type B Funding, any municipality, [or] municipally-owned public water system or **privately owned public water system**, including subdivisions or agencies thereof, may be eligible to apply for one loan in any application period. The maximum loan amount awarded to any municipality, [or] municipally owned public water system or **privately owned public water system** under any application for Type B Funding shall be \$3,000,000. Eligibility and criteria for Type B Funding shall be as set forth at N.J.A.C. 7:1A-5.1(a) through (e).

## 7:1A-7.4 Priority determination (Type B and C Loans)

(a) (No change.)

(b) For Type C Funding, a municipality having residences with contaminated wells as defined in this chapter may make application for and receive one award for a maximum of \$8,000,000 subject to meeting the following criteria to the satisfaction of the Department.

1. The municipality shall have received notification from the Water Supply Element[, Division of Water Resources] of the **Department** that groundwater contamination problems exist within its jurisdiction which adversely affect[s] the potable water service.

2.-4. (No change.)

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5. The application shall be accompanied by adequate explanation of how the [applicant] **municipality** plans to repay the loan and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan and the steps it plans to take before receiving the loan that will guarantee that at the time of the signing of the loan award document it will be irrevocably committed to repay the loan and pay any other expenses necessary to fully complete and implement the project. The [applicant] **municipality** must comply with all standard loan provisions of the State of New Jersey.

6. (No change.)

7. The municipality shall have a contiguous residential area containing more than 1,500 residential units that has been found by the local department of health, or board of health, and the county board of health, or department of health, to have at least 25 percent of the wells supplying potable water to the area with contaminants [at or above Interim Action Levels II, III or IV for hazardous contaminants in drinking water, or] in excess of the maximum contaminant levels to be adopted by the Department pursuant to the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., as [may be] applicable.

8.-12. (No change.)

**(a)**

**DIVISION OF SCIENCE AND RESEARCH**

**Industrial Survey Project Rules**

**Proposed Readoption with Amendments: N.J.A.C. 7:1F**

**Proposed Repeals: N.J.A.C. 7:1F-1.1, 1.2, 1.6, 1.7**

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

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.

Proposal Number: PRN 1992-108.

Submit written comments by April 1, 1992 to:

Samuel A. Wolfe, Esq.  
Office of Legal Affairs  
Department of Environmental Protection  
and Energy  
CN 402  
Trenton, New Jersey 08625-0402

The agency proposal follows:

**Summary**

Under Executive Order No. 66(1978), the Industrial Survey Project Rules, N.J.A.C. 7:1F, are set to expire on April 20, 1992. As required by the Executive Order, the Department of Environmental Protection and Energy (Department) has reviewed N.J.A.C. 7:1F and determined that in part, it remains necessary, reasonable and proper for the purpose for which it was originally promulgated. The Department proposes to readopt the necessary, reasonable and proper part of this chapter, with a number of minor grammatical and organizational changes, in order to continue the necessary portion of its operation beyond the impending expiration date.

In 1980, the Department adopted N.J.A.C. 7:1F to enable the Toxic Substances Program to undertake an initial survey of industrial establishments, known as the Industrial Survey Project. The purpose of the Industrial Survey Project was to obtain baseline data concerning the use, manufacture, packaging, repackaging, disposal and release into the environment of certain carcinogenic and toxic chemicals. Between 1979 and 1982, the Industrial Survey Project contacted approximately 15,000 businesses in the State, and analyzed survey information from approximately 7,000 of these businesses. The results of the Industrial Survey Project were published in final form in 1986.

The information obtained by the Industrial Survey has been used by almost all the Department's regulatory programs. Since the completion of the Industrial Survey Project, the Department has used the data collected to conduct site-specific investigations of toxic contamination; to provide a valuable cross-check for regulatory programs, including

programs established pursuant to the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq., and the Environmental Cleanup and Responsibility Act, N.J.S.A. 13:1K-6 et seq.; and to provide direction for in-depth toxics research and the development of legislation, such as the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., and the Pollution Prevention Act, N.J.S.A. 13:1D-35 et seq. In particular, the survey information has helped the Department to make preliminary assessments as to the role which the industrial use and release of certain toxic substances may play in the development of cancer and other diseases in New Jersey. The Industrial Survey Project has also constituted an important part of the Department's efforts to administer the Air Pollution Control Act, the Water Pollution Control Act, and its other enabling statutes.

Inasmuch as the Department has not actively surveyed industrial establishments in accordance with N.J.A.C. 7:1F since 1982, the provisions of the chapter which govern the conduct of the industrial survey are no longer necessary. However, N.J.A.C. 7:1F-2 of these rules continues to be necessary to maintain the confidentiality of information obtained by the Industrial Survey Project for which respondent industrial establishments asserted confidentiality claims. This information remains on file in locked cabinets in the Department's offices, and remains subject to future requests for disclosure under N.J.A.C. 7:1F-2.5 through 2.7.

The Department is currently evaluating whether to conduct another full or limited industrial survey, within the next 12 to 18 months. The Department will propose new rules to govern the conduct of such a survey if one is to be conducted.

N.J.A.C. 7:1F-1 describes the objectives, organization, and operation of the Industrial Survey Project, including the penalties for failure to respond to the questionnaire. N.J.A.C. 7:1F-1 also defines terms used throughout the chapter. N.J.A.C. 7:1F-2 allows respondents to the industrial survey questionnaire to assert a confidentiality claim for information which may constitute trade secrets, proprietary information or information related to national security. This subchapter describes the Department's procedures for maintaining the confidentiality of such information, the conditions under which the Department may disclose information for which a confidentiality claim has been asserted, and the penalties which may attach for wrongful access or disclosure to confidential information.

The Department is proposing to repeal the portions of N.J.A.C. 7:1F-1 which have become unnecessary as a result of the completion of the Industrial Survey. The bulk of the proposed amendments to this subchapter and the proposed repeal of N.J.A.C. 7:1F-1.1, Description of the Industrial Survey, N.J.A.C. 7:1F-1.2, Authority, N.J.A.C. 7:1F-1.6, Response to questionnaires, and N.J.A.C. 7:1F-1.7, Failure to respond; penalties, are intended to reflect the narrower scope of N.J.A.C. 7:1F.

The proposed amendments to N.J.A.C. 7:1F-2, as well as certain proposed amendments to N.J.A.C. 7:1F-1, reflect the consolidation of the former Department of Environmental Protection with the Board of Public Utilities to form the Department of Environmental Protection and Energy, and the reorganization of the former Toxic Substances Program as part of the Division of Science and Research in the Department. Several changes are also proposed to correct addresses appearing in the rules, and to eliminate minor redundancies and errors in the rules.

The proposed amendments to N.J.A.C. 7:1F-2 also include a procedure for requesting an adjudicatory hearing to contest the disclosure of assertedly confidential information. To improve the effectiveness of this provision, the proposed amendments also include requirements for the Department to notify and/or consult with the respondent before disclosing the assertedly confidential information.

**Social Impact**

The Department expects the portions of the rules reflecting the completion of the Industrial Survey to have no social impact, because the affected provisions of N.J.A.C. 7:1F-1 no longer have any effect.

By protecting against the disclosure of confidential information, N.J.A.C. 7:1F-2 has had a positive social impact by encouraging compliance and cooperation with the Industrial Survey Project, thereby furthering the goals of the Project. The Department desires to leave no doubt that it will continue to protect confidential information following the completion of the Industrial Survey. The Department hopes that the continued protection will have a positive social impact, by encouraging compliance with requirements for submission of information under its other programs. The addition of a procedure for notifying or consulting with the respondent before disclosing assertedly confidential information,

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and the addition of a procedure for requesting an adjudicatory hearing, will enhance this positive social impact.

As noted, the readoption of N.J.A.C. 7:1F-2 will continue to protect confidential business information from routine disclosure. However, emergency disclosure of Industrial Survey information will still be available pursuant to N.J.A.C. 7:1F-2.7 if such disclosure will alleviate imminent and substantial danger to the environment and, in turn, to the public health and safety.

**Economic Impact**

The provisions of N.J.A.C. 7:1F governing confidential information have not imposed significant costs on businesses surveyed. Therefore, the Department does not expect significant costs to result from the proposed readoption.

The Department expects that the continued protection of confidential information will avoid the adverse impact which a business could suffer if its confidential information were disclosed. The addition of provisions establishing a procedure to contest disclosure will contribute to avoiding this adverse impact as well.

**Environmental Impact**

The Department expects the continued protection of confidential information to have no environmental impact. The Department also expects no environmental impact to result from the repeal of provisions governing the conduct of the Industrial Survey, because it has been completed.

As noted, the readoption of N.J.A.C. 7:1F-2 will continue to protect confidential business information from routine disclosure. However, emergency disclosure of Industrial Survey information will still be available pursuant to N.J.A.C. 7:1F-2.7 if such disclosure will alleviate imminent and substantial danger to the environment.

**Regulatory Flexibility Analysis**

The confidentiality provisions of N.J.A.C. 7:1F impose some compliance requirements upon respondents seeking confidential treatment of information. However, since 1982 the Department has not actively surveyed industrial establishments in accordance with N.J.A.C. 7:1F. For this reason, the Department expects few if any new confidentiality claims to be asserted by respondents, and therefore does not expect these compliance requirements to have any significant impact upon the small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., which may be included among such respondents. The confidentiality provisions do not impose reporting or recordkeeping requirements.

The primary cost of establishing a confidentiality claim is the cost of submitting information which the claimant chooses to submit in support of the claim. Therefore, the Department cannot estimate the extent of that cost for any small businesses making new confidentiality claims. The cost could be limited to the cost of copying and mailing a few pages of information, or could be greatly increased if the respondent chooses to retain an attorney and other professionals to assist in making and substantiating the claim. The Department expects that the cost which the respondent chooses to incur will depend primarily upon the nature of the information the respondent desires to protect. The same factors will affect the cost of contesting a proposed disclosure of assertedly confidential information.

The confidentiality provisions are intended to require respondents to incur only minimal costs in protecting the confidentiality of information, unless a respondent elects to incur greater costs. Therefore, N.J.A.C. 7:1F contains no provisions aimed specifically at limiting the costs imposed upon small businesses.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:1F.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 7:1F-1.1, 1.2, 1.6 and 1.7.

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

**7:1F-1.3 Scope**

This chapter [describes the organization of the Industrial Survey and the procedures to be followed by the Department in conducting it. They establish the responsibilities of respondents for replying to questionnaires and other inquiries from the Department, and set forth penalties for non-compliance. They describe] 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**, and set] sets forth penalties for Department personnel or contractors who [violated] **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 [Toxic Substances Program] **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 [these regulations] **this chapter**.

...

**7:1F-2.1 Confidentiality claims**

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

(g) Packages shall be sent to:  
Industrial Survey Project  
[P.O. Box 251]  
CN 409  
Trenton, New Jersey [08602] **08625**  
Tel. (609) [292-0647] **984-6070**

**7:1F-2.2 Access to information; non-disclosure; hearing before disclosure**

(a) Except as otherwise provided in [these regulations] **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 [these regulations] **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 [these regulations] **this chapter**. Nothing in this section shall be construed as prohibiting the incorporation of confidential information into compilations 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:

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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[, or his designee authorized in writing,] 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[, or his designee authorized in writing] 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 [section 7 of this subchapter] N.J.A.C. 7:1F-2.7.

(b) The Director[, or his designee authorized in writing,] may disclose confidential information obtained through the Industrial Survey to other officers, employees or agencies of the Department [of Environmental Protection] or the Department of Health if:

1.-3. (No change.)

(c) The Director[, or his designee authorized in writing,] may disclose confidential information to any other State agency or to a federal agency if:

1. The Director[, or his designee authorized in writing,] receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency; [and]

2. The request sets forth the official purpose for which the information is needed; [and]

3. The Director[, or his designee authorized in writing,] 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; [and]

4. The other agency has first furnished to the Director[, or his designee authorized in writing,] 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; [and]

5. (No change.)

6. The Director[, or his designee authorized in writing,] 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[, or his designee authorized in writing,] 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 [of Environmental Protection] 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 [of Environmental Protection] or the Department of Health other than those employees, contractors or [agents of the Director] 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[, or his designee authorized in writing,] 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[, or his designee authorized in writing,] 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[, or his designee authorized in writing,] finds that any person has violated the regulations of this subchapter, he or she may:

1. (No change.)

2. Pursue any other remedy available [to him] by law.

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

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(a)

DIVISION OF RESPONSIBLE PARTY SITE  
REMEDATION

## Environmental Cleanup Responsibility Act Rules

Proposed Amendments: N.J.A.C. 7:26B-1.3, 1.5, 1.6,  
1.8, 1.9, 1.10, 1.13, 5.4, 13.1 and App. AAuthorized By: Scott A. Weiner, Commissioner, Department of  
Environmental Protection and Energy.Authority: N.J.S.A. 13:1D-1 et seq., 13:1K-6 et seq., particularly  
13:1K-10, and 58:10-23.11 et seq.

DEPE Docket Number: 03-92-01.

Proposal Number: PRN 1992-109.

A public hearing on this proposal will be held on:

Monday, March 30, 1992 at 9:00 A.M.

Department of Personnel Conference Room

Station Plaza 3

44 South Clinton Avenue

Trenton, New Jersey

Submit written comments by April 1, 1992 to:

Samuel A. Wolfe, Esq.

Department of Environmental Protection and Energy

Office of Legal Affairs

CN 402

Trenton, New Jersey 08625-0402

The agency proposal follows:

## Summary

On May 6, 1991 the Superior Court of New Jersey, Appellate Division, issued its decision *In Re Adoption of N.J.A.C. 7:26B*, 250 N.J. Super. 189 (App. Div. 1991), concerning the regulations of the Department of Environmental Protection and Energy (Department) implementing the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 through 13:1K-14 (ECRA). ECRA was enacted by the Legislature in recognition of the fact that "the generation, handling, storage and disposal of hazardous substances and wastes poses an inherent danger of exposing the citizens, property and natural resources of this State to substantial risk of harm or degradation and that the closing of operations and the transfer of real property utilized for the generation, handling, storage and disposal of hazardous substances and wastes should be conducted in a rational and orderly way so as to mitigate potential risks; and that it is necessary to impose a precondition on any closure or transfer of these operations by requiring the adequate preparation and implementation of acceptable cleanup procedures therefor". N.J.S.A. 13:1K-7.

In *In Re Adoption of N.J.A.C. 7:26B*, appellants Chemical Industry Council of New Jersey, the Society of Environmental Economic Development, Ashland Chemical Company and Cooper Industries, Inc. ("industrial appellants") and the Public Interest Research Group of New Jersey, the New Jersey Lobby and Keith Onsdorff ("environmental appellants") (collectively, the "appellants") filed appeals challenging the regulations upon notice of adoption in December 1987. The appeals were consolidated by the Appellate Division in February 1988. In October 1988, the Appellant Division granted the Department's motion to remand the matter to allow for the formulation of revised regulations after consulting with the appellants. Revised rules were then adopted by the Department and published on August 7, 1989 at 21 N.J.R. 2367(a). An appeal followed, culminating with *In Re Adoption of N.J.A.C. 7:26B*.

The Appellant Division upheld the Department's rules concerning transactions and occurrences subject to ECRA, subject to the promulgation of reasonable standards for determining when ECRA is not applicable, to provide the regulated community with some guidance for conduct, and to provide the Department with a structure for the fair administration and exercise of its discretion. 250 N.J. Super. at 204, 225-226. The Appellate Division's decision also included direction to the Department concerning other necessary amendments, which are discussed in more detail below. The purpose of the proposed amendments is to address the concerns raised by the Appellate Division.

In the course of developing the proposed amendments, the Department met with attorneys for the appellants. The Department considered the suggestions made by the appellants in drafting the proposed amendments.

The Department has also proposed additional amendments to the ECRA rules for the purposes of clarity and consistency. A summary of the specific provisions of the proposed amendments follow.

## N.J.A.C. 7:26B-1.3 Definitions

The definition of "cessation of all or substantially all operations" currently has three criteria, number of employees, area of operations and units of product output, any of which having a reduction of 90 percent or more at an industrial establishment would trigger ECRA. In its opinion, the Appellate Division perceived a danger in the current regulations in that "a 90 percent reduction of employees or production in one facet of a business dealing with hazardous substances, would not necessarily approach a cessation of 'substantially all' of its operations". 250 N.J. Super. at 224-225. The court suggested that with "a 'bright line' 90 percent test for when a business must comply with ECRA or seek a determination of non-applicability, the regulation is not onerous or problematic, *In re Robert L. Mitchell Technical Center, supra*, 223 N.J. Super. at 173, and does not effect so broad a reach that it defeats the purpose of the statute". *Id.* at 225. The proposed amendment at N.J.A.C. 7:26B-1.9(b)5 implements the Appellate Division's recommendation by clarifying the standard for applicability determinations with respect to cessation of operations. The proposed amendment provides that if a cessation results in a 90 percent reduction in units of product output, the cessation will not be found subject to ECRA. The Department recognizes some industrial establishments cannot readily measure "units of product output." For those industrial establishments the criteria of area of operations and number of employees will be utilized to determine if a substantial cessation has occurred.

Under the current rules, the definition of "closing, terminating or transferring operations" includes "any transaction or proceeding, including but not limited to explosions, fires or other similar events, through which an industrial establishment becomes non-operational for health or safety reasons". N.J.A.C. 7:26B-1.3. This provision was invalidated by the court on various grounds, including the incongruity of utilizing the term "proceeding" to refer to a fire or explosion. 250 N.J. Super. at 231. The proposed amendments include a revised definition of "closing, terminating or transferring operations" where ECRA will be triggered for health or safety reasons where a determination by a court or regulatory agency has rendered an industrial establishment non-operational. For example, if a municipality revokes a certificate of occupancy for an industrial establishment on the basis of structural integrity then ECRA is triggered. N.J.A.C. 7:26B-1.6(a)10 has also been modified to be consistent with this change.

The definition of "controlling interest" is modified to advise the regulated community that there are standards and procedures proposed in N.J.A.C. 7:26B-1.9 concerning this particular ECRA triggering event.

The definition of "corporate reorganization not substantially affecting ownership" is modified to advise the regulated community that there are standards and procedures proposed in N.J.A.C. 7:26B-1.9 concerning this particular ECRA triggering event.

The definition of "Department" is modified to reflect the change in name of the Department.

The definition of "hazardous substances" at N.J.A.C. 7:26B-1.3 is modified to reflect the Department's definition of that term in its rules pursuant to the Discharges of Petroleum and Other Hazardous Substances Regulations, N.J.A.C. 7:1E.

The definition of "industrial establishment" is modified to clarify that a portion of a property that was once utilized as part of the industrial establishment will require ECRA review should the law be triggered. Additionally the Department has further clarified that this would include buildings or portions of buildings historically used by the owner or operator of the industrial establishment.

The definition of "sale or transfer of the controlling share of the assets" is modified to advise the regulated community that there are standards and procedures proposed in N.J.A.C. 7:26B-1.9 concerning this particular ECRA triggering event.

The Department's fee schedule under N.J.A.C. 7:26B-1.10 provides reductions in some fees for small businesses. The Department has moved the definition of "small business," which had appeared in N.J.A.C. 7:26B-1.10(d), to the definition section at N.J.A.C. 7:26B-1.3.

## N.J.A.C. 7:26B-1.5 Applicability

The Appellate Division noted, while the Department's current rules do not provide express consideration of the applicability section as they relate to partnership transactions, this omission was inadvertent and would be rectified administratively. 250 N.J. Super. at 233. N.J.A.C.

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7:26B-1.5(b)10 rectifies the omission by adding "unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9."

N.J.A.C. 7:26B-1.5(b)14 which concerns the "closing, terminating or transferring" of operations of an industrial establishment has been changed to be consistent with the proposed definition described previously.

N.J.A.C. 7:26B-1.5(b)15 which concerns the "cessation of all or substantially all operations" of an industrial establishment has been changed to be consistent with the proposed definition described previously.

**N.J.A.C. 7:26B-1.8 Operations and transactions not subject to ECRA**

The definition of "closing, terminating or transferring operations" at N.J.A.C. 7:26B-1.3 currently includes the following:

Any changes in operations sufficient to change the primary SIC number of the industrial establishment from an SIC number that is subject to the Act to one that is not subject to the Act.

The Appellate Division noted that a change in an SIC number which resulted from a change in classification by the Federal government, without a change in operations of the industrial establishment, would not in itself be an ECRA trigger. 250 *N.J. Super.* at 240. The proposed amendment to this section includes the exemption from ECRA of any change in SIC number by the Federal government from one that is subject to ECRA to one that is not subject when no change in operations occurs at the industrial establishment. This provision appears at N.J.A.C. 7:26B-1.8(a)27.

**N.J.A.C. 7:26B-1.9 Applicability determinations**

As discussed above, the Appellate Division directed the Department to develop and promulgate standards for the applicability section, to provide the regulated community with guidance for conduct and to provide the Department with a structure for the fair administration of its sound exercise of discretion. While the Appellate Division declined to set forth precise recommendations as to the content of the necessary changes to the rules, the court suggested, "The DEP might well want to articulate a desire to exempt entities or transactions where 'triggering' activity would not result in any material changes in New Jersey operations, would not weaken the ability to ultimately comply with ECRA or other environmental mandates, or would be so formalistic as to have no consequence relevant to [ECRA]." 250 *N.J. Super.* at 226. The proposed amendments at N.J.A.C. 7:26B-1.9 seek to implement this mandate by inclusion of substantive provisions addressing the concerns which were raised by the Appellate Division with regard to ECRA triggers.

**Merger or consolidation of indirect owner of industrial establishment; transfer of stock resulting in change in controlling interest in indirect owner or operator of industrial establishment; dissolution of indirect owner or operator of industrial establishment.**

N.J.A.C. 7:26B-1.5(b)1, 2 and 6 currently provide that the "closing, terminating or transferring" of operations which is generally subject to ECRA include the following:

- Sales or transfers of stock resulting in a merger or consolidation of the direct or indirect owner or operator of an industrial establishment;
- Sales or transfers of stock resulting in a change in the person or persons holding the controlling interest in the direct or indirect owner or operator of an industrial establishment; and
- Dissolution of a corporation which is the direct or indirect owner or operator of an industrial establishment.

In upholding these ECRA triggers as applied to corporations which indirectly own or operate industrial establishments through subsidiaries, the Appellate Division stated that any danger that such triggers could be an over-reaching of the Department's legitimate statutory authority could be mitigated by N.J.A.C. 7:26B-1.9, with appropriate standards. 250 *N.J. Super.* at 212. Accordingly, N.J.A.C. 7:26B-1.9(b)1 has been modified to present standards for applicability determinations in connection with these types of transactions.

Specifically, N.J.A.C. 7:26B-1.9(b)1 provides for an exclusion from ECRA applicability for transactions of the types described above involving an indirect owner, if the assets of the indirect owner would have been unavailable for the cleanup of the industrial establishment even if the transaction had not occurred. The Department has reasoned that if the assets were unavailable to pay for the cleanup, the transaction involving the indirect owner would not reduce the assets available.

For purposes of determining when the assets of the indirect owner would be unavailable for the cleanup, the proposed amendment

establishes criteria which are analogous to those under the Spill Act and case law interpreting that statute. The guidance provided by the Appellate Division indicates that the Spill Act criteria are relevant to this determination under ECRA.

In upholding the ECRA triggers for transactions involving indirect owners and operators, the Appellate Division discussed the Spill Act case of *DEP v. Ventron Corp.*, 94 *N.J.* 473 (1983), in detail. The Appellate Division cited *Ventron* to support the statutory imposition of liability on one corporation based on the actions of a related corporation, even where the traditional requirements for piercing a corporate veil are not present. 250 *N.J. Super.* at 214. While noting that a corporate veil will usually not be pierced unless the parent abused the privilege of incorporation by using the subsidiary to perpetrate fraud or to circumvent the law, and finding those circumstances absent in *Ventron*, the Court nonetheless held the parent corporation liable under the Spill Act, which imposes liability on "any person . . . in any way responsible" for pollution. 94 *N.J.* at 502, citing N.J.S.A. 58:10-23.11(g)(c). The Court found the parent corporation responsible because it was aware of and permitted certain dumping of waste material by its subsidiary, and that it was constantly involved in the subsidiary's activities. *Id.*

In support of its holding, the Appellate Division made note of similarities between the Spill Act and ECRA. See 250 *N.J. Super.* at 216. The Appellate Division also indicated that both ECRA and the Spill Act extended to indirect owners and operators in the same circumstances, noting that "ECRA was enacted precisely to avoid the delays attributable to Spill Act enforcement." *Id.* at 239-240. Based upon the guidance from the Appellate Division, the proposed standards set forth at N.J.A.C. 7:26B-1.9(b)1 reflect *Ventron* and other case law.

Under the Spill Act and related case law, the indirect owner's assets would be available for a cleanup if the indirect owner has exercised control over the owner or operator. Under the proposed amendment at N.J.A.C. 7:26B-1.9(b)1ii, the determination that an indirect owner or operator has exercised control over the direct owner or operator will be made if the following circumstances exist:

- The indirect owner or operator has exerted fiscal control over the direct owner or operator including, but not limited to, imposing any restriction upon financing, borrowing, budgeting, dividends, reporting and cash management;
- Officers, directors and employees of the indirect owner or operator constitute a majority of the directors of the direct owner or operator or such smaller number of directors as may be sufficient to effectively direct the management and policies of the corporation;
- The officers, directors and employees of the indirect owner or operator are involved in the day-to-day operations of the direct owner or operator;
- The indirect owner or operator determines policies or decisions of the direct owner or operator; or
- The indirect owner or operator knows of and is able to control the direct owner or operator's activities, including its environmentally related activities.

These criteria, modeled in large part on the same factors which guided the Supreme Court in the *Ventron* decision, provide a corporate parent with clear standards upon which to rely in seeking to determine if its activities in relationship to a subsidiary are sufficiently remote to remove a particular transaction from the purview of ECRA.

N.J.A.C. 7:26B-1.9(b)1iii has been added to require that the applicability application include a statement that the indirect owner has not exercised control over the direct owner or operator based upon the above criteria.

**Corporate reorganization not substantially affecting ownership or control**

N.J.A.C. 7:26B-1.8(a)4 currently provides that a corporate reorganization not substantially affecting ownership or control of the industrial establishment is not subject to ECRA. The Appellate Division concluded that "it appears necessary to define a corporate reorganization not substantially affecting ownership as one which does not entail significant changes in the financial ability of a corporation to comply with ECRA." 250 *N.J. Super.* at 218.

The proposed amendments at N.J.A.C. 7:26B-1.9(b)2 implement the Appellate Division's suggested redefinition by establishing specific criteria upon which the Department will rely in determining whether a corporate reorganization will not entail significant changes in the financial ability of a corporation to comply with ECRA. Under the proposed amendments, the Department first determines whether the assets of the transferor would not have been available for a cleanup of

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the industrial establishment. This determination is made by reference to N.J.A.C. 7:26B-1.9(b)1, specifically whether the transferor exercised control over the owner or operator of the industrial establishment. If the Department is unable to determine that a transferor's assets would have been unavailable, ECRA will be triggered by the transaction unless (1) the transferee's net worth is at least 90 percent of the net worth of the transferor, and (2) the transferee assumes the transferor's liability (if any) for the cleanup.

Also proposed at N.J.A.C. 7:26B-1.9(b)2 is the requirement that in order for a transaction to be exempt from ECRA, the transfer of stock, assets or both, must occur solely among corporations under common ownership or control, hence insuring that the provision be available only to corporate reorganizations.

Additionally N.J.A.C. 7:26B-1.9(b)2iv(3) is being added to provide that if the transferor is a New Jersey corporation or a foreign corporation authorized to transact business in New Jersey, the transferee must be as well, otherwise the transaction could impair the Department's ability to reach the assets of the indirect owner or operator.

Finally, the proposed amendment presented at N.J.A.C. 7:26B-1.9(b)2ii requires that the aggregate of such transactions, whether in one or several independent transactions, shall not result in a diminution by more than 10 percent of the net worth of the industrial establishment itself, or its direct owner or operator. The purpose of this requirement is to preserve the availability of assets for any cleanup of the industrial establishment. A diminution of more than 10 percent in an owner or operator of an industrial establishment raises the question as to the financial ability to perform any environmental cleanup and whether there are sufficient assets available for a cleanup. The specific proposal to allow for a 10 percent diminution in the net worth of the industrial establishment itself, or its direct owner or operator is the result of the meetings the Department held with attorneys for the appellants and the ensuing negotiations. Also, the Department received an additional proposal from one of the appellants recommending that an exemption be granted for transactions involving transferees with a net worth that exceeds \$100 million. The basis of this proposal is that there would be sufficient assets to cover any future remediation requirements. The Department recognizes that transferees with net worth less than \$100 million could still have sufficient assets for a cleanup and should be able to avail themselves to such an exemption. Therefore, the Department is soliciting public opinion concerning this proposal and is scheduling a public workshop open to all interested parties to discuss this issue for a subsequent proposal.

**Change in person holding controlling interest**

The Appellate Division sustained the current definition of controlling interest at N.J.A.C. 7:26B-1.3, which defines the term to include the interest held by owners of more than 50 percent of the issued and outstanding stock of a corporation, or the interest of those holding 50 percent or less but who directly or indirectly possess the power to direct the management and policies of a corporation. The 50 percent "bright line test" was found to be reasonable, 250 *N.J. Super.* at 220, but the court noted that "[t]he regulations may be uncertain in some specific applications." *Id.* at 222. Overall, the court declined to offer any specific suggestions or guidance on rulemaking in this area.

As amended, N.J.A.C. 7:26B-1.9(b)3 requires that the transferor and transferee certify to the Department that (1) the transferor is transferring 50 percent or less of the corporation's voting stock; (2) no voting trust, shareholder's agreement, or proxy exists which would enable the stock transferee to elect a majority of the board of directors or such smaller number as is necessary to direct the policies and management of the corporation; and (3) if a transferor holds a controlling interest in the corporation, the transferor will continue to hold the controlling interest after the transfer.

**Change in the controlling share of the assets**

N.J.S.A. 13:1K-8b states that the "closing, terminating or transferring of operations" includes a "sale of the controlling share of the assets" of an industrial establishment. The phrase is further defined at N.J.A.C. 7:26B-1.3 as follows:

"Sale or transfer of the controlling share of the assets" means a transfer or sale not in the ordinary course of business, within any five year period since December 31, 1983 by an owner or operator of an industrial establishment, of more than 50 percent of the fair market value during the period of their respective ownership, of the assets of the industrial establishment excluding real property. The term does not include the sale or transfer of

equipment or machinery in order to replace, modify, or retool existing equipment or machinery.

In upholding the validity of this definition the Appellate Division required that reasonable standards be developed by the Department on remand. The proposed amendment at N.J.A.C. 7:26B-1.9(b)4 establishes standards in connection with the determination that several independent transactions should be aggregated for purposes of determining whether a transfer of the controlling share of the assets has occurred. The applicability application must contain certifications that the transfer or sale in question is not part of a plan to sell substantially all of the assets, and list all asset sales or transfers in the past five years not in the ordinary course of business, as that term is used in Title 12A, Commercial Transactions, specifically N.J.S.A. 12A:6-102(1).

**Transfers of partnership interest**

The provisions of the rules relating to the sale or transfer of partnership interests was found to be arbitrary and unreasonable and was invalidated by the court, in part because it lacked any reference to a "safety valve" of N.J.A.C. 7:26B-1.9. The court noted that the absence of a "safety valve" made the regulation "unduly stringent." 250 *N.J. Super.* at 234. The court also stated as follows:

"... we believe the regulations would be sustainable to the extent they viewed the sale of a general partnership interest as presumptively a change in ownership under the act and/or an event which could affect the financial ability of a partnership to finance an ECRA cleanup. A sale of the interest of a general partner who has equal management rights in a partnership could be analogous to a sale of a controlling interest in a corporation, or the sale of a minority interest by a person with the power to manage or control the corporation, transactions which trigger ECRA under the statute and other sections of the regulations [250 *N.J. Super.* at 235-236]."

The court was critical of the regulation to the extent that the Department "makes certain assumptions about the legal status of partnerships to justify the absolute nature of its regulation when, by the express terms of the Uniform Partnership Law, those assumptions do not always pertain." *Id.* at 237.

A reference to the provision at N.J.A.C. 7:26B-1.9 is proposed to be included at N.J.A.C. 7:26B-1.5(b)10. In addition, proposed amendments at N.J.A.C. 7:26B-1.9(b)6 establish standards for determining when the sale or transfer of a partner's entire interest will result in an ECRA trigger. Under the proposed amendment, the sale or transfer of a partner's entire interest in a partnership would not trigger ECRA if (1) the transferor's share of the net profits and losses of the partnership is 50 percent or less; (2) the aggregate net worth of the partnership and the general partners will not be reduced by more than 10 percent as a result of the transfer; and (3) the transferee of the partnership interest assumes the liabilities (without acknowledging that such liabilities exist) of the transferor with respect to the cleanup of an industrial establishment. This requirement is necessary because, as the Appellate Division pointed out, in the absence of an agreement between the withdrawing partner, the entity continuing the partnership business, and the partnership creditor, "a person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before admission thereto as though the person was a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property. In other words, the new partner does not have the personal liability that is typical of general partners with respect to prior transactions." 250 *N.J. Super.* at 235. Accordingly, without such an assumption of liability, the assets available for a clean up would be reduced because the assets of the new partner would not be available.

**Diminution in net worth**

Several provisions of the proposed amendments include requirements that a transaction, whether through one or several independent transactions, will trigger ECRA unless it does not diminish a person's net worth by more than 10 percent. The proposed amendment to N.J.A.C. 7:26B-1.9(c) specifies that the Department will rely upon a certification by an independent certified public accountant stating that there is no such aggregate diminution. The certification must be submitted with the applicability application.

**Transferee's Assumption of Liability**

The proposal of N.J.A.C. 7:26B-1.9(d) provides the language to be included in any certification made by a transferee as required by either

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N.J.A.C. 7:26B-1.9(b)2iv(2) or N.J.A.C. 7:26B-1.9(b)5ii. The document must be in the form of an affidavit, executed in accordance with the provisions outlined in N.J.A.C. 7:26B-1.13(b)2i(1) through (3), and must accompany the applicability application.

**Time for making applicability determinations**

The Appellate Division directed the Department to include in its standards a reasonable time limit for the Department to act on any applications for applicability determinations. 250 *N.J. Super.* at 226. The proposed amendment at N.J.A.C. 7:26B-1.9(e) provides that the Department will advise the applicant of the determination within 45 days after receipt of a complete application. However, in nearly all cases, except for the most complex transactions, the Department is able to perform the review of these determinations in less than 10 days. Should the Department fail to act on the application within this period, a person should not assume that the application has been approved by the Department.

**Fees**

The Department's fees are designed to support the program's direct and indirect costs associated with performing each task. At this time the Department does not propose any fee increase; however, because of the more recent practice of applicant's submitting additional sampling plans and cleanup plans for Departmental review, the cost to the Department to review second and third sampling plan proposals or cleanup plan proposals has to be assessed an additional fee. Since the current fee schedule categorizes plans according to complexity, the assessable fee in the corresponding category listed in N.J.A.C. 7:26B-1.10(c) is appropriate for any additional submittals made to the Department. This proposed amendment would not apply to cases where submittals are made to the Department in response to deficiency letters issued by the Department. Submittals made to the Department that result in a disapproval will require a new proposal with the appropriate fee. Plans submitted for areas of environmental concern which were not addressed in a prior submittal will also be assessed a fee.

N.J.A.C. 7:26B-1.10(a) is proposed to be amended to require that all fees mandated by this section shall be submitted with their respective submittals to the Department. The ECRA program is supported entirely by the fees required to perform the Department reviews; therefore, the Department cannot review these submittals without the accompaniment of the appropriate review fee.

**Miscellaneous Changes**

N.J.A.C. 7:26B-1.10(d) is added to provide that any person applying under the small business standard shall submit an affidavit certifying specifically that it meets the small business definition.

N.J.A.C. 7:26B-1.13(a) is amended to provide the addition of the small business affidavit to the list of submittals that must meet the specified certification and signatory criteria.

N.J.A.C. 7:26B-5.4(b), (c) and (d) are amended to provide for the increase from 60 days to 120 days for the length of time a negative declaration approval will be effective. The current rules allow for a 60 day extension; the proposed amendment eliminates the administrative burden of requesting an extension. The Department recognizes that the regulated community has had difficulty closing their transactions within 60 days of receipt of an approval for a negative declaration; therefore, these amendments are the Department's response to make the administrative procedure in ECRA more reasonable and responsive to the regulated community's needs.

N.J.A.C. 7:26B-13(b)2 is amended to allow for an appraisal submitted with a petition for a Certification of Limited Conveyance to be valid for the duration of one year instead of 60 days. The Department presents this change for the purpose of consistency with standard commercial practice regarding the length of time for which an appraisal is considered valid.

The proposed amendments also make various editorial corrections to Appendix A of N.J.A.C. 7:26B, the Wording of Instruments Document for Financial Assurance.

**Social Impact**

The proposed amendments clarify the procedures to be followed and results in more efficient implementation of the Act. This is particularly true for the applicability standards that were remanded to the Department by the Appellate Division. Thus, the amendments will continue the important and innovative program pursuant to the Act and continue to minimize the exposure of the citizens, property and natural resources of the State to the inherent dangers from operations which involve the

generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances and wastes.

**Economic Impact**

The proposal to assess a fee for each submittal made to the Department pursuant to N.J.A.C. 7:26B-1.10(a) is designed to support the program's direct and indirect costs associated with performing each task. There is no proposal to increase fees. Applicants who submit additional sampling plans and/or cleanup plans for Department review will be assessed an additional fee. Since the fee schedule categorizes plans according to complexity the Department does not believe that any additional submittals made to the Department would result in the applicants incurring any additional costs due to ECRA since the same plans could be consolidated and submitted as one proposal rather than several. It is feasible for a regulated party to receive the necessary approvals without any increased costs based on this proposal. This amendment simply advises the regulated community that the fee associated with the review of each submittal to the Department will require the submittal of the appropriate fee. Since this is an item that can be controlled by the parties subject to the law, the Department does not anticipate any significant economic impact as a result of this amendment.

Except as otherwise required by the Appellate Division, the proposed amendments to the standards used in making applicability determinations simply clarify the ECRA applicability criteria without substantially changing the scope of applicability. Accordingly, the Department expects no significant economic impact to result from those portions of the proposed amendments. However, in response to the Appellate Division's response, the Department presents amendments which will exclude certain transactions and occurrences from ECRA applicability. These proposed amendments include the elimination of "explosions, fires or similar events" in the definition of "closing, terminating or transferring operations"; the changes to the exclusion for corporate reorganizations not substantially affecting ownership; the changes to the applicability standards for cessations of operations; and the changes to the applicability standards for transactions involving partnerships. To the extent that these changes will exclude a transaction or occurrence from ECRA applicability, the persons who would have been responsible for compliance with ECRA in connection with such transactions or occurrences will not incur ECRA compliance costs at this time. The extent of that impact depends upon the particular circumstances of the industrial establishment and the transaction or occurrence, therefore, the Department cannot estimate the cost to an applicant for such a certification.

As discussed in the Summary above, the applicability standards for certain types of transactions include a requirement concerning the diminution in the net worth of a direct or indirect owner or operator of an industrial establishment. For such transactions, the person seeking an applicability determination is required to submit a certification by an independent certified public accountant. The cost of obtaining that certification will vary widely depending upon the complexity of the financial affairs of the persons whose net worth are at issue.

For corporate reorganizations and transfers of a partner's entire interest in a partnership, the transferee may incur costs as a result of the requirement for the transferee to assume any liability of the transferor for the cleanup of the industrial establishment. The extent of this cost will depend upon whether the transferor has any such liability, and, if so, the cost of the cleanup.

N.J.A.C. 7:26B-5.4(b), (c) and (d) increase the length of time a negative declaration approval will be effective. The proposed amendment eliminates the administrative burden of requesting an extension, and therefore, this amendment will have a positive economic impact upon applicants who would otherwise have to delay transactions while obtaining an extension from the Department. This change could also cut costs to applicants in the professional fees paid to consultant and attorneys.

The proposed amendment to N.J.A.C. 7:26B-13, expending the amount of time for which an appraisal is valid in connection with an application for certificate of limited conveyance, will have a positive economic impact upon applicants who would otherwise have been required to obtain reappraisals.

**Environmental Impact**

In response to the Appellate Division's decision, the Department presents amendments which will exclude certain transactions and occurrences from ECRA applicability. These proposed amendments include the elimination of the terms "explosions, fires or similar events" in the definition of "closing, terminating or transferring operations" (provided that there is no judicial proceeding or final agency action through which the industrial establishment becomes non-operational for health or safety

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reasons); the changes to the exclusion for corporate reorganizations not substantially affecting ownership; the changes to the applicability standards for cessations of operations; and the changes to the applicability standards for transactions involving partnerships. To the extent that these changes will exclude a transaction or occurrence from ECRA applicability, there could be an impact to the environment since persons who would have been responsible for compliance with ECRA will not be required to perform an ECRA review of their industrial establishment at the time of the proposed transaction. Therefore the discovery of any impact to the environment could be delayed. The Department expects the impact to the environment due to these amendments to be minimized based upon the fact that facilities that do have contamination at their property are subject to other environmental statutes, including, but not limited to, the Spill Compensation and Control Act, the Water Pollution Control Act and the Solid Waste Management Act. Therefore, the Department would direct the cleanup of contaminated sites under these other authorities.

## Regulatory Flexibility Analysis

The proposed amendments would apply to all persons closing, terminating or transferring the operations of an industrial establishment, or seeking the Department's determination whether the Act applies to a particular facility or transaction. Many such persons are likely to be small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; however, since N.J.A.C. 7:26B applies to facilities involved in particular types of transactions or occurrences, rather than to particular types of businesses, the Department cannot determine how many small businesses would be subject to compliance with the proposed amendments.

The proposed amendments include requirements for compliance to which small businesses will be subject along with all other subject persons. Under N.J.A.C. 7:26B-1.9(b), as amended, applicability determinations are based upon more specific criteria. The Department expects that the criteria set forth in the proposed amendments will result in the same number or fewer facilities or transactions being subject to the Act than are currently subject to the Act under the existing rules. Therefore, the proposed amendments will not cause any additional small businesses to become subject to the Act.

However, under the amended criteria, the cost of establishing that a facility or transaction is not subject to the Act may increase in some cases. The amended criteria require additional information to be included in the application for an applicability determination; in most cases, the applicant will have the information readily available, so that the cost of obtaining and including the information will not be significant.

As discussed in the Economic Impact statement above, the Department does expect that the applicant will incur more significant costs in establishing certain specific criteria for applicability. For example, for some types of transactions, the applicant is required to establish the diminution in net worth which would result from the transaction, by submitting a certification by an independent certified public accountant. For small businesses with essentially simple financial affairs, the Department expects that the cost of obtaining this certification would be less than the cost which a larger, more complex business would incur. Similarly, for transfers of assets, the applicant will be required to submit a compilation of the total fair market value of the transferor's assets; the cost of compiling this data should be lower for smaller businesses having lesser assets.

In addition, in corporate reorganizations and transfers of the entire interest of a partner in a partnership, transferees will be required to assume liabilities of transferors for the cleanup of the industrial establishment. If any such liability exists, the cost to the transferee would depend upon the cost of cleanup. However, the assumption of liability is necessary to help ensure the availability of assets to pay for a cleanup. For this reason, the Department cannot minimize the impact of this requirement upon small businesses without risking adverse effects upon public health, safety and the environment.

Also as discussed above in the Economic Impact statement, small businesses will be among those required to pay additional fees for additional submittals under N.J.A.C. 7:26B-1.10(a). As previously noted, the total fees paid will increase only if a person elects to make such submittals piecemeal rather than in a single submittal. Therefore, small businesses can avoid paying any increased fee by making a single comprehensive submittal. This approach is also likely to reduce the cost of the submittal itself, since the repetitive work involved in multiple submittals for the same facility is likely to increase the cost of retaining environmental consultants and other professionals.

With N.J.A.C. 7:26B-5.4(b), (c) and (d) increasing the length of time a negative declaration approval will be effective small businesses can avoid requesting an extension, and therefore, avoid delays in closing their transactions and possibly preventing any additional costs in professional fees paid to consultant and attorneys.

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

## SUBCHAPTER 1. GENERAL PROVISIONS

## 7:26B-1.3 Definitions

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

...

"Cessation of all or substantially all the operations" means the cessation of operations that involve the generation, manufacturing, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes resulting in at least a 90 percent reduction in [any one of the following:

1. Number of employees;
2. Area of operations; or
3. Units] **the units of product output by the industrial establishment. For industrial establishments that have an undefined unit of product output, the following criteria are to be applied:**
  1. **Ninety percent reduction in number of employees; or**
  2. **Ninety percent reduction in area of operations.**

...

"Closing, terminating or transferring operations" means any one of the following:

- 1.-2. (No change.)
3. Any [transaction or] **judicial proceeding[.] or final agency action** [including but not limited to explosions, fires or other similar events,] through which an industrial establishment becomes nonoperational for health or safety reasons;
4. (No change.)
5. [Except for any corporate reorganization not substantially affecting ownership, any] **Any** change in ownership of the industrial establishment including, but not limited to, transfer by any means of shares of a corporation which results in a change in the controlling interest in the owner or operator, the sale of stock in the form of a statutory merger or consolidation, sale of the controlling share of the assets, conveyance of the real property, transfer of real property through condemnation proceedings, dissolution of corporate identity, financial reorganization, and liquidation in bankruptcy or insolvency proceedings. See also N.J.A.C. 7:26B-1.5 and N.J.A.C. 7:26B-1.8.

...

"Controlling interest" means the interest held by the person or persons who own more than 50 percent of the issued and outstanding stock of a corporation; it also means the interest held by the person or persons who own 50 percent or fewer of the issued or outstanding stock of a corporation and who possess, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation **except as provided at N.J.A.C. 7:26B-1.9.**

"Corporate reorganization not substantially affecting ownership" means the restructuring or reincorporation by the board of directors or the shareholders of a corporation, which does not diminish the availability of assets for any environmental cleanup, diminish the Department's ability to reach the assets, or otherwise hinder the owner's or operator's ability to cleanup the industrial establishment **as provided at N.J.A.C. 7:26B-1.9,** and where the purpose is merely as set forth in 1 to 3 below.

1. To correct illegalities or defects in the original incorporation;
2. To broaden the scope of the powers of the organization including the amendment as well as extension or revival of charters; or [;]
3. To reorganize for any other reason related financial, administrative or managerial convenience, or for any other legitimate business purpose.

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

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...  
 "Hazardous substances" means any [of the substances listed below except sewage and sewage sludge:

1. Petroleum and petroleum products;
2. All pesticides designated as "prohibited" or "restricted" at N.J.A.C. 7:30 pursuant to the Pesticide Control Act of 1971, N.J.S.A. 13:1F-11 et seq.;
3. Substances designated as hazardous substances by the Environmental Protection Agency pursuant to the Section 311 of the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977, 33 U.S.C. 1317;
4. Substances designated as toxic pollutants by Congress or the Environmental Protection Agency pursuant to Section 307 of the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977, 33 U.S.C. 1317; and
5. Any other Substances listed in the list of hazardous substances at Appendix A of N.J.A.C. 7:1E] **substance defined as such pursuant to the Discharges of Petroleum and Other Hazardous Substances Regulations, N.J.A.C. 7:1E.**

...  
 "Industrial establishment" means any place of business or real property at which such business is conducted, having the primary SIC major group number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in, and determined in accordance with, the procedures described in the SIC manual and engaged in operations on or after December 31, 1983, which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances and wastes on-site, above or below ground unless otherwise provided at N.J.A.C. 7:26B-1.8. Except as provided below for leased properties, the industrial establishment includes all of the block(s) and lot(s) upon which the business is **or has been** conducted and those contiguous block(s) and lot(s) controlled by the same owner or operator that are vacant land, or **improvements or portions of improvements** that are **or were** used in conjunction with such business. For leased properties, the industrial establishment includes the leasehold and any external tanks, surface impoundments, septic systems, or any other structures, vessels, contrivances, or units that provide, or are utilized for, hazardous substances and wastes to or from the leasehold.

...  
 "Sale or transfer of the controlling share of the assets" means a transfer or sale not in the ordinary course of business, within any five year period since December 31, 1983 by an owner or operator of the industrial establishment, of more than 50 percent of the fair market value during the period of their respective ownership of the assets of the industrial establishment excluding real property. **The term does not include a sale or transfer satisfying the requirements set forth in N.J.A.C. 7:26B-1.9(b)4.** The term does not include the sale or transfer of equipment or machinery in order to replace, modify, or retool existing equipment or machinery.

...  
 "Small business" means any business which is resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full time employees.

7:26B-1.5 Applicability  
 (a) (No change.)

(b) Unless otherwise provided in this chapter, closing, terminating, or transferring operations includes, but is not limited to, the following events:

- 1.-9. (No change.)
10. Sale or transfer of the entire interest of any partner in a general partnership, the entire interest of a general partner in a limited partnership, or, the entire interest of a limited partner in a limited partnership liable for the obligations of a limited partnership as provided at N.J.S.A. 42:2-9, 42:2-11, and 42:2A-27, such partnership or limited partnership owning or operating an industrial establishment, **unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9;**

11.-13. (No change.)  
 14. Any [transaction or] **judicial proceeding or final agency action** [including but not limited to explosions, fires or other similar events,

as a result of which] **through which** an industrial establishment becomes non-operational for health or safety reasons [, whenever the Department determines that there has been a significant discharge or release of hazardous substances and wastes];

15. Cessations of all or substantially all the operations at an industrial establishment that is for a period of two years or longer (see N.J.A.C. 7:26B-1.8(a)7)[, unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9];

- 16.-18. (No change.)
- (c) (No change.)

7:26B-1.6 Initial Notice triggers

(a) The owner or operator of an industrial establishment shall submit the GIS of the Initial Notice required by N.J.A.C. 7:26B-3 no more than five days subsequent to any of the following events:

- 1.-9. (No change.)
10. [Receipt by the owner or operator of the determination by the Department that the transaction or proceeding, including but not limited to explosions, fires, or other similar events, rendering] **The date fixed in a judgment or final agency action (or, if such judgment or final agency action is stayed, the expiration or any stay thereof) entered in a judicial or regulatory proceeding through which the industrial establishment becomes non-operational for health or safety reasons as described at N.J.A.C. 7:26B-1.5(b)14** [has caused a significant discharge or release of hazardous substances and wastes];

- 11.-14. (No change.)
- (b) (No change.)

7:26B-1.8 Operations and transactions not subject to ECRA

(a) Operations or transactions not subject to the provisions of this chapter include, but are not limited to, the following:

- 1.-24. (No change.)
25. Construction loans obtained by the owner or operator of an industrial establishment; [and]

26. The termination of a lease of an industrial establishment where the lease is renewed by the same tenant without a disruption in operations[.]; **and**

27. **A change in SIC number as the result of a change in the SIC manual without a change in the operations of the industrial establishment.**

- (b) (No change.)

7:26B-1.9 Applicability determinations

(a) In order to obtain a determination from the Department concerning the applicability of the Act or this chapter to a specific [site] **facility or transaction**, a person shall:

- 1.-3. (No change.)
4. Demonstrate to the Department's satisfaction, that the Act or this chapter is not applicable. **As part of such demonstration, all applicable requirements of (b) below shall be satisfied.**

(b) **For applicability determinations requested for a transaction of any of the types described at N.J.A.C. 7:26B-1.5(b)1, 2, 3, 6 or 10, the person requesting the applicability determination shall comply with the procedural requirements set forth in (a) above, and shall satisfy the following requirements:**

1. **As to applicability determinations under N.J.A.C. 7:26B-1.5(b)1, 2 and 6, the applicant shall demonstrate to the Department that:**

i. **The corporation which is to be dissolved, or the shares or assets of which are to be sold or transferred, as the case may be, is an indirect owner or operator of the industrial establishment within the meaning thereof in N.J.A.C. 7:26B-1.5(b)1, 2 and 6 (an "indirect owner"); and**

ii. **Based upon the existence of all of the following circumstances, and upon the statement required under (b)liii below, the assets of the indirect owner would not have been available for the cleanup of the industrial establishment because the indirect owner has not exercised control over the industrial establishment or the direct owner or operator thereof:**

(1) **The indirect owner has not exerted fiscal control over the owner including, but not limited to, imposing any restriction upon**

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the financing, borrowing, budgeting, dividends, reporting and cash management of the owner;

2. Officers, directors and employees of the indirect owner do not constitute a majority of the directors of the owner or such smaller number of directors as may be sufficient to effectively direct the management and policies of the corporation;

(3) No officers, directors and employees of the indirect owner are involved in the day-to-day operations of the owner;

(4) No officers, directors or employees of the indirect owner determine the policies or decisions of the owner; and

(5) The indirect owner does not have knowledge of nor the ability to control the activities including the environmentally related activities of the owner; and

iii. The application for the applicability determination includes a statement by the indirect owner that the indirect owner has not exercised control, at any time, over the industrial establishment or the direct owner or operator thereof, based on the criteria listed in N.J.A.C. (b)1ii above.

2. The Department shall determine that a transaction is a corporate reorganization not substantially affecting the ownership or control of the industrial establishment, and therefore not subject to the provision of the Act, if the requirements set forth in (b)2i and ii below, and the requirements set forth in either (b)2iii or iv below are satisfied:

i. The transaction involves the transfer of stock, assets, or both, solely among corporations under common ownership or control. For the purposes of this subsection, a transaction between related corporations that prepare financial statements and tax returns on a consolidated basis will be presumed to be among corporations under common ownership or control; and

ii. The transaction will not result in an aggregate diminution of more than 10 percent in the net worth of the industrial establishment, or of the person directly owning or operating the industrial establishment. For the purposes of this section, the aggregate diminution, whether through one or several independent transactions, shall not result in a diminution of more than 10 percent of the net worth of the industrial establishment itself, or its direct owner or operator; and

iii. With respect to any indirect owner transferring any direct or indirect interest in the stock or assets of the industrial establishment, the assets of such indirect owner would not have been available for the cleanup of the industrial establishment, based upon the criteria set forth in (b)1ii and iii; or

iv. With respect to any indirect owner described in (b)2iii above, for which the Department cannot determine that the assets would have been unavailable for the cleanup of the industrial establishment:

(1) The transferee of the indirect owner's interest has a net worth equal to at least 90 percent of the net worth of the transferor;

(2) The transferee of the indirect owner's interest agrees with the Department in writing to assume any liability which the transferor may have for the cleanup of any industrial establishment. No such assumption shall constitute or be construed to constitute an admission that the transferor, or any other party, is or may be liable for any compliance with the Act. Neither shall such assumption affect any liability of the transferee to any person or entity other than the Department with respect to the cleanup of the industrial establishment or compliance with the Act. Neither shall such assumption be deemed a submission to the jurisdiction of the Department or any other agency, court or tribunal; and

(3) If the transferor is a New Jersey corporation, or is a foreign corporation authorized to transact business in New Jersey, then the transferee shall be either a New Jersey corporation or be authorized to transact business in New Jersey.

3. As to applicability determinations under N.J.A.C. 7:26B-1.5(b)2, the transferor and transferee of the stock shall certify the following to the Department:

i. The transferor is transferring 50 percent or less of the voting stock of the corporation;

ii. No voting trust, shareholders agreement or proxy exists which would enable the transferee of the stock to elect a majority of the board of directors or such smaller number of directors as may be

sufficient to effectively direct the management and policies of the corporation; and

iii. If the transferor holds a controlling interest in the corporation, the transferor will continue to hold a controlling interest after the transfer.

4. As to applicability determinations under N.J.A.C. 7:26B-1.5(b)3, the sale or transfer of assets will not be considered a sale or transfer of the controlling share of the assets of the industrial establishment, if the transferor complies with (b)4i, ii and iii below:

i. The transferor includes in the applicability application a complete list of asset transfers and sales not in the ordinary course of business (as that term is used in N.J.S.A. 12A:6-102(1) for the five years preceding the date of the applicability application) which list shall include a statement of the fair market value of the assets included in such asset sales;

ii. The transferor includes in the applicability application a compilation of the total fair market value of the transferor's assets at the time of the applicability application; and

iii. The transferor certifies in the applicability application that the transfer or sale of assets is not part of a plan to sell all of the assets of the industrial establishment.

5. For applicability determinations under N.J.A.C. 7:26B-1.5(b)10, the following requirements are satisfied:

i. The applicant demonstrates to the Department that:

(1) The selling or transferring general partner holds no more than 50 percent of the voting interest in the partnership; and

(2) The sale or transfer of the partnership interest, whether in one or several independent transactions, will not result in an aggregate diminution of the net worth of the partnership and the general partners by more than 10 percent; and

ii. The transferee of the interest of the selling or transferring general partner agrees with the Department in writing to assume any liability of the selling or transferring general partner with respect to the cleanup of any industrial establishments directly or indirectly owned or operated by the partnership. No such assumption shall constitute or be construed to constitute an admission that the transferor, or any other party, is or may be liable for any compliance with the Act, nor affect in any manner the transferee's liability to any person or entity other than the Department in respect of the Act. No person entering into such an assumption shall be deemed thereby to have submitted itself to the jurisdiction of the Department of any other agency, court or tribunal.

(c) If the applicant for an applicability determination is required under this section to provide information concerning the net worth of any person, the applicant shall submit with its applicability application form a certification by an independent certified public accountant licensed to practice in New Jersey, stating the following:

1. That the transaction which is the subject of the applicability determination will not reduce the net worth of the person in question by more than 10 percent nor in culmination with one or several previous independent transactions, does not result in a diminution of more than 10 percent of the net worth of the industrial establishment itself, or its direct owner or operator; and

2. That the conclusion set forth in (c)1 above is based upon a review of this transaction as well as any previous transfers undertaken by the applicant and upon financial statements which fairly represent the financial condition of the person in question as of the date of the certification required hereunder, which financial statements have been prepared in accordance with generally accepted accounting principles, and consistently applied.

(d) If the applicant for an applicability determination is required by either (b)2iv2 or (b)5ii above to provide a certification by a transferee, the document shall be an affidavit executed in accordance with the provisions outlined in N.J.A.C. 7:26B-1.13(b)2i(1) through (3) and certified as set forth below:

"The undersigned, [name of transferee] ("Transferee"), hereby agrees with the Department of Environmental Protection and Energy ("Department") to assume any liability which [name of transferor] ("Transferor") may have for the cleanup of [identify the industrial establishment] (the "Industrial Establishment"). The assumption shall not constitute or be construed to constitute an admission that

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Transferor, or any other person or entity, is or may be liable for any cleanup of the Industrial Establishment or compliance with the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. Neither shall this assumption affect any liability of Transferee to any person or entity other than the Department with respect to the cleanup of the Industrial Establishment or Compliance with the Environmental Cleanup Responsibility Act. Neither shall this assumption be deemed a submission to the jurisdiction of the Department or any other agency, court or tribunal."

(e) The Department will, within 45 days after receipt of a complete application for an applicability determination, advise the applicant of its decision. Any person who requests an applicability determination pursuant to this chapter and does not receive a written response from the Department within the deadlines imposed by this subchapter shall not be entitled to assume that the application was found not subject to the Act.

7:26B-1.10 Fee schedule

(a) The owner or operator shall pay all applicable fees required by this section [prior to issuance by] upon submittal to the Department of [any] each submission for negative declaration [approval], sampling plan [approval], cleanup plan [approval, final site cleanup approval], applicability determination, de minimus quantity exemption, Certificate of Limited Conveyance, [or] ACO or Initial Notice, except as provided at (e)4i and (e)5i below. The applicable fee required by this section shall be submitted with each and every submittal made to the Department. The fees required by this section are not one time fees but rather the fees required to perform the review of the specific submittals to the Department.

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

(d) Small business means any business which is resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full time employees.]

(d) Any applicant filing as a small business shall file an affidavit certifying that it is such a business. This affidavit shall be certified in accordance with N.J.A.C. 7:26B-1.13.

(e) (No change.)

7:26B-1.13 Certification and signatories

(a) The following documents required to be submitted to the Department shall be executed and certified as set forth in (b) below:

1. Affidavit for small business filing fee (see N.J.A.C. 7:26B-1.10(d));

Recodify existing 1.-4. as 2.-5. (No change in text.)

[5.]6. Affidavit for a negative declaration[,] and changes to an approved negative declaration[, and requests for extensions of negative declarations] (see N.J.A.C. 7:26B-5.2 and 5.4);

Recodify existing 6.-9. as 7.-10. (No change in text.)

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

7:26B-5.4 Issuance and duration of negative declaration approval  
(a) (No change.)

(b) A negative declaration approval shall be effective only for so long as all the information submitted pursuant to N.J.A.C. 7:26B-3.2 remains unchanged but, in any event, shall not be effective for a period to exceed [60] 120 days.

(c) Where there is a change in the information required in the Initial Notice prior to the expiration of the [60] 120-day period, the owner or operator of the industrial establishment shall immediately notify the Department of the change and request an amended negative declaration approval. The amended negative declaration approval shall be effective for a period not to exceed the remainder of the original [60] 120-day period.

(d) Upon submission of an affidavit that there have been no new discharges of hazardous substances and wastes, the Department will grant one extension of the negative declaration approval of a period not to exceed 60 days.]

7:26B-13.1 Certificate of Limited Conveyance

(a) (No change.)

(b) The Certificate of Limited Conveyance shall be granted only where:

1. (No change.)

2. The appraisal has occurred as close to the application for a Certificate of Limited Conveyance from the Department as possible, but in no case more than [60] one year prior to submittal of the application for the Certificate of Limited Conveyance;

3. (No change.)

(c) (No change.)

(d) To apply for a Certificate of Limited Conveyance the owner shall submit the following to the Department:

1.-4. (No change.)

5. An affidavit certifying that no changes have occurred since the date of the appraisal that would in any way alter the appraised value. The affidavit shall also certify that the portion of the industrial establishment to be conveyed has never been involved in the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes on-sites, above or below ground;

6.-8. (No change.)

(e) (No change.)

OFFICE OF ADMINISTRATIVE LAW NOTE: Because bracketed text is part of the text of Appendix A below, proposed deletions from the Appendix are indicated in brackets with asterisks \*[thus]\*; proposed additions are indicated in boldface thus.

APPENDIX A

WORDING OF INSTRUMENTS DOCUMENT  
FOR FINANCIAL ASSURANCE REQUIRED PURSUANT  
TO THE ENVIRONMENTAL CLEANUP  
RESPONSIBILITY ACT  
N.J.S.A. 13:1K-6 et seq. ("ECRA")

LETTER OF CREDIT

A letter of credit, as specified in N.J.A.C. 7:26B-6.4, issued pursuant to ECRA, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Irrevocable Standby Letter of Credit

\*[Richard T. Dewling]\*, Commissioner

New Jersey Department of Environmental Protection and Energy  
CN-028

Trenton, New Jersey 08625

ATTN: Assistant Director, Industrial Site Evaluation Element

RE: ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT  
ECRA CASE #\_\_\_\_\_

Dear Sir or Madam: We hereby establish our \*[Irrevocable Standby]\* **irrevocable standby** Letter of Credit No. \_\_\_\_\_ in your favor, at the request and for the account of [owner's or operator's of the industrial establishment name and address] up to the aggregate amount of [in words] U.S. dollars \_\_\_\_\_, available upon presentation by you of (1) your sight draft, bearing reference to this \*[Irrevocable Standby]\* **irrevocable standby** Letter of Credit No. \_\_\_\_\_, and (2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to the authority of the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. (P.L. 1983, C. 330) (\*\*[ERCA]\*ECRA") and the ECRA Regulations, N.J.A.C. 7:26B.

This \*[letter of credit]\* **Letter of Credit** is effective as of [insert month, day, and year] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of at least one (1) year on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both NJDEPE's Industrial Site Evaluation Element, CN-028, Trenton, New Jersey, 08625, and [name of owner or operator of industrial establishment] by certified mail that we have decided not to extend this \*[letter of credit]\* **Letter of Credit** beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 years after date of receipt by both NJDEPE and [name of owner or operator of industrial establishment], as shown on the signed return receipts.

Whenever this \*[letter of credit]\* **Letter of Credit** is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund \*[or]\* of [name of owner or operator of industrial establishment], in accordance with your instructions.

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We certify that the wording of this \*[letter of credit]\* **Letter of Credit** is identical to the wording specified in N.J.A.C. 7:26B (Appendix A), as such regulations were constituted on [the date shown immediately below.]

[Name of issuing institution] shall not cancel this \*[letter of credit]\* **Letter of Credit** on the basis of a request from [name of owner or operator of industrial establishment] until it has received written authorization from NJDEPE.

This irrevocable standby \*[letter of credit]\* **Letter of Credit** is subject to [insert \*[ ]\* the most recent edition of the "Uniform Customs and Practice for Documentary Credit", published by the International Chamber of Commerce, \*[ ]\* or "the Uniformed Commercial Code"].

Very truly yours,  
[Name of Issuing Institution]  
[Signature and Title of Official]  
[Printed Name of Official\*[ ]'s Signature]\*  
[Date \_\_\_\_\_ ]

**SURETY BOND**

A surety bond guaranteeing payment into a trust fund, as specified in N.J.A.C. 7:26B-6.2, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Financial Guarantee Bond

RE: ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT  
ECRA CASE # \_\_\_\_\_

Date bond executed: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Principal: [Legal name and business address of owner or operator of the industrial establishment]

Type of organization [insert "individual", \*[ ]\* "joint venture", \*[ ]\* "partnership", \*[ ]\* or "corporation"]

State of incorporation: \_\_\_\_\_

[Insert name, current ownership, Standard Industrial Classification number, location of industrial establishment, including lot and block number, municipality and county, and ECRA cleanup amount(s) for each industrial establishment guaranteed by this bond. Indicate NJDEPE-approved ECRA cleanup amount]:

Total penal sum of bond: \_\_\_\_\_

Surety bond number: \_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the New Jersey Department of Environmental Protection and Energy, hereinafter NJDEPE, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

\* \* \*

[Next Paragraph For Use by Principal With ECRA Administrative Consent Order Only]

WHEREAS, said Principal has entered into an Administrative Consent Order with NJDEPE dated [date], hereinafter "Consent Order", under which Principal has agreed, among other things, to undertake certain actions in order to comply with ECRA with respect to the industrial establishment described above;

WHEREAS, said Principal is required to provide financial assurance in an amount equal to or greater than the cost estimate for implementation of the cleanup plan approved by NJDEPE on [date] and required as a precondition to any closure or sale or transfer of an industrial establishment in accordance with the Environmental Cleanup

Responsibility Act, N.J.S.A. 13:1K-6 et seq., hereinafter "ECRA", and the ECRA Regulations, N.J.A.C. 7:26B, and

WHEREAS, the condition of this obligation is such that, if the \*[principal]\* **Principal** shall promptly and faithfully perform its obligations under the provisions of ECRA, then this obligation shall be null and void; otherwise, the surety bond shall remain in full force and effect to assure performance of the obligations under ECRA and to otherwise assure and guarantee the performance and implementation of the ECRA cleanup plan approved by NJDEPE on [date];

WHEREAS, said Principal shall establish a standby trust fund as is required by N.J.A.C. 7:26B-6.2(c) when a surety bond is used to provide a mechanism for access by NJDEPE to assure payment for the implementation of the ECRA cleanup plan approved by NJDEPE on [date];

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform its obligation under ECRA, whenever required to do so, regarding each industrial establishment for which this surety bond guarantees performance, then this obligation shall be null and void, otherwise, it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the NJDEPE that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the industrial establishment into the standby trust fund as directed by the NJDEPE within ten (10) days of receipt of NJDEPE's notification.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Security(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the NJDEPE Industrial Site Evaluation Element, CN-028, Trenton, N.J., 08625; provided, however, the cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEPE Industrial Site Evaluation Element, as evidenced by the return receipts, nor shall cancellation occur while a compliance procedure is pending, as defined in N.J.A.C. 7:26B-6.2(h).

The Principal may terminate this bond by sending written notice to the Surety(ies); provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEPE.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth below.

The persons whose signatories appear below hereby certify that they are authorized to execute this \*[survey]\* **surety** on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the Wording of Instruments document referred to in N.J.A.C. 7:26B-6.2(b) as constituted on the date the bond was established.

Principal  
[Signature(s)]  
[Date]  
[Name(s)]  
[Title(s)]  
[Corporate seal]  
[Name and address]  
State of incorporation: \_\_\_\_\_  
Liability limit: \_\_\_\_\_  
[Signature(s)]  
[Date]  
[Name(s) and title(s)]  
[Corporate seal]  
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]  
Bond premium: \_\_\_\_\_

**PROPOSALS**

**Interested Persons see Inside Front Cover**

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**PERFORMANCE BOND**

A surety bond guaranteeing performance of ECRA cleanup or payment into a standby trust fund, as specified in N.J.A.C. 7:26B-6.3, shall be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**Performance Bond**

RE: ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT  
ECRA Case # \_\_\_\_\_

Date bond executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and business address of owner or operator of industrial establishment]

Type of organization: [insert "individual", \*["]\* "joint venture", \*["]\* "partnership", \*["]\* or "corporation"]

State of incorporation: \_\_\_\_\_

Surety(ies): [name(s) and business address(es)]

[Insert name, current ownership, Standard Industrial Classification number, location of industrial establishment, including lot and block number, municipality and county, and ECRA cleanup amount(s) for each industrial establishment guaranteed by this bond. Indicate NJDEPE-approved ECRA Cleanup amount]:

Total penal sum of bond: \_\_\_\_\_

Surety bond number: \_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto, are firmly bound to the New Jersey Department of Environmental Protection and Energy, hereinafter NJDEPE, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally, with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of penal sum.

[Next Paragraph For Use by Principal With ECRA Administrative Consent Order Only]

WHEREAS, said Principal has entered into an Administrative, Consent Order with NJDEPE dated [date], hereinafter "Consent Order", under which Principal has agreed, among other things, to undertake certain actions in order to comply with ECRA with respect to the industrial establishment described above;

WHEREAS, said Principal is required to provide financial assurance in an amount equal to or greater than \*[to]\* the cost estimate for implementation of the cleanup plan approved by NJDEPE on [date] and required as a precondition to any closure, \*[or]\* sale or transfer of an industrial establishment in accordance with the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 *et seq.*, hereinafter "ECRA" and the ECRA Regulations, N.J.A.C. 7:26B;

WHEREAS, the condition of this obligation is such that, if the Principal shall promptly and faithfully perform its obligations under the provisions of ECRA, then this obligation shall be null and void; otherwise, the surety bond shall remain in full force and effect to assure performance of the obligations under ECRA and to otherwise assure and guarantee the performance and implementation of the ECRA cleanup plan approved by NJDEPE on [date];

WHEREAS, said Principal shall establish a standby trust fund as is required by N.J.A.C. 7:26B-6.3(c) when a surety bond is used to provide a mechanism for access by NJDEPE to all or part of such financial assurance required by ECRA to assure performance of the implementation of the ECRA cleanup plan and/or Consent Order approved by NJDEPE on [date];

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform its obligations under ECRA, whenever required to do so, regarding each facility for which this surety bond guarantees performance, then this obligation shall be null and void, otherwise, it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon

notification by the NJDEPE that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall either perform the monitoring and cleanup in accordance with the NJDEPE-approved cleanup plan [or, if appropriate, delete "NJDEPE-approved cleanup plan" and insert "Consent Order"] or place funds in the amount guaranteed for the cleanup of the industrial establishment into the standby trust fund as directed by the NJDEPE. **The Surety(ies) shall notify NJDEPE within ten (10) days of receipt of NJDEPE's notification of the Surety(ies) intentions to either perform the monitoring and cleanup at the industrial establishment in accordance with the NJDEPE approved cleanup plan or Consent Order or place the funds in the amount guaranteed into the standby trust fund.**

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall be obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the NJDEPE Industrial Site Evaluation Element, CN-028, Trenton, N.J. 08625; provided, however, the cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEPE, as evidenced by the return receipts, nor shall cancellation occur while a compliance procedure is pending, as defined in N.J.A.C. 7:26B-6.3(i).

The Principal may terminate the bond by sending written notice to the Surety(ies); provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEPE.

In \*[WITNESS WHEREOF]\* **Witness Whereof**, the Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth below.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the Wording of Instruments document referred to in N.J.A.C. 7:26B-6.2(b).

Principal

[Signature(s)]

[Date]

[Name(s)]

[Title(s)]

[Corporate seal]

[Name and address]

State of incorporation: \_\_\_\_\_

Liability limit: \_\_\_\_\_

[Signature(s)]

[Date]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \_\_\_\_\_

**STANDBY TRUST AGREEMENT**

A Standby Trust Fund, established pursuant to a Standby Trust Agreement, shall be required along with and in addition to a financial assurance option selected by the owner or operator of an industrial establishment pursuant to this Wording of Instruments document (see N.J.A.C. 7:26B-6.2(b) for Surety Bond; N.J.A.C. 7:26B-6.3(b) for Performance Bond; and N.J.A.C. 7:26B-6.4(b) for Letter of Credit). NJDEPE requires a Standby Trust Agreement for a Standby Trust Fund to provide a mechanism for access by NJDEPE to all or part \*[or]\* of such financial assurance required by ECRA to assure the successful implementation of any ECRA-cleanup plan approved by NJDEPE.

A standby trust agreement for a cleanup plan approval or an Administrative Consent Order shall be worded as follows, except that instructions

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in brackets are to be replaced with the relevant information and the brackets deleted:

**Standby Trust Agreement**

**RE: ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT  
ECRA CASE # \_\_\_\_\_**

This Standby Trust Agreement, hereinafter "Agreement", entered into as of [date] by and between [name and address of the owner or operator of the industrial establishment], a New Jersey [insert "corporation\*[,]", "partnership[,]", "association", or "proprietorship"], hereinafter "Grantor and [name and address of corporate trustee], [insert "incorporated in the State of" or "a national bank"], hereinafter "Trustee".

WHEREAS, the New Jersey Department of Environmental Protection and Energy, hereinafter "NJDEPE", an agency of the State of New Jersey, has established the Environmental Cleanup Responsibility Act Regulations, N.J.A.C. 7:26B, pursuant to the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 *et seq.*, hereinafter "ECRA", applicable to the Grantor, requiring that certain procedures be followed by industrial establishments to ensure adequate preparation and implementation of acceptable cleanup procedures as a precondition of any closure, \*[or]\* sale or transfer of any industrial establishment in accordance with ECRA.

\* \* \*

[Next Paragraph For Use by Grantor With ECRA Administrative Consent Order Only]

WHEREAS, the Grantor has entered into an Administrative Consent Order with NJDEPE dated [date], hereinafter "Consent Order", under which Grantor has agreed, among other things, to undertake certain actions in order to comply with ECRA with respect to the industrial establishment described above;

WHEREAS, the Grantor is required, within 14 days of written approval of the ECRA-cleanup plan by NJDEPE, to provide a surety bond or other financial security pursuant to N.J.A.C. 7:26B-6 in an amount equal to or greater than the cost of said approved cleanup plan;

WHEREAS, The Grantor, acting through its duly authorized officer or management official, has selected the Trustee \*[to be the trustee]\* under this Agreement, and the Trustee is willing to act as \*[trustee]\* Trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follow:

**Section 1. Definitions.**

As used in this Agreement:

(a) The term "Grantor" means the owner or operator of the industrial establishment entering into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee.

**Section 2. Identification of Industrial Establishment and Cost Estimates.**

This Agreement pertains to the industrial establishments and cost estimates identified on Attachment A. [On Attachment A, for each industrial establishment list the name, cleanup plan cost estimates, current ownership, Standard Industrial Classification number, location of the industrial establishment, \*[including]\* tax lot and block number, municipality and county for which financial assurance is demonstrated by this Agreement.]

**Section 3. Establishment of Fund.**

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of NJDEPE. The Grantor and the Trustee intend that no[t] third party shall have access to the fund except as herein provided. The Fund is established initially as consisting of the total sum of [dollar amount] which is acceptable to the Trustee and NJDEPE. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEPE.

**Section 4. Payment for ECRA Cleanup.**

The Trustee shall make payment from the Fund as the NJDEPE Commissioner, or his designee, shall direct, in writing, to provide for the payment of the ECRA cleanup costs of the industrial establishment [as appropriate add "pursuant to the Administrative Consent Order dated [date]" or "covered by the ECRA cleanup approved by the NJDEPE on [date]"] and this Agreement. The Trustee shall reimburse the Grantor or other persons, as specified by the NJDEPE, from the Fund for ECRA cleanup expenditures in such amounts as the NJDEPE shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts the NJDEPE specifies in writing. Upon refund such funds shall no longer constitute part of the Fund as defined herein.

**Section 5. Payments Comprising the Fund.**

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

**Section 6. Trustee Management.**

At such time as the corpus of the Fund is funded with more than one dollar, the Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the NJDEPE as the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment of distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

**Section 7. Commingling and Investment.**

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

**Section 8. Express Powers of Trustee.**

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another

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person, or to deposit or arrange for the deposit of any securities issued by the Federal Government of the United States or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

**Section 9. Taxes and Expenses.**

All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee, shall be paid from the Fund.

**Section 10. Annual Valuation.**

The Trustee shall, annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEPE a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NJDEPE shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

**Section 11. Advice of Counsel.**

The Trustee may, from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

**Section 12. Trustee Compensation.**

The Trustee shall be entitled to reasonable compensation, from time to time, for its services, as agreed upon in writing with the Grantor.

**Section 13. Successor Trustee.**

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and his successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over **\*[property]\* to the successor Trustee the funds and properties** constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the NJDEPE and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section [3]9.

**Section 14. Successor Grantor.**

Sixty days prior to the Grantor ceasing to exist, if dissolution is contemplated, the Grantor must notify and provide NJDEPE with the names and addresses of any and all successors and assigns along with a notarized acknowledgement from same stating that the successors and assigns assume responsibilities concerning financial assurance.

**Section 15. Instructions to the Trustee.**

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in Attachment B or such other designees as the Grantor may designate by amendment to Attachment B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the NJDEPE

to the Trustee shall be in writing, signed by the NJDEPE Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor of NJDEPE hereunder has occurred.

The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEPE, except as provided for herein.

**Section 16. Amendment of Agreement.**

This Agreement may be amended by an instrument in writing executed jointly by the Grantor or the Grantor's principals, successors, and assigns if Grantor has dissolved, the Trustee and the NJDEPE or by the Trustee and the NJDEPE if the Grantor ceases to exist and no successors or assigns are named.

**Section 17. Irrevocability and Termination.**

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEPE or of the Trustee and the NJDEPE, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

**Section 18. Immunity and Indemnification.**

The Trustee shall not incur personal liability of any nature in connection with any **\*[acts or] act of omission\*[s]\***, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEPE issued in accordance with the Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

**Section 19. Choice of law.**

This Agreement shall be administered, construed and enforced according to the laws of the State of New Jersey.

**Section 20. Interpretation.**

As used in this Agreement, words in the singular include the plural and words in the plural include the singular.

The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officer or management official, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date set forth below.

[NAME OF GRANTOR]

DATE: \_\_\_\_\_ BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

[NAME OF TRUSTEE]

DATE: \_\_\_\_\_ BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

[Grantor shall attach Attachments A and B.]

**CERTIFICATION OF ACKNOWLEDGEMENT  
(Grantor & Trustee)**

ECRA Case #: \_\_\_\_\_

Industrial Establishment: \_\_\_\_\_

Owner: \_\_\_\_\_

Operator: \_\_\_\_\_

\*[Location: \_\_\_\_\_ ]\*

Amount of ECRA Cleanup Approval: \_\_\_\_\_

Amount of ECRA ACO: \_\_\_\_\_

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Type of Financial Assurance Posted: \_\_\_\_\_  
 State of \_\_\_\_\_  
 County of \_\_\_\_\_

On the [date], before me personally came [owner or operator of the industrial establishment] and [Trustee], to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instruments is such corporate seal; that \*[was]\* is so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like other.

[Signature of Notary Public].

**FULLY FUNDED TRUST**

A fully funded trust for an ECRA cleanup plan approval or an ECRA ACO shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

\*[Standby]\* **Fully Funded Trust Agreement**

RE: ENVIRONMENTAL \*[RESPONSIBILITY]\* CLEANUP  
**RESPONSIBILITY ACT**  
 ECRA CASE # \_\_\_\_\_

This Fully Funded Trust, hereinafter "Agreement", entered into as of [date] by and between [name and address of the owner or operator of the industrial establishment], a New Jersey [insert "corporation", "partnership", "association", or "proprietorship"], hereinafter "Grantor" and [name and address of corporate trustee], [insert "incorporated in the State of" or "a national bank"], hereinafter "Trustee".

WHEREAS, the New Jersey Department of Environmental Protection and Energy, hereinafter "NJDEPE", an agency of the State of New Jersey, has established the Environmental Cleanup Responsibility Act Regulations, N.J.A.C. 7:26B, pursuant to the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 *et seq.*, hereinafter "ECRA", applicable to the Grantor, requiring that certain procedures be followed by industrial establishments to ensure adequate preparation and implementation of acceptable cleanup procedures as a precondition of any closure, \*[or]\* sale or transfer of any industrial establishment in accordance with ECRA.

\* \* \*

[Next Paragraph For Use by Grantor With ECRA Administrative Consent Order Only]

WHEREAS, the Grantor has entered into an Administrative Consent Order with NJDEPE dated [date], hereinafter "Consent Order", under which Grantor has agreed, among other things, to undertake certain actions in order to comply with ECRA with respect to the industrial establishment described above;

WHEREAS, the Grantor is required, within 14 days of written approval of the ECRA-cleanup plan by NJDEPE, to provide a surety bond or other financial security pursuant to N.J.A.C. 7:26B-6 in an amount equal to or greater than the cost of said approved cleanup plan;

WHEREAS, The Grantor, acting through its duly authorized officer or management official, has selected the Trustee \*[to be the trustee]\* under this Agreement, and the Trustee is willing to act as \*[trustee]\* **Trustee**.

NOW THEREFORE, the Grantor and the Trustee agree as follow:

**Section 1. Definitions.**

As used in this Agreement:

(a) The term "Grantor" means the owner or operator of the industrial establishment entering into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee.

**Section 2. Identification of Industrial Establishment and Cost Estimates.**

This Agreement pertains to the industrial establishments and cost estimates identified on Attachment A. \*[on]\* On Attachment A, for each industrial establishment list the name, cleanup plan cost estimates, current ownership, Standard Industrial Classification number, location of the industrial establishment, \*[including]\* tax lot and block number,

\*[and]\* municipality and county for which financial assurance is demonstrated by this Agreement.]

**Section 3. Establishment of Fund.**

The Grantor and the Trustee hereby establish a fully funded trust fund, hereinafter the "Fund", for the benefit of NJDEPE. The Grantor and the Trustee intend that no third party shall have access to the fund except as herein provided. The Fund is established initially as consisting of the total sum of [dollar amount] which is acceptable to the Trustee and NJDEPE. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEPE.

**Section 4. Payment for ECRA Cleanup.**

The Trustee shall make payment from the Fund as the NJDEPE Commissioner, or his designee, shall direct, in writing, to provide for the payment of the ECRA cleanup costs of the industrial establishment [as appropriate add "pursuant to the Administrative Consent Order dated [date]" or "covered by the ECRA cleanup approved by the NJDEPE on [date]"] and this Agreement. The Trustee shall reimburse the Grantor or other persons, as specified by the NJDEPE, from the Fund for ECRA cleanup expenditures in such amounts as the NJDEPE shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts the NJDEPE specifies in writing. Upon refund such funds shall no longer constitute part of the Fund as defined herein.

**Section 5. Payments Comprising the Fund.**

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

**Section 6. Trustee Management.**

At such time as the corpus of the Fund is funded, the Trustee shall invest and reinvest principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the NJDEPE as the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment of distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

**Section 7. Commingling and Investment.**

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the Federal Government of the United States or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee, shall be paid from the Fund.

Section 10. Annual Valuation.

The Trustee shall, annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and the NJDEPE a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NJDEPE shall constitute a conclusively binding asset by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel.

The Trustee may, from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation, from time to time, for its services, as agreed upon in writing with the Grantor.

Section 13. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over \*[property]\* to the successor Trustee the funds and properties constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of

a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the NJDEPE and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section [3]9.

Section 14. Successor Grantor.

Sixty days prior to the Grantor ceasing to exist, if dissolution is contemplated, the Grantor must notify and provide NJDEPE with the names and addresses of any and all successors and assigns along with a notarized acknowledgement from same stating that the successors and assigns assume responsibilities concerning financial assurance.

Section 15. Instructions to the Trustee.

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in Attachment B or such other designees as the Grantor may designate by amendment to Attachment B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the NJDEPE to the Trustee shall be in writing, signed by the NJDEPE Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NJDEPE hereunder has occurred.

The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEPE, except as provided for herein.

Section 16. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed jointly by the Grantor or the Grantor's principals, successors, and assigns if Grantor has dissolved, the Trustee and the NJDEPE or by the Trustee and the NJDEPE if the Grantor ceases to exist and no successors or assigns are named.

Section 17. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEPE or of the Trustee and the NJDEPE, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any \*[acts or]\* act of omission\*[s]\*, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEPE issued in accordance with the Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law.

This Agreement shall be administered, construed and enforced according to the laws of the State of New Jersey.

Section 20. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular.

The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officer or management official, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date set forth below:

[NAME OF GRANTOR]

DATE: \_\_\_\_\_ BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

[NAME OF TRUSTEE]

DATE: \_\_\_\_\_ BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

[Grantor shall attach Attachments A and B.]

CERTIFICATION OF ACKNOWLEDGEMENT  
(Grantor) & (Trustee)

ECRA Case #: \_\_\_\_\_

Industrial Establishment: \_\_\_\_\_

Owner: \_\_\_\_\_

Operator: \_\_\_\_\_

\*[Location: \_\_\_\_\_ ]\*

Amount of ECRA Cleanup Approval: \_\_\_\_\_

Amount of ECRA ACO: \_\_\_\_\_

Type of Financial Assurance Posted: \_\_\_\_\_

\*[[Total amount received in the form of \_\_\_\_\_ ]]\*

State of \_\_\_\_\_

County of \_\_\_\_\_

On the [date], before me personally came [owner or operator of the industrial establishment] and [Trustee], to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instruments is such corporate seal; that is [was] so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like other.

[Signature of Notary Public].

(a)

POLICY AND PLANNING  
AIR QUALITY REGULATION  
SCIENCE AND TECHNICAL

Notice Seeking Public Input on the Process of Setting  
Statewide Standards for Mercury Emissions

Take notice that the Department of Environmental Protection and Energy will hold a public meeting for the purpose of receiving information and recommendations from the regulated community, the environmental community and any other interested party on the process of setting mercury emission standards. In particular, the Department is seeking public input on what the standard(s) should be, scientific and technical data to support the recommended standard(s), and the type of facilities that should be covered by the standard(s) as well as information on the environmental areas, ecological systems and pathways that should be considered.

The public meeting will be held on Monday, April 6, 1992 from 1:00 P.M. to 9:00 P.M. at the New Jersey Department of Environmental Protection and Energy, First Floor, Hearing Room, 401 East State Street, Trenton, New Jersey. Anyone wishing to participate in this meeting should register in advance by contacting Diane Yarson at 609-984-3023.

Submit written comments by April 30, 1992 to:

Samuel A. Wolfe, Esq.  
New Jersey Department and Environmental Protection  
and Energy  
Office of Legal Affairs  
401 East State Street  
CN 402  
Trenton, New Jersey 08625-0402

HEALTH

(b)

HEALTH FACILITIES RATE SETTING  
Standard Hospital Accounting and Rate Evaluation  
(SHARE) Cost Accounting and Rate Evaluation  
Guidelines

Proposed Amendments: N.J.A.C. 8:31A-7.4 and 7.5

Authorized By: Frances J. Dunston, M.D., M.P.H.,  
Commissioner, Department of Health (with approval of the  
Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq.

Proposal Number: PRN 1992-99.

Submit comments by April 1, 1992 to:  
Charles O'Donnell, Director  
Health Facilities Rate Setting  
New Jersey Department of Health  
CN 360  
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 8:31A-7.4 and 7.5 will provide for a periodic rebasing of the SHARE Hospital system and a periodic elimination of the Minimum Base Period Challenge (MBPC). The Share Hospital system has not been rebased since 1979 and a rebasing would recognize hospital industry changes and new technologies. In order to coordinate future changes, the Department is recommending a periodic rebasing of the SHARE Hospital not less than every four years nor more than seven years. This will assure that the reimbursement system is maintaining a status quo with the hospital industry.

The recommendation for a periodic rebasing is a response to the New Jersey Hospital Association Petition for Rulemaking, which requested a rebasing (see 23 N.J.R. 2882(d) and 23 N.J.R. 3045(b)). The Department solicited public comment on the petition. Nine hospitals, Blue Cross and Blue Shield of New Jersey, and the Department of the Public Advocate supported the rebasing. One hospital submitted comments which neither supported nor opposed the rebasing concept. There was no opposition to the rebasing which will be effective for base year 1990 and rate year 1992.

The petition for rulemaking requested an elimination of the Minimum Base Period Challenge (MBPC). This control excludes costs from subsequent Rate Years if they have been categorized as unreasonable in an earlier Rate Year. The rebasing will eliminate this exclusion for costs categorized as unreasonable, since 1979.

The proposed amendments will eliminate the MBPC periodically not less than every four years nor more than seven years as part of the periodic rebasings. However, the MBPC will apply to costs categorized as unreasonable for the years between each rebasing. This mechanism will continue one of the basic cost containment fundamentals of the SHARE Hospital system. Both Blue Cross and Blue Shield of New Jersey and the Department of the Public Advocate support this application of the MBPC.

Social Impact

These proposed amendments will insure that the SHARE rate setting system will continue to provide reasonable reimbursement rates for the provider. The periodic rebasings will insure a balance between recognition of hospital industry changes and appropriate cost containment mechanisms.

Economic Impact

Rebasing the SHARE system will increase Blue Cross and Medicaid reimbursement to hospitals by approximately \$7,700,000 a year. This increase will enable the SHARE Hospitals to maintain, at current levels, or reduce, their rates to other payors, which will result in a more equitable reimbursement system for all payors.

Regulatory Flexibility Statement

The hospitals regulated by N.J.A.C. 8:31A are not small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since these hospitals employ more than 100 people. Therefore, no regulatory flexibility analysis is required.

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

8:31A-7.4 Methodology for calculating Global Rates

(a) (No change.)

(b) **Hospitals will not receive a Global Rate for the Rate Year which reflects a rebasing and the elimination of the Minimum Base Period Challenge.**

8:31A-7.5 Methodology for Alternate Rates

(a) (No change.)

(b) A proposed Alternate Rate will be developed from the following:

1.-5. (No change.)

6. The Adjusted [Approval] **Approved** Base will be determined by adjusting the most recent approved rate (Final Administrative Rate, Administrative Payment Rate, or Proposed Administrative Rate) for actual volume variances, relevant certificate of need and other legal changes, and excluding depreciation and lease costs in the Plant cost center, interest, malpractice and utility costs. This Adjusted Approved amount will be compared to the actual costs less peer comparison challenges and exclusive of depreciation and lease costs in the Plant cost center, malpractice and utility costs. If the actual costs are in excess of the Adjusted Approval Base the amount of excess is the overspending challenge. The overspending challenge will be increased by the economic factor and deducted from the Actual costs [for] **except for base year 1991 (rate year 1993) and periodically not less than every four years nor more than seven years.** [this] This adjustment will be made separately for the non-physician and physician portions. No tradeoffs will be allowed.

7.-15. (No change.)

(c) (No change.)

(a)

**DRUGS UTILIZATION REVIEW COUNCIL  
List of Interchangeable Drug Products  
Proposed Amendments: N.J.A.C. 8:71**

Authorized By: Drug Utilization Review Council,  
Robert Kowalski, Chairman.  
Authority: N.J.S.A. 24:6E-6(b).  
Proposal Number: PRN 1992-101.

A public hearing concerning these proposed amendments will be held on **Monday, March 23, 1992, at 2:00 P.M.** at the following address:

Room 804, Eighth Floor  
Department of Health  
Health-Agriculture Bldg.  
Trenton, New Jersey 08625-0360

Submit written comments by April 2, 1992 to:  
Mark A. Stollo, R.Ph., M.S.  
Drug Utilization Review Council  
New Jersey Department of Health  
Room 501, CN 360  
Trenton, N.J. 08625-0360  
609-292-4029

The agency proposal follows:

**Summary**

The List of Interchangeable Drug Products is a generic formulary, or list of acceptable generic drugs which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

For example, the proposed atenolol 50 mg and 100 mg tablets could be used as a less expensive substitute for Tenormin, a branded prescription medicine. Similarly, the proposed tolmetin 600 mg tablets could be substituted for the more costly branded product, Tolectin.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalence," any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including negative comments from the

manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found to be in compliance with the U.S. Food and Drug Administration's regulations.

**Social Impact**

The social impact of the proposed amendments would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacists's supply options.

Physicians and patients are not adversely affected by this proposal because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

**Economic Impact**

The proposed amendments will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the economies occasioned by these amendments accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. A 1988 estimate of average savings per substituted Medicaid prescription was \$7.31. However, the number of prescriptions that will be newly substituted due to these proposed amendments cannot be accurately assessed in order to arrive at a total savings.

**Regulatory Flexibility Analysis**

The proposed amendments impact many small businesses, as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-15 et seq.; specifically, over 1,500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting or recordkeeping requirements for pharmacies, and small generic drug manufacturers have minimal initial reports, and no additional ongoing reporting or recordkeeping requirements. Further, these minimal requirements are offset by the increased economic benefits accruing to these same small generic businesses due to these proposed amendments.

Full text of the proposed amendments follows:

Albuterol sulfate Inhalation soln 0.5%	Copley
Albuterol sulfate tabs 2 mg	Copley
Albuterol sulfate tabs 4 mg	Copley
Amantadine HCl syrup 10 mg/5ml	Copley
Amiloride/HCTZ tabs 5/50	Geneva
Asbron G elixir substitute	Liquipharm
Atenolol tabs 100 mg	Bristol-Meyers
Atenolol tabs 100 mg	Lederle
Atenolol tabs 100 mg	Mutual
Atenolol tabs 50 mg, 100 mg	W-C
Atenolol tabs 50 mg	Bristol-Meyers
Atenolol tabs 50 mg	Lederle
Atenolol tabs 50 mg	Mutual
Atenolol/Chlorthalidone tabs 100/25	Mutual
Atenolol/Chlorthalidone tabs 50/25	Mutual
Cefadroxil caps 500 mg	Zenith
Cefadroxil tabs 1000 mg	Zenith
Chloral hydrate syrup 500 mg/5 ml	Liquipharm
Clemastine fumarate syrup 0.67 mg/5 ml	Lemmon
Cyclobenzaprine tabs 10 mg	Watson
Fenopropfen calcium caps 200 mg	W-C
Fluocinonide ointment 0.05%	Lemmon
Fluphenazine HCl oral soln 5 mg/ml	Copley
HCTZ tabs 25 mg, 100 mg	Danbury
Hyoscyamine sulfate drops 0.125 mg/ml	Liquipharm
Iodoquinol tabs 650 mg	Liquipharm
Leucovorin tabs 25 mg	W-C
Loperamide caps 2 mg	W-C
Metaproterenol syrup 10 mg/5 ml	Copley

STATE

PROPOSALS

Methocarbamol tabs 500 mg	Mutual
Methocarbamol tabs 750 mg	Mutual
Minocycline tabs 50 mg, 100 mg	W-C
Minoxidil tabs 10 mg	Mutual
Minoxidil tabs 2.5 mg	Mutual
Morphine sulfate oral soln 2 mg/ml	Liquipharm
Naldecon pediatric drops substitute	Liquipharm
Nortriptyline HCl caps 50 mg, 75 mg	Creighton
Nortriptyline HCl caps 10 mg, 25 mg	Creighton
Phenobarbital elixir 20 mg/5 ml	Liquipharm
Phos Flur oral rinse substitute	Copley
Phos Flur oral rinse substitute	Liquipharm
Pindolol tab 10 mg	Purepac
Pindolol tab 5 mg	Purepac
Piroxicam caps 10 mg, 20 mg	W-C
Piroxicam caps 10 mg	Mutual
Piroxicam caps 20 mg	Mutual
Podoben liquid substitute	Liquipharm
Potassium Cl powder packets 20 mEq	KV Pharm
Potassium Cl powder packets 20 mEq	Tower
Propoxyphene naps/APAP tabs 100/650	Mutual
Propoxyphene naps/APAP tabs 50/325	Mutual
Quinine sulfate tabs 260 mg	Vitarine
Rynatan pediatric susp. substitute	Liquipharm
Rynatan tabs substitute	Vitarine
Salsalate tabs 500 mg	Vitarine
Salsalate tabs 750 mg	Vitarine
Sodium fluoride drops 4.97 mg/ml	Liquipharm
Stuartnatal 1+1 tabs substitute	Vitarine
Sulindac tabs 150 mg	Lemmon
Sulindac tabs 200 mg	Lemmon
Timolol maleate tabs 5 mg, 10 mg, 20 mg	W-C
Tolmetin tabs 600 mg	Purepac
Trazodone tabs 1000 mg	Mutual
Trazodone tabs 150 mg	Mutual
Trazodone tabs 50 mg	Mutual
Triaminic infant drops substitute	Liquipharm
Trihexyphenidyl HCl elixir 2 mg/5 ml	Liquipharm
Trilisate tabs substitute 1000 mg	Vitarine
Trilisate tabs substitute 500 mg	Vitarine

advising the public that they can register to vote at the office. The procedures for agency employees to follow in registering persons to vote and providing assistance to such persons are set forth. Instructions for receipt, acceptance and stamping or marking of completed forms, and the procedure for transmitting received and accepted forms, are provided. Public agencies are required to prepare specified lists of their public offices, and to provide the Secretary of State with copies of and updates to the lists. Agency employees and agents are also required to prepare and submit to the agency head weekly reports of utilization of voter registration services, and the agency head is required to report to the Secretary, in May and October of each year, the aggregate of such utilization of services.

In addition, N.J.A.C. 15:10-1.5(c)9 is being added to clarify that a registration form is invalid if the date of witnessing is earlier than the date of signature; however, a witnessing date later than or the same as the date of signature shall not render the form invalid.

**Social Impact**

The proposed new rules are anticipated to have a positive social impact on the public in that specific procedures are established for the completion and ultimate filing of New Jersey voter registration forms. The new rules allow the Division of Elections to have an efficient means to distribute forms to certain public agencies regularly contacted by the general public, thus ensuring State residents are provided with an opportunity to register to vote. The rules further provide that a public official be made available to assist the applicant in completing the necessary registration form.

**Economic Impact**

The proposed new rules will not have or result in any economic impact on the general public or businesses. Any cost involved will be administrative in nature, such as printing, postage, and recordkeeping which will be funded by the Secretary of State and the various public agencies.

**Regulatory Flexibility Analysis**

In defining "public agencies" as used in these proposed new rules, N.J.S.A. 19:31-6.3a includes "any agent of the director [of the Division of Motor Vehicles] designated under R.S. 39:3-3." While the proposed new rules also apply to public agencies which are not small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the following analysis is applicable for agents of the Division of Motor Vehicles who may be small businesses:

The proposed new rules impose reporting, recordkeeping and other compliance requirements on public agencies, as defined under P.L.1991, c.318. These requirements are as summarized in the proposal Summary above. The costs of compliance with these requirements will be administrative in nature, for example, notice printing, postage, recordkeeping and reporting. Specific requirements are imposed on agency employees in making the public aware of the opportunity to register, assisting with form completion and reporting on registration utilization. Except possibly for the printing or copying of the notices to be posted, no professional services need be utilized by the agency. In order to maintain consistency with the statutory requirements, to maximize the expanded opportunity for voter registration and to efficiently manage this distribution program, lesser requirements or exemptions for public agencies which may be small businesses cannot be provided.

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

15:10-1.5 Completion of form

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

(c) In order for the registrant to be deemed validly registered, the following items on the voter registration form must be completed in the following manner:

1.-8. (No change.)

**9. The form shall be rendered invalid if the date of witnessing is earlier than the date of signature. If the date of witnessing is on or after the date of signature, a difference in the dates shall not render the form invalid.**

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

STATE

(a)

**DIVISION OF ELECTIONS**

**Distribution of State Voter Registration Forms through Public Agencies**

**Proposed New Rules: N.J.A.C. 15:10-7**

**Proposed Amendment: N.J.A.C. 15:10-1.5**

Authorized By: Daniel J. Dalton, Secretary of State.

Authority: P.L.1991, c. 318.

Proposal Number: PRN 1992-112.

Submit written comments by April 1, 1992 to:

Lillian Midge Trainor  
Department of State  
Division of Elections, CN 304  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

P.L.1991, c.318, which was signed into law and enacted on November 20, 1991, provides that the Secretary of State may promulgate rules and regulations to effectuate its purpose. The purpose of this act is to provide for the uniform distribution of State voter registration forms and ensure accessibility to the general public by making the forms available through various public agencies. This act further provides that a public agency representative will be available to assist in the proper completion of these forms.

The proposed new rules require public agencies, as defined in N.J.S.A. 19:31-6.3a, to maintain a supply of voter registration forms in a prominent location in each of their offices, and to post a prescribed notice

**SUBCHAPTER 7. DISTRIBUTION OF STATE VOTER REGISTRATION FORMS THROUGH PUBLIC AGENCIES**

**15:10-7.1 Definitions**

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

"Agency head" means the Division Director, Executive Director or administrative officer listed in N.J.S.A. 19:31-6.4f.

"Applicant" means a person applying to register as a voter.

"Employee" includes an agent of the Division of Motor Vehicles and employees of such agent, as well as the employees of other public agencies.

"Form" means the voter registration form described in N.J.S.A. 19:31-6.4.

"Office" or "public office" means the place where voter registration forms must be made available to the public pursuant to N.J.S.A. 19:31-\_\_\_ (P.L.1991, c.318, section 3).

"Public agency" means any agency defined as such in N.J.S.A. 19:31-6.3a.

"Registered voter" means a voter who is registered to vote in the State of New Jersey.

"Secretary" means the Secretary of State.

"Transmittal" includes mailing, forwarding or direct delivery of forms to the agency head, the Secretary or the county board or superintendent of elections.

**15:10-7.2 Prominent display of forms at public agencies; posting of notice**

(a) Each public agency shall maintain a supply of forms located prominently within public view at each of its public offices.

(b) In addition to the prominent display of forms, each public office of a public agency shall display a sign which shall be provided by the Secretary of State.

(c) During the month of January in each year, the Secretary shall inform the agency head of each public agency of the closing dates for registration for the regular municipal, primary and general elections to be held that year.

(d) Each public agency shall post a notice informing the public of the closing dates described in (c) above.

**15:10-7.3 Voter registration procedure; assistance to applicants; witnessing forms**

(a) Each employee of a public agency dealing with any member of the public appearing at offices of the public agency shall ask if the person is registered to vote and, if not, whether the person wishes to register. The employee shall also inform the person:

1. That forms for registration are available at that office;

2. That the employee will assist the applicant in completing the form if asked to do so; and

3. That registering or not registering to vote will not affect the availability of any benefit or service that the public agency administers.

(b) If a person wishes to register at the office of a public agency, the agency employee dealing with that person shall provide the person with a form and shall assist the person in completing the form, if asked to do so.

(c) The employee assisting an applicant shall, if asked to do so, witness the applicant's signature if the employee is a registered voter.

(d) If the employee assisting an applicant is not a registered voter, the employee shall make reasonable efforts to provide the applicant with a witness who is a registered voter and, if a witness cannot be provided readily, the employee shall inform the applicant:

1. That the form cannot be completed at the office due to the need for a proper witness for the applicant's signature;

2. That the applicant's signature must be witnessed by a registered voter; and

3. That the form can be mailed or delivered to the Secretary, the appropriate county commissioner of registration or any public agency, as defined herein, once it has been completed, signed and witnessed.

(e) The employee assisting the applicant shall, if possible:

1. Make note of any defects observed on the completed form;

2. Make the applicant aware of any such defects; and

3. Assist the applicant in correcting the defects.

(f) The employee shall inform the applicant that the form can be mailed to the Secretary or given to the employee for transmittal to the Secretary or the appropriate county commissioner of registration.

(g) The employee shall inform the applicant:

1. That the applicant is not actually registered until his or her form is reviewed and accepted by the county commissioner of registration;

2. That the county commissioner of registration will notify the applicant, by mail of the acceptance or rejection of his or her application; and

3. That questions regarding the further processing of the form should be directed to the county commissioner of registration.

(h) Detailed instructions for employees of public agencies and for applicants can be obtained from the Secretary by any public agency.

**15:10-7.4 Receipt, acceptance and stamping or marking; defects**

(a) When a completed, signed and witnessed form is accepted by a public agency, it shall be stamped or marked with the date of receipt by placing the stamp or mark on the right side of block No. 8 on the form. The form shall also be initialed, below the "street address" portion of block No. 8, by the employee who stamps or marks the date of receipt.

(b) Forms which appear defective or improperly completed shall be stamped or marked, initialed and transmitted as if they had been completed properly.

**15:10-7.5 Transmittal of received and accepted forms**

(a) Employees of the Division of Motor Vehicles shall transmit forms to the agency head, who shall in turn transmit such forms to the Secretary upon receipt.

(b) Employees of county welfare boards and county boards of social services shall transmit forms to the county board of elections, which shall in turn transmit such forms to the county superintendent of elections, in counties with such superintendents, upon receipt.

(c) Employees of other public agencies shall transmit forms directly to the Secretary.

(d) Any person or agency mailing forms may send individual forms separately or batches of forms in bulk. Postage shall be provided by each public agency sending the forms.

(e) Any public agency transmitting forms in bulk shall first sort them by county of applicant's address.

(f) On the closing dates of registration for municipal, primary and general elections, and during the 10 days preceding such dates, forms shall be transmitted daily. In any event, forms must be transmitted no later than the day after the close of registration for any of the elections recited above. At other times, forms shall be transmitted not more than five days after receipt or acceptance.

**15:10-7.6 Preparation, transmittal and updating of lists of offices**

(a) Each public agency shall prepare and maintain a list of its public offices. The list shall include the street location and mailing address (if different) and telephone number of each office and shall indicate those locations where bilingual (English/Spanish) forms and instructions are provided to applicants.

(b) A copy of the list described in (a) above shall be mailed upon promulgation to the Secretary and shall be updated to show changes as they occur. Updates shall be mailed to the Secretary with the reports described in N.J.A.C. 15:10-7.7.

(c) Mailings to the Secretary shall be addressed to Department of State, Election Division, CN 304, Trenton, New Jersey 08625-0304.

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**15:10-7.7 Reports of utilization**

(a) Employees and agents at each public office of a public agency shall report at least weekly to the agency head regarding utilization of voter registration services, using the format set forth in (c) below.

(b) Each agency head shall report the aggregate of such utilization to the Secretary in May and October of each year, not later

than 10 days after the close of registration for the primary election and the general election, respectively.

(c) The format for reporting utilization of voter registration services shall be as follows:

Name of agency	Office location	Time period	Number of registrations
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# RULE ADOPTIONS

## COMMUNITY AFFAIRS

### (a)

#### DIVISION OF HOUSING AND DEVELOPMENT

##### Uniform Fire Code

##### Adopted Amendments: N.J.A.C. 5:18-1.1, 1.5, 2.4A, 2.6, 2.9, 4.1, 4.7, 4.11; 5:18A-2.6

Proposed: December 2, 1991 at 23 N.J.R. 3552(a).

Adopted: January 30, 1992 by Melvin R. Primas, Jr.,  
Commissioner, Department of Community Affairs.

Filed: February 3, 1992 as R.1992 d.104, with **substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-198.

Effective Date: March 2, 1992.

Expiration Date: January 4, 1995.

##### Summary of Public Comments and Agency Responses:

Comments were received from Robert H. Karen, President of the New Jersey Builders Association (NJBA).

COMMENT: NJBA recommends that N.J.A.C. 5:18-4.7(g) be modified to be limited to commercial cooking operations that produce grease laden vapors.

RESPONSE: It is not the Department's intention that these requirements apply to normal residential use. The text is therefore being amended to exclude buildings in Use Groups R-2 and R-3.

COMMENT: NJBA seeks confirmation of its understanding that supervised automatic fire alarm systems shall be installed in accordance with the Uniform Construction Code, as it may be amended by future supplements.

RESPONSE: The alarm system is indeed required to be installed in accordance with the Uniform Construction Code. However, the method used for supervision of the system must conform to N.J.A.C. 5:18-4.9(c).

COMMENT: NJBA recommends that the Fire Safety Code identify specific sections of the subcodes of the Uniform Construction Code that are applicable in particular instances rather than making general references to the Uniform Construction Code. Otherwise, NJBA fears, cases may arise in which, due to a change in a subcode provision, a building that has been retrofitted to be in compliance with the Fire Safety Code may have to be retrofitted further in a subsequent year.

RESPONSE: References to the Uniform Construction Code are made only for the purpose of establishing installation standards for required equipment and systems. These references avoid problems for construction officials, allow for advances in technology, and result in reduced confusion. Moreover, once a building has met the requirements of the retrofit and has received either a certificate of occupancy or a certificate of approval for the required systems, no further upgrading would be required because of a change in the Uniform Construction Code.

##### Summary of Agency-Initiated Changes:

In order to correctly reference an ASME standard, N.J.A.C. 5:18-4.17(e)1 and 2 have been amended to reflect the standard's location at N.J.A.C. 5:18-3, Appendix 3-A.

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

##### 5:18-1.1 Title; division into subchapters

(a) (No change.)

(b) The Code is divided into four parts:

1.-2. (No change.)

3. Subchapter 3 is entitled "State Fire Prevention Code," and may be cited throughout the code as N.J.A.C. 5:18-3 and when referred to in Subchapter 3 of this chapter, may be referred to as this subchapter.

4. (No change.)

##### 5:18-1.5 Definitions

...  
"Use" or "Use Group" means the use to which a building, portion of a building, or premises, is put as follows. It shall also mean and include any place, whether constructed, manufactured or naturally occurring, whether fixed or mobile, that is used for human purpose or occupancy, which use would subject it to the provisions of this Code if it were a building or premises.

1.-16. (No change.)

17. "Use Group R-3": This Use Group shall include all buildings arranged for the use of one- or two-family dwelling units, including not more than five lodgers or boarders per family.

Renumber existing 17.-18. as 18.-19. (No change in text.)

##### 5:18-2.4A Type Aa through Aj life hazard uses

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

(c) Type Ac life hazard uses are as follows:

1.-3. (No change.)

4. School dormitories of Use Group R-2 of one story;

5. Guest houses, as defined in N.J.A.C. 5:18-1.5, regardless of number of stories.

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

(f) Type Af life hazard uses are as follows:

1.-4. (No change.)

5. School dormitories of Use Group R-2 of two or three stories.

(g) (No change.)

(h) Type Ah life hazard uses are as follows:

1.-2. (No change.)

3. School dormitories of Use Group R-2 of four or more stories.

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

##### 5:18-2.6 Registration of buildings and uses

(a)-(g) (No change.)

(h) The owner of each life hazard use in the State shall pay to the Department an annual fee in the amount specified in this subchapter. The annual registration fee shall be paid when due.

(i) The owner of a life hazard use shall pay the annual fee within 30 days of the day on which it is demanded by the Department. If he fails to do so, the Department may, pursuant to N.J.S.A. 52:27D-201, issue a certificate to the clerk of the Superior Court stating that the owner is indebted to the Department for the payment of the annual fee and the clerk shall immediately enter upon his record of docketed judgements the name of the owner and of the Department, a designated statute under which the fee is assessed, the amount of the fee certified and the date the certification was made. The making of the entry shall have the same effect as the entry of a docketed judgement in the office of the clerk, but without prejudice to the owner's right of appeal.

1. Upon application by a local enforcing agency and approval by the Bureau, the certificate obtained pursuant to this subsection shall be assigned to the local enforcing agency in which the life hazard use is located. The local enforcing agency shall pursue collection and forward any fees collected to the Bureau in accordance with N.J.A.C. 5:18A-2.6(a)4.

##### 5:18-2.9 Enforcement procedures

(a) Whenever the fire official or the fire inspector shall find in any structure or upon any premises dangerous or hazard conditions or materials as set forth in the State Fire Prevention Code, N.J.A.C. 5:18-3, the fire official shall order such dangerous conditions or materials to be removed or remedied in accordance with the provisions of this Code.

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

##### 5:18-4.1 Code adopted; scope

(a) (No change.)

(b) All buildings for which requirements are established in this subchapter shall be in compliance with such applicable requirements

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of this subchapter by June 16, 1989, unless a later date of compliance is set forth in this subchapter.

Redesignate (e) as (c).

## 5:18-4.7 Fire suppression systems

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

(g) All cooking operations that produce grease laden vapors shall be equipped with a ventilating hood, duct, and automatic fire suppression system designed and installed in accordance with the New Jersey Uniform Construction Code.

**\*1. This subsection shall not apply to buildings in Use Groups R-2 or R-3.\***

**\*[1.]\*2.\*** Exception to (g) above: Ventilating hoods, ducts, and suppression shall not be required for completely enclosed ovens, steam tables, or auxiliary equipment that does not produce grease laden vapors.

(h) In all buildings, any windowless basement or story located below the seventh story shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

1. Stories or basements shall not be considered windowless when there is provided on at least one side of such story or basement fire fighter access through openings, such as windows, doors or access panels, that are located entirely above the adjoining grade level.

2. Such openings shall be at least:

i. 32 inches by 48 inches in size, spaced not more than 100 feet apart in each story or basement; or

ii. 22 inches by 42 inches in size, spaced not more than 30 feet apart in each story or basement.

3. All openings for firefighter access shall conform to all the following:

i. Openings shall be unobstructed to allow firefighting and rescue operations from the exterior; and

ii. Openings in stories at or above grade shall have a sill height of not more than 36 inches as measured from the finished floor level. Openings in basements shall have no sill height restrictions; and

iii. Openings shall be readily identifiable and openable from the outside or shall be glazed with plain flat glass.

4. When openings in a story are provided on only one side and the opposite wall of such story is more than 75 feet from such openings, the story shall be considered windowless unless openings as specified above are provided on at least two sides of the exterior walls of the story.

5. If any portion of a basement is located more than 75 feet from openings as specified above, the basement shall be considered windowless.

6. Windowless basements not exceeding 3,000 square feet in area shall be exempt from this automatic suppression requirement, provided a supervised automatic fire alarm system shall be installed in accordance with the New Jersey Uniform Construction Code.

7. In windowless basements greater than 3,000 square feet, but not exceeding 10,000 square feet in area, the required suppression system need not be connected to a water supply other than an existing domestic supply if the following conditions are met:

i. The suppression system shall be provided with a fire department connection, which shall be marked with a sign reading "Basement Area Sprinkler Water Supply"; and

ii. A supervised automatic fire alarm system shall be installed in accordance with the New Jersey Uniform Construction Code.

(i)-(k) (No change.)

## 5:18-4.11 Means of egress

(a)-(n) (No change.)

(o) In all buildings of Use Group R-1 and R-2 all transoms shall be either glazed with 1/4" wire glass set in metal frames and permanently secured in the closed position or sealed with materials consistent with the corridor construction. Any other sash, grill or opening in a corridor, and any window in a corridor not opening to the outside air, shall be sealed with materials consistent with the corridor construction.

## 5:18-4.17 High rise buildings

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

(e) Elevators in high rise structures shall be equipped with the following emergency control devices:

1. All elevators shall be equipped with Phase I Emergency Recall Operation\*,\* as required by ASME A17.1, Rules 211.3a and 211.3b listed in \*[N.J.A.C. 5:18-3.35]\* **\*Appendix 3-A to N.J.A.C. 5:18-3\***; and

2. Access to all floors shall be provided by at least one elevator equipped with Phase II Emergency In-Car Operation\*,\* as required by ASME A17.1, Rule 211.3c listed in \*[N.J.A.C. 5:18-3.35]\* **\*Appendix 3A to N.J.A.C. 5:18-3\***.

## 5:18A-2.6 Collection of and accounting for fees and penalties

(a) Collection of registration fees:

1. The Bureau shall annually bill for and take such steps as may be necessary to collect or provide for the collection of the annual registration fees provided for by the Code.

2. The Bureau shall remit 65 percent of the amount collected to the local enforcing agency established for the inspection of life hazard uses. This payment shall be disbursed by the end of the quarter next succeeding the one in which the fees were collected.

3. The 65 percent local share shall not be considered State funds but rather local funds held in trust by the State.

4. Where a local enforcing agency has been assigned a certificate of judgement in accordance with N.J.A.C. 5:18-2.6(i)1, it shall remit 35 percent of the amount collected to the Bureau by the end of the quarter next succeeding the one in which the fees were collected.

i. The local enforcing agency may deduct the costs of collection from the total amount collected provided an accounting of the costs is included with the remittance. Any such deduction shall be made prior to calculating the required remittance.

(b) Permit fees and other fees provided for or allowed by the Code or any local ordinance or any penalties shall be collected and retained fully by the enforcement agency having jurisdiction.

(c) All revenues collected by the Bureau shall be deposited in the Fire Safety Revolving Fund created by the Treasurer of the State of New Jersey. Expenditures may be made from the fund to carry out any of the responsibilities of the Bureau of Fire Safety.

(d) All revenues generated by a local enforcing agency shall be appropriated by the local governing body to the local enforcing agency for the purpose of enforcing the Code.

(e) The Bureau shall have no obligation to a local enforcing agency in respect of fees due but not collected in any given quarter.

(a)

## DIVISION OF HOUSING AND DEVELOPMENT

## Uniform Fire Code

## Fire Prevention Code

## Adopted Repeals and New Rules: N.J.A.C. 5:18-3

Proposed: December 2, 1991 at 23 N.J.R. 3554(a).

Adopted: January 30, 1992 by Melvin R. Primas, Jr.,  
Commissioner, Department of Community Affairs.

Filed: February 3, 1992 as R.1992, d.105, **with substantive and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-198.

Effective Date: March 2, 1992.

Expiration Date: January 4, 1995.

## Summary of Public Comments and Agency Responses:

Comments were received from James G. Keelan, Staff Manager, Environmental Health and Safety, of Bellcore; from Robert H. Karen, President of the New Jersey Builders Association (NJBA); and from Robert J. Davidson, Fire Official of South Brunswick Township.

COMMENT: Mr. Keelan, who is a member of a committee associated with the Semiconductor Industry Association that is working on updates to various BOCA model codes, recommends that the Department adopt all of the BOCA codes automatically, with deletions and exceptions made

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to customize the codes for special situations in New Jersey. He views this as the best way to deal with the problem of the 1984 BOCA Fire Prevention Code being outdated and unavailable.

RESPONSE: All of the model codes referenced in the Uniform Construction Code are adopted automatically, without technical modifications except as required for conformity with other adopted subcodes, and are applicable to new construction and alterations done after the date of adoption. The Fire Prevention Code applies to existing buildings. It does include modifications to technical standards, but changes are only made after review by the Fire Safety Commission and notice and opportunity for comment pursuant to the Administrative Procedure Act. So long as there is likely to be significant modification of whatever edition of the BOCA Fire Prevention Code that is used as the basic code document, the new format, which integrates the BOCA material and the changes, is easier to use than is a format that requires continual cross-referencing. The Department has reviewed the codes carefully to make sure that they do not conflict.

COMMENT: NJBA recommends that the exclusion of one- and two-family owner-occupied dwellings should be made explicit in N.J.A.C. 5:18-3.1(b)1.

RESPONSE: The Department agrees and has made this change.

COMMENT: NJBA asks that N.J.A.C. 5:18-3.3(m)9 be amended to exempt existing electrical appliances or fixtures that are in perfectly good order, so that there is no prohibition of "safe and functional appliances and fixtures which may have historic or antique qualities."

RESPONSE: The section does not apply to existing fixtures or appliances currently in service and not posing a hazard.

COMMENT: NJBA recommends deletion of N.J.A.C. 5:18-3.3(q)3i, which exempts Use Group R-3 single family dwellings (as well as "chimneys serving fireplaces which are not equipped with fireplace stoves or inserts") from annual inspection requirements, on the grounds that owner-occupied one- and two-family dwellings would be already exempted if the recommended amendment to N.J.A.C. 5:18-3.1(b)1 were made.

RESPONSE: Not all Use Group R-3 one- and two-family dwellings are owner-occupied, so there are properties covered by this provision even if, as has been done, the exclusion of owner-occupied one- and two-family dwellings is made explicit in N.J.A.C. 5:18-3.1(b)1.

COMMENT: NJBA maintains that N.J.A.C. 5:18-3.4(c)10 should be deleted, or at least amended, because it duplicates the procedures and inspections (and fees) required under the elevator safety subcode of the Uniform Construction Code.

RESPONSE: The elevator safety subcode will not be effective until July 1, 1992. The Department is currently reviewing this section and will make any necessary revisions once the elevator safety subcode becomes effective.

COMMENT: NJBA asks whether N.J.A.C. 5:18-3.17(d)2 is intended to prohibit all open flame devices, including those used for the purpose of food and beverage warming (for example, "Sterno" cans), from being allowed inside or within 20 feet of a membrane or air-supported structure.

RESPONSE: The section prohibits only **unapproved** open flame devices. The fire official has authority to permit use of open flame devices on a case-by-case basis as a stipulation under the permit required by N.J.A.C. 5:18-2.7(d).

COMMENT: Fire Official Davidson recommends adding the term "aisles" to the definition of "means of egress," adding the term "premises" to the definition of "occupancy," and adding the term "or disposal" to the definition of "storage." He also recommends deleting the limitation of requiring maintenance of material safety data sheets to "toxic" pesticides. He notices that the reference to an aisle width of 37 inches appears to be a clerical error, the correct figure being 36 inches. He would also substitute a reference to the Uniform Construction Code for stated requirements concerning underground storage tanks, in order to avoid any conflict with that code or with requirements of the Department of Environmental Protection and Energy.

RESPONSE: The Department has accepted these recommendations, and has made the necessary changes.

COMMENT: Mr. Davidson recommends adding a definition for "building code in effect at the time of first occupancy," amending N.J.A.C. 5:18-3.3(b)1 to make it clear that the exemption for agricultural burning only applies if a State Forest Fire Service permit has been obtained, requiring approval by the fire official for all campfires, prohibiting propane grills under building overhangs, and eliminating the requirement that the fire official have the approval of the fire and police chiefs

before designating a fire lane. He also recommends that N.J.A.C. 5:18-3.5(d)2 provide that installation of window security devices require either a construction permit or fire official approval, that N.J.A.C. 5:18-3.13(a) include in its scope the exterior storage or processing of forest products, that N.J.A.C. 5:18-3.29(b) should include prohibitions on discharge and reporting requirements like those at N.J.A.C. 5:18-3.28(b)6 and 9, requiring labeling of structures with hazardous materials, conforming requirements for liquified petroleum gas storage to those of the Uniform Construction Code, and requiring immediate notification of the fire official, rather than notification within 24 hours, if there is serious injury or loss of life in an incident involving a liquified petroleum gas installation. Labels warning that the contents are flammable should be required on containers with such liquids even if they are not being offered for sale.

RESPONSE: These recommendations would involve new requirements and are, therefore, being submitted to the Codes Council of the Fire Safety Commission for its review.

Mr. Davidson's further comments and the responses thereto are as follows:

COMMENT: All unused fixtures, circuits, wiring and electrical devices or fixtures should be required to be removed and should not be allowed to be secured in place.

RESPONSE: While requiring removal might be most convenient for an official, it would impose undue costs on property owners.

COMMENT: The exclusion for tar kettles being used under a valid construction permit should be eliminated.

RESPONSE: All activities on construction sites are under the jurisdiction of the construction official and the fire subcode official. The fire official should not issue violation notices at construction sites; instead, he should refer any alleged violations to the fire subcode official.

COMMENT: Fire evacuation plans should be required in all occupancies.

RESPONSE: An extension of evacuation plan requirements to all buildings would be excessive and burdensome. The Department will, however, consider adding other types of buildings to the list.

COMMENT: The exemption of Use Group R-3 buildings from the prohibition on use of kerosene heaters allows their use in condominium and townhouse developments.

RESPONSE: This is not the case because N.J.A.C. 5:18-1.5 defines "Use Group R-2" so that it includes condominium and townhouse units in multifamily structures.

COMMENT: Include buildings that are unoccupied, but not necessarily damaged or abandoned, under the requirement that vacant buildings be secured against unauthorized entry as ordered by the fire official. Vacant buildings should be required to be maintained free of rubbish and excessive vegetation.

RESPONSE: A building that is temporarily unoccupied, and is neither damaged nor abandoned, does not necessarily have to be secured. The recommended maintenance requirement is already dealt with by N.J.A.C. 5:18-3.3(e).

COMMENT: The fire official should be able to order more frequent cleaning of kitchen equipment.

RESPONSE: The fire official must approve the cleaning schedule. If the approved schedule proves to be inadequate, he can withdraw his approval and require a new schedule.

COMMENT: Does the term "when provided" in N.J.A.C. 5:18-3.4(b)8 refer only to breathing apparatus?

RESPONSE: Yes.

COMMENT: Notice of suppression or alarm system tests should be given to the fire official even if the system is not connected through a central supervisory system directly to the fire or police department. An alert citizen may call in an alarm and the firefighters may respond unnecessarily. Also, records of tests and inspections should be submitted to the fire official even if not requested.

RESPONSE: Such requirements would be excessive and unduly burdensome to building owners.

COMMENT: There may be a conflict between occupant load determinations by the fire official and by the construction official.

RESPONSE: There is no need for the fire official to recalculate the occupant load of a building already posted by the construction official.

COMMENT: It should be up to the management of a place of assembly or education, or of a membrane or air-supported structure, to determine whether employees should use fire extinguishers and other manual suppression equipment.

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RESPONSE: The Department's position is that people in those places are better protected if there are employees present who are trained in the use of the equipment.

COMMENT: Underground storage tanks requirements in N.J.A.C. 5:18-3.16(b)1 and (c)1 should be changed to cross-references to the Uniform Construction Code requirements.

RESPONSE: The reference to N.J.A.C. 5:18-3.28 serves to clarify the placement requirements for the tank. Moreover, the Uniform Construction Code only allows placement of up to 660 gallons above ground on sites not open to the public.

COMMENT: The fire official and the police department should be given prior notice each day that blasting is to occur.

RESPONSE: The fire official has authority to make this requirement a condition of a blasting permit.

COMMENT: Testing requirements for underground storage tanks should not apply to tanks in compliance with N.J.A.C. 7:14B.

RESPONSE: N.J.A.C. 7:14B expressly references the Uniform Fire Code. This section allows the fire official to require testing if he suspects a problem.

COMMENT: N.J.A.C. 5:18-3.28(g)1i should be amended to delete the exemption of owner-occupied one- and two-family dwellings from requirements concerning storage of flammable and combustible liquids. "It would be the activity being enforced against, not the use itself."

RESPONSE: The Uniform Fire Safety Act specifically excludes owner-occupied one- and two-family dwellings from jurisdiction. The Legislature is presumed to have made this exclusion with full knowledge that fire hazards can well exist in such dwellings. Despite the concern of both the Department and the fire service that those fire hazards be addressed, the Department does not find that any amount of semantic manipulation can allow it to breach the clear limits of its jurisdiction.

**Summary of Agency-Initiated Changes:**

The Department has reviewed the published proposal and has made the following changes:

The definition of "Acetylene, medium pressure," has been changed to include pressures exceeding one psig to 15 psig.

The order of the definitions has been corrected.

Terms used in "Special industrial high explosive materials" have been corrected.

Codification has been corrected in N.J.A.C. 5:18-3.3(b) and 3.7(c)11.

Spelling has been corrected in the Table 3.26(d)2 of N.J.A.C. 5:18-3.26.

Because of the conditions under which they would be encountered, the adjective "toxic" describing "pesticides" in N.J.A.C. 5:18-3.34(b)2 has been deleted as meaningless.

**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 3. STATE FIRE PREVENTION CODE**

**5:18-3.1 Purpose and scope**

(a) The purpose of this subchapter is to prescribe minimum requirements and controls to safeguard life, property, or public welfare from the hazards of fire and explosion.

(b) This subchapter shall be applicable to:

1. All buildings, structures, and premises within this State\*, with the exception of owner-occupied one- and two-family dwellings\*; and
2. All fire safety hazards arising from the storage, handling or use of substances, materials or devices and arising from conditions hazardous to life, property or public welfare in the use or occupancy of buildings, structures, sheds, tents, lots or premises.

**5:18-3.2 Definitions**

The following terms shall have the meanings indicated except where the context clearly requires otherwise. Where a term is not defined then the definition of that term found in this code at N.J.A.C. 5:18-1.5 or within the Uniform Construction Code, N.J.A.C. 5:23-1.4, shall govern:

"Acetylene, low pressure" means acetylene at a pressure not exceeding one pound per square inch gauge (psig).

"Acetylene, medium pressure" means acetylene at pressures exceeding \*[two]\* \*one\* psig but not exceeding 15 psig.

"Acetylenic compound" means a material, like acetylene, having a triple bond between two carbon atoms.

"Agent" means any person who shall have charge, care or control of any buildings as owner, or agent of the owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner. Any such person representing the actual owner shall be bound to comply with the provisions of this code to the same extent as if that person were the owner.

"Air supported structure" means a structural and mechanical system, which is constructed of high strength fabric or film and achieves its shape, stability and support by pretensioning with internal air pressure.

"Alarm" means any audible or visible signal or intelligence indicating existence of a supposed fire or emergency requiring response and emergency action on the part of the fire fighting service. Also, the alarm devices or device by which fire and emergency signals are received.

"Approved" means approved by the fire official or the Department.

"Automatic detecting device" means a device which automatically detects heat, smoke or other products of combustion.

"Automatic fire alarm system" means a fire alarm system containing automatic detecting device(s) which actuates a fire alarm signal and which may contain manual fire alarm devices.

"Automatic fire suppression system" means an engineered system using carbon dioxide (CO<sub>2</sub>), dry chemical, a halogenated extinguishing agent, or an automatic sprinkler system to automatically detect and suppress a fire through fixed piping and nozzles.

"Automatic sprinkler system" for fire protection purposes means an integrated sprinkler system of underground and/or overhead piping designed in accordance with fire protection engineering standards. The system includes a suitable water supply. The portion of the system aboveground is a network of specially sized or hydraulically designed piping installed in a building, structure or area, generally overhead, and to which automatic sprinklers are connected in a systematic pattern. The system is usually activated by heat from a fire and discharges water over the fire area.

"Automatic water supply" means water supplied through a gravity or pressure tank or automatically operated fire pumps, or from a direct connection to an approved municipal water main.

"Blasting agent" means any material or mixture consisting of a fuel and oxidizer intended for blasting, not otherwise classified as an explosive, in which none of the ingredients are classified as explosives, provided that the finished product, as mixed and packaged for use or shipment, cannot be detonated by means of a No. 8 test blasting cap when unconfined. Materials or mixtures classified as nitro carbo nitrates by U.S. Department of Transportation (DOT) regulations shall be included in this definition.

"Boiling point" means the temperature at which the vapor pressure of a liquid equals the atmospheric pressure of 14.7 pounds per square inch gauge (psig) of mercury. Where an accurate boiling point is unavailable for the material in question, or for mixtures which do not have a constant boiling point, for purposes of this classification, the 10 percent of a distillation performed in accordance with ASTM D86 listed in Appendix 3-A, incorporated herein by reference, may be used as the boiling point of the liquid.

"Bonfire" means a large, public, open-air fire kindled to mark or highlight some public event.

"Building Code" means the New Jersey Uniform Construction Code (N.J.A.C. 5:23), including all of its component subcodes.

"Carbon dioxide (CO<sub>2</sub>) extinguishing system" means a system to supply carbon dioxide (CO<sub>2</sub>) from a pressurized vessel through fixed pipes and nozzles. The system includes an automatic detection and actuating mechanism.

"Catalytic combustion system" means an oven heater or any construction that employs catalysts to accelerate oxidization or combustion of fuel-air or fume-air mixtures for eventual release of heat to an oven process.

"Central station system" means a system, or group of systems, the operations of which are signaled to, recorded in, maintained and supervised from an approved central station, in which there are competent and experienced observers and operators in attendance at all times whose duty it shall be, upon receipt of a signal, to take such action as shall be required under the rules established for their

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guidance. Such systems shall be controlled and operated by a person, firm or corporation whose principal business is the furnishing and maintaining of supervised protective signaling service and who does not have interest in the protected properties.

"Combustible fibers" means readily ignitable and free burning fibers, such as cotton, sisal, henequen, ixtle, jute, hemp, tow, cocoa fiber, oakum, baled waste paper, kapok, hay, straw, Spanish moss, excelsior, certain synthetic fibers and other like materials.

"Combustible liquids" means any liquid having a flash point at or above 100 degrees Fahrenheit. Combustible liquids shall be known as Class II or III liquids and shall be divided into the following classifications:

1. Class II: Liquids have a flash point at or above 100 degrees F. and below 140 degrees Fahrenheit;
2. Class IIIA: Liquids having flash points at or above 140 degrees F. and below 200 degrees Fahrenheit; and
3. Class IIIB: Liquids having flash points at or above 200 degrees Fahrenheit.

"Combustible waste matter" means magazines, books, trimmings from lawns, trees or flower gardens, leaves, pasteboard boxes, rags, paper, straw, sawdust, packing material, shavings, boxes and all rubbish and refuse that will ignite through contact with flames or ordinary temperatures.

"Compressed gas" means any mixture or material, when enclosed in a container, having either a vapor pressure of 40 psia at 70 degrees Fahrenheit, or a vapor pressure of 140 psia at 130 degrees Fahrenheit; or any flammable material having a vapor pressure exceeding 40 psia at 100 degrees Fahrenheit, as determined by ASTM D323 (Reid Method) listed in Appendix 3-A, incorporated herein by reference.

"Construction official" means the officer or other designated authority charged with the administration and enforcement of the building code.

"Cooking appliances" means all ranges, ovens, food boilers, upright broilers, charcoal broilers, char-broilers, griddles, deep-fat fryers or similar appliances used to heat, cook or process food for human or animal consumption.

"Cooking fire" means an outdoor fire which is used to prepare food.

"Corrosive liquid" means those acids, alkaline caustic liquids and other corrosive liquids which, when in contact with living tissue, will cause damage to such tissue by chemical action; or in case of leakage will materially damage or destroy other containers of other hazardous commodities by chemical action and cause the release of their contents; or are liable to cause fire when in contact with organic matter or with certain chemicals.

"Cryogenic liquid" means those liquids that have a boiling point below -200 degrees Fahrenheit.

"Cryogenic vessel" means any pressure vessel, low pressure tank, or atmospheric tank on which venting, insulation, refrigeration, or a combination of these, are used in order to maintain the operating pressure, and the contents in a liquid phase.

"Decorative material" means all materials such as curtains, draperies, streamers, surface coverings applied over the building finish for decorative, acoustical or other effect, and also cloth, cotton batting, straw, vines, leaves, trees and moss used for decorative effect.

"Detector, smoke" means an approved, listed detector for sensing visible or invisible products or combustion.

"Dispensing" means the pouring or transferring of any material from a container, tank or similar vessel whereby vapors, dusts, mists or gases may be released to the atmosphere.

"DOT container" means any container approved by DOT 49CFR listed in Appendix 3-A, incorporated herein by reference, for shipping any liquid, gaseous or solid material of a flammable, toxic or other hazardous nature.

"Dry chemical" means a powder composed of small particles, usually of sodium bicarbonate, potassium chloride, potassium bicarbonate, potassium bicarbonate/urea or ammonium phosphate, with added particular material supplemented by special treatment to prevent caking and provide flowability.

"Dry chemical extinguishing system" means a system consisting of dry chemical and expellant gas storage tanks, fixed piping, and nozzles used to assure proper distribution of an approved extinguishing agent on a specific fire hazard or into a potential fire area. The system includes an automatic detection and actuating mechanism.

"Dry cleaning" means the process of removing dirt, grease, paint and other stains from wearing apparel, textiles, fabrics, rugs, etc., by the use of nonaqueous liquid solvents, flammable or nonflammable, and it shall include the process of dyeing clothes or other fabrics or textiles in a solution of dye colors and nonaqueous liquid solvents.

"Dry pipe system" as applied to water fire suppression systems, shall mean a system of piping which is filled with air under pressure and a permanent water supply is controlled by an approved automatic dry pipe valve which releases the water supply by the release of air in the event of fire.

"Dry system" as applied to water fire suppression systems, shall mean a system without permanent or automatic water supply but equipped with a fire department connection.

"Engineered system" means a functional unit requiring individual calculation and design to determine the flow rates, nozzle pressures, quantities of extinguishing agent and the number and types of nozzles and their placement for the protection of a specific hazard.

"Egress" see "means of egress."

"Explosive" means a chemical compound or mechanical mixture, that is commonly used or intended for the purpose of producing an explosion, that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing, that an ignition by fire, by friction, by concussion, by percussion, or by detonation of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life and limb. The term "explosive" includes all materials classified as Class A, Class B or Class C explosives by DOT regulations and includes, but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse igniters, fuse lighters, squibs, conreau detonant fuse, instantaneous fuse, ignitor cord and igniters.

"Explosive-actuated power device" means any tool or special mechanized device which is actuated by explosives, but not to include propellant-actuated power devices. Examples of explosive-actuated power devices are jet tappers and jet perforators.

"Fire alarm system" means a functionally related group of devices that when either automatically or manually activated will sound audio or visual warning devices on or off the protected premises and may control other devices or equipment.

"Fire department connection" means a connection on a building for fire department use in supplementing or supplying water for standpipes and sprinkler systems. Also 2½ inch standpipe outlets provided for attaching fire department hose as contrasted with outlets for small first aid hose.

"Fire door" means a door and its assembly, so constructed and assembled in place as to give protection against the passage of fire.

"Fire hazard" means any thing or act which increases or may cause an increase of the hazard or menace of fire to a greater degree than that customarily recognized by persons in the public service regularly engaged in preventing, suppressing or extinguishing fire; or which may obstruct, delay, hinder or interfere with the operations of the fire department or the egress of occupants in the event of fire.

"Fire inspector" means a person working under the direction of the fire official who is certified by the Commissioner of the Department of Community Affairs and appointed or designated to enforce the Code by the appointing authority of a local enforcing agency.

"Fire official" means a person certified by the Commissioner of the Department of Community Affairs and appointed or designated to direct the enforcement of the Code by the appointing authority of a local enforcing agency.

"Fire prevention" means the preventive measures which provide for the safe conduct and operation of hazardous processes, storage

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of combustible and flammable materials, conducting of fire drills and the maintenance of fire protection, detection and extinguishing service equipment and good housekeeping conditions. That part of fire protection activities exercised in advance of the outbreak of fire to prevent such outbreaks and to minimize loss when fire does occur.

"Fire protection system" means a system including systems, devices and equipment to detect a fire, actuate an alarm or suppress fire or any combination thereof.

"Flammable" means capable of burning or producing flame at ordinary temperatures, or easily being ignited.

"Flammable anesthetic" means a compressed gas which is flammable and administered as an anesthetic and shall include among others, cyclopropane, divinyl ether, ethyl chloride, ethyl ether and ethylene.

"Flammable cryogenic liquid" means those cryogenic liquids which are flammable in their vapor state.

"Flammable compressed gas" means a gas that when either: a mixture of 13 percent or less (by volume) with air forms a flammable mixture; or, the flammable range with air is wider than 12 percent regardless of the lower limit.

"Flammable liquid" means any liquid having a flash point below 100 degrees Fahrenheit, and having a vapor pressure not exceeding 40 psia at 100 degrees Fahrenheit. Flammable liquids shall be known as Class I liquids and be divided into the following classifications:

1. Class IA: Liquids having flash points below 73 degrees Fahrenheit and having a boiling point below 100 degrees Fahrenheit;
2. Class IB: Liquids having flash points below 73 degrees Fahrenheit and having a boiling point at or above 100 degrees Fahrenheit; and
3. Class IC: Liquids having flash points at or above 73 degrees Fahrenheit and below 100 degrees Fahrenheit.

(See "combustible liquids" for Class II or III liquids.)

"Flammable liquid gas" means a "liquefied compressed gas" which under the charged pressure is partially liquid at a temperature 70 degrees Fahrenheit and which is flammable.

"Flammable solid" means a solid substance, other than one classified as an explosive, which is liable to cause fires through friction, through absorption of moisture, through spontaneous chemical changes, or as a result of retained heat from manufacturing or processing.

"Flash point" means the minimum temperature in degrees Fahrenheit at which a flammable liquid will give off sufficient vapors to form an ignitable mixture with air near the surface or in the container, but will not sustain combustion. The flash point of a liquid shall be determined by appropriate test procedure and apparatus as specified in ASTM D56 and ASTM D93 listed in Appendix 3-A, incorporated herein by reference.

"Foam extinguishing system" means a special system to discharge a foam made from concentrates, either mechanically or chemically, over the area to be protected.

"Fuel gas" means acetylene, hydrogen, LP-Gas, and other liquefied and nonliquefied flammable gases.

"Fumigant" means any substance which by itself or in combination with any other substance emits or liberates a gas, fume or vapor used for the destruction or control of insects, fungi, vermin, germs, rats, or other pests, and shall be distinguished from insecticides and disinfectants which are essentially effective in the solid or liquid phases. Examples are methyl bromide, ethylene dibromide, hydrogen cyanide, carbon disulfide and sulfur fluoride.

"Fumigation" means the use within an enclosed space of a fumigant in concentrations which may be hazardous or acutely toxic to man.

"Grease consuming appliances or fume incinerator" means devices intended for placement over restaurant type cooking equipment in the exhaust duct and through which all exhaust vapors or smoke must pass. Grease and other particulate matter from cooking fumes and exhaust are removed by open flames.

"Grease extractor" means a device intended for the removal of smoke and grease-laden particles from exhaust fumes or vapors created by cooking operations. A grease extractor device normally consists of a hood, a grease collecting device, a wash system, means

to detect excessive temperature of the exhaust gases which activates a device to prevent flame and excessively hot gases from entering the exhaust duct, and associated electrical controls.

"Halogenated extinguishing agents" means a halogenated compound is one which contains one or more atoms of an element from the halogen chemical series; fluorine, chlorine, bromine and iodine. Halogenated extinguishing compounds shall be restricted to the following:

1. Halon 1211, bromochlorodifluoromethane, CBrClF<sub>2</sub>; or
2. Halon 1301, bromotrifluoromethane, CBrF<sub>3</sub>.

"Halogenated extinguished system" means a system of pipes, nozzles and an actuating mechanism and a container of halogenated agent under pressure.

"Handling" means the deliberate transport by any means to a point of storage or use.

"Highly toxic material" means a material so toxic to man as to afford an unusual hazard to life and health during fire fighting operations. Examples are: parathion, TEPP (tetraethyl phosphate), HETP (hexaethyl tetraphosphate), and similar insecticides and pesticides.

"Liquefied petroleum gas (LP-Gas or LPG)" means any material having vapor pressure not exceeding that allowed for commercial propane composed predominantly of the following hydrocarbons, either by themselves or as mixtures: propane, propylene, butane (normal butane or isobutane) and butylenes including isomers.

"Liquefied petroleum gas equipment" means all containers, apparatus, piping (not including utility distribution piping systems) and equipment pertinent to the storage and handling of liquefied petroleum gas. Gas consuming appliances shall not be considered as being liquefied petroleum gas equipment.

"Manual fire alarm system" means an interior alarm system composed of sending stations and signaling devices in a building, operated on an electric circuit, so arranged that the operation of any one station will ring all signals throughout the building and at one or more approved locations.

"Means of egress" means a continuous and unobstructed path of travel from any point in a building or structure to a public way and consists of three separate and distinct parts: the exit access; the exit; and the exit discharge. A means of egress comprises the vertical and horizontal means of travel and shall include intervening room spaces, doors, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, escalators, horizontal exits, courts\*, aisles\* and yards.

"Noncombustible building material" means one which, in the form and thickness in which it is used, meets any of the following requirements:

1. Materials which are intended to be classified as noncombustible shall be tested in accordance with ASTM E136 listed in Appendix 3-A, incorporated herein by reference. Such materials shall be acceptable as noncombustible materials when at least three of the four specimens tested meet all of the following criteria:

- i. The recorded temperature of the surface and interior thermocouples shall not at any time during the test rise more than 54 degrees Fahrenheit above the furnace temperature at the beginning of the test;

- ii. There shall be no flaming from the specimen after the first 30 seconds; and

- iii. If the weight loss of the specimen during testing exceeds 50 percent, the recorded temperature of the surface and interior thermocouples shall not at any time during the test rise above the furnace air temperature at the beginning of the test, and there shall be no flaming of the specimen.

2. Materials having a structural base of noncombustible materials as defined in paragraph 1 above, with a surfacing not more than 1/8 inch thick which has a flame spread rating not greater than 50 when tested in accordance with ASTM E84 listed in Appendix 3-A, incorporated herein by reference.

The term noncombustible does not apply to the flame spread characteristics of interior finish or trim materials. A material shall not be classed as noncombustible building construction material which is subject to increase in combustible or flame spread rating

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beyond the limits herein established through the effects of age, moisture or other atmospheric conditions.

"Occupancy" means the purpose for which a building \*or premises\*, or part thereof, is used or intended to be used. The term shall also include the building, room or enclosed space that houses \*[such]\* \*a\* use.

"Occupancy classification" means the various use groups as classified in this Code.

"Occupant load" means the total number of persons that are permitted to occupy a building or portion thereof at any one time.

"Open burning" means the burning of any materials wherein products of combustion are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber. For the purposes of this definition, a chamber shall be regarded as enclosed when, during the time combustion takes place, only apertures, ducts, stacks, flues, or chimneys necessary to provide combustion air and to permit the escape of exhaust gas are open.

"Organic coating" means a liquid mixture of binders such as alkyd, nitrocellulose, acrylic, or oil, and flammable and combustible solvents such as hydrocarbon, ester, ketone, or alcohol, which when spread in a thin film convert to a durable protection and decorative finish.

"Oxidizing material" means substances such as chlorates, permanganates, peroxides, or nitrates, that yield oxygen readily to stimulate combustion.

"Overcrowding" means exceeding the total number of persons that may occupy a building or portion thereof at any one time.

"Person" means a corporation, firm, partnership, association, organization and any other group acting as a unit as well as individuals. It shall also include an executor, administrator, trustee, receiver or other representative appointed according to law. Whenever the word "person" is used in any section of this Code prescribing a penalty or fine, as to partnerships or associations, the word shall include the partners or members thereof, and as to corporations, shall include the officer, agents or members thereof who are responsible for any violation of such section.

"Poisonous gas" means any noxious gas of such nature that a small amount of the gas in air is dangerous to life. Examples are: chlorine, cyanogen, fluorine, hydrogen cyanide, nitric oxide, nitrogen tetroxide and phosgene.

"Portable kerosene-fired heater" means a non-flue-connected, self-contained, self-supporting heater, with integral fuel reservoir, that is designed to be carried from one location to another.

"Radioactive material" means any material or combination of material that spontaneously emits ionizing radiation.

"Residual pressure" means pressure remaining in a fire protection system while water is being discharged from outlets.

"Riser" means a vertical water supply pipe used to carry water for fire protection to elevations above or below grade; such as a standpipe riser, sprinkler riser, etc.

"Rubbish (trash)" means combustible and noncombustible waste materials including the residue from the burning of coal, wood, or coke or other combustible material, paper, rags, cartons, tin cans, metals, mineral matter, glass crockery, dust and discarded refrigerators, heating, cooking or incinerating appliances.

"Safety can" means an approved container, not over five gallons capacity, having a spring closing lid and spout cover and so designed that it will safely relieve internal pressure when subjected to fire exposure. Such containers shall be clearly marked with the product contained therein.

"Self-closing" means, as applied to a fire door or other opening protective, normally closed and equipped with an approved device, which will insure closing after having been opened for use.

"Siamese" means a hose fitting for combining the flow from two or more lines into a single stream.

"Small arms ammunition" means any shotgun, rifle, pistol or revolver cartridge.

"Solid fuel-fired heater" means a flue connected heater, fired with solid fuels, such as a fireplace, fireplace insert or stove, free standing wood stove or similar solid fuel-fire appliance.

"Special industrial explosive device" means any explosive power-pack containing an explosive charge in the form of a cartridge or

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construction device. The term includes, but is not limited to, explosive rivets, explosive bolts, explosive charges for driving pins or studs, cartridges for explosive-actuated power tools and charges of explosives used in jet tapping of open hearth furnaces and jet perforation of oil well casings.

"Special industrial high explosive materials" means sheets, extrusions, pellets and packages of high explosives containing dynamite, trinitrotoluol, \*[pentaerythritol tetranitrate, cyclotrimethylenetrinitramine]\* \*pentaerythritol tetranitrate, cyclotrimethylene trinitramine\*, or other similar compounds used for high energy rate forming, expanding and shaping in metal fabrication, and for dismemberment and quick reduction of scrap metal.

"Spraying area" see N.J.A.C. 5:18-3.7(c)1.

"Sprinkler alarm system" means an alarm activated by waterflow from a sprinkler system.

"Standpipe" means a wet or dry pipe line, extending from the lowest to the topmost story of a building or structure, equipped with a shutoff valve with hose outlets at every story.

"Storage" means articles that are stored, kept or accumulated for some future use\*, or for disposal,\* and \*are\* drawn upon as needed.

"Story" means that portion of a building included between the upper surface of a floor and the floor or roof next above.

"Structure" means that which is built or constructed.

"Thermal insecticidal fogging" means the use of insecticidal liquids that are passed through thermal fog-generating units where they are, by means of heat, pressure and turbulence, transformed and discharged in the form of a fog or mist that is blown into an area to be treated.

"Unstable (reactive) chemical" means any substance, other than one classified as an explosive or blasting agent, that will vigorously and energetically react, is potentially explosive, will polymerize, decompose instantaneously, undergo uncontrollable auto-reaction or can be exploded by heat, shock, pressure or combinations thereof. Examples are: organic peroxides, nitromethane, and ammonium nitrate.

"Use group" see N.J.A.C. 5:18-1.5.

"Volatile-flammable" means any liquid, gas substance, mixture or compound that readily emits flammable vapors at a temperature below 73 degrees Fahrenheit when tested in accordance with ASTM D56 listed in Appendix 3-A, incorporated herein by reference.

"Wet system" as applied to water fire suppression systems shall mean a system that is filled with water and connected to a permanent water supply under pressure so that water is discharged immediately from sprinklers opened by a fire or from open hose outlet valves.

## 5:18-3.3 General precautions against fire

(a) The following precautions are general provisions for precautions against fire to be applied to the use of all properties.

1. Any dangerous or hazardous conditions that are outlined in (a)1i through x below shall be removed or remedied in accordance with the provisions of N.J.A.C. 5:18-2.9:

- i. Dangerous conditions that are liable to cause or contribute to the spread of fire in or on said premises, building or structure or endanger the occupants thereof;
- ii. Conditions that would interfere with the efficiency and use of any fire protection equipment;
- iii. Obstruction to or on fire escapes, stairs, passageways, doors or windows, liable to interfere with the egress of occupants or the operation of the fire department in case of fire;
- iv. Accumulations of dust or waste material in air conditioning or ventilating systems or grease in kitchen or other exhaust ducts;
- v. Accumulations of grease on kitchen cooking equipment, or oil, grease or dirt upon, under or around any mechanical equipment;
- vi. Accumulations of rubbish, waste, paper, boxes, shavings or other combustible materials, or excessive storage of any combustible material;
- vii. Hazardous conditions arising from defective or improperly used or installed electrical wiring, equipment or appliances;
- viii. Hazardous conditions arising from defective or improperly installed equipment for handling or use of combustible, explosive or otherwise hazardous materials;

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ix. Dangerous or unlawful amounts of combustible, explosive or otherwise hazardous materials; or

x. All equipment, materials, processes, or operations that are in violation of the provisions and intent of this Code.

**\*(b)\*** The following apply to bonfires and outdoor fires:

1. Burning of rubbish shall be prohibited except in approved incinerators. The burning of herbaceous or infested plant life, the burning of orchard prunings and cuttings, prescribed burnings and the clearing of agricultural land by burning are not prohibited by this subchapter, but are subject to the provisions of N.J.A.C. 7:27-2, administered by the State Forest Fire Service in the New Jersey Department of Environmental Protection (NJDEP).

2. A person shall not kindle or maintain any bonfire or authorize any such fire to be kindled or maintained unless:

i. The location is approved by the fire official and is not less than 50 feet from any structure, and adequate provision is made to prevent fire from spreading to within 50 feet of any structure; or

ii. The fire is contained in an approved burner located safely not less than 15 feet from any structure.

3. Fuel for bonfires shall consist of seasoned dry wood only and shall be ignited with a small quantity of paper only. Bonfires shall not contain rubbish, garbage, trash, any material made of or coated with rubber, plastic, leather or petroleum based materials and shall not contain any flammable or combustible liquids. The allowable quantity of wood to be burned shall be determined by the fire official and shall be based upon the fire safety requirements of the situation and the desirable duration of burn.

4. Bonfires shall be constantly attended by a competent person until such fire is extinguished. This person shall have fire extinguishing equipment readily available for use as deemed necessary by the fire official.

5. The fire official may prohibit any or all bonfires that are or could be offensive or objectionable due to smoke or odor emissions when atmospheric conditions or local circumstances make such fires hazardous. The fire official shall order the extinguishment, by the permit holder or the fire department, of any bonfire that creates or adds to a hazardous or objectionable situation.

6. In districts for which firewardens have been appointed in accordance with the General Forest Fire Act (N.J.S.A. 13:9-44.1 et seq.), the granting of permits for campfires shall be administered and enforced by the State Forest Fire Service.

7. Open burning shall be allowed without prior notice to the fire official for cooking fires, highway safety flares, smudge pots and similar occupational needs.

(c) A person shall not deposit hot ashes or cinders, or smoldering coals, or greasy or oily substances susceptible to spontaneous ignition into any combustible receptacle, or place the same within 10 feet of any combustible materials, except in metal or other noncombustible covered receptacles. Such receptacles, unless resting on a noncombustible floor or on the ground outside of the building, shall be placed on noncombustible stands and in every case shall be kept at least two feet away from any combustible wall or partition, or exterior window or door opening.

(d) Any person using a torch or other flame-producing device for removing paint from any building or structure shall provide one approved portable fire extinguisher or water hose connected to the water supply on the premises where such burning is done. In all cases, the person doing the burning shall remain on the premises one hour after each use of the torch or flame-producing device.

(e) Accumulations of waste paper, wood, hay, straw, weeds, litter or combustible or flammable waste or rubbish of any kind shall not be permitted to remain upon any roof or in any court, yard, vacant lot, alley, parking lot or open space. All weeds, grass, vines or other growth, when same endangers property, or is liable to be fired, shall be cut down and removed by the owner or occupant of the property. All combustible rubbish, oily rags or waste material when kept within a building, shall be stored in approved metal containers. Storage shall not produce conditions that, in the opinion and judgment of the fire official, will tend to create a nuisance or a hazard to the public health, safety or welfare.

(f) The following apply to materials storage:

1. The storage of combustible or flammable material shall be confined to approved storage areas.

2. In sprinklered buildings, storage shall be maintained a minimum of 18 inches below sprinkler head deflectors.

3. Storage in buildings and structures shall be orderly, shall not be within two feet of the ceiling, and located so as not to obstruct egress from the building.

4. The outside storage of combustible or flammable materials shall not be more than 20 feet in height and shall be compact and orderly. Such storage shall be located as not to constitute a hazard and not less than 15 feet from any other building on the site or from a lot line.

5. The clearance between stored materials and unit heaters, radiant space heaters, duct furnaces, and flues shall not be less than three feet in all directions or shall be in accordance with the clearances shown on the approval agency label.

(g) Flammable materials, such as cotton batting, straw, dry vines, leaves, trees, artificial flowers or shrubbery and foam plastic materials, shall not be used for decorative purposes in show windows or other parts of buildings in such a quantity to constitute a fire hazard, unless such material is flameproofed in an approved manner. Electric light bulbs shall not be decorated with paper or other combustible materials unless such materials shall first have been rendered flameproof.

(h) The following apply to open flame or light:

1. A person shall not take or use an open flame or light into any structure, building, barn, vessel, boat or any other place where highly flammable, combustible or explosive material is used or stored. All lighting appliances shall be well secured in a glass globe and wire mesh cage or similar approved device.

2. Heating or lighting apparatus or equipment capable of igniting flammable materials of the types stored or handled shall not be used in the storage area of any warehouse storing rags, excelsior, hair or other highly flammable or combustible material; nor in the work area of any shop or factory used for the manufacture, repair or renovating of mattresses or bedding; nor in the work areas of any establishment used for the upholstering of furniture.

3. Propane cooking equipment such as barbecue grills shall not be stored or used on any porch, balcony or any other portion of a building, within any room or space of a building, within five feet of any combustible exterior wall, or within five feet vertically or horizontally of an opening in any wall.

(i) The following apply to chimneys and heating appliances:

1. All existing chimneys, smokestacks or similar devices for conveying smoke or hot gases to the outer air and all stoves, ovens, furnaces, incinerators, boilers or any other heat producing devices or appliances shall be constructed in accordance with the building and mechanical codes in effect at the time of first occupancy and maintained in accordance with NFPA 54 and 211 listed in Appendix 3-A, incorporated herein by reference, where the provisions of this section do not specifically cover conditions and operations, and in such a manner as not to create a fire hazard.

2. The fire official shall order the sealing (preventing the use) of any existing stove, oven, furnace, incinerator, boiler or any other heat producing device or appliance found to be defective or in violation of Code requirements for existing appliances after giving 10 days notice to this effect to any person, owner, firm, agent or operator in charge of same. However, the fire official may seal any device or appliance without notice when inspection shows the existence of an immediate fire hazard or when imperiling human life. The sealed defective appliance shall remain withdrawn from service until all necessary repairs or alterations have been made.

i. It shall be deemed a violation of this Code for any person or user, firm or agent to continue the use of any device or appliance which has been sealed or ordered sealed under (i)2 above, unless written authority to remove said seal is given by the fire official. Removing or breaking the seal shall be deemed a violation of this Code.

3. All incinerating operations shall be subject to the following restrictions and a sign of permanent design, furnished by the owner, shall be posted in a conspicuous location at or near the incinerator to inform the operators of said restrictions:

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- i. Fuel-fired incinerators shall be preheated 30 minutes before using;
- ii. Only competent operators are allowed to operate the incinerator;
- iii. After loading the main combustion chamber, the feed door shall be closed until the combustion cycle is complete;
- iv. The waste material ash compartment shall be cleaned regularly; and
- v. Waste matter shall not be burned, under permit or otherwise, if such waste matter would, if burned, cause or create a dense smoke or odor.

(j) The following apply to building protection:

1. Fire resistance rated walls, floors and ceilings shall be maintained as originally designed or constructed. Holes in rated walls, floors or ceilings that will allow the movement of fire or smoke shall be repaired to their original rating using approved materials to prevent such movement. All membrane fire protection shall be maintained at all times.
2. All required fire resistance rated doors or smoke barriers, including all hardware necessary for the proper operation thereof, shall be maintained in good working order. The use of door stops, wedges and other unapproved hold-open devices is prohibited. Where it is desired to keep the doors open, the fire official shall require the installation of approved heat rate of rise or smoke actuated self-closing devices.

i. For smoke barrier doors, only smoke actuated devices shall be allowed.

3. All doors to service equipment areas shall be identified, as to the equipment contained within the room, with a permanently affixed sign with letters at least one inch in height.

(k) The following apply to smoking conditions:

1. The smoking or carrying of a lighted pipe, cigar, cigarette or tobacco in any form is prohibited in the areas herein provided.

2. Smoking shall be prohibited where conditions are such as to make smoking a hazard, including areas of piers, wharves, warehouses, stores, industrial plants, institutions, schools, places of assembly and in spaces where combustible materials are stored or handled. The fire official shall designate specific safe locations, if necessary, in any building, structure or place in which smoking may be permitted.

3. The fire official is empowered and authorized to order the owner or occupant to post "No Smoking" signs in each building, structure, room or place in which smoking shall be prohibited. The content, lettering, size, color and location of required "No Smoking" signs shall be subject to the approval of the fire official.

4. It shall be a violation of this Code for any person to obscure, remove, deface, mutilate or destroy a posted "No Smoking" sign.

5. It shall be a violation of this Code for any person to smoke, throw or deposit any lighted or smoldering substance in any place where "No Smoking" signs are posted.

6. Where smoking is permitted, there shall be provided on each table and at other convenient locations suitable noncombustible ash trays or match receivers.

(l) The following apply to fire lanes on private property:

1. The fire official, with the approval of the chief executive officer of the fire department and the chief of police of the jurisdiction, may designate fire lanes on private property to which the public is invited or which is devoted to public use, if it is necessary to provide safety for the public or to provide proper access for fire department operations in the event of an emergency.

2. Whenever a determination has been made for the fire lane designation, pursuant to (1)1 above, the fire official shall notify the owner of the property in writing by registered or certified mail, or by hand delivering such notice, specifically describing the area designated and the reason for making the designation.

3. The marking of fire lanes shall be the responsibility of, and at the expense of, the property owner and shall be accomplished within 30 days of the receipt of the notification.

4. It shall be a violation of this Code for any person to park a motor vehicle in, or otherwise to obstruct, a fire lane.

(m) The following apply to electrical equipment and hazards:

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1. When any electrical hazards arising from defective or improperly used or installed electrical wiring, equipment or appliances are identified, such conditions shall be abated. All identified hazardous electrical conditions in permanent wiring shall be referred to the construction official.

2. Clearance of not less than 30 inches shall be provided between all electrical service equipment and storage.

3. The use of multi-plug adaptors, such as cube adaptors, unfused plug strips, or any other device that is not approved by a nationally recognized testing agency shall be prohibited.

4. Extension cords and flexible cords shall not be used as a substitute for permanent wiring. Extension cords and flexible cords shall not be affixed to structures, extended through walls, ceilings, floors, under doors or floor coverings, nor be subject to environmental damage or physical impact.

5. Open junction boxes and open wiring splices shall be prohibited. Approved covers shall be provided for all switch and electrical outlet boxes.

6. All electrical motors shall be maintained free from accumulations of oil, dirt, waste, and debris.

7. Illumination shall be maintained for all service equipment areas, motor control centers and electrical panelboards.

8. All unused fixtures, circuits, wiring and electrical devices or fixtures shall be removed or properly secured in place.

9. Electrical appliances or fixtures that have not been approved by a nationally recognized testing agency shall not be placed in service.

(n) The following apply to asphalt (tar) kettles:

1. This subsection shall not apply to any use of a tar kettle in conjunction with a valid construction permit.

2. It shall be unlawful to transport or to permit to be transported any asphalt (tar) kettle beneath which is maintained any open fire, heated coals or ashes, over any highway, road or street.

3. Asphalt (tar) kettles shall not be used inside of or on the roof of any building. Fired asphalt (tar) kettles shall not be left unattended.

4. There shall be a minimum of one 20-B:C rated portable fire extinguisher within 30 feet of each asphalt (tar) kettle during the period such kettle is in use, and one additional minimum 20-B:C rated portable fire extinguisher on the roof being covered. Every kettle shall be equipped with a tight fitting cover. A kettle, when in operation, shall be placed a safe distance from any combustible material or buildings.

5. When liquified petroleum gas cylinders or containers are utilized for fueling asphalt (tar) kettles, the LPG cylinder shall be protected against vandalism and tampering.

i. When possible, all LPG cylinders and containers shall be placed in a secured area for protection against tampering.

ii. LPG cylinders or containers which cannot be secured in a protected area shall have the dome covers locked and secured or, if the container does not have a dome cover, the valve handle shall be removed or secured in the OFF position to insure against unauthorized opening of the LPG cylinders.

iii. The storage of LPG cylinders on roof tops shall be prohibited.

(o) All high rise structures served by elevators shall be equipped with emergency control devices in accordance with N.J.A.C. 5:18-4.17(e).

(p) The following apply to fire safety and evacuation plans:

1. A fire safety and evacuation plan shall be prepared as set forth in this subsection where required by (p)li through v below and by N.J.A.C. 5:18-3.15(b)3.

i. Use Group R-1: All Use Group R-1 buildings;

ii. Use Group I: All Use Group I buildings;

iii. High rise buildings: All high rise buildings as defined in this Code;

iv. Casinos: All buildings licensed as hotel-casinos by the New Jersey Casino Control Commission pursuant to N.J.S.A. 5:12-1 et seq. (see also (t) below);

v. Flammable liquid storage terminals: All flammable liquid storage terminals required to install High Level Alarm Systems by N.J.A.C. 5:18B shall submit a fire and emergency plan as required by N.J.A.C. 5:18B-3.4(a).

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2. The fire safety plan shall be approved by the fire official and shall be distributed by the owner to all tenants and employees. The plan shall contain the location of the nearest exits and fire alarms; the procedures to be followed when a smoke or fire alarm sounds; and the procedures to be followed in the event of fire or smoke.

i. A copy of the fire safety plan shall be readily available at all times within the building. In hotel-casinos the plan shall be located in the Fire Command Center.

3. The evacuation plan shall be conspicuously posted on every floor for the occupants' use.

i. Exception: In R-1 Use Groups the evacuation plan shall be posted on the inside of each guest room door, other than a door opening directly to the outside at grade level.

4. The fire safety and evacuation plan shall be maintained to reflect changes in the use and physical arrangement of the building.

5. All hotel-casino employees who are assigned duties under the plan shall be periodically instructed and kept informed in respect to their respective duties and responsibilities. Such training shall include the proper use of portable fire extinguishers and other manual fire suppression equipment. With respect to new staff members, such training shall be provided within 30 days of entrance to duty. With respect to existing staff, refresher training shall be provided at least annually and whenever a reassignment significantly alters an employee's duties and responsibilities under the plan.

(q) The following apply to portable kerosene fired and solid fuel fired heaters:

1. Portable kerosene fired and solid fuel fire heaters shall be operated and installed with at least the minimum clearance to combustibles for which the appliance has been tested.

i. Exception: Clearances may be reduced in accordance with the mechanical subcode of the Uniform Construction Code.

2. Portable kerosene fired heaters shall be tested in accordance with UL 647 and bear the label of an approved testing agency complying with the criteria for labeling specified in the mechanical subcode of the Uniform Construction Code.

i. The use of portable kerosene fired heaters is prohibited in all Use Groups except R-3.

ii. Portable kerosene fired heaters shall not be offered for sale unless a conspicuous sign is posted at the point of sale and display indicating that the use of portable kerosene fired heaters is prohibited in all buildings except one- and two-family dwellings and is prohibited by ordinance in some municipalities in all dwellings.

iii. Portable containers for kerosene shall be either of a plastic or metal construction with fill and vent openings. The container shall be predominantly medium blue. The word "Kerosene" shall be displayed around the perimeter of the container.

3. Chimneys connected to solid-fuel fired heaters shall be inspected annually and maintained free of significant deposits of creosote and soot.

i. Exceptions to (q)3 above are Use Group R-3 single family dwellings, and chimneys serving fireplaces which are not equipped with fireplace stoves or inserts.

(r) The following apply to vacant and abandoned buildings and structures:

1. All buildings or structures that are, or hereafter become, vacant as a result of damage, fire, or abandonment shall be secured against unauthorized entry as ordered by the fire official. Structures which appear to be in danger of collapse shall be referred to the building official for remedial action in accordance with the Uniform Construction Code.

2. All utilities which represent a potential source of ignition shall be disconnected in a manner approved by the fire official.

3. Fire protection systems shall be maintained as required in N.J.A.C. 5:18-3.4(b)5.

(s) The following apply to fire drills:

1. Fire drills shall be held in buildings and parts thereof, when of Use Group E or Use Group I, in day care centers regardless of use group and in dormitories having an occupancy load of 50 or more.

2. Fire drills shall be held at least once a month in day care centers and buildings of Use Group E, at least twice annually in dormitories,

and at least once every three months on each work shift in buildings of Use Group I. During severe weather, fire drills may be postponed.

3. A record of fire drills shall be kept on the premises and shall be made available to the fire official upon request. Such records shall contain the date of drill, weather conditions at the time, number of occupants evacuated, total time for evacuation and any other information relevant to the drill.

4. In day care centers, educational uses and dormitories, fire drills shall include complete evacuation of all persons from the building. In institutional uses, fire drills shall be conducted to familiarize operating personnel with their assigned positions of emergency duty. Complete evacuation of occupants from the building at the time of the fire drill shall be required in institutional uses only where it is practicable and does not involve moving or disturbing persons under medical care or restraint.

(t) The following apply to casino fire safety programs:

1. Every establishment licensed as a hotel-casino by the New Jersey Casino Control Commission shall establish a Fire Safety Unit consisting of trained personnel who shall be under the direct supervision of a supervisor who shall have responsibility for the operation of the Unit and the Fire Command Center and whose sole responsibility during a fire-related emergency incident shall be the direction of the unit and center. The supervisor shall report directly to the Director of the Department under which the Fire Safety Unit is organized.

2. The responsibilities of the Fire Safety Unit shall include the following as listed in (t)2i through ix below. The Fire Safety Unit shall:

i. Ensure continual staffing of the Fire Command Center with trained hotel-casino personnel. There shall be at least one such trained person in the Center at all times who shall, while on duty, be responsible for the direction of the unit and the center during a fire-related emergency;

ii. Develop and implement a comprehensive fire safety and evacuation plan;

iii. Provide specialized training for all employees to assure compliance with the fire safety plan;

iv. Familiarize all employees of the hotel-casino with the fire safety plan and with the built-in fire detection and suppression systems in the casino and hotel;

v. Familiarize management and security employees with local fire department operations and procedures for various emergencies in the hotel-casino;

vi. Provide training for employees on specific support functions to be performed to assist fire department personnel in an emergency;

vii. Provide training for employees in early detection and proper evaluation of a fire emergency and the proper use of first aid, firefighting equipment and techniques;

viii. Provide training annually for all security personnel and Fire Safety Unit staff in cardiopulmonary resuscitation; and

ix. Ensure the maintenance of the building and its fire protection features in compliance with the Uniform Construction Code and the Uniform Fire Code.

3. The Fire Command Center shall maintain a comprehensive log which shall include the information required in (t)3i and ii below.

i. The name and signature of each employee on duty in the Fire Command Center along with the date and time of arrival and departure; and

ii. A description of each incident occurring within the casino or hotel including the date, time, location and action taken. An incident shall include, but not be limited to, fire, alarm activation, trouble signal, fire protection equipment malfunction, and any unrecorded communication pertaining to fire or life safety which are made to or from the Fire Command Center.

(u) The following apply to kitchen exhaust systems:

1. Commercial kitchen exhaust systems shall be cleaned to remove deposits of residue and grease in the system at intervals specified in the cleaning schedule. Thorough cleaning of ducts, hoods and fans shall require scraping, brushing or other positive cleaning methods.

2. When a cleaning schedule is not on file, the fire official shall require an approved cleaning schedule to be submitted indicating the method of cleaning and the time intervals between cleanings.

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

1. All heating ventilating and air conditioning (HVAC) and mechanical equipment shall be maintained free of excessive accumulations of oil, grease, dust or waste materials.
2. All emergency controls shall be maintained and tested in accordance with N.J.A.C. 5:18-3.4(d). All fire and smoke dampers shall be free at all times of obstructions that prevent proper operations.
3. All equipment for the handling or use of combustible, explosive or otherwise hazardous materials shall be installed and maintained as required by this Code. Where the provisions of this Code do not specifically cover conditions and operations, the equipment shall be installed and maintained in accordance with nationally recognized good practice so as not to create any hazardous conditions.

**5:18-3.4 Fire protection systems**

(a) The general provisions of this section on fire protection systems are as follows:

1. The provisions of this section shall govern the operation, maintenance, and testing of all existing fire protection systems, devices, units and fire safety equipment in all occupancies as herein provided. Such systems shall comply with maintenance provisions of NFPA 13, 13A, 14, 15, 20, 22, 24, 71, 72A, 72B, 72C, 72D, 231, 231C and 231D listed in Appendix 3-A, incorporated herein by reference, where provisions of this section do not specifically cover conditions and operations.
2. Before any fire alarm, detection or fire suppression system is installed, enlarged or extended, a construction permit shall be secured from the construction official.
3. All required tests shall be conducted by and at the expense and risk of the owner or a representative of the owner. The fire official shall not be held responsible for any damages incurred during any such test. Where the presence of the fire official is required for tests under the provisions of this section, the fire official shall be notified not less than 48 hours before said test is made.
4. All fire department connections and fire pump test connections shall be properly marked with a sign indicating their purpose and shall be maintained in a manner and location satisfactory to the fire official. A metal sign with raised letters at least one inch in size shall be mounted on all fire department connections serving fire sprinklers, standpipes and/or fire pump connections. Such signs shall read Automatic Sprinklers and/or Standpipes and/or Test Connection.
5. All threads provided for fire department connections to sprinkler systems, standpipe systems, yard hydrants or any other fire hose connections shall be uniform to those used by the fire department.

(b) The following apply to protection maintenance:

1. All fire protection systems, devices, units, and service equipment which were installed in compliance with any law, ordinance or order, shall be maintained in an operative condition at all times, and it shall be a violation of this Code for any owner or occupant to reduce the effectiveness of the protection so required; except this shall not prohibit the owner or occupant from temporarily reducing or discontinuing the protection where necessary to make tests, repairs, alterations or additions. The fire official shall be notified before disconnection and interruption of protection, tests, repairs, alterations or additions are started and upon its completion, and shall be advised of the extent of and reason for such work. The restoration of the protection shall be diligently pursued.
2. Anyone disabling, tampering or interfering with the effectiveness of any component of a fire detection or alarm system shall be in violation of this Code.
3. When any required fire alarm, fire communication, fire extinguishing, fire detecting, first-aid fire fighting system, device or unit, or part thereof becomes inoperative and affects the fire safety of a building or structure or the occupants therein, the fire official may order said building or structure or portion thereof vacated until said inoperative system, device or unit is repaired and returned to full service.
4. For buildings under construction, the standpipe system shall be carried up with each floor and shall be installed and ready for use as each floor progresses as required by the Uniform Construction

Code. Standpipes shall not be more than one floor below the highest forms or staging.

5. Vacant or unoccupied buildings or portions thereof shall maintain all required sprinkler and standpipe systems and all component parts in a workable condition at all times. Fire alarm systems shall be maintained in operating condition at all times, except when the building is vacated for periods of more than one week, and the system shall be tested in the presence of the fire official upon restoration to use.

i. Exception: In vacant or unoccupied buildings, where the fire official determines the type of construction, fire separation and security of the building is such as not to create a fire hazard, the fire official may permit the fire protection systems to be taken out of service in such a manner and for such a time as the official specifically prescribes.

6. When a building is being demolished and a standpipe or sprinkler system exists within said building, such standpipe and/or sprinkler system shall be maintained in an operable condition so as to be available for use by the fire department. Such standpipe and/or sprinkler system shall be demolished with the building, but in no case shall the system, or systems, be more than one floor below the floor being demolished.

7. Existing non-required fire protection systems, devices, units and service equipment that do not conform to current Code requirements shall continue in service without alteration provided the fire official determines said system, device, unit or equipment does not constitute a serious protection deficiency. Serious protection deficiencies shall be corrected at the discretion of the fire official.

i. All non-required fire protection equipment shall be arranged and maintained in a manner consistent with the requirements at the time of installation unless discontinuation of the equipment is approved by the fire official. All discontinued equipment and devices (pullstations, nozzles, detectors, heads, sensors, panels, hose connections, etc.) shall be removed so as not to give a false indication that the building, area, or space is protected.

8. In any use of carbon dioxide, dry chemical, or halon total flooding systems where there is a possibility that personnel will be trapped in, or enter into, atmosphere made hazardous by a discharge, warning signs, discharge alarms and breathing apparatus, when provided, shall be maintained to insure prompt evacuation of and to prevent entry into such atmospheres and also to provide means for prompt rescue of any trapped personnel.

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

1. Inspections and field tests of fire suppression, alarm, detection and any other fire protection systems, devices and equipment shall be conducted by the owner or an authorized representative as herein required.
2. When testing any suppression system, standpipe or fire alarm system which is connected through a central supervisory station directly to the fire or police department, notification shall be given to the fire official before initiation of the tests.
3. All standpipe fire lines in all buildings and structures shall be tested at least every five years. In high rise structures, tests shall be made at intervals of not more than two years. Wet and dry pipe systems shall meet the flow demands required at the time of installation or as required by (d)2i below, and dry systems shall meet the pressure demands of (d)2 below. At the time of the test, all control valves, including those inside hose cabinets, shall be operated and then reset in their proper position to insure the workability of these valves. Wet and dry systems unable to meet the flow requirements at the time of installation or as required by (d)2i below shall be required to install automatic fire pumps or tanks if deemed necessary by the fire official for the occupancy of the building.
4. The inspector's test connections, main drain valves and all control valves on all sprinkler systems shall be operated at least once a year to determine that there is a free water flow at adequate pressure and that the supervisory service, if any exists, is operating properly. An internal inspection of the piping shall be performed periodically, but at least once every 10 years to check for debris buildup, and the piping is to be flushed if needed. If debris buildup is noted, internal inspections shall be at five year intervals thereafter.

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Each dry pipe valve shall be cleaned and reset at least once each year. Automatic antifreeze solution systems and limited area systems that are supplied from a domestic water source and which are not required to provide a test line shall be exempt from the requirements of this section.

5. All fire pumps that automatically supply water to suppression systems and standpipes shall be operated periodically until water is discharged freely from the relief valve and at least once every 30 days. A yearly test shall be made in accordance with NFPA 20 listed in Appendix 3-A, incorporated herein by reference, to make sure that neither pump nor suction pipe is obstructed. Where the suction supply is from public mains, the test shall not draw the residual suction pressure at the pump below 20 pounds per square inch (psi).

6. Automatic and manual fire alarm systems and each of their components shall be tested annually in accordance with (c)6i through iii below.

i. An alarm shall be simulated for each zone of the system and shall cause the alarm to be audibly and/or visually received throughout the entire building and at the control panel and at any other location at which the alarm signal is required to be received.

ii. The supervisory circuits of each zone shall be tested in accordance with the manufacturer's instructions and cause a trouble signal to be received both audibly and visually at the control panel.

iii. A failure of the main power supply to the fire alarm system shall be simulated. The emergency power supply shall then be capable of indicating, both audibly and visually, trouble and alarm signals at the control panel.

7. All high level alarm systems installed in accordance with N.J.A.C. 5:18B shall be periodically tested in accordance with N.J.A.C. (a)4 above.

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 above.

ii. Smoke control systems shall be placed into operation by manual and automatic means. The proper sequence and operation of system components shall be kept in writing on the premises, shall be available to the fire official and shall be verified when the system is activated.

iii. For pressurization systems, pressure readings shall be taken with all doors closed to verify that the system continues to meet the standards of its approval under the Uniform Construction Code, including maintaining the exhaust capacity.

iv. For smoke removal systems, exhaust discharge readings shall be taken to verify that the system maintains the exhaust capacity required by the Uniform Construction Code.

9. Tests shall be performed on emergency and standby power generation systems annually in accordance with (c)9i and ii below.

i. The main power supply shall be interrupted and cause the generator to start automatically under full load.

ii. Emergency power shall be supplied by the generator in 10 seconds or less under full load. Standby power shall be supplied by the generator in 60 seconds or less under full load.

10. Elevators shall be tested annually in accordance with (c)10i and ii below.

i. Upon simulated activation of an elevator lobby detector, the elevator controller shall cause all elevator cars that serve that lobby to return nonstop to the designated lobby, and prevent further operation of the elevators without the use of an emergency service key.

ii. The emergency service keys shall be utilized to place the recalled elevators into emergency operation and to verify proper functioning of the elevator for fire service operation.

11. Foam extinguishing systems shall be periodically tested and maintained in accordance with NFPA 11, 11A and 16 listed in Appendix 3-A, incorporated herein by reference.

12. Carbon dioxide extinguishing systems shall be periodically tested and maintained in accordance with NFPA 12 listed in Appendix 3-A, incorporated herein by reference.

13. Halogenated extinguishing systems shall be periodically tested and maintained in accordance with NFPA 12A and 12B listed in Appendix 3-A, incorporated herein by reference.

14. Dry chemical extinguishing systems shall be periodically tested and maintained in accordance with NFPA 17 listed in Appendix 3-A, incorporated herein by reference.

15. Wet chemical extinguishing systems shall be periodically tested and maintained in accordance with NFPA 17A listed in Appendix 3-A, incorporated herein by reference.

16. Water spray fixed extinguishing systems shall be periodically tested and maintained in accordance with NFPA 15 listed in Appendix 3-A, incorporated herein by reference.

17. A complete written record of all tests and inspections required under this section shall be maintained on the premises by the owner or occupant in charge of said premises, and all such records shall be submitted to the fire official when requested for inspection and evaluation.

(d) The following apply to standpipe systems:

1. All standpipe systems and equipment, including fire pumps, shall be periodically tested in accordance with this Code.

2. All standpipe systems, including dry, wet and dry pipe systems, shall be tested hydrostatically to demonstrate that the system will sustain for two hours a pressure of not less than 200 psi or 50 psi in excess of the maximum static pressure when the maximum static pressure is in excess of 150 psi.

i. Wet and dry pipe systems shall be tested to determine that the source of water supply, held back by air pressure, is adequate to maintain a minimum flow and pressure at the topmost hose outlet as required for the system design by the Uniform Construction Code. A working test of dry pipe valves, quick opening devices and air maintenance devices, if installed, shall be made before acceptance. Dry pipe systems must deliver water at the most remote hose outlet in not more than 60 seconds, starting at the normal operating air pressure.

ii. Standpipe fire lines without permanent or automatic water supply and equipped with a fire department connection shall be capable of delivering 250 gallons per minute (gpm) simultaneously from each of any three outlets under the operation of one fire engine or pumper.

3. All fire hose stations for dry standpipe fire lines shall be marked with a permanently attached noncombustible sign with letters not less than two inches high, in a color which contrasts with the background color, and reading "Dry Hose—Fire Department Use Only" which is mounted or painted on or near said fire hose station.

4. When fire fighting equipment (standpipe, fire hose, fire extinguishers, fire axes, fire department valves, and so forth) is enclosed in cabinets, these cabinets shall not be blocked from use or obscured from view in any manner.

5. When fire fighting equipment is enclosed in cabinets which are equipped with doors, said doors shall conform with the following provisions:

i. Painted over, covered, or solid metal cabinet doors without visual identification glass panels shall not be bolted, locked, or secured in any manner unless said lock is approved by the fire official. Such doors shall be marked by a permanently attached noncombustible sign with letters not less than two inches high, in a color which contrasts with the background color, and shall indicate what equipment is contained therein. The fire official may allow doors to be marked with a permanently attached noncombustible picture of the equipment contained therein provided said doors are not large enough to accommodate a written sign.

ii. Cabinet doors with an approved visual identification clear glass panel need not be marked provided said door is not locked, bolted or secured in any unapproved manner. Cabinet doors with approved visual identification clear glass panels may be locked provided the following conditions are met:

(1) All locking devices shall be approved by the fire official and shall be capable of being opened when a glass panel is broken away;

(2) Unlocking handles shall be painted red and shall indicate the direction in which the handle must be pushed or pulled to unlock said door; and

(3) Visual identification glass panels shall be unobscured or painted panes that can readily be broken so that access can be obtained, and a permanently attached noncombustible sign with letters not less than two inches high, in a color that contrasts with

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the background color, and reading "Fire Equipment—In Case of Fire Break Glass and Operate Red Handle" shall be mounted or painted on the cabinet doors.

iii. Cabinet doors that have complete glass door panels may be locked provided said glass can readily be broken and access obtained, and a noncombustible sign with letters not less than two inches high in a color that contrasts with the background color and reading "In Case of Fire Break Glass" shall be mounted or painted on the glass panel.

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

1. The provisions of this subsection shall govern the operation and maintenance of fire suppression systems for range hoods and food preparation centers in all buildings and structures.

2. An approved automatic fire suppression system shall be installed in all hoods and connecting hood and duct systems as required by N.J.A.C. 5:18-4.7(g). Such fire suppression systems shall provide surface protection for all cooking appliances and equipment that may be a source of ignition in or under the hood.

i. Automatic safe shut-off valves, remote manual pull stations, surface protection or extended surface protection shall be required by the fire official on any existing automatic or nonautomatic fire suppression system when said system does not conform to the provisions of this section and when additional protection is deemed necessary by the fire official for the safety and protection of the operation, the occupants or the operator.

3. All nozzles, fusible links and cylinders shall be readily accessible for cleaning, replacement, inspection and service. It shall be the responsibility of the person in charge of said cooking operation to see that the extinguishing systems are inspected at least every six months and whenever said system is activated or found inoperative. Inspections shall be made only by properly trained and qualified personnel. Regular service contracts with the manufacturer or an authorized installing or maintenance company are recommended. All actuation components, including remote manual pull stations, mechanical or electrical devices, detectors, actuators, etc., shall be checked for proper operation during inspection. All fusible links and fusible link sprinkler heads shall be replaced annually. Manual stations shall be sealed and safety pinned or latched. An inspection tag shall be located at the manual pull station indicating the date of the last inspection and the signature and name of the person and company who performed the work.

i. A certificate of inspection shall be forwarded to the fire official whenever any system is placed back into service after being discharged or deactivated for repair work, and after each required semi-annual inspection, by the person or company who performed said inspection. Certificates of inspection shall be submitted in such form as the fire official may prescribe.

4. All cooking operations and all food preparation centers within any occupancy, except individual dwelling units, shall provide a sufficient number of portable fire extinguishers to afford adequate fire safety as determined by the fire official but not less than one unit. All extinguishers shall carry a minimum of 20-B:C rating and capacity and be compatible with the fire suppression system extinguishing agent. The extinguisher shall be located not more than 15 feet and not less than 10 feet from the hazard.

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 above.

(f) The following apply to portable fire extinguishers:

1. All hand operated portable fire extinguishers shall be selected, distributed, inspected, maintained, tested and recharged in accordance with NFPA 10 listed in Appendix 3-A, incorporated herein by reference, and (f)2 below.

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. Theaters shall be provided with at least two approved fire extinguishers in the stage area behind the proscenium wall where movable scenery is installed; not less than one fire extinguisher on

stages or platforms without scenery or stage equipment; one in each tier of dressing rooms; and one immediately outside the entrance to every motion picture booth.

ii. Schools, assembly and lecture halls shall be provided with one fire extinguisher for each 2,500 square feet of floor area or fraction thereof but not less than one fire extinguisher in each laboratory, shop or other vocational room.

iii. In hotels, dormitories and lodging houses, at least one fire extinguisher shall be provided on each floor at the stairway landing and in the corridor at each elevator or bank of elevators.

iv. Hospitals, nursing homes, prisons and group homes shall be provided with one fire extinguisher for each 2,500 square feet of floor area, but not less than one per floor, and one in each kitchen.

v. Portable fire extinguishers shall be provided as required by the fire official in accordance with NFPA 10 listed in Appendix 3-A, incorporated herein by reference.

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	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. When auxiliary emergency equipment is enclosed in cabinets, said cabinets shall conform to (d)4 through 5 above.

4. In isolated hazardous locations, incidental to the general use of the building, a limited area sprinkler system serviced from the building water supply complying with the Uniform Construction Code may be accepted as a substitute for portable fire extinguishers.

5. Actuated extinguishers shall be immediately moved away from their designated location and shall be temporarily replaced with a standby or spare unit of the same type and capacity as the actuated unit.

6. Soda acid, foam, loaded stream, antifreeze and water portable fire extinguishers of the inverting type shall not be recharged or placed in service for fire protection use. Extinguishers of these types shall not be considered approved devices for fire protection use under the provisions of this code and shall immediately be removed from service.

(g) The following apply to fire alarm systems:

1. Fire alarm systems and all devices attached thereto shall be maintained in proper working order at all times and shall be subjected to periodic tests as required by (c) above.

i. Exception to maintenance and periodic tests: Vacant buildings (see (b)5 above).

5:18-3.5 Means of egress

(a) The provisions of this section shall govern the maintenance and use of means of egress as provided in buildings and structures

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in accordance with the requirements of the Uniform Construction Code and this code (see N.J.A.C. 5:18-3.15 for additional requirements for places of assembly and education).

(b) The following apply to hazards relating to means of egress:

1. All means of egress elements, such as egress doors and their hardware, corridors, stairways, fire escapes and similar egress components, shall be maintained in a safe and operable condition at all times, and be available for immediate use. The fire official may require a load test on any exterior stairway or fire escape to determine structural stability.

2. A person shall not at any time place any encumbrance within or upon any element of a means of egress which reduces its width to less than that required by the Uniform Construction Code. Draperies or similar decorative hangings shall not obstruct the view of, nor access through, any element of a means of egress. Mirrors shall not be placed in or adjacent to a means of egress in any manner which may confuse the direction of egress. Exit doors shall not be decorated in any way that would obscure or confuse the purpose of the door.

3. Exits shall not be used for any purpose other than a means of egress. Spaces within a stairway enclosure shall not be utilized for storage or location of any materials or items. Exterior spaces below and within 10 feet horizontally of fire escapes and exterior stairs shall not be utilized for the storage of combustible materials or location of refuse containers.

4. Enclosed exit access corridors shall be maintained free of accumulations of flammable or combustible materials at all times except for the conditions listed in (b)4i and ii below:

- i. Decorative items affixed directly to walls or ceilings; or
- ii. Furniture located within seating or waiting areas which is fixed in place which does not reduce the required width of the corridor.

(c) The following apply to egress doors:

1. All interior exit stairway doors shall be openable from either side; and all egress doors shall be openable from the side from which egress is to be made without the use of a key or special knowledge or effort at all times the building or area served is occupied except as provided in (c)2 below.

i. All keys necessary for unlocking doors installed in means of egress shall be individually identifiable by both touch and sight.

2. Exceptions: Locks or fasteners may be installed on egress doors under the following conditions only:

- i. In mental, penal or other institutions where the security of inmates is necessary, in which case properly trained supervisory personnel shall be continuously on duty and approved provisions are made to safely remove occupants in case of fire or other emergency;
- ii. In problem security areas, special purpose door alarms or locking devices shall be approved by the fire official prior to installation. Manually operated edge or surface molded flush bolts are prohibited; and
- iii. In high rise buildings with stairway doors arranged in accordance with the Uniform Construction Code.

(d) The following apply to emergency escape windows:

1. Emergency escape windows and doors shall be maintained operational and available to occupants of sleeping rooms in residential uses.

2. Bars, grilles, grates or similar devices may be installed in required emergency escape windows provided such devices are equipped with approved release mechanisms which are openable from the inside without the use of a key or special knowledge or excessive force.

(e) The following apply to signs and lighting:

1. All exit signs shall be maintained in a clean and legible condition and shall be clearly illuminated at all times that the building is occupied. Supplemental internally illuminated directional signs, when necessary, shall be installed indicating the direction and way of egress.

i. A sign shall be provided at each landing in all interior stairways more than three stories in height designating the floor level above the exit discharge.

2. Any door, passage or stairway which is neither a means of egress nor access to a means of egress and which is so located or

arranged as may be mistaken for a means of egress shall be properly identified as to its use.

3. Decorations, furnishings or equipment which impair the visibility of egress signs shall not be permitted nor shall there be any brightly illuminated sign (for other than egress purposes), display or object in or near the line of vision to the required egress sign of such a character as to so detract attention from the egress sign that it may not be noticed.

4. Stairways, hallways and other means of egress, including exterior open spaces to or through which an exit leads, shall be kept adequately lighted at all times that the building served thereby is occupied.

5. All elevator lobby call stations on all floor levels in buildings more than six stories or 75 feet in height shall be marked with approved signs reading as follows: "Use Stairways in Case of Fire—Do Not Use Elevators." The requirements of this paragraph shall apply to existing as well as new buildings.

(f) The following apply to fire and exit doors:

1. All self-closing and automatic doors serving as a means of egress or providing a fire or smoke barrier as required by the building code in effect at the time of first occupancy shall be maintained in operable condition at all times in accordance with NFPA 80 listed in Appendix 3-A, incorporated herein by reference, where provisions of this section do not specifically cover conditions and operations.

i. It shall be unlawful to block open any interior egress door or any fire door which is required to be self-closing.

#### 5:18-3.6 Airports, heliports and helistops

(a) The following are general provisions applicable to this section:

1. The provisions of this section shall apply to all airports, heliports, helistops and aircraft hangers.

2. All applicable facilities shall be operated and maintained in accordance with the provisions of this code.

(b) The following apply to service areas:

1. A person shall not install, operate, or maintain an aircraft service except in accordance with the provisions of N.J.A.C. 5:18-3.16 and 3.28. All transferring apparatus, pumps, hoses, electrical equipment, fueler units and accessory equipment shall be approved and shall comply with NFPA 407 listed in Appendix 3-A, incorporated herein by reference.

2. The dispensing, transfer or storage of flammable or combustible liquid shall not be permitted inside of or upon any building or structure. Flammable or combustible liquid shall not be dispensed into or removed from a container, tank, vehicle or aircraft except in a location approved by the fire official.

3. All repairing of aircraft requiring the use of open flames, spark-producing devices or the heating of parts above 500 degrees Fahrenheit shall be done in the open or in an area conforming to the provisions of the Uniform Construction Code.

4. A person shall not smoke or produce any open flame within 50 feet of any point where fuel is being transferred, nor shall any electrical or motor driven device be connected to or disconnected from any aircraft at any time fueling operations are in progress on such aircraft.

(c) Safety requirements are as follows:

1. Application of flammable finishes shall be conducted in areas approved by the fire official.

2. A person shall not clean any aircraft, engine or parts of an aircraft or engine with any Class I flammable liquid.

3. Every aircraft hanger shall be provided and maintained with metal drip pans under the engines of all aircraft, except turbine-powered aircraft, stored or parked therein.

4. An open flame, flame-producing device or other source of ignition shall not be permitted in any hanger, except in approved locations.

5. Smoking shall be prohibited on loading and servicing ramps or within 50 feet of any parked aircraft. Smoking in hangars shall be allowed only in areas designated by the fire official. "No Smoking" signs shall be provided in accordance with (k) below.

6. The engines of any aircraft shall not be run in an aircraft hangar except in approved engine test areas.

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7. Combustible materials or other hazardous materials shall not be stored in an aircraft hangar except in locations and containers approved by the fire official.

8. The touchdown area for helicopters shall be surrounded on all sides by a clear area having a minimum average width at roof level of 15 feet with no width less than five feet and shall be so maintained.

9. Landing areas on structures shall be so maintained as to confine any flammable liquid spillage to the landing area itself and provision shall be made to drain such spillage away from any exit servicing the landing area or from a structure housing such exit.

(d) The following apply to passenger facilities:

1. Passenger traffic may be permitted during the time fuel transfer operations are in progress, provided the following provisions are strictly enforced by the owner of the aircraft or an authorized employee.

i. A person shall not smoke or produce any open flame in the cabin of the aircraft or on the outside thereof within 50 feet. A qualified employee of the aircraft owner shall be responsible for seeing that passengers are not allowed to smoke when remaining aboard the aircraft, nor while crossing the ramp from the gate to the aircraft or vice versa.

ii. Passengers shall not be permitted to linger about the aircraft but shall proceed directly between the loading gate and the aircraft.

iii. Passenger loading stands shall be left in loading position until all fuel transfer operations are completed.

iv. Fuel transfer operations shall not be performed on the main exit side of any aircraft containing passengers except when the owner of the aircraft or a capable and qualified employee of the owner shall remain inside to direct and assist the escape of such passengers through regular and emergency exits in the event of fire. A passenger shall not board or exit the aircraft on the same side as the refueling operation.

2. Exits from applicable facilities shall be maintained in compliance with N.J.A.C. 5:18-3.5 except that all landing areas located on buildings shall have at least two independent exits.

(e) The following apply to portable fire extinguishers:

1. Portable fire extinguishers suitable for flammable liquid and electrical type fires shall be provided as specified by the fire official.

2. Every vehicle for towing aircraft shall be equipped with at least one fire extinguisher having a minimum 20-B:C rating.

3. Every welding apparatus shall be equipped with at least one fire extinguisher having a minimum rating of 2-A:10-B:C.

4. Every aircraft refueler shall be equipped with a minimum of two extinguishers having a 20-B:C rating. A fire extinguisher shall be readily accessible from either side of the vehicle.

5. Every aircraft service area shall be provided with at least two fire extinguishers as specified in NFPA 407 listed in Appendix 3-A, incorporated herein by reference.

6. The use of any fire extinguishing equipment under any circumstances shall be reported to the airport manager and the fire official immediately after use.

**5:18-3.7 Application of flammable finishes**

(a) The following are general provisions applicable to this section:

1. The locations or areas where the following activities are intended to be conducted or are done shall comply with the provisions of this section.

i. The application of flammable or combustible paint, varnish, lacquer, stain or other flammable or combustible liquid applied as a spray by whatever means, in continuous or intermittent processing; and

ii. Dip tank operations in which articles or materials are passed through contents of tanks, vats or containers of flammable or combustible liquids, including coating, finishing, treating and similar processes.

(b) Fire safety requirements are as follows:

1. The layout, arrangement and construction of buildings and structures in which spraying or dipping operations are done shall comply with the applicable requirements of the building code in effect at the time of first occupancy for the appropriate use group classification, and shall be provided with fire protection and fire extinguishing equipment as required by N.J.A.C. 5:18-4 and that

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code. Buildings and structures and their service equipment shall be maintained in proper operating condition as required by this code and NFPA 33 and 34 listed in Appendix 3-A, incorporated herein by reference, where provisions of this section do not specifically cover conditions and operations.

2. Smoking and open flames shall be prohibited in any spray finishing area and in the vicinity of dip tanks. Signs with lettering of approved size shall be conspicuously posted in such areas and shall read "No Smoking By Order of the Fire Official."

3. Electrical wiring and equipment shall conform to the provisions of N.J.A.C. 5:18-3.3(m) and shall be installed as specified in NFPA 70 listed in Appendix 3-A, incorporated herein by reference.

(c) The following apply to spray finishing:

1. Any area in which quantities of flammable vapors or combustible residues, dusts or deposits are present due to the operation of spraying processes shall be considered a spraying area. The fire official may define the limits of the spraying area in any specific case. A spraying area shall include:

i. The interior of spray booths;

ii. The interior of ducts exhausting from spraying processes; and

iii. Any area in the direct path of spray or any area containing dangerous quantities of air-suspended combustible residue, dust, deposits, spray or vapor as a result of spraying operations.

2. Spray-finishing operations shall not be conducted in buildings used for assembly, educational, institutional or residential occupancies, except in a room designed for that purpose, protected with an approved fire suppression system and separated vertically and horizontally from other areas as required by the Uniform Construction Code or N.J.A.C. 5:18-4.

3. Spray booths shall be maintained according to (c)3i through vii below.

i. The interior surfaces of spray booths shall be smooth and continuous without edges and otherwise maintained to prevent pocketing of residues and facilitate cleaning and washing without injury.

ii. The floor construction of spray areas, if combustible, shall be covered by approved noncombustible material. All spraying areas shall be kept free from the accumulation of deposits of combustible residues. Combustible coverings (thin paper, plastic, and so forth) and strippable coatings may be used to facilitate cleaning operations in spraying areas. If residue accumulates to excess in booths, ducts or duct discharge points or other spraying areas, then all spraying operations shall be discontinued until conditions are corrected.

iii. If installed, baffle plates shall be of noncombustible material, readily removable or accessible on both sides for cleaning and designed to promote an even flow of air through the booth and to prevent the deposit of overspray before it enters the exhaust duct. Such baffle plates shall not be located in exhaust ducts.

iv. Each spray booth having a frontal area larger than nine square feet shall have a metal deflector or curtain not less than 4½ inches deep installed at the upper outer edge of the booth, over the opening.

v. Each spray booth shall be separated from other operations by at least three feet or by such partition or wall as the fire official may require to reduce the hazard from adjoining operations.

vi. Spray booths shall be so installed that all portions are readily accessible for cleaning. A clear space of not less than three feet on all sides shall be kept free from storage or combustible construction. This does not preclude the installation of a spray booth against a partition or wall having a one hour fire resistance rating providing the booth can be maintained and cleaned.

vii. When spraying areas are illuminated through glass panels or other transparent materials, only fixed lighting units shall be used as a source of illumination. Panels shall effectively isolate the spraying area from the area in which the lighting unit is located and shall be of noncombustible material of such a nature or so protected that breakage will be unlikely. Panels shall be so arranged that normal accumulations of residue on the exposed surface of the panel will not be raised to a dangerous temperature by radiation or conduction from the source of illumination.

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4. Overspray dry filters or filter rolls, if installed in conventional dry-type spray booths, shall conform to the provisions of (c)4i through v below.

i. All discarded filter pads and filter rolls shall be immediately removed to a safe, well-detached location or placed in a water filled metal container and disposed of at the close of the day's operation unless maintained completely immersed in water.

ii. The location of filters in a spray booth shall be so as to not reduce the effective booth enclosure of the objects being sprayed.

iii. Clean filters or filter rolls shall be noncombustible or of an approved type.

iv. Filters or filter rolls shall not be used when applying a spray material known to be highly susceptible to spontaneous heating and ignition.

v. Filters and filter rolls shall not alternately be used for different types of coating materials where the combination of materials may be conducive to spontaneous ignition.

5. There shall be no open flame, spark-producing equipment or exposed surfaces exceeding the ignition temperature of the material being sprayed in the areas specified in (c)5i and ii below, except as specifically permitted in (c)11 and (e) below. Further, there shall be no equipment or processes that may produce sparks or particles of hot metal located above or adjacent to the areas in (c)5i and ii below, unless means are provided to prevent the sparks or particles of hot metal from entering these areas.

i. A spraying area as defined in (c)1 above; and

ii. An area adjacent to a spraying area which would require electrical equipment conforming to the provisions of NFPA 70 listed in Appendix 3-A for Division 2 locations, incorporated here by reference, unless separated therefrom by a partition extending at least to the boundary of the Division 2 location.

6. Room heating appliances, steam pipes or hot surfaces shall not be located in a spraying area where deposits of combustible residues may readily accumulate.

7. A ventilation system shall be operated and maintained for all spray booths and spray areas in accordance with the BOCA Mechanical Code listed in Appendix 3-A, incorporated herein by reference.

8. The storage and handling of flammable liquids shall be in accordance with N.J.A.C. 5:18-3.28 and shall also conform to the provisions of this paragraph.

i. Where the quantity of liquid in five gallon and smaller containers, other than original sealed containers, exceeds a total of 10 gallons, it shall be stored in a storage cabinet or an interior storage room conforming to N.J.A.C. 5:18-3.28.

ii. Original closed containers, approved portable tanks, approved safety cans or a properly arranged system of piping shall be used for bringing flammable liquids into spray finishing areas. Open or glass containers shall not be used.

iii. Containers supplying spray nozzles shall be of a closed type or provided with metal covers kept closed. Containers not resting on floors shall be on noncombustible supports or suspended by wire cables. Containers supplying spray nozzles by gravity flow shall not exceed 10 gallons capacity.

iv. All containers or piping to which is attached a hose or flexible connection shall be provided with a shutoff valve at the connection. Such valves shall be kept shut when spraying operations are not being conducted, except when a circulating system is used and it is provided with an automatically operated anti-runaway control.

v. Heaters shall not be located in spray booths or other locations subject to the accumulation of deposits of combustible residue.

vi. If flammable or combustible liquids are supplied to spray nozzles by positive displacement pumps, means shall be provided to prevent the discharge pressure from exceeding the operating pressure of the system. Any discharge shall be to a safe location.

vii. Whenever flammable liquids are transferred from one container to another, both containers shall be bonded or effectively grounded. Piping systems for flammable liquid shall be permanently grounded.

9. An approved automatic fire suppression system shall be installed, and portable fire extinguishers, small hoses or other fire

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extinguishing equipment shall be installed near all spraying areas as may be required by the fire official.

10. All spraying areas shall be kept free from the accumulation of deposits of combustible residues. Combustible coverings (thin paper, plastic, and so forth) and strippable coatings may be used to facilitate cleaning operations in spraying areas. If residue accumulates to excess in booths, duct or duct discharge points or other spraying areas, then all spraying operations shall be discontinued until conditions are corrected.

i. Scrapers, spuds or other such tools used for cleaning purposes shall be of nonsparking material.

ii. Residue scraping and debris contaminated with residue shall be immediately removed from the premises and properly disposed of.

iii. Solvents for cleaning operations shall have flash points above 100 degrees Fahrenheit except that for cleaning spray nozzles and auxiliary equipment, solvents having flash points not less than those normally used in spray operations may be used. Cleaning operations using flammable or combustible solvents shall be conducted inside spray booths with ventilating equipment operating during the cleaning procedure.

iv. Spray booths shall not be alternately used for different types of coating materials, where the combination of the materials may be conducive to spontaneous ignition, unless all deposits of the first used material are removed from the booth and exhaust ducts prior to spraying with the second.

v. Approved metal waste cans equipped with self-closing lids shall be provided wherever rags or waste are impregnated with finishing material and all such rags or waste shall be deposited therein immediately after use. The contents of waste cans shall be properly disposed of at least once daily and at the end of each shift.

11. In addition to conforming to the requirements of this section, drying apparatus shall comply with the applicable provisions of N.J.A.C. 5:18-3.14.

i. Spray booths, rooms or other enclosures used for spraying operations shall not alternately be used for the purpose of drying by any arrangement which will cause a material increase in the surface temperature of the spray booth, room or enclosure.

ii. Except as specifically provided in (c)11iii below, drying or baking units utilizing a heating system having open flames or which may produce sparks shall not be installed in a spraying area as defined in (c)1 above, but may be installed adjacent thereto when equipped with an interlocked ventilating system arranged to:

(1) Thoroughly ventilate the drying space before heating system can be started;

(2) Maintain a safe atmosphere at any source of ignition; and

(3) Automatically shut down the heating system in the event of failure of the ventilating system.

iii. Automobile refinishing booths or enclosures, installed and maintained in conformity with this section, may alternately be used for drying with portable infrared drying apparatus when conforming to all of the following requirements:

(1) The procedure shall be restricted to low-volume, occasional spray application;

(2) The interior of spray enclosures shall be kept free of over-spray deposits; and

(3) During spray operations, the drying apparatus and electrical connections and wiring thereto shall not be located within spray enclosure nor in any other location where spray residue may be deposited thereon.

\*[iv]\*\*(4)\* Spraying apparatus, drying apparatus, and ventilating system of spray enclosure shall be equipped with suitable interlocks so arranged that:

\*[(1)]\*\*(A)\* Spraying apparatus cannot be operated while drying apparatus is inside spray enclosure;

\*[(2)]\*\*(B)\* Spray enclosure will be purged of spray vapors for a period of not less than three minutes before drying apparatus can be energized; and

\*[(3)]\*\*(C)\* Ventilating system will maintain a safe atmosphere within the enclosure during the drying process and drying apparatus will automatically shut off in the event of failure of the ventilating system.

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\*[v.]\*\***(5)**\* All electrical wiring and equipment of drying apparatus shall conform to the provisions of N.J.A.C. 5:18-3.3(m). Only equipment of a type approved for Class I, Division 2, hazardous locations shall be located within 18 inches of floor level. All metallic parts of drying apparatus shall be properly electrically bonded and grounded.

(d) The following apply to dip tanks:

1. The provisions of this subsection shall apply to any tank, vat or container of flammable or combustible liquid in which articles or materials are immersed for the purpose of coating, finishing, treating or similar processes, which are known as dip tanks, and to any area containing dangerous quantities of flammable vapors in the vicinity of dip tanks, their drain boards or associated drying, conveying or other equipment, during operation or shutdown periods, which shall be known as vapor areas. The fire official may determine the extent of the vapor area, taking into consideration the characteristics of the liquid, the degree of sustained ventilation and the nature of the operations.

2. Dip tank operations shall not be conducted in buildings used for assembly, educational, institutional or residential occupancies, except in a room designed for the purpose, protected with an approved automatic fire suppression system and separated vertically and horizontally from other areas as required by the Uniform Construction Code.

3. A ventilation system shall be operated and maintained in all areas in accordance with this code and the BOCA mechanical code listed in Appendix 3-A.

4. Dip tanks, including drain boards if provided, shall be constructed of substantial noncombustible material and their supports shall be of heavy metal, reinforced concrete or masonry and shall comply with the following provisions of (d)14i through iii below.

i. Dip tanks of over 150 gallons in capacity or 10 square feet in liquid surface area shall be equipped with a properly trapped overflow pipe leading to a safe location outside the building. The bottom of the overflow connection shall not be less than six inches below the top of the tank.

ii. Dip tanks over 500 gallons in liquid capacity shall be equipped with bottom drains automatically and manually arranged to quickly drain tank in event of fire unless the viscosity of the liquid at normal atmospheric temperature makes this impractical. Manual operation shall be from a safely accessible location. Where gravity flow is not practicable, automatic pumps shall be provided.

iii. All bottom drains shall be trapped and shall discharge to a closed properly vented salvage tank or to a safe outside location.

5. Dip tanks utilizing a conveyor system shall be so arranged that, in the event of fire, the conveyor system shall automatically cease motion and required bottom drains shall open.

6. There shall be no open flames, spark producing devices or heated surfaces having a temperature sufficient to ignite vapors in any vapor area.

i. Electrical wiring and equipment in any vapor area shall be explosion-proof type approved for use in such hazardous locations. Such area shall be considered as Class I, Division 1, hazardous locations as specified in NFPA 70 listed in Appendix 3-A.

ii. Unless specifically approved for locations containing both deposits of readily ignitable residues and explosive vapors, there shall not be electrical equipment in the vicinity of dip tanks or associated drain boards or drying operations which are subject to splashing or dripping of dip tank liquids, except wiring in rigid conduit or in threaded boxes or fittings not containing taps, splices or terminal connections, and except as specifically permitted in (e) below relating to electrostatic apparatus.

iii. In any floor space outside a vapor area, but within 20 feet therefrom, and not separated by tight partitions, open flames or spark producing devices shall be prohibited, except drying and baking apparatus may be installed adjacent to vapor areas when conforming to (c)11ii above. Such area shall be considered a Class I, Division 2, hazardous location as specified in NFPA 70 listed in Appendix 3-A.

7. Areas in the vicinity of dip tanks shall be maintained as clear combustible stock as practical and shall be kept entirely free of combustible debris.

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i. When waste or rags are used in connection with dipping operations, approved metal waste cans equipped with self-closing lids shall be provided and all impregnated rags or waste deposited therein immediately after use. The contents of waste cans shall be disposed of at least once daily and at the end of each shift.

8. Areas in the vicinity of dip tanks shall be provided with portable fire extinguishers suitable for flammable liquid fires as specified for extra hazardous occupancies in NFPA 10 listed in Appendix 3-A, incorporated herein by reference.

i. Dip tanks of over 150 gallons capacity or 10 square feet liquid surface area shall be protected with at least one of the following automatic facilities:

- (1) Approved automatic water spray extinguishing system;
- (2) Approved automatic foam extinguishing system;
- (3) Approved automatic carbon dioxide system;
- (4) Approved automatic dry chemical extinguishing system; or
- (5) Dip tank covers conforming to (d)9 below.

ii. Dip tanks containing a liquid with a flash point below 110 degrees Fahrenheit, when used in such manner that the liquid temperature may equal or be greater than its flash point from artificial or natural causes, shall conform to (d)8i above when having both a capacity of more than 10 gallons and a liquid surface area of more than four square feet.

9. Covers arranged to close automatically in the event of fire shall be actuated by approved automatic devices and shall also be arranged for manual actuation and operation.

i. Covers shall be of substantial noncombustible material or of tin-clad type with enclosing metal applied with locked joints.

ii. Chains or wire rope shall be used for cover support or operating mechanism where the burning of a cord would interfere with the action of a device.

iii. Covers shall be kept closed when tanks are not in use.

10. Hardening and tempering tanks shall conform to (d)4, 7 and 8 above, as well as (d)10i through v below.

i. Tanks shall be located as far as practicable from furnaces and shall not be located on or near combustible construction.

ii. Tanks shall be provided with a noncombustible hood and vent or other equally effective means, terminating outside of the building to serve as a vent in case of fire. All such vent ducts shall be treated as flues and proper clearances shall be maintained from combustible materials.

iii. Tanks shall be equipped with a high temperature limit switch arranged to sound an alarm when the temperature of the quenching medium reaches 50 degrees Fahrenheit below the flash point.

iv. Hardening and tempering tanks of over 500 gallons capacity or 25 square feet liquid surface area shall be protected as specified in (d)8i above.

v. Air under pressure shall not be used to fill or to agitate oil in tanks.

11. Flow coat operations shall conform to the requirements for dip tanks, considering the area of the sump and any areas on which paint flows as the area of a dip tank.

i. Paint shall be supplied by direct low pressure pumping arranged to automatically shut down by means of approved heat actuated devices in case of fire, or by a gravity tank not exceeding 10 gallons in capacity.

12. The processes of roll coating, spreading and impregnating, in which fabrics, paper or other materials are passed directly through a tank or trough containing flammable liquids, or over the surface of a roller that revolves partially submerged in a flammable liquid, shall conform to the requirements of this subsection and to the applicable provisions of this section.

i. Adequate arrangements shall be made to prevent sparks from static electricity by electrically bonding and grounding all metallic rotating and other parts of machinery and equipment and by the installation of static collectors or maintaining a conductive atmosphere such as a high-relative humidity.

(e) The following apply to electrostatic apparatus:

1. Approved electrostatic equipment shall be used in connection with paint spraying operations.

2. Transformers, power packs, control apparatus and all other electrical portions of the equipment, with the exception of high

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voltage grids and electrostatic atomizing heads and their connections, shall be located outside of the spraying or vapor areas as defined in (c) and (d) above or shall conform to the requirements of (c)5 and (d)6 above.

3. A space of at least twice the sparking distance shall be maintained between goods painted and fixed electrodes, electrostatic atomizing heads or conductors. A suitable sign stating the sparking distance shall be conspicuously posted near the assembly.

4. Electrostatic apparatus shall be equipped with automatic controls which will operate without time delay to disconnect the power supply to the high voltage transformer and to signal the operator under any of the following conditions:

- i. Stoppage of ventilating fans or failure of ventilating equipment from any cause;
- ii. Stoppage of the conveyor carrying goods past the high voltage grid;
- iii. Occurrence of a ground or of an imminent ground at any point of the high voltage system; or
- iv. Reduction of clearance below that specified in (e)3 above.

\*[(A)]\* \*(1)\* Hand electrostatic equipment shall be interlocked with the ventilation system for the spraying area so that the equipment cannot be operated unless the ventilating system is in operation.

5. Adequate booths, fencing, railings or guards shall be so placed about the equipment that it is either by their location or character or both that a safe isolation of the process is maintained from plant storage or personnel. Such railings, fencing and guards shall be of conducting material, adequately grounded, and shall be at least five feet from processing equipment.

6. Signs shall be posted designating the process zone as dangerous with respect to fire and accident.

7. All insulators shall be kept clean and dry. Drip plates and screens subject to paint deposits shall be removable and shall be taken to a safe place for cleaning.

8. The spraying area shall be adequately ventilated so as to insure a safe condition from a fire and health standpoint.

(f) The following apply to automobile undercoating:

1. Automobile undercoating spray operations, conducted in areas having adequate natural or mechanical ventilation, may be exempt from the provisions of (c) above as approved by the fire official when using undercoating materials that are not more hazardous than fuel oil or undercoating materials using only solvents having a flash point in excess of 100 degrees Fahrenheit.

2. Undercoating spray operations not conforming to (f)1 above shall be subject to all applicable provisions of this section.

#### 5:18-3.8 Bowling establishments

(a) The equipment, processes and operation of bowling alleys and establishments shall comply with the applicable requirements of this Code and the provisions of this section.

(b) Fire safety requirements are as follows:

1. The layout, arrangement and construction of buildings and structures used for bowling alleys or establishments shall comply with the applicable requirements of the building code in effect at the time of first occupancy for the appropriate use group classification, and shall be provided with fire protection and fire extinguishment equipment as required by that code. Buildings and structures and their service equipment shall be maintained in proper operating condition as required by this Code.

2. A metal waste can with self-closing cover shall be provided for all waste materials and rags, and the contents shall be disposed of daily.

(c) In the operation and maintenance of bowling establishments, the following conditions shall be observed.

1. Resurfacing operations shall not be carried on while the establishment is open for business. The fire official shall be notified when the bowling lanes are to be resurfaced. Mechanical ventilation shall be provided to adequately remove flammable vapors. Heating, ventilating or cooling systems employing recirculation of air shall not be operated during resurfacing operations or within one hour following the application of flammable finishes. All electric motors or other equipment in the area which might be a source of ignition shall be

shut down, and all smoking and use of open flame shall be prohibited during the application of flammable finishes and for one hour thereafter.

2. Pin refinishing involving the application of flammable finishes shall be done only in a special room meeting the requirements of the building code in effect at the time of first occupancy or N.J.A.C. 5:18-4. Smoking shall be prohibited at all times in refinishing rooms.

3. All power tools in the room shall be effectively grounded. A substantial metal box or other receptacle approved by the fire official shall be provided for catching dust of lathes and sanding or buffing machines thrown off during operation. The contents shall be removed daily and disposed of safely.

4. Storage of flammable or combustible liquids in such rooms shall not exceed a combined aggregate of 60 gallons in original metal containers, or five gallons individual capacity in approved safety containers in accordance with N.J.A.C. 5:18-3.28, where provisions of this section do not specifically cover conditions and operations.

#### 5:18-3.9 Dry cleaning plants

(a) The following general provisions apply to dry cleaning plants:

1. The equipment, processes and operation of dry cleaning plants shall comply with the construction requirements of the building code in effect at the time of first occupancy and the maintenance provisions of NFPA 32 listed in Appendix 3-A, incorporated herein by reference, where the provisions of this section do not specifically cover conditions and operations.

2. Dry cleaning systems shall be classified as follows:

i. High hazard: All such establishments shall be classified as high hazard which employ gasoline or other solvents having a flash point below 100 degrees Fahrenheit per ASTM D56 listed in Appendix 3-A, incorporated herein by reference, in quantities of more than three gallons, or more than 60 gallons of combustible solvents with a flash point between 100 and 140 degrees Fahrenheit.

ii. Moderate hazard: All such establishments employing less than three gallons of volatile flammables with a flash point of less than 100 degrees Fahrenheit or less than 60 gallons of solvent with a flash point between 100 and 140 degrees Fahrenheit shall be classified as moderate hazard.

iii. Low hazard: All such establishments using solvents of other than flammable liquids or solvents with a flash point more than 140 degrees Fahrenheit in cleaning and dyeing operations shall be classified as low hazard.

(b) Fire safety requirements are as follows:

1. The layout, arrangement and construction of buildings and structures used for drycleaning operations shall comply with the applicable requirements of the building code in effect at the time of first occupancy for the appropriate use group classification, and shall be provided with fire protection and fire extinguishing equipment as required by that code or by N.J.A.C. 5:18-4. Buildings and structures and their service equipment shall be maintained in safe condition as required by this Code.

2. Every dry cleaning room, and dry dyeing room employing high and moderate hazard solvents, shall be protected with an approved automatic fire suppression system in accordance with this Code and the Uniform Construction Code.

3. Adequate portable fire extinguishing appliances of a type suitable for fighting fires involving flammable liquids shall be provided in all dry cleaning plants; at least one extinguisher shall be provided at each entrance to every room or area where flammable liquids are stored or used.

4. Smoking in all plants shall be strictly prohibited, except in smoking rooms so designated by the fire official, and "No Smoking" signs shall be posted.

(c) Storage and handling of cleaning solvents shall be as follows:

1. All solvent containers \*[for storage of high hazard solvent]\* **\*and storage tanks\*** shall be \*[kept underground. Solvent storage tanks for moderate hazard systems may be inside of buildings if individual capacity of tanks does not exceed 275 gallons and the aggregate capacity of storage tanks does not exceed 550 gallons]\* **\*stored and maintained in accordance with N.J.A.C. 5:18-3.28\*.**

2. The handling of solvents from storage tanks or containers through the various machines and equipment and back to the settling

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and clear solvent tanks shall be through closed circuits of piping. Pipe systems shall contain a sufficient number of valves to operate the system properly and to protect the plant.

i. All piping shall be tested to a pressure of at least 50 percent in excess of normal operating pressure and proven tight and protected against physical damage.

ii. Piping, valves, fittings and ground joint unions for solvents shall be designed for the working pressures and structural stresses to which they may be subjected. They shall be of steel or other material suitable for use with the solvent. Pipe systems shall be substantially supported and protected against physical damage and excessive stresses arising from settlement, vibration, expansion or contraction. Cast iron fittings for pressure piping shall be prohibited.

3. Pumps of positive displacement-type shall have a bypass and relief valve.

4. Sight glasses, the breakage of which would permit the escape of liquids, shall be of a type not readily damaged by heat and shall be protected against physical damage.

i. Liquid level gauge glasses in moderate hazard systems shall be equipped with an automatic device which will immediately shut off the flow of solvent if the glass is broken. These liquid level gauge glasses shall be guarded against physical damage.

5. Pressure-type filters shall be equipped with a reliable pressure gauge and shall not be operated at pressures exceeding those for which they are designed. The filters shall be provided with an air-bleeding valve and line connected to discharge into the washer or into the storage tank vent line. Such air-bleeding lines shall not discharge into the room.

6. When underground treating and settling tanks are used, a separate suction and discharge connection shall be provided to the pump for removal of sludge. The suction pipe shall be carried to the tank bottom, and the discharge connection to a suitable container.

(d) The following apply to stills and condensers:

1. Steam or hot water only shall be used as the source of heat. If steam is used, a pressure regulating valve shall be installed in the steam supply line to the still.

2. Stills shall be designed for operation on the vacuum principle.

3. Stills and condensers shall be liquid and gas tight. If a relief valve is provided, it shall be equipped with a vent line extending to the outside.

4. Each still shall be provided with a combination vacuum and pressure gauge.

5. Each still shall be equipped with a constant level valve to automatically maintain the solvent liquid level in the still at the proper height.

(e) The following apply to washing machines:

1. Washing machines shall be substantially constructed. The loading door opening shall be equipped with a close fitting door so designed as to prevent solvent leaks due to splash. The machine shall be provided with interlocks to prevent cylinder rotation under power except for inching when doors are open.

i. Individual button and lint traps shall be provided for each washer.

2. The cylinders and shells of all washing machines shall be permanently and effectively grounded to dissipate static electricity in accordance with NFPA 77 listed in Appendix 3-A, incorporated herein by reference. The grounding of the cylinder in each case shall be through the trunnion shaft and, in cases where wooden cylinders are used, shall be grounded also across the inner surface of the cylinder.

3. Each washing machine shall be provided with an overflow pipe one size larger than the size of the solvent supply line to the machine. Such overflow pipe shall be connected to the shell of the washer so that the top of the overflow is below the bottom of the trunnion shaft; it shall be without shutoff valves and shall be arranged to discharge to a suitable tank. The supply pipe shall enter the washing machine above the charged liquid level.

4. In high hazard and moderate hazard systems, each washing machine shall be provided with an approved automatic fire suppression system in accordance with this Code and the building code in effect at the time of first occupancy.

(f) The following apply to drying tumblers and cabinets:

1. Drying tumblers in high hazard and moderate hazard systems shall be of substantial construction, well secured to substantial foundations, and shall be provided with self-closing explosion hatches having an area equal to at least one square foot for each 30 cubic feet of cylinder volume. Hatches shall be arranged to open away from the operator.

i. Drying tumblers in high hazard and moderate hazard systems shall be provided with a steam jet of not less than  $\frac{3}{8}$  inch size for humidifying during the drying process.

2. The cylinder and shell of all drying tumblers shall be permanently and effectively grounded to dissipate static electricity in accordance with NFPA 77 listed in Appendix 3-A, where provisions of this section do not specifically cover conditions and operations. The grounding of the cylinder in each case shall be through the trunnion shaft.

3. Drying tumblers and drying cabinets shall be ventilated to the outside air by means of properly constructed pipes or ducts connected to an exhaust fan of sufficient capacity to remove all dust, vapors, or lint generated by the process. Such discharge pipes or ducts shall be carried to a height of not less than six feet above the roof and shall be provided with cleanout facilities if used for the high hazard or moderate hazard systems.

i. Discharge pipes shall not terminate within 10 feet measured horizontally of any door, window or frame walls of any adjoining or adjacent building.

ii. The fan shall be properly housed and so interlocked as to insure operation while the drying tumbler is in use. The fan spiders, blades or running rings shall be constructed of non-ferrous metal. The fan motor shall not be mounted within the ventilating duct.

4. Each drying tumbler in high hazard or moderate hazard systems shall be provided with an approved automatic fire suppression system in accordance with this Code and the building code in effect at the time of first occupancy.

(g) The following apply to extractors:

1. Extractors shall be provided with liquid-tight covers, or they shall be designed so that none of the liquid solvent is thrown out of the extractor while it is in operation. Covers shall be equipped with automatic mechanical or electrical interlocks which will prohibit operating the extractors while the cover is open and which will prohibit opening the cover until the basket comes to rest. The basket shall have a rim of non-ferrous metal and shall be well balanced.

i. Extractors shall be provided with a drain pipe not less than  $1\frac{1}{2}$  inches in diameter connected direct to underground storage tanks or to a suitable aboveground container, or to the washer through an approved extractor pump with connections fitted with proper valves.

ii. Brakes, if used, shall be so designed as to prevent the creation of sparks or excessive heat.

2. The outside shell of extractors shall be permanently and effectively grounded for dissipation of static electricity in accordance with NFPA 77 listed in Appendix 3-A.

3. Extractors shall not be operated at a speed in excess of that prescribed by the manufacturer as shown on name plate, which must be provided on each machine.

4. Extractors equipped with a solvent spray nozzle for spray rinsing of garments after the primary extraction shall comply with the following provisions:

i. Installation of spray rinse equipment on existing extractors shall be subject to approval of the fire official.

ii. Extractor covers shall be made splashproof to prevent leakage of the solvent, and shall be equipped with a latch to hold the cover closed during operation.

iii. Supply pumps of positive displacement-type shall be provided with a bypass and relief valve set so as to prevent excessive pressure.

iv. Valves in the supply line between pump and outlet shall be installed in such a manner that the cutoff is effected ahead of any flexible portion of the supply line.

v. Extractor drain lines shall not be less than two inches for extractors up to and including 40 inches in diameter and three inches for extractors in excess of 40 inches in diameter.

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vi. Extractors shall be provided with at least one drain line open at all times. If more than one extractor drain line is provided for the purpose of alternating use, quick opening valves or equivalent shall be installed in each line and interlocked so that when either valve is shut, the other valve is open.

vii. If a separate extractor drain tank is provided, it shall have a capacity equal to the combined total gallonage of the charged solvent extraction, the rinse and the rinse extraction.

viii. Drainage from extractors to all tanks shall be by gravity flow.

(h) The following apply to combination dry cleaning units:

1. Machines in which the washing and extracting cycles are complete within the same enclosure shall be of substantial construction. The machines shall be provided with splashproof doors, or covers, with interlocking means to prevent cylinder rotation, under power, except for inching at slow speed when doors or covers are open. Such interlocks shall provide that during the extracting cycle, opening of the door or cover will disconnect the drive motor and apply braking means to bring the cylinder to rest before access to cylinder is possible. Machines shall be provided with braking means to insure stoppage within reasonable time without the creation of sparks or excessive heat.

i. Cylinders shall be supported so as to provide sufficient clearance to prevent striking or rubbing adjacent parts during rotation.

ii. Individual button and lint traps with suitable lids shall be provided for each machine.

2. The cylinders and shells of all machines in high hazard and moderate hazard systems shall be permanently and effectively grounded to dissipate static electricity in accordance with NFPA 77 listed in Appendix 3-A, where the provisions of this section do not specifically cover conditions and operations.

3. Each machine shall be provided with an overflow pipe one size larger than the size of the solvent supply line to the machine. Such overflow shall be connected so that the top of the overflow is below the bottom of the trunnion shaft and arranged to discharge into a suitable tank. The supply pipes to machines, whether from pumps, filters or storage tanks, shall be arranged to deflect solvent steam away from tub openings.

4. The machine shall be furnished with name plate indicating maximum cylinder speed and a warning that it shall not be operated in excess of such speed.

5. Each machine in a high hazard and moderate hazard system shall be provided with an approved automatic fire suppression system in accordance with this Code and the building code in effect at the time of first occupancy.

(i) The following apply to scouring, brushing and spotting operations:

1. The brushing (prespotting) table shall have a liquid-tight top with a curb on all sides not less than one inch high. The top of the table shall be pitched so as to insure thorough draining to a 1½ inch drain connected to a suitable container especially provided and marked for that purpose.

2. All scouring or brushing and spotting (prespotting) operations utilizing solvents of a higher hazard than the solvent used in the plant dry cleaning machines shall be limited to one gallon and dispensed from an approved safety can. Additional storage shall be in approved safety cans of not over one gallon capacity, or in unopened shipping containers.

i. Scouring or brushing operations utilizing in excess of one gallon of solvents of a higher hazard than the solvent used in the plant dry cleaning machines shall be conducted only in a room or building conforming to all the requirements for a dry cleaning system utilizing the same type of solvent.

ii. The total amount of Class II and III solvents used on scouring or brushing tables or in scrubbing tubs, in accordance with (i)2i above, shall not exceed three gallons. The scouring or brushing table or scrubbing tub shall be so located as to insure thorough and effective disposal of vapors through the ventilating system. Scrubbing tubs shall be used only for articles, the character of which prevents their washing in the usual washing machines. Scrubbing tubs shall be secured to the floor and shall be provided with permanent 1½ inch trapped drains to a suitable container specially provided and marked for that purpose.

**ADOPTIONS****5:18-3.10 Dust explosion hazards**

(a) Equipment, processes and operations which involve dust consisting of pulverized particles of any material which, if mixed with air in the proper portions, becomes explosive and may be ignited by flame or spark shall comply with the applicable requirements of this code and the provisions of this section, and shall be maintained in accordance with NFPA 61A, 61B, 61C, 65, 68, 69, 85F, 91, 120, 490, 651, 654, and 655 listed in Appendix 3-A, incorporated herein by reference, where provisions of this section do not specifically cover conditions and operations.

(b) General requirements pertaining to dust explosion hazards are as follows:

1. Equipment and processes in plants where dust hazards exist shall comply with the requirements of the following paragraphs. Where specific requirements are not otherwise established, plants producing dusts shall comply with nationally recognized good practice.

2. All dust-producing or dust-agitating machinery, such as grinding mills and separators, and all elevators, elevator legs, spouts, hoppers and other conveyors shall be provided with casing or enclosures maintained as nearly dust-tight as possible.

3. Approved magnetic or pneumatic separators shall be installed ahead of all shellers, crackers, crushers, grinding machines, pulverizers and similar machines in which the entrance of foreign materials may cause sparks to be generated.

4. Suitable dust collecting equipment shall be installed and accumulation of dust shall be kept at a minimum in the interior of buildings.

5. All machinery and metal parts of the crushing, drying, pulverizing and conveying systems shall be electrically grounded in accordance with NFPA 77 listed in Appendix 3-A.

(c) Fire safety requirements are as follows:

1. Buildings and structures in which equipment or processes involving dust hazards are housed shall comply with the applicable requirements of the building code in effect at the time of first occupancy for the appropriate use group classification and shall be provided with fire protection and fire extinguishing equipment as required by that code or by N.J.A.C. 5:18-4. Buildings and structures and their service equipment shall be maintained in a safe condition as required by this Code.

2. Smoking and the carrying of matches, the use of heating or other devices employing an open fire, or use of any spark producing equipment is prohibited in areas containing dust-producing or dust-agitating operations. Artificial lighting in such areas shall be by electricity with all wiring and electrical equipment installed in accordance with NFPA 70 listed in Appendix 3-A, incorporated herein by reference.

**5:18-3.11 Crop ripening or coloring processes**

(a) This section shall apply to the equipment and operations for the process of ripening bananas, tomatoes, pears or honeydew melons, and coloring tobacco, citrus fruits or other crops in tightly closed rooms, and shall include those processes where ethylene gas is introduced into the room to assist these processes.

(b) Fire safety requirements are as follows:

1. The layout, arrangement and construction of buildings and structures in which the process of ripening or coloring of crops is conducted shall comply with the applicable requirements of the building code in effect at the time of first occupancy for the appropriate use group classification, and shall be provided with fire protection and fire extinguishing equipment as required by that code. Buildings and structures and their service equipment shall be maintained in safe conditions as required by this Code.

2. The location of buildings in which crop ripening or coloring processes utilizing gas containers of ethylene are conducted shall be approved by the fire official.

i. The method for introducing ethylene shall provide positive control. The ethylene shall be measured so that the quantity introduced does not exceed one part ethylene to 1,000 parts of air.

ii. Containers storing ethylene gas shall be built in an approved manner.

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iii. Ethylene gas containers other than those connected for use shall be stored outside of the building or in a special building except that not more than two portable U.S. Department of Transportation (DOT) containers not connected for use may be stored inside of the building premises. Such inside rooms or portions of buildings used for storage of these containers shall be constructed in accordance with N.J.A.C. 5:18-3.20(g)4.

iv. Ethylene piping shall be of steel pipe. Flexible connectors and hose, when used, shall be an approved type. Tubing shall be of brass or copper with not less than 0.049 inch wall thickness.

3. Electrical wiring and equipment shall be installed as specified in NFPA 70 listed in Appendix 3-A. Artificial lighting shall be by electricity only.

4. Heating of ripening and coloring rooms shall be by indirect means with low pressure steam, hot water or warm air; approved electric heaters; or approved gas heaters or approved kerosene heaters, both of which shall have sealed combustion chambers.

i. Steam and hot water pipes and radiators shall have a clearance of at least one inch to combustible material.

ii. Gas heaters and their vents shall be installed in an approved manner. Gas heaters shall be equipped with an automatic pilot device to shut off gas supply whenever the flame is extinguished.

iii. Burners for gas or kerosene heaters shall be installed so that air for combustion is taken from outside the ripening or coloring room and the products of combustion are discharged outside the building in an approved manner.

iv. Kerosene heaters shall be installed in accordance with the applicable provisions of the Building Code.

v. Electric heaters shall be of a type not having an exposed surface at a temperature higher than 800 degrees Fahrenheit and with thermostatic elements which do not produce sparks. They shall be of a type approved for use in hazardous locations.

vi. A protective guard shall be provided around any heater to prevent the possibility of its being knocked over by other equipment such as vehicles or lift trucks.

5. Open flame heaters and open lights shall not be permitted in ripening or coloring rooms using ethylene from gas tanks or cylinders. "No Smoking" signs shall be posted at every entrance and smoking shall be prohibited in the ripening or coloring rooms.

6. Rooms for ripening or coloring shall be frequently cleared of all combustible material.

### 5:18-3.12 Fumigation and thermal insecticidal fogging

(a) Fumigation and thermal insecticidal fogging operations shall conform to the provisions of this section and all other applicable requirements of this Code.

(b) Fire safety requirements are as follows:

1. Any building where fumigation and thermal insecticidal fogging operations are conducting shall comply with the following fire protection and safety requirements.

2. All fires, open flames and similar sources of ignition shall be eliminated from the space under fumigation or thermal insecticidal fogging. Heating, if needed, shall be by indirect means with steam or hot water.

i. Electricity shall be shut off, except that circulating fans may be used provided such equipment is designed and installed so as not to create an ignition hazard. Electrical equipment shall be designed and installed in accordance with NFPA 70 listed in Appendix 3-A.

3. The fire official shall be notified in writing at least 24 hours before any building or structure is to be closed in connection with the use of any toxic or flammable fumigant. Such notification shall give the location of the building, structure, ship or enclosed space to be fumigated or fogged as well as its character and use, the fumigants or insecticides to be used, the person or persons in charge of the operation and the date and time when it will be started. Notice of any fumigation or thermal insecticidal fogging shall be served with sufficient advance notice upon the occupants of any building or other enclosed space involved in the operation to enable them to evacuate the premises.

i. Suitable warning signs indicating the danger, type of chemical involved and recommended precautions shall be posted on all doors and entrances to the premises and upon all gangplanks and ladders

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from the deck, pier or land to the ship. Such notice is to be printed in red ink on white background. Letters in the headlines are to be at least two inches in height and shall state the date and time of the operation, the name and address of the person, the name of the operator in charge, together with a warning to the effect that the premises so occupied shall be vacated at least one hour before the operation is started and must not be re-entered until the danger signs have been removed by the proper authorities.

ii. All persons engaged in the business of fumigation or thermal insecticidal fogging shall maintain and have available approved protective breathing apparatus.

iii. During the period fumigation is in progress, except when fumigation is conducted in a gastight vault or tank, a capable, alert watchman or watchmen shall remain on duty at the entrance or entrances to the building, ship, or enclosed space fumigated until after the fumigation is completed and until the premises are properly ventilated and again safe for human occupancy. Sufficient watchmen shall be provided to prevent any person from entering the building, ship or enclosed space under fumigation without being observed.

4. Thermal insecticidal fogging liquids with a flash point below 100 degrees Fahrenheit shall not be used.

5. The fire official shall require that any fire detection or alarm system components be safeguarded to prevent accumulation of the fogging agent or fumigant within the devices.

### 5:18-3.13 Lumber yards and woodworking plants

(a) Lumber yards and woodworking plants shall comply with the applicable requirements of this Code and the provisions of this section.

(b) Fire safety requirements are as follows:

1. The layout, arrangement and construction of buildings and structures used for lumber yards or woodworking plants shall comply with the applicable requirements of the building code in effect at the time of first occupancy for the appropriate use group classification, and shall be provided with fire protection and fire extinguishing equipment as required by that code. Buildings and structures and their service equipment shall be maintained in safe condition as required by this Code and in accordance with NFPA 46 listed in Appendix 3-A, incorporated herein by reference, where the provisions of this section do not specifically cover conditions and operations.

2. Lumber shall be piled with due regard to stability of piles and in no case higher than 20 feet.

i. Driveways between and around lumber piles shall be at least 15 feet wide and maintained free from accumulation of rubbish, equipment or other articles or materials. Driveways shall be so spaced that a maximum grid system unit of 50 feet by 150 feet is produced.

ii. Permanent lumber storage shall be surrounded with a suitable fence at least six feet high, unless storage is within a building.

3. The burning of shavings, sawdust and refuse materials shall be permitted only under boilers, in furnaces or in incinerators or refuse burners safely constructed and located. Stacks shall be provided with approved spark arresters having openings not greater than 3/4 inch, or other effective means provided, such as an expansion chamber, baffle walls or other effective arrangement, which will eliminate the danger from sparks. At the boiler or other points where sawdust or shavings are used as fuel, a storage bin of noncombustible construction with raised sill shall be provided.

4. Smoking shall be prohibited except in specified safe locations in buildings. Large "No Smoking" signs shall be painted on exterior building walls and on signs erected at edges of driveways. "No Smoking" signs shall be posted throughout all buildings except in specific locations designated as safe for smoking purposes.

5. Weeds shall be kept down throughout the entire yard and shall be sprayed as often as needed with a satisfactory weed killer or cut or grubbed out. Dead weeds shall be removed.

6. Debris such as sawdust, chips and shorts shall be removed regularly from piling areas and not less frequently than quarterly. Proper housekeeping shall be maintained at all times.

7. Portable fire extinguishing equipment suitable for the fire hazard involved shall be provided at convenient, conspicuous, ac-

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cessible locations in open yards. When used, approved Class A portable fire extinguishers, properly protected against freezing where necessary, shall be provided so that the travel distance to the nearest unit does not exceed 75 feet. In buildings, fire protection equipment shall be provided as required by the building code in effect at the time of first occupancy.

(c) The following apply to woodworking plants:

1. Sawmills, planing mills and other woodworking plants shall be equipped with refuse removal systems which will collect and remove sawdust and shavings as produced, or suitable metal or metal-lined bins, provided with normally closed covers or automatically closing covers, shall be installed at or near such machines, and shavings and sawdust shall be swept up and deposited in such bins at sufficiently frequent intervals as to keep the premises clean. Blower and exhaust systems shall be installed in accordance with nationally recognized good practice.

2. Fire fighting equipment, either portable fire appliances or small hose supplied from a suitable water system, shall be provided near any machine producing shavings or sawdust.

3. Where specific requirements are not otherwise established, woodworking plants shall comply with NFPA 91 and 664 listed in Appendix 3-A, incorporated herein by reference.

**5:18-3.14 Industrial processing ovens and furnaces**

(a) The following general provisions apply to industrial processing ovens and furnaces:

1. The provisions of this section shall apply to the location, design, construction and operation of industrial processing ovens and furnaces operating at approximately atmospheric pressures and temperatures not exceeding 1,400 degrees Fahrenheit which are heated with oil or gas fuel or which during operation contain flammable vapors from the product being processed. It is the intent of this section to provide for the operation of these ovens and furnaces within certain limitations of control depending on oven or furnace design, flammable formulations and ventilation needs, the disregard of which may cause them to function in an unsafe manner, thereby becoming liable to destruction by fire or explosion. Where applicable for maintenance, NFPA 86 listed in Appendix 3-A, incorporated herein by reference, shall be used where provisions of this section do not specifically cover conditions and operations.

2. An application for a permit shall be accompanied by plans showing all essential details as to location, design, construction, controls, and calculations for safe operation. The process and materials involved shall be fully described. Catalytic combustion systems utilized for the oxidation or combustion of the exhaust gases or vapors shall be described.

(b) Fire safety requirements are as follows:

1. The layout, arrangement and construction of buildings and structures in which industrial processing ovens and furnaces are installed or operated shall comply with the applicable requirements of the building code in effect at the time of first occupancy for the appropriate use group classification, and shall be provided with fire protection and fire extinguishing equipment as required by that code. Buildings and structures and their service equipment shall be maintained in safe condition as required by this Code.

(c) Location and construction requirements are as follows:

1. Ovens, furnaces and related equipment shall be located with due regard to the possibility of fire resulting from overheating or from the escape of fuel gas or fuel oil, and the possibility of damage to the building and injury to persons resulting from explosion.

2. Ovens and furnaces shall be located at or above grade, or, if in basements, at least 50 percent of the wall area of the room in which the oven or furnace is located shall be above grade.

3. Ovens and furnaces shall be so located as to be readily accessible for inspection and maintenance and with adequate clearances to permit the proper functioning of explosion vents. Roofs and floors of ovens and furnaces shall be sufficiently insulated and ventilated to keep temperatures at combustible ceilings and floors below 160 degrees Fahrenheit.

4. Ovens and furnaces shall be constructed of noncombustible materials throughout except where the maximum oven temperature is not over 160 degrees Fahrenheit. The amount of insulation used

in oven panel construction shall be enough to prevent the outside surface temperature from exceeding 160 degrees Fahrenheit or adequate guards shall be provided to protect personnel. The metal frames of ovens or furnaces shall be electrically grounded.

5. Ovens and furnaces which may contain flammable air-gas mixtures shall be equipped with relief vents for freely relieving internal explosion pressures and all explosion-venting panels or doors shall be arranged so that when open, the full vent opening will be an effective relief area.

6. All duct work shall be constructed of noncombustible material. Ducts shall be made tight throughout and shall have no openings other than those required for the proper operation and maintenance of the system. Ducts passing through combustible walls, floors, or roofs shall have adequate insulation and clearances to prevent surface temperatures from exceeding 160 degrees Fahrenheit. Exhaust ducts shall not discharge near doors, windows or other air intakes in a manner that will permit re-entry of vapors into the building.

(d) Ventilation requirements are as follows:

1. Ovens and furnaces in which flammable or toxic vapors are liberated or through which products of combustion are circulated shall be ventilated by the introduction of a supply of fresh air and proper exhaust to the outdoors. Discharge pipes shall not terminate within 10 feet measured horizontally of any door, window or wood frame walls of any building.

2. Ventilation shall be arranged to provide vigorous and well distributed air circulation within the oven or furnace to insure that the flammable vapor concentration will be safely below the lower explosive limit at all times. Unless the oven or furnace is operated in accordance with specific approval specifying particular solvents and rate of ventilation, the rate of ventilation shall not be less than 10,000 cubic feet of fresh air per gallon of solvent evaporated in continuous process ovens or furnaces, and not less than 380 cubic feet per minute per gallon of flammable solvent evaporated in batch process ovens or furnaces.

3. Exhaust duct openings shall be located in the area of greatest concentration of vapors.

4. All exhaust shall be by mechanical means using power driven fans.

5. Safety controls shall be sufficient in number and substantially constructed and arranged to maintain the required conditions of safety and prevent the development of fire and explosion hazards.

i. Ventilation controls, suitably interlocked, shall be provided which will insure the required prevention and ventilation of the system.

ii. Fuel safety controls, suitably interlocked and arranged to minimize the possibility of dangerous accumulations of explosive air-fuel mixtures in the heating system, shall be provided.

iii. Excess temperature controls shall be provided to maintain a safe operating temperature within the oven or furnace.

iv. Conveyor interlocks shall be provided in conveyor ovens or furnaces having a flammable vapor hazard, so that the conveyor cannot move unless ventilating fans are operating and discharging the required amount of air.

**5:18-3.15 Places of assembly and education**

(a) General provisions concerning places of assembly and education are as follows:

1. The decoration, operation or use of places of assembly and education shall comply with the applicable requirements of this Code and the provisions of this section.

2. A place of assembly shall be a room or space accommodating individuals for religious, recreational, political, social or amusement purposes or for the consumption of food and drink, including all connected rooms or spaces with a common means of egress and entrance.

3. Each place of assembly or education shall be posted with an approved legible sign in contrasting colors conspicuously located near the main exit from the room or space stating the number of occupants permitted within such space. The number of occupants permitted shall be determined by the Fire Safety Code, N.J.A.C. 5:18-4.11(f). Assembly rooms or spaces which have multiple use

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capability shall be posted for all such uses. The owner shall be responsible for installing and maintaining such signs.

i. An owner shall not permit overcrowding or admittance of any person beyond the established posted occupant load of any place of assembly or education. The fire official, upon finding overcrowding conditions or obstruction in aisles, passageways or other means of egress, or upon finding any condition which constitutes a hazard to life and safety, shall cause the performance, presentation, spectacle or entertainment to be stopped until such a condition or obstruction is corrected and the addition of any further occupants prohibited until the posted occupant load is reestablished.

(b) Fire safety requirements are as follows:

1. The layout, arrangement and construction of buildings and structures in which rooms or places of assembly or education are located shall comply with the applicable requirements of the building code in effect at the time of first occupancy for the appropriate use group classification, and shall be provided with fire protection and fire extinguishing equipment as required. Buildings and structures and their service equipment shall be maintained in safe condition.

2. Employees or attendants of places of assembly and education shall be instructed in the proper use of portable fire extinguishers and other manual fire suppression equipment if provided.

3. A fire safety and evacuation plan shall be prepared as set forth in N.J.A.C. 5:18-3.3(p). All employees shall be trained in the duties they are to perform under the plan.

(c) The following apply to decorative material:

1. Decorative materials shall include all such materials as curtains, draperies, streamers, fabrics, cotton batting, straw, hay, vines, leaves, stalks, trees and moss used for decorative effect, including surface coverings applied over interior finish materials for acoustical or decorative purposes. All such decorative materials shall be noncombustible or they shall be flame resistant complying with the requirement of NFPA 701 listed in Appendix 3-A, incorporated herein by reference. The term decorative materials shall not include ordinary window shades or interior finish materials, such as wainscoting, paneling or wallpaper which are regulated by the Uniform Construction Code.

i. A finished floor covering shall be exempt from the requirements of this paragraph, provided, however, that in any case where the fire official finds a floor surface to be of unusual hazard, the floor surface shall be considered a part of the interior finish for the purposes of this code.

ii. No burlap, fish netting, or other similar type material shall be suspended from the ceiling of any building, unless approved by the fire official.

2. The fire official shall subject decorative materials, where required to be flameresistant, to a field test in accordance with Chapter 6 of NFPA 701 listed in Appendix 3-A.

i. Treatments used to accomplish this flameproofing shall be renewed as often as may be necessary to maintain the flameproof effect. The fire official may require a certificate to be supplied by the firm or person providing the flameproofing and such certificate shall indicate the date of treatment, the name of the chemical used, and nature of the process. The certificate shall be filed with the fire official.

ii. Pyroxylin coated fabric used as a decorative material in accordance with (c)1 above or as a surface covering on fixed furnishings shall be limited in amount to the following: such fabrics containing 1.4 ounces or more of cellulose nitrate per square yard shall not be used in excess of a total amount equivalent to one square foot of fabric surface to 15 cubic feet of room volume. Each square foot of such fabric which contains 1.7 ounces or more of cellulose nitrate per square yard shall be counted as two square feet in making this computation.

(d) In places of assembly or education, a motion picture screen or screen masking shall not be used which will ignite and allow flame to spread over the surface when exposed to the field test described in (c)2 above.

(e) The following apply to means of egress:

1. The operator or the person in charge of operation or use of any place of assembly or education shall check egress facilities before such building is occupied for any use, to determine compliance with

the provisions of this section. If such inspection reveals that any element of the required means of egress is obstructed, inaccessible, locked, fastened or otherwise unsuited for immediate use, admittance to the building shall not be permitted until necessary corrective action has been completed.

i. As may be required by the fire official, not more than 10 minutes prior to the scheduled commencement of any activity, event, performance, show, meeting, function, or other occasion for which persons will gather at a place of assembly or education with a capacity of 50 or more people, the owner or his authorized agent shall orally notify all attendees concerning the location of the exits to be used in case of fire or other emergency, and shall also notify all attendees of smoking regulations.

ii. In theaters, motion picture theaters, auditoriums and other similar places of public assembly where there are noncontinuous programs, an audible or visual announcement shall be made immediately prior to the start of each program to notify occupants of the location of the exits to be used in case of a fire or other emergency.

2. During the period of occupancy, an egress door shall not be locked, bolted or otherwise fastened or obstructed by any means, so that the door cannot be opened from the inside by the use of the ordinary door latch or knob or by pressure on the door or on a panic release device except as provided in N.J.A.C. 5:18-3.5(c).

3. [Each] \*In each\* room where chairs, or tables and chairs, are used\*,\* the arrangement shall be such as to provide for ready access by aisles to each egress door. Aisles leading directly to an egress door shall have not less than 44 inches clear width. When serving an occupant load of 50 or less, such required clear width shall be \*[37]\* \*36\* inches. Aisles shall not be obstructed by chairs, tables or other objects.

4. A part of a stairway, whether interior or exterior, or of a hallway, corridor, vestibule, balcony or bridge leading to a stairway or exit shall not be used in any way that will obstruct or restrict its use as a means of egress or that will present a hazardous condition.

5. A plan showing the occupant load, seating diagram and location of exits and of aisles leading thereto shall be submitted for approval to the fire official and an approved copy shall be kept on the premises. Temporary deviation from the specifics of the approved seating diagram shall be permitted provided the occupant load is not increased and the intent of this section is maintained.

i. The employees or attendants of places of public assembly and education shall be trained and drilled in the duties they are to perform in case of fire, panic or other emergency.

6. The signs and lighting of means of egress required for places of assembly or education shall be maintained in proper operating condition as required by N.J.A.C. 5:18-3.5(e).

(f) The following apply to projection rooms:

1. Every projection room shall be of permanent construction consistent with the requirements of the building code in effect at the time of first occupancy.

2. Temporary projection rooms shall be permitted for incidental amusement and educational purposes by the fire official when in accordance with N.J.A.C. 5:18-3.

3. Each projection room shall be provided with rewind and film storage facilities. A maximum of four containers for flammable liquids not greater than 16 ounce capacity and of a nonbreakable type may be permitted in each projection room.

5:18-3.16 Service stations, garages and fuel dispensing operations

(a) General provisions concerning service stations, garages and fuel dispensing operations are as follows:

1. The provisions of this section shall apply to all service stations and all other locations where flammable and combustible fuels are stored and dispensed to motor vehicles, and all buildings and structures used for the storage or servicing of motor vehicles. The maintenance provisions of NFPA 30A listed in Appendix 3-A, incorporated herein by reference, shall apply where the provisions of this section do not specifically cover conditions and operations.

2. The layout, arrangement and construction of buildings and structures shall comply with the applicable requirements of the

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building code in effect at the time of first occupancy and shall be provided with fire protection and fire extinguishing equipment as required.

3. All service stations, garages, buildings, storage areas and premises shall be operated and maintained in a safe condition at all times and shall conform to all applicable provisions of this Code.

(b) Flammable and combustible liquids used or intended to be used as fuel for motor vehicles shall be stored in underground tanks on the premises in conformance with N.J.A.C. 5:18-3.28. Flammable and combustible fuel may be stored in approved containers inside a building provided the total amount does not exceed 120 gallons.

(c) Fuel dispensing requirements are as follows:

1. Motor vehicle fuels shall be transferred from underground storage tanks to vehicle tanks by means of approved dispensing units located at least 15 feet from a property line. A pump or other mechanical equipment for dispensing Class I flammable liquids shall not be installed inside a building or less than 10 feet from the outside of the building unless it has been specifically approved by the construction official. The transfer of such liquids shall not be made into an open container.

2. Special type dispensers, such as coin or card operated devices, for self-service operations shall be installed and operated in accordance with the Uniform Construction Code.

3. These provisions shall not prevent the use of portable or semi-portable tanks and dispensing devices to refuel vehicles or motorized equipment on property not generally accessible to the general public provided specific approval is obtained from the fire official.

(d) The following apply to fuel pumps and dispensers:

1. Dispensers shall be designed to prevent leakage or accidental discharge and shall be provided with remote master control devices to shut off all pumps in the event of an emergency. Such devices shall be adequately identified as pump shutoff controls.

2. All dispensers shall be protected from vehicle damage by mounting them on a concrete platform at least 6 inches in height extending a minimum of 12 inches beyond the dispenser in any direction.

i. When the protective devices required above are diminished in effectiveness by repaving or other circumstances, additional safeguards shall be provided such as pipe bollards or guard rails.

3. All dispenser hoses shall be equipped with automatic self-closing type nozzles.

4. Each service station open to the public shall have an attendant on duty familiar with the location of pump controls and operation of safety equipment.

5. An approved, rigidly anchored emergency shutoff valve designed to close automatically in the event of a fire or severe impact shall be properly installed in the liquid supply line at the base of each dispenser supplied by a remote pump. The valve shall be so installed that the shear groove is flush with or within 3/4 inch of the top of the concrete dispenser island, and that there is ample clearance provided around the valve body and operating parts. In cases of overhead-type dispensers, the valve shall be installed at the liquid supply line inlet of each dispenser. If installed, a vapor return line inside the dispenser housing shall have a shear section or approved flexible connector so that the liquid supply line emergency shutoff valve will function properly. All emergency shutoff valves shall further be installed and maintained in accordance with the manufacturer's instructions, shall be tested at the time of initial installation and shall be tested at least yearly thereafter by manually tripping the hold-open linkage.

(e) Fire safety requirements are as follows:

1. Motors of vehicles receiving fuel shall be shut off during the fueling operation. Smoking shall not be permitted in areas where motor vehicles are fueled or serviced.

2. All heating and ventilating appliances and equipment shall comply with the provisions of the building code in effect at the time of first occupancy. Other devices generating a glow, spark or flame capable of igniting flammable vapors shall not be installed or used within 18 inches of the floor of a building without proper ventilation.

3. Floor drains to oil or gasoline separators or traps discharging to the sewer shall be installed in accordance with the Uniform Construction Code. Contents of oil separators or traps of floor

drainage systems shall be collected at sufficiently frequent intervals and removed from the premises to prevent oil from being carried into the sewers. Self-closing metal cans shall be used for all oily waste or waste oils.

4. A Class I flammable liquid shall not be used in any building for washing parts or removing grease or dirt.

5. Service station buildings shall not contain basements or rooms partially below grade. Pits in service areas shall comply with the requirements of the Uniform Construction Code.

6. Fire extinguishers shall be provided in all service stations of a size, type and location approved by the fire official, and shall be maintained in accordance with NFPA 10 listed in Appendix 3-A, incorporated herein by reference, where the provisions of this section do not specifically cover conditions and operations.

7. Warning signs shall be visibly posted in every fuel dispensing area. The signs shall indicate: Smoking is prohibited; and, Engine must be shut off during refueling; and additional signage as required by N.J.A.C. 5:18-3.28(b)2iii.

8. Operating instructions shall be visibly posted on every pump at a private unattended fuel dispensing area.

(f) Marine service stations shall be installed and operated in conformance with NFPA 30A and 303 listed in Appendix 3-A, incorporated herein by reference.

(g) The following apply to gaseous motor fuels:

1. Motor fuel service stations which store, handle and dispense gaseous motor fuels in addition to or instead of flammable and combustible liquid motor fuels shall comply with the provisions of this section.

2. The storage, handling and dispensing of LP gas as a motor fuel shall comply with the requirements of N.J.A.C. 5:18-3.30 and NFPA 58 listed in Appendix 3-A, incorporated herein by reference.

3. The compressing, storage, handling and dispensing of natural gas as a motor fuel shall comply with the applicable provisions of NFPA 54 listed in Appendix 3-A, incorporated herein by reference.

4. The use of liquefied petroleum gas (LP gas) and compressed natural gas (CNG) for self-service operations in service stations open to the public shall be prohibited.

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

(a) General provisions concerning tents and air-supported and other temporary structures are as follows:

1. The provisions of this section shall apply to air-supported, air-inflated, membrane-covered cable and membrane-covered frame structures, collectively known as membrane structures, erected for a period of less than 90 days. Those erected for a longer period of time shall comply with the building code in effect at the time of first occupancy.

2. The entire membrane or air-supported structure system shall be inspected at regular intervals to assure that the installation is maintained in proper condition.

i. Every three months, the owner of the membrane or air-supported structure shall file a maintenance inspection report. The inspection report shall verify that the structure has been inspected and serviced by a qualified representative of the structure's manufacturer.

ii. All anchors shall be inspected daily and shall be adjusted or repaired immediately to insure a secure base attachment and seal.

iii. The fabric envelope shall be inspected daily and any fabric damage shall be repaired immediately to prevent more extensive damage.

(b) Construction requirements are as follows:

1. All structures shall be constructed and erected in conformance with requirements of the building code in effect at the time of first occupancy and maintained in accordance with NFPA 102 listed in Appendix 3-A, incorporated herein by reference, where the provisions of this section do not specifically cover conditions and operations.

2. All membrane shall be constructed of 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.

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3. An affidavit or affirmation shall be submitted to the fire official and a copy retained on the premises on which the membrane or air-supported structure is located, attesting to the following information relative to the flame resistance of the fabric:

- i. The names and addresses of the owners of the membrane or air-supported structure;
- ii. The date fabric was last treated with flame resistant solution;
- iii. The trade name or kind of chemical used in treatment;
- iv. The name of person or firm treating the material; and
- v. The name of testing agency and test standard by which the fabric was tested.

4. Operating pressure shall be maintained at the design pressure specified by the manufacturer to assure structural stability and to avoid excessive distortion during high wind or snow loads.

5. Under high wind over 50 miles per hour or snow conditions, the use of doors in air-supported structures shall be controlled to avoid excessive air loss. Doors shall not be left open under any conditions.

(c) The following apply to means of egress:

1. All membrane or air-supported structures, and every balcony or tier thereof considered separately, shall be provided with means of egress meeting the following provisions:

i. At least two exits as remote from each other as practical and leading directly to the outside shall be provided. When the occupant load exceeds 500, additional exits shall be provided in accordance with Table 3.17(c)1 below.

ii. The length of travel to an exit shall not be greater than 100 feet.

iii. The aggregate clear width of all elements of a means of egress from any membrane or air-supported structure shall be determined on a basis of not less than one unit of 22 inches width for each 100 persons. Exit openings shall not be less than 36 inches wide and aisles, corridors or passageways shall not be less than 44 inches wide.

iv. Grandstands and bleachers shall comply with the requirements of the building code in effect at the time of first occupancy in respect to occupant loading, type of construction, design, aisles and seats.

v. The height of doors, aisles or passageways shall in no case be less than 6<sup>2</sup>/<sub>3</sub> feet.

vi. When exit doors are located above the ground level, a ramp approved by the fire official shall be provided on both sides of the doorway.

vii. Exit doors from air-supported structures shall swing in the direction of exit travel. All such doors shall be capable of automatically closing against operating pressures. Fasteners on the door shall be capable of being readily opened from the inner side. The opening force on the door shall not exceed 15 pounds.

viii. Exit openings from any tent shall remain open or may be covered by canvas provided said coverings shall be free sliding on a proper support. The support shall not be less than 12 inches above the top of the opening. The coverings shall be so arranged that, when open, no part of the covering shall obstruct the opening; and, said coverings shall be of a color or colors which definitely contrast with the color of the tent.

ix. Exits, aisles and passageways leading to them shall be adequately lighted at all times when said structures are occupied. Artificial light shall be provided whenever natural light is inadequate.

x. Exit doorways shall be adequately indicated by signs reading "Exit" in red letters on a white background or in other approved distinguishable colors. Sign letters shall be at least six inches high and not less than 3/4 inch in width. "Exit" signs shall be illuminated in membrane and air-supported structures with occupant loads over 100 persons in the following manner:

(1) Two separate electrical sources for occupant loads over 600; and

(2) Two separate electrical circuits, one of which shall be separate from other circuits, for occupant loads under 600.

Table 3.17(c)1.  
NUMBER OF ADDITIONAL EXITS

Capacity	Minimum number of exits
501 to 900	3
901 to 1,500	4
over 1,500	one additional for each 500 persons

(d) Fire safety requirements are as follows:

1. Hay, straw, shavings or similar combustible materials shall not be allowed within any tent or air-supported structure used for public assembly other than that necessary for the daily feeding and care of animals. Sawdust and shavings may be used for a public performance or exhibit when kept damp. Combustible materials shall not be permitted under stands or seats at any time. The area within, and adjacent to the membrane or air-supported structure, shall be maintained clear of all flammable material or vegetation which will create a fire hazard within a distance of 20 feet from the structure. All combustible trash shall be regularly (daily) removed from the structure during the period that the structure is used by the public.

2. Gasoline, gas, charcoal or other cooking device or any other unapproved, open flame shall not be allowed inside or within 20 feet of the membrane or air-supported structure.

3. Spot or effect lighting shall be by electricity only; and all combustible construction within six feet of such equipment shall be protected with asbestos not less than 1/4 inch thick or other approved noncombustible insulation.

4. Membrane or air-supported structures shall not be used for the display of motion pictures unless safety film is used.

5. Proper clearance shall be maintained between the fabric envelope and all material or equipment stored inside the air-supported structure. There shall be a minimum clearance of at least three feet between the envelope and the inside contents.

6. Fire extinguishing equipment of approved types shall be furnished by the owner or operator of membranes or air-supported structures in such amount and in such locations as may be directed by the fire official. Such fire extinguishing equipment shall be maintained in proper working order and shall be operated by employees of said operation who shall be properly trained for the purpose, and who shall be required to exhibit their skill on order of the fire official.

5:18-3.18 Vehicle tire rebuilding plants

(a) The equipment, processes and operation of automobile tire rebuilding and recapping plants shall comply with the applicable requirements of this Code and the provisions of this section.

(b) Fire safety requirements are as follows:

1. The layout, arrangement and construction of buildings and structures used for tire rebuilding or recapping shall comply with the applicable requirements of the building code in effect at the time of first occupancy for the appropriate use group classification, and shall be provided with fire protection and fire extinguishing equipment as required by that code. Buildings and structures and their service equipment shall be maintained in safe condition as required by this Code.

2. Fire doors or other opening protectives to exit or elevator enclosures or similar shaft enclosures required by the Uniform Construction Code shall be kept closed except when the opening is in actual use.

3. When tire rebuilding plants are required to be separated from other uses in the building by the Uniform Construction Code, such separation shall be maintained in good condition and shall not be pierced or broken in any manner. When a sprinkler system is required in a tire rebuilding plant, it shall be maintained in proper and continuous working order.

4. Buffing machines shall be located in a room separated from the remainder of the plant as required by the Uniform Construction Code and fire doors in such separations shall be maintained free of all obstructions at all times. Each machine shall be connected to an ample dust collecting system conforming to NFPA 91 listed in Appendix 3-A, incorporated herein by reference.

5. Each room where rubber cement is used or mixed, or flammable or combustible solvents are applied, shall be equipped with effective mechanical or natural ventilation.

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(a) General provisions concerning vehicle wrecking yards, junkyards and waste material handling plants are as follows:

1. The equipment, processes and operation of vehicle wrecking yards, junk yards and waste material handling plants shall comply with the applicable requirements of this Code and the detail provisions of this section.

2. Materials stored within a vehicle wrecking yard, junk yard or waste material handling plant shall not be located as to seriously expose adjoining or adjacent properties to any hazard of fire or explosion.

(b) Fire safety requirements are as follows:

1. The layout, arrangement and construction of buildings and structures used in connection with a vehicle wrecking yard or waste material handling plant shall comply with the applicable requirements of the building code in effect at the time of first occupancy for the appropriate use group classification, and shall be provided with fire protection and fire extinguishing equipment as required by that code. Buildings and structures and their service equipment shall be maintained in safe condition as required by this Code.

2. Reasonably safe aisles, driveways and uniform passageways shall be provided to permit reasonable access for firefighting operations. This shall include areas where stripped vehicle bodies are stored.

3. Picking rooms shall be provided with exhaust systems of sufficient capacity to remove dust and lint.

4. The burning of wrecked or discarded vehicles, or any parts thereof, or junk, or any waste materials shall be prohibited unless specifically authorized by the fire official.

**5:18-3.20 Welding or cutting, calcium carbide and acetylene generators**

(a) Welding or cutting shall include gas, electric arc or flammable liquid welding or cutting or any combination thereof. The operation and maintenance of equipment for use of such materials shall comply with the provisions of this section and NFPA 51 listed in Appendix 3-A, incorporated herein by reference, where provisions of this section do not specifically cover conditions and operations.

(b) For the purpose of this section and as used in this Code, the following words and terms shall have the meaning shown:

"Machine" means a device in which one or more torches using fuel gas and oxygen are incorporated.

"Manifold" means an assembly of pipe and fittings for connecting two or more cylinders for the purpose of supplying gas to a piping system or directly to a consuming device.

"Oxygen manifold, high pressure" means a manifold connecting oxygen containers having a U.S. Department of Transportation (DOT) service pressure exceeding 200 psig.

"Oxygen manifold, low pressure" means a manifold connecting oxygen containers having a DOT service pressure not exceeding 200 psig.

"Piping" means rigid conduit.

"Portable outlet header" means an assembly of piping and fittings used for service outlet purposes which is connected to the permanent service piping by means of hose or other nonrigid conductors.

"Station outlet" means the point at which gas is withdrawn from the service piping system.

"Tubing" means semi-rigid conduit.

(c) General requirements are as follows:

1. In the performance of welding or cutting operations, only approved equipment shall be used and the equipment shall be installed and operated in accordance with nationally recognized good practice.

2. A permit for welding or cutting operations shall not be issued unless the individuals in charge of performing such operations are capable of doing such work in a safe manner. Demonstration of a working knowledge of the provisions of this section shall constitute acceptable evidence of compliance with this requirement.

3. Companies, corporations, copartnerships and owner-operators required to have a permit shall maintain a record of all locations

where welding or cutting operations are performed and have it available for inspection by the fire official.

(d) Fire safety requirements are as follows:

1. The layout, arrangement and construction of buildings and structures designed and approved for welding shall comply with the applicable requirements of the building code in effect at the time of first occupancy for the appropriate use group classification, and shall be provided with fire protection and fire extinguishing equipment as required by that code. Buildings and structures and their service equipment shall be maintained in safe condition as required by this Code.

2. Before welding or cutting operations are begun in areas not designed or approved for the purpose, specific authorization shall be obtained from the owner of the premises or a duly authorized agent.

3. When welding or cutting operations are performed above or within 35 feet of combustible construction or material exposed to the operation, or within 35 feet of the floor, ceiling or wall openings so exposed, the requirements listed in (d)3 i through iii below shall be met:

i. Such combustible construction or material shall be protected by noncombustible shields or covers from possible sparks, hot metal or oxide.

ii. Such floor, ceiling or wall openings shall be protected by noncombustible shields or covers.

iii. A fire watcher shall be provided to watch for fires, make use of portable fire extinguishers or fire hose, and perform similar fire prevention duties. The fire watcher shall remain on the job at least 30 minutes after the welding or cutting operations have been completed to insure that no fire exists. A signed inspection report attesting to that fact shall be filed and available for inspection by the fire official.

4. One portable fire extinguisher having a rating of not less than 2-A:20-B:C shall be kept at the location where welding or cutting is to be done, and one portable fire extinguisher having a rating of not less than 2-A:10-B:C shall be attached to all portable welding carts.

5. Welding or cutting shall not be done in or near rooms or locations where flammable gases, liquids or vapors, lint, dust or loose combustible stocks are present when sparks or hot metal from the welding or cutting operations may cause ignition or explosion of such materials.

6. Except as provided herein, welding or cutting shall not be performed on containers and equipment which contain or have contained flammable liquids, gases or solids until these containers and equipment have been thoroughly cleaned or inerted or purged; except that "hot tapping" may be permitted on tanks and pipe lines.

7. Sprinkler protection shall not be shut off while welding or cutting work is being performed. When welding or cutting is done close to automatic sprinkler heads, sheet asbestos or damp cloth guards may be used to shield the individual heads, but shall be removed when the work is completed.

(e) Gas welding and cutting requirements are as follows:

1. Devices or attachments facilitating or permitting mixture of air or oxygen with combustible gases prior to consumption, except at the burner or in a standard torch or blow pipe, shall not be allowed unless approved for the purpose.

2. Fuel gas cylinders stored inside of buildings, except those in actual use or attached ready for use, shall be limited to a total capacity of 2,000 cubic feet of gas or 300 pounds of liquefied petroleum gas. Storage exceeding 2,000 cubic feet total gas capacity of cylinders or 300 pounds of liquefied petroleum gas shall be in a separate room in accordance with (h)4 and (h)4i below, or cylinders shall be stored outside or in a separate building. All compressed gas cylinders in storage or in service shall be adequately secured to prevent falling or being knocked over.

i. Separate rooms or buildings for fuel gas storage shall be well ventilated. Heating shall be by steam, hot water or other indirect means. Heating by flames or fires shall be prohibited in outside generator houses or inside generator rooms or in any enclosure communicating with them. All electrical wiring and equipment in

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outside generator houses or inside generator rooms shall be reasonably safe to persons and property. When electrical wiring and equipment are used in outside generator houses or inside generator rooms, such electrical wiring and equipment shall be of a type approved for use in Class I, Division 2, hazardous locations as specified in NFPA 70 listed in Appendix 3-A, incorporated herein by reference, and such equipment shall be installed in accordance with nationally recognized safe practice. Sources of ignition shall be prohibited in outside generator houses or inside generator rooms.

ii. Cylinders permitted inside of buildings shall be stored at least 20 feet from highly combustible materials and where they will not be exposed to excessive rise in temperature, physical damage or tampering by unauthorized persons.

iii. Oxygen cylinders in storage shall be separated from fuel gas cylinders or combustible materials (especially oil or grease), a minimum distance of 20 feet or by a noncombustible barrier at least five feet high having a fire resistance rating of at least one-half hour.

iv. Oxygen cylinders shall not be stored in inside acetylene generator rooms.

v. Oxygen cylinders stored in outside generator houses shall be separated from the generator or carbide storage rooms by a noncombustible partition having a fire resistance rating of at least one hour. This partition shall be without openings and shall be gas-tight.

vi. Cylinders of dissolved acetylene shall be stored with the valve end up to minimize the possibility of solvent being discharged as liquid.

3. When moving compressed gas cylinders by crane, suitable cradles shall be used to prevent the possibility of dropping them. Ordinary rope slips or electromagnets shall not be used.

4. Fuel gas cylinders shall be placed with valve end up whenever they are in use.

5. The user shall not transfer gases from one cylinder to another or mix gases in a cylinder.

6. When a cylinder is not in use, the valve shall be closed and the valve protection cap shall be in place, hand-tight.

7. A cylinder or cylinder manifold for oxygen shall be provided with a pressure regulating device intended for use with oxygen, and so marked.

8. Empty cylinders shall have their valves closed while in storage and during shipment.

9. Fuel gas shall not be used from cylinders through torches or other devices equipped with shutoff valves without reducing the pressure through a suitable regulator attached to the cylinder valve or manifold.

i. Pressure adjusting screws on regulators shall be fully released before the regulator is attached to a cylinder and the cylinder valve opened.

ii. Before a regulator is removed from a cylinder valve, the cylinder valve shall be closed and the gas released from the regulator.

10. Valves on cylinders or compressed gas shall be opened slowly.

11. Cylinders, valves, regulators, hose and other apparatus and fittings containing or using oxygen shall be kept free from oil or grease. Oxygen cylinders, apparatus and fittings shall not be handled with oily hands, oily gloves, or greasy tools or equipment.

12. Acetylene gas shall not be generated, piped (except in approved cylinder manifolds and cylinder manifold connections), or utilized at a pressure in excess of 15 psig unless dissolved in a suitable solvent in cylinders manufactured according to DOT 49 CFR listed in Appendix 3-A, incorporated herein by reference. Acetylene gas shall not be brought in contact with unalloyed copper except in a blowpipe or torch.

13. Oxygen and fuel gas cylinders and acetylene generators shall be placed far enough away from the welding area to prevent them from being heated by radiation from heated materials, by sparks or slag, or by misdirection of the torch flame.

14. When gas welding or cutting operations are discontinued for a substantial period of time, such as during lunch hour or overnight, the torch valve shall be closed and the gas supply to the torch completely shut off.

15. Welding or cutting work shall not be supported on compressed gas cylinders or containers.

16. Tests for leaks in any piping system or equipment shall be made with soapy water. Flames shall not be used.

(f) Electric arc welding and cutting requirements are as follows:

1. The frame or case of electric arc welding or cutting machines, except internal combustion engine driven machines, shall be grounded. Ground connections shall be mechanically strong and electrically adequate for the required current.

2. Welding current return circuits from the work to the machine shall have proper electrical contact at all joints and periodic inspection shall be made to ascertain that proper electrical contact is maintained.

3. When electric arc welding or cutting is to be discontinued for any substantial period of time, such as during lunch hour or overnight, all electrodes shall be removed from the holders, the holders shall be carefully located so that accidental contact cannot occur, and the machines shall be disconnected from the power source.

(g) The following apply to calcium carbide systems:

1. Containers used for the storage of calcium carbide shall be of metal of sufficient strength to insure handling without rupture, and shall be provided with a screw top or its equivalent. They shall be of water-tight and air-tight construction. Solder shall not be used on joints in such manner that fire would disrupt the package. Packages shall be marked "Calcium carbide—Dangerous If Not Kept Dry".

2. Storage of calcium carbide inside buildings shall be in a dry, waterproof and well ventilated location.

i. Calcium carbide not in excess of 600 pounds may be stored inside of buildings or in the same room with fuel gas cylinders, but not with oxygen cylinders.

ii. Calcium carbide in excess of 600 pounds, but not in excess of 5,000 pounds, shall not be stored in a building containing other uses unless in an acetylene generator room or separate room or compartment in a one-story building without a basement underneath the carbide storage section. Such rooms shall be separated from the remainder of the building by construction having a fire resistance rating required under the applicable provisions of the building code in effect at the time of first occupancy. Openings to other parts of the building shall be protected by approved self-closing fire doors. Adequate ventilation shall be provided. This storage room shall not be used for any other purpose.

3. Calcium carbide in excess of 5,000 pounds shall be stored in buildings not exceeding one story in height without a basement and used for no other purpose, or in outside acetylene generator houses. Location of such storage buildings shall be outside congested mercantile and manufacturing districts. If the storage building is of noncombustible construction, it may adjoin other one-story buildings if separated therefrom by unpierced fire walls; if detached less than 10 feet from such building or buildings, there shall not be an opening within that distance. If the storage building is of combustible construction, it shall not be within 20 feet of any other one of two-story building, nor within 30 feet of any other building exceeding two stories.

(h) The following apply to acetylene generators:

1. Acetylene generators shall be of approved type, and shall be plainly marked with the rate in cubic feet of acetylene per hour for which they are designed, the amount or weight of carbide necessary for a single charge, the manufacturer's name and address, and the name or number of the type of generator.

2. Stationary generators shall be installed either in a well ventilated one-story noncombustible outside generator house, or in a well ventilated room or compartment of ample size and of construction as outlined in (h)4 below, either in a one-story building or on the top floor or roof of a multistory building. The storage of fuel gas cylinders in such rooms or compartments shall not exceed a total capacity of 2,000 cubic feet of gas, 300 pounds in case of liquefied petroleum gas.

3. The walls or partitions, floor and ceiling of such room or compartment shall be constructed having fire resistance ratings as required by the applicable provisions of the building code in effect at the time of first occupancy. At least one wall of an inside generator room shall be an exterior wall.

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i. Openings from a generator room or compartment to other parts of the building shall be protected by an approved self-closing fire door of the swinging type and close into a rabbet, or otherwise be made tight to prevent passage of flame around the edge. Exit doors shall be located so as to be readily accessible in case of emergency. Windows, if provided in partitions, shall be wired glass in approved metal frames with fixed sash.

ii. A portion of the exterior wall equal to not less than 10 percent of the combined areas of the enclosing walls shall be of light noncombustible material such as single thickness, single strength glass. Single thickness, single strength window glass skylights, or lightly fastened roof hatch covers, swinging doors in exterior wall opening outward, sheet metal siding or lightly fastened roofs, may be accepted in part or entirely in lieu of the glass area or its equivalent, provided the required percentage of explosion venting area is thus obtained.

4. Portable generators shall not be used in rooms of total volume less than 35 times the total gas generating capacity per charge of all generators in the room. The gas generating capacity in cubic feet per charge shall be assumed as four and one-half times the weight of carbide per charge in pounds. Generators shall not be used in rooms having a ceiling height less than 10 feet. An acetylene generator shall not be moved by derrick, crane or hoist while charged.

5. Generators shall be placed where water will not freeze. Common salt (sodium chloride) or other corrosive chemical shall not be used as a protection against freezing.

6. Cylinders of fuel gases stored inside a building, except those in actual use or attached ready for use, shall be limited to a total capacity of 2,000 cubic feet of gas or 300 pounds of liquefied petroleum gas. For storage in excess of 2,000 cubic feet total gas capacity of cylinders or 300 pounds of liquefied petroleum gas, a separate room or compartment as required by (g)2ii above shall be provided, or cylinders shall be kept outside or in a special building. Buildings, rooms or compartments provided for such storage shall be well ventilated and shall be without open flame heating or lighting devices.

7. Cylinders or oxygen stored inside of buildings shall comply with the requirements for oxygen manifolds covered in (i)2 below.

(i) The following apply to piping manifolds and hose systems for fuel gases and oxygen:

1. Except as herein provided, piping shall be steel, wrought iron, brass or copper pipe, or seamless copper, brass or stainless steel tubing. Piping and fittings shall comply with nationally recognized good practice except that pipe and fittings shall be standard weight as a minimum for sizes not over six inches in normal size.

i. Acetylene piping shall be steel or wrought iron pipe only.

ii. Oxygen piping at pressures in excess of 700 pounds per square inch shall be stainless steel or nonferrous tubing.

iii. Joints in steel or wrought iron pipe shall be welded or made up with threaded or flanged fittings, or rolled, forged or cast steel, or malleable iron fittings may be used. Joints in brass or copper pipe may be welded, brazed, threaded or flanged. Joints in seamless copper, brass or stainless steel tubing shall be by approved gas tubing fittings or shall be brazed. Socket type points in brass or copper pipe or in seamless copper, brass or stainless steel tubing shall be brazed with silver brazing alloy or similar high melting point filler. Cast iron fittings shall be prohibited. Threaded connections in oxygen piping shall be tinned, or made up with litharge and glycerine, or other joint compound approved for oxygen service and applied to male threads only.

iv. Piping shall be protected against physical damage, and allowance made for contraction, expansion, jarring and vibration. If laid underground, it shall be below the frost line and protected against corrosion. Low points in piping shall be provided with drip pots and drain valves, the latter to be normally closed with screw cap or plugs.

v. All piping shall be tested and proved tight at one and one-half times its maximum working pressure. Any medium used for testing oxygen lines shall be oil free.

vi. All buried pipe and tubing and outdoor ferrous pipe and tubing shall be covered or painted with a suitable corrosion-resisting material.

2. Oxygen manifolds shall not be located in an acetylene generator room. Oxygen manifolds shall be located at least 20 feet away from both highly flammable material, such as oil or grease, and combustible gas cylinders unless the combustible gas cylinders are separated by a fire resistive partition constructed as required by (g)2ii above.

i. The aggregate capacity of oxygen cylinders connected to one manifold inside a building shall not exceed 6,000 cubic feet. More than one such manifold may be located in the same room provided the manifolds are at least 50 feet apart.

ii. An oxygen manifold connected to cylinders having an aggregate capacity of more than 6,000 cubic feet shall be located outside, in a separate building, or in a separate room constructed in accordance with (g)2ii above with no combustible material within 20 feet of the manifold.

iii. Oxygen manifolds with service pressures not exceeding 200 psig shall be marked:

“Low Pressure Manifold

Do Not Connect High Pressure Cylinders”

iv. The aggregate capacity of fuel gas cylinders connected to one manifold inside a building shall not exceed 3,000 cubic feet of gas or 300 pounds of liquefied petroleum gas. More than one such manifold may be located in the same room provided the manifolds are at least 50 feet apart.

v. A fuel gas manifold connected to cylinders having an aggregate capacity of more than 3,000 cubic feet of gas or 300 pounds of liquefied petroleum gas shall be located outside, in a separate building, or in a separate room constructed in accordance with (g)2ii above.

3. Hose shall be capable of withstanding a hydrostatic pressure of at least 800 psi.

i. A single hose having more than one gas passage, a wall failure of which would permit the flow of one gas into the other gas passage, shall not be used.

ii. Single and double hose, except as provided herein, shall be identified by exterior colors using green for oxygen hose, red for acetylene, LP-gas and other fuel gases and black for inert gases and air hose.

iii. When two hoses are joined by a web to form integral lengths of double hose, the color of both hoses shall be red, and the exterior surface of oxygen hose shall be smooth to the touch, while fuel gas hose shall be corrugated or ribbed.

iv. When parallel lengths of oxygen and acetylene hose are taped together for convenience and to prevent tangling, there must be at least one foot between taped sections and the taped section shall not be more than two inches in length.

v. Hose connections shall be clamped or otherwise securely fastened in a manner that will withstand, without leakage, twice the pressure to which they are normally subjected in service, but not less than a pressure of 300 psi.

vi. Hose shall be inspected frequently for leaks, burns, worn places, loose connections or other defects which may render the hose unfit for service. Where hose shows excessive wear or has been subjected to flashback, it shall be inspected and tested at twice the normal pressure to which it is subjected in service, but not at less than 200 psi before being returned to service. Defective lengths of hose shall be discarded.

5:18-3.21 Cellulose nitrate motion picture film

(a) The equipment, processes and operation of the storage and handling of cellulose nitrate motion picture film, hereafter referred to as “nitrate film,” shall comply with NFPA 40 listed in Appendix 3-A, incorporated herein by reference.

(b) A person shall not sell, lease or otherwise dispose of any nitrate film to any person not having a permit to handle, use or display such film.

(c) Fire safety requirements are as follows:

1. The layout, arrangement and construction of buildings and structures used for the use or storage of flammable film shall comply with the applicable requirements of the Uniform Construction Code for the appropriate use group classification, and shall be provided with fire protection and fire extinguishing equipment as required

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by that code. Buildings and structures and their service equipment shall be maintained in safe condition as required by this Code.

## 5:18-3.22 Cellulose nitrate (pyroxylin) plastics

(a) The equipment, processes and operations for the storage or handling of any plastic substance, material or compound other than cellulose nitrate film covered by N.J.A.C. 5:18-3.21, having cellulose nitrate as a base, by whatever name known, when in the form of blocks, slabs, sheets, tubes or fabricated shapes shall comply with NFPA 40E listed in Appendix 3-A, incorporated herein by reference.

(b) Fire safety requirements are as follows:

1. The layout, arrangement and construction of buildings and structures in which cellulose nitrate (pyroxylin) plastics are used or stored shall comply with the applicable requirements of the building code in effect at the time of first occupancy for the appropriate use group classification, and shall be provided with fire extinguishing equipment as required by that code. Buildings and structures and their service equipment shall be maintained in safe condition as required by this Code. Smoking shall be in accordance with N.J.A.C. 5:18-3.3(k).

2. All new and existing buildings or any portions of the building used for the manufacture or storage of articles of cellulose nitrate (pyroxylin) plastic shall be equipped with an approved automatic fire suppression system as required by the building code in effect at the time of first occupancy. Vaults located within buildings for the storage of raw pyroxylin shall be protected with an approved automatic sprinkler system capable of discharging 1.66 gallons per minute (gpm) per square foot over the area of the vault.

3. In buildings or rooms where cellulose nitrate (pyroxylin) plastics are handled or stored, heating systems shall be installed in accordance with the requirements of the building code in effect at the time of first occupancy.

## 5:18-3.23 Combustible fibers

(a) The equipment, processes and operations for handling, storage or use of combustible vegetable or animal fibers, including, among others, readily ignitable and free burning fibers such as cotton, sisal, henequen, ixtel, jute, hemp, tow, cocoa fiber, oakum, baled waste, baled waste paper, kapok, hay, straw, Spanish moss, excelsior, certain synthetic fibers and cloth in the form of scraps and clippings, shall comply with the applicable requirements of this Code and the provisions of this section.

(b) Fire safety requirements are as follows:

1. The layout, arrangement and construction of buildings and structures involving the storage or use of combustible fibers shall comply with the applicable requirements of the building code in effect at the time of first occupancy for the appropriate use group classification, and shall be provided with fire protection and fire extinguishing equipment as required by that code. Buildings and structures and their service equipment shall be maintained in safe condition as required by this Code.

2. Loose combustible fibers (not in suitable bales or packages), whether housed or in the open, shall not be stored within 100 feet of any building, except as hereinafter specified.

i. Not more than 100 cubic feet of loose combustible fibers may be kept in any building, provided storage is in a metal or metal-lined bin equipped with a self-closing cover.

ii. Quantities exceeding 100 cubic feet of loose combustible fibers, but not exceeding 500 cubic feet, may be stored in rooms or compartments having floor, walls and ceiling with a fire-resistance rating of not less than one hour. Each opening into such rooms or compartments from other parts of the building shall be equipped with an approved opening protective. Such fire separations shall comply with the applicable requirements of the building code in effect at the time of first occupancy.

iii. Quantities exceeding 500 cubic feet of loose combustible fibers may be stored in approved vaults, constructed as required by the Uniform Construction Code.

iv. A maximum of 2,500 cubic feet of loose fibers may be stored in a detached "loose house" suitably located, with openings properly protected against entrance of sparks. The "loose house" shall not be used for any other purpose.

3. A single block or pile shall not contain more than 25,000 cubic feet of fiber exclusive of aisles or clearances. Blocks or piles of baled fiber shall be separated from adjacent storage by aisles not less than five feet wide, or by flash fire barriers consisting of continuous sheets of noncombustible material extending from floor to a height of at least one foot above the highest point of piles and projecting at least one foot beyond the sides of the piles.

i. Sisal and other fibers in bales bound with combustible tie ropes, and also jute and other fibers liable to swell when wet, shall be stored to allow for expansion in any direction without endangering building walls, ceilings or columns. Not less than three feet clearance shall be left between walls and sides of piles, except that if the storage compartment is not more than 30 feet in width, one foot clearance at side walls will be sufficient, provided a center aisle not less than five feet wide is maintained.

4. Not less than three feet clearance shall be maintained between the sprinklers and tops of piles.

5. A person shall not store hay, straw or similar agricultural products adjacent to buildings or combustible material unless a cleared horizontal distance equal to the height of pile is maintained between such storage and combustible material and buildings. Storage shall be limited to stacks of 100 tons each. Unlimited quantities of hay, straw and other agricultural products may be stored in or near farm buildings located outside closely built areas. A permit shall not be required for agricultural storage.

6. Ashes, waste, rubbish or sweepings shall not be kept in wood or other combustible receptacles and shall be removed from the building daily. Grass or weeds shall not be allowed to accumulate at any point on the premises.

## 5:18-3.24 Compressed gases

(a) The equipment, processes and operations of bulk oxygen systems for the storage, handling and use of compressed gases, as defined herein, shall comply with the applicable requirements of this Code and the provisions of this section, and shall be maintained in accordance with NFPA 50, 99, and 99C listed in Appendix 3-A incorporated herein by reference, where the provisions of this section do not specifically cover conditions and operations. Liquefied petroleum gases and compressed gases used in conjunction with welding or cutting operations are exempt from these provisions.

(b) For the purpose of this section and as used in this Code, the following words and terms shall have the meaning indicated.

"Bulk oxygen system" means an assembly of equipment, such as oxygen storage containers, pressure regulators, safety devices, vaporizers, manifolds and interconnecting piping, which has a storage capacity at normal temperature and pressure of more than 13,000 cubic feet of oxygen connected in service or ready for service, or more than 25,000 cubic feet of oxygen, including unconnected reserve on hand at the site. The bulk oxygen system terminates at the point where oxygen at the service pressure first enters the supply line. The oxygen may be stored as a liquid or gas in either stationary or portable containers.

"Gaseous hydrogen system" means a facility in which hydrogen is delivered, stored and discharged in the gaseous form to consumer piping. The system includes stationary or movable containers, pressure regulators, safety relief devices, manifolds, interconnecting piping and controls. The system terminates at the point where hydrogen at service pressure first enters the consumer's distribution piping.

"Nonflammable medical gas" means a compressed gas which is nonflammable and used for therapeutic purposes and includes, among others, oxygen and nitrous oxide.

"Piped distribution system" means a central supply system with control equipment, and a system of piping extending to the points in the hospital where nonflammable medical gases are used, and to suitable station outlet valves at each use point.

(c) Storage and use requirements are as follows:

1. The containers, systems and methods of use of compressed gases shall comply with the following conditions of this subsection.

2. Cylinders and pressure vessels shall be designed, constructed, tested and maintained in accordance with ANSI K61.1, DOT 49 CFR

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or NFPA 50, 50A, 99 or 99C listed in Appendix 3-A, incorporated herein by reference.

3. Each cylinder, pressure vessel or group of containers shall be marked with the name of the gas contained in accordance with DOT 49 CFR listed in Appendix 3-A.

4. Cylinders containing flammable anesthetics and nonflammable medical gases, in hospitals and similar facilities, shall be stored, handled and used so as to be reasonably safe to persons and property.

5. Piping systems shall not be used to distribute flammable medical gases in any hospital or similar facility. Piped distribution systems handling non-flammable medical gases, in hospitals and similar facilities, shall be installed and used in accordance with NFPA 99 listed in Appendix 3-A.

6. Bulk oxygen systems located at industrial and institutional consumer sites shall be installed and maintained in accordance with NFPA 50 listed in Appendix 3-A.

7. Anhydrous ammonia shall be stored and handled in accordance with ANSI K61.1 listed in Appendix 3-A.

8. Gaseous hydrogen systems shall be installed and maintained in accordance with NFPA 50A listed in Appendix 3-A.

9. All compressed gas cylinders in storage or in service shall be adequately secured to prevent falling or being knocked over. Separate cylinder storage or manifold enclosure shall be provided for flammable gases and oxidizing gases. Such enclosures shall serve no other purpose and shall be constructed in accordance with the requirements of the Uniform Construction Code.

## 5:18-3.25 Cryogenic liquids

(a) This section shall apply to the storage, handling and transportation of cryogenic liquids except that this section shall not include liquefied petroleum gas as defined in N.J.A.C. 5:18-3.30(a). The storage, handling and transportation shall comply with NFPA 50, 50A and 50B listed in Appendix 3-A, incorporated herein by reference, where provisions of this section do not specifically cover conditions and operations.

(b) For the purpose of this section and as used in this Code, the following words and terms shall have the meaning indicated.

“Container” means any cryogenic vessel whether used for transportation or storage.

(c) The following apply to containers and equipment:

1. All containers, valves and piping shall be located so that they are readily accessible for inspection and repair and shall be protected against tampering.

2. All containers including piping, valves and pressure relief devices shall be located, designed and constructed in accordance with the requirements of the Uniform Construction Code and NFPA 50, 50B and 59A listed in Appendix 3-A, incorporated herein by reference, and they shall be maintained in a safe condition.

3. Warning labels and signs shall be posted on all containers and equipment.

(d) Fire safety requirements are as follows:

1. Dispensing of flammable cryogenic liquids, liquefied oxygen or liquid oxidizers shall be only at locations approved by the fire official. Water lines and hose shall be provided for cleaning and melting areas.

2. Flammable cryogenic liquids, liquid oxygen or cryogenic oxidizers shall not be loaded, unloaded, dispensed or handled where vapors can reach a source of ignition. Smoking shall be prohibited and “No Smoking” signs shall be conspicuously posted. Loading, unloading and dispensing of oxygen shall not be permitted in the vicinity of loading, unloading or dispensing of gaseous or liquid fuel.

(e) Transportation requirements are as follows:

1. Containers, tanks and vessels used for transporting cryogenic liquids shall meet all applicable requirements of the DOT 49 CFR listed in Appendix 3-A.

2. Vehicles used for transportation of cryogenic liquids shall be placarded at the front, rear and each side with the name of the product in addition to placards which are required by DOT 49 CFR listed in Appendix 3-A. Vehicles shall be equipped with at least one approved fire extinguisher with a minimum 20-B:C rating and with adequate wheel chock blocks.

## 5:18-3.26 Explosives, ammunition and blasting agents

(a) General provisions applicable to explosives, ammunition and blasting caps are as follows:

1. The equipment, processes and operations involving the manufacture, possession, storage, sale and use of explosives and blasting agents shall comply with the applicable requirements of this code and the provisions of this section and shall be maintained in accordance with NFPA 495 and DOT 49 CFR listed in Appendix 3-A, incorporated herein by reference, except as herein specifically exempted or where provisions of this section do not specifically cover conditions and operations.

2. Exceptions: Nothing in this section shall be construed as applying to the following uses:

i. The possession, storage, transportation or use of explosives or explosive weaponry in any form by the Armed Forces of the United States or of a state;

ii. Explosives in forms prescribed by the official United States Pharmacopoeia;

iii. The sale or use of fireworks which are regulated by N.J.A.C. 5:18-3.27;

iv. The possession, transportation and use of small arms ammunition for personal use;

v. The possession, storage, transportation and use of not more than 15 pounds of smokeless powder and 1,000 small arms primers for hand loading of small arms ammunition for personal use;

vi. The possession, transportation and use of special industrial explosive devices that are legally permitted; or

vii. The transportation and use of explosives or blasting agents by the United States Bureau of Mines, the Federal Bureau of Investigation, the United States Secret Service or police and fire departments acting in their official capacity.

3. The following explosives shall not be permitted:

i. Liquid nitroglycerin;

ii. Dynamite (except gelatin dynamite) containing over 60 percent of liquid explosive ingredient;

iii. Dynamite having an unsatisfactory absorbent or one that permits leakage of a liquid explosive ingredient under any conditions liable to exist during storage;

iv. Nitrocellulose in a dry and uncompressed condition in quantity greater than 10 pounds net weight in one package;

v. Fulminate of mercury in a dry condition and fulminate of all other metals in any condition except as a component of manufactured articles not hereinafter forbidden;

vi. Explosive compositions that ignite spontaneously or undergo marked decomposition, rendering the products or their use more hazardous, when subjected for 48 consecutive hours or less to a temperature of 167 degrees Fahrenheit;

vii. New explosive until approved by DOT 49 CFR listed in Appendix 3-A, except that permits may be issued to educational, governmental or industrial laboratories for instructional or research purposes;

viii. Explosives condemned by DOT 49 CFR listed in Appendix 3-A;

ix. Explosives not packed or marked in accordance with the requirements of DOT 49 CFR listed in Appendix 3-A; and

x. Explosives containing an ammonium salt and a chlorate.

4. Any self-employed person in possession of a valid permit to use explosives for blasting purposes, issued by the New Jersey Department of Labor pursuant to N.J.A.C. 12:190-3.11, shall have an insurance coverage for blasting damage not less than \$500,000 for property damage including explosion, collapse, and underground utility damage and \$500,000 to \$1,000,000 for personal injury.

i. Any person in possession of a valid permit to use explosives for blasting purposes, as outlined in (a)4 above, and who is not self-employed, shall not use explosives unless the employer is insured as specified in that paragraph.

ii. Proof of the possession of a valid insurance policy covering blasting damage shall be readily available for inspection at the site.

iii. Nothing in this section shall be construed as preventing greater insurance coverage for damage from blasting when requested by any person for whom blasting is being performed.

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5. For the purpose of this section and as used in this Code, the following words and terms shall have the meaning shown.

"Carrier" means a person who engages in the transportation of articles or materials by rail, highway, water or air.

"Highway" means any public street, alley or road.

"Magazine" means any building, structure or other enclosure or container other than an explosives manufacturing building, used for the storage of explosives. Magazines shall be of five types as follows:

i. A Type 1 magazine means a permanent outdoor magazine used for storage of high explosives or other classes of explosives;

ii. A Type 2 magazine means an indoor or outdoor magazine that is portable or mobile; such as a skid magazine or a trailer or semi-trailer used for the temporary storage of high explosives or other classes of explosives;

iii. A Type 3 magazine means a portable outdoor magazine; such as a "day-box" or a magazine on skids used, while attended, for the temporary storage of high explosives or other classes of explosives;

iv. A Type 4 magazine means an indoor or outdoor magazine used for the storage of low explosives, smokeless powder, or blasting agents. Detonators that will not mass detonate may also be stored in Type 4 magazines;

v. Type UG magazine means a magazine for the permanent storage of explosives in underground operations.

"Public conveyance" means any railway car, streetcar, cab, bus, airplane or other vehicle transporting passengers for hire.

"Railway" means any steam, electric or other railroad or railway which carries passengers for hire.

"Terminal" means those facilities used by carriers for the receipt, transfer, temporary storage or delivery of articles or materials.

"Testing blasting cap No. 8" means one containing two grams of a mixture of 80 percent mercury fulminate and 20 percent potassium chlorate, or a cap of equivalent strength.

"Vehicle" means a conveyance of any type operated upon the highways.

(b) Prohibitions on manufacture, storage, display and use are as follows:

1. The manufacture of explosives or blasting agents shall be prohibited unless such manufacture is authorized by the fire official. This shall not apply to hand loading of small arms ammunition for personal use when not for resale.

2. The storage of explosives and blasting agents is prohibited within the limits established by law as the limits of the district in which such storage is to be prohibited, except for temporary storage for use in connection with approved blasting operations, provided, however, this prohibition shall not apply to wholesale and retail stocks of small arms ammunition, explosive bolts, explosive rivets or cartridges for explosive-actuated power tools in quantities involving less than 500 pounds of explosive material.

3. The fire official may limit the quantity of explosives or blasting agents to be permitted at any location.

4. A person shall not sell or display explosives or blasting agents on highways, sidewalks, public property or in places of public assembly or education.

i. No person shall sell or use explosives without obtaining a permit for that purpose from the Commissioner of Labor, pursuant to the applicable provisions of N.J.A.C. 12:190.

(c) Fire safety requirements are as follows:

1. The layout, arrangement and construction of buildings and structures in which explosives, ammunition and blasting agents are permitted shall comply with the applicable provisions of this Code. Buildings and structures and their service equipment shall be maintained in safe condition as required by this Code.

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

1. Explosives, including special industrial high explosive materials, shall be stored in magazines which meet the requirements of this section. This shall not be construed as applying to wholesale and retail stocks of small arms ammunition, explosive bolts, explosive rivets or cartridges for explosive-actuated power tools in quantities involving less than 500 pounds of explosive material. Magazines shall be in the custody of a competent person at all times who shall be

at least 21 years of age, and who shall be held responsible for compliance with all safety precautions.

2. The fire official may authorize the storage of up to 50 pounds of explosives and 5,000 blasting caps in wholesale or retail hardware stores or other approved establishments. Explosives and blasting caps shall be stored in separate Type 2 and Type 4 indoor magazines at approved locations on the first floor not more than 10 feet from an entrance. A distance of 10 feet shall be maintained between the magazines. Their location shall not be changed without approval of the fire official. Two such magazines may be located in the same building provided one magazine is used for the storage of not more than 5,000 detonators and when a distance of ten feet is maintained between magazines.

3. Smokeless powder not exceeding 400 pounds intended for resale shall be stored in a warehouse or storage room which is not accessible to unauthorized personnel. It shall be stored in non-portable cabinets as follows:

i. Not more than two cabinets in a building and not more than 200 pounds of smokeless powder in a single cabinet.

ii. Cabinets shall be located against the walls of the warehouse or storage room with a minimum separation of 10 feet between cabinets.

iii. A cabinet for smokeless powder shall have walls at least one inch thick with an interior of non-sparking material. Shelves shall not exceed a three foot separation. The cabinet shall have at least one lock and hinges and hasps that cannot be removed when the door is closed and locked.

4. Magazines shall be located as provided in this subsection, except as specifically provided in (d)4ii below for Type 2 indoor magazines.

i. Type 1 magazines and Type 2 outdoor magazines shall be located outside of buildings. When used for the storage of high explosives, they shall be located no closer to inhabited buildings, passenger railways, public highways, or other magazines in which high explosives are stored than the distance specified in Table 3.26(d) below.

ii. The location, either outside or inside buildings, of Type 3 magazines, shall be as far as practicable from the neighboring inhabited buildings, railways, highways, and any other magazine, and shall be closely attended when in a use location.

iii. Type 4 outdoor magazines shall be located outside of buildings and, when used for the storage of low explosives, shall be located no closer to inhabited buildings, passenger railways, public highways, or other magazines in which explosives are stored than the distances specified in Table 3.26(d)1 below whether barricaded or unbarricaded. When a Type 4 outdoor magazine is used for storage of blasting agents, Table 3.26(d) below shall be used.

iv. Type 2 indoor and Type 4 indoor magazines shall be located as provided in (d)2 above.

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

i. Ammonium nitrate and ammonium nitrate based blasting agents shall be separated from nearby stores of high explosives or blasting agents referred to as the "donor" by the distances provided in Table 3.26(d)2 below;

ii. If storage of ammonium nitrate is located within the sympathetic detonation distance of explosives or blasting agents, one-half the mass of the ammonium nitrate shall be included in the mass of the "donor" when calculating separation distances;

iii. When ammonium nitrate or a blasting agent, or both, is not barricaded, the distances shown in Table (d)2 below shall be multiplied by six. These distances allow for the possibility of high velocity metal fragments from mixers, hoppers, truck bodies, sheet metal structures, metal containers and the like which may enclose the "donor." Where storage is in bullet-resistant magazines recommended for explosives or where the storage is protected by a bullet-resistant wall, the distances and barricade thickness need not exceed those prescribed in Table 3.26(d) below;

iv. Table 3.26(d)1 below shall apply to blasting agents which pass the insensitivity test prescribed in the definition of blasting agent;

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v. Earthen dikes, sand dikes or enclosures filled with the required minimum thickness of earth or sand shall be acceptable artificial barricades. Hills of timber of sufficient density shall be acceptable natural barricades;

vi. For determining the distances to be kept from inhabited buildings, passenger railways, and public highways, Table 3.26(d) below shall apply. Ammonium nitrate, when stored with blasting agents or explosives, may be counted at one-half its actual weight.

TABLE 3.26(d)  
HIGH EXPLOSIVES  
DISTANCES IN FEET

Quantity of Explosives		Inhabited Buildings		Public Highways with Traffic Volume of 3,000 or less Vehicles/Day		Passenger Railways Public Highways with Traffic Volume of More Than 3,000 Vehicles/Day		Separation of Magazines	
Pounds Over	Pounds Not Over	Barricaded	Unbarricaded	Barricaded	Unbarricaded	Barricaded	Unbarricaded	Barricaded	Unbarricaded
2	5	70	140	30	60	51	102	6	12
5	10	90	180	35	70	64	128	8	16
10	20	110	220	45	90	81	162	10	20
20	30	125	250	50	100	93	186	11	22
30	40	140	280	55	110	103	206	12	24
40	50	150	300	60	120	110	220	14	28
50	75	170	340	70	130	127	254	15	30
75	100	190	380	75	150	139	278	16	32
100	125	200	400	80	160	150	300	18	36
125	150	215	430	85	170	159	318	19	38
150	200	235	470	95	190	175	350	21	42
200	250	255	510	105	210	189	378	23	46
250	300	270	540	110	220	201	402	24	48
300	400	295	590	120	240	221	442	27	54
400	500	320	640	130	260	238	476	29	58
500	600	340	680	135	270	253	506	31	62
600	700	355	710	145	290	266	532	32	64
700	800	375	750	150	300	278	556	33	66
800	900	390	780	155	310	289	578	35	70
900	1,000	400	800	160	320	300	600	36	72
1,000	1,200	425	850	165	330	318	636	39	78
1,200	1,400	450	900	170	340	336	672	41	82
1,400	1,600	470	940	175	350	351	702	43	86
1,600	1,800	490	980	180	360	366	732	44	88
1,800	2,000	505	1,010	185	370	378	756	45	90
2,000	2,500	545	1,090	190	380	408	816	49	98
2,500	3,000	580	1,160	195	390	432	864	52	104
3,000	4,000	635	1,270	210	420	474	948	58	116
4,000	5,000	685	1,370	225	450	513	1,026	61	122
5,000	6,000	730	1,460	235	470	546	1,092	65	130
6,000	7,000	770	1,540	245	490	573	1,146	68	136
7,000	8,000	800	1,600	250	500	600	1,200	72	144
8,000	9,000	835	1,670	255	510	624	1,248	75	150
9,000	10,000	865	1,730	260	520	645	1,290	78	156
10,000	12,000	875	1,750	270	540	687	1,374	82	164
12,000	14,000	885	1,770	275	550	723	1,446	87	174
14,000	16,000	900	1,800	280	560	756	1,512	90	180
16,000	18,000	940	1,880	285	570	786	1,572	94	188
18,000	20,000	975	1,950	290	580	813	1,626	98	196
20,000	25,000	1,055	2,000	315	630	876	1,752	105	210
25,000	30,000	1,130	2,000	340	680	933	1,866	112	224
30,000	35,000	1,204	2,000	360	720	981	1,962	119	238
35,000	40,000	1,275	2,000	380	760	1,026	2,000	124	248
40,000	45,000	1,340	2,000	400	800	1,068	2,000	129	258
45,000	50,000	1,400	2,000	420	840	1,104	2,000	135	270
50,000	55,000	1,460	2,000	440	800	1,140	2,000	148	280
55,000	60,000	1,515	2,000	455	910	1,173	2,000	145	290
60,000	65,000	1,565	2,000	470	940	1,206	2,000	150	300
65,000	70,000	1,610	2,000	485	970	1,236	2,000	155	310
70,000	75,000	1,655	2,000	500	1,000	1,263	2,000	160	320
75,000	80,000	1,695	2,000	510	1,020	1,293	2,000	165	330
80,000	85,000	1,730	2,000	520	1,040	1,317	2,000	170	340
85,000	90,000	1,760	2,000	530	1,060	1,344	2,000	175	350
90,000	95,000	1,790	2,000	540	1,080	1,369	2,000	180	360
95,000	100,000	1,815	2,000	545	1,090	1,392	2,000	185	370
100,000	110,000	1,835	2,000	550	1,100	1,437	2,000	195	390
110,000	120,000	1,855	2,000	555	1,110	1,479	2,000	205	410
120,000	130,000	1,875	2,000	560	1,120	1,521	2,000	215	430

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130,000	140,000	1,890	2,000	565	1,130	1,557	2,000	225	450
140,000	150,000	1,900	2,000	570	1,140	1,593	2,000	235	470
150,000	160,000	1,935	2,000	580	1,160	1,629	2,000	245	490
160,000	170,000	1,965	2,000	590	1,180	1,662	2,000	255	510
170,000	180,000	1,990	2,000	600	1,200	1,695	2,000	265	530
180,000	190,000	2,010	2,010	605	1,210	1,725	2,000	275	550
190,000	200,000	2,030	2,030	610	1,220	1,755	2,000	285	570
200,000	210,000	2,055	2,055	620	1,240	1,782	2,000	295	590
210,000	230,000	2,100	2,100	635	1,270	1,836	2,000	315	630
230,000	250,000	2,155	2,155	650	1,300	1,890	2,000	335	670
250,000	275,000	2,215	2,215	670	1,340	1,950	2,000	360	720
275,000	300,000	2,275	2,275	690	1,380	2,000	2,000	385	770

TABLE 3.26(d)1  
LOW EXPLOSIVES

Low Explosives		Distance in Feet from		
Pounds over	Pounds not over	Inhabited Building	Public Railroad and Highway	Above-ground Magazine
0	1,000	75	75	50
1,000	5,000	115	115	75
5,000	10,000	150	150	100
10,000	20,000	190	190	125
20,000	30,000	215	215	145
30,000	40,000	235	235	155
40,000	50,000	250	250	165
50,000	60,000	260	260	175
60,000	70,000	270	270	185
70,000	80,000	280	280	190
80,000	90,000	295	295	195
90,000	100,000	300	300	200
100,000	200,000	275	275	250
200,000	300,000	450	450	300

50,000	55,000	24	86	35
55,000	60,000	25	90	35
60,000	70,000	26	94	40
70,000	80,000	28	101	40
80,000	90,000	30	108	40
90,000	100,000	32	115	40
100,000	120,000	34	122	50
120,000	140,000	37	133	50
140,000	160,000	40	144	50
160,000	180,000	44	158	50
180,000	200,000	48	173	50
200,000	220,000	52	187	60
220,000	250,000	56	202	60
250,000	275,000	60	216	60
275,000	300,000	64	230	60

\*High explosives and blasting agents are donors. Ammonium nitrate, by itself, is not considered to be a donor.

\*\*Ammonium nitrate and blasting \*[agnets]\* \*agents\* are acceptors.

Notes to Tables

(1) If any two or more Type 1 and Type 2 magazines are separated from each other by less than distances specified in the column reading "Separation of Magazines," the two or more magazines, as a group, shall be considered as one magazine. The total quantity of explosives stored in that group shall then be treated as if stored in a single magazine and shall comply with the distances from other magazines, inhabited buildings, railways, or highways of Table 3.26(d).

(2) For quantity and distance purposes, the following shall apply to blasting caps and detonating cord:

(A) All types of blasting caps in strengths through No. 8 cap shall be rated at one and one-half pound of explosives per 1,000 caps. For strengths higher than No. 8 caps, consult the manufacturer.

(B) Detonating cord of 50 to 60 grains shall be calculated as equivalent to nine pounds of explosives per 1000 feet. Heavier or lighter core loads shall be rated proportionately.

5. A Type 1 magazine shall be a permanent structure: a building, an igloo, a tunnel, or a dugout. It shall be resistant to fire, theft, bullets, and the weather, and shall have no openings except for entrances and ventilation. Materials and methods of construction shall be as follows:

i. Masonry wall construction shall consist of at least six inches of brick, concrete, tile, cement block, or cinder block. Hollow masonry units shall have all hollow spaces filled with well-tamped, coarse, dry sand or weak concrete (at least a mixture of one part cement and eight parts sand with enough water to dampen the mixture while tamping in place).

ii. Fabricated metal wall construction shall consist of sectional sheets of steel or aluminum not less than No. 14 gauge, securely fastened to a metal framework. Metal wall construction shall be either lined inside with brick, solid cement blocks, or hardwood not less than four inches thick, or shall have at least a six inch sand fill between interior and exterior walls.

iii. In wood frame wall construction, the exterior of outer wood walls shall be covered with iron or aluminium not less than No. 26 gauge. The interior wall shall be constructed so as to provide a space

TABLE 3.26(d)2  
LOCATION OF AMMONIUM NITRATE AND BLASTING AGENTS FROM HIGH EXPLOSIVES OR BLASTING AGENTS

Donor* pounds over	Weight pounds not over	Minimum Separation Distance of Acceptor** When Barricaded (feet)		Minimum Thickness of Artificial Barricades (inches)
		Ammonium Nitrate	Blasting Agent	
0	100	3	11	12
100	300	4	14	12
300	600	5	18	12
600	1,000	6	22	12
1,000	1,600	7	25	12
1,600	2,000	8	29	12
2,000	3,000	9	32	15
3,000	4,000	10	36	15
4,000	6,000	11	40	15
6,000	8,000	12	43	20
8,000	10,000	13	47	20
10,000	12,000	14	50	20
12,000	16,000	15	54	25
16,000	20,000	16	58	25
20,000	25,000	18	65	25
25,000	30,000	19	68	30
30,000	35,000	20	72	30
35,000	40,000	21	76	30
40,000	45,000	22	79	35
45,000	50,000	23	83	35

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of not less than six inches between the outer and inner walls. The space shall be filled with coarse, dry sand or weak concrete.

iv. Interior walls shall be constructed of or covered with a non-sparking material.

v. Floor shall be constructed of or covered with a suitable non-sparking material and shall be strong enough to bear the weight of the maximum quantity of explosives to be stored.

vi. Foundations shall be constructed of brick, concrete, cement block, stone, or metal or wood posts. If piers or posts are used in lieu of a continuous foundation, the spaces thus created under the building shall be enclosed with fire-resistant material.

vii. Outer roofs shall be constructed of fabricated metal, tile, non-friable asbestos, concrete, or other fire-resistant material. Where it is possible for a bullet to be fired directly through the roof and into the magazine at such an angle that the bullet would strike the explosives stored within, the magazine shall be protected by one of the following methods: a sand tray lined with a layer of building paper, plastic or other non-porous material, and filled with not less than four inches of coarse, dry sand located at the tops of inner walls covering the entire ceiling area, except that portion necessary for ventilation; or a fabricated metal roof constructed of  $\frac{3}{16}$  inch plate steel lined with four inches of hardwood. For each additional  $\frac{1}{16}$  inch of plate steel, the hardwood lining may be decreased one inch.

viii. No sparking material shall be exposed to contact with stored explosive materials. All ferrous nails in the floor and side walls which might be so exposed shall be blind-nailed or counter-sunk on the floor and side walls covered with a lattice work or other non-sparking material.

ix. Igloo, tunnel, and dugout magazines shall be constructed of reinforced concrete, masonry, metal or a combination of these materials. They shall have an earth mound covering of not less than 24 inches on top, sides and rear unless the magazine complies with vii above.

x. Exterior doors shall be constructed of  $\frac{1}{4}$  inch plate steel and lined on the interior with two inches of hardwood.

xi. Hinges and hasps shall be attached to the doors by welding, riveting, or bolting with nuts on the inside of the door. The hinges and hasps shall be installed in such a manner that they cannot be removed when the door is closed and locked.

xii. Each door shall be equipped with one or more of the following: two mortise locks; or two padlocks fastened in separate hasps and staples. Padlocks shall have at least five tumblers and a case-hardened shackle of at least  $\frac{3}{8}$  inch diameter. Outdoor padlocks shall be protected with:

(1) One-quarter inch steel hoods constructed so as to prevent sawing or lever action on the locks or hasps;

(2) A combination of a mortise lock and padlock;

(3) A mortise lock that requires two keys to open;

(4) A three-point lock; or

(5) A bolt, lock or bar that cannot be actuated from the outside.

6. 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. The exterior and covers of doors shall be constructed of  $\frac{1}{4}$  inch steel and shall be lined with two inches of hardwood. Magazines with top openings shall have lids with water-resistant seals or the lids shall overlap the side by at least one inch when in a closed position.

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

7. A Type 2 indoor magazine shall be a portable or mobile magazine which is resistant to fire and theft. It need not be bullet- or weather-resistant if the building in which it is stored provides protection from the weather and from bullet penetration. Materials and methods of construction shall be as follows:

i. Wood magazines shall have sides, bottoms, and covers or doors constructed of two inches of hardwood and shall be well braced at

corners. They shall be covered with sheet metal of not less than No. 20 gauge. Nails exposed to the interior of magazines shall be counter-sunk.

ii. Metal magazines shall have sides, bottoms, and covers or doors constructed of No. 12 gauge metal and shall be lined inside with a non-sparking material. Edges of metal covers shall overlap the sides at least one inch.

iii. Magazines for blasting caps (cap boxes) in quantities of 100 or less shall have sides, bottoms, and covers or doors constructed of No. 12 gauge metal and shall be lined with a non-sparking material.

iv. Hinges, hasps, locks, padlocks, padlock protection, and sparking materials shall comply with the applicable provisions of (d)5 above; except that only one padlock shall be required on a type 2 indoor magazine that is located in a room that is also secured by a lock.

8. A Type 3 magazine shall be a "day-box" or other portable magazine which is resistant to fire, weather and theft. Materials and methods of construction shall be as follows:

i. A Type 3 magazine shall be constructed of not less than No. 12 gauge steel lined with at least  $\frac{1}{2}$  inch plywood or  $\frac{1}{2}$  inch Masonite-type hardboard.

ii. No sparking material shall be exposed to contact with stored explosive materials.

iii. Doors or covers shall overlap sides of Type 3 magazines by not less than one inch.

iv. Hinges and hasps shall be attached by welding or riveting by bolting with nuts on the inside.

v. One steel padlock which need not be protected by a steel hood, having at least five tumblers and a case-hardened shackle of not less than  $\frac{3}{8}$  inch diameter shall be provided for locking purposes.

9. A Type 4 outdoor magazine shall be a building, igloo, tunnel, dugout, box, trailer, semi-trailer or other mobile magazine which is resistant to fire, weather, and theft. Materials and methods of construction shall be as follows:

i. A Type 4 outdoor magazine shall be constructed of masonry, metal-covered wood, fabricated metal, or a combination of these materials.

ii. The walls and floors shall be constructed of, or covered with a non-sparking material, or lattice work.

iii. Foundations shall be constructed of brick, concrete, cement block, stone or metal or wood posts. If piers or posts are used in lieu of a continuous foundation, the spaces thus created under the building shall be enclosed with fire-resistive material.

iv. The doors or covers shall be metal or solid wood covered with metal.

v. Hinges and hasps, locks, padlocks, padlock protection and sparking materials shall comply with the applicable provisions of (d)5 above.

10. A Type 4 indoor magazine shall be fire and theft resistant. It need not be bullet or weather-resistant if the building in which it is stored provides protection from the weather and from bullet penetration. Materials and methods of construction shall be as follows:

i. Wood magazines shall have sides, bottom, and covers or doors constructed of not less than one inch of hardwood and shall be well braced at corners. They shall be covered with sheet metal of not less than No. 26 gauge. Ferrous nails exposed to the interior of magazines shall be counter-sunk.

ii. Metal magazines shall have sides, bottoms, and covers or doors constructed of not less than No. 16 gauge metal and shall be lined inside with a non-sparking material.

iii. Hinges and hasps, locks, padlocks, padlock protection, and sparking materials shall comply with the applicable provisions of (d)4 above, except that only one padlock shall be required on a type 4 indoor magazine that is located in a room that is also secured by a lock.

11. A Type UG magazine shall be used for the storage of not more than 5000 pounds of explosives underground in underground mining operations and shall not be permitted unless the mining has progressed to a point where the magazine is at least 300 feet from any shaft, is at least 15 feet from any haulage way or travel way,

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has a travel way to the nearest means of egress with at least two sharp turns, could not impede evacuation of all persons in the event of detonation of the explosives in the magazine, and is at least 50 feet from any magazine containing blasting caps. A Type UG magazine shall be constructed in accordance with the following:

i. In solid rock with the front opening constructed in accordance with the applicable provisions of (d)4 above for Type 1 magazines, unless otherwise specified in this paragraph.

ii. Doors shall have at least 16 gauge metal outer covering or equivalent fire resistance protection and be lined with at least two inches of hardwood.

iii. Doors shall be provided with one padlock having at least five tumblers and a case-hardened shackle of at least  $\frac{3}{8}$  inch diameter. Outdoor padlocks shall be protected with  $\frac{1}{4}$  inch steel hoods constructed so as to prevent sawing or level action on the locks or hasps.

iv. Floors shall be wood lined or covered with wooden slats.

v. Provisions shall be made so that water will drain away.

vi. Adequate ventilation shall be provided.

vii. A conspicuous marking, reading "EXPLOSIVES" shall be provided.

12. Magazines shall not be provided with artificial heat and light, except that if artificial lighting is necessary, approved electric safety battery lamps or approved electric lights, wiring and equipment of a type designed for the hazardous location may be used.

13. Magazines shall be maintained in good repair. Before repairing the interior of magazines, all explosive material shall be removed and their interior shall be cleaned. Before repairing the exterior of magazines, all explosive materials shall be removed if there exists any possibility that repairs may produce sparks or flame. Any explosive material removed from magazines under repair shall be:

i. Placed in other magazines appropriate for the storage of those materials in accordance with this section; or

ii. Placed a safe distance from the magazine under repair, where they shall be properly guarded and protected until the repairs have been completed.

14. Smoking, matches, open flames, spark producing devices and firearms shall be prohibited inside or within 100 feet of magazines. Combustible materials shall not be stored within 100 feet of magazines.

i. The land surrounding magazines shall be kept clear of brush, dried grass, leaves, trash and debris for a distance of at least 50 feet.

ii. Magazines shall be kept locked except when being inspected or when explosives are being placed therein or being removed therefrom.

iii. Magazines shall be kept clean, dry and free of grit, paper, empty packages and rubbish.

iv. Detonators shall not be stored in the same magazine with other explosives, except as follows: detonators that will not mass detonate may be stored with electric squibs, safety fuses, igniters and igniter cords in a Type 1 or Type 2 magazine; and detonators may be stored with delay devices, electric squibs, safety fuses, igniter cords and igniters in a Type 1 or Type 2 magazine. Detonators are defined as any device containing a detonating charge that is used for initiating detonation in an explosive. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, detonating-cord delay connectors, and non-electric instantaneous or delay blasting caps.

v. Except with respect to fiberboard or other nonmetal containers, containers of explosive materials shall not be unpacked or repacked inside a magazine or within 50 feet of a magazine. Containers of explosive materials shall be securely closed while being stored.

vi. Magazines shall not be used for the storage of any metal tools or of any commodity except explosives, but this restriction shall not apply to the storage of blasting agents, blasting supplies and oxidizers used in compound blasting agents.

15. When an explosive has deteriorated to an extent that it is in an unstable or dangerous condition, or if nitroglycerin leaks from any explosive, then the person in possession of such explosive shall immediately report the fact to the fire official and upon his authorization shall proceed to destroy such explosives and clean floors stained with nitroglycerin in accordance with the instructions

of the manufacturer. Only experienced persons shall do the work of destroying explosives.

16. Sign requirements are as follows:

i. On the premises where a Type 1 magazine, a Type 2 outdoor magazine or a Type 4 outdoor magazine is located, the holder of a "permit to store" explosives shall post a conspicuous sign reading "EXPLOSIVES—KEEP OFF" in letters at least three inches in height on a contrasting background, and so located that a bullet passing through the face of the signs will not strike the magazine.

ii. Type 2 and Type 4 indoor magazines shall be labeled "EXPLOSIVES—KEEP FIRE AWAY".

iii. All Type 3 magazines shall bear the word "EXPLOSIVES" in letters at least three inches in height and legible on a contrasting background.

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

(e) The following apply to the storage of blasting agents and supplies:

1. Blasting agents or oxidizers, when stored in conjunction with explosives, shall be stored in the manner set forth in (d) above for explosives. The quantity of blasting agents or oxidizers shall be included when computing the total quantity of explosives for determining distance requirements.

2. Buildings used for storage of blasting agents separate from explosives shall be located away from inhabited buildings, passenger railways and public highways in accordance with Table 3.26(d).

3. The interior of buildings used for the storage of blasting agents shall be kept clean and free from debris and empty containers. Spilled materials shall be cleaned up promptly and safely removed. Combustible materials, flammable liquids, corrosive acids, chlorates, nitrates other than ammonium nitrate or similar materials shall not be stored in any building containing blasting agents unless separated therefrom by construction having a fire resistance rating of not less than one hour. The provisions of this paragraph shall not prohibit the storage of blasting agents together with non-explosive blasting supplies.

4. Semi-trailers or full trailers may be used for temporarily storing blasting agents, provided they are located away from inhabited buildings, passenger railways and public highways, in accordance with Table 3.26(d). Trailers shall be provided with substantial means for locking, and the trailer doors shall be kept locked except during the time of placement or removal of blasting agents.

5. Piles of oxidizers and buildings containing oxidizers shall be adequately separated from readily combustible fuels.

6. Caked oxidizer, either in bags or in bulk, shall not be loosened by blasting.

(f) The following apply to the handling of explosives:

1. Buildings or other facilities used for mixing blasting agents shall be located away from inhabited buildings, passenger railways and public highways in accordance with Table 3.26(d).

2. Not more than one day's production of blasting agents or the limit determined by Table 3.26(d), whichever is less, shall be permitted in or near the building or other facility used for mixed blasting agents. Larger quantities shall be stored in separate buildings or magazines.

3. Compounding and mixing of recognized formulations of blasting agents shall be conducted in accordance with nationally recognized good practice.

4. Smoking or open flames shall not be permitted within 100 feet of any building or facility used for the mixing of blasting agents.

i. Tools used for opening packages of explosives shall be constructed of non-sparking materials.

5. Empty oxidizer bags shall be disposed of daily by burning in a safe manner in the open at a safe distance from buildings or combustible materials.

i. Empty boxes and paper and fiber packing materials which have previously contained high explosives shall not be used again for any purpose, but shall be destroyed by burning at an approved isolated location out of doors, and any person shall not be nearer than 100 feet after the burning has started. Explosives shall not be abandoned.

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(g) Blasting requirements are as follows:

1. Blasting operations shall be conducted during daylight hours except when authorized at other times by the fire official.

2. The handling and firing of explosives shall be performed by the person possessing a permit issued by the N.J. Department of Labor pursuant to N.J.A.C. 12:190 to use explosives or by employees under that person's direct supervision who are at least 18 years old.

i. A person shall not handle explosives while under the influence of intoxicants or narcotics.

ii. A person shall not smoke or carry matches while handling explosives or while in the vicinity thereof.

iii. An open flame light shall not be used in the vicinity of explosives.

iv. A permit to blast does not confer any right or privilege to conduct business or perform any operation including storage or handling of explosives which is contrary to or in conflict with provisions of any law of the State of New Jersey or any Federal law.

3. At the site of blasting operations, a distance of at least 150 feet shall be maintained between magazines and the blast area when the quantity of explosives temporarily kept therein is in excess of 25 pounds, and at least 50 feet when the quantity of explosives is 25 pounds or less. When site restrictions are such that the distance specified herein cannot be met, then the magazine shall be moved from the site the required distance when the blasting is actually to be performed.

4. Whenever blasting is being conducted within 50 feet of gas, electric, water, fire, alarm, telephone, telegraph or steam utilities, the blaster shall notify the appropriate representatives of such utilities at least 24 hours in advance of blasting, specifying the location and intended time of such blasting. Verbal notice shall be confirmed with written notice. In an emergency this time limit may be waived by fire official.

5. Before a blast is fired, the person in charge shall make certain that all surplus explosives are in a safe place, all persons and vehicles are at a safe distance or under sufficient cover, and a loud warning signal has been sounded.

6. Due precautions shall be taken to prevent accidental discharge of electric blasting caps from current induced by radio or radar transmitters, lightning, adjacent power lines, dust storms or other sources of extraneous electricity. These precautions shall include:

i. The suspension of all blasting operations and removal of persons from the blasting area during the approach and progress of an electrical storm;

ii. The posting of signs warning against the use of mobile radio transmitters on all roads within 350 feet of the blasting operations; and

iii. The blaster shall comply with the Safety Guide for the Prevention of Radio Frequency Radiation Hazards, IME No. 20-1981 (ANSI C-95-4), incorporated herein by reference.

7. When blasting is done in congested areas or in close proximity to a building, structure, railway, highway or any other installation that may be damaged, the blast shall be covered before firing, with a mat constructed so that it is capable of preventing rock from being thrown into the air.

## 5:18-3.27 Fireworks

(a) General provisions concerning fireworks are as follows:

1. The display, sale or discharge of fireworks shall comply with the requirements of this section.

2. Application for permits for display or discharge shall be made in writing at least 15 days in advance of the date of the display or discharge of fireworks. The sale, possession, use and distribution of fireworks for such display shall be lawful under the terms and conditions approved with the permit and for that purpose only. A permit granted hereunder shall not be transferable, nor shall any such permit be extended beyond the dates set out therein.

3. For the purpose of this section and as used in this Code, the following words and terms shall have the meaning indicated.

"Dangerous fireworks" means and includes the following:

(1) Toy torpedoes containing more than five grains of explosive composition;

(2) Paper caps containing more than .25 grain of explosive composition;

(3) Firecrackers or salutes exceeding five inches in length or 3/4 inch in diameter;

(4) Cannons, canes, pistols, or other devices designed for use otherwise than with paper caps;

(5) Any fireworks containing a compound or mixture of yellow or white phosphorous or mercury;

(6) Any fireworks that contain a detonator or blasting cap;

(7) Fireworks compositions that ignite spontaneously or undergo marked decomposition when subjected for 48 consecutive hours to a temperature of 167 degrees Fahrenheit;

(8) Fireworks that can be exploded en masse by a blasting cap placed in one of the units or by impact of a rifle bullet or otherwise;

(9) Fireworks, such as sparklers or fuses, containing a match tip, or head, or similar igniting point or surface, unless each individual tip, head or igniting point or surface is thoroughly covered and securely protected from accidental contact or friction with any other surface; and

(10) Fireworks containing an ammonium salt and a chlorate.

"Fireworks" include any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation.

"Fireworks factory building" means any building or other structure in which the manufacture of fireworks, other than sparklers, is carried on.

"Fireworks plant" means and includes all lands, with buildings thereon, used in connection with the manufacturing or processing of fireworks, as well as storehouses located thereon for the storage of finished fireworks.

"Highway" means any public street, public alley, public road, or navigable stream.

"Navigable streams" means streams susceptible of being used, in their ordinary condition, as highways of commerce, over which trade or travel are or may be conducted in the customary modes, but shall not include streams that are not capable of navigation by barges, tugboats and other large vessels.

"Railroad" means any steam, electric or other railroad which carries passengers for hire, but shall not include sidings or spur trucks installed primarily for the use of the fireworks plant.

(b) Sale and discharge requirements are as follows:

1. It shall be a violation of this Code for any person to store, to offer for sale, expose for sale, sell at retail, or use or explode any fireworks, except as provided for by the fire official when granting a permit for supervised displays of fireworks by the jurisdiction, fair association, amusement park, or other organization. Every such display shall be handled by a competent operator approved by the fire official. The fireworks shall be arranged, located, discharged or fired in a manner that, in the opinion of the fire official, will not be a hazard to property or endanger any person. In matters not specifically covered by this subsection, the provisions of NFPA 1123 and 1124 listed in Appendix 3-A, incorporated herein by reference, shall be deemed to provide adequate protection.

2. The governing body of any municipality may, upon application in writing accompanied by proof of proper insurance coverage, grant a permit for the public display of fireworks by municipalities, religious, fraternal or civic organizations, fair associations, amusement parks, or other organizations or groups of individuals, approved by the governing body of such municipality to whom the application is made. The governing body is authorized to grant such permission by resolution. After such permission shall have been granted, and a permit shall have been issued by the fire official, pursuant to N.J.A.C. 5:18-2.7(b)5, the possession and use of fireworks for such display shall be lawful for that purpose only.

i. All applications for permits shall set forth the date, the hour, the place of making such display, and the place for storing of fireworks prior to the display. The application shall also contain the names of the person, persons, firm, partnership, corporation, association, or group of individuals making the display, and the name of the person or persons in charge of the igniting, firing, setting-off, exploding or causing to be exploded such fireworks. The location

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of the storage place shall be subject to the approval of the fire official of the jurisdiction.

ii. The governing body of the municipality shall require insurance in a sum of not less than \$500,000 conditioned for the payment of all damages, which may be caused either to a person or persons or to property, by reason of the display so as aforesaid permitted, and arising from any acts of the permit holder, his agents, employees, or subcontractors. Such surety shall run to the municipality in which the permit is granted, and shall be for the use and benefit of any person, persons, or the owner or owners of any property so damaged, who is or are authorized to maintain an action thereon, or his or their heirs, executors, administrators, successors or assigns.

3. Exceptions: Nothing in this section shall be construed to prohibit any resident wholesaler, dealer or jobber to sell at wholesale such fireworks as are not herein prohibited, or the sale of any kind of fireworks provided the same are to be shipped directly out-of-State, or the use of fireworks by railroads or other transportation agencies for signal purposes or illumination, or the sale or use of blank cartridges for a show or theater, or for signal or ceremonial purposes in athletic or sports, or for use by military organizations. Such wholesalers, dealers and jobbers shall store their supplies of fireworks in accordance with N.J.A.C. 5:18-3.26(d).

4. The fire official shall seize, take, remove or cause to be removed at the expense of the owner, all stocks of fireworks offered or exposed for display or sale, stored or held in violation of this section.

5. The use of what are technically known as fireworks showers, or of any composition containing potassium and sulphur, in theaters or public halls shall be subject to prior approval by the fire official and the following conditions shall apply:

i. Fireworks shall be discharged at a height no greater than four feet above the stage floor.

ii. Fireworks shall be discharged and operated in accordance with manufacturers directions and specifications.

iii. The owner/operator shall provide a full demonstration to the fire official prior to final operation.

iv. Fireworks shall be discharged so as not to endanger the public by escape of any hot particles from the stage area.

v. A fire watch, with proper extinguishing equipment as approved by the fire official, shall be maintained during the operation at both sides of the stage area.

6. It shall be unlawful to manufacture, sell, transport or use dangerous fireworks within the State.

(c) Manufacturing requirements are as follows:

1. No factory building shall be situated nearer than 200 feet from any inhabited building or to any highway or to any railroad, nor nearer than 50 feet from any building used for the storage of explosives or fireworks, nor nearer than 25 feet to any other factory building. This subsection shall not apply to factory buildings existing on March 25, 1930, in fireworks plants then in operation.

2. No building in a fireworks plant used for the storage of finished fireworks, other than those containing only sparklers, shall be situated nearer than 300 feet from any building not used in connection with the manufacture of fireworks, nor from any highway, railroad or navigable stream, nor within 300 feet of the property line of the fireworks plant. This subsection shall not apply to such storehouses existing on March 25, 1930.

3. All fireworks plants shall be enclosed on all sides by substantial fences and all openings to such enclosures shall be fitted with suitable gates, which, when not locked, shall be in charge of a competent watchman who shall have charge of the fireworks plant when it is not in operation.

4. Fireworks plants and all buildings situated within fireworks plant enclosures shall be equipped with suitable fire protection, commensurate with the hazard involved, to protect life and property from direct burning and exposure. Such fire protection shall be installed as directed by the fire official.

5. No stoves, exposed flame or electrical heating devices shall be used in any part of any fireworks plant, except in the boiler room or machine shop. No fireworks or chemicals are to be stored in those

rooms. All parts of the buildings in fireworks plants shall be kept clean, orderly, and free from accumulations of dust or rubbish.

6. Fireworks in the finished state shall not be stored in buildings where fireworks are in process of manufacture.

7. No fireworks may be manufactured except such as shall be approved for transportation by the regulations of U.S. Department of Transportation.

8. Each outside package of fireworks shall bear upon the outside thereof the words "Fireworks—Handle Carefully—Keep Fire Away" in letters not less than  $\frac{7}{16}$  inch in height, and in addition shall show the name of the fireworks manufacturer.

9. No employee or other person shall enter or attempt to enter any fireworks plant with matches or other flame-producing devices, nor with liquor or narcotics in his or her possession or control, nor when under the influence of liquor or narcotics, nor partake of intoxicants or narcotics while in the plant.

10. No person shall smoke nor carry matches, a lighted cigar, cigarette, or pipe within any room or enclosed place or upon any part of a fireworks plant.

11. All fireworks plants shall be properly posted with "Warning" and "No Smoking" signs.

12. It shall be the duty of the superintendent, foreman or other person in charge of any fireworks plant to provide safety containers for matches at all main entrances of the plant, where all matches in the possession of all persons shall be deposited before entering the plant enclosure.

13. On receipt of an application to operate a fireworks plant, the fire official shall cause an inspection to be made of the premises described in the application for the purpose of determining whether they conform to the provisions of this chapter, and applicable sections of the Uniform Construction Code and N.J.A.C. 5:18-4.

14. A record of the certificates of registration issued and revoked shall be kept on file in the office of the Commissioner, and a notice sent to the fire official of each community in which a fireworks plant is located.

15. The owner or operator of any fireworks plant, within 60 days after demand therefor in writing by the Commissioner of Community Affairs, shall file and keep on file with the Department of Insurance of the State, an indemnity bond payable to the State of New Jersey in such sums as may be determined by the Commissioner and set forth in such demand, not in excess of \$1,000,000 nor less than \$500,000, with surety or sureties satisfactory to the Department of Community Affairs conditioned for the payment of all final judgments that may be rendered against such owner or operator for damages caused to persons and property by reason of any explosion at such fireworks plant of the product or component part or parts thereof there manufactured, processed or handled.

**5:18-3.28 Flammable and combustible liquids**

(a) General provisions concerning flammable and combustible liquids are as follows:

1. This section shall apply to the transportation, storage, handling and processing of flammable and combustible liquids as defined in N.J.A.C. 5:18-3.2. The provisions of NFPA 30 listed in Appendix 3-A, incorporated herein by reference, shall apply where the provisions of this section do not specifically cover conditions and operations.

2. A permit shall be obtained from the fire official in accordance with N.J.A.C. 5:18-2.7 for any of the following:

i. Storage, handling or use of Class I liquids in excess of five gallons in a dwelling or other place of human habitation, or in excess of 10 gallons in any other building or other occupancy, or in excess of 60 gallons outside of any building, except that no permit shall be required for:

(1) The storage or use of flammable liquids in the fuel tank of a motor vehicle, aircraft, motorboat, mobile power plant or mobile heating plant; or

(2) For the storage or use of paints, oils, varnishes or similar mixtures when such liquids are stored for painting or maintenance, or similar purposes upon the premises, and which are not stored for a period exceeding 30 days.

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ii. Storage, handling or use of Class II combustible liquids or Class III combustible liquids in excess of 25 gallons in a building, or in excess of 60 gallons outside of a building, except for fuel oil used in connection with oil burning equipment in single family residential buildings.

(b) Fire safety requirements are as follows:

1. The layout, arrangement and construction of buildings and structures in which flammable liquids are used or stored shall comply with the applicable requirements of the building code in effect at the time of first occupancy for the appropriate use group classification, and shall be provided with fire protection and fire extinguishing equipment as required by that code. Buildings and structures and their service equipment shall be maintained in a safe condition as required by this Code.

2. Containers, tanks, equipment and apparatus and all piping, fittings and appliances used or intended to be used for the storage, handling, use or movement of flammable or combustible liquids shall be constructed and tested in accordance with NFPA 30 listed in Appendix 3-A and approved by the fire official.

i. All cans, containers or vessels which contain flammable liquids or flammable liquid compounds or mixtures and are offered for sale shall be provided with a warning label painted or printed on the container, stating said liquid is flammable and should be kept away from heat or open flame. All portable cans, containers or vessels which are empty and offered for sale and which are intended for the conveyance or storage of flammable liquids or flammable liquid compounds or mixtures shall be conspicuously marked with the name of the product which they are intended to contain.

ii. Portable containers intended to hold 10 gallons or less and to be used for gasoline or other flammable liquid shall be red in color. The name of the flammable liquid shall be prominently displayed on the container in bold letters of a contrasting color. The containers shall be of metal or approved plastic with a spring-loaded or screw cap. Containers for kerosene shall be blue.

iii. Wherever flammable liquids or kerosene are dispensed into or offered for sale in containers, there shall be a prominent sign located in a conspicuous location indicating the required color and construction of this container for each product sold. The sign shall not be less than 12 inches in the least dimension.

3. The fire official may prohibit the sale or use of any heating, lighting or cooking appliance using a flammable or combustible liquid when said appliance presents a hazard.

4. It shall be unlawful for any person to sell or offer for sale any Class I flammable liquid for the purposes of domestic cleaning.

5. All flammable or combustible liquids shall be dispensed in accordance with the following requirements:

i. Flammable liquids shall not be dispensed by gravity from tanks, drums, barrels or similar containers. Approved pumps, taking suction from the top of the container, shall be used. An exception may be granted when the viscosity of the liquid makes such a restriction impractical. Combustible liquids may be drawn from tanks, drums or barrels by gravity through an approved self-closing valve or faucet which is affixed directly on the container or a rigid closed piping system attached thereto. The provisions of this subparagraph shall not prohibit the temporary use of movable tanks in conjunction with the dispensing of flammable or combustible liquids into the fuel tanks of motor vehicles or other motorized equipment on premises not normally accessible to the public. Such installations shall only be made with the approval of the fire official.

ii. Flammable or combustible liquids shall not be dispensed by a device that operates through pressure within a storage tank, drum or container, unless the tank, drum or container has been approved as a pressure vessel for the intended use. Air or oxygen shall not be used to pressurize the approved vessel.

iii. Flammable or combustible liquids shall not be dispensed into a portable or stationary tank, drum or container which does not meet the requirements of this code.

iv. Fuel pumps and fuel dispensers shall be installed in accordance with N.J.A.C. 5:18-3.16.

6. A person shall not permit or cause to be permitted the discharge of flammable or combustible liquids, or any waste liquid containing petroleum or its products, into or upon any street, pave-

ment, highway, drainage canal ditch, storm or sanitary drain or flood control channel, lake or waterway, or upon the ground. All waste petroleum products shall be stored in accordance with the requirements of this subchapter.

7. Class I flammable liquid shall not be used within a building for washing parts or removing grease or dirt unless it is used in a closed machine approved for such purpose or in a separately ventilated room constructed in accordance with the building code in effect at the time of first occupancy.

8. In locations where flammable vapors may be present, precautions shall be taken to prevent ignition by eliminating or controlling sources of ignition. Sources of ignition may include open flames, lightening, smoking, cutting or welding, hot surfaces, frictional heat, sparks (static, electrical, and mechanical), spontaneous ignition, chemical and physical-chemical reactions and radiant heat. The fire official may prohibit the use of devices or order the suspension of an operation when proper precautionary measures are not taken.

9. Flammable and combustible liquid spills and leaks shall be promptly reported to the fire official.

(c) Bulk processing or industrial plants, refineries or other plants and distilleries and all buildings, tanks and equipment used for the storage, processing, distillation, refining or blending of flammable or combustible liquids shall be located, constructed and used in accordance with the building code in effect at the time of first occupancy and NFPA 30 listed in Appendix 3-A and any other applicable law or ordinance of the jurisdiction.

(d) Aboveground tank storage requirements are as follows:

1. Aboveground storage tanks for the storage of combustible or flammable liquid shall be maintained in a safe operating condition as required by this Code.

2. Existing aboveground tank installations that have been previously approved may be continued, provided the installation does not constitute a hazard. The fire official shall periodically inspect the installation for safety, and if he or she determines the installation or operation is no longer conducted or maintained in a safe manner, he or she shall have authority to require unsafe tanks to be removed from service.

\*[i. Existing fuel oil tanks for supplying oil burning heating equipment may be located above ground, inside or outside of the building, providing the capacity of such tank does not exceed 660 gallons for each building served, and the installation does not constitute a hazard.]\*

(e) Underground tank storage requirements are as follows:

1. Periodic tests of underground storage systems may be required by the fire official to determine that leakage has not occurred.

(f) The following apply to containers and portable tanks:

1. This subsection shall apply to the storage and dispensing of flammable or combustible liquids into or from containers or portable tanks not exceeding 660 gallons individual capacity.

2. Exceptions: The requirements of this subsection shall not apply to the following:

i. Flammable liquids in the fuel tanks of a motor vehicle, aircraft, motorboat, mobile power plant, or mobile heating plant; and  
ii. Flammable or combustible paints, oils, varnishes, or similar mixtures when such liquids are stored from painting or maintenance or similar purposes, upon the premises and which are not stored for a period exceeding 30 days.

3. Containers and portable tanks for flammable and combustible liquids shall conform to (b)2 and (b)2i above and Table 3.28(f) below.

TABLE 3.28(f)  
MAXIMUM ALLOWABLE SIZE OF CONTAINERS AND PORTABLE TANKS

Container Type	Flammable Liquids			Combustible Liquids	
	Class 1A	Class 1B	Class 1C	Class II	Class III
Glass	1 pt.	1 qt.	1 gal.	1 gal.	1 gal.
Metal (other than DOT drums) or approved plastic Safety cans	1 gal. 2 gal.	5 gal. 5 gal.	5 gal. 5 gal.	5 gal. 5 gal.	5 gal. 5 gal.
Metal drums (DOT spec.)	60 gal.	60 gal.	60 gal.	60 gal.	60 gal.
Approved portable tanks	660 gal.	660 gal.	660 gal.	660 gal.	660 gal.

i. Exceptions: The requirements of (f)3 above shall not apply to the following: medicines, beverages, foodstuffs, cosmetics and other common consumer items, when packaged according to commonly accepted practices. Class 1A and 1B flammable liquids may be stored in glass containers of not more than one gallon capacity if the required liquid purity (such as ACS analytical reagent grade or higher) would be affected by storage in metal containers or if the liquid would cause excessive corrosion of the metal container.

3. 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.

4. The inside storage of flammable or combustible liquids in approved and properly sized containers or tanks shall comply with Table 3.28(f)4 below.

i. Flammable or combustible liquids, including stock for sale, shall not be stored so as to limit use of the means of egress of the building.

5. Flammable or combustible liquid containers conforming to (b)2 and (b)2i and Table 3.28(f) above shall be stored as specified in NFPA 30 listed in Appendix 3-A.

Table 3.28(f)4  
MAXIMUM INSIDE PILE STORAGE

Class liquid	Storage Level (Note b)	Protected* Maximum Gals. (Note a)	Storage per Pile Height (Note c)	Unprotected Maximum Gals. (Note a)	Storage per Pile Height (Note c)
1A	Ground and upper floors	2,750 (50)	3 ft. (1)	660 (12)	3 ft. (1)
	Basement	Not permitted		Not permitted	
1B	Ground and upper floors	5,500 (100)	6 ft. (2)	1,375 (25)	3 ft. (1)
	Basement	Not permitted		Not permitted	
1C	Ground and upper floors	16,500 (300)	6 ft. (2)	4,125 (75)	3 ft. (1)
	Basement	Not permitted		Not permitted	
II	Ground and upper floors	16,500 (300)	9 ft. (3)	4,125 (75)	9 ft. (3)
	Basement	5,500 (100)	9 ft. (3)	Not permitted	
III	Ground and upper floors	55,000 (1,000)	15 ft. (5)	13,750 (250)	12 ft. (4)
	Basement	8,250 (150)	9 ft. (3)	Not permitted	

\*A water sprinkler or equivalent fire suppression system installed in accordance with the Uniform Construction Code and approved by the fire official.

Note a: When two or more classes of materials are stored in a single pile, the maximum gallonage permitted in that pile shall be the smallest of separate maximum gallonage. Number below gallon quantity is the number of 55 gallon capacity containers.

Note b: Aisles shall be provided so that no portable tank is more than 12 feet from an aisle. Main aisles shall be at least eight feet wide and side aisles at least four feet wide.

Note c: Each pile shall be separated from each other pole by at least four feet. When stored on suitably protected racks or when the storage is suitably protected, portable tanks may be piled up to the height limits indicated in (g)6iv below, where approved by the fire official.

(g) Quantity requirements are as follows:

1. The storage of flammable or combustible liquids in containers or portable tanks shall comply with the following applicable paragraphs, except that the fire official may impose a quantity limitation or require greater protection where unusual hazard to life or property is involved. Increase of these amounts may be authorized where the type of construction, fire protection provided, or other factors substantially reduce the hazard.

1. 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.

2. Storage in excess of 10 gallons of flammable liquids or 60 gallons of combustible liquids shall be prohibited in buildings of Use Groups A, R-1 and R-2.

3. In buildings of Use Groups B, E and I, storage shall be limited to that required for operation of office equipment, maintenance, demonstration, treatment and laboratory work. All liquids in laboratories and at other points of use shall meet the following storage provisions:

i. A container for flammable liquids shall not exceed a capacity of one gallon, except that safety cans can be of two gallons capacity.

ii. Not more than 10 gallons of flammable liquids shall be stored outside of an approved storage cabinet or interior storage room, except in safety cans.

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iii. Not more than 25 gallons of flammable liquids shall be stored in safety cans outside of an interior storage room or storage cabinet.

iv. Not more than 60 gallons of combustible liquids shall be stored outside of an interior storage room or storage cabinet.

v. Quantities of flammable and combustible liquids in excess of those set forth in this paragraph shall be stored in an approved interior storage room or storage cabinet.

4. Storage in buildings of Use Group M shall comply with the following provisions:

i. In rooms or areas accessible to the public, storage of Class I, Class II and Class IIIA liquids shall be limited to quantities needed for display and normal merchandising purposes but shall not exceed two gallons per square foot of gross floor area. The gross floor area used for computing the maximum quantity permitted shall be considered as that portion of the store actually being used for merchandising flammable and combustible liquids.

ii. Where the aggregate quantity of additional stock exceeds 60 gallons of Class IA, 120 gallons of Class IB, 180 gallons of Class IC, 240 gallons of Class II, or 660 gallons of Class IIIA liquids or any combination of flammable liquids exceeding 240 gallons, the excess shall be stored in a room or portion of the building that complies with the construction provisions for an inside storage room. For water-miscible liquids, these quantities may be doubled.

iii. Containers in a display area shall not be stacked more than three feet or two containers high, whichever is the greater, unless on fixed metal shelving or otherwise being satisfactorily secured.

iv. Shelving shall be made of stable metal construction, of sufficient depth and arrangement such that containers displayed thereon shall not be easily displaced.

v. Leaking containers shall be removed to an approved interior storage room or to a location outside the building safe from ignition sources, and the contents transferred to an undamaged container.

5. Storage in general purpose or industrial plant warehouses shall be in accordance with Tables 3.28(f) and 3.28(f)4 above and in buildings or in portions of such buildings separated by fire walls. Material creating fire exposure hazard to the flammable or combustible liquids may not be stored in the same area.

6. Flammable and combustible liquid warehouses or storage buildings shall comply with the following requirements:

i. The total quantity of liquids within a building shall not be restricted, but the arrangement of storage shall comply with Table 3.28(f)4 above provided said storage is in approved containers of sizes complying with Table 3.28(f) above.

ii. Containers in piles shall be separated by pallets or dunnage where necessary to provide stability and to prevent excessive stress on container walls.

iii. Portable tanks stored over one tier high shall be designed to nest securely, without dunnage, and adequate materials handling equipment shall be available to handle tanks safely at the upper tier level.

iv. No pile shall be closer than three feet to the nearest beam, chord, girder or other obstruction and shall be three feet below sprinkler deflectors or discharge orifices of water spray, or other overhead fire protection systems.

v. Aisles at least three feet wide shall be provided where necessary for access to doors, windows or standpipe connections.

(h) Fire control requirements are as follows:

1. Suitable fire extinguishing equipment, such as small hose or portable fire extinguishers, shall be available at locations where flammable or combustible liquids are stored.

i. At least one portable fire extinguisher having a rating of not less than 20-B:C shall be located outside of, but not more than 10 feet from, the door opening into any interior storage room.

ii. At least one portable fire extinguisher having a rating of not less than 20-B:C shall be located not less than 10 feet, nor more than 25 feet, from any flammable liquid storage area located outside of an interior storage room but inside the building.

2. Open flames and smoking shall not be permitted in flammable or combustible liquid storage areas.

3. Materials which will react with water shall not be stored in the same room with flammable or combustible liquids.

4. Containers and portable tanks used for flammable liquids shall be electrically bonded or grounded during transfer of liquids in accordance with NFPA 77 listed in Appendix 3-A, incorporated herein by reference.

(i) The following apply to tank vehicles:

1. The provisions of this subsection apply to tank vehicles which are to be used for the transportation of asphalt or flammable or combustible liquids. The intent of the provisions is to provide minimum requirements for the design and construction of cargo tanks and their appurtenances and to set forth certain matters pertaining to tank vehicles.

2. All tank vehicles, and appurtenances shall be designed and constructed in compliance with NFPA 385 listed in Appendix 3-A, incorporated herein by reference.

3. Tank vehicles shall be used and operated as specified in NFPA 385 listed in Appendix 3-A and as follows:

i. Tank vehicle shall not be parked or left unattended on any street, highway, avenue or alley, provided that this shall not prevent a driver from necessary absence from the vehicle in connection with the delivery of the load, except that during actual discharge of the liquid some responsible person shall be present at the vehicle, nor shall it prevent stops for meals during the day or night if the street is well lighted at point of parking. Tank vehicles shall not be parked out of doors at any one point for longer than one hour, except at flammable liquid bulk terminals, bulk plants and other locations approved by the fire official.

ii. Tank vehicles shall not be parked or garaged in any building or structure other than those specifically approved for such use by the fire official.

iii. Each tank vehicle shall be provided with at least one portable fire extinguisher having a rating of not less than 2-A:20-B:C.

4. The driver, operator or attendant of any tank vehicle shall not leave the vehicle while it is being filled or discharged. Delivery hose, when attached to a tank vehicle, shall be considered to be a part of the tank vehicle. When making or breaking hose connections, the motors of tank trucks or tractors shall be shut down. If loading or unloading is done without the use of a power pump, the tank truck or tractor motor shall be shut down throughout such operations.

i. Delivery of flammable liquids to underground tanks of more than 1,000 gallons capacity shall be made by means of vapor-tight connections between the hose and the fill pipe. In all cases where underground tanks are equipped with any type of vapor recovery system, all connections required to be made for the safe and proper functioning of the particular vapor recovery process shall be made. Such connections shall be made liquid and vapor-tight and shall remain connected throughout the unloading process. Vapors shall not be discharged into the atmosphere at grade level during delivery.

ii. Upon arrival at a point of delivery and prior to discharging any flammable or combustible liquids into underground tanks, the driver, operator or attendant of the tank vehicle shall ensure that all liquid delivery and vapor recovery (if required) hoses will be protected from physical damage by motor vehicles. Such protection shall be provided by positioning the tank vehicle so as to prevent motor vehicles from passing through the area(s) occupied by hoses or shall consist of portable traffic warning devices, such as traffic cones.

#### 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.

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(b) For the purpose of this section and as used in this Code, the following words and terms shall have the meaning shown.

“Sealed source” means a quantity of radiation so enclosed as to prevent the escape of any radioactive material but at the same time permitting radiation to come out for use.

“Storage, isolated” means storage away from incompatible materials in a different storage room or in a separate and detached building located at a safe distance from hazardous occupancies and important exposures.

“Storage, separated” means storage in the same fire area but physically separated by as much space as practicable, using sills or curbs as safeguards, or by intervening storage of nonhazardous, compatible commodities.

(c) General requirements for hazardous materials and chemicals are as follows:

1. The manufacture, storage, handling and use of hazardous materials and chemicals shall be safeguarded with such protective facilities as public safety requires.

2. The fire official may require the separation or isolation of any chemical that in combination with other substances may bring about a fire or explosion or may liberate a flammable or poisonous gas. The fire official may require separation from other storage facilities, dwellings, places of assembly, educational uses, railroads and public highways when the quantity stored constitutes a material hazard. Limitations on storable quantities shall be considered with regard to proximity of these exposures and congested commercial and industrial districts.

3. Defective containers which permit leakage or spillage shall be disposed of or repaired in accordance with recognized safe practices. Spilled materials shall not be allowed to accumulate on floors or shelves.

4. Where kept for retail sale in containers or packages usual to the retail trade, storage shall be neat and orderly and shelves shall be of substantial construction.

5. Where specific requirements are not otherwise established, storage, handling and use of hazardous materials and chemicals shall be in accordance with nationally recognized good practice.

6. All containers of materials and chemicals shall be individually labeled or shall have a sign or placard posted on the container.

7. All labels, signs and placards shall be prominently affixed to the container and shall provide the chemical name and hazard warning information related to the substance being contained. Fixed containers shall also be provided with placards in accordance with NFPA 704 listed in Appendix 3-A, incorporated herein by reference.

8. The owner shall have available for review and inspection a material safety data sheet for each hazardous material or substance on the premises. The material safety data sheet shall include the following information.

i. The manufacturer’s name, address and emergency telephone number;

ii. The chemical name and synonyms; trade names and synonyms; and hazardous ingredients;

iii. The physical date and reactivity date;

iv. Fire and explosion data;

v. Health hazard data; and

vi. Special protection information and special precautions.

(d) The layout, arrangement and construction of buildings and structures in which hazardous chemicals are handled shall comply with the applicable requirements of the building code in effect at the time of first occupancy for the appropriate use group classification, and shall be provided with fire protection and fire extinguishing equipment as required by that Code. Buildings and structures and their service equipment shall be maintained in safe condition as required by this Code.

(e) Packaged oxidizing materials shall be stored in dry locations and separated from stored organic and other combustible materials. Bulk oxidizing materials shall not be stored on or against wooden surfaces.

(f) The following apply to radioactive materials:

1. Durable, clearly visible signs warning of radiation dangers shall be placed at all entrances to areas or rooms where radioactive

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materials are used or stored. In addition, on each container in which radioactive materials are used, stored or transported shall be the three-bladed radiation symbol in magenta or purple on a yellow background in accordance with nationally recognized good practice. The use, storage and handling of radioactive materials shall comply with NFPA 801 listed in Appendix 3-A, incorporated herein by reference, where provisions of this section do not specifically cover conditions and operations.

i. Exception: Signs are not required for storage of manufactured articles other than liquids, such as instruments or clock dials or electronic tubes or apparatus of which radioactive materials are a component part, and luminous compounds, when securely packed in strong containers, provided the gamma radiation at any surface of the package is less than 10 milliroentgens in 24 hours.

2. When not in use, radioactive materials shall be kept in adequately shielded fire resistant containers of such design that the gamma radiation will not exceed 200 milliroentgens per hour or equivalent at any point of readily accessible surface.

(g) The following apply to unstable (reactive) chemicals:

1. Unstable chemicals shall be stored away from all incompatible chemicals and contaminating and sensitizing materials. Unstable reactive chemicals shall not be stored in the same building with or in close proximity to explosives and blasting agents, except in accordance with N.J.A.C. 5:18-3.26(e).

2. Such chemicals shall be kept away from all heat-producing appliances and electrical devices and shall be protected from external heat, fire and explosion. All electric bulbs shall be equipped with guards to prevent breakage. Open lights or flames and smoking shall be prohibited in or near storage areas. Internal combustion motor vehicles or lift trucks shall not be parked or stored in the room or compartment where such chemicals are located.

3. Good housekeeping shall be maintained. Uncontaminated contents of broken or cracked bags, packages or other containers shall be transferred to new and clean containers before storing. Other spilled materials and discarded containers shall be promptly gathered up and destroyed in an approved manner.

4. A detached, well isolated, ventilated and unheated storage building constructed with walls having a fire resistance rating of not less than two hours, a noncombustible floor and a lightweight insulated roof shall be provided for the storage of 50 pounds or more of organic peroxides. If not adequately protected by a fast-acting deluge type automatic sprinkler system, the storage building shall be located the minimum distances from flammable liquid storage combustible materials in the open and from any other building or highway, as indicated in the following Table 3.29(g)4 below.

i. Stock supplies stored inside production buildings shall be limited to 50 pounds at any one time.

TABLE 3.29(g)4  
ORGANIC PEROXIDE STORAGE

Weight of organic peroxide (pounds)	Distance (feet)
50 to 100	75
100 to 500	100
500 to 1,000	125
1,000 to 3,000	200
3,000 to 5,000	300

ii. The organic peroxides shall be stored in the original shipping containers (U.S. Department of Transportation containers). Care shall be taken to avoid rough handling or contamination of these chemicals. Readily legible warning signs and placards shall be prominently placed in the storage and processing areas.

5. A suitably isolated outdoor storage area shall be provided for nitromethane. Hazardous processing shall not be permitted in the vicinity of this storage area. Nitromethane shall be stored in the drums in which it is received or in an underground tank with suitable corrosion protection and a minimum of two feet of earth over the tank or in barricaded tanks above ground. If the drum storage is not adequately protected by a fast-acting deluge type automatic sprinkler system, the storage of 2,000 pounds or more shall be

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located the minimum distances from inhabited buildings as shown in Table 3.29(g)5 below. Care shall be taken to avoid rough handling or contamination of this chemical. Readily legible warning signs and placards shall be prominently placed in the storage and processing areas.

**TABLE 3.29(g)5  
NITROMETHANE STORAGE**

Weight of nitromethane (pounds over) (pounds not over)	Approximate number of drums	Distance (feet)
Beginning at 2,000	4	100
2,000 to 10,000	20	200
10,000 to 20,000	40	300
20,000 to 40,000	80	400
40,000 to 80,000	160	500

6. All flooring in storage and handling areas shall be of noncombustible material and shall be without drains, traps, pits or pockets into which any molten ammonium nitrate could flow and be confined in case of fire.

i. Each storage pile of bags or other authorized packages and containers of such materials shall not exceed 20 feet in width and 50 feet in length. The length is not limited if the building is of fire resistive or noncombustible construction or sprinkler protected. For pile heights exceeding 15 feet, a hydraulically engineered sprinkler system shall be required. Such pile units shall be separated by a clear space of not less than three feet in width from the base to the top of the piles, serving as cross-aisles. At least one service or main aisle in the storage area shall be not less than four feet in width. A clearance of not less than 30 inches shall be maintained from building walls and partitions and of not less than three feet from ceilings or roof structural members with a minimum of 18 inches from sprinklers.

ii. Ammonium nitrate storage areas shall be separated by a space of 30 feet with sills or curbs, or by approved type walls of not less than one hour fire resistance rating, from stocks of organic chemicals, corrosive liquids, flammable compressed gases, flammable and combustible materials, such as coal, sawdust, charcoal, or flour where storage of such materials is permitted with ammonium nitrate.

iii. Quantities of ammonium nitrate or ammonium nitrate fertilizer, not having organic coating, in the form of crystals, flakes, grains or prills including fertilizer grade, dynamite grade, nitrous oxide grade and technical grade ammonium nitrate and ammonium nitrate phosphate (containing 60 percent or more ammonium nitrate by weight) of more than 50 tons total weight shall be stored in a well ventilated building of fire resistive or noncombustible construction, or in buildings of other types of construction equipped with an approved automatic sprinkler system. In populated areas, quantities of 2,500 tons or more shall be stored in well ventilated buildings of fire resistive or noncombustible construction equipped with an approved automatic sprinkler system, and combustible materials or ammonium nitrate sensitizing contaminants shall not be stored in this building.

iv. Storage of ammonium nitrate, coated or mixed with organic anti-caking materials, except compounded blasting agents, shall not be permitted in populated and congested areas. Outside such areas, quantities of 500 tons or less may be stored in well ventilated buildings of fire resistive or noncombustible construction equipped with an approved automatic sprinkler system.

(h) The following apply to highly toxic materials:

1. Highly toxic materials shall be separated from other chemicals and combustible and flammable substances by storage in a room or compartment separated from other areas by walls and floor and ceiling assemblies having a fire resistance rating of not less than one hour. The storage room shall be provided with adequate drainage facilities and natural or mechanical ventilation to the outside atmosphere.

2. Legible warning signs and placards stating the nature and location of the highly toxic materials shall be posted at all entrances to areas where such materials are stored or used.

(i) The following apply to poisonous gases:

1. Storage of poisonous gases shall be in rooms of at least one hour fire resistance rated construction and having natural or mechanical ventilation adequate to remove leaking gas. Such ventilation shall not discharge to a point where the gases may endanger any person.

2. Legible warning signs stating the nature of hazard shall be placed at all entrances to locations where poisonous gases are stored or used.

3. Distributors of poisonous gases as defined in this chapter shall provide and maintain on their premises at least one complete commercial-type repair kit for each size and type poisonous gas cylinder stored or kept on said premises. Such repair kit(s) shall be so located that they will be accessible at all times for immediate use. Said repair kits shall be kept in durable containers and plainly marked as to the size of cylinder the repair kit is designed to service.

(j) Satisfactory provisions shall be made for containing and neutralizing leakage of corrosive liquids which may occur during storage or handling.

(k) The following apply to hazardous materials tank vehicles:

1. The provisions of this subsection apply to vehicles for transportation of hazardous materials as defined in (a) above.

2. Vehicles shall be operated as follows:

i. Vehicles shall not be parked or left unattended on any street, highway, avenue or alley, provided that this shall not prevent a driver from the necessary absence from the vehicle in connection with the delivery of the load, except that during actual discharge of the load some responsible person shall be present at the vehicle, nor shall it prevent stops for meals during the day or night if the street is well lighted at point of parking. Vehicles shall not be parked out of doors at any one point for longer than one hour except at locations approved by the fire official.

ii. Vehicles shall not be parked or garaged in any building or structure other than those specifically approved for such use by the fire official.

3. The driver, operator or attendant of any vehicle shall not leave the vehicle while it is being filled or discharged. Delivery hose, when attached to a tank vehicle, shall be considered to be a part of the tank vehicle. When making or breaking hose connections, the motors of tank trucks or tractors shall be shut down. If loading or unloading is done without the use of power pump, the tank truck or tractor motor shall be shut down throughout such operations.

5:18-3.30 Liquefied petroleum gases:

(a) The equipment, processes and operations for storage and handling of liquefied petroleum gas shall comply with the applicable requirements of this Code and the provisions of this section and shall be installed and maintained in accordance with NFPA 58 listed in Appendix 3-A, incorporated herein by reference, where provisions of this section do not specifically cover conditions and operations.

(b) Installers shall maintain a record of all installations for which a permit is not required (but not including installation of gas burning appliances and replacing of portable cylinders) and have it available for inspection by the fire official.

(c) The following apply to tank container systems:

1. All aboveground tank container systems other than cylinder or bottled gas shall be located with respect to the nearest important building, group of buildings, or line of adjoining property which may be built upon as specified in Table 3.30(d) below.

2. Underground tank container systems shall be buried at least six inches below grade. All containers shall be protected against corrosion for the soil condition at the container site by a method in accordance with good engineering practices. The fire separation from the nearest important building, group of buildings, or line of adjoining property that may be built upon shall comply with Table 3.30(d) below.

(d) Container storage requirements are as follows:

1. Where storage containers having an aggregate water capacity more than 4,000 gallons are located in heavily populated or congested areas, the siting provisions of Table 3.30(d) below may be modified as indicated by the fire safety analysis described in Section 3-10.2 of NFPA 58 listed in Appendix 3-A.

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2. Multiple container installations with a total storage water capacity of more than 180,000 gallons, or approximately 150,000 gallons LP-Gas capacity, shall be subdivided into groups containing not more than 180,000 gallons in each group. Such groups shall be separated by a distance of not less than 50 feet. Where one of these forms of protection in (d)2i through v below is provided, the separation shall not be less than 25 feet between such container groups.

- i. Burial or mounding in an approved manner;
- ii. Protection with approved insulation on such areas that may be subjected to impingement of ignited gas from pipelines or other leakage;
- iii. Protection by fire walls of approved construction;
- iv. Protection by an approved system for application of water; or
- v. Protection by other approved means.

**TABLE 3.30(d)  
SEPARATION FOR TANK CONTAINER SYSTEMS**

Water capacity per container (gallons)	Minimum distances between containers and buildings or lot lines		
	Mounded or underground <sup>d</sup>	Aboveground	Between aboveground containers
Less than 125 <sup>a</sup>	10 feet	None <sup>b</sup>	None
125 to 250	10 feet	10 feet	None
251 to 500	10 feet	10 feet	3 feet
501 to 2,000	25 feet <sup>c</sup>	25 feet <sup>c</sup>	3 feet
2,001 to 30,000	50 feet	50 feet	5 feet
30,001 to 70,000	50 feet	75 feet	
70,001 to 90,000	50 feet	100 feet	(1/4 of sum of diameters of adjacent containers)
90,001 to 120,000	50 feet	125 feet	

Note a: At a consumer site, if the aggregate water capacity of a multi-container installation comprised of individual containers having a water capacity of less than 125 gallons is 501 gallons or more, the minimum distance shall comply with the appropriate portion of this table, applying the aggregate capacity rather than the capacity per container. If more than one such installation is made, each installation shall be separated from any other installation by at least 25 feet. Do not apply the minimum distances between aboveground containers to such installations.

Note b: The following shall apply to aboveground containers installed alongside of buildings:

1. DOT specification containers shall be located and installed so that the discharge from the container safety relief device is at least three feet horizontally away from any building opening below the level of such discharge, and shall not be beneath any building unless this space is well ventilated to the outside and is not enclosed for more than 50 percent of its perimeter. The discharge from container safety relief devices shall be located not less than five feet in any direction away from any exterior source of ignition, openings into direct-vent (sealed combustion system) appliances, or mechanical ventilation air intakes.

2. ASME containers of less than 125 gallons water capacity shall be located and installed so that the discharge from safety relief devices shall not terminate in or beneath any building and shall be located at least five feet horizontally away from any building opening below the level of such discharge, and not less than five feet in any direction away from any exterior source of ignition, openings into direct vent (sealed combustion system) appliances, or mechanical ventilation air intakes.

3. The filling connection and the vent from liquid level gauges on either DOT or ASME containers filled at the point of installation shall not be less than 10 feet in any direction away from any exterior source of ignition, openings into direct-vent (sealed combustion system) appliances, or mechanical ventilation air intakes.

Note c: This distance may be reduced to not less than 10 feet for a single container of 1,200 gallons water capacity or less provided

such container is at least 25 feet from any other LP-Gas container of more than 125 gallons water capacity.

Note d: Minimum distances for underground containers shall be measured from the relief valve and filling or liquid level gauge vent connection at the container, except that no part of an underground container shall be less than 10 feet from a building or line of adjoining property which may be built upon.

(e) Requirements for use inside buildings are as follows:

1. Containers and first stage regulating equipment shall be located outside of buildings other than buildings especially provided for this purpose, except containers and regulating equipment may be used indoors under the following conditions:

i. If temporarily used for demonstration purposes and the container has a maximum water capacity of 12 pounds (nominal five pounds LP-Gas capacity);

ii. If used with a completely self-contained gas hand torch or similar equipment, and the container has a maximum water capacity of 2½ pounds (nominal one pound LP-Gas capacity);

iii. In industrial and temporary applications when in conformance with N.J.A.C. 5:18-3.20(i)2 and Section 3-4 of NFPA 58 listed in Appendix 3-A;

iv. In use as a motor fuel ((e)2 below); or

v. In storage awaiting use or resale in accordance with Chapter 5 of NFPA 58 listed in Appendix 3-A.

2. The quantity of LP-Gas stored inside buildings for use as a motor fuel shall not exceed 300 pounds.

3. Gas for fuel purposes in either the liquid or vapor phase shall not be piped into any building at pressure in excess of 20 pounds per square inch gauge (psig) except as follows:

i. Buildings used exclusively to house equipment for vaporization, pressure reduction, gas mixing, gas manufacturing or distribution;

ii. Buildings, or portions of buildings, separated from other portions by walls, partitions and floor and ceiling assemblies of noncombustible material having a fire resistance rating of not less than two hours, used exclusively to house internal combustion engines or industrial processes or used exclusively for research and experimental laboratories; or

iii. Buildings, structures or equipment under construction or repair.

(f) Fire safety requirements are as follows:

1. The layout, arrangement and construction of buildings and structures in which liquefied petroleum gases are used or stored shall comply with the applicable requirements of the building code in effect at the time of first occupancy for the appropriate use group classification, and shall be provided with fire protection and fire extinguishing equipment as required by that code. Buildings and structures and their service equipment shall be maintained in safe condition as required by this Code.

2. All liquefied petroleum gas equipment, except such equipment installed at utility gas plants, shall be installed as specified in NFPA 58 listed in Appendix 3-A except as otherwise provided in this section. Liquefied petroleum gas equipment at utility gas plants shall be installed as specified in NFPA 59 listed in Appendix 3-A, incorporated herein by reference.

3. Every tank vehicle, or other vehicle used for the transportation of liquefied petroleum gas in excess of 1,000 pounds aggregate gross weight (product and container weight), shall be placarded according to DOT 49 CFR listed in Appendix 3-A.

i. The parking and garaging of tank vehicles used for the transportation of liquefied petroleum gases shall be in accordance with Section 6-6 of NFPA 58 listed in Appendix 3-A.

4. Liquefied petroleum gas installations at marine and pipeline terminals, natural gasoline plants, refineries and tank farms shall be designed and installed so as to be reasonably safe to persons and property.

(g) The following apply to abandonment of equipment:

1. The fire official shall be notified immediately when the use of any liquefied petroleum gas equipment is to be abandoned. Such equipment shall be abandoned in accordance with (g)2 below within 30 days after such notification.

2. Approved procedures for abandoned liquefied petroleum gas containers are as follows:

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i. Tanks "temporarily out of service" shall have the fill line, gauge opening, any fuel line entering the building and the pump connection secured against tampering. Relief and regulating devices shall be maintained in accordance with the requirements of this section.

ii. Any tank not used for a period of 10 months shall be properly safeguarded or removed in a manner approved by the fire official.

(1) Exception: Emergency standby LP-Gas fuel systems which are not utilized within an 18 month period shall be purged of all flammable gases with an inert gas or removed. When LP-Gas containers are purged, the container shall be marked on two sides with 12 inch high, red or contrasting letters stating, "Purged—Inert Gas". The fire official shall be notified in writing as to which containers have been rendered out of service.

iii. Any tank which has been abandoned for a period of one year shall be removed from the property in a manner approved by the fire official and the site restored in an approved manner.

iv. Tanks which are to be reinstalled for liquefied petroleum gas shall comply with all of the provisions of this section.

v. Tanks which are to be returned to service shall be tested in a manner approved by the fire official.

(h) Container and site requirements are as follows:

1. Containers of 125 gallons or more water capacity shall be legibly marked with a warning followed by the name of the gas contained. The warning label shall read "Flammable Gas" followed by the name of the gas, such as "Propane" or "Butane".

2. Storage areas having containers exceeding 125 gallons aggregate water capacity shall be posted with adequate "NO SMOKING" and "FLAMMABLE GAS" signs legibly marked. The warning "FLAMMABLE GAS" shall be followed by the name of the gas stored on the site, such as "PROPANE" or "BUTANE".

3. All LP-Gas installations exceeding 250 gallons individual or aggregate water capacity shall be provided with a marker plate or sign indicating who should be called in the event of an emergency involving the LP-Gas installation. The marker or sign shall include the following:

i. The name of the gas supplier, plant installer, owner, or operator who will respond to the emergency; and

ii. The telephone number of that person.

4. The LP-Gas supplier, plant installer, owner or operator indicated on the marker plate or sign required in (h)3 above shall respond when notified to all LP-Gas emergencies occurring at the installation and shall maintain a 24-hour phone service.

5. Whenever there is a fire or explosion or accident involving serious injury or loss of life as a result of an incident involving an LP-Gas installation, the fire official shall be notified within 24 hours of its occurrence.

**5:18-3.31 Magnesium**

(a) The equipment, processes and operation for the storage, handling or processing of magnesium shall comply with the applicable requirements of this Code and the provisions of this section. Magnesium, as herein referred to, shall include the pure metal and alloys of which the major part is magnesium.

(b) Storage requirements are as follows:

1. Outside storage of magnesium pigs, ingots and billets shall be in piles not exceeding 500 tons each, separated by aisles not less in width than one-half the height of the pile, and separated from combustible materials or buildings on the same or adjoining property by a distance of not less than the height of the nearest pile.

2. Storage of pigs, ingots and billets in buildings shall be on floors of noncombustible construction, in piles not larger than 250 tons each, separated by aisles not less in width than one-half the height of the pile.

3. The size of storage piles of magnesium articles in foundries and processing plants shall not exceed 1,250 cubic feet and shall be separated by aisles not less in width than one-half the height of the pile.

4. Magnesium storage in a quantity greater than 50 cubic feet shall be separated from storage of other materials that are either combustible or in combustible containers, by aisles equal in width to not less than the height of the piles of magnesium.

5. Magnesium storage in a quantity greater than 1,000 cubic feet shall be separated into piles each not larger than 1,000 cubic feet with aisles between equal in width to not less than the height of the piles.

6. Where storage in a quantity greater than 1,000 cubic feet is in a building of combustible construction, or the magnesium is packed in combustible crates or cartons, or there is other combustible storage within 30 feet of the magnesium, the storage area shall be protected by an automatic sprinkler system.

(c) Handling requirements are as follows:

1. At each grinding, buffing or wire-brushing operation on magnesium, not including rough finishing of castings, dust shall be collected by means of suitable hoods or enclosures connected to a liquid precipitation type of separator, such that the dust will be converted to sludge without contact in a dry state with any high speed moving parts.

i. Connecting ducts or suction tubes shall be completely grounded and as short as possible, without unnecessary bends. Ducts shall be carefully fabricated and assembled, with a smooth interior and with internal lap joints pointing in the direction of air flow, and without unused capped side outlets, pockets or other dead-end spaces which might allow an accumulation of dust.

ii. Each machine shall be equipped with an individual dust separating unit, except that with multi-unit machines not more than two dust-producing units may be served by one separator. Not more than four portable dust-producing units in a single enclosure or stand shall be served one separator unit.

iii. Power supply to dust-producing machines shall be interlocked with the motor driving the exhaust blower and the liquid level controller of the wet collector in such a way that improper functioning of the dust collecting system will shut down the machine it serves. A time delay switch or equivalent device shall be provided in the dust-producing machine to prevent starting of its motor drive until the wet collector is in complete operation and several changes of air have swept out any residual hydrogen.

iv. All electrical wiring, fixtures and equipment in the immediate vicinity of and attached to dust-producing machines, including those used in connection with separator equipment, shall be of types approved for use in Class II, Group E, hazardous locations as specified in NFPA 70 listed in Appendix 3-A, incorporated herein by reference, and shall be installed in accordance with nationally recognized safe practice.

v. All equipment shall be securely grounded by permanent ground wires.

2. Approved means shall be provided for control of magnesium fires in heat treating ovens.

3. Floors under and around melting pots shall be of noncombustible construction.

4. Chips, turnings and other fine magnesium scrap shall be collected from the pans or spaces under the machines and from other places where they collect at least once each working day and placed in a covered, vented steel container and removed to a safe location.

i. Magnesium fines shall be kept separate from other combustible materials. Storage in a quantity greater than 50 cubic feet of fine magnesium scrap shall be separated from other uses in accordance with the Uniform Construction Code or by an open space of at least 50 feet. Storage in a quantity greater than 1,000 cubic feet shall be separated from all buildings other than those used for magnesium scrap recovery operations by a distance of not less than 100 feet.

(d) Fire safety requirements are as follows:

1. The layout, arrangement and construction of buildings and structures where magnesium is stored, processed or handled shall comply with the applicable requirements of the building code in effect at the time of first occupancy for the appropriate use group classification and shall be provided with fire protection and fire extinguishing equipment as required by that code. Buildings and structures and their service equipment shall be maintained in safe condition as required by this code and NFPA 651 listed in Appendix 3-A, incorporated herein by reference, where provisions of this section do not specifically cover conditions and operations. Smoking shall be in accordance with N.J.A.C. 5:18-3.3(k).

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2. A supply of approved extinguishing powder in a substantial container with a hand scoop or shovel for applying powder on magnesium fires or an approved extinguisher unit designed for use with such powder shall be kept within easy reach of every operator performing a machining, grinding or other processing operation on magnesium.

**5:18-3.32 Matches**

(a) The equipment, processes, and operation for the manufacturing, storage or handling of matches in quantities as indicated herein shall comply with the applicable requirements of this Code and the provisions of this section.

(b) Fire safety requirements are as follows:

1. The layout, arrangement and construction of buildings and structures for use in connection with the manufacturing or storing of matches shall comply with the applicable requirements of the building code in effect at the time of first occupancy for the appropriate use group classification and shall be provided with fire protection and fire extinguishing equipment as required by that code. Buildings and structures and their service equipment shall be maintained in safe condition as required by this Code.

2. At wholesale establishments and wherever more than 25 cases of matches are stored, shipping containers containing matches shall be arranged in piles not exceeding 18 feet in height nor 25,000 cubic feet in volume. Such pile units shall be separated from each other and from other combustible material by a clear space of not less than four feet. Matches shall not be stored within 10 feet of any exit, open stairway elevator shaft opening or other vertical opening.

3. Where matches are sold at retail, original sealed containers may be stored on shelves not closer than 10 feet to heaters, furnaces, compressors or other mechanical equipment.

4. Where shipping containers containing matches are opened, the contents of the opened containers shall be removed and stored in metal or metal-lined bins equipped with self-closing covers.

**5:18-3.33 Organic coatings**

(a) This section shall apply to processes manufacturing protective and decorative finishes or coatings (paints) for industrial, automotive, marine, transportation, institutional, household or other purposes, and the handling of flammable and combustible liquids, certain combustible solids and potential dust explosion conditions.

i. Exception: This section shall not apply to processes manufacturing nonflammable or water thinned coatings or operations applying coating materials.

(b) Fire safety requirements are as follows:

1. The layout, arrangement and construction of buildings and structures in which organic coatings are manufactured or stored shall comply with the applicable requirements of the building Code in effect at the time of first occupancy for the appropriate use group classification and shall be provided with fire protection and fire extinguishing equipment as required by that Code and this section. Buildings and structures and their service equipment shall be maintained in safe condition as required by this Code and NFPA 35 listed in Appendix 3-A, incorporated herein by reference, where provisions of this section do not specifically cover conditions and operations.

2. Portable fire extinguishers suitable for flammable liquid fires shall be provided as required by the fire official.

3. Open flames and direct-fired heating devices shall be prohibited in areas where flammable vapor-air mixtures may exist.

4. Smoking shall be prohibited except in designated areas approved by the fire official. "No Smoking" signs with lettering of approved size shall be conspicuously posted in such prohibited areas and shall read "By Order of the Fire Official".

6. Adequate aisles shall be maintained for the unobstructed movement of personnel and fire suppression equipment.

7. Power operated equipment and industrial trucks shall be of a type approved for the location.

8. The cleaning of tanks or vessels which have contained flammable or combustible liquids shall only be done under the supervision of persons who understand the fire and explosion potential.

i. When necessary to make repairs involving "hot work," the work shall be authorized by the responsible individual in charge before the work is started.

ii. When necessary to enter a tank, pit, manhole or other confined space, such entry shall be authorized by the responsible individual in charge.

iii. Empty containers previously used for flammable or combustible liquids shall be removed to a detached, outside location, and, if not cleaned on the premises, removed from the plant as soon as practical.

9. Drainage facilities shall be provided to direct flammable and combustible liquid leakage and fire protection water to a safe location away from the building, any other structure, storage area or adjoining property.

i. 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) 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) Static protection requirements are as follows:

1. All equipment such as tanks, machinery and piping, where an ignitable mixture may be present, shall be bonded and connected to a ground. The bond or ground or both shall be physically applied or shall be inherently present by the nature of the installation. This electrically conductive path shall have a resistance of not more than 1,000,000 ohms.

2. Electrically isolated sections of metallic piping or equipment shall be bonded to the other portions of the system or grounded.

3. Tank vehicles loaded or unloaded through open connections shall be grounded and bonded to the receiving system.

4. When a flammable mixture is transferred from one portable container to another, a bond shall be provided between the two containers.

5. Metal framing of buildings shall be grounded with resistance of not more than five ohms.

(d) The following apply to the process building:

1. The process building shall be designed and constructed as required by the building code in effect at the time of first occupancy and without a basement or pit. The first floor shall be at or above grade.

2. An organic coating manufacturing operation shall not be located in the same building with other uses. Operations incidental to, or in connection with, organic coating manufacturing shall not be classed as "other uses" for the purpose of this provision.

3. An organic coating manufacturing operation shall be accessible from at least one side for the purpose of fire control.

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.

5. Structures in which Class I liquids or finely divided flammable solids are processed shall be provided with explosion venting.

6. Enclosed buildings in which Class I liquids are processed or handled shall be ventilated at a rate of not less than one-half cubic foot per minute per square foot of solid floor area. This shall be accomplished by exhaust fans preferably taking suction at floor levels, and discharging to a safe location outside the building. Provision shall be made for introduction of noncontaminated intake air in such a manner that all portions of solid floor areas will be subject to continuous uniformly distributed movement of air.

7. Heating in hazardous areas, if required, shall be provided by indirect means. Ignition sources such as open flames, or electrical heating elements, except as provided in (c) above, shall not be used within the building.

(e) The following apply to process mills, mixers and kettles:

1. Mills operating with close clearances and used for the processing of flammable and heat sensitive materials, such as nitrocellulose, shall be located in a detached building without other uses. The

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amount of nitrocellulose or other flammable material brought into the area shall be no more than that required for a batch.

2. Mixers shall be of the enclosed type or, if of the open type, shall be provided with properly fitted covers. Where gravity flow is used, a shutoff valve shall be installed as close as practical to the mixer and a control valve shall be provided near the end of the fill pipe.

3. Open kettles shall be located in an outside area, provided with a protective roof or in a separate building of noncombustible construction or separated from other areas by means of a noncombustible wall or partition having a fire resistance rating of at least two hours.

4. The vaporizer section of heat transfer systems heating closed kettles containing solvents shall be remotely located. Contact heated kettles containing solvents shall be equipped with safety devices that in case of fire can turn the process heat off, turn the cooling medium on, and inject gas into the kettle.

5. The kettle and thin-down tank shall be instrumented, controlled and interlocked so that any failure of the controls will result in a safe condition. The kettle shall be provided with a pressure rupture disc in case the normal vent becomes inoperative. The vent piping from the rupture disc shall be of minimum length and shall discharge to a safe location. The thin-down tank shall be adequately vented. Thinning operations shall be provided with an adequate vapor removal system.

(f) The following apply to process piping:

1. All piping, valves and fittings shall be designed for the working pressures and structural stresses to which they may be subjected. They shall be of steel or other material approved for the service intended.

2. Valves shall be of an indicating type. Terminal valves on remote pumping systems shall be of the "dead-man" type which will shut off both the pump and the flow of solvent.

3. Piping systems shall be substantially supported and protected against physical damage. Piping shall be pitched to avoid unintentional trapping of liquids or suitable drains shall be provided.

4. Approved flexible connectors may be used where vibration exists or where frequent movement is necessary. Approved hose shall be used at dispensing stations.

5. Before being placed in service, all piping shall be free of leaks when tested to not less than one and one-half times the working pressure or a minimum of not less than five psig at the highest point in the system. Tests shall continue for a minimum of 30 minutes and shall be at the expense of the owner.

(g) The following apply to raw materials in process areas:

1. The amount of nitrocellulose brought into the operating area shall not exceed that required for a work shift. Any nitrocellulose which may be spilled on the floor or elsewhere shall be promptly swept up, put into a pail of water, and removed at the end of the day or shift and disposed of by use or by burning in the open at a suitable detached location approved by the fire official.

2. Organic peroxides brought into the operating area shall be in the original shipping container and shall not exceed the quantity required for a work shift. When in the operating area, the peroxide shall not be placed in locations exposed to ignition source, heat or mechanical shocks.

(h) The following apply to the transfer of flammable and combustible liquids in process areas:

1. The transfer of large quantities of flammable and combustible liquids shall be through piping by means of pumps. The use of compressed air as a transfer medium shall be prohibited.

i. Pumps shall be selected for the flammable and combustible liquid use, the working pressures and the structural stresses to which they may be subjected.

2. Where solvents are pumped from storage to points of use, approved switches shall be provided in the processing areas and at the pumps to shut down the pumps in case of fire.

3. Empty and filled containers shall be stored outside the filling area.

(i) The following apply to the storage of raw materials and finished products:

1. The storage, handling and use of flammable and combustible liquids shall be in accordance with N.J.A.C. 5:18-3.28.

2. Tank storage for flammable and combustible liquids inside of buildings shall be permitted only in storage areas at or above grade which are separated from the processing area by a two hour fire-resistance rated fire separation wall. This is not intended to prevent processing equipment from container flammable and combustible liquids or storage in such quantities as are essential to the continuity of operations.

3. Tank car and tank vehicle loading and unloading stations for Class I liquids shall be separated from the processing area, other plant buildings, nearest line of adjoining property that may be built upon or public thoroughfare by a clear distance of not less than 25 feet.

i. Loading and unloading structures and platforms for flammable and combustible liquids shall be designed and installed in accordance with N.J.A.C. 5:18-3.28.

ii. Tank cars for flammable liquids shall be unloaded so as to be reasonably safe to persons and property. Tank vehicles for flammable and combustible liquids shall be loaded and unloaded in accordance with N.J.A.C. 5:18-3.28(i).

4. The nitrocellulose storage shall be in a separate building or in a room separated with a two hour fire-resistance rated fire separation wall. The nitrocellulose storage area shall not be used for any other purpose. Electrical wiring and equipment installed in such rooms or buildings shall conform to (c) above.

i. Nitrocellulose shall be stored only in closed containers. Barrels shall be stored on end and, if tiered, not more than two high. Barrels or other containers of nitrocellulose shall not be opened in the main storage building but at the point of use or other location set aside for the purpose.

ii. Spilled nitrocellulose shall be promptly wetted with water and disposed of by use or by burning in the open at a suitable detached location approved by the fire official.

5. The storage of organic peroxides shall be in accordance with N.J.A.C. 5:18-3.29(g).

i. The size of the package containing the organic peroxide shall be selected so that, as nearly as practical, full packages are utilized at one time. Any peroxide spilled shall be promptly cleaned up and disposed of as recommended by the supplier.

6. Finished products that are flammable or combustible liquids shall be stored outside of buildings, in a separate building, or in a room separated from the processing area by a wall having a fire-resistance rating of at least two hours, and openings shall be equipped with approved fire doors. The storage of finished products shall be in tanks or in closed containers in accordance with N.J.A.C. 5:18-3.28.

**5:18-3.34 Pesticide storage**

(a) This section shall apply to both inside and outside storage of all forms of pesticides in portable containers other than fixed installation on transportation equipment. This section shall not apply to the following:

1. Highly toxic materials as regulated in N.J.A.C. 5:18-3.29; and
2. Storage in dwellings or private garages of pesticides registered by the Environmental Protection Agency for use around the home.

(b) Storage requirements are as follows:

1. Pesticides shall be stored in accordance with the following:
  - i. Pesticides that are flammable or combustible liquids shall be stored in accordance with the requirements of N.J.A.C. 5:18-3.28.
  - ii. Pesticides that are oxidizing agents shall be stored in accordance with N.J.A.C. 5:18-3.29.

iii. Pesticides shall not be stored in the same area with ammonium nitrate fertilizer.

iv. Pesticide storage shall be restricted to a first-story room or area which has direct access to the outside. Pesticides shall not be stored in basements. Storage areas shall be designed in a manner so as to prevent unauthorized entry.

v. Pesticides in containers which could be damaged by moisture or water shall be stored off the floor.

vi. Damaged or leaking containers of pesticides or materials contaminated by pesticides shall be immediately separated, disposed of

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or decontaminated in accordance with Department of Environmental Protection and Energy regulations.

vii. Pesticide storage shall be constructed in such a manner so that run-off from fire streams will not contaminate streams, ponds, ground water, crop lands or buildings.

2. Material safety data sheets for each \*[toxic]\* pesticide shall be available at each storage location.

3. Pesticide storage buildings, storage rooms and areas shall be identified by approved prominent and legible signs.

4. Drums and packages shall be stacked in a stable manner.

5. Compressed gas pesticides shall be stored away from heat such as steam pipes and direct sunlight.

i. All compressed gas cylinders in service or storage shall be protected to insure against being knocked over.

ii. Compressed gas pesticide containers shall be separated from other compressed gases in accordance with N.J.A.C. 5:18-3.24(c)9.

iii. Containers shall be tightly closed and provided with a safety cap when not in use, whether empty or full.

**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	Section number	*Referenced in Code
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	Section number	Referenced in Code
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	Section number	Referenced in Code
D56-87	Flash Point by Tag Closed Tester-Test method for .....		3.2(a) 3.9(2)i
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 Furnace at 75°C.—Test method for .....		3.2(a)

**BOCA** Building Officials & Code Administrators, International  
4051 West Flossmoor Road  
Country Club Hills, Illinois 60477

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Standard reference number	Title	Section number	Referenced in Code
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	Section number	Referenced in Code
49-CFR	Explosive and Other Dangerous Articles, Shipping Containers-Specifications for Transportation of, Parts 100/199 .....		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	Section number	Referenced in Code
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
11A-88	Foam Systems, Medium and High Expansion—Standard for .....		3.4(c)10
12-89	Carbon Dioxide Extinguishing System—Standard for .....		3.4(c)11
12A-87	Halogenated Extinguishing Agent Systems—Halon 1301 .....		3.4(c)12
12B-85	Halogenated Extinguishing Agent Systems—Halon 1211 .....		3.4(c)12
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
16-86	Deluge Foam-Water Sprinkler Systems and Foam-Water Spray Systems—Standard for the Installation of .....		3.4(c)10
17-85	Dry Chemical Extinguishing Systems—Standard for .....		3.4(c)13
17A-86	Wet Chemical Extinguishing Systems .....		3.4(c)14
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

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24-87	Installation and Private Fire Service Mains and Their Appurtenances—Standard for .....	3.4(a)1	70-87	Electrical Code, National .....	3.7(b)3 3.7(c)5ii 3.7(d)6i 3.7(d)6ii 3.10(c)2 3.11(b)3 3.12(b)2i 3.20(e)2i 3.31(c)1iv
30-87	Liquid, Flammable and Combustible—Code for .....	3.28(a)1 3.28(b)2 3.28(c) 3.28(f)5			
30A-87	Automotive and Marine Service Station Code .....	3.16(a)1 3.16(f)	71-87	Signaling Systems, Central Station—Standard for .....	3.4(a)1
32-85	Dry Cleaning Plants—Standard for .....	3.9(a)1	72A-87	Signaling Systems, Local Protective—Standard for .....	3.4(a)1
33-85	Spray Application Using Flammable and Combustible Materials—Standard for .....	3.7(b)1	72B-86	Signaling Systems, Auxiliary Protective, for Fire Alarm Service .....	3.4(a)1
34-87	Dipping and Coating Processes Using Flammable or Combustible Liquids—Standard for .....	3.7(b)1	72C-86	Signaling Systems, Remote Station Protective—Standard for .....	3.4(a)1
35-87	Coatings, Organic—Standard for the Manufacture of .....	3.33(b)1	72D-86	Signaling Systems, Proprietary Protective—Standard for .....	3.4(a)1
40-88	Film Motion Picture, Cellulose Nitrate—Standard for the Storage and Handling of .....	3.21(a)	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
40E-86	Pyroxylin Plastics—Code for Storage of .....	3.22(a)	80-86	Fire Doors and Windows—Standard for .....	3.5(f)1
46-85	Forest Products—Recommended Safe Practice for Storage of .....	3.13(b)1	85F-88	Fuel Systems, Pulverized—Standard for the Installation and Operation of .....	3.10(a)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	86-85	Industrial Furnace Design, Location and Equipment—Standard for .....	3.14(a)1
50A-89	Hydrogen Systems, Gaseous, at Consumer Sites—Standard for .....	3.24(c)2 3.24(c)7 3.25(a)	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
50B-89	Hydrogen Systems, Liquefied, at Consumer Sites—Standard for .....	3.25(a) 3.25(c)2	99-87	Health Care Facilities—Standards for .....	3.24(a) 3.24(c)2 3.24(c)5
51-87	Gas Systems, Oxygen-Fuel for Welding, Cutting—Standard for the Installation and Operation of .....	3.20(a)	99C-87	Gas and Vacuum Systems .....	3.24(c)2
54-88	National Fuel Gas Code .....	3.3(i)1 3.16(g)3	102-88	Tents, Grandstands and Air Supported Structures, Used For Places of Assembly—Standard for .....	3.17(b)1
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	211-88	Chimneys, Fireplaces and Venting Systems—Standard for .....	3.3(i)1
59-89	Gases, Liquefied Petroleum at Utility Plants—Standard for the Storage and Handling of .....	3.30(f)2	231-87	General Storage, Indoors—Standard for .....	3.4(a)1
59A-85	Gas, Liquefied Natural—Standard for the Production, Storage and Handling of .....	3.25(c)2	231C-86	Rack Storage—Standard for .....	3.4(a)1
61A-85	Manufacturing and Handling Starch .....	3.10(a)1	231D-86	Storage of Rubber Tires—Standard for .....	3.4(a)1
61B-89	Dust Explosions in Grain Elevators and Bulk Grain Handling Facilities—Prevention of Fire .....	3.10(a)1	303-86	Marinas and Boatyards, Fire Protection—Standard for .....	3.16(f)
61C-89	Dust Explosions in Feed Mills—Prevention of Fire .....	3.10(a)1	385-85	Liquids, Flammable and Combustible—Tank Vehicles—Recommended Regulatory Standard for .....	3.28(i)2 3.28(i)3
65-87	Aluminum—Standard for the Processing and Finishing of .....	3.10(a)1	407-85	Aircraft Fuel Servicing—Standard for .....	3.6(b)1 3.6(e)5
68-88	Venting of Deflagrations—Guide for .....	3.10(a)1	490-86	Ammonium Nitrate—Code for the Storage of .....	3.10(a)1
69-86	Explosion Prevention Systems—Standards On .....	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

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655-88	Prevention of Sulfur Fires and Explosions .....	3.10(a)1	Old Citation	New Citation	Old Citation	New Citation
664-87	Dust Explosions in Woodworking and Wood Flour Manufacturing Plants—Prevention of .....	3.13(c)3	F-1701.0	3.17(b)	F-2804.0	3.28(e)
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	F-1702.0	3.17(c)	F-2805.0	3.28(f) and (g)
704-85	Identification of the Fire Hazards of Materials .....	3.29(c)7	F-1703.0	3.17(d)	F-2806.0	3.28(h)
801-86	Radioactive Materials, Facilities Handling Recommended Fire Protection Practice for .....	3.29(f)1	F-1800.0	3.18(a)	F-2807.0	3.27(i)
1123-90	Fireworks, Public Display of—Standard for .....	3.27(b)1	F-1801.0	3.18(b)	F-2900.0	3.29(a) and 3.2(a)
1124-88	Fireworks, Manufacture, Transportation and Storage of—Code for .....	3.27(b)1	F-1900.0	3.19(a)	F-2901.0	3.29(c)
			F-1901.0	3.19(b)	F-2902.0	3.29(d)
			F-2000.0	3.20(a) and 3.2(a)	F-2903.0	3.29(e)
			F-2001.0	3.20(c)	F-2904.0	3.29(f)
			F-2002.0	3.20(d)	F-2905.0	3.29(g)
			F-2003.0	3.20(e)	F-2906.0	3.29(h)
			F-2004.0	3.20(f)	F-2907.0	3.29(i)
			F-2005.0	3.20(g)	F-2908.0	3.29(j)
			F-2006.0	3.20(h)	F-2909.0	3.29(k)
			F-2007.0	3.20(i)	F-3000.0	3.30(a) and 3.2(a)
			F-2100.0	3.21(a)	F-3001.0	3.30(c)
			F-2101.0	3.21(c)	F-3002.0	3.30(d)
			F-2200.0	3.22(a)	F-3003.0	3.30(e)
			F-2201.0	3.22(b)	F-3004.0	3.30(f)
			F-2300.0	3.23(a)	F-3005.0	3.30(g)
			F-2301.0	3.23(b)	F-3006.0	3.30(h)
			F-2400.0	3.24(a) and 3.2(a)	F-3100.0	3.31(a)
			F-2401.0	3.24(c)	F-3101.0	3.31(b)
			F-2500.0	3.25(a) and 3.2(a)	F-3102.0	3.31(c)
			F-2501.0	3.25(c)	F-3103.0	3.31(d)
			F-2502.0	3.25(d)	F-3200.0	3.32(a)
			F-2503.0	3.25(e)	F-3201.0	3.32(b)
			F-2600.0	3.26(a) and 3.2(a)	F-3300.0	3.33(a) and 3.2(a)
			F-2601.0	3.26(b)	F-3301.0	3.33(b)
			F-2602.0	3.26(c)	F-3302.0	3.33(c)
			F-2603.0	3.26(d)	F-3303.0	3.33(d)
			F-2605.0	3.26(e)	F-3304.0	3.33(e)
			F-2607.0	3.26(f)	F-3305.0	3.33(f)
			F-2608.0	3.26(g)	F-3306.0	3.33(g)
			F-2700.0	3.27(a)	F-3307.0	3.33(h)
			F-2701.0	3.27(b)	F-3308.0	3.33(i)
			F-2702.0	3.27(c)	new section	3.34(a)
			F-2800.0	3.28(a)	new section	3.33(b)
			F-2801.0	3.28(b)	Appendix A	Appendix 3-A
			F-2802.0	3.28(c)	new section	Appendix 3-B
			F-2803.0	3.28(d)		

\*All code references refer to, and should be preceded by, N.J.A.C. 5:18-

**APPENDIX 3-B**

**Cross References:**

Old Citation	New Citation	Old Citation	New Citation
F-200.0	3.2(a)	F-704.0	3.7(e)
F-201.0	3.2(a)	F-705.0	3.7(f)
F-300.0	3.3(a)	F-800.0	3.8(a)
F-301.0	3.3(b)	F-801.0	3.8(b)
F-302.0	3.3(c)	F-802.0	3.8(c)
F-303.0	3.3(d)	F-900.0	3.9(a) and 3.2(a)
F-304.0	3.3(e)		3.9(b)
F-305.0	3.3(f)	F-901.0	3.9(b)
F-306.0	3.3(g)	F-902.0	3.9(c)
F-307.0	3.3(h)	F-903.0	3.9(d)
F-308.0	3.3(i)	F-904.0	3.9(e)
F-309.0	3.3(j)	F-905.0	3.9(f)
F-310.0	3.3(k)	F-906.0	3.9(g)
F-311.0	3.3(l)	F-907.0	3.9(h)
F-312.0	3.3(m)	F-908.0	3.9(i)
F-313.0	3.3(n)	F-1000.0	3.10(a)
F-314.0	3.3(o)	F-1001.1	3.10(b)
F-315.0	3.3(p)	F-1002.0	3.10(c)
F-316.0	3.3(q)	F-1100.0	3.11(a)
F-317.0	3.3(r)	F-1101.0	3.11(b)
F-318.0	3.3(s)	F-1200.0 &	
F-319.0	3.3(t)	3.2(a)	3.12(a)
new section	3.3(u)	F-1201.0	3.12(b)
new section	3.3(v)	F-1300.0	3.13(a)
F-400.0	3.4(a)	F-1301.0	3.13(b)
F-400.1	3.2(a)	F-1302.0	3.13(c)
F-403.0	3.4(b)	F-1400.0	3.14(a) and 3.2(a)
F-404.0	3.4(c)		3.14(b)
F-405.0	3.4(d)	F-1401.0	3.14(b)
F-408.0	3.4(e)	F-1402.0	3.14(c)
F-409.0	3.4(f)	F-1403.0	3.14(d)
F-410.0	3.4(g)	F-1500.0	3.15(a)
F-501.0	3.5(b)	F-1501.0	3.15(b)
F-503.0	3.5(d)	F-1502.0	3.15(c)
F-504.0	3.5(e)	F-1503.0	3.15(d)
F-505.0	3.5(f)	F-1504.0	3.15(e)
F-600.0	3.6(a)	F-1505.0	3.15(f)
F-601.0	3.6(b)	F-1600.0	3.16(a)
F-602.0	3.6(c)	F-1601.0	3.16(b)
F-603.0	3.6(d)	F-1602.0	3.16(c)
F-604.0	3.6(e)	F-1603.0	3.16(d)
F-700.0	3.7(a)	F-1604.0	3.16(e)
F-701.0	3.7(b)	F-1605.0	3.16(f)
F-702.0	3.7(c)	new section	3.16(g)
F-703.0	3.7(d)	F-1700.0	3.17(a)

**ENVIRONMENTAL PROTECTION AND ENERGY**

**(a)**

**DIVISION OF RESPONSIBLE PARTY SITE REMEDIATION**

**Underground Storage Tank Systems Technical Requirements and Procedures**

**Adopted Amendments: N.J.A.C. 7:14B-4.5, 9.1 and 13.20**

Proposed: September 16, 1991 at 23 N.J.R. 2854(a).  
 Adopted: January 27, 1992, by Scott A. Weiner, Commissioner,  
 Department of Environmental Protection and Energy.  
 Filed: January 28, 1992, as R.1992 d.99, **without change**.  
 Authority: N.J.S.A. 13:1D-9 and 58:10A-1 et seq., more particularly 58:10A-23.  
 DEPE Docket Number: 035-91-08.  
 Effective Date: March 2, 1992.  
 Expiration Date: December 21, 1992.

**ENVIRONMENTAL PROTECTION**

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**Summary of Public Comment and Agency Responses:**

The proposed amendments were published in the September 16, 1991 New Jersey Register. The comment period extended from September 16, 1991 through October 16, 1991 during which time the Department received one written comment from the New Jersey Fuel Merchants Association. In addition to publication in the New Jersey Register, secondary notice of the proposal was provided by publication of a public notice in three newspapers in the State.

N.J.A.C. 7:14B-4.5

The New Jersey Fuel Merchants Association contends that the amendments (P.L. 1991 c.1) to the Underground Storage of Hazardous Substances Act do not allow for a phase-in compliance schedule.

**RESPONSE:** The amendments to the Act provide the Department with the authority to prescribe an orderly phase-in compliance schedule to be completed by August 6, 1995 for non-residential heating oil tanks. They do not dictate what the compliance schedule must be based upon. The purpose of the schedule is to prevent an overload on providers of the services necessary to upgrade or close the regulated underground storage tanks and on the Department for the issuance of the necessary closure approvals and permit applications. The Department proposed a phase-in schedule based on the age of the tank because of the higher potential for older tanks to fail. Since the amendments to the Act provide ample authority for the proposed phase-in schedule, there is no reason to make a change to the proposed rule.

Full text of the adopted amendments follows.

**7:14B-4.5 Upgrading existing underground storage tank systems**

(a) (No change.)

(b) All underground storage tank systems, except as provided for in (b)1 and 2 below, shall comply with the upgrade requirements listed in (c) and (d) below by December 22, 1993:

1. All underground storage tank systems storing heating oil used for heating non-residential buildings and installed prior to August 6, 1974, or of unknown age shall comply with the upgrade requirements listed in (c) and (d) below by August 6, 1994; and

2. All underground storage tank systems storing heating oil used for heating non-residential buildings and installed on or after August 6, 1974 shall comply with the upgrade requirements listed in (c) and (d) below by August 6, 1995.

(c) All existing metallic underground storage tank systems without corrosion protection shall retrofit cathodic protection in accordance with the following conditions:

1.-5. (No change.)

(d) All existing underground storage tank systems shall, except as provided for in (g) below, install a monitoring system in accordance with N.J.A.C. 7:14B-6, and spill prevention and overfill protection in accordance with N.J.A.C. 7:14B-4.1(c).

(e)-(i) (No change.)

**7:14B-9.1 General requirements**

(a) The owner or operator of an underground storage tank system which is empty for a period of 12 months or less after September 4, 1990 shall maintain all existing cathodic protection systems as required by N.J.A.C. 7:14B-5.2 and shall follow the procedures in American Petroleum Institute Recommended Practice 1604 "Removal and Disposal of Used Underground Petroleum Storage Tanks," incorporated herein by reference, for placing a tank system temporarily out of service. The owner or operator of such tank systems are required to comply with N.J.A.C. 7:14B-7 and 8 during the temporary closure period. The owner and operator of a temporarily closed underground storage tank system shall install spill and overfill prevention in accordance with the requirements of N.J.A.C. 7:14B-4.1(c) and release detection in accordance with the requirements of N.J.A.C. 7:14B-6 either by the date prescribed in N.J.A.C. 7:14B-4.5(b), (b)1 or (b)2, as applicable; or at the time the underground storage tank system is put back into use, whichever is later. The Department shall be notified in writing on forms provided by the Department of any tank that is undergoing temporary closure.

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

**7:14B-13.20 Recycling of funds**

Subject to Federal and/or State law, funds from repayment of loans issued under the authority of the Underground Storage of

Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and this subchapter, shall be deposited in the Underground Storage Tank Improvement Fund and shall remain available for further disbursements as new loans for all underground storage tanks except non-residential heating oil storage tanks used for on-site consumption for further disbursement as new loans until December 21, 1993. Funds for non-residential heating oil storage tanks used for on-site consumption shall be available until August 6, 1995.

(a)

**HAZARDOUS WASTE REGULATION ELEMENT**

**Waste Management Rules**

**Hazardous Waste From Non-Specific Sources; Severability; Existing Facilities**

**Adopted Amendments: N.J.A.C. 7:26-1.2, 1.4, 8.2, 8.13, 8.14, 9.1, 9.4, 9.5, 9.7, 9.10, 10.4, 10.7, 10.8, 11.5, 12.1, 12.2, 12.4, 12.5, 12.9 and 17.4**

Proposed: August 19, 1991 at 23 N.J.R. 2453(b).

Adopted: January 27, 1992 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: January 28, 1992 as R.1992 d.100, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEPE Docket Number: 029-91-07.

Effective Date: March 2, 1992.

Expiration Date: October 25, 1995.

**Summary of Public Comments and Agency Responses:**

The amendments were proposed August 19, 1991. The comment period closed on October 18, 1991. No comments were received. The amendments are being adopted with technical changes that do not effect the interpretation or impact of the respective rule.

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

**7:26-1.2 Construction and severability**

(a) These rules shall be liberally construed to permit the Department to discharge its statutory function.

(b) If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid in any judicial or administrative proceeding, such decision shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered, and it shall not affect or impair the remainder of this chapter or the application thereof to other persons.

**7:26-1.4 Definitions**

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

...  
 "Impermeable liner" means a layer of natural and/or man-made material of sufficient thickness, density and composition so as to have a maximum permeability for water of  $1 \times 10^{-7}$  cm/sec at the maximum anticipated hydrostatic pressure.  
 ...

**7:26-8.2 Exclusions**

(a) (No change.)

(b) A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, a manufacturing process unit, or an associated non-waste-treatment-manufacturing unit is not subject to regulation under N.J.A.C. 7:26-7 through 13A,

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16, 16A and 17 until it exits the unit in which it was generated, unless the hazardous waste remains in the unit more than 90 days

after the unit ceases to be operated for manufacturing or for storage or transportation of product or raw materials.

7:26-8.13 Hazardous waste from non-specific sources

(a) Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
...	F003	The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the non-halogenated solvents listed above; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of 10 percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and the still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(I*)

7:26-8.14 Hazardous waste from specific sources

Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
...	K023	Distillation light ends from the production of phthalic anhydride from naphthalene...	(T)

7:26-9.1 Scope and applicability

- (a)-(b) (No change.)
- (c) The standards and requirements of this subchapter do not apply to:
  - 1.-8. (No change.)
  - 9. The owner or operator of an industrial boiler or industrial furnace burning a hazardous waste, provided the following conditions are met:
    - i.-vi. (No change.)
    - vii. The device is located in an area zoned for industrial use and is not located in a residential building.
    - viii. The hazardous waste is burned no more than 90 days after it is generated and the following conditions are met:
      - (1) (No change.)
      - (2) The date on which each period of accumulation begins and the words "Hazardous Waste" are clearly marked and visible for inspection on each container;
      - (3) (No change.)
      - (4) For waste which is placed in above ground tanks, the following requirements shall be met:
        - (A) (No change.)
        - (B) The waste shall be managed in conformance with N.J.A.C. 7:26-9.3(b)1 through 5, 7, 8, and 9, as well as N.J.A.C. 7:26-9.1(c)9viii(2) and (3); and
        - ix.-x. (No change.)
    - 10. Generators who recycle hazardous waste on the site where such wastes are generated (see definitions of "recycling" and "on-site" at N.J.A.C. 7:26-1.4) provided:
      - i. Where the recycled hazardous waste is used as a fuel:
        - (1)-(3) (No change.)
        - (4) The burning of the material is accomplished in accordance with N.J.A.C. 7:26-9.1(c)9 and N.J.A.C. 7:27 (Rules of the Bureau of Air Pollution Control) and, specifically, a "Permit to Construct, Install or Alter Control Apparatus or Equipment" has been issued that explicitly includes the recycled material to be burned; and
        - (5) (No change in text.)
      - ii. The generator submits an annual report by March 1 covering the recycling activities for the previous calendar year. The report shall be submitted on forms approved by the Department and shall include the following information:
        - (1) The generator's name, address, and EPA identification number;
        - (2) For each hazardous waste recycled, a description of the waste, DOT hazard class, EPA or State hazardous waste number, total annual amount, and unit of measure;
        - (3) The calendar year covered by the report;

- (4) Waste minimization information, which shall include the following:
  - (A) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated;
  - (B) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years, and to the extent such information is available for years\*[,] prior to 1984; and
- (5) The New Jersey Department of Environmental Protection Hazardous Waste Generator Annual Report certification signed by the generator or authorized representative;
  - iii. (No change.)
  - iv. The hazardous waste is recycled no later than 90 days after it is generated and the following conditions are met:
    - (1) The hazardous waste is placed in containers which meet the standards of N.J.A.C. 7:26-7.2 and which are managed in accordance with N.J.A.C. 7:26-9.4(d);
    - (2) For each container, the date on which the period of accumulation begins and the words "Hazardous Waste" are clearly marked and visible for inspection;
    - (3) The generator complies with the requirements for owners and operators at N.J.A.C. 7:26-9.4(g), 9.6, and 9.7 concerning preparedness and prevention, contingency plans, emergency procedures, and personnel training.
    - (4) For hazardous waste placed in above ground tanks, the following requirements shall be met:
      - (A) Prior to placing the hazardous waste in the tank, written approval shall be obtained from the Department; and
      - (B) The hazardous waste shall be managed in conformance with N.J.A.C. 7:26-9.3(b)1 through 5, 8 and 9.
  - 11. (No change.)
  - 12. The owner or operator of an industrial waste management facility (IWMF) constructed and operated in accordance with N.J.A.C. 7:14A-4.6.
  - 13.-16. (No change.)
  - (d)-(f) (No change.)

7:26-9.4 General facility standards

  - (a)-(b) (No change.)
  - (c) The owner or operator shall comply with the requirements of this subsection for unauthorized waste shipments.
    - 1. (No change.)
    - 2. An owner or operator, if offered hazardous waste of a type which the facility is not authorized to handle, shall:
      - i.-iv. (No change.)
      - v. Contact the Hazardous Waste Enforcement Regional Field Office or Hazardous Waste Enforcement Element, at telephone

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number 609-633-0700, and report the unauthorized waste shipment; and

vi. (No change.)

(d)-(f) (No change.)

(g) Hazardous waste facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the hazardous waste facility's compliance with the requirements of this subchapter.

1.-5. (No change.)

6. The owner or operator shall maintain the following documents and records at the facility;

i.-iii. (No change.)

iv. Records that document that the training required by (g)1 through 5 above has been given to, and completed by, facility personnel.

7.-8. (No change.)

(h)-(o) (No change.)

#### 7:26-9.5 Groundwater monitoring system

By December 6, 1982, the owner or operator shall design, construct, and implement a groundwater monitoring system in accordance with N.J.A.C. 7:14A-6 unless the owner or operator can demonstrate to the Department that all or part of the groundwater monitoring requirements may be waived, pursuant to 40 C.F.R. 265.90(c). The Department may, in its discretion, only grant waivers which satisfy the requirements of 40 C.F.R. 265.90(c). Modification of groundwater monitoring requirements under N.J.A.C. 7:14A-6.1(a)3 is not available to owners and operators of hazardous waste facilities to narrow or limit any requirement found in N.J.A.C. 7:14A-6. In no case shall all of the groundwater monitoring requirements for a hazardous waste management facility or an industrial waste management facility be waived.

#### 7:26-9.7 Contingency plan and emergency procedures

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

(j) The contingency plan shall be reviewed and immediately amended, if necessary, whenever:

1.-4. (No change.)

5. The list of emergency equipment changes.

(k)-(l) (No change.)

#### 7:26-9.10 Financial requirements for facility closure

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

(f) The owner or operator of each hazardous waste facility shall establish financial assurance for closure of the hazardous waste facility. The owner or operator shall choose from the options specified in (f)1 through 5 below, except that the option in (f)3 is not available to owners or operators of existing facilities until they have received a permit.

1.-3. (No change.)

4. Closure letter of credit requirements are as follows:

i. (No change.)

ii. The wording of the letter of credit shall be identical to the wording specified in N.J.A.C. 7:26-9 Appendix A, incorporated herein by reference.

iii.-x. (No change.)

5.-8. (No change.)

#### 7:26-10.4 Use and management of containers

(a) (No change.)

(b) Rules on containment in container storage areas include the following:

1.-3. (No change.)

4. Spilled or leaked waste shall be removed from the sump or collection area daily.

i. (No change.)

ii. If the collected material is discharged through a point source to waters of the State, the material is subject to the requirements of NJPDES in N.J.A.C. 7:26 and 7:14A (Regulations concerning the New Jersey Pollutant Discharge Elimination System).

(c) (No change.)

#### 7:26-10.7 Hazardous waste incinerators

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

(d) Performance standards for hazardous waste incinerators include the following:

1. Any person responsible for an incinerator burning hazardous waste shall ensure that it is designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under (f) and (g) below, it shall meet the following performance standards:

$$i. *DRE = \frac{w_{in} - w_{out}}{w_{in}} \times 100$$

$$*DRE = \frac{(w_{in} - w_{out})}{w_{in}} \times 100$$

Where:

$w_{in}$  = Mass feed rate of one principal organic hazardous constituent (POHC) in the waste stream feeding the incinerator, and

$w_{out}$  = Mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

ii. (No change.)

iii. The stack emissions of total hydrogen halides from any hazardous waste incinerator shall not exceed 50 parts per million (ppm) by volume adjusted to seven percent oxygen by volume in the wet flue gas using the formula:

$$PPM_7 = PPM_8(14/(21-\%O_2))$$

Where:

$PPM_7$  is the parts per million adjusted to seven percent oxygen,  $PPM_8$  is the ppm by volume determined to be in the wet flue gas, and

$\% O_2$  is the percentage of oxygen determined to be in the wet flue gas.

iv. New hazardous waste incinerators shall not emit particulate matter exceeding 0.03 grains per dry standard cubic foot when corrected to seven percent oxygen using the procedures presented in the Clean Air Act regulations, "Standards of Performance for Incinerators," 40 C.F.R. 60.50, Subpart E, except that the percent oxygen obtained from stack gas analysis is to be used to correct particulate matter emissions to seven percent oxygen ( $O_2$ ) using the following formula:

$$C_7 = C \times 14/(21-\% O_2)$$

Where:

$C_7$  is the concentration of particulate matter corrected to seven percent oxygen ( $O_2$ ),

$C$  is the concentration of particulate matter as measured by EPA Method 5, and

$\% O_2$  is the percentage of oxygen ( $O_2$ ) in the dry flue gas as measured by EPA Method 3.

v.-vi. (No change.)

2. (No change.)

(e)-(m) (No change.)

#### 7:26-10.8 Hazardous waste landfills

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

(d) Landfills that are used for the disposal of hazardous wastes shall have the following systems:

1. A leachate collection and removal system, which shall include a system for either the treatment or the disposal, or both, of collected leachate, to handle all leachate generated within the landfill and which shall be:

i. Designed to ensure that the leachate depth over the primary liner does not exceed one foot (30.5 cm);

ii.-v. (No change.)

2.-6. (No change.)

(e)-(h) (No change.)

(i) Closure and post-closure requirements for hazardous waste landfills include the following:

1. (No change.)

2. The final cover shall function with minimum maintenance and shall consist of the following:

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- i. (No change.)
- ii. A drainage layer which will promote drainage and minimize erosion or abrasion of the cover, and which has the following design characteristics:
  - (1) (No change.)
  - (2) Be designed to allow for an effective drainage path for flow through the vegetative top cover to minimize head on the liner system;
  - iii.-iv. (No change.)
  - 3.-5. (No change.)
  - (j) (No change.)

7:26-11.5 Hazardous waste incinerators

- (a) (No change.)
- (b) An owner or operator shall comply with the general operating requirements of this subsection.
  - 1.-4. (No change.)
  - 5. The stack emissions of hydrogen halides shall not exceed 50 parts per million by volume adjusted to seven percent oxygen by volume in the wet flue gas. An incinerator burning hazardous waste containing more than 0.5 percent chlorine by weight shall be controlled to remove at least 99 percent of the hydrogen chloride from the exhaust gas.
  - 6. (No change.)
  - (c)-(g) (No change.)

7:26-12.1 Scope and applicability

- (a) (No change.)
- (b) The following persons are not required to obtain a permit pursuant to this subchapter to conduct the following activities or construct or operate the following hazardous waste facilities:
  - 1.-2. (No change.)
  - 3. The owner or operator of an industrial waste management facility (IWMF) constructed and operated in accordance with N.J.A.C. 7:14A-4.6; and
  - 4.-6. (No change.)
  - 7. The owner or operator of an industrial boiler or industrial furnace burning hazardous waste provided the following conditions, as well as those set forth at N.J.A.C. 7:26-9.1(c)9, are met:
    - i.-vii. (No change.)
    - viii. The hazardous waste is burned no more than 90 days after it is generated and the following conditions are met:
      - (1) (No change.)
      - (2) The date on which each period of accumulation begins and the words "Hazardous Waste" are clearly marked and visible for inspection on each container;
      - (3) (No change.)
      - (4) For waste which is placed in above ground tanks, the following requirements shall be met:
        - (A) (No change.)
        - (B) The waste shall be managed in conformance with N.J.A.C. 7:26-9.3(b)1 through 5, 7 and 8 as well as N.J.A.C. 7:26-9.1(c)9viii(2) and (3);
        - ix.-x. (No change.)
        - 8. (No change.)
  - 9. Generators who recycle hazardous waste on the site where such wastes are generated (see definitions of "recycling" and "on-site" at N.J.A.C. 7:26-1.4) provided:
    - i. Where the recycled waste is used as a fuel:
      - (1)-(4) (No change.)
      - (5) (No change in text.)
    - ii. The generator complies with the annual reporting requirements of N.J.A.C. 7:26-9.1(c)10ii.
    - iii.-iv. (No change.)
  - 10.-12. (No change.)
  - (c)-(g) (No change.)

7:26-12.2 Permit application

- (a)-(d) (No change.)
- (e) All applicants shall provide the following information in Part B of the permit application:
  - 1.-16. (No change.)

17. For existing facilities, documentation that a notice has been placed in the deed or appropriate alternative instrument as required by N.J.A.C. 7:26-9.9(n);

18. The most recent closure cost estimate for the facility prepared in accordance with N.J.A.C. 7:26-9.10(e) plus a copy of the financial assurance mechanism adopted in compliance with N.J.A.C. 7:26-9.10(f);

19.-23. (No change.)

(f)-(k) (No change.)

7:26-12.4 Standards applicable to all permits

- (a) The conditions in this section shall apply to all permits issued pursuant to this chapter. All conditions applicable to all permits shall be incorporated into the permit either expressly or by reference. If incorporated by reference, a specific citation to this subchapter shall be given in the permit.
  - 1.-16. (No change.)
  - 17. The following reports required by N.J.A.C. 7:26-7, 9 and 10 shall be submitted in addition to those required by (a)12 above:
    - i.-iii. (No change.)
    - iv. (Reserved.)
    - v. An annual report covering facility activities during the previous calendar year shall be submitted as required at N.J.A.C. 7:26-7.6(f)2.
    - (b)-(h) (No change.)
    - (i) (Reserved.)

7:26-12.5 Transfer of ownership or operational control

- (a) (No change.)
- (b) The permittee shall notify the Department at least 180 days in advance of any proposed change of ownership or operational control of a facility (90 days in the case of a prospective new permittee exempt from the requirement of a disclosure statement under N.J.A.C. 7:26-16.3(d)). The notice shall include:
  - 1. A disclosure statement or alternative information statement prepared by the prospective new permittee meeting the requirements of N.J.A.C. 7:26-12.2(h);
  - 2.-3. (No change.)
  - (c)-(e) (No change.)

7:26-12.9 Short term permits

- (a) (No change.)
- (b) For the purpose of determining feasibility of compliance with the incinerator performance standard of N.J.A.C. 7:26-10.7(d) and of determining adequate incinerator operating conditions under N.J.A.C. 7:26-10.7(f), the Department may issue a trial burn permit to a facility to allow short term operation of a hazardous waste incinerator subject to (b)1 through 8 below.
  - 1.-5. (No change.)
  - 6. The applicant shall submit to the Department a certification that the trial burn has been carried out in accordance with the approved trial burn plan and the results of all the determinations required in N.J.A.C. 7:26-12.9(b)5. To the extent possible, this submission shall be made within 30 days after the completion of the trial burn or sooner if the Department so requests.
  - 7.-8. (No change.)

7:26-17.4 Administrative procedures and appeals for requests for information

- (a)-(j) (No change.)
- (k) Requests for information should be addressed to:
  - Information Officer
  - \*[Division of Hazardous Waste Management]\*
  - \*Hazardous Waste Regulation Element\***
  - 401 East State Street
  - CN 028
  - Trenton, New Jersey 08625.

**ENVIRONMENTAL PROTECTION**

**ADOPTIONS**

**(a)**

**DIVISION OF ENVIRONMENTAL QUALITY**

**Control and Prohibition of Air Pollution by Volatile Organic Compounds**

**Adopted Amendments: N.J.A.C. 7:27-8.1, 8.2, 8.11, 8.14; 16; 17.1, 17.3 through 17.9; 23.1, 23.2, 23.3, 23.5, 23.6; 25.2; 7:27A-3.2, 3.10, 3.11; 7:27B-3.1, 3.2, 3.4 through 3.12, 3.14, 3.15, 3.17 and 3.18**

Proposed: June 17, 1991 at 23 N.J.R. 1858(b).

Adopted: January 28, 1992 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: January 29, 1992 as R.1992 d.102, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

DEPE Docket Number: 022-91-05.

Effective Date: March 2, 1992.

Operative Date: March 28, 1992, provided that the operative date for N.J.A.C. 7:27-16.2(n), 16.3(w)1, 16.5(l), 16.5(m)1, 16.6(m)1 and 16.8(g) is October 1, 1992; and that the operative date for N.J.A.C. 7:27-16.3(w)2-3, 16.5(m)2-4, and 16.6(m)2-4 is April 1, 1993, as set forth at N.J.A.C. 7:27-16.9(h).

Expiration Date: N.J.A.C. 7:27A, December 4, 1994; N.J.A.C. 7:27 and 7:27B, Exempt.

**Summary of Public Comments and Agency Responses:**

The New Jersey Department of Environmental Protection and Energy (the Department) is adopting amendments to N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Compounds (subchapter 16). Subchapter 16 establishes standards and requirements for equipment, control apparatus, and source operations which emit volatile organic compounds to the atmosphere. Additionally, to maintain consistency with the amendments to subchapter 16, the Department is adopting amendments at N.J.A.C. 7:27-8, Permits and Certificates, Hearings, and Confidentiality (subchapter 8); N.J.A.C. 7:27-17, Control and Prohibition of Air Pollution by Toxic Substances (subchapter 17); N.J.A.C. 7:27-23, Prevention of Air Pollution from Architectural Coatings and Consumer Products (subchapter 23); N.J.A.C. 7:27-25, Control and Prohibition of Air Pollution by Vehicular Fuels (subchapter 25); N.J.A.C. 7:27A-3, Civil Administrative Penalties and Requests for Adjudicatory Hearings (the Penalty Code); and N.J.A.C. 7:27B-3, Sampling and Analytic Procedures for the Determination of Volatile Organic Compounds from Source Operations (Air Test Method 3).

A public hearing was held on July 17, 1991, at the War Memorial Building in Trenton, New Jersey to provide interested parties the opportunity to comment on the proposed amendments. The comment period closed on August 1, 1991. One oral comment was presented at the public hearing. The Department received written comments from the following 20 persons on the proposed amendments. One person submitted both written and oral comments. The commenters were as follows:

1. Neale R. Bedrock, Esq., Lowenstein Sandler, et. al.
2. Dean Brunken, General Manager, Advanced Chemical Technologies
3. Rosalie M. Cacace, Environmental Coordinator, Hargro Flexible Packaging
4. Thomas J. Carr, Vice President of Technical Affairs, Motor Vehicle Manufacturers Association
5. J. Cerchiaro, Manager of Environmental Compliance, Shering-Plough Corporation
6. Thomas J. Detweiler, Associate Director of Regulatory Affairs, Chemical Industry Council of New Jersey
7. Ralph Engel, President, Chemical Specialties Manufacturers Association
8. D.D. Esch, Government and Industry Relations Manager, Exxon Company U.S.A.
9. Joyce Graf, Staff Chemist, the Cosmetic, Toiletry and Fragrance Association

10. Patrick B. Henretty, Environmental Advisor, Mobil Oil Corporation
11. Diane Krell, Environmental Engineer, Merck Chemical Manufacturing Division
12. D.M. Lucas, Manager of Perth Amboy Refinery, Chevron U.S.A. Inc.
13. Keith E. Lynott, Esq., McCarter & English
14. Bradley S. Martin, Area Consultant, E.I. du Pont de Nemours and Company, Chambers Works
15. Mary H. Owens, Citizen of West Long Branch
16. Stephan T. Pascucci, Project Engineer, Ambient Engineering Incorporated
17. Russell D. Potter, Principal Consultant, Omni Environmental Corporation
18. Lewis S. Ripps, President, Palmer Asphalt Company
19. Richard Sedlak, Research Director, The Soap and Detergent Association
20. Conrad Simon, Director of Air and Waste Management Division, United States Environmental Protection Agency, Region II

The Department has amended the text of the rule proposal upon adoption in response to comments received. The following is a summary of such amendments:

1. The definition of the term "volatile organic compound" (VOC) has been amended to clarify that only organic substances are included in the definition of VOC.
2. The text at N.J.A.C. 7:27-8.14(a) has been amended and a new provision at N.J.A.C. 7:27-16.9(i) has been added to inform persons that the Department has procedures to allow the assertion of confidentiality claims for the records submitted to the Department pursuant to the new recordkeeping requirements at N.J.A.C. 7:27-16.2(n), 16.3(w), 16.5(l), 16.5(m), 16.6(m) or 16.8(g).
3. At N.J.A.C. 7:27-16.1, the following terms now are defined: "capture efficiency," "destruction efficiency," "distillates of air," "indirect emissions," "partial pressure," "vapor pressure," and "worst case operating conditions."
4. At N.J.A.C. 7:27-16.1, the definition of "surface coating of automobiles and light-duty trucks" has been amended for clarification.
5. N.J.A.C. 7:27-16.2(a)1 has been amended to clarify current policy on whether a storage tank requires white paint.
6. N.J.A.C. 7:27-16.2(c) has been amended to eliminate the use of the incorrect term, "process emission rate."
7. N.J.A.C. 7:27-16.2(m) has been amended to clarify the applicability of delivery vessels.
8. N.J.A.C. 7:27-16.2(m) has been amended by the elimination of unnecessary recordkeeping requirements for storage tanks.
9. The recordkeeping requirements at N.J.A.C. 7:27-16.3(w)2ii, 16.5(m)3i, and 16.6(m)3i have been amended indicating that VOC concentration does not need to be expressed as methane.
10. N.J.A.C. 7:27-16.5(a)3ii has been amended to clarify the control requirement for surface coating operations which use control apparatus.
11. A footnote has been amended at N.J.A.C. 7:27-16.5 Table 3C to reference the "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light Duty Truck Top Coat Operations."
12. The text at N.J.A.C. 7:27-16.5(f) has been amended to clarify the control requirement for graphic arts operations.
13. The new provision at N.J.A.C. 7:27-16.5(n) has been added to clarify that the use of standard formulation sheets, material data safety sheets, and results from analytical tests are acceptable ways to document all or part of the surface coating recordkeeping requirements.
14. Clauses specifying vapor pressure limits have been added to the VOC leak prohibition provisions at N.J.A.C. 7:27-16.6(d) and (e) to prevent the scope of this provision from being broadened by the change in the definition of VOC.
15. N.J.A.C. 7:27-16.6(m)1ii has been amended to clarify the worst case analysis compliance determination recordkeeping procedure.
16. N.J.A.C. 7:27-16.9(g) has been amended to clarify circumstances in which a test period is longer than 60 minutes.
17. The new provision at N.J.A.C. 7:27-16.9(h) specifies that the proposed new recordkeeping requirements will become operative on October 1, 1992, and April 1, 1993.
18. At N.J.A.C. 7:27-17.1, the term "indirect emissions" is now defined.
19. At N.J.A.C. 7:27-17.3, Table 1, which lists toxic substances, Chemical Abstracts Service (CAS) Numbers have been added next to the chemical names.

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20. At N.J.A.C. 7:27-23.6(b), vapor pressure clauses have been amended to prevent the scope of this provision from being broadened by the change in the definition of VOC.

21. At N.J.A.C. 7:27A-3.2, new definitions of the terms "partial pressure" and "vapor pressure" have been amended.

22. An error in the equation at N.J.A.C. 7:27B-3.8(f)4 has been corrected.

The following is a summary of the comments received on the proposed amendments and the Department's responses. The person who commented is identified after each comment with the number referenced in the list above in parenthesis.

**General Comments**

**COMMENT:** I fully support every effort, including these amendments, to make New Jersey's air safer to breathe. As one who has suffered health problems ever since having four bouts of bronchitis in the summer of 1988, and who experienced breathing difficulties during recent episodes of bad air quality, I can speak from personal experience. I fervently hope these amendments will be adopted. (15)

**RESPONSE:** The Department acknowledges your support and appreciates your interest in the improvement of the air quality in New Jersey.

**COMMENT:** Since vapor pressure and partial vapor pressure are used throughout the proposed regulations, they should be defined. Also it would be helpful to reference where such data can be found or the testing standard to be used since technical texts disagree on the number for various chemicals or compounds. (17)

**RESPONSE:** The Department has added definitions of the terms "vapor pressure" and "partial pressure" at N.J.A.C. 7:27-16 as suggested by this comment. The following definitions have been inserted at N.J.A.C. 7:27-16.1 and are the same as those at N.J.A.C. 7:27B-3.1.

"Partial pressure" means the pressure exerted by a specified component in a mixture of gases.

"Vapor pressure" means the pressure of the vapor phase of a substance, or the sum of the partial pressures of the vapor phases of individual substances in a mixture of substances, when in equilibrium with the non-vapor phase of the substance or substances.

The Department commonly uses Perry's Chemical Engineers' Handbook and the CRC Handbook of Chemistry and Physics as references for vapor pressures. N.J.A.C. 7:27B-3.6 also references texts which list the vapor pressures of chemical compounds and test methods for determining vapor pressures.

**Comments on the Proposed Recordkeeping Requirements**

**COMMENT:** Two persons commented that the proposed recordkeeping requirements are extraordinarily burdensome for large facilities. One estimated the annual costs to be \$2,960,000; that is, \$3,700 per source for 800 sources. The other estimate of annual cost was \$8,000,000; that is, \$2,000 per source for 4,000 sources. (11, 14)

**RESPONSE:** The Department acknowledges that owners and operators will incur costs in maintaining the records required in these revisions. The Department acknowledges that the costs involved will vary from facility to facility and from source operation to source operation. The Department estimates the cost of the new recordkeeping requirements to range between \$120.00 and \$3,700 annually per source. Facilities having many sources will incur larger costs than facilities with few sources. However, due to economies of scale, the cost per source for facilities having many sources will be less than the costs incurred by a facility having a single source.

In developing these recordkeeping requirements, because it recognized the burden of costs involved, the Department took care to require recordkeeping only for those parameters which are essential for determining compliance with the applicable provisions of N.J.A.C. 7:27-16. The data required therein is the same data that owners or operators would also need to verify for themselves that they are operating in compliance.

The State of New Jersey, like many urbanized areas in the United States, has yet to achieve compliance with the National Ambient Air Quality Standard (NAAQS) for ozone, a standard established to protect public health. New Jersey exceeds the NAAQS for ozone.

The 1990 Clean Air Act amendments mandate that the State take all measures necessary to ensure that conformance with this health standard is achieved. The Department is required to take steps to ensure that at least all standards currently in effect are adhered to before proceeding to promulgate rules that regulate additional source categories or impose more stringent requirements on source categories now re-

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gulated. Pursuant to its obligations to ensure that the State is making reasonable further progress toward attainment of the national standard for ozone, the United States Environmental Protection Agency (EPA) has required the State to adopt recordkeeping requirements as one of these steps.

Considerations of equity also lead to the conclusion that all owners and operators, not just the conscientious ones already doing so, should gather and maintain the information they need to determine their compliance status. These records can and will be used by the State to monitor whether source operations are meeting the standards applicable to them. Owners and operators are encouraged to use them for the same purpose, thereby contributing to the effort needed to improve the quality of New Jersey's air.

The Department notes that the rules controlling VOC emissions have resulted in significant improvements in air quality. For example, in 1988 New Jersey experienced 45 days when the NAAQS for ozone was exceeded. Yet, for this year as of September 2, 1991, New Jersey experienced only 25 days when the ozone standard was exceeded, and the weather conditions needed to form ozone this year were at least as bad as in 1988.

**COMMENT:** Has the Department taken into consideration the small to very small business concerns which will be subject to these regulations? These firms do not have the manpower availability necessary to comply with the recordkeeping requirements as set forth in these proposed regulations. (6)

**RESPONSE:** To the extent feasible, consistent with its obligation to protect air quality, the Department has taken into consideration the effect of these rules on small businesses.

Very small sources of VOC have previously been exempted and continue to be exempt from these rules and do not need to comply with any of their provisions, including their recordkeeping requirements. For example, any stationary storage tank with a capacity less than 2,000 gallons and the gasoline dispensing facilities at any gas station with an annual throughput less than 10,000 gallons are not subject to these rules. Additionally, where alternatives were possible, the Department has attempted to select recordkeeping parameters most accessible to owners and operators of small businesses. Also, alternative recordkeeping options are provided at N.J.A.C. 7:27-16.5 and 6.

**COMMENT:** The 60 day period between adoption and the operative date of the amendments does not provide enough time to comply with the proposed recordkeeping requirements. One person suggested a compliance date six months after adoption. The other suggested a phased in approach by having recordkeeping requirements become applicable upon permit issuance, permit alteration, and permit renewal. (6, 14)

**RESPONSE:** The Department agrees that it is not appropriate or reasonable to have recordkeeping commence as of the operative date of the amendments. Facilities will need time to develop, acquire and implement new record keeping systems in order to comply. Therefore, the Department has adopted a new provision to allow for the implementation of new recordkeeping requirements after the operative date of the rule revision at N.J.A.C. 7:27-16.9(h) as follows:

(h) Any recordkeeping requirement set forth at N.J.A.C. 7:27-16.2(n), 16.3(w), 16.5(l), 16.5(m), 16.6(m) or 16.8(g) shall become effective on October 1, 1992, except for recordkeeping based on continuous emission monitoring. Any recordkeeping requirement based on continuous emission monitoring shall become effective on April 1, 1993.

N.J.A.C. 7:27-16.9(h) allows owners and operators over 12 months to come into compliance with recordkeeping requirements based on continuous emission monitoring and over six months for all other recordkeeping requirements.

**COMMENT:** The reporting requirements stipulated throughout this proposed regulation are inconsistent. The Department initiates these regulations with annual recordkeeping requirements and quickly digresses in following subsections to daily and then hourly requirements. This is inconsistent and overly burdensome. It would be much more feasible, economically viable, and far less burdensome if the Department would stipulate a single time frame (for example, annually, monthly, etc.) as a recordkeeping requirement. (6)

**RESPONSE:** The Department has developed recordkeeping requirements for different kinds of source operations to reflect the different compliance time periods for those operations. A single time requirement would be inappropriate for the many kinds of operations. Daily, annual, and hourly recordkeeping requirements reflect frequencies needed to ensure continuing compliance for specific source categories. To adopt an hourly requirement for every source is overkill for many sources and

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an annual requirement meaningless and unenforceable for other sources. For example, a surface coating operation which complies with N.J.A.C. 7:27-16.5 by a daily average of emissions would not need to verify compliance on an hourly basis. The Department has tried to tailor these recordkeeping requirements to provide meaningful information that operators can use to determine whether they are in compliance and to help them maintain compliance and demonstrate that compliance is continuous, not just achieved during a limited test or inspection period.

Furthermore, under Title V of the Clean Air Act Amendments of 1990, EPA is required to adopt regulations requiring compliance certification and plans. EPA should publish proposed rules in the Federal Register on May 10, 1991, entitled Compliance Certification and Compliance Plans. Recordkeeping provides the basis for certifying compliance and reporting non-compliance. Such recordkeeping is also consistent with pollution prevention goals and industry's efforts to self monitor and improve environmental performance.

COMMENT: If there are no emissions from a tank, then do records need to be kept pursuant to N.J.A.C. 7:27-16.2(n)? What about a tank with an emergency vent or pressure relief valve? (17)

RESPONSE: No records are needed for pressurized tanks which do not have emissions. Also, emergency venting does not require reporting pursuant to subchapter 16. Venting through pressure relief valves does require reporting if it is of a routine, rather than emergency, nature. However, any venting which poses a potential threat to public health, welfare or the environment or which might reasonably result in citizen complaints shall immediately be reported to the Department pursuant to N.J.S.A. 26:2C-19(e).

COMMENT: What is the purpose of requiring the information at N.J.A.C. 7:27-16.2(n)? This will not prove compliance with subchapter 16. Most of this information is available on the permit application. In addition, for tanks that handle waste, the exact chemical composition can vary widely and may not be known at any time. Chemical analyses are not generally completed until off-site shipment. Due to these limitations keeping an annual throughput of each chemical or its vapor pressure becomes unnecessarily burdensome. (11)

RESPONSE: The permit application only specifies what substances a tank is permitted to contain. If records are not kept on what substances the tank actually contains, compliance cannot be documented. Furthermore, the recordkeeping requirements also apply to storage tanks that do not need to have permits pursuant to N.J.A.C. 7:27-8.

For waste storage, the general composition of the waste, including its major components, can be recorded if the exact composition is not known. Different kinds of waste must be recorded separately.

COMMENT: The level of recordkeeping at N.J.A.C. 7:27-16.2(n) is redundant and will place an undue burden on industry. The VOC stored, the VOC vapor pressure, and the maximum annual throughput are required information on the air permit application for a storage tank permit. Information on the actual annual throughput and the dates stored per individual tank are not usually recorded. This information provides little additional value to the Department and greatly increases industry's monitoring, measuring, and recordkeeping burden. It is requested that the Department clarify its stand on "annual throughput." Is this figure calculated on a fiscal or annual calendar (that is, the last calendar year or the previous 365 days)? Is it a reconciliation of pounds utilized or replaced during a daily cycle, or is it established on some other arbitrary date? (6)

RESPONSE: The Department has removed the requirement to record the annual throughput and the dates of storage of VOCs from N.J.A.C. 7:27-16.2(n) upon adoption because throughput and dates of storage are not needed to verify compliance with subchapter 16. It should be noted that this does not prohibit the Department from requesting such data, or similar data, through air pollution inventories or Right to Know programs. Sources should have sufficient records to determine annual throughput in order to calculate and report annual emissions pursuant to other rules.

Although the VOC and the vapor pressure of the VOC are required information for the permit application, the recordkeeping requirements are necessary to verify continued compliance after the permit and certificate are issued.

COMMENT: One person recommended deleting the recordkeeping requirements for the vapor pressure of each VOC stored and the corresponding dates the tanks were used to store the VOC at a light product distribution facility.

Currently, the State regulates the Reid vapor pressure limits by month for the products we sell and is thus aware of the vapor pressure on a daily basis. Additionally, our distribution facilities typically utilize the

same tank for a specific product such as unleaded gasoline, day after day, year after year. Yet the regulation as proposed, will require us to record on a daily basis, the fact that unleaded gasoline is still stored in tank 101 and the vapor pressure has only changed .01 from yesterday. While we strive to protect the environment and be responsive to environmental issues, I fail to see how the accumulation of mounds of paperwork which will be generated and stored for five years will improve air quality, especially when the majority of the information gathered is already available to the State. (10)

RESPONSE: The amendments at N.J.A.C. 7:27-16.2(n) do not specify a frequency for keeping records. For storage tanks that store the same VOC for long periods of time, recordkeeping does not need to be maintained daily. Only when the material being stored changes, must a record be made. For example, if throughout a calendar year the same VOC was stored in the same tank, the record should show a single VOC and vapor pressure. Such a vapor pressure record can be a maximum value, provided that the value complies with all rules and permits. Variations of vapor pressure of a VOC mixture, such as gasoline, need only to be recorded if the vapor pressure exceeds the previously recorded vapor pressure.

COMMENT: The recording requirement at N.J.A.C. 7:27-16.2(n) places an enormous, costly burden on a large facility to document and maintain records of normal, in compliance operations with no obvious benefit to the Department. A prudent operator collects sufficient data to manage his business safely, in compliance with regulations, and profitably. Data serving multiple purposes can be used on an ad hoc basis to demonstrate compliance.

To comply with these tank recordkeeping requirements an operator must compile existing and specially collected data into a cohesive record for each tank. Where tanks are permitted to store many materials, each change in the stored material generates a record change. A large facility may operate hundreds of tanks with many raw materials, intermediates, or finished products. Specific, rather than generic VOC names of materials, may be used based solely on factors such as raw material origin or product destination.

This requirement merely increases the potential for recordkeeping violations due to the failure to maintain records of routine data. A record showing actual data, different than the permit basis data should not by itself be considered non-compliance since the emissions are calculated based on a combination of variables. The recordkeeping requirement should be deleted. (8)

RESPONSE: These recordkeeping requirements were mandated by the Clean Air Act Amendments of 1990 (Section 172(d)) and EPA so that compliance with N.J.A.C. 7:27-16 can be verified. These requirements specify the minimum information necessary to verify compliance.

The requirement at N.J.A.C. 7:27-16.2(n) includes recording each time the contents of the stored material changes. This requirement is necessary to verify that the control apparatus of the tank is appropriate for storing the new material as specified by N.J.A.C. 7:27-16.2 and to ensure that the tank is operated in accordance with its permit.

If the VOC stored consists of a mixture of compounds of which the exact composition is not known (such as waste oil), the major constituents may be recorded, instead of recording each individual compound. In this case, the vapor pressures of the major constituents should be recorded if the vapor pressure of the mixture is not exactly known. Another alternative is to record a maximum value of vapor pressure, provided the mixture would have a vapor pressure clearly less than the recorded vapor pressure and the tank controls are sufficient for that vapor pressure.

For gasoline and other commercial mixtures of VOC, compliance with the recordkeeping requirement at N.J.A.C. 7:27-16.2(n) is satisfied by recording the commercial name of the mixture, for example, gasoline, and the maximum vapor pressure of the mixture.

These recordkeeping requirements were developed so that compliance with N.J.A.C. 7:27-16.2 can be verified. These records showing actual data can be used to enforce violations of any provision within the scope of the Air Pollution Control Act, including N.J.A.C. 7:27-8 and 16.

COMMENT: Does N.J.A.C. 7:27-16.3(w)2ii require that industry install CEMs to record VOC concentration levels measured as methane or record the date and time of carbon regeneration or replacement within equipment such as vapor recovery units?

The three light products distribution terminals my company operates in New Jersey all possess carbon adsorption vapor recovery units. The units are designed with automatic shutdown devices which are activated if the carbon becomes saturated, thus precluding the emission of free flowing vapors. We are not aware of any CEM which can accomplish

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this task. The CEMs as currently designed, measure the total VOCs butane rather than methane as you are proposing and do nothing to prove the efficiency of the vapor recovery unit or detect the saturation level of the carbon. The CEMs only measure emissions which may fluctuate during peak loading hours but do not ensure compliance with the 35 mg/l or more stringent requirement; as such, we oppose this option.

Regarding the proposed option of recording the date and time of carbon bed regeneration or replacement, the carbon adsorption vapor recovery units utilized by industry, in conjunction with loading rack operations, have at least two carbon beds which regenerate, on an alternating basis every 15 minutes. This process, as designed, extends the life of the carbon indefinitely; as such, it is not uncommon to operate a vapor recovery unit with the same carbon for a 10 year period or longer. Therefore, we oppose the requirement of recording the carbon regeneration process every 15 minutes and support documenting carbon replacement thus avoiding unnecessary and insurmountable paperwork. (10)

RESPONSE: The Department agrees that to require the regulated community to record VOC concentrations as methane when the current design of continuous emission monitors measure VOCs as butane is not prudent. Upon adoption, the Department has deleted the words "measured as methane" from N.J.A.C. 7:27-16.3(w)2ii, 16.5(m)3i, and 16.6(m)3i.

The Department maintains the necessity for the records to demonstrate compliance. As an alternate means of recording the concentration of VOC in the flue gas, records may be maintained on when the carbon is regenerated or replaced. This requirement is necessary so that the proper operation of carbon adsorption units can be verified by both the operator and by the Department. Routine procedures, such as carbon regeneration every 15 minutes may be so noted on these daily records.

COMMENT: One person recommended deleting the requirement at N.J.A.C. 7:27-16.3(w) which states that the Department has the right to request any information at any frequency from a facility. Although the intent may be to insure compliance with Air Quality Regulations, a firm may be forced to spend hundreds of man hours each week or month generating reports which have no basis except to the individual requesting the information. (10)

RESPONSE: The information that may be required to be recorded by the Department pursuant to N.J.A.C. 7:27-16.3(w) is limited to any operating parameter that is relevant to the prevention or control of air contaminant emissions from the facility. The recording frequency of the operating parameter would be based on the variability of the operating parameter and the expected effect of any variation on the emissions of air contaminants. This additional information that may be required would be to supplement the records required pursuant to N.J.A.C. 7:27-16.3(w)1 and 2 and is not expected to cause any significant human resource needs. The Department does not expect firms to spend hundreds of man hours each week to comply with the recordkeeping requirements.

COMMENT: At N.J.A.C. 7:27-16.5(m)1 it is recommended the following for each surface coating formulation as applied, the following specifications:

- i. The number of hours applied each day
- ii. The volume applied each day
- iii. The analytical VOC content of the formulation as determined by Federal Reference Method 24.

(iv. through vi.—delete as replaced by iii above)

N.J.A.C. 7:27-16.5(m) should be changed to allow companies that have standard formulas to list the formula designation along with the hours and volume applied only on the daily records. Formulation sheets should be kept with the daily records files until changed. Changes in the standard formulas should be noted with the date of change over. Non-standard formulas should have the full documentation. This method would conform more to the actual production records that most companies now keep and would reduce the recordkeeping burden. (4,17)

RESPONSE: The Department has specified the information required at N.J.A.C. 7:27-16.5(m)1, but has not specified the format in which this information must be recorded. The results of analytical tests or information on standard formulation sheets can satisfy portions of the recordkeeping requirements provided that the required information can be readily extracted from them. The information required by N.J.A.C. 7:27-16.5(m)1iii through vi are parameters needed to perform calculations to determine compliance with N.J.A.C. 7:27-16.5, and must be available in the facility records.

To make this procedure clear, that compliance through the least burdensome method is acceptable, the Department has added the following provision at N.J.A.C. 7:27-16.5(n):

(n) All or part of the information documenting the composition of a surface coating formulation as required by (l) or (m) above, may be in the form of standard formulation sheets, material safety data sheets, the results of analytical tests, or another form provided that the required information can be readily extracted.

COMMENT: At N.J.A.C. 7:27-16.5(m), "The density of the VOC in the formulation" should be deleted from the daily record since this should be a standard number which can be looked up. The daily record should only have items which are variable. (17)

RESPONSE: The density of VOCs used are needed to calculate compliance with the emission limit. The density of VOC is not a standard number and depends on the specific compound or mixture of compounds. Thus, the Department has adopted N.J.A.C. 7:27-16.5(m) as proposed.

COMMENT: Consider adding some record system to N.J.A.C. 7:27-16.5(m) that shows the relationship between the control device and the process so that the Department can see that the two are being operated together. A concurrent suggestion is to require that a control device have at least an alarm system to alert production personnel when the control device is not in operation or require an interlock so the control device must be operating to run the process. (17)

RESPONSE: The approval of alarms and interlocks is part of the permit review process. Because of the variables involved with the types of operations and the operational parameters, it is infeasible to specify alarm and interlock requirements in the rule. The Department will continue to require alarms and/or interlocks on a case-by-case basis in the permit review process.

COMMENT: The Department's requirement at N.J.A.C. 7:27-16.5(m)1 for hourly recordkeeping is overly burdensome and unnecessary. The recordkeeping costs alone will force many companies, especially small companies, to close down operations in New Jersey and relocate to other states. (6)

RESPONSE: The recordkeeping requirement set forth at N.J.A.C. 7:27-16.5(m)1 requires that records be maintained on a daily, not hourly, basis. It does require, however, that the number of hours a specific surface coating formulation is applied be recorded. This is necessary to determine compliance with the control efficiency requirements as set forth at N.J.A.C. 7:27-16.5(a)3, and daily weighted VOC content as set forth at N.J.A.C. 7:27-16.5(a)2.

The provisions of the rule do offer an alternative to this recordkeeping at N.J.A.C. 7:27-16.5(l). If an owner or operator uses only surface coating formulations that conform with the standards set forth in the tables in that section, such detail as the number of hours a formulation is applied need not be recorded. The Department estimated that the most complicated recordkeeping costs when using both compliant and non-compliant coatings will be less than \$3,700 per source per year and does not expect recordkeeping costs will cause facilities to close down or relocate.

COMMENT: N.J.A.C. 7:27-16.6(m)1ii: The pilot plant permit holders have performance based limits and complete pre- and post-calculations to determine compliance with subchapter 16. The Department should clarify if this information should be sufficient to meet the requirements of this section.

Detailed recordkeeping requirements that demonstrate VOC emission compliance have been developed for the Pilot Plant Permitting Policy. Additional or duplicative recordkeeping requirements for facilities permitted under this policy should not be required. (11,14)

RESPONSE: Duplicative recordkeeping requirements will not be required for equipment permitted under the Pilot Plant Permit Procedure. The information required under N.J.A.C. 7:27-16.6(m) can be included on the calculation pages, diagrams, Pre-Experiment Approval Form, and Post-Experiment Review Form for each experiment (or batch) run in the equipment. These items are all currently required as records for equipment permitted under the Procedure. Records of information not required by the Procedure, such as test data, can be included with the items listed above.

COMMENT: Recent level III (including batch permits) air permits have conditional approvals that require process monitoring to verify VOC emission compliance. These facilities should not be given additional or duplicative VOC recordkeeping requirements. (14)

RESPONSE: Process monitoring is used to ensure that the equipment is operating as expected and as allowed in the permit regardless of the

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nature of the air contaminants or raw materials involved. These monitors cannot be substituted for the records required under N.J.A.C. 7:27-16.6(m) because the process monitors required in the air permits monitor operational parameters, such as temperature, pressure, and flow rate, and do not measure emissions. Although these monitors generally indicate proper equipment functions, they do not verify compliance with emission standards.

COMMENT: The recording and reporting obligations at N.J.A.C. 7:27-16.6(m)1 require permittees to report detailed product and formula information. No provisions exist for the assertion of a confidentiality claim. (1)

RESPONSE: The Department agrees that some types of information required to be submitted under these rules may be entitled to confidential treatment. Existing provisions of N.J.A.C. 7:27 already address the commenter's concern. N.J.A.C. 7:27-8.14 through 8.25 provide for the assertion of confidentiality claims for information required to be submitted under the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. The Department has amended N.J.A.C. 7:27-8.14(a) to make it clear that information required to be submitted under these rules, which are promulgated under the authority of the Air Pollution Control Act, is included within the scope of those confidentiality provisions. N.J.A.C. 7:27-8.14(a) is therefore amended to read as follows:

(a) Any person required to submit any information, pursuant to the provisions of the Air Pollution Control Act (N.J.S.A. 26:2C-1 et seq.), this subchapter, or N.J.A.C. 7:27-16.2(n), 16.3(w), 16.5(l), 16.5(m), 16.6(m), or 16.8(g), which in the person's opinion constitutes trade secrets, proprietary information, or information related to national security, may assert a confidentiality claim by following the procedures set forth in this subchapter. Emissions information may not be claimed as confidential.

Additionally, the following language has been added at N.J.A.C. 7:27-16.9:

(i) Any person who reports information to the Department pursuant to the requirements set forth at N.J.A.C. 7:27-16.2(n), 16.3(w), 16.5(l), 16.5(m), 16.6(m), or 16.8(g) may assert a confidentiality claim for that information in accordance with the procedures set forth at N.J.A.C. 7:27-8.14.

COMMENT: When does a record pursuant to N.J.A.C. 7:27-16.6(m)1i have to be created? Can it be once per month upon review of batch records or does it need to be generated at the time of the batch? (5)

RESPONSE: Actual process parameters must be recorded at the time of the batch. Calculations required to comply with this provision must, at a minimum, be prepared on a quarterly basis, which is consistent with the Department's practice of requiring that excess emissions reports be submitted quarterly.

COMMENT: At N.J.A.C. 7:27-16.6(m)1ii, what is meant by a "worst case" analysis? Is it the process with the largest emission rate of VOC or is it pushing a process past normal operating conditions? For purposes of clarification, the Department should readdress the term "worst case" and clarify its definition with regard to operational and regulatory issues. (1,5,6)

RESPONSE: To clarify the explanation of "worst case" at N.J.A.C. 7:27-16.6(m)1ii, the Department has added the following definition at N.J.A.C. 7:27-16.1:

"Worst case operating condition" means the conditions of operation which result in the maximum VOC emission rate for any hour period for a continuous operation or the maximum VOC batch cycle emission rate for a batch operation, considering any enforceable limitations on the operation including those set forth in any applicable rule or regulation, permit, or operating certificate."

COMMENT: Much of the recordkeeping information requested in this section is redundant to the requirements of the air permit application. These requirements should be incorporated into the air permit application, rather than specified in the rule. The Department should also note that thermal oxidizers are not always required to be installed on small fume afterburners by the Bureau of New Source Review. (6)

RESPONSE: Recordkeeping requirements that demonstrate continuing compliance of a source operation are not redundant with the information in a permit application. An application projects compliance, but does not periodically demonstrate compliance based on actual operating data. Recordkeeping requirements complement, and are a logical outgrowth of, compliance projections in a permit application.

Also, the adopted recordkeeping requirements are the minimum needed for existing source operations which may or may not have a permit and operating certificate. For sources that apply for permits, these recordkeeping requirements may be incorporated into the conditions of

the operating certificate. Also, additional case by case recordkeeping may be specified as conditions of an operating certificate pursuant to N.J.A.C. 7:27-8.8 and 8.9.

The Department recognizes that some sources are not required to operate with thermal oxidizers. These sources are not subject to the recordkeeping requirements at N.J.A.C. 7:27-16.6(m)2.

COMMENT: N.J.A.C. 7:27-16.6(m)1i: In a batch permit, the product characterization sheet for each process provides categories of raw materials, the source gas range classification and maximum allowable emission rates. The permit also contains lists of raw materials for each category listed on the product characterization sheets. If the permittee has a batch permit, this information should be sufficient to meet the recordkeeping requirements of this section. In addition, the Department requires that an example calculation is shown to indicate that the permittee knows how to comply with N.J.A.C. 7:27-16.6.

In a pilot plant permit, engineers are required to complete pre- and post-calculations showing emissions are in compliance with N.J.A.C. 7:27-16. This type of documentation should be sufficient to meet this section.

Since the number of people holding batch and pilot plant permits has significantly increased in the last few years, the Department should adopt this alternate documentation to save time and money for both the Department and the regulated community. This type of recordkeeping requirement should be specifically allowed for in the permit conditions. (11)

RESPONSE: The information the Department requires for batch operations is the minimum information for a company to verify compliance with subchapter 16. The information in the permit is calculated only at the time of the application and does not verify continued compliance. Since the Department requires an example calculation to be done, operators of batch plants should be able to keep these records.

COMMENT: N.J.A.C. 7:27-16.6(m)1ii: The term "potential VOC emission rate" should be defined. Does this term include before or after control emissions? (11)

RESPONSE: The term "potential VOC emission rate" has been removed from N.J.A.C. 7:27-16.6(m)1ii. For clarification, the Department has amended N.J.A.C. 7:27-16.6(m)1ii upon adoption to read as follows:

Conduct an analysis of the source operation, which demonstrates that, under worst case operating conditions that maximize the VOC emissions after any control, the VOC emission rate of the source operation is in compliance with this section; and maintain process records sufficient to demonstrate whether the VOC emission rate of the source operation from actual operations does not exceed the VOC emission rate under worst case operating conditions.

COMMENT: N.J.A.C. 7:27-16.6(m)1ii: A "worst case" analysis is currently determined on conventional and batch permits. The Department should clarify if this information should be sufficient to meet the requirements of this section. (11)

RESPONSE: The "worst case" analysis currently determined for continuous or batch operations during the permit process is sufficient to meet only part of requirement at N.J.A.C. 7:27-16.6(m)1ii. Process records which can be used to indicate whether the operation runs in compliance also must be maintained.

COMMENT: N.J.A.C. 7:27-16.6(m)1ii: The Department should describe what type of process records should be maintained to show compliance with N.J.A.C. 7:27-16. (11)

RESPONSE: To demonstrate compliance with N.J.A.C. 7:27-16.6(m)1ii, the same process parameters used to determine the "worst case analysis" should be recorded. Since there are a great variety of industrial sources which are subject to N.J.A.C. 7:27-16.6, it is impractical to specify the process parameters in the text of the rule.

COMMENT: N.J.A.C. 7:27-16.6(m)2: A continuous monitor and not a continuous recorder should be required. The rules should allow for flexibility for other intervals of monitoring. (11)

RESPONSE: The rule allows flexibility for other intervals of monitoring in the use of the phrase "or at a frequency approved in writing by the Department." Where the Department requires a continuous emission monitor, it generally also requires a continuous emission recorder.

COMMENT: At N.J.A.C. 7:27-16.9(a), why is the record retention period five years and not three years? (5)

RESPONSE: The five year record retention time period was chosen to be consistent with the Department's five year permit and certificate life.

COMMENT: Concerning N.J.A.C. 7:27-16.9(a), how soon after the request must these records be made available? The Department does not provide a guideline with regard to this requirement. Secondly, when

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does the maintenance of records begin? Must all calculations required (for example, N.J.A.C. 7:27-16.6(m)) be performed by the effective date of the regulation? Some of this information may require substantial time to gather, especially at a plant with a large number of permits and/or a large number of varying processes. Do these requirements fall back retrospectively to all existing or pending permits or do they only apply to new applications and renewals? If they apply to existing permits, will the Department make any attempt to notify those permit holders of these requirements or will the burden of compliance be placed solely upon the facility? (6)

RESPONSE: Recent production records must be made available immediately upon request during site inspection. Archival records must be made available within a reasonable amount of time, for example, three working days, which is a reporting deadline in many permit conditions.

The calculations and recordkeeping requirements required as a part of this subchapter must commence by October 1, 1992, or in the case of new continuous emission monitors, April 1, 1993. (These deadlines were provided in response to another comment.)

Reporting requirements are required to address rule deficiencies and apply to all applicable operations, whether new or existing, or whether covered by a permit or not.

Formal notice of the new requirements is made through publication in the New Jersey Register. The Department will mail full text of the adopted rules to facilities currently operating sources which are affected by these amendments. The Department also frequently meets with industrial associations to verbally explain new requirements and encourages informal notice through association mailings. The Department will assist notice through this means either by drafting articles for publication in newsletters or by reviewing articles drafted by industrial representatives.

COMMENT: Does N.J.A.C. 7:27-16.9 require the use of the Department's and USEPA's approved methods or does it require the approval of the methods by both the Department and USEPA? Several parts of this section are not clear. Approval by both agencies of a test method would be very time consuming and expensive. Who has final say if one approves and the other does not? How do you mediate so that the permittee does not have to spend a fortune on lawyers and consultants which has already happened? (17)

RESPONSE: N.J.A.C. 7:27-16.9(f) specifies either that test methods set forth at N.J.A.C. 7:27B-3 (Test Method 3) or that other methods approved both by the EPA and the Department be used. Test Method 3 is approved by both agencies. Therefore, if a company chooses to use a different test method, it must be submitted to the Department. The Department would then evaluate the submitted test method and seek EPA's approval. The company seeking approval of a test method previously not approved would only need to coordinate with the Department, not both agencies. If either agency will not accept the method, the method may not be used.

Any person contemplating use of a method not included in Test Method 3 and which has not been previously approved by both the EPA and the Department should allow adequate time for both agencies to review and reach a determination as to the acceptability of the method prior to the required test date.

COMMENT: Concerning N.J.A.C. 7:27-16.9(d), the Department must realize that providing facilities for testing is a time consuming task for industry and as such it will take some time to write a protocol, have it approved, hire a consultant and have the consultant test a piece of equipment. (11)

RESPONSE: N.J.A.C. 7:27-16.9(d) does not require the company to test the equipment, only to ensure that test facilities are available, and to provide access to equipment and facilities needed to conduct such tests in the event that the Department and/or USEPA stack test the equipment. Also, this provision is a long standing requirement and was not new to this rule with these amendments.

COMMENT: For batch operations the limits utilized are "Batch Average VOC Limits." How will N.J.A.C. 7:27-16.9(g) be applied to such operations? Clarification by the Department on the batch process issue is required. If it is the intent of the Department to apply the requirements of this section to emissions testing only, the Department should then clarify its intent in such a manner as to avoid any possible interpretation by industry or enforcement agencies. (6)

RESPONSE: Compliance with batch average emission limits are determined by recordkeeping and testing pursuant to a test protocol approved by the Department. Since batch operations are highly variable, case-by-case test procedures are generally required.

COMMENT: Regarding N.J.A.C. 7:27-16.9(g) in certain cases, a test may be required on certain steps that emit for less than an hour, for

example, 15 minutes. The Department should allow for testing only during the emission step, not during the remainder of the 45 minutes. This requirement is too detailed for a regulation and should be handled by the Department on a case-by-case basis through an approved testing protocol. (11)

RESPONSE: The Department concurs with this comment and has added the following language at N.J.A.C. 7:27-16.9(g) to account for operations which last less than 60 minutes and to account for circumstances where a longer than 60 minute period may be appropriate:

"If circumstances require that test periods be less than, or more than 60 minutes (such as when an operational duration is less than 60 minutes or when detectability limits are approached for low concentration gas streams), the Department may require different test periods in its review and approval of test protocols."

COMMENT: Testing to verify compliance with an hourly emission rate should be based on the average of three one hour tests, consistent with EPA guidelines. It is recommended the language at N.J.A.C. 7:27-16.9(g) be revised as follows:

Hourly emissions limits apply to any consecutive 60 minute period. Testing performed to verify compliance shall consist of three separate 60 minute periods during which the equipment or control apparatus is used and operated under conditions acceptable to the Department and consistent with the operational parameters and limits set forth in any permit or certificate in effect. For purposes of determining compliance, the arithmetic mean of the results of the three shall apply. Maximum allowable emission rates shall be prorated to actual production during stack testing. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of sample train, extreme meteorological conditions, or other circumstances, beyond the owner or operator's control compliance may, upon approval of the Department, be determined using the arithmetic mean of the results of the two other runs. (4)

RESPONSE: N.J.A.C. 7:27B-3 indicates that three valid test runs are to be conducted. Determining compliance for each of the three tests has been a New Jersey requirement prior to the adoption of the test procedures in N.J.A.C. 7:27B-3. So few tests are done on source operations, that it is appropriate to make each test a separately enforceable means to determine compliance. An arithmetic average of two or three tests is not acceptable for determining compliance with this subchapter because the emission standards at N.J.A.C. 7:27-16 are hourly limits.

Allowable emissions cannot be accurately "prorated" based on production levels. That is why the Department requires a company to test at or near worse case conditions or at the maximum production rate allowed by the permit.

**Comments on the Definition of VOC**

COMMENT: One person commends the Department for proposing the amended definition of "volatile organic compounds" or "VOC" appearing in N.J.A.C. 7:27-8.1 (and elsewhere in the proposed rules) with respect to limiting the definition to a substance "that participates in atmospheric photochemical reactions." The person stated that this change is consistent with previous comments on this regulation which pointed out the extent to which volatile compounds actually enter the atmosphere will be heavily dependent upon the consumer's use of each product, such as how frequently the product is used and method of application, and the fate of the product's ingredients upon disposal.

For example, the bulk of the industrial products are used in aqueous wash solutions which, upon disposal, enter sewage treatment systems. Virtually all (90 percent or more) of the volatile compounds in such products are disposed in this manner, where they are essentially eliminated by biodegradation. Thus, very little of the volatile organic compounds reach the atmosphere and thus very little have the potential to participate in photochemical reactions. This proposed definitional change recognizes that the VOCs present in many matrices are not equivalent to the amounts participating in photochemical reactions. This person, therefore, supports this proposed definitional change. (19)

RESPONSE: The Department acknowledges this support of the revised definition.

COMMENT: What is the purpose of changing the definition of VOC? The definition of VOC should not be changed as proposed. (16)

RESPONSE: The United States Environmental Protection Agency mandated the Department to change the definition of VOS, specifically to remove the vapor pressure limit as a means to define VOC.

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COMMENT: Why change the definition of VOC from a vapor pressure limit to atmosphere photochemical reaction, when vapor pressure limits are inserted throughout the text of the rule? (16)

RESPONSE: The vapor pressure limit is removed because, although an organic substance having a vapor pressure less than 0.02 pounds per square inch (one millimeter of mercury) absolute would not evaporate quickly at ambient conditions, under certain conditions such as at high temperatures (for example, coatings dried in ovens), the organic substance has the potential to enter the atmosphere at a substantial rate and participate in the formation of ground level ozone. Specific organic substances continue to be exempt from the definition of VOC and are listed in the definition.

COMMENT: Will the proposed definition include more or less the same substances as the old definition? Will it just make it more difficult to determine whether a substance is a VOC or not? The criteria to determine whether a compound participates in atmospheric photochemical reactions is unclear. It is more practical to determine the applicability of the definition of VOC by the vapor pressure of an organic substance rather than whether the substance participates in atmospheric photochemical reactions. (1, 7, 14, 16)

RESPONSE: The new definition and amendments to the rule will regulate essentially the same substances as the previous definition and rule. Where, in the text of N.J.A.C. 7:27, vapor pressure clauses (having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch . . .) modify the term VOC, the same substances as in the old definition, VOS, are regulated. Where no vapor pressure clause modifies the term VOC, any organic substance measured by the appropriate test method is regulated.

In practice, a determination of photochemical reactivity is not required to determine if a substance is a VOC. Whether an organic substance is considered a VOC is determined by approved test methods, such as N.J.A.C. 7:27B-3. Also, Air Test Method 3 will determine how much VOC is emitted, irrespective of photochemical reactivity, except for the specifically exempt substances.

COMMENT: Where can one find out whether a particular organic or organic/inorganic mixture can participate in atmospheric photochemical reactions? And is there a test to determine this? (6, 16)

RESPONSE: EPA has developed test protocols to predict the photochemical reactivity of organic compounds. The first test protocol entitled, Experimental Protocol for Determining Hydroxyl Radical Reaction Rate Constants for Organic Compounds (EPA 600/3-85/058, June 1985), compares the hydroxyl radical reaction rate of a compound with the rate of ethane. If the rate of a compound less than ethane, EPA considers the compound to be negligibly photochemically reactive. As stated in a review document entitled, Review of the U.C.R. Protocol for Determination of OH Rate Constant with Volatile Organic Compounds and its Applicability to Predict Photochemical Ozone Production (EPA 600/3-85/046, January 1988), the follow-up chemistry involved with compounds having a OH reaction rate constant greater than ethane is important in determining photochemical reactivity. In consideration of this finding, EPA has recently developed a document entitled, Development of Ozone Reactivity Scales for Volatile Organic Compounds (EPA 600/3-91/050, August 1991).

However, determination of photochemical reactivity is not directly relevant to whether a substance is a VOC regulated under N.J.A.C. 7:27-16. EPA uses the methods mentioned above to exempt specific substances from regulation. As discussed above, New Jersey may not provide for the same exemptions and regulates all VOC not specifically exempted under the definition of VOC.

COMMENT: The revised definition of VOS to VOC contains a reference to include for a coating line "any coalescing or other agent which evaporates from the coating during the application and drying phase." This is a little too broad and should not include water or other compounds that do not contribute to photochemical smog and which are not regulated in the New Jersey State Implementation Plan. (17)

RESPONSE: The Department has amended the definition of VOC throughout the proposed rules in response to this comment. Within this definition, the sentence regarding surface coating formulations is modified as follows:

"In the case of surface coating formulations, this term also includes any coalescing or other agent which is an organic substance and evaporates from the coating during the application and drying phase."

This amendment clarifies the Department interpretation and current analytical practices at N.J.A.C. 7:27B-3 which take into account the presence of water and other inorganic substances in surface coating formulations and source gases.

COMMENT: In response to the proposed definition of Volatile Organic Compounds, the Department should add the following five halocarbon compounds and four classes of perfluorocarbon compounds to the list of compounds that are excluded from the definition of VOC:

**Halocarbon compounds**

- 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
- pentafluoroethane (HFC-125)
- 1,1,2,2-tetrafluoroethane (HFC-134)
- 1,1,1-trifluoroethane (HFC-143a)
- 1,1-difluoroethane (HFC-152a)

**Classes of perfluorocarbon compounds**

1. cyclic, branched, or linear, completely fluorinated alkanes;
2. cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
3. cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
4. sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

EPA has added these compounds to the list of organic compounds which have negligible photochemical reactivity and they should be exempt from regulation under state implementation plans to attain the national ambient air quality standard (NAAQS) for ozone (56 FR 11418 and 56 FR 11387).

Adopting EPA's definition of VOC and exempting compounds determined by EPA to be photochemically non-reactive will have a net benefit on the environment. Industry is transitioning from CFC refrigerants and blowing agents to CFC alternatives (including HCFCs). VOC emission limits for CFC alternatives will inhibit this voluntary transition in use and manufacture. Currently, the Department requires stringent emission control of exempt CFCs through the subchapter 8 "state of the art" review. CFCs and HCFCs are unusual compounds in that their vapor pressures are high (typically above atmospheric) and their molecular weights are high. As a result, recovery is difficult, particularly in the presence of inerts. Start-up, shut-down, or maintenance preparation activity can often generate infrequent, short-term emissions that can be permitted by state of the art review. If subchapter 16 VOC regulations apply to a contaminant, the hourly exclusion rate or control efficiency requirements are inflexible, even if the emission is of short duration, and of negligible annual quantity, additional control equipment will be required.

CFC production will eventually be eliminated as mandated by the Clean Air Act Amendments of 1990 by the year 2000. However, significant early reductions in the use and manufacture of CFCs can be accomplished if transition to the CFC alternatives is encouraged. CFC alternatives (namely the HCFCs) have been demonstrated to have negligible impact on ground level atmosphere ozone formation, and transitioning from CFCs to CFC alternatives has been shown to have a net beneficial effect on the stratospheric ozone layer. Hence, EPA exempted several of the CFC alternatives.

For the reasons stated above, namely to promote CFC to CFC alternative transition, avoid different state and federal definitions of VOC, to clearly define compounds that do not participate in atmospheric photochemical reactions, and to provide an avenue to demonstrate that a compound is negligibly photochemically reactive (that is: EPA petition) the commenter recommends that the Department adopt the EPA definition of VOC in its entirety. Pennsylvania has adopted EPA's definition of VOC, the same wording would be effective for New Jersey's Administrative Code:

"VOC—Volatile Organic Compound—An organic compound which participates in atmospheric photochemical reactions other than those which the Administrator of the EPA designates in the Federal Register as having negligible photochemical reactivity and those compounds excluded from the definition of volatile organic compounds at 40 CFR 51.165(a)(1)(xix)." (Pennsylvania Code, Title 25, Chapter 121, Section 121.1)

A state can have more stringent requirements than the Federal government, but in terms of credit towards attainment of the ozone standard, EPA will not allow reductions from these compounds to be credited towards attainment. Additionally, EPA will not enforce against a person using one of the compounds EPA considers exempt because of negligible photo-chemical reactivity. (7, 14, 20)

RESPONSE: The Department agrees with many of the facts provided by the commenter. However, the Department is not currently prepared to reach the conclusion that additional compounds should be exempted from the definition of VOC, because of other considerations not mentioned in the comment.

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The Department acknowledges that EPA has found several compounds to the negligibly photochemically reactive and, therefore, is exempting them from its definition of VOC (see the Federal Register of January 18, 1989, (54 FR 1987) and of March 18, 1991, (56 FR 11418)).

The compounds being exempted by EPA are:

- dichlorotrifluoroethane (HCFC-123)
- 1,1,1,2-tetrafluoroethane (HFC-134a)
- dichlorodifluoroethane (HCFC-141b)
- chlorodifluoroethane (HCFC-142b)
- chlorotetrafluoroethane (HCFC-124)
- pentafluoroethane (HFC-125)
- 1,1,2,2-tetrafluoroethane (HFC-134)
- 1,1,1-trifluoroethane (HFC-143a)
- 1,1-difluoroethane (HFC-152a)

and the following four classes of perfluorocarbons:

- (1) cyclic, branched, or linear, completely fluorinated alkanes
- (2) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations
- (3) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations
- (4) sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

The Department finds merit in the commenter's view that this rule should not inhibit the transition away from the use of CFCs to alternatives less damaging to stratospheric ozone, provided other deleterious effects are also addressed. The Department is currently deliberating how to resolve this issue and is carefully examining all of the effects of such a change, including, but not limited to, ground level ozone formation, stratospheric ozone depletion, and toxic effects, to reach an environmentally sound determination as to whether to propose changes to the exemption list for the definition of VOC.

The Department expects to publish its decision on this issue in response to a rulemaking petition by the March 16, 1992 edition of the New Jersey Register.

**COMMENT:** The current definition would appear to result in defining an entire mixture of organic and inorganic substances as a volatile organic compound. For instance, a product which contains one percent of a volatile organic and 99 percent water could be seen to be "a mixture of organic and inorganic substances that participates in atmospheric photochemical reactions," and thus would be 100 percent VOC. (7)

**RESPONSE:** The Department agrees with this comment. Therefore, the definition of "volatile organic compound" has been amended throughout this document upon adoption to read as follows:

"Volatile organic compound" or "VOC" means any organic substance, mixture of organic substances, or the organic components of any mixture of organic and inorganic substances that participates in atmospheric photochemical reactions . . .

While mixtures of organic and inorganic substances are defined as VOC, mixtures having low organic contents would most likely meet the standards in subchapter 16.

#### N.J.A.C. 7:27-8 Permits and Certificates

**COMMENT:** The term "distillates of air" should be expanded to include hydrogen. Hydrogen is a distillate of air and is naturally present in air as a small percentage. (11)

**RESPONSE:** The Department has not amended the definition of "distillates of air" upon adoption. The fact that hydrogen is a component of dry atmospheric air in a very small percentage does not justify its exemption from the definition of "air contaminant", as "distillates of air" are exempt from the definition of "air contaminant." Other compounds, such as methane, nitrogen dioxide, and ozone, are listed as components in small concentrations of dry atmospheric air in the text Air Pollution: Its Origin and Control, by Kenneth Wark and Cecil F. Warner, copyright 1976. These compounds are considered to be air contaminants by the Department. The Department only considers noble gases and the major components of atmospheric air (that is, nitrogen, oxygen, and carbon dioxide) to be distillates of air.

The commenter may submit a petition for rulemaking (see N.J.A.C. 7:1), with justification demonstrating that hydrogen does not contribute to the formation of air pollution and should be exempt from the definition of air contaminant.

#### N.J.A.C. 7:27-16.1 Definitions

**COMMENT:** The terms "air contaminant," "control apparatus," and "equipment" should include only air contaminants that are discharged into the outdoor atmosphere. Air contaminants discharged indoors are

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covered by OSHA regulations and the Department should not be regulating these standards. (11)

**RESPONSE:** The Department agrees that N.J.A.C. 7:27 does not regulate the indoor atmosphere. The rules set forth at N.J.A.C. 7:27 only apply to emissions to the outdoor atmosphere, but do so whether the venting of such emissions is directly through a stack or indirectly into a room and then out a room fan, or similar indirect venting scenario.

**COMMENT:** The phrase "distillates of air" in the definition of "air contaminant" is vague and ambiguous. This term needs to be defined. (1)

**RESPONSE:** The definition of "air contaminant" was proposed for change to be consistent with the definition in subchapter 8. This proposed change included using the term "distillates of air," which is also defined in subchapter 8. To clarify the use of the term in subchapter 16, the definition of "distillates of air" as promulgated at N.J.A.C. 7:27-8.1 is included at N.J.A.C. 7:27-16.1 upon adoption as follows:

"Distillates of air" means helium (He), nitrogen (N<sub>2</sub>), oxygen (O<sub>2</sub>), neon (Ne), argon (Ar), Krypton (Kr), xenon (Xe), and carbon dioxide (CO<sub>2</sub>).

**COMMENT:** Adding the word "indirectly" to the definitions of "control apparatus," "equipment," and "source operation" makes them unclear. Until this time, a point source potentially needing a permit could be easily identified. There is a distinct need for the Department to clarify, and specify, these definitions with regard to "indirect" emissions requiring air permits and their relation to subchapter 8. These amendments are ambiguous in that it is not clear whether the use of the words "directly or indirectly" are meant to apply to the control apparatus or equipment itself or to the emission from or controlled by the control apparatus or equipment. This ambiguity would permit the Department to assert jurisdiction over a wide range of equipment which "indirectly" causes, prevents, or controls an emission of an air contaminant. Theoretically, the Department could apply this reading of the proposed amendments so as to assert jurisdiction over any unit or piece of equipment, however insignificant, in a process system. As written, an open window could be considered a "source operation." This would also apply to doorways separating manufacturing and office areas. (6, 12)

**RESPONSE:** The modification of these definitions is consistent with modifications previously made to definitions at N.J.A.C. 7:27-8.1.

The terms "directly or indirectly" refer to how emissions from a source operation are vented to the outdoor atmosphere. A source operation that emits air contaminants to the outdoor atmosphere through hoods and ducts connected from the equipment to a stack or equivalent stack is considered to be venting directly. A source operation that is not connected by hoods, ducts, etc. to a stack or equivalent stack and vents into an enclosed building from which pollutants can escape to the outdoor atmosphere through windows, doors, ventilation system or other openings of the building is considered to be venting indirectly to the outdoor atmosphere.

To make this interpretation of the rule explicit, the Department has added the definition of the term "indirect emissions" at N.J.A.C. 7:27-16.1 and 17.1 upon adoption. This definition was previously promulgated at N.J.A.C. 7:27-8.1 and reads as follows:

"Indirect emissions" means a discharge of any air contaminant into the outdoor atmosphere through any opening that is not a stack or chimney directly connected to the equipment.

**COMMENT:** The definition of "source operation" should be altered to mean "any process or any separately identifiable part with different air contaminants thereof . . ." Otherwise every opening in operations such as a coating line with a dryer could be considered a new source requiring forms and possibly fees. (17)

**RESPONSE:** This comment concerns the number of application forms and fees required for a new or altered source operation. The Department did not propose or adopt any changes to the definition of source operation which would change the application of fee requirements. Also, fees are based on the definition of equipment, rather than source operation. The following discussion of application and fee requirements reflect current procedures.

A new or altered source operation meeting the applicability requirements listed at N.J.A.C. 7:27-8.2 must file permit and certificate applications with the Department. A VEM-003 form would be required for each stack or vent. Separate VEM-004 forms would be submitted for each piece of equipment, as defined at N.J.A.C. 7:27-8.1. The applicant would be assessed a fee according to N.J.A.C. 7:27-8.11.

Using the commenter's example, a coating operation equipped with a dryer with its own stack and a coating head with its own stack, would be required to submit two VEM-003 forms (one for each stack) and

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two VEM-004 forms (one for each source). A base fee of \$1,350 would be assessed. This represents \$500.00 for the permit application, \$500.00 for the certificate application, and \$350.00 for the additional piece of equipment (the coating head). The suggested changes to the definition have not been adopted because a source operation can sometimes be separate pieces of equipment, which require separate technical reviews, and for which separate fees are justified even if the same kind of air contaminants are emitted from each piece of equipment. Fees are not based on the number of stacks (openings) from a piece of equipment. They are based on the number of pieces of equipment.

COMMENT: The phrase "can reasonably be anticipated to emit" in the definition of "source operation" is overly broad, vague and ambiguous. It should therefore be eliminated. In the alternative, the Department should articulate a clear standard as to what constitutes "reasonable anticipation." (1)

RESPONSE: If based on materials inputted into a source operation, and processes conducted in it, a technical judgement can be made that pollutants may be emitted from the source operation and emission rates can be estimated for those pollutants using engineering principles, then the source "can reasonably be anticipated to emit" air contaminants. Since the reasonable anticipation is based on factual and technical information, no change is made to the definition of "source operation."

COMMENT: The definition of "surface coating formulation as applied" should be revised to:

"Surface coating formulation as applied" or "coating as applied" means the volume, in gallons per hour or liters per hour . . . (17)

RESPONSE: The Department has not amended the definition of "surface coating formulation as applied" upon adoption. The use of the term is not always specific to an hourly time frame. The text of the rule modifies the term appropriately at N.J.A.C. 7:27-16.5(a), (d), (g), (l), and (m).

COMMENT: Add at the end of the definition of "surface coating operation"—**A web coating line with a dryer is one source operation**. This should be added since the emissions from the line are the same type throughout and a capture ratio of greater than 75 percent is required at N.J.A.C. 7:27-16.5(f) for high volatile formulations. (17)

RESPONSE: The proposed language addresses the commenter's concern. If the dryer is after a coater and between the supply roll and take-up roll for the web, then the dryer is part of the surface coating operation. Since N.J.A.C. 7:27-16.5 regulates surface coating operations, which are specifically and clearly defined to include dryers, it is not necessary or appropriate to use the term "source operation" within the definition of "surface coating operation." The term "source operation" can be used to categorize all or part of a surface coating operation. For example, a dryer may be considered a "source operation" for nitrogen oxides emitted by the dryer burner.

However, the Department agrees with the commenter that the use of the term "source operation" in N.J.A.C. 7:27-16.5(f) can create confusion. Therefore, the Department has deleted the word "source" and the phrase "to serve the source operation" from N.J.A.C. 7:27-16.5(f) so that the introductory language of the provision now reads as follows:

(f) Any person responsible for a rotogravure, flexographic, or fabric printing operation may, as an alternative to complying with the requirements set forth in Table 3D, pursuant to (a)1 above, install and use control apparatus which:

Consistent with the comments and actual implementation of N.J.A.C. 7:27-16.5(f), the Department has clarified that printing operations include associated dryers by adding the phrase, "including associated dryers," after the words "printing operation" at N.J.A.C. 7:27-16.5(f)1, 2 and 3.

COMMENT: In the definition of "surface coating operation" the term "before other surface coating formulations are applied" allows for an interpretation that for an automobile and light duty truck topcoat, spray prime, or final repair operation the "surface coating operation" consists of a series of coating applicators and ovens in which a surface coating formulation continues to be applied.

For clarification purposes, it is recommended that the following language be added to the definition:

For any automobile and light duty truck topcoat, spray prime, or final repair operation, this term means an entire coating application system, including all spray booths, flash-off areas, and ovens in which the topcoat, spray prime, or final repair coating formulations are applied, dried and cured. (4)

RESPONSE: The Department agrees with the interpretation of this comment and has added the recommended clarifying language, with

modification, to distinguish between surface coating categories for which there are different regulatory limits. Since the definition for this surface coating category already exists, rather than amending the definition of surface coating operation, the Department has added the following sentence to the definition of "surface coating of automobiles and light-duty trucks" upon adoption at N.J.A.C. 7:27-16.1:

"This term means an entire coating application system, including all spray booths, flash-off areas, and ovens in which surface coating formulations within the same spray prime, topcoat, or repair operation, category are applied, dried and cured."

Consequently, for automobile surface coating operations, the topcoat, spray prime and final repair coating equipment would each be considered as separate coating operations because they are regulated in N.J.A.C. 7:27-16.5 Table 3A as separate surface coating categories.

COMMENT: It is recommended that the definitions of "capture efficiency" and "destruction efficiency" be added to N.J.A.C. 7:27-16.1. These terms are explained at N.J.A.C. 7:27-16.5(a)3ii; however, the added definitions would make the regulation clearer and more concise. These terms could still appear in both places.

The following definitions are preferred:

"Capture efficiency means the weight per unit of time of VOC entering a capture system and delivered to a control device divided by the weight per unit time of total VOC generated by a source of VOC, expressed as a percentage."

"Destruction efficiency means the amount of VOC destroyed or removed by a control device expressed as a percent of the total VOC entering the device." (20)

RESPONSE: The Department agrees that defining the terms "capture efficiency" and "destruction efficiency" at N.J.A.C. 7:27-16.1 would be beneficial. The Department has included the following definitions at N.J.A.C. 7:27-16.1.

"Capture efficiency" means the amount of VOC entering a capture system and delivered to a control device expressed as a ratio of the total VOC generated by a source of VOC.

"Destruction efficiency" means the amount of VOC destroyed or removed by a control device expressed as a ratio of the total VOC entering the device."

The Department has modified the commenter's suggested definitions to maintain consistency with use of the terms in subchapter 16.

## N.J.A.C. 7:27-16.2 Storage of volatile organic compounds

COMMENT: The Department should clarify its position on the requirement, and the necessity, of all storage tanks being painted white. In the case of an insulated storage tank there is no added benefit to that tank being painted white. Therefore, it is recommended that the following language be added to N.J.A.C. 7:27-16.2(a)1.

1. "No person shall cause, suffer, allow or permit the storage of any VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch absolute (1 millimeter of mercury) or greater at standard conditions in any stationary storage tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater exposed to the rays of the sun unless the external surface of the tank is painted and maintained white, **except when the tank is insulated.**" (6)

RESPONSE: The Department agrees that if a tank is properly insulated, there would be no added benefit if the tank was also painted white. The Department has amended N.J.A.C. 7:27-16.2(a)1 upon adoption to clarify existing policy on whether a storage tank requires white paint. The Department currently approves equivalent methods of control to satisfy N.J.A.C. 7:27-16.2(a). One such method is a temperature controlled tank; the Department considers tanks maintained at a temperature of 50 degrees Fahrenheit or less an equivalent method of control. Another method is an insulated tank. Insulating material of an acceptable thermal resistivity and thickness is considered an equivalent method of control by the Department. To clarify the Department's current policy, the phrase "or an equivalent method of emission control approved by the Department is used" has been added to N.J.A.C. 7:27-16.2(a)1.

COMMENT: A tank is not a process by the definitions. The last line in N.J.A.C. 7:27-16.2(c) reference "process emission rate" for a tank. This is not clear and should be changed to read ". . . at least 90 percent by weight of the **uncontrolled VOC emissions from the tank.**" (17)

RESPONSE: The Department agrees that a storage tank by definition has no "process emission rate" and the correct term should be "uncontrolled emissions." The Department has amended N.J.A.C. 7:27-16.2(c) upon adoption as indicated by this comment.

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COMMENT: Regarding N.J.A.C. 7:27-16.2(m), what defines a delivery vessel? Does any tank of any size or a drum become a delivery vessel if it can be reused?

RESPONSE: The definition of "delivery vessel" was previously promulgated as "any mobile storage tank including but not limited to, tank trucks, or railroad tank cars" at N.J.A.C. 7:27-16.1. Because this definition was not proposed to be changed, it did not appear in the proposal document. If through the provision of N.J.A.C. 7:27-16.2(m), a delivery vessel were to be subject to N.J.A.C. 7:27-16.2, only those delivery vessels which are vented to the atmosphere and which have a capacity of 2,000 gallons or greater (or 1,000 gallons or greater if the VOC stored has a vapor pressure of 13 pounds per square inch or greater) would be subject to N.J.A.C. 7:27-16.2. For example, a 50 gallon drum would be exempt from N.J.A.C. 7:27-16.2, no matter how long it is used to store VOC at a facility.

COMMENT: An empty and clean delivery vessel should not be covered by N.J.A.C. 7:27-16.2(m). Therefore, the line should read "Any delivery vessel located at a facility that contains any VOC or VOC residuals which has ..." (17)

RESPONSE: The Department agrees that the provisions of N.J.A.C. 7:27-16.2(m) should not apply to an empty and clean delivery vessel. The Department has revised the rule upon adoption to make this interpretation of the rule explicit. However, the Department has not included the words "or VOC residuals," as the commenter suggested. The term "any VOC" as used in the proposal already includes residuals which are VOC. N.J.A.C. 7:27-16.2(m) has been adopted to read:

(m) Any delivery vessel that contains any VOC which has a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater and is located at a facility and is vented to the atmosphere for more than 30 consecutive days shall be considered a stationary storage tank for the purposes of this section.

COMMENT: Railroad tank cars in transit to the location where they are loaded or unloaded should not constitute a "delivery vessel used at a facility for storing any VOC." Railroad tank cars are routinely on plant sites for more than 30 days, but often for the purpose of transport. For example, railroad tank cars carrying process raw materials may accumulate on-site during an extended process shut-down.

N.J.A.C. 7:27-16.2 regulations require painting VOC storage tanks white, and installing conservation vents (based on vapor pressure) to reduce diurnal tank breathing emissions. A tank car awaiting transport is sealed (equipped with an emergency pressure relief device) and has no air emissions. Installing a conservation vent on a tank car awaiting transport would allow the vessel to breathe, and would increase air emissions, and could cause railroad tank car spills. Painting a tank car white that is sealed and awaiting transport has no impact on emissions from the vessel, but increases overall emissions through additional paint use and subsequent volatilization.

To effectively limit VOC emissions from delivery vessels, the following wording is recommended for N.J.A.C. 7:27-16.2(m):

Any delivery vessel used at a facility for storing any VOC which has a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 mm Hg) absolute or greater at standard conditions for more than 30 consecutive days from the date the vessel is vented to the atmosphere until it is loaded or unloaded and sealed for transport, shall be considered a stationary storage tank for the purposes of this section.

This provision should only apply to those railcars actively connected to a process or being loaded or unloaded for greater than 30 consecutive days. (11,14)

RESPONSE: The Department agrees that the provisions of N.J.A.C. 7:27-16.2(m) should only apply only to railroad tank cars that are vented to the atmosphere while being used to store VOC for more than 30 days. For clarification purposes, the Department has amended N.J.A.C. 7:27-16.2(m) so that it only applies to vented delivery vessels. See the previous response to read the revised provision.

COMMENT: At N.J.A.C. 7:27-16.2(m), the railcar exclusion has been eliminated making railcars subject to the same VOC standards and requirements as stationary storage tanks if they hold VOCs for more than 30 days with vapor pressures or sum of partial pressures of organic substances greater than 0.02 pounds per square inch absolute.

Simply eliminating the railroad car exclusion does not sufficiently define the special permitting requirements for mobile equipment. For example, does a 2,000 gallon or greater railcar loaded with VOCs which remains on-site in a railcar storage yard for more than 30 days require an air permit? Must that permit be amended if the railcar is moved

to a different on-site location? Must the railcar be painted white as required by N.J.A.C. 7:27-16.2(a)1 before the 30 day period ends? Once the transfer operation is completed a railcar becomes a closed vessel maintained under pressure greater than one atmosphere protected by an emergency relief valve. In this mode it meets the conditions stated in N.J.A.C. 7:27-16.12(a), Exceptions, which states "The provisions of this subchapter shall not apply to any stationary vessel or delivery vessel maintained under pressure greater than one atmosphere provided that any vent serving such vessel has the sole function of relieving pressure under abnormal emergency conditions."

N.J.A.C. 7:27-16.2(m) should be modified to read: "Any delivery vessel used at a facility for storing VOC which has a vapor pressure or sum of partial pressures of organic substances or 0.02 pounds per square inch absolute or greater at standard conditions for more than 30 consecutive days, in an operational condition other than that condition described in 7:27-16.12(a), shall be considered a stationary storage tank for the purposes of this section. (8)

RESPONSE: Railroad tank cars that are considered stationary storage tanks pursuant to N.J.A.C. 7:27-16.2(m) and not exempt from the provisions of N.J.A.C. 7:27-16 pursuant to N.J.A.C. 7:27-16.12(a) must obtain permits from the Department pursuant to N.J.A.C. 7:27-8.2(a)9 and must be equipped with any controls required by the rule prior to storing any VOC. For example, if a 2,000 gallon or greater railcar which is vented to the air, is loaded with VOC, and remains in a railyard for more than 30 days, requires a permit. However, the permit does not need to be amended if the railcar is moved to a different on-site location.

COMMENT: The Department should establish, and state for purposes of clarity, the conditions for the issuance of "emergency permits" due to emergencies or work stoppages that may require the use of delivery vessels as storage tanks. (6)

RESPONSE: The Department can issue expedited permits for delivery vessels that will be used as storage tanks. Usually the expedited permits can be issued within five working days of receipt of the application if the permit application is properly prepared and submitted to the Department. If the tank car is closed to the atmosphere, then permits are not required pursuant to N.J.A.C. 7:27-16.2(m) or the exemption provided at N.J.A.C. 7:27-16.12(a).

**N.J.A.C. 7:27-16.3 Transfer operations**

COMMENT: Requiring performance testing at N.J.A.C. 7:27-16.3(c)4 for gasoline vapor control systems to be conducted only when the ambient air temperature exceeds 80 degrees Fahrenheit does not accomplish any purpose. First, performance testing will be limited to about three months out of the year. Secondly, testing a system at this condition does not necessarily reflect a "worst-case" or "maximum emissions" scenario. The ambient air temperature has little effect on the efficiency of the gasoline vapor control system because the vapor pressure of gasoline varies during the year. Less volatile gasoline is used during the summer, while more volatile gasoline is used during the winter. It is recommended that the Department remove this modification because current regulations at N.J.A.C. 7:27-8 already give the Department flexibility in setting criteria for conducting performance testing (that is, testing as per a stack testing protocol approved by the Department). (6)

RESPONSE: N.J.A.C. 7:27-16.3(c)4 has been adopted as proposed. This provision is applicable only if the vapor control system used is not one of the types of equipment specified in paragraphs (c)1, 2, 3 or 5. Temperature plays an important role in the evaporation of gasoline. As indicated in Table 4.3-1, "physical properties of typical organic liquids" from EPA's Compilation of Air Pollution Emission Factors (AP-42), gasoline having a Reid vapor pressure of 9.0 has true vapor pressure of about seven pounds per square inch absolute at 80 degrees Fahrenheit. Gasoline having Reid vapor pressure of 13.0 has a true vapor pressure of about four pounds per square inch absolute at 32 degrees Fahrenheit. The temperature of loads in delivery trucks are near ambient temperatures. At higher temperatures there are more gasoline vapors in the tank, there is a greater amount of gas expansion in the system, and there are greater emissions. When warm fuel is unloaded into a cooler underground tank the temperature of the gases in the vapor space will increase, expand and tend to be vented. Consequently, the test condition is scientifically relevant and appropriately reflects attention to the ozone air quality problem, by requiring performance testing for alternate equipment when the ambient air temperature is 80 degrees Fahrenheit or greater.

COMMENT: At N.J.A.C. 7:27-16.3(v), the first reference is to provision of "(r)." Since the intent of this provision is to require vapor

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recovery systems for stations which exceed the monthly 10,000 gallons throughout, the reference should include both (r) and (s). (20)

RESPONSE: The Department agrees with the comment and has referenced both (r) and (s) at N.J.A.C. 7:27-16.3(v). This is a clarification in that these references do not change the substance of the requirement for control of all stations which exceed the monthly 10,000 gallon throughput.

#### N.J.A.C. 7:27-16.5 Surface coating and graphic arts operations

COMMENT: N.J.A.C. 7:27-16.5 is overly complicated and gives allowances for averaging that were not in the previously promulgated regulations. The regulations should be more even handed.

Suggestion 1: Simplify so that either a coating formulation is used that conforms to the tables or a control device must be used that prevents more than 90 percent of the uncontrolled emissions from being released. In terms of the wording—leave (a)1 and 3i, strike 2 and 3ii and 3iii.

Suggestion 2: Insert an “or” in between (a)2 and (a)3, between (a)3i and (a)3ii.

Suggestion 3: Delete (a)2 and (a)3ii and iii. Replace with the worst case formulation (greatest VOC content by weight) must either be in conformance with the tables or a control must eliminate greater than 90 percent of the emissions.

Suggestion 4: Require that as a condition of permit renewal or new submission that a control device demonstrates greater than 90 percent destruction efficiency. Testing a stack once every five years would not be too great a financial burden if the testing system is simplified. Replace the Department's pre-review and approval to testing protocols with a standardized test (like Method 3 with a few more items) that certified tests labs can perform. Require chain of custody and summary reports with certifications from independent firms that the work was done according to the procedures. Why reinvent the wheel each time since 95 percent of the tests are the same. Then Suggestion 1 can be applied. (17)

RESPONSE: Allowances for averaging are not changed from the previous regulation. Rather, the equations being used to implement the regulations are provided to clarify for the regulated community how to perform compliance determinations when using non-conforming coatings. These equations can be derived directly from the common meaning of the operative language in the rule.

The averaging of coating VOC contents is not a simple task; hence, the need to provide the equations and other adopted clarifications. Such averaging provisions were provided in the rule at the regulated community's request so that difficult to reformulate or low use coatings could continue to be used as long as greater than required reductions in solvent content in higher use coatings offset the non-conforming coatings. Also, the USEPA's Control Technology Guidelines (CTGs), which provide the technical basis for most of N.J.A.C. 7:27-16.5, provide for 24 hour averaging of the VOC content of different coatings. This provides the industry with some flexibility on meeting the VOC emission reduction requirements in the most cost-effective way.

The commenter's suggestions 1 and 3 would limit compliance options to the use of the complying coatings or 90 percent control of all emissions. No averaging of coating VOC contents would be permitted. While this would certainly make the rule simpler to understand and easier to implement, it would also result in unreasonable situations. For example, not all automobile top-coat colors conform with Table 3A limits, but on the average they do. Implementation of the suggestion would either restrict the colors of vehicles manufactured in New Jersey, or shut down New Jersey's two plants since 90 percent control of an entire top-coat operation is not economically feasible at this time. Therefore, suggestions 1 and 3, which are the same, have not been incorporated into this adoption.

The Department will be considering more stringent VOC emission limits to implement the federal Clean Air Act Amendments and may need to restrict averaging in the future to achieve the VOC emission reductions required to attain the ozone ambient air quality standard. The commenter's suggestions 1 and 3 will be reconsidered for such future rulemaking.

The Department concurs that the use of “or” between these subsections of the rule would clarify that compliance with one of these options in N.J.A.C. 7:27-16.5 is the intent of the Department. Therefore, suggestion 2 of this comment has been incorporated into the adopted rule.

Suggestion 4 would implement the 90 percent control requirement (suggestion 1 and 3) at permit renewal and require testing to demonstrate compliance every five years. The Department is not adopting this suggestion for the same reason it is not adopting suggestion 1. Also, implemen-

tation of a retrofit requirement at permit renewal results in inequities among the regulated community because some companies would have to control immediately and others could wait up to five years. This would create arbitrary and unwarranted cost differences between competitors in the same industry. For the implementation of a control requirement on existing sources, it is the Department's policy to specify a reasonable compliance period in the rule setting the requirement and subjecting the entire regulated community to that schedule or, in the case of a phased implementation, to divide the regulated community into logical categories, usually by capacity of the equipment, and set a common compliance schedule for each category. With respect to the suggestion that tests be performed every five years upon renewal of the operating certificate, the Department already has this authority pursuant to N.J.A.C. 7:27-8.8(b). The Department uses its judgement on whether to require testing at renewal time, rather than requiring every source to test. For sources using N.J.A.C. 7:27-16.5(a)3i to demonstrate compliance, it is likely that the Department would require a test to demonstrate compliance at least every five years.

COMMENT: The purpose of N.J.A.C. 7:27-16.5(a)3i is to allow an equivalent alternative compliance to the express VOC levels in Tables 3A, 3B, 3C, 3D, or 3E. As such, a control device must reduce actual emissions to allowable emissions as determined by the equation in 3ii or 3iii. In that regard, I believe that the agency's intent is that the control device achieve a minimum 90 percent destruction efficiency; not that it prevent 90 percent by weight of the VOC content in the surface coating formulation as applied each hour from being discharged.

N.J.A.C. 7:27-16.5(a)3i should be reworded as follows:

The control apparatus must collect and prevent VOC's from being discharged into the outdoor atmosphere so that the actual daily emissions are no greater than the allowable daily emissions as calculated in the equation in 3ii or 3iii. The control apparatus shall achieve a minimum destruction efficiency of 90 percent or a maximum outlet concentration approved by the Department. (4)

RESPONSE: The Department does not agree with this comment. The following is the Department's interpretation of N.J.A.C. 7:27-16.5(a)3. This provision applies to surface coating operations which use control apparatus to comply with subchapter 16. The surface coating operation may comply through the provisions of subparagraphs (a)3i, ii, or iii. Subparagraph (a)3ii states that the actual emissions shall be less than the allowable emissions as calculated on a solids as applied basis. Subparagraph (a)3iii states that for operations which average the VOC contents of the surface coating formulations on a daily basis and use control apparatus, the actual emissions shall be less than the allowable emissions as calculated by the given equations. Subparagraph (a)3i states that 90 percent of the uncontrolled emissions shall be prevented from being discharged to the atmosphere. This 90 percent figure is a total control efficiency, not a destruction efficiency. The purpose of subparagraph (a)3i is to specify the maximum Reasonably Available Control Technology (RACT) option for control efficiency for surface coating operations which use control devices. For example, if a surface coating operation applies a low solids or high VOC coating, and the allowable emissions as calculated in subparagraph (a)3ii would require 99 percent control, this would not be reasonable, and subparagraph (a)3i may be used instead. To comply with N.J.A.C. 7:27-16.5(c)3, either subparagraph (a)3i, ii, or iii may be used.

COMMENT: It is recommended that N.J.A.C. 7:27-16.5(a)3ii be modified to include the phrase “i.e., on a solids as applied basis” after “. . . in accordance with the following equation . . .” (20)

RESPONSE: The Department agrees with the change suggested. The equation at N.J.A.C. 7:27-16.5(a)3ii takes into account the amount of solids in a surface coating formulation. The phrase “on a solids as applied basis” appropriately describes the equation. The Department omitted this description. Therefore, N.J.A.C. 7:27-16.5(a)3ii is modified to include the phrase, “on a solids as applied basis” before “in accordance with the following equation.”

COMMENT: For clarification purposes, one person recommends that N.J.A.C. 7:27-16.5(a)3ii be revised to read as follows:

3.ii. The surface coating operation shall be controlled by the control apparatus so that the operation results in an hourly VOC emission rate no greater than the maximum allowable hourly rate calculated in accordance with the following equation: (4)

RESPONSE: The Department concurs with the suggested revision to N.J.A.C. 7:27-16.5(a)3ii for clarification purposes. Thus, N.J.A.C. 7:27-16.5(a)3ii is revised, with minor editorial changes, to read:

“The VOC emissions from the surface coating operation are controlled by the control apparatus so that the operation results in an hourly VOC

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emission rate no greater than the maximum allowable hourly rate calculated on a solids as applied basis in accordance with the following equation:"

COMMENT: N.J.A.C. 7:27-16.5(d) needs to be revised to more clearly incorporate EPA's 10-year recognition of equivalency in automotive and light duty truck plants subject to RACT. In addition, detailed EPA-approved procedures for generating data and calculating VOC emissions performance to verify compliance with the emission standards for automotive topcoat and primer-surfacer should be incorporated. Because EPA has stressed replicability and uniformity in protocols designed for compliance demonstration, the Automotive and Light Duty Truck Protocol should be adopted verbatim.

In addition, it is recommended that provisions be made within this subsection to allow a demonstration that final repair coatings meet the applicable limit on an occurrence basis rather than on a daily weighted average.

It is recommended that N.J.A.C. 7:27-16.5(d) be revised to read as follows:

1. Any person responsible for any automobile or light duty truck surface coating operation shall, as an alternative to complying, pursuant to (a) above, with the content limits set forth in Table 3A, comply with the provisions of Table 3C pertaining to spray prime and spray topcoat formulations. Compliance with the provisions of Table 3C shall be demonstrated using the procedures detailed in "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light Duty Truck Topcoat Operations" (USEPA 450/3-88-018).

2. Any person subject to the emission standard in Table 3A pertaining to repair coatings may, as an alternative to the maximum allowable emissions set forth in Table A and the calculation of a daily weighted mean pursuant to 16.5(a)2, utilize combinations of basecoat and clearcoat repair materials and repair primer in such quantities so as not to exceed a weighted average VOC content of 4.8 pounds per gallon of coating, minus water, on a worst case repair basis.

Also, Table 3C at N.J.A.C. 7:27-16.5 should be replaced in its entirety with the following:

TABLE 3C

ALTERNATIVE MAXIMUM ALLOWABLE EMISSION RATE FOR AUTOMOBILE AND LIGHT DUTY SURFACE COATING OPERATIONS

Type of Operation	Maximum Allowable Emission Rate	Final Compliance Date
Spray Prime	15.1 lb VOC/gsa*	December 31, 1984
Topcoat	15.1 lb VOC/gsa*	December 31, 1984

\*Gallons of Solids Applied: based on 2.8 lb VOC per gallon coating, minus water, applied at a 30 percent baseline transfer efficiency, and calculated on a daily weighted average.

At a minimum, should the Department elect not to replace Table 3C in its entirety, it is recommended that the following footnote should be added below Table 3C:

Each combination of VOC content and transfer efficiency in Table 3C is equivalent to 15.1 VOC per gallon of solids applied. Compliance with a daily weighted emission rate of 15.1 lb VOC/gsa, using the methods described in the EPA protocol 450/3-88-018, shall also comply with any combination of VOC and transfer efficiency in Table 3C. (4)

RESPONSE: The Department agrees with the minimum recommendation. The Department has added a footnote to Table 3C. Table 3C allows alternate emission limits for spray prime and spray topcoat surface coating formulations. Higher VOC content is allowed if the application system achieves a transfer efficiency greater than 34 percent. The footnote indicates that Table 3C is equivalent to 15.1 pounds of VOC per gallon of solids deposited consistent with EPA policy and compliance determination protocol. Since this is an equivalent way of stating the standard, there is no significant change to the rule. The following footnote has been added to Table 3C.

"Each combination of VOC content and transfer efficiency in Table 3C is equivalent to a daily emission of 15.1 pounds of VOC per gallon of solids deposited, minus water. Verification of this equivalent emission rate using the methods prescribed in the "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light Duty Truck Topcoat Operations" (EPA 450/3-88-018) shall satisfy compliance with Table 3C."

It should be noted that this provision does not preclude the Department from requiring stack tests to be performed on any part of a vehicle surface coating system.

The Department maintains that the emissions from different surface coating categories can not be averaged together. The Department will not amend N.J.A.C. 7:27-16.5(d) or the body of Table 3C as suggested by this comment. Emissions from each surface coating category must be controlled by compliant surface coating formulations, by daily weighted average of surface coating formulations used in the surface coating operations within the category, or by control apparatus on the surface coating operations within the category.

COMMENT: At N.J.A.C. 7:27-16.5(f), the collection efficiency should be changed to 90 percent since this is what the Department seems to require with each test these days. (17)

RESPONSE: The Department is adopting N.J.A.C. 7:27-16.5(f) as proposed. The collection efficiencies specified are consistent with RACT standards in the CTG. Higher collection efficiencies may be required from new sources pursuant to the state-of-the-art requirement at N.J.A.C. 7:27-8.6(b).

**N.J.A.C. 7:27-16.6 Source operations other than storage tanks, transfers, open top tanks, surface cleaners, surface coaters and graphic arts operations**

COMMENT: If a bubble permit expires during the two year interim period, will the company require a temporary permit? Will the regulations act as a temporary permit? Will the company be considered as having no permit? If a bubble has not been renewed during the time between proposal and adoption of these amendments, will a permittee be immediately forced to meet compliance or shut down? (1, 3)

RESPONSE: An approved Mathematical Combination of Sources Plan (or "bubble") is different than a permit or certificate in that it is a compliance plan, not a permit to construct or certificate to operate. The operating certificates of the individual sources that are included in the bubble will require renewals if they expire prior to two years from the effective date of these amendments. The approved bubble plan does not need to be renewed and will be valid until two years from the effective date of these amendments, provided the bubble sources are in compliance with N.J.A.C. 7:27-8.

COMMENT: Companies that have more than two years left on their permits will prematurely be required to submit new permit application with appropriate fees. The Department should exempt the permittees from the fee requirement or subject them to a pro-rata share of the application fee. (1, 3)

RESPONSE: Many of the sources in approved bubble plans are already in compliance with the single source provisions of N.J.A.C. 7:27-16 and do not need to alter their equipment and obtain a preconstruction permit for such alteration. If a company chooses to use reformulated surface coatings and finds that there is no need to alter their processing equipment, they would file an application to amend their current permit application. If a company chooses to install control devices and/or replace their processing equipment in order to accommodate a reformulated surface coating to reduce VOC emission, they would file a permit application to alter their equipment. The permit amendment or alteration fees set forth in N.J.A.C. 7:27-8 would apply and should not be reduced because such fees are intended to cover the cost of the permit review, which is necessary to determine the acceptability of the proposed alterations.

Each alteration of equipment requires both a permit to construct fee and a certificate to operate fee which are based on the costs of issuing these approvals and a single inspection to confirm compliance with the permit. Other inspections over the life of the certificate are billed separately, and consequently, there is not double charging for inspections.

COMMENT: The elimination of bubbling will favor pollution control over pollution prevention and, therefore, bubbles should be allowed. (13)

RESPONSE: The Department disagrees, and believes that deletion of bubble allowances will promote pollution prevention by encouraging facilities with valid bubbles to use reformulated coatings or implement other measures to reduce air contaminant emissions. These RACT requirements, and associated bubble provisions, have been in place since 1982. During the past 10 years many reformulated coatings that can meet both VOC limits and the product quality requirements have become available. Since reformulated coatings are water based or are high solids coatings containing less VOCs, this provision will in fact promote pollution prevention.

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COMMENT: The elimination of bubbles is inconsistent with EPA policy, and bubbles are needed when it is expensive and difficult to retrofit control to achieve RACT standards. (4, 13)

RESPONSE: The Department does not agree with this comment, for the following reasons. In its June 4, 1988 letter to the Department, EPA found New Jersey's bubble provisions inconsistent with EPA requirements. Specifically, the following inconsistencies were listed:

- i. Distance allowed between bubbled sources
- ii. EPA's Emission Trading Policy (51 FR 43814, December 4, 1986) does not permit the use of bubbles with averaging times greater than 24 hours in nonattainment areas like New Jersey. (This makes most bubbles unworkable for industry because uncontrolled sources would also have to be shut down if the controlled sources are not operating at equivalent or greater rates for each 24 hour period.)
- iii. In primary non-attainment areas lacking approved attainment demonstrations, existing bubble provisions must be modified to: use the lowest of either the "actual-SIP-allowable" or "RACT allowable" emission baseline; require an additional 20 percent emissions reduction credit; and provide assurance that the National Ambient Air Quality Standards will be attained and maintained.

USEPA Final Emission Trading Policy requires actual emission reductions to be achieved with the bubble provisions. According to USEPA policy, a facility would apply emissions reduction measures on some of its sources to lower VOC emissions so that resultant VOC emissions from all the sources in the bubble would be equal to RACT levels, less 20 percent credited for reasonable further progress towards attainment. The New Jersey bubble rules allowed use of previously complying sources and, therefore, did not require achievement of actual emission reductions with bubble compliance plans, and also did not require 20 percent additional reduction for reasonable further progress. The Department believes that modification of bubble provisions to comply with EPA requirements would eliminate most existing approved New Jersey bubbles.

Also, since most of New Jersey is designated as severe non-attainment areas for ozone, and New Jersey is in the process of developing a SIP for the achievement and maintenance of the ozone standard, it is not possible to provide assurance that the National Ambient Air Quality Standards will be attained and maintained with these bubbles. Therefore, such bubbles would not be approved by EPA.

There are 141 chemical manufacturing and 94 surface coating sources at 14 facilities that are currently in bubble plans. Out of these, the Department has determined that 110 of the chemical manufacturing and 53 of the surface coating sources are in compliance with the N.J.A.C. 7:27-16 requirements. The remaining 31 chemical manufacturing and 41 surface coating sources must either use reformulated coatings or changed processes, or be controlled to achieve compliance.

The surface coating sources include can coating, flexographic printing, paper coating, rotogravure printing, leather coating, and metal furniture coating. There are several hundred existing sources in these and similar categories in New Jersey that are operating in compliance with the RACT requirements. Consequently, reformulated coating or technology for auxiliary controls is readily available.

Switching to reformulated coatings in most cases would not cause significant economic impact. However, in some cases it may require capital investments to modify or replace the coating equipment. The Department anticipates that deletion of the bubble provision will result in emission reduction of approximately 2000 tons of VOC per year (5.5 tons per day). Depending on the method chosen to comply with RACT standards, the costs may range from \$2,000 to \$6,000 per ton. These costs will impact only a small percentage (less than five percent) of the sources in the surface coating and chemical manufacturing industry. Using an average cost of \$4,000 per ton, the combined cost for the facilities to comply with N.J.A.C. 7:27-16.6 due to the elimination of bubbles is estimated to be \$8,000,000. This estimate is high because it assumes that all emissions reductions are through the use of control apparatus and are not through the use of reformulating to compliant coatings and materials. The elimination of bubbles is a cost effective way to reduce emissions which will contribute to the achievement of the NAAQS for ozone, considering that the cost to control VOC from new sources can be from \$10,000 to \$30,000 per ton.

If it is technically infeasible to achieve compliance with the RACT standards, the source owner and/or operator may apply to the Department for a variance pursuant to N.J.A.C. 7:27-16.10.

COMMENT: N.J.A.C. 7:27-16.6(d) and (e) prohibits leaks from sealed surfaces in VOS service. The proposal changes VOS to VOC. At N.J.A.C. 7:27-16.6(f), which is not changed by the proposal, the owner

or operator of a petroleum refinery is required to develop a fugitive emissions monitoring and maintenance program for the sealed surfaces defined in N.J.A.C. 7:27-16.6(d) and (e).

Since the VOC definition is much broader than the VOS definition for a refinery, this change represents a significant expansion of the existing fugitive emissions programs. The VOS definition with its 0.02 psia vapor pressure limitation focused the monitoring and maintenance programs on light liquid and gaseous refinery systems. Using the broader VOC definition without the 0.02 vapor pressure limitation will include heavy liquid streams which do not vaporize and may not be detectable using the required monitoring instrumentation. The fugitive emission monitoring and maintenance program should continue to be focused on material with a vapor pressure greater than 0.02 pounds per square inch absolute. (8)

RESPONSE: The Department agrees with this comment and has amended N.J.A.C. 7:27-16.6(d) and (e) to modify the term VOC with the phrase "having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater measured at standard conditions." As these provisions did not pertain to leaks of organic substances having vapor pressure less than 0.02 pounds per square inch absolute prior to this rulemaking, the added phrases at N.J.A.C. 7:27-16.6(d) and (e) do not constitute a substantive change.

**N.J.A.C. 7:27-16.11 Permit to construct and certificate to operate**

COMMENT: A definition of "function properly" needs to be incorporated into N.J.A.C. 7:27-8.3. Consistent with EPA guidelines, certain normal equipment or control device deviations can occur and still allow the equipment or control device to be functioning properly.

Although N.J.A.C. 7:27-8 was not included in the proposed rule revision, it is recommended that the following language be added to that section:

7:27-8.3(e)2. All components connected or attached to, or serving the equipment or control apparatus are functioning properly and are in use in accordance with the permit and certificate. Deviations less than three hours in duration shall not cause equipment or control apparatus to be defined as not functioning properly. (4)

RESPONSE: The commenter's concern is outside the scope of these amendments. The provisions of subchapter 8 are not rules specifying Reasonably Available Control Technology (RACT) and have not been identified by EPA as deficient. The Department has not made changes in response to this comment. The Department does not include allowances for malfunctions in rules because it tends to make rules unenforceable and does not promote preventative maintenance and adequate design safeguards. Pursuant to N.J.A.C. 7:27A-3.5(e)5, malfunctions which are beyond the control of the permittee, are considered when the Bureau of Enforcement Operations takes enforcement actions. However, it is noted that malfunctions beyond the control of the permittee which pose a threat to human health, welfare, or the environment are required to be reported to the Department pursuant to N.J.S.A. 26:2C-19(e).

**N.J.A.C. 7:27-17 Control and Prohibition of Air Pollution by Toxic Substances**

COMMENT: One person suggests that the Department add the Chemical Abstract Service (CAS) number to the chemicals in Table 1 at N.J.A.C. 7:27-17.3. Since there are multiple names for some of the chemicals, the CAS numbers would serve to avoid any confusion. (17)

RESPONSE: In response to this comment and in order to avoid any confusion regarding the list of Toxic Substances in N.J.A.C. 7:27-17, Table 1, the Chemical Abstract Service (CAS) number has been included next to the chemical names.

**N.J.A.C. 7:27-23 Prevention of Air Pollution from Architectural Coatings and Consumer Products**

COMMENT: One person suggested that the Department permit the units of the labeling requirement at N.J.A.C. 7:27-23.5(a)2 to be expressed in grams of VOC per liter of coating as an alternative to the units currently specified, pounds of VOC per gallon of coating. (18)

RESPONSE: Labeling was not subject to this proposal except with respect to the use of terms VOC or VOS, both of which continue to be allowed on labels. The Department previously required that the labels for VOC content, pursuant to N.J.A.C. 7:27-23.5(a)2, be expressed in pounds per gallon. Labeling provides the function of providing information on the relative amounts of VOC in the products used and allows people the opportunity to use this information in making consumption decisions. Pounds per gallon will be more easily understood by con-

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sumers, particularly in light of the fact that paint is often sold by the gallon.

COMMENT: One person requested that the VOC content limit for shellac be allowed for waterproofing sealers that use alcohol as a solvent. (2)

RESPONSE: The VOC content limits to which the commenter refers are outside the scope of these amendments. Nonetheless, the Department notes that the different VOC limits for shellac and for waterproofing sealers remain necessary, for the same reason that different limits were originally promulgated. The VOC limit for shellac was specifically developed for coatings formulated solely with the resinous secretions of the lac beetle and thinned with alcohol, as indicated in the definition. The VOC limit for waterproofing sealers was developed regardless of what compounds are used for thinning. There is no justification to allow a waterproofing sealer to use the VOC limit for shellac just because alcohol is used as a thinner.

COMMENT: The proposed revision to the definition of volatile organic substances (VOS) would broaden the scope of the recordkeeping requirements of N.J.A.C. 7:27-23.6(b). By omitting a vapor pressure clause in the definition of volatile organic compound (VOC), manufacturers of consumer products would be required to keep records of products containing organic substances having extremely low vapor pressures. Such organic substances widely used in the cosmetics industry include waxes, emollients, fragrances, organic acids, organic salts, and polymers. These organic substances get washed away before they have a chance to be emitted into the outdoor atmosphere. Information on such compounds of low volatility would not be particularly useful to New Jersey. The following vapor pressure clause should be inserted in the text of the rule at N.J.A.C. 7:27-23.6(b) to modify the term VOC: "having a vapor pressure of sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater at standard conditions."

It should also be noted that the definition of "volatile organic compound" as proposed at N.J.A.C. 7:27-23.2 would cause significant problems for manufacturers of consumer products if the recordkeeping requirements at N.J.A.C. 7:27-23.6(b) are retained in this rule. Virtually all of the hundreds of thousands of consumer products currently in interstate commerce are composed entirely of "any organic substance or mixture of organic substances, or mixture of organic and inorganic substances," so manufacturers of these consumer products would then have to decide whether their product, "participates in atmospheric photochemical reactions." This information is not readily available for most of the substance of which consumer products are composed. Even where such data are available for a given chemical compound to determine that it "participates in atmospheric photochemical reactions." (7, 9, 19)

RESPONSE: The Department concurs with these comments. These rules incorporate language similar to that suggested by the commenter at N.J.A.C. 7:27-16, so that the amendment to the definition of VOS would not broaden the scope of the rule. As the Department did generally not intend to broaden the scope of N.J.A.C. 7:27-23.6(b), the suggested phrase has been added after the use of the term VOC in N.J.A.C. 7:27-23.6(b). This adopted amendment eliminates the broadening effect of the change of VOS to VOC. Manufacturers of consumer products will not have to determine whether the constituents of their products participate in atmospheric photochemical reactions. The vapor pressure criteria is still in effect for this provision.

COMMENT: The requirement at N.J.A.C. 7:27-23.6(b) places the burden of maintaining records on the manufacturer of consumer products. However, the distributor has sole control and knowledge of the ultimate distribution and, thus, information on the approximate number of units sold in New Jersey. Therefore, in many instances, the manufacturer will not be capable of maintaining accurate information on this component of the recordkeeping requirement. (19)

RESPONSE: The Department requires an approximate number of units sold in New Jersey, not an exact number. A manufacturer of consumer products is capable of supplying this information. The manufacturer of consumer products may contact the distributors of their products to get information on the approximate number of units sold in New Jersey. To have more than one company provide different pieces of information about a single consumer product would lead to possible errors, inconsistencies, omissions and duplications of information, when gathered.

COMMENT: The requirement at N.J.A.C. 7:27-23.6(b) for manufacturers to keep records on the total number of units produced by a manufacturer is irrelevant in providing information of the quantity of

consumer products sold in New Jersey. Since this provision also specifies that a manufacturer record an approximation of the number of units sold in New Jersey (which is most relevant to New Jersey), the requirement to record the total number of units manufactured is unnecessary. (19)

RESPONSE: The requirement for manufacturers of consumer products to record the total number of units produced is a relevant item of information. This information will provide the Department an estimate of the percentage of the total number of units produced which are sold in New Jersey by each manufacturer. With this information, the Department can estimate how proposed rules would impact those manufacturers. This information would enable the Department to propose consumer product rules to achieve emission reductions with a reasonable impact on industry.

COMMENT: Two commenters expressed concern regarding the effort required by N.J.A.C. 7:27-23.6(b) in light of the Section 183(e) under the Clean Air Act Amendments of 1990 requiring EPA to develop an inventory of VOC emissions from commercial and consumer products within three years, and to develop regulations within eight years. This EPA inventory is to present VOC emissions adjusted to account for the reactivity of the different VOCs found to be emitted by these products. The commenters stated that such an inventory makes the New Jersey recordkeeping requirement unnecessary and redundant.

Requiring consumer product manufacturers to maintain these records on thousands of products, irrespective of the Department's current or future interest in regulating the products, is highly inefficient. The maintenance of records, as proposed, would be a significant burden to companies.

The administrative burden imposed on industry by this section of the regulation is particularly troubling in view of the fact that the Department makes no commitment to collect all of this information, which would be massive, and evaluate it. In fact, there is no commitment to collect and evaluate any of the data, which suggests that at this point in time the Department remains unsure of how to proceed.

The impact of collecting and evaluating the required records would also be a significant burden on the Department, which also apparently has been ignored in the economic impact analysis. Should the Department request any appreciable amount of these records, a significant amount of the Department's resources would likely be expended in the compilation and evaluation of the submitted data. This needs to be considered in an economic impact assessment.

For the reasons cited above, it is suggested that the Department amend the proposed regulations by deleting N.J.A.C. 7:27-23.6(b). (7, 19)

RESPONSE: In its amendments at N.J.A.C. 7:27-23.6(b), the Department has not increased the burden upon industry. These requirements were previously adopted by the Department on July 16, 1990. The purpose of the changes to the language at N.J.A.C. 7:27-23.6(b) of this adoption is to maintain the same requirements as previously adopted, by continuing to require record keeping for VOC having a vapor pressure greater than or equal to 0.02 pounds per square inch absolute. Consequently, the burden to manufacturers of consumer products is not increased by these amendments.

The Department is committed to propose rules which will regulate the emissions from consumer products. The information required at N.J.A.C. 7:27-23.6(b) is essential for the Department to develop effective regulations.

Concerning impact on the Department of compiling and analyzing data requested on consumer products, the Department will consider resource needs when making such requests. The Department maintains that the information required is necessary to make sound regulatory decisions. In the past, rulemaking efforts were hampered by either the inavailability of data or the failure of industry to share data with the Department.

**N.J.A.C. 7:27A Air Administrative Procedures and Penalties**

COMMENT: Citation N.J.A.C. 7:27-8.3(a)—Estimated Potential Emission Rate—The term "potential" is vague and should be defined. The Department should also clarify if a penalty is based on potential emissions: 1. before controls, 2. after controls, 3. for a source, or 4. for an entire permit. (11)

RESPONSE: "Estimated Potential Emission Rate," as previously defined at N.J.A.C. 7:27A-3.1 is based on the maximum uncontrolled emissions of each source at the maximum rated capacity of the equipment. Penalties are based on potential emissions if the control is malfunctioning.

COMMENT: The penalties at N.J.A.C. 7:27A-3.10 for violations of N.J.A.C. 7:27-8.3e(1) and e(2) are excessive. Under normal operations,

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a piece of control equipment has the potential for minor deviations from agreed to operating parameters. The USEPA, and many states' environmental agencies, recognize that deviations less than three hours in duration do not automatically construe equipment to be not functioning properly. In these cases, no fines, or much lesser fines are more appropriate. (11)

**RESPONSE:** The penalty provisions to which the commenter refers are outside the scope of these amendments. Nonetheless, for the reasons discussed when the penalty rules were promulgated, the Department believes that the penalties to which the commenter refers are not excessive, and are necessary to deter violations. New Jersey does not accept these hour deviations from allowable emission rates as representative of a complying operation. The allowable emission rates in a permit or certificate should never be exceeded. Where justified, expected deviations can be allowed as part of a permit, provided they do not exceed a regulatory limit and provided those limits cannot be reasonably achieved during certain pre-defined conditions. For example, for certain combustion sources, the Department allows higher emissions of carbon monoxide for startup and shutdown periods than for normal operation.

**N.J.A.C. 7:27B-3 Air Test Method 3**

**COMMENT:** At N.J.A.C. 7:27B-3.8(f)4, in the numerator of the calculation for the emission rate, "SCFM" is listed twice. Is this in error? (5)

**RESPONSE:** Yes, it is an error. The extra "SCFM" has been removed upon adoption.

**COMMENT:** A footnote should be added to the table which allows the mass emission rate per day for automotive and light duty truck surface coating operations, as determined by the EPA protocol EPA 450/3-88-018 divided by the actual hours worked to be substituted for stack testing if approved by the Department. (4)

**RESPONSE:** As stated in N.J.A.C. 7:27-8.8(b), stack testing must be conducted in accordance with a standard test procedure acceptable to the Department, or a source specific testing protocol approved in advance by the Department. Compliance by using the EPA protocol instead of stack testing must be approved in advance by the Department. For this reason, the Department has not made the suggested addition.

**Summary of Hearing Officer's Recommendations and Agency Response:**

Nancy Wittenberg, Director of the Department's Division of Environmental Quality, served as the hearing officer at the July 17, 1991 public hearing at the War Memorial Building in Trenton, New Jersey. After reviewing the oral testimony presented at the public hearing, Director Wittenberg recommends that the Department make the following change upon adoption:

N.J.A.C. 7:27-23.6(b) should include the phrase "having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater at standard conditions" after the use of the term "VOC."

The Department has modified the rule accordingly upon adoption.

Director Wittenberg's recommendations are set forth in more detail in the hearing officer's report. A copy of the record of public hearing, which includes the hearing officer's report, is available upon payment of the Department's normal charges for copying (50¢ per page for the first 10 pages, 25¢ per page for the following 10 pages, and 10¢ per page for additional pages). The record of public hearing is 19 pages. The Department will charge \$7.25 for one copy. Persons requesting copies should contact:

Samuel A. Wolfe, Esq.  
 Administrative Practice Officer  
 Department of Environmental Protection  
 Office of Legal Affairs  
 401 East State Street  
 CN 402  
 Trenton, New Jersey 08625-0402

**Summary of Agency-Initiated Changes:**

Additional changes have been made on adoption to clarify the requirements as follows:

Where references to temperature in the metric scale were proposed, the Department proposed the term "centigrade." The Department has changed the terms "centigrade" to "Celsius" upon adoption.

The Department made an error at N.J.A.C. 7:27-16.4(d)5 in the proposal document by proposing to replace the term "VOS" with "solvent." The Department has replaced this term with "VOC" upon adoption.

The Department made an error of omission in not proposing changes to N.J.A.C. 7:27-23.1. At this section, the term "volatile organic substances" was not proposed for change to "volatile organic compound" as intended. The Department has replaced the word "substances" with "compound" upon adoption. Also, in this section, the reference to the term "architectural coatings" was not included in the proposal at N.J.A.C. 7:27-23.1 to be consistent with the change in the title of Subchapter 23 as intended. The words "architectural coatings and" now precede the words "consumer products" as adopted.

The Department has removed the vague phrases referencing dates (for example, "effective date of these amendments") and has replaced them with the actual dates throughout the rules.

At the beginning of the definition sections at N.J.A.C. 7:27-8, 16, 17 and 23 and N.J.A.C. 7:27A-3 and N.J.A.C. 7:27B-3, the Department has removed the word "shall" from the phrases "The following words and terms, when used in this subchapter, shall have the following meanings . . ." The word "shall" has no use in these phrases because the "shall" neither implies a future use nor indicates an action for a person to accomplish.

As a correction of punctuation, the Department has added a comma after the word "diluent" in the definition of the term "volatile organic compound" at N.J.A.C. 7:27-8.1.

At N.J.A.C. 7:27-16.5(a)3ii in the explanation of the variable "d," the word "or" was proposed before "(lb/gal)." This location is incorrect. The Department has moved the "or" after "(lb/gal)" upon adoption.

At N.J.A.C. 7:27-16.5(j)1ii, the Department has removed the referenced citation for the mathematical combination of source gases, as it no longer is applicable.

At N.J.A.C. 7:27-25.2, the definition of "petroleum distillate" uses the term "volatile organic compounds." The definition of this term was not included at N.J.A.C. 7:27-25.2. The Department has included the definition of "volatile organic compound" at N.J.A.C. 7:27-25.2 upon adoption.

**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]\***).

**CHAPTER 27  
 AIR POLLUTION CONTROL**

**7:27-8.1 Definitions**

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

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

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

...  
 "Surface cleaner" means a device to remove unwanted foreign matter from the surfaces of materials by using VOC solvents in liquid or vapor state.

...  
 "Volatile organic compound" or "VOC" means any organic substance, mixture of organic substances, or **\*the organic components of any\*** mixture of organic and inorganic substances that participates in atmospheric photochemical reactions. For the purpose of determining compliance with emissions limits or content standards, VOC shall be measured by approved test methods. This term includes, but is not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents\*,\* and thinners. In the case of surface coating formulations, this term also includes any coalescing or other agent which **\*is an organic substance and\*** evaporates from the coating during the application and drying phase. This term does not include:

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methane\*[,]\*  
 trichlorofluoromethane (CFC-11)\*[,]\*  
 dichlorodifluoromethane (CFC-12)\*[,]\*  
 chlorodifluoromethane (CFC-22)\*[,]\*  
 trifluoromethane (FC-23)\*[,]\*  
 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)\*[,]\*  
 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)\*[, and]\*  
 chloropentafluoroethane (CFC-115).

7:27-8.2 Applicability

(a) New or altered equipment and control apparatus for which a permit and an operating certificate are required, pursuant to the provisions of N.J.A.C. 7:27-8.3, include:

1.-8. (No change.)

9. Stationary storage tanks which have a capacity of 2,000 gallons or greater and which are used for the storage of VOC having a vapor pressure or sum of partial pressures of 0.02 pounds per square inch absolute (1 millimeter of mercury) or greater at standard conditions;

10.-14. (No change.)

15. Waste or water treatment equipment which may emit air contaminants, including, but not limited to, air stripping equipment, aeration basins, and surface impoundments. A permit is not required for:

i. Any water treatment equipment if the concentration of each TXS included in N.J.A.C. 7:27-17 does not exceed 100 parts per billion by weight and the total concentration of VOC does not exceed 3,500 parts per billion by weight;

ii.-iv. (No change.)

16.-17. (No change.)

(b) (No change.)

7:27-8.11 Service fees

(a) Any person subject to the provisions of this subchapter shall submit with each application for a permit, an operating certificate or a renewal thereof, or with a request for an amendment or a banking service, as an integral part thereof, a non-refundable base service fee in accordance with the Base Fee Schedule.

(b) Prior to taking final action on any application for a permit, an operating certificate or renewal thereof, on any request for an amendment or a banking service, the Department will invoice each applicant for any additional fees due to the Department, assessed in accordance with the Base Fee Schedule and the Supplementary Fee Schedule. The applicant shall submit any fees so assessed to the Department within 60 days of receipt of the invoice.

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

**A. BASE FEE SCHEDULE**

ACTIVITY	BASIS	AMOUNT
1.-5. (No change.)		

**B. SUPPLEMENTARY FEE SCHEDULE**

(No change.)

7:27-8.14 Confidentiality claims

(a) Any \*[applicant]\* \*person\* required to submit any information, pursuant to the provisions of the Air Pollution Control Act\*[,]\* \*(N.J.S.A. 26:2C-1 et seq.)\*, \* [or]\* this subchapter, \*or N.J.A.C. 7:27-16.2(n), 16.3(w), 16.5(l), 16.5(m), 16.6(m), or 16.8(q),\* which in the \*[applicant's]\* \*person's\* opinion constitutes trade secrets, proprietary information, or information related to national security, may assert a confidentiality claim by following the procedures set forth in this subchapter. Emissions information may not be claimed as confidential.

(b) Any \*[applicant]\* \*person\* submitting any information to the Department and asserting a confidentiality claim covering any information contained therein shall submit two documents to the Department. One shall contain all the information required by the Department including any information which the \*[applicant]\* \*person\* alleges to be entitled to confidential treatment. The second shall be identical to the first except that it shall contain no information which the \*[applicant]\* \*person\* alleges to be entitled to con-

fidential treatment. The second can be a photocopy of the first, with the allegedly confidential material blacked out. The second document may be released by the Department to the public as submitted.

(c) The top of each page of the first submission containing the information which the \*[applicant]\* \*person\* alleges to be entitled to confidential treatment shall display the heading "CONFIDENTIAL" in bold type or stamp.

(d) All parts of the text of the first submission which the \*[applicant]\* \*person\* alleges to be entitled to confidential treatment shall be underscored or highlighted in a clearly identifiable manner. The manner of marking confidential information shall be such that both the allegedly confidential information and the underscoring or highlighting is reproducible on photocopying machines.

(e) The first submission, containing the information which the \*[applicant]\* \*person\* alleges to be entitled to confidential treatment, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope, together with the second, non-confidential submission (which may or may not be enclosed in a separate envelope, at the option of the \*[applicant]\* \*person\*), shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no marking indicating the confidential nature of the contents.

(f) (No change.)

**SUBCHAPTER 16. CONTROL AND PROHIBITION OF AIR POLLUTION BY VOLATILE ORGANIC COMPOUNDS**

7:27-16.1 Definitions

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

"Air contaminant" means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases.

...  
 \*\*"Capture efficiency" means the amount of VOC entering a capture system and delivered to a control device expressed as a ratio of the total VOC generated by a source of VOC.\*

...  
 "Certificate" means either an operating certificate or a temporary operating certificate.

"CFR" means the Code of Federal Regulations.

...  
 "Conservation vent" means any valve designed and use 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.

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

"Conveyorized surface cleaner" means a surface cleaner through which the parts to be cleaned are moved by means of a continuous, automatic system.

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

...  
 \*\*"Destruction efficiency" means the amount of VOC destroyed or removed by a control device expressed as a ratio of the total VOC entering the device.\*

...  
 \*\*"Distillates of air" means helium (He), nitrogen (N<sub>2</sub>), oxygen (O<sub>2</sub>), neon (Ne), argon (Ar), krypton (Kr), xenon (Xe), and carbon dioxide (CO<sub>2</sub>).\*

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

"Equipment" means any device capable of causing the emission of an air contaminant either directly or indirectly to the outdoor atmosphere, and any stack or chimney, conduit, flue, duct, vent or

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similar device connected or attached to, or serving the equipment. This term includes, but is not limited to, a device in which the preponderance of the air contaminants emitted is caused by a manufacturing process.

...  
 "Exempt organic substance" means an organic substance which is one of the chemical compounds specifically not included in the term "volatile organic compound" or "VOC" as defined in this section.

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

...  
 "Freeboard chiller" means a heat exchanger mounted on a surface cleaner freeboard to provide a chilled air layer immediately above the VOC vapor space to reduce VOC emissions.

"Freeboard height" means the vertical distance from either the VOC liquid level to the lip of an unheated open top surface cleaner or from the interface of the VOC vapor with the air to the lip of a vapor surface cleaner.

...  
 "Gasoline" means any petroleum distillate or petroleum distillate/oxygenated blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) absolute or greater and used as an automotive fuel.

...  
**"Indirect emissions" means a discharge of any air contaminant into the outdoor atmosphere through any opening that is not a stack or chimney directly connected to the equipment.\***

...  
 "Liquid particles" means particles which have volume but are not of rigid shape.

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

...  
**\*"Partial pressure" means the pressure exerted by a specified component in a mixture of gases.\***

"Particles" means any material, except uncombined water, which exists as liquid particles or solid particles at standard conditions.

...  
 "Permit" means a "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C-9.2.

"Person" means corporations, companies, associations, societies, firms, partnerships, and joint stock companies, as well as individuals, and all political subdivisions of this State or any agencies or instrumentalities thereof.

"Petroleum distillate" means any mixture of VOC produced by condensing vapors of petroleum during distillation, including, but not limited to, naphthas, aviation gasoline, motor gasoline, kerosene, diesel oil, domestic fuel oil, and petroleum solvents.

...  
 "Receiving vessel" means any vessel into which a VOC is introduced including, but not limited to, storage tanks, delivery vessels, and manufacturing process vessels.

...  
 "Reid vapor pressure" or "RVP" means the absolute vapor pressure of a petroleum product in pounds per square inch (kilopascals) at 100 degrees Fahrenheit (°F) (37.8 degrees \*[centigrade]\* \*Celsius\* (°C)) as measured by "Method 1—Dry RVP Measurement Method" or "Method 2—Herzog Semi-Automatic Method" promulgated at 40 CFR 80, Appendix E; or any other test method approved in advance in writing by the Department and the EPA.

...

"Seal-envelope combination" means a barrier to the passage of VOC vapors between a floating roof and the inner surface of a storage vessel wall, consisting of a seal which maintains constant contact with the wall as the floating roof rises and descends with the level of the stored VOC, and a membrane, diaphragm, fabric, or blanket, known as an envelope, which spans the gap between the floating roof and the seal and which is vapor-tight.

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

"Stack or chimney" means a flue, conduit or opening designed, constructed or utilized for the purpose of emitting any air contaminant into the outdoor atmosphere.

"Standard conditions" means 70 degrees Fahrenheit (°F) (21.1 degrees \*[centigrade]\* \*Celsius\* (°C)) and one atmosphere pressure (14.7 pounds per square inch absolute or 760.0 millimeters of mercury).

"Storage tanks" means any tank, reservoir, or vessel which is a container for liquids or gases, wherein:

1. No manufacturing process, or part thereof, other than filling or emptying takes place; and
2. The only treatment carried out is that necessary to prevent change from occurring in the physical condition or the chemical properties of the liquids or gases deposited into the container. Such treatment may include recirculating, agitating, maintaining the temperature of the stored liquids or gases, or replacing air in the vapor space above the stored liquids or gases with an inert gas in order to inhibit the occurrence of chemical reaction.

...  
 "Surface cleaner" means a device to remove unwanted foreign matter from the surfaces of materials by using VOC solvents in liquid or vapor state.

...  
 "Surface coating formulation" means the material used to form a protective, functional, or decorative film including, but not limited to, paint, varnish, ink, or adhesive, applied to or impregnated into a substrate.

"Surface coating formulation as applied" or "coating as applied" means the volume, in gallons or liters, of any surface coating formulation used in a surface coating operation, including any diluents or thinners added.

...  
 "Surface coating of automobiles and light-duty trucks" means the application, flash-off, and curing of prime, topcoat, and repair coat on main body and other exterior sheetmetal of any passenger car or passenger car derivative capable of seating 15 or fewer passengers or any motor vehicle rated at 8,500 pounds (3,856 kilograms) gross weight or less which is designed primarily for purposes of transportation of property, or a derivative of such vehicle including, but not limited to, pick-ups, vans, and window vans. **\*This term means an entire coating application system, including all spray booths, flash-off areas, and ovens in which surface coating formulations within the same spray prime, topcoat, or repair operation category are applied, dried and cured.\***

...  
 "Surface coating operation" means the application of one or more surface coating formulations, using one or more coating applicators, together with any associated drying or curing areas. A single surface coating operation ends after drying or curing and before other surface coating formulations are applied. For any web coating line, this term means an entire coating application system, including any associated drying ovens or areas between the supply roll and take-up roll, that is used to apply surface coating formulations onto a continuous strip or web.

...  
 "Temporary operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C-9.2, which is valid for a period not to exceed 90 days.

...

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**"Vapor pressure"** means the pressure of the vapor phase of a substance, or the sum of the partial pressures of the vapor phases of individual substances in a mixture of substances, when in equilibrium with the non-vapor phase of the substance or substances.\*

**"Volatile organic compound"** or **"VOC"** means any organic substance, mixture of organic substances, or **\*the organic components of any\*** mixture of organic and inorganic substances that participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by approved test methods. This term includes, but is not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners. In the case of surface coating formulations, this term also includes any coalescing or other agent which **\*is an organic substance and\*** evaporates from the coating during the application and drying phase. This term does not include **\*[.]\*\*:**

- methane **\*[.]\***
- trichlorofluoromethane (CFC-11) **\*[.]\***
- dichlorodifluoromethane (CFC-12) **\*[.]\***
- chlorodifluoromethane (CFC-22) **\*[.]\***
- trifluoromethane (FC-23) **\*[.]\***
- 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113) **\*[.]\***
- 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114) **\*[.]\***, and **]**
- chloropentafluoroethane (CFC-115).

**"Worst case operating conditions"** means the conditions of operation which result in the maximum VOC emission rate for any hour period for a continuous operation or the maximum VOC batch cycle emission rate for a batch operation, considering any enforceable limitations on the operation including those set forth in any applicable rule or regulation, permit, or operating certificate.\*

**7:27-16.2 Storage of volatile organic compounds**

(a) General provisions are:

1. No person shall cause, suffer, allow or permit the storage of any VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch absolute (1 millimeter of mercury) or greater at standard conditions in any stationary storage tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater exposed to the rays of the sun unless the external surface of the tank is painted and maintained white **\*or an equivalent method of emission control approved by the Department is used\***.

2. (No change.)

(b) No person shall cause, suffer, allow or permit the storage of any VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch absolute (1 millimeter of mercury) or greater at standard conditions in any stationary storage tank having a maximum capacity of 10,000 gallons (37,850 liters) or greater unless such stationary storage tank is equipped with control apparatus as determined in accordance with the procedures for using Table 1 or as approved by the Department as being equally or more effective in preventing the emission of a VOC into the outdoor atmosphere.

**PROCEDURE FOR USING TABLE I**

- Step 1: Determine the vapor pressure at standard conditions in pounds per square inch absolute of the VOC to be stored.
- Step 2: (No change.)
- Step 3: (No change.)
- Step 4: (No change.)
- Step 5: (No change.)

**TABLE 1**

**DETERMINANTS OF TYPE CONTROL APPARATUS  
REQUIRED FOR STORAGE OF VOLATILE  
ORGANIC COMPOUNDS**

(No change.)

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**\*Any VOC** which has a vapor pressure of 0.02 pounds per square inch absolute at standard conditions is included in this line.

(c) No person shall cause, suffer, allow, or permit the storage of any VOC having a vapor pressure of greater than 13.0 pounds per square inch absolute (672 millimeters of mercury) at the actual temperature existing at or near the liquid surface in any stationary storage tank having a maximum capacity of 1,000 gallons (3,785 liters) or greater unless such tank is equipped with a vapor control system to reduce the rate of the VOC emissions to the outdoor atmosphere by at least 90 percent by weight of the **\*[process emission rate]\* **\*uncontrolled VOC emissions from the tank\*****.

(d) No person shall cause, suffer, allow, or permit the storage of any VOC in any stationary storage tank subject to the provisions of either (b) above in Ranges II and III or (c) above and equipped with gauging and/or sampling systems unless such systems are vapor-tight except when gauging or sampling is taking place.

(e) The provisions of (b) or (c) above shall not apply to a stationary storage tank in Range II located underground at a depth of no less than eight inches (20.3 centimeters) below the surface measured to the highest point of the tank shell, or installed in other manner approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere.

(f) The provisions of (a) above shall apply to any storage tank:

- 1. (No change.)
- 2. Equipped with a vapor control system reducing by at least 98 percent the weight of VOC emissions to the outdoor atmosphere.

(g) Any stationary storage tank in Range III as determined from Table 1, constructed or installed on or after December 17, 1979, shall be provided with a double seal floating roof or other control apparatus approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere.

(h) No person shall cause, suffer, allow, or permit the storage of any VOC in any stationary storage tank equipped with an external floating roof, unless:

1. Prior to June 15, 1990, any such storage tank having a maximum capacity of 40,000 gallons (151,400 liters) or greater is equipped with control apparatus as determined in accordance with the procedure for using Table 1A or as approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere.

2. As of June 15, 1990, and continuously thereafter, any such storage tank containing a VOC having a vapor pressure of 1.0 pounds per square inch absolute (50 millimeters of mercury) or greater at standard conditions and having a maximum capacity of 20,000 gallons (75,700 liters) or greater is equipped with a double seal-envelope combination or equipment approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere. For the secondary seal, the gap area of gaps exceeding one-eighth inch (0.32 centimeters) in width between the seal and the tank wall shall not exceed 1.0 square inch per foot (6.5 square centimeters per 0.3 meters) of tank diameter.

**Procedure for Using Table 1A**

- Step 1: Determine the vapor pressure at standard conditions in pounds per square inch absolute of the VOC to be stored.
- Step 2: (No change.)
- Step 3: (No change.)
- Step 4: (No change.)
- Step 5: (No change.)
- Step 6: (No change.)

**TABLE 1A**

**DETERMINANTS OF REQUIREMENTS FOR SECOND SEAL  
RETROFITS ON EXTERNAL FLOATING ROOF STORAGE  
TANKS CONTAINING VOLATILE ORGANIC COMPOUNDS**

(No change.)

**\*Any VOC** which has a vapor pressure of 0.02 pounds per square inch absolute at standard conditions is included in this line.

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(i) Prior to June 15, 1990, no person shall cause, suffer, allow, or permit the storage of any VOC having a vapor pressure of greater than 1.5 pounds per square inch absolute (75 millimeters of mercury) at standard conditions in any stationary storage tank having a maximum capacity of greater than 40,000 gallons (151,400 liters) and equipped with an external floating roof having a vapor-mounted primary seal unless such tank is equipped with a second seal-envelope combination. The gap area of gaps exceeding one-eighth inch (0.32 centimeters) in width between the secondary seal and the tank wall shall not exceed 1.0 square inch per foot of tank diameter (6.5 square centimeters per 0.3 meters of tank diameter).

(j)-(k) (No change.)

(l) No person shall cause, suffer, allow, or permit the storage of any VOC in any stationary storage tank equipped with an external floating roof unless all openings in such roof, excluding emergency roof drains, are covered when not in active use.

(m) Any delivery vessel\*, used at a facility for storing\* **\*that contains\*** any VOC which has a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater at standard conditions **\*and is located at a facility and is vented to the atmosphere\*** for more than 30 consecutive days shall be considered a stationary storage tank for the purposes of this **\*[Section]\* \*section\***.

(n) Any person responsible for the emission of any VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater at standard conditions from any storage tank pursuant to this section shall maintain, for each tank, records specifying each VOC stored\*[,]\* **\*and\*** the vapor pressure of each VOC at standard conditions\*, the annual throughput of each VOC, and the dates on which the tank is used to store each VOC\*.

7:27-16.3 Transfer operations

(a) No person shall cause, suffer, allow, or permit the transfer of any VOC which has a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater at standard conditions into any receiving vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such transfer is made through a submerged fill pipe or by other means approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere during transfer. By no later than December 31, 1986, such submerged fill pipe shall be permanently affixed to any underground storage tank of 2,000 gallons (7,570 liters) or greater total capacity into which gasoline is transferred.

(b) (No change.)

(c) No person shall cause, suffer, allow, or permit the transfer of gasoline from any delivery vessel into any stationary storage tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such storage tank is equipped with and operating one of the following controls:

1. A vapor balance system with all atmospheric vents positively closed during transfer;
2. A vapor balance system with a conservation vent adjusted to remain closed during transfer;
3. A vapor balance system with a drilled cap on the atmospheric vent, the drilled hole not to exceed ¼ inch (6.4 millimeters) in diameter;
4. A vapor control system which reduces by no less than 90 percent by volume the air-vapor mixture displaced during the transfer of gasoline and which demonstrates to the satisfaction of the Department achievement of this control efficiency through testing performed when the ambient air temperature is 80 degrees Fahrenheit (°F) (27 degrees **\*[centigrade]\* \*Celsius\*** (°C)) or greater; or

5. A floating roof or equivalent approved by the Department and the EPA.

(d) (No change.)

(e) No person shall cause, suffer, allow, or permit the transfer or loading of gasoline or any substance into any gasoline vapor laden delivery vessel or marine delivery vessel at a gasoline loading facility

unless such facility is equipped with and operating a control apparatus in accordance with the following provisions:

1. (No change.)

2. Facilities loading more than 15,000 gallons (56,775 liters) of gasoline per day shall be equipped with and operating a vapor control system which:

i. Prevents VOC emissions to the outdoor atmosphere from exceeding the maximum allowable emissions as determined from Table 2; or

ii. Reduces the total VOC emissions to the outdoor atmosphere by no less than 90 percent by weight.

TABLE 2

**EMISSION STANDARDS FOR GASOLINE LOADING FACILITIES LOADING MORE THAN 15,000 GALLONS (56,775 LITERS) PER DAY**

Concentration of VOC in Gas Displaced from Delivery Vessel, Volume Percent	Maximum Allowable Emissions per Volume Unit Loaded
(No change.)	(No change.)

3. (No change.)

4. For facilities transferring or loading gasoline into marine delivery vessels, only (d) above, and (k) below, and the following shall apply:

i. Effective February 28, 1991, any facility with an annual throughput of 6,000,000 gallons (22,710,000 liters) or greater for loading gasoline into marine delivery vessels shall be equipped with and operating a vapor control system which reduces the total VOC emissions to the outdoor atmosphere by no less than 95 percent by weight.

ii. Effective February 28, 1991, any facility loading 60,000 gallons (227,100 liters) of gasoline or greater into marine delivery vessels in a single day between May 1 and September 15 shall be equipped with and operating a vapor control system which reduces the total VOC emissions to the outdoor atmosphere by no less than 95 percent by weight.

iii. (No change.)

5. For facilities subject to (e)4i or ii above, by January 19, 1990, the applicant shall submit to the Department a completed application for a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" pursuant to the provisions of N.J.A.C. 7:27-8. This application shall demonstrate the equipment's ability to reduce the total VOC emissions to the outdoor atmosphere by no less than 95 percent by weight.

(f) Unless in compliance with (g), (h), (r), (s), (t), and (u) below, no person shall cause, suffer, allow, or permit the transfer of gasoline into any gasoline vapor laden vehicular fuel tank unless the transfer is made using a vapor control system that is approved by the Department and that is designed, operated, and maintained so as:

1. To prevent VOC emissions to the outdoor atmosphere by no less than 95 percent by weight at all gasoline dispensing facilities except those facilities exempted in (g) below; and

2. (No change.)

(g) (No change.)

(h) Any person subject to the provisions of (f) above shall comply with the following provisions:

1. The average monthly throughput shall be based on the average of the monthly throughputs between September 1, 1986, and August 31, 1987, or during the most recent twelve months of operation, whichever is greater; and

2. (No change.)

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

(k) No person shall cause, suffer, allow, or permit any VOC to be emitted into the outdoor atmosphere during a transfer of gasoline, subject to the provisions of (c), (d), (e), and (f) above, from leaking components of vapor control systems or delivery vessels being loaded or unloaded if:

1.-2. (No change.)

(l) (No change.)

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(m) No person shall cause, suffer, allow, or permit the transport of any VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater in a delivery vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such vessel is vapor-tight at all times while containing any VOC except:

1.-3. (No change.)

(n)-(u) (No change.)

(v) Notwithstanding the provisions of (r) \*or (s)\* above, any person responsible for an existing gasoline dispensing facility which had not previously been required to install a vapor recovery system pursuant to (f) above and which has an average monthly throughput, as determined by (h) above, of greater than 10,000 gallons as of, or after, \*[the effective date of these amendments]\* **March 28, 1992\*** shall comply with the following schedule:

1. Within 3 months of exceeding the average monthly throughput of 10,000 gallons, the applicant, pursuant to the provisions of N.J.A.C. 7:27-8, shall submit a completed application for a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" to the Department which meets the requirements of (f) above;

2. Within 9 months of exceeding the average monthly throughput of 10,000 gallons, construction of the equipment and control apparatus in accordance with the approved "Permit to Construct, Install, or Alter, Control Apparatus or Equipment" shall commence; and

3. Within 18 months of exceeding the average monthly throughput of 10,000 gallons, compliance with (f) above shall be achieved.

(w) Any person responsible for any gasoline loading facility subject to (e)1, 2, or 3 above shall maintain the following records:

1. On a daily basis, record the total quantity, in gallons or liters, loaded into delivery vessels at the facility;

2. On a continuous basis or at a frequency approved by the Department in writing:

i. For any thermal oxidizer used to control the emission of VOC, record the operating temperature at the exit of the combustion chamber and the carbon monoxide concentration in the flue gas emitted to the outdoor atmosphere; or

ii. For any control apparatus using carbon or other adsorptive material, record the concentration of the total VOC\*[, measured as methane,]\* in the flue gas emitted to the outdoor atmosphere; or, on a daily basis, the date and time the carbon or other adsorptive material used in any control apparatus is regenerated or replaced; and

3. Upon the request of the Department and at the frequency specified by the Department, record any other operating parameter relevant to the prevention or control of air contaminant emissions from the facility.

#### 7:27-16.4 Open top tanks and surface cleaners

(a) No person shall cause, suffer, allow, or permit the use of any VOC in an unheated or heated open top tank unless such tank is covered by a lid which protects the VOC vapors from drafts and diffusion when the tank is not in active use.

(b) No person shall cause, suffer, allow, or permit the use of any VOC in an unheated open top surface cleaner having a top opening of more than six square feet (0.56 square meters) but not more than 25 square feet (2.3 square meters) unless such cleaner:

1. Has a visible high-level liquid mark which shall not be exceeded by the contained VOC;

2. Is equipped with a rack or mechanism for ensuring that all of the draining liquid VOC returns into the surface cleaner VOC bath;

3. Is devoid of any flushing wand which produces any VOC droplets or mist or which delivers a stream of any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge);

4. Is devoid of any agitating system which causes splashing of the VOC; and

5. (No change.)

(c) No person shall cause, suffer, allow, or permit the use of any VOC in an unheated open top surface cleaner having a top opening of more than 25 square feet (2.3 square meters) unless such cleaner:

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1. Has a visible high-level liquid mark which shall not be exceeded by the contained VOC;

2. Is equipped with a rack or mechanism for ensuring that all of the draining liquid VOC returns into the surface cleaner VOC bath;

3. Is devoid of any flushing wand which produces any VOC droplets or mist or which delivers a stream of any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge);

4. Is devoid of any agitating system which causes splashing of the VOC; and

5. Blocks drafts from contact with VOC vapors by:

i.-ii. (No change.)

(d) No person shall\*[,]\* cause, suffer, allow, or permit the use of any VOC in a heated open top tank which is operated at a temperature lower than the boiling point of such VOC unless such tank:

1. Has a visible high-level liquid mark which shall not be exceeded by the contained VOC;

2. Is devoid of any agitating system which causes splashing of the VOC;

3. Is devoid of any flushing wand which produces any VOC droplets or mist or which delivers a stream of any VOC under line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge);

4. Blocks drafts from contact with VOC vapors by:

i. (No change.)

ii. Having a freeboard ratio of 0.5 or greater, and being separated from other activities, and from open windows and doors by means of walls or screens; and

5. Has a thermostat or approved equivalent which automatically maintains the \*[solvent]\* **VOC\*** temperature below the boiling point.

(e) No person shall cause, suffer, allow, or permit the use of any VOC in an open top vapor surface cleaner unless such cleaner;

1. Has a visible high-level liquid mark which shall not be exceeded by the contained liquid VOC;

2. Is equipped with a rack or mechanism for ensuring that all of the draining liquid VOC returns into the surface cleaner VOC bath;

3. Is devoid of any flushing wand which produces any VOC droplets or mist or which delivers a stream of any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge);

4. Is devoid of any agitating system which causes splashing of the VOC;

5. Blocks drafts from contact with VOC vapors by:

i. (No change.)

ii. Having a freeboard ratio of 0.5 or greater, and being separated from other activities, and from open windows and doors by means of walls or screens;

6. Has a visible high-level vapor mark which shall not be exceeded by the VOC;

7. Is free from the influence of any local exhaust ventilation system unless such ventilation system collects at least 80 percent by volume of the VOC vapors leaving the cleaner, and reduces the vapors collected by at least 85 percent by volume;

8. Is free from the influence of any positive pressure source located within 20 feet (6.1 meters) of the tank rim unless the cleaner is equipped with and operates a means of collecting at least 80 percent by volume of the VOC vapors leaving the cleaner, and reduces the vapors collected by at least 85 percent by volume;

9. Is operated with a condenser having heat removal capacity equal to or greater than the heat input rate into the liquid VOC bath;

10. Is equipped with a device which automatically shuts off the heat input to the VOC if the temperature above the condensing surfaces or the temperature of the condensate exceeds the manufacturer's specifications; and

11. (No change.)

(f) No person shall cause, suffer, allow, or permit the use of any VOC in an unheated conveyerized surface cleaner unless such cleaner:

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1. Has a visible high-level liquid mark which shall not be exceeded by the contained VOC;

2. Is devoid of any flushing wand which produces any VOC droplets or mist or which delivers a stream of any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge);

3. Is devoid of any agitating system which causes splashing of the VOC;

4. Is protected from drafts when not in active use by the installation of covers over the conveyor inlet and conveyor outlet ports and over any other openings;

5.-6. (No change.)

(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. Has a visible high-level liquid mark which shall not be exceeded by the contained VOC;

2. Is devoid of any flushing wand which produces any VOC droplets or mist or which delivers a stream of any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge);

3. Is devoid of any agitating system which causes splashing of the VOC;

4. Has a thermostat or approved equivalent which automatically maintains the VOC temperature below the boiling point;

5. Is protected from drafts when not in active use by the installation of covers over the conveyor inlet and conveyor outlet ports and over any other openings;

6. (No change.)

7. Is equipped with a vapor control system by February 1, 1987, which reduces the total VOC emissions from the cleaner by at least 85 percent by volume.

(h) No person shall cause, suffer, allow, or permit the use of any VOC in a conveyORIZED vapor surface cleaner unless such cleaner:

1. Has a visible high-level liquid mark which shall not be exceeded by the contained liquid VOC;

2. Is devoid of any flushing wand which produces any VOC droplets or mist or which delivers a stream of any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge);

3. Is devoid of any agitating system which causes splashing of the VOC;

4. Is operated with a condenser having heat removal capacity equal to or greater than the heat input rate into the liquid VOC bath;

5. Is equipped with a device which automatically shuts off the heat input to the VOC if the temperature above the condensing surfaces or the temperature of the condensate exceeds the manufacturer's specifications;

6. Is protected from drafts when not in active use by the installation of covers over the conveyor inlet and conveyor outlet ports and over any other openings;

7. (No change.)

8. Is equipped with:

i. (No change.)

ii. A vapor control system which reduces the total VOC emissions from the cleaner by at least 85 percent by volume.

(i) No person shall cause, suffer, allow, or permit the use of any oil-water separator unless such separator is covered with a lid while containing any VOC. Sections of oil-water separators containing essential powered mechanical devices operating above the liquid level are not subject to this requirement.

(j) No person shall cause, suffer, allow, or permit the use of any VOC in an open top tank or surface cleaner unless such use follows written operating, inspection and maintenance instructions prepared in accordance with guidelines issued by the Department.

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

(o) The provisions of (a) above shall not apply to:

1. (No change.)

2. Open top tanks used in a waste water treatment system, provided the VOC emitted from such tanks does not exceed a

concentration of 5,000 parts per million by volume measured at any point above the liquid surface at the height of the tank lip.

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. The VOC content of any surface coating formulation as applied does not exceed the maximum allowable VOC content as specified in Table 3A, 3B, 3C, 3D or 3E; or

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:

$$\text{Daily mean VOC content} = \frac{\sum_{i=1}^n (c_i) (v_i)}{\sum_{i=1}^n (v_i)}$$

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<sub>i</sub> = maximum actual VOC content per volume of each coating (minus water) applied in one day, in pounds per gallon or kilograms per liter; and

v<sub>i</sub> = 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. The control apparatus prevents no less than 90 percent by weight of the VOC content in the surface coating formulation as applied each hour from being discharged directly or indirectly into the outdoor atmosphere; \*or\*

ii. The \*VOC emissions from the surface coating operation are controlled by the\* control apparatus \*so that the operation\* results in an hourly VOC emission rate no greater than the maximum allowable hourly emission rate calculated \*on a solids as applied basis\* in accordance with the following equation:

$$\text{Maximum allowable hourly rate} = (1 - y/d) (z) (x)/(1 - x/d)$$

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 formulation in pounds per gallon \*[or]\* (lb/gal) \*or\* kilograms per liter (kg/l);

y = VOC content of the applied surface coating formulation (minus water) in pounds per gallon (lb/gal) or kilograms per liter (kg/l); and

z = volume of the coating (minus water) applied per hour in gallons per hour (gal/hr) or liters per hour (l/hr); or

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:

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Actual daily emissions = (1NcNd) (VOC<sub>a</sub>) (V)

where: VOC<sub>a</sub> = 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 = 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 = 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

Allowable daily emissions = (1-VOC<sub>a</sub>/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<sub>a</sub> = daily mean VOC content of the applied surface coating formulations as calculated by 2 above; or

4. Until \*[two years from the effective date of these amendments]\* **\*March 28, 1994\***, the surface coating operation is included in a mathematical combination of sources which was approved by the Department prior to \*[the effective date of these amendments]\* **\*March 28, 1992\***, pursuant to N.J.A.C. 7:27-16.6(c)4-6.

(b) (No change.)

(c) The provisions of (a) and (b) above and (f), (g), and (h) below shall not apply to any individual surface coating or graphic arts operation in which the total surface coating formulations containing VOC are applied:

1.-3. (No change.)

(d) Any person responsible for any automobile or light duty truck surface coating operation may, as an alternative to complying, pursuant to (a) above, with the content limits set forth in Table 3A, comply with the provisions of Table 3C pertaining to spray prime and spray topcoat surface coating formulations, provided that the transfer efficiency of the spray coating operation is determined in accordance with a method approved by the Department and the EPA.

TABLE 3A

**MAXIMUM ALLOWABLE VOC CONTENT IN COATINGS FOR AUTOMOBILE AND LIGHT DUTY TRUCK SURFACE COATING OPERATIONS**

Type of Operation	Maximum Allowable VOC Content Per Volume of Coating (Minus Water)		Final Compliance Date
	Pounds Per Gallon	Kilograms Per Liter	
(No change.)	(No change.)	(No change.)	(No change.)

TABLE 3B

**MAXIMUM ALLOWABLE VOC CONTENT IN COATINGS FOR MISCELLANEOUS SURFACE COATING OPERATIONS**

Type of Operation	Maximum Allowable VOC Content per Volume of Coating (minus water)	
	Pounds per Gallons	Kilograms per Liter
<b>Group I</b>		
Can Coating		
Sheet basecoat	2.8	0.34
Two-piece can exterior		
Two- & three-piece can interior body spray, two-piece and exterior	4.2	0.51
Side-seam spray	5.5	0.66
End sealing compound	3.7	0.44
Coil Coating	2.6	0.31
Fabric Coating	2.9	0.35
Vinyl Coating	3.8	0.45
Paper Coating	2.9	0.35
Metal Furniture Coating	3.0	0.36
Magnet Wire Coating	1.7	0.20
Large Appliance Coating	2.8	0.34
<b>Miscellaneous Metal Parts and Products</b>		
Clear coating	4.3	0.52
Air-dried coating	3.5	0.42
Extreme performance coating	3.5	0.42
All other coatings	3.0	0.36
<b>Flat Wood Paneling</b>		
Printed hardwood plywood panels and particleboard panels	2.7	0.32

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Natural finish hardwood plywood	3.3	0.40
Hardboard panels	3.6	0.43
Group II		
Leather Coating	5.8	0.70
Urethane Coating	3.8	0.45
Tablet Coating	5.5	0.66
Glass Coating	3.0	0.36

TABLE 3C

**ALTERNATIVE MAXIMUM ALLOWABLE VOC CONTENT IN COATINGS WITH MINIMUM TRANSFER EFFICIENCIES REQUIRED FOR SPRAY COATING OPERATIONS**

Maximum Allowable VOC Content per Volume of Coating (minus water) (No change.)	Minimum Transfer Efficiency Required (No change.)
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**\*NOTE:** Each combination of VOC content and transfer efficiency in Table 3C is equivalent to a daily emission of 15.1 pounds of VOC per gallon of solids deposited, minus water. Verification of this equivalent emission rate using the methods prescribed in the "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light Duty Truck Topcoat Operations" (EPA 450/3-88-018) shall satisfy compliance with Table 3C.\*

TABLE 3D

**MAXIMUM ALLOWABLE VOC CONTENT IN COATINGS FOR GRAPHIC ARTS SOURCE OPERATIONS**

<b>Basis</b>	<b>Control Criterion</b>	
For formulations that contain water:	Maximum Allowable volume percent VOC in volatile fraction of coatings (VOC plus water) as applied.	
	Volume Percent	
	25.0	
or		
For formulations that do not contain water:	Maximum Allowable VOC Content per volume of formulation (minus water)	
	Pounds per Gallon	Kilograms per Liter
	2.9	0.35

TABLE 3E

**MAXIMUM ALLOWABLE VOC CONTENT IN COATINGS FOR WOOD FURNITURE SURFACE COATING OPERATIONS**

Type of Surface Coating Formulation (No change.)	Maximum Allowable VOC Content per Volume of Coating (minus water) (No change.)
--	--

(e) Any person responsible for any metal furniture or large appliance surface coating operation may, as an alternative to complying with the applicable maximum allowable VOC content limits per volume of coating (minus water) set forth in Group I of Table 3B, pursuant to (a)1 above, apply to the Department for an alternative maximum allowable VOC content limit per volume of coating, provided such person can demonstrate to the satisfaction of the Department and the EPA that the surface coating formulation is applied at a transfer efficiency of greater than 60 percent.

(f) Any person responsible for a rotogravure, flexographic, or fabric printing [source]\* operation may, as an alternative to complying with the requirements set forth in Table 3D, pursuant to (a)1 above, install and use control apparatus [to serve the source operation]\* which:

1. Collects at least 75 percent by volume of the source gas emitted from a rotogravure printing operation\*, including associated dryers,\* and prevents from being discharged into the outdoor atmosphere at least 90 percent by volume of the VOC collected on an hourly basis;
2. Collects at least 70 percent by volume of the source gas emitted from a flexographic printing operation\*, including associated

dryers,\* and prevents from being discharged into the outdoor atmosphere at least 90 percent by volume of the VOC collected on an hourly basis;

3. Collects at least 70 percent by volume of the source gas emitted from a fabric printing operation\*, including associated dryers,\* and prevents from being discharged into the outdoor atmosphere at least 90 percent by volume of the VOC collected on an hourly basis.

(g) Notwithstanding the provisions of (a)3.ii and (a)4 above, any person responsible for a tablet coating operation that uses a surface coating formulation that does not comply with the maximum allowable VOC content limits per volume of coating (minus water) set forth in Table 3B, Group II, shall install and use control apparatus which prevents no less than 90 percent by weight of the VOC content in the surface coating formulation as applied each hour from being discharged directly or indirectly into the outdoor atmosphere.

(h) Any person responsible for a wood furniture surface coating operation shall comply with the following requirements:

1. At a facility emitting less than 50 tons (45.36 megagrams) of VOC per year, each surface coating formulation specified in Table 3E shall be applied using airless, air-assisted airless, or heated airless spray techniques, or another application method approved by the

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Department and the EPA as having a transfer efficiency of at least 40 percent; or

2. At a facility emitting 50 tons (45.36 megagrams) of VOC or greater per year, each surface coating formulation specified in Table 3E shall be applied using airless, air-assisted airless, heated airless, electrostatic spray techniques, or flat line processes, or another application method approved by the Department and the EPA as having a transfer efficiency of at least 65 percent.

(i) Any person responsible for an automobile or light duty truck surface coating operation subject to a VOC content limit for custom topcoating or refinishing set forth in Table 3A of this section shall comply with the following schedule:

1.-4. (No change.)

(j) Any person responsible for a surface coating operation subject to a VOC content limit set forth in Table 3B, Group II for leather coating, urethane coating, tablet coating, glass coating; in Table 3D for fabric or urethane printing operations; or in Table 3E for wood furniture coating, shall comply with the following schedule:

1. By January 30, 1987, a plan must be submitted to the Department for approval describing the measures which will be applied in order to achieve compliance. The plan submittal shall include:

i. (No change.)

ii. Completed applications, if relevant, for the mathematical combination of source gases \*[as provided for in N.J.A.C. 7:27-16.6(c)4]\*;

iii.-iv. (No change.)

2.-4. (No change.)

(k) (No change.)

(l) Any person responsible for the emission of any VOC from any surface coating operation subject to this section applying only surface coating formulations which are subject to and conform with the applicable VOC content limit set forth in Table 3A, 3B, 3C, 3D, or 3E shall maintain records of the VOC content of each surface coating formulation (minus water) as applied, in pounds of VOC per gallon of coating or kilograms of VOC per liter of coating; the percent by weight of any exempt organic substance; and the daily volume of each surface coating formulation applied.

(m) Any person responsible for any surface coating operation, which is subject to this section and which uses one or more surface coating formulations which do not conform with the applicable VOC content limit set forth in Table 3A, 3B, 3C, 3D, or 3E, shall maintain the following records:

1. On a daily basis, specification of the following for each surface coating formulation as applied:

i. The number of hours applied;

ii. The volume applied;

iii. The density of the formulation;

iv. The density of the VOC in the formulation;

v. The percent by weight of VOC in the formulation;

vi. The percent by weight of any exempt organic substance in the formulation; and

vii. The percent by weight of any water in the formulation;

2. For any surface coating operation that has a thermal oxidizer used to control the emission of VOC, record on a continuous basis or at a frequency approved in writing by the Department the operating temperature at the exit of the combustion chamber and the carbon monoxide concentration in the flue gas emitted to the outdoor atmosphere;

3. For any surface coating operation that has a control apparatus using carbon or other adsorptive material to control the emission of VOC:

i. Record on a continuous basis or at a frequency approved in writing by the Department the concentration of the total VOC\*[, measured as methane,]\* in the flue gas emitted to the outdoor atmosphere; or

ii. Record the date and time the carbon or other adsorptive material used in the control apparatus is regenerated or replaced; and maintain any other information required to document whether the control apparatus is being used and maintained in accordance with the manufacturer's recommended procedures. The manufacturer's recommendations for use and maintenance are to be readily available on the operating premises, and the person responsible for

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the surface coating operation shall provide these to the Department upon request; and

4. Upon the request of the Department and at the frequency specified by the Department, record any other operation parameter relevant to the prevention or control of air contaminant emissions from the surface coating operation or control apparatus.

**\*(n) All or part of the information documenting the composition of a surface coating formulation as required by (l) or (m) above may be in the form of standard formulation sheets, material safety data sheets, the results of analytical tests, or another form provided that the required information can be readily extracted.\***

7:27-16.6 Source operations other than storage tanks, transfers, open top tanks, surface cleaners, surface coaters and graphic arts operations

(a) No person shall cause, suffer, allow, or permit any VOC to be emitted into the outdoor atmosphere from any source operation not subject to the provisions of N.J.A.C. 7:27-16.2, 16.3, 16.4, 16.5, 16.7, and 16.8, of this subchapter, in excess of the maximum allowable emission rate as determined in accordance with the procedures for using Table 4.

**Procedure for Using Table 4**

1. Determine the vapor pressure at standard conditions in pounds per square inch absolute of the VOC emitted from the source operation.

2. Determine the percent by volume of the VOC in the source gas emitted from the source operation. Whenever dilution gas is added to the source gas from a source operation, the source gas shall be considered to have the gas discharge rate and composition prior to such dilution, in accordance with the following:

i. If the source operation discharges under a ventilation hood, concentration of VOC and the flow rate of the source gas may be measured or otherwise determined in the duct connecting the hood to the inlet of the ventilation fan.

ii. If the emissions and ventilation air are conveyed through ducts from the source operation to the outdoor atmosphere with no interruption, the concentration of VOC and the rate of the source gas are to be determined inside the ducts.

iii. For all other source operations including, but not limited to, evaporation from steps in chemical manufacturing processes, the concentration of VOC and the rate of the source gas shall be measured at a point no farther than six inches (15 centimeters) downstream from the point at which the vapors leave the process equipment.

3. From Table 5, find the source gas range classification by selecting the appropriate line for the vapor pressure as determined in Step 1 and the appropriate column for the percent VOC as determined in Step 2.

4. (No change.)

5. The maximum allowable emission rate shall be the pounds (kilograms) per hour (or per batch cycle hour) equivalent to the percent of the process emissions shown in Column 2 or:

i. (No change.)

ii. As of June 15, 1990, and continuously thereafter, the Exclusion Rate shown in Column 4, whichever is greater.

**TABLE 4**

**MAXIMUM ALLOWABLE HOURLY VOC EMISSIONS FROM SOURCE OPERATIONS**

(No change.)

**TABLE 5**

**DETERMINATIONS OF CONTROLS REQUIRED FOR PROCESS SOURCE GASES**

Concentration of VOC by Volume, Percent

(No change.)

(b) The provisions of (a) above shall not apply to a source gas in Range A or B discharged into the outdoor atmosphere through a local exhaust ventilation system whose intake is located within six

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inches (15 centimeters) of the point at which the source gas is discharged to an internal work space, provided such exhaust ventilation system:

1. (No change.)
2. Is equipped with a vapor control system which prevents from being discharged into the outdoor atmosphere at least 85 percent by volume of the VOC collected, on an hourly basis.

(c) For the purpose of this section:

- 1.-3. (No change.)
4. Until **\*[two years from the effective date of these amendments]\* \*March 28, 1994\***, the provisions of 3 above may apply to source gases which are mathematically combined, providing approval for such a mathematical combination of sources has been obtained from the Department prior to **\*[the effective date of these amendments]\* \*March 28, 1992\***;
5. As of **\*[the effective date of these amendments]\* \*March 28, 1992\***, the Department shall not approve any mathematical combining of source gases; and
6. Any approval of a permit or certificate issued by the Department authorizing the demonstration of compliance through a mathematical combination of sources **\*[pursuant to N.J.A.C. 7:27-16.6(c)4]\*** shall expire **\*[two years from the effective date of these amendments]\* \*as of March 28, 1994\***. Any person who, as a result of this expiration, must alter any equipment or control apparatus in order to operate in conformance with any requirement of this subchapter shall do so in accordance with the following schedule:
  - i. **\*[Within 180 days of the effective date of these amendments]\* \*By September 24, 1992\***, apply to the Department for a permit to carry out the alteration; and
  - ii. **\*[Within two years from the effective date of these amendments]\* \*By March 28, 1994\***, comply with the requirements of this **\*[Chapter]\* \*chapter\*** and with any provisions or conditions set forth in any alteration permit issued which authorizes the alteration of the equipment or control apparatus.

(d) No person shall cause, suffer, allow, or permit VOC **\*having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater measured at standard conditions\*** to be emitted from leaking flange gaskets, manhole gaskets, measuring instrument connections, sight glass connections, and other sealed connections, joints, and fittings not involving moving parts.

(e) No person shall cause, suffer, allow, or permit VOC **\*having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater measured at standard conditions\*** to be emitted from leaking valve bonnets, pump packings, compressor packings, and other seals surrounding moving parts:

- 1.-2. (No change.)
- (f) (No change.)
- (g) The owner or operator of a natural gas/gasoline processing plant shall develop and initiate an emission testing program for equipment leaks subject to the provisions of (d) and (e) above. The program shall apply to only that equipment in contact with a substance that is 1.0 percent by weight or greater VOC and shall include the following provisions:
  - 1.-7. (No change.)

(h) The owner or operator of a synthetic organic chemical or polymer manufacturing facility shall develop and initiate an emission program for equipment leaks subject to the provisions of (d) and (e) above. The program shall apply only to that equipment in contact with a substance that is 10 percent by weight or greater VOC and that is used to produce greater than 1,100 tons per year (1,000 megagrams per year) of a synthetic organic chemical or polymer and shall include the following provisions:

- 1.-7. (No change.)
- (i)-(j) (No change.)
- (k) After July 1, 1982, for a petroleum refinery, and after July 1, 1987, for a natural gas/gasoline processing plant or a synthetic organic chemical or polymer manufacturing facility, no owner or operator shall install or operate a valve, except for safety pressure

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relief valves, at the end of a pipe or line containing VOC unless the pipe or line is sealed with a second valve, a blind flange, a plug or a cap. The sealing device may be removed only when a sample is being taken or during maintenance operations.

(1) (No change.)

(m) Any person responsible for a source operation subject to (a) above shall maintain the following records for each source operation:

1. For each different kind of batch or continuous process for which the source operation is used:

i. Record the following information determined in accordance with the Procedure for Using Table 4 in (a) above; the chemical name and vapor pressure of each VOC used, the percent concentration by volume of VOC in the source gas, the volumetric gas flow rate, the source gas range classification, and the maximum allowable emission rate; also record the maximum actual emission rate and maintain the calculations and any test data used to determine the actual emission rate for each process; and, if the source operation is used for more than one process, record the dates on which the source operation is used for each process; or

ii. Conduct **\*[a "worst case"]\* \*an\*** analysis of the source operation, **\*which demonstrates that, under \*[""]\*worst case\*[""]\* operating conditions that maximize the \*["potential"]\* VOC \*["emission rate"]\* \*emissions after any control\***, the VOC emission rate of the source operation is in compliance with this section; and maintain process records sufficient to demonstrate whether the VOC emission rate of the source operation from actual operations does not exceed the **\*["potential"]\* VOC emission rate under \*[""]\*worst case\*[""]\* \*operating\*** conditions;

2. For any source operation that has a thermal oxidizer used to control the emission of VOC, record on a continuous basis or at a frequency approved in writing by the Department the operating temperature at the exit of the combustion chamber and the carbon monoxide concentration in the flue gas emitted to the outdoor atmosphere; also maintain production records sufficient to demonstrate whether the processes conducted generate VOC emissions within the design parameters of the thermal oxidizer;

3. For any source operation that has a control apparatus using carbon or other adsorptive material used to control the emission of VOC;

i. Record on a continuous basis or at a frequency approved in writing by the Department the concentration of the total VOC **\*[, measured as methane,]\*** in the flue gas emitted to the outdoor atmosphere; or

ii. Record the date and time the carbon or other adsorptive material used in the control apparatus is regenerated or replaced; also maintain production records sufficient to demonstrate whether the processes conducted generate VOC emissions within the design parameters of the control apparatus and any other information required to document whether the control apparatus is being used and maintained in accordance with the manufacturer's recommended procedures. The manufacturer's recommendations for use and maintenance are also to be readily available on the operating premises, and the person responsible for the source operation shall provide these to the Department upon request; and

4. Upon the request of the Department and at the frequency specified by the Department, record any other operating parameter relevant to the prevention or control of air contaminant emissions from the source operation or control apparatus.

## 7:27-16.7 Cutback and emulsified asphalts

(a) No person shall cause, suffer, allow, or permit the use of cutback asphalt or emulsified asphalt containing any VOC unless:

1. The material is applied during the periods of January 1 through April 15 or October 15 through December 31;
2. The use is solely as a penetrating prime coat;
3. The emulsified asphalt contains no greater than eight percent VOC by volume and is used for mixed-in-place construction;
4. (No change.)
5. The user can demonstrate that there are no emissions of VOC from the asphalt under conditions of normal use.

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## 7:27-16.8 Petroleum solvent dry cleaning operations

(a) No person shall cause, suffer, allow, or permit any VOC emissions to the outdoor atmosphere from a petroleum solvent dry cleaning dryer unless such dryer is:

1. Equipped with a vapor control system which prevents VOC emissions from exceeding 7.7 pounds (3.5 kilograms) per 220 pounds (100 kilograms) dry weight of articles dry cleaned; or

2. (No change.)

(b) No person shall cause, suffer, allow, or permit any VOC emissions to the outdoor atmosphere from a petroleum solvent filtration system unless:

1. The VOC content in all filtration wastes is reduced to no more than 2.2 pounds (1.0 kilograms) per 220 pounds (100 kilograms) dry weight of articles dry cleaned, before disposal, and exposure to the outdoor atmosphere; or

2. (No change.)

(c) No owner or operator of a petroleum solvent dry cleaning facility shall cause, suffer, allow, or permit any VOC to be emitted into the outdoor atmosphere from:

1. (No change.)

2. Containers of VOC or VOC-laden waste standing open to the outdoor atmosphere.

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

(f) The total amount of any VOC consumed by a petroleum solvent dry cleaning operation in each calendar year shall not exceed 9.9 pounds per 220 pounds of dry weight of articles cleaned.

(g) Any person responsible for the emission of any VOC from a petroleum solvent dry cleaning operation subject to this section shall maintain a monthly record setting forth the chemical name of the VOC used in the operation, the volume of VOC consumed in the operation, and the dry weight of articles cleaned.

## 7:27-16.9 Emission information, record keeping and testing

(a) Any person subject to any record keeping provision of this subchapter shall maintain the required records for a period of no less than five years and shall make those records available upon the request of the Department or the EPA, or any duly authorized representative of the Department or the EPA.

(b) Any person who owns or operates a source operation subject to any record keeping requirement set forth in this subchapter may submit a request in writing to the Department for approval to maintain records other than those specified at N.J.A.C. 7:27-16.2(n), 16.3(w), 16.5(l), 16.5(m), 16.6(m), or 16.8(g). The Department and EPA may approve any such request if the person demonstrates to the satisfaction of the Department and EPA that the alternate records to be maintained are at least as effective in documenting that the source is operating in compliance with the applicable requirements.

(c) Any person responsible for the emission of VOC shall, upon request of the Department, the EPA, or any duly authorized representative of the Department or the EPA, provide information relating to the location, rate, duration, composition, and properties of the effluent and such other information as the Department may prescribe.

(d) Any person responsible for the emission of VOC shall, upon request of the Department, the EPA, or any duly authorized representative of the Department or the EPA, provide facilities and necessary equipment for determining the quantity and identity of any VOC emitted into the outdoor atmosphere and shall conduct such testing using N.J.A.C. 7:27B-3 or another method approved by the Department and the EPA. Test data shall be recorded in a permanent log at such time intervals as specified by the Department and shall be maintained for a period of not less than two years and shall be available for review by the Department, the EPA, or any duly authorized representative of the Department or the EPA.

(e) Any person responsible for the emission of VOC shall, upon request of the Department, provide sampling facilities and testing facilities exclusive of instrumentation and sensing devices as may be necessary for the Department to determine the nature and quantity of the VOC being emitted into the outdoor atmosphere. During such testing by the Department, the equipment and all components connected, or attached to, or serving the equipment shall be used and

operated under normal routine operating conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

(f) All testing and monitoring pursuant to the provisions of this subchapter shall be conducted using N.J.A.C. 7:27B-3 or another method approved by the Department and the EPA.

(g) Hourly emissions limits apply to any consecutive 60 minute period, and testing performed to verify compliance shall be based on a 60 minute period during which the equipment or control apparatus is used and operated under conditions acceptable to the Department and consistent with the operational parameters and limits set forth in any permit or certificate in effect. **\*If circumstances require that test periods be less than, or more than 60 minutes (such as when an operational duration is less than 60 minutes or when detectability limits are approached for low concentration gas streams), the Department may require different test periods in its review and approval of test protocols.**

(h) Any record keeping requirement set forth at N.J.A.C. 7:27-16.2(n), 16.3(w), 16.5(l), 16.5(m), 16.6(m), or 16.8(g) shall become effective on October 1, 1992, except for record keeping based on continuous emission monitoring. Any record keeping requirement based on continuous emission monitoring shall become effective on April 1, 1993.

(i) Any person who reports information to the Department pursuant to the requirements set forth at N.J.A.C. 7:27-16.2(n), 16.3(w), 16.5(l), 16.5(m), 16.6(m), or 16.8(g) may assert a confidentiality claim for that information in accordance with the procedures set forth at N.J.A.C. 7:27-8.14.\*

## 7:27-16.10 Variances

(a) Whenever a person responsible for the emission of any VOC believes that advances in the art of control for the kind and amount of VOC emitted have not developed to a degree which would enable the requirements of this subchapter to be attained, such person may apply to the Department in writing for a variance, setting forth any reason and justification therefor.

(b) Any person submitting an application for a variance to the Department is subject to the certification requirements set forth at N.J.A.C. 7:27-8.24.

(c) The Department may issue a variance which shall be valid for a period not to exceed three consecutive years from the date of issuance and may be renewed upon application to the Department setting forth reasons and justifications for its continuation.

(d) Variances issued under the provisions of this section shall be conditional upon:

1. Compliance with any requirements which the Department sets forth as conditions of approval; and

2. Approval by the EPA as a revision to the State Implementation Plan.

(e) Variances may be revoked at any time at the discretion of the Department.

(f) Any applicant aggrieved by the denial or revocation by the Department of a variance allowed under the provisions of this section may request an adjudicatory hearing pursuant to N.J.A.C. 7:27-8.12.

## 7:27-16.11 Applicability

(a) Whenever persons, equipment, control apparatus or any VOC subject to the provisions of this subchapter are also subject to the provisions of any other subchapters of this chapter, the requirements of the relevant provisions of this subchapter and all subchapters of this chapter will apply.

(b) Whenever a VOC subject to the emission rate provisions of this subchapter is also subject to the emission rate provisions of any other subchapters of this chapter, the relevant provisions of the subchapter requiring the lowest allowable rate will apply.

## 7:27-16.12 Exceptions

(a) (No change.)

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(b) The provisions of this subchapter shall not apply to the VOC emissions from the following source operations:

1.-7. (No change.)

**SUBCHAPTER 17. CONTROL AND PROHIBITION OF AIR POLLUTION BY TOXIC SUBSTANCES**

**7:27-17.1 Definitions**

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

...  
 "Air contaminant" means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases.

...  
 "CFR" means the Code of Federal Regulations.  
 "Control apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

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

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

"Gasoline" means any petroleum distillate or petroleum distillate/oxygenate blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) absolute or greater and used as an automotive fuel.

**\*"Indirect emissions" means a discharge of any air contaminant into the outdoor atmosphere through any opening that is not a stack or chimney directly connected to the equipment.\***

...  
 "Liquid particles" means particles which have volume but are not of rigid shape.

...  
 "Person" means corporations, companies, associations, societies, firms, partnerships, and joint stock companies, as well as individuals, and all political subdivisions of this State or any agencies or instrumentalities thereof.

"Reid vapor pressure" or "RVP" means the absolute vapor pressure of a petroleum product in pounds per square inch (kilopascals) at 100 degrees Fahrenheit (°F) (37.8 degrees \**[centigrade]*\* \**Celsius*\* (°C)) as measured by "Method 1—Dry RVP Measured Method" or "Method 2—Herzog Semi-Automatic Method" promulgated at 40 CFR 80, Appendix E; or any other equivalent test method approved in advance in writing by the Department and the EPA.

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

"Stack or chimney" means a flue conduit or opening designed, constructed, or utilized for the purpose of emitting any air contaminant into the outdoor atmosphere.

"Standard conditions" means 70 degrees Fahrenheit (°F) (21.1 degrees \**[centigrade]*\* \**Celsius*\* (°C)) and one atmosphere pressure (14.7 pounds per square inch absolute or 760.0 millimeters of mercury).

"Storage tank" means any tank, reservoir, or vessel which is a container for liquids or gases, wherein:

1. No manufacturing process, or part thereof, other than filling or emptying takes place; and
2. The only treatment carried out is that necessary to prevent change from occurring in the physical condition or the chemical properties of the liquids or gases deposited into the container. Such treatment may include recirculating, agitating, maintaining the tem-

perature of the stored liquids or gases, or replacing air in the vapor space above the stored liquids or gases with an inert gas in order to inhibit the occurrence of chemical reaction.

"Surface cleaner" means a device to remove unwanted foreign matter from the surfaces of materials by using VOC solvents in the liquid or vapor state.

"Surface coating formulation" means the material used to form a protective, functional, or decorative film including, but not limited to, any architectural coating, paint, varnish, ink or adhesive applied to or impregnated into a substrate.

"Surface coating operation" means the application of one or more surface coating formulations, using one or more coating applicators, together with any associated drying or curing areas. A single surface coating operation ends after drying or curing and before other surface coating formulations are applied. For any web coating line, this term means an entire coating application system, including any associated drying ovens or areas between the supply roll and take-up roll, that is used to apply surface coating formulations onto a continuous strip or web.

...  
 "Toxic substance" or "TXS" means a substance listed in Table 1 of this subchapter.

...  
 "Volatile organic compound" or "VOC" means any organic substance, mixture of organic substances, or **\*the organic components of any\*** mixture of organic and inorganic substances that participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by approved test methods. This term includes, but is not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners. In the case of surface coating formulations, this term also includes any coalescing or other agent which **\*is an organic substance and\*** evaporates from the coating during the application and drying phase. This term does not include:

- methane\*[,]\*
- trichlorofluoromethane (CFC-11)\*[,]\*
- dichlorodifluoromethane (CFC-12)\*[,]\*
- chlorodifluoromethane (CFC-22)\*[,]\*
- trifluoromethane (FC-23)\*[,]\*
- 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)\*[,]\*
- 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)\*[, and]\*
- chloropentafluoroethane (CFC-115).

**7:27-17.3 Storage, transfer, and use of toxic substances**

(a) No person shall cause, suffer, allow or permit any TXS listed in Table 1 to be emitted from any source operation, storage tank, or transfer operation into the outdoor atmosphere unless such equipment and operation is registered with the Department within six months of the effective date of this subchapter. Such registration shall include information relating to vessel sizes, transfer rates, emission rates, operating procedures and other information required by the Department and shall be made on forms provided by the Department.

(b) In cases where the Department determines that the equipment or operating procedures as described in the registration do not represent advances in the art of control for the types and kinds of TXS emitted, the Department will so notify the registrant.

(c) Within three months of such notification, the registrant must advise the Department of measures to be taken for reducing the TXS emissions to a rate or concentration equivalent to advances in the art of control and the schedule for completing such measures.

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

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**TABLE 1  
TOXIC SUBSTANCES**

<b>*NAME*</b>	<b>*CAS NUMBER*</b>
Benzene (Benzol)	<b>*71-43-2*</b>
Carbon tetrachloride (Tetrachloromethane)	<b>*56-23-5*</b>
Chloroform (Trichloromethane)	<b>*67-66-3*</b>
Dioxane (1,4-Diethylene dioxide)	<b>*123-91-1*</b>
Ethylenimine (Aziridine)	<b>*151-56-4*</b>
Ethylene dibromide (1,2-Dibromoethane)	<b>*106-93-4*</b>
Ethylene dichloride (1,2-Dichloroethane)	<b>*107-06-2*</b>
1,1,2,2-Tetrachloroethane (sym Tetrachloroethane)	<b>*79-34-5*</b>
Tetrachloroethylene (Perchloroethylene)	<b>*127-18-4*</b>
1,1,2-Trichloroethane (Vinyl trichloride)	<b>*79-00-5*</b>
Trichloroethylene (Trichlorethene)	<b>*79-01-6*</b>

**7:27-17.4 Discharge of toxic substances**

(a) No person shall cause, suffer, allow or permit any TXS to be emitted from any source operation into the outdoor atmosphere unless such discharge is:

1.-3. (No change.)

(b) No person shall cause, suffer, allow or permit the emission of a TXS into the outdoor atmosphere from a system, equipment, or control apparatus not approved by the Department as being effective in preventing aerodynamic downwash.

**7:27-17.5 Operating instructions**

(a) No person shall cause, suffer, allow or permit the use of TXS in any open top tank or surface cleaner unless such use is in conformity with written operating, inspection and maintenance instructions prepared in accordance with guidelines issued by the Department.

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

**7:27-17.6 Emissions information and tests**

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

(c) Any person responsible for the emission of TXS shall, upon request of the Department, provide:

1. (No change.)

2. Facilities and necessary equipment for determining the quantity and identity of TXS emitted into the outdoor atmosphere and shall conduct such tests using methods approved by the Department. Test data shall be recorded in a permanent log at such time intervals as specified by the Department and shall be maintained for a period of not less than two years and shall be available for review by the Department.

3. Sampling facilities and testing facilities exclusive of instrumentation and sensing devices as may be necessary for the Department to determine the nature and quantity of TXS being emitted into the outdoor atmosphere. During such testing by the Department, the equipment and all components connected, or attached to, or serving the equipment shall be used and operated under normal routine operating conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

**7:27-17.7 Permit to construct and certificate to operate**

(a) No person shall construct or install any new equipment, or any new control apparatus, or alter any existing equipment or control apparatus from which TXS are emitted into the outdoor atmosphere without first having obtained a "Permit to Construct, Install or Alter Control Apparatus or Equipment" from the Department, in accordance with the provisions of subchapter 8 (Permits and Certificates) of this chapter.

(b) No person shall use or cause to be used any new or altered equipment, or any new or altered control apparatus from which TXS are emitted into the outdoor atmosphere without first having obtained a "Certificate to Operate Control Apparatus or Equipment" from the Department, in accordance with the provisions of subchapter 8 (Permits and Certificates) of this chapter.

(c) No person shall use or cause to be used any equipment or control apparatus from which TXS are emitted into the outdoor atmosphere unless all components connected, or attached to, or serving the equipment, including control apparatus, are functioning properly and are in use in accordance with any relevant "Permit to Construct, Install or Alter Control Apparatus or Equipment" and any relevant "Certificate to Operate Control Apparatus or Equipment."

**7:27-17.8 Applicability**

(a) (No change.)

(b) Whenever persons, equipment, control apparatus or TXS subject to the provisions of this subchapter are also subject to the provisions of any other subchapters of this chapter, the requirements of the relevant provisions of this subchapter and all subchapters of this chapter will apply.

(c) Whenever a TXS subject to the provisions of this subchapter is also subject to the provisions of any other subchapters of this chapter, the relevant provisions of the subchapter requiring the lowest allowable rate will apply.

**7:27-17.9 Exceptions**

(a) (No change.)

(b) The provisions of this subchapter shall not apply to any TXS which:

1.-3. (No change.)

**SUBCHAPTER 23. PREVENTION OF AIR POLLUTION FROM ARCHITECTURAL COATINGS AND CONSUMER PRODUCTS**

**7:27-23.1 Applicability**

This subchapter prescribes the rules of the Department for limiting the \*[volatile organic substances] **\*VOC\*** content of **\*architectural coatings and\*** consumer products. The following sections shall govern the content of **\*architectural coatings and\*** consumer products used and provided for use in the State and the methods to be followed by manufacturers, distributors, and retailers to assure these standards are met.

**7:27-23.2 Definitions**

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

... "ASTM" means the American Society for Testing and Materials.

... "Volatile organic compound" or "VOC" means any organic substance, mixture of organic substances, or **\*the organic components of any\*** mixture of organic and inorganic substances that participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by approved test methods. This term includes, but is not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners. In the case of surface coating formulations, this term also includes any coalescing or other agent which **\*is an organic substance and\*** evaporates from the coating during the application and drying phase. This term does not include:

- methane\*[,]\*
- trichlorofluoromethane (CFC-11)\*[,]\*
- dichlorodifluoromethane (CFC-12)\*[,]\*
- chlorodifluoromethane (CFC-22)\*[,]\*
- trifluoromethane (FC-23)\*[,]\*
- 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)\*[,]\*
- 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)\*[, and]\*
- chloropentafluoroethane (CFC-115).

**7:27-23.3 Architectural coatings**

(a) No person shall sell, offer for sale, hold for sale, provide, apply, or manufacture for sale within New Jersey any architectural coating manufactured after January 1, 1990, for Group I coatings and after February 28, 1990, for Group II coatings which contains

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more than the applicable VOC content limit per volume of coating, excluding water and any colorant added to tint bases, as allowed in Table 1 in (f) below.

(b) Effective February 28, 1993, no person shall sell, offer for sale, provide or hold for sale within New Jersey any architectural coating which contains more than the applicable VOC content limit per volume of coating, excluding water and any colorant added to tint bases, as allowed in Table 1 in (f) below.

(c) For a specific architectural coating to which more than one VOC content limit in Table 1 is applicable, or for any architectural coating which has anywhere on the coating container, on any sticker or label affixed thereto, or in any sales or advertising literature, any indication that more than one VOC content limit in Table 1 is applicable, the most stringent limit is applicable.

(d) (No change.)

(e) (No change.)

(f) Table 1 contains the VOC content limits for architectural coatings:

**TABLE 1  
VOC CONTENT LIMITS  
FOR ARCHITECTURAL COATINGS**

Type of Architectural Coating	Maximum Allowable VOC Content Per Volume Of Coating Excluding Water	
	POUNDS PER GALLON	KILOGRAMS PER LITER
<b>GROUP I</b> (No change.)	(No change.)	(No change.)
<b>GROUP II</b>		
Fire retardant coating		
opaque	4.2	0.50
all others	7.1	0.85
Flat architectural coating	2.1	0.25
High heat resistant coating	5.4	0.65
Lacquer	5.7	0.68
Multicolored coating	5.0	0.60
Quick-dry primer, sealer, undercoater	4.2	0.50
Shellac		
clear	6.1	0.73
pigmented	4.6	0.55
Sign paint	3.8	0.45
Stain		
semitransparent	4.6	0.55
opaque	2.9	0.35
Tile-like glaze coating	4.6	0.55
Varnish	3.8	0.45
Waterproofing sealer	5.0	0.60
All other architectural coatings	2.1	0.25

**7:27-23.5 Labeling requirements**

(a) For architectural coatings subject to the requirements of N.J.A.C. 7:27-23.3, the following shall apply:

1. (No change.)

2. The label on any side of the container except the bottom shall include a statement which specifies the maximum pounds of VOC in a gallon of architectural coating as produced by that manufacturer, excluding water and any colorant added to tint bases and after any recommended thinning. For architectural coatings manufactured after August 9, 1991, this statement shall be prominent and in print no smaller than 0.08 inches (two millimeters or eight point) in size.

(b) (No change.)

(c) For labeling purposes only, terms other than VOC may be used provided that the volatile organic content level cited on the label is an accurate reflection of the VOC content of the coating, as defined in this subchapter.

(d) (No change.)

**7:27-23.6 Administrative requirements**

(a) (No change.)

(b) Each manufacturer of a consumer product which contains greater than five percent by weight VOC **\*having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury), absolute or greater measured at standard conditions\*** and is sold for use in New Jersey shall maintain calendar year records indicating the types of products containing greater than five percent by weight VOC **\*having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury), absolute or greater measured at standard conditions\*** produced by that manufacturer for sale in New Jersey, the number of units produced, the VOC content by weight per unit and percent weight, and the approximate number of units sold in New Jersey. Within a given product category variations of products that have VOC contents within a range of five percent by weight may be combined for the purpose of record keeping, provided the maximum weight percent and maximum weight per unit within the product category is records. Upon the request of the Department, the manufacturer shall submit, within 90 days of the request, a report on forms obtained from the Department about products sold in New Jersey containing greater than five percent by weight VOC. Records sufficient to provide the above information shall be maintained by each manufacturer for five years after each calendar year for which the data is collected.

**SUBCHAPTER 25. CONTROL AND PROHIBITION OF AIR POLLUTION BY VEHICULAR FUELS**

**7:27-25.2 Definitions**

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

...  
 "Petroleum distillate" means any mixture of volatile organic compounds produced by a refining process, including, but not limited to, naphthas, aviation gasoline, motor vehicle gasoline, kerosene, diesel oil, domestic fuel oil, and petroleum products.

...  
**\*"Volatile organic compound" or "VOC" means any organic substance, mixture of organic substances, or the organic components of any mixture of organic and inorganic substances that participates in atmospheric photochemical reactions. For the purpose of determining compliance with emissions limits or content standards, VOC shall be measured by approved test methods. This term includes, but is not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners. In the case of surface coating formulations, this term also includes any coalescing or other agent which is an organic substance and evaporates from the coating during the application and drying phase. This term does not include:**

- methane**
- trichlorofluoromethane (CFC-11)**
- dichlorodifluoromethane (CFC-12)**
- chlorodifluoromethane (CFC-22)**
- trifluoromethane (FC-23)**
- 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)**
- 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)**
- chloropentafluoroethane (CFC-115).\***

...

**CHAPTER 27A**

**AIR ADMINISTRATIVE PROCEDURES AND PENALTIES**

**SUBCHAPTER 3. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS**

**7:27A-3.2 Definitions**

The following words and terms, when used in this subchapter, \*[shall]\* have the following meanings unless the context clearly indicates otherwise. Unless otherwise specified below, all words and

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terms **\*[shall be]\* \*are\*** defined in N.J.S.A. 26:2C-2 and in N.J.A.C. 7:27.

...  
**\*\*Partial pressure\*\* means the pressure exerted by a specified component in a mixture of gases.\***

TXS means a substance listed as a toxic substance in N.J.A.C. 7:27-17.

...  
**\*\*Vapor pressure\*\* means the pressure of the vapor phase of a substance, or the sum of the partial pressure of the vapor phases of individual substances in a mixture of substances, when in equilibrium with the non-vapor phase of the substances.\***

“Volatile organic compound” or “VOC” means any organic substance, mixture of organic substances, or **\*the organic components of any\*** mixture of organic and inorganic substances that participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by approved test methods. This term includes, but is not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners. In the case of surface coating formulations, this term also includes any coalescing or other agent which **\*is an organic substance and\*** evaporates from the coating during the application and drying phase. This term does not include:

- methane\*[,]\*
- trichlorofluoromethane (CFC-11)\*[,]\*
- dichlorodifluoromethane (CFC-12)\*[,]\*

- chlorodifluoromethane (CFC-22)\*[,]\*
- trifluoromethane (FC-23)\*[,]\*
- 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)\*[,]\*
- 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)\*[, and]\*
- chloropentafluoroethane (CFC-115).

7:27A-3.10 Civil administrative penalties for violations of rules adopted pursuant to the Act

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

(e) The Department shall determine the amount of the civil administrative penalty for offenses described in this section on the basis of the provision violated and the frequency of the violation. Footnotes 3, 4, and 8 set forth in this subsection and (f) below are intended solely to put violators on notice that in addition to any civil administrative penalty assessed the Department may also revoke the violator’s operating certificate or variance. These footnotes are not intended to limit the Department’s discretion in determining whether or not to revoke an operating certificate or variance, but merely indicate the situations in which the Department is most likely to seek revocation. The number of the following subsections corresponds to the number of the corresponding subchapter in N.J.A.C. 7:27.

1.-4. (No change.)

5. The violations of N.J.A.C. 7:27-5, Prohibition of Air Pollution, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-5.2(a) Maximum Penalty Per Violation	\$10,000	\$25,000 <sup>7</sup>	\$50,000 <sup>7</sup>	\$50,000 <sup>7</sup>
The Maximum penalty may be reduced by applying the following factors:				
(1) Remedial Measures Taken				
(a) Yes	—15% Reduction from Maximum			
(b) Partial	—10% Reduction from Maximum			
(c) None	— 0% Reduction from Maximum			
(2) Magnitude of Problem				
(a) Population Affected				
Less than three complainants	—20% Reduction from Maximum			
Three to five complainants	—15% Reduction from Maximum			
Six to ten complainants	— 5% Reduction from Maximum			
Greater than 10 complainants	— 0% Reduction from Maximum			
(b) Nature of Air Contaminant <sup>9</sup>				
Particulates and other air contaminants	—15% Reduction from Maximum			
VOC or AAQS	— 5% Reduction from Maximum			
EHS, TXS, or NESHAPS	— 0% Reduction from Maximum			
(c) Amount of Air Contaminant Emitted in Any One Hour				
Less than 22.8 pounds	—15% Reduction from Maximum			
22.8 pounds or greater	— 0% Reduction from Maximum			
(d) Area Covered (Air contaminant)				
Less than 1/2 square mile	—15% Reduction from Maximum			
1/2 square mile or greater	— 0% Reduction from Maximum			
(e) Off-site Property Damage				
No	—15% Reduction from Maximum			
Yes	— 0% Reduction from Maximum			

<sup>7</sup>For instance, for the first offense, if the violator takes remedial measures to reduce or eliminate the violation, the Department may reduce \$1,500 (15%) from the maximum penalty. Further, if there are less than three complainants related to the violation, the Department may reduce an additional \$2,000 (20%) from the maximum penalty. Further, if an air contaminant emitted is not a VOC, AAQS, EHS,

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TXS, or NESHAPS, the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted is less than 22.8 pounds in any one hour to the atmosphere, the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted into the atmosphere covers an area of less than 1/2 square mile, the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if there is no off-site property damage from the air contaminant, the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Therefore, the maximum reduction for the first offense penalty of \$10,000 would be \$9,500 (95%) resulting in an assessed penalty of \$500.00.

<sup>9</sup>VOC (N.J.A.C. 7:27-16)

TXS (N.J.A.C. 7:27-17)

EHS (N.J.A.C. 7:31-1)

NESHAPS (40 CFR 61)

AAQS (N.J.A.C. 7:27-13)

6-7. (No change.)

8. The violations of N.J.A.C. 7:27-8, Permits and Certificates, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

Citation

N.J.A.C. 7:27-8.3(a)

CLASS

Estimated Potential Emission Rate

	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
1. Less than 10 pounds per hour	\$200 <sup>5</sup>	\$400 <sup>5</sup>	\$1,000 <sup>5</sup>	\$3,000 <sup>5</sup>
2. Ten through 22.8 pounds per hour	\$600 <sup>5</sup>	\$1,200 <sup>5</sup>	\$3,000 <sup>5</sup>	\$9,000 <sup>5</sup>
3. Greater than 22.8 pounds per hour	\$1,000 <sup>5</sup>	\$2,000 <sup>5</sup>	\$5,000 <sup>5</sup>	\$15,000 <sup>5</sup>
4. Regulated pursuant to NSPS, NESHAPS PSDAQ, EOR, EHS, and TXS <sup>6</sup>	\$2,000	\$4,000	\$10,000	\$30,000

Citation

N.J.A.C. 7:27-8.3(b)

CLASS

Estimated Potential Emission Rate

	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
1. Less than 10 pounds per hour	\$200 <sup>5</sup>	\$400 <sup>5</sup>	\$1,000 <sup>5</sup>	\$3,000 <sup>5</sup>
2. Ten through 22.8 pounds per hour	\$600 <sup>5</sup>	\$1,200 <sup>5</sup>	\$3,000 <sup>5</sup>	\$9,000 <sup>5</sup>
3. Greater than 22.8 pounds per hour	\$1,000 <sup>5</sup>	\$2,000 <sup>5</sup>	\$5,000 <sup>5</sup>	\$15,000 <sup>5</sup>
4. Regulated pursuant to NSPS, NESHAPS PSDAQ, EOR, EHS, and TXS <sup>6</sup>	\$2,000	\$4,000	\$10,000	\$30,000

Citation

N.J.A.C. 7:27-8.3(d) through (e)<sup>1</sup>

(No change.)

Citation

N.J.A.C. 7:27-8.3(e)<sup>1</sup> or (e)<sup>2</sup>

CLASS

Emissions

	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
1. Less than 10 pounds per hour	\$800 <sup>5</sup>	\$1,600 <sup>5</sup>	\$4,000 <sup>5</sup>	\$12,000 <sup>5</sup>
2. From 10 through 22.8 pounds per hour	\$1,200 <sup>5</sup>	\$2,400 <sup>5</sup>	\$6,000 <sup>5</sup>	\$18,000 <sup>5</sup>
3. Greater than 22.8 pounds per hour	\$2,000 <sup>5</sup>	\$4,000 <sup>5</sup>	\$10,000 <sup>5</sup>	\$30,000 <sup>5</sup>
4. Regulated pursuant to NSPS, NESHAPS PSDAQ, EOR, EHS, and TXS <sup>6</sup>	\$3,000	\$6,000	\$15,000	\$45,000

<sup>4</sup>Per Air Contaminant Exceeding Allowable Standard—Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

<sup>5</sup>Based on Permit, if Applicable, or if Not, Estimate of Air Contaminant with Greatest Emission Rate Without Controls

<sup>6</sup>NSPS (40 CFR 60)

EOR (N.J.A.C. 7:27-18)

NESHAPS (40 CFR 61)

TXS (N.J.A.C. 7:27-17)

PSDAQ (40 CFR 51)

EHS (N.J.A.C. 7:31-1)

9-15. (No change.)

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16. The violations of N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Compounds (VOC), and the

civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.2(a)	External Surface	\$1,000	\$2,000	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-16.2(b)	Control Apparatus	\$1,000	\$2,000	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-16.2(c)	Vapor Control System	\$1,000	\$2,000	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-16.2(d)	Gauging/Sampling	\$500	\$1,000	\$2,500 <sup>3</sup>	\$7,500 <sup>3</sup>
N.J.A.C. 7:27-16.2(g)	Floating Roof	\$2,000	\$4,000	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
N.J.A.C. 7:27-16.2(h)	Seal-Envelope	\$2,000	\$4,000	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
N.J.A.C. 7:27-16.2(i)	Second Seal	\$2,000	\$4,000	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
N.J.A.C. 7:27-16.2(k)	Retrofit Notification	\$500	\$1,000	\$2,500 <sup>3</sup>	\$7,500 <sup>3</sup>
N.J.A.C. 7:27-16.2(l)	Roof Openings	\$600	\$1,200	\$3,000 <sup>3</sup>	\$9,000 <sup>3</sup>
N.J.A.C. 7:27-16.2(n)	Record Keeping	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.3(a)	Submerged Fill	\$600	\$1,200	\$3,000 <sup>3</sup>	\$9,000 <sup>3</sup>
N.J.A.C. 7:27-16.3(c)	Transfer of Gasoline	\$600	\$1,200	\$3,000 <sup>3</sup>	\$9,000 <sup>3</sup>
N.J.A.C. 7:27-16.3(d)	Transfer of Gasoline (Delivery)	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.3(e)1	15,000 gallons per day	\$1,000	\$2,000	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-16.3(e)2	Greater than 15,000 gallons per day	\$5,000	\$10,000	\$25,000 <sup>3</sup>	\$50,000 <sup>3</sup>
N.J.A.C. 7:27-16.3(f)1	VOC Emission	\$600	\$1,200	\$3,000 <sup>3</sup>	\$9,000 <sup>3</sup>
N.J.A.C. 7:27-16.3(f)2	Overfill and Spillage	\$1,000	\$2,000	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-16.3(h)2	Records Availability	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.3(i)1	Pressure Testing	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.3(i)2 and (3)	Certification Display	\$100	\$200	\$500	\$1,500
N.J.A.C. 7:27-16.3(j)	Transfer Pressure	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.3(k)	Leaking Components	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.3(m)	Vapor-Tight Delivery Vessel	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.3(q)	Transfer/Loading	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.3(r)1	Permit	\$400	\$800	\$2,000	\$6,000
N.J.A.C. 7:27-16.3(r)2	Construction	\$800	\$1,600	\$4,000	\$12,000
N.J.A.C. 7:27-16.3(s)1	Permit	\$200	\$400	\$1,000	\$3,000
N.J.A.C. 7:27-16.3(s)2	Construction	\$400	\$800	\$2,000	\$6,000
N.J.A.C. 7:27-16.3(w)	Record Keeping	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.4(a)	Tank Lids	\$500	\$1,000	\$2,500	\$7,500 <sup>3</sup>
N.J.A.C. 7:27-16.4(b)	Unheated Surface Cleaner 25 square feet or less	\$500	\$1,000	\$2,500 <sup>3</sup>	\$7,500 <sup>3</sup>
N.J.A.C. 7:27-16.4(c)	Unheated Surface Cleaner greater than 25 square feet	\$1,000	\$2,000	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-16.4(d)	Heated Tank	\$1,000	\$2,000	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-16.4(e)	Vapor Surface Cleaner	\$1,500	\$3,000	\$7,500 <sup>3</sup>	\$22,500 <sup>3</sup>
N.J.A.C. 7:27-16.4(f)	Unheated ConveyORIZED Surface Cleaner	\$1,000	\$2,000	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-16.4(g)	Heated ConveyORIZED Surface Cleaner	\$1,500	\$3,000	\$7,500 <sup>3</sup>	\$22,500 <sup>3</sup>
N.J.A.C. 7:27-16.4(h)	ConveyORIZED Vapor Surface Cleaner	\$2,000	\$4,000	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
N.J.A.C. 7:27-16.4(i)	Oil-Water Separator	\$500	\$1,000	\$2,500 <sup>3</sup>	\$7,500 <sup>3</sup>
N.J.A.C. 7:27-16.4(j)	Written Instructions	\$200	\$400	\$1,000	\$3,000 <sup>3</sup>
N.J.A.C. 7:27-16.4(k)	Training Program	\$500	\$1,000	\$2,500	\$7,500 <sup>3</sup>
N.J.A.C. 7:27-16.4(l)	Copies of Instructions	\$300	\$600	\$1,500	\$4,500 <sup>3</sup>
N.J.A.C. 7:27-16.4(m)	Submittal	\$300	\$600	\$1,500	\$4,500 <sup>3</sup>
N.J.A.C. 7:27-16.4(n)	Notification	\$200	\$400	\$1,000	\$3,000 <sup>3</sup>

Citation

N.J.A.C. 7:27-16.5(a) through (h)  
(No change.)

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Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.5(l)	Record Keeping	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.5(m)	Record Keeping	\$500	\$1,000	\$2,500	\$7,500

Citation

N.J.A.C. 7:27-16.6(a)  
(No change.)

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.6(d)	Leaks (Per Leak)	\$300	\$600	\$1,500 <sup>3</sup>	\$4,500 <sup>3</sup>
N.J.A.C. 7:27-16.6(e)	Leaks (Per Leak)	\$300	\$600	\$1,500 <sup>3</sup>	\$4,500 <sup>3</sup>
N.J.A.C. 7:27-16.6(f)	Emission Testing Program	\$5,000	\$10,000	\$25,000 <sup>3</sup>	\$50,000 <sup>3</sup>
N.J.A.C. 7:27-16.6(g)	Emission Testing Program	\$3,000	\$6,000	\$15,000 <sup>3</sup>	\$45,000 <sup>3</sup>
N.J.A.C. 7:27-16.6(h)	Emission Testing Program	\$3,000	\$6,000	\$15,000 <sup>3</sup>	\$45,000 <sup>3</sup>
N.J.A.C. 7:27-16.6(i)1	Log	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.6(i)2	Reports	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.6(k)	Sealing Device	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.6(l)	Annual Monitoring	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-16.6(m)	Record Keeping	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.7	Cutback and Emulsified Asphalts	\$1,000	\$2,000	\$5,000	\$15,000

Citation

N.J.A.C. 7:27-16.8(a)  
(No change.)

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.8(b)	Filtration Emissions	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.8(c)1	Leaking Equipment	\$500	\$1,000	\$2,500 <sup>3</sup>	\$7,500 <sup>3</sup>
N.J.A.C. 7:27-16.8(c)2	Open Containers	\$500	\$1,000	\$2,500 <sup>3</sup>	\$7,500 <sup>3</sup>
N.J.A.C. 7:27-16.8(f)	Total Emissions	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.8(g)	Record Keeping	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.9(a)	Records Availability	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.9(c)	Information	\$300	\$600	\$1,500	\$4,500
N.J.A.C. 7:27-16.9(d)	Monitoring	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-16.9(e)	Sampling and Testing Facilities	\$2,000	\$4,000	\$10,000	\$30,000

<sup>3</sup>Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

17. The violations of N.J.A.C. 7:27-17, Control and Prohibition of Air Pollution by Toxic Substances, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-17.2 through 17.6(a) (No change.)					
N.J.A.C. 7:27-17.6(c)1	Information (TXS)	\$300	\$600	\$1,500	\$4,500
N.J.A.C. 7:27-17.6(c)2	Monitoring (TXS)	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-17.6(c)3	Sampling Testing Facilities (TXS)	\$2,000	\$4,000	\$10,000	\$30,000

18.-25. (No change.)

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7:27A-3.11 Civil administrative penalty for violations of N.J.S.A. 26:2C-19(e)

(a) The Department shall determine the amount of the civil administrative penalty for violations in this section on the basis of the provisions violated and the frequency of the violations as follows:

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.S.A. 26:2C-19(e)				
Maximum Penalty Per Violation	\$10,000 <sup>1</sup>	\$25,000 <sup>1</sup>	\$50,000 <sup>1</sup>	\$50,000 <sup>1</sup>
The Maximum penalty may be reduced by applying the following factors:				
1. (No change.)				
2. Magnitude of Problem				
(a) (No change.)				
(b) Nature of Air Contaminants <sup>2</sup>				
Particulates & other air contaminants	-15% Reduction from Maximum			
VOC or AAQS	- 5% Reduction from Maximum			
EHS, TXS or NESHAPS	- 0% Reduction from Maximum			
(c)-(e) (No change.)				

<sup>1</sup>For instance, for the first offense, if the violator takes remedial measures to reduce or eliminate the violation, the Department may reduce \$1,500 (15%) from the maximum penalty. Further, if there are less than three complainants related to the violation, the Department may reduce an additional \$2,000 (20%) from the maximum penalty. Further, if an air contaminant emitted is not a VOC, AAQS, EHS, TXS, OR NESHAPS, the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted is less than 22.8 pounds in any one hour to the atmosphere, the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted into the atmosphere covers an area of less than 1/2 square mile, the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if there is no off-site property damage from the air contaminant, the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Therefore, the maximum reduction for the first offense penalty of \$10,000 would be \$9,500 (95%) resulting in an assessed penalty of \$500.00.

<sup>2</sup>VOC (N.J.A.C. 7:27-16)

TXS (N.J.A.C. 7:27-17)

EHS (N.J.A.C. 7:31-1)

NESHAPS (40 CFR 61)

AAQS (N.J.A.C. 7:27-13)

**CHAPTER 27B**

**SAMPLING AND ANALYTICAL PROCEDURES**

**SUBCHAPTER 3. AIR TEST METHOD 3: SAMPLING AND ANALYTICAL PROCEDURES FOR THE DETERMINATION OF VOLATILE ORGANIC COMPOUNDS FROM SOURCE OPERATIONS**

7:27B-3.1 Definitions

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

... "ASTM" means the American Society for Testing and Materials.

... "Combustion gas" means air which contains less than two ppm of equivalent carbon or methane and is used to support the combustion of VOC in the sample gas.

... "Gas chromatograph-flame ionization detector (GC-FID)" means a gas chromatograph instrument equipped with a flame ionization detector and a suitable column to separate the VOC. The flame ionization detector must have a heating system capable of preventing any condensation of the sample gas. The flame ionization detector must be capable of meeting or exceeding by demonstration the manufacturer's specifications.

... "Gasoline" means any petroleum distillate or petroleum distillate/oxygenate blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) absolute or greater and used as an automotive fuel.

... "Laboratory standard calibration gases" means three gas mixtures each containing known concentrations of each of the VOC in the source gas (except trace components) in the same matrix, if possible, as will be sampled. One mixture is to have greater than, one mixture is to be approximately equal to, and one mixture is to have less than the expected concentration of VOC in the source gas. These

gases can be certified to ± two percent by the manufacturer or produced locally by approved techniques if the concentration is confirmed by an independent analysis. The standards must be stable in the matrix and container over their period of use.

... "Pure component standards" means a gas mixture consisting of only one VOC in an inert gas. A separate mixture is required for each VOC suspected in the sources gas.

... "Reid vapor pressure" or "RVP" means the absolute vapor pressure of a petroleum product in pounds per square inch (kilopascals) at 100 degrees Fahrenheit (°F) (37.8 degrees \*[Centigrade]\* \*Celsius\* (°C)) as measured by "Method 1-Dry RVP Measurement Method" or "Method 2-Herzog Semi-Automatic Method" promulgated at 40 CFR 80, Appendix E; or any other test method approved in advance in writing by the Department and the EPA.

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

... "Standard conditions" means 70 degrees Fahrenheit (°F) (21.1 degrees \*[centigrade]\* \*Celsius\* (°C)) and one atmosphere pressure (14.7 pounds per square inch absolute or 760 millimeters of mercury).

... "Surface coating formulation" means the material used to form a protective, functional, or decorative film including, but not limited to any architectural coating, paint, varnish, ink, or adhesive, applied to or impregnated into a substrate.

... "Volatile organic compound" or "VOC" means any organic substance, mixture of organic substances, or \*the organic components of any\* mixture of organic and inorganic substances that participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards,

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VOC shall be measured by approved test methods. This term includes, but is not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners. In the case of surface coating formulations, this term also includes any coalescing or other agent which **\*is an organic substance and\*** evaporates from the coating during the application and drying phase. This term does not include:

- methane\*[,]\*
- trichlorofluoromethane (CFC-11)\*[,]\*
- dichlorodifluoromethane (CFC-12)\*[,]\*
- chlorodifluoromethane (CFC-22)\*[,]\*
- trifluoromethane (FC-23)\*[,]\*
- 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)\*[,]\*
- 1,2-dichloro-1,1,2,2,-tetrafluoroethane (CFC-114)\*[,] and]\*
- chloropentafluoroethane (CFC-115).

**7:27B-3.2 Sampling and analytical protocol: acceptable test methods**

(a) When N.J.A.C. 7:27-8, 7:27-16, 7:27-17, or 7:27-23 requires a source emissions test, the applicant shall submit a written protocol to the Department at least 30 days prior to the date of the test, to the following address:

Chief, Bureau of Technical Services  
 Division of Environmental Quality  
 Department of Environmental Protection  
 CN 411  
 380 Scotch Road  
 Trenton, New Jersey 08625-0411

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

(i) For determining the quality and quantity of VOC from source operations, the prescribed test procedures shall be as follows:

1. For a single known VOC: Procedures for the Direct Measurement of VOC Using a Flame Ionization Detector or a Photoionization Detector or a Non-Dispersive Infrared Analyzer (N.J.A.C. 7:27B-3.7).

2. For a mixture of known VOC in known proportion: Procedures for the Direct Measurement of VOC Using a Flame Ionization

Detector, a Photoionization Detector or a Non-Dispersive Infrared Analyzer (N.J.A.C. 7:27B-3.7).

3. For a mixture of known VOC in unknown proportions: Procedures for the Direct Measurement of VOC Using a Gas Chromatograph with Flame Ionization Detector or other suitable detector (N.J.A.C. 7:27B-3.8).

4. For a mixture containing unknown VOC: A procedure has not been included in the test methods, but an analysis using a gas chromatograph with a mass spectrometer will be required and conducted in accordance with established procedures by a qualified operator. Prior to any such test, the Department must receive and approve a written protocol from the operator.

5. For a known or unknown VOC in a stack where condensation is present, isokinetic sampling will be required. A procedure has not been included in these test methods, but sampling using an approved modified particulate train will be required, which shall be submitted for Departmental review pursuant to N.J.A.C. 7:27B-3.2(c), (d), and (e).

(j) (No change.)

(k) Whenever a volume flow rate must be determined to establish mass emission rates of VOC or for any other reason, the methods prescribed in N.J.A.C. 7:27B-1, AIR TEST METHOD 1 (N.J.A.C. 7:27B-3.18 Reference 1), or other flow determining method which shall be submitted for Departmental review pursuant to N.J.A.C. 7:27B-3.2(c), (d), and (e).

**7:27B-3.4 Sampling facilities**

(a) The following sampling facilities shall be provided by the party responsible for the emissions:

1.-3. (No change.)

4. Any other facilities exclusive of instrumentation and sensing devices as may be necessary for the Department to accurately determine the emissions of VOC from the source operation; and

5.-6. (No change.)

**7:27B-3.5 Source operations and applicable test methods**

The following chart sets forth the applicable test methods, shown by section designation, for the various source operations that are regulated by N.J.A.C. 7:27-8, 7:27-16, 7:27-17, and 7:27-23:

Source Operation	Vapor Pressure	Applicable Test Methods					Leak Tightness of Delivery Vessel	Recovered Solvent Flow Rate
		Efficiency of Control Apparatus	Leaks From Source	Emissions From Source	VOC Content			
Storage of VOC	3.6	3.7 3.8 3.9	3.14					
Transfer Operations	3.6	3.16	3.15	3.11		3.13		
Open Top Tanks and Surface Cleaners	3.6	3.7 3.8 3.9		3.7 3.8 3.9				
Surface Coating Operations		3.7 3.8 3.9		3.7 3.8 3.9	3.10			
Source Operations Other than Storage Tanks,	3.6	3.7 3.8 3.9	3.14	3.7 3.8 3.9				
Open Top Tanks and Surface Outers								
Cutback and Emulsified Asphalt						3.12		

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Petroleum	3.7	3.17	3.17
Solvent	3.8		
Dry Cleaners	3.9		

7:27B-3.6 Procedures for the determinations of vapor pressures of a single known VOC or mixtures of known and/or unknown VOC

(a) The vapor pressure of a single known VOC shall be determined as follows:

1. The vapor pressure of certain single known VOC may be found in the following, or other sources which shall be submitted to the Department for review, pursuant to N.J.A.C. 7:27B-3.2(c), (d), and (e), and may be used provided the vapor pressure was measured and the VOC was certified by the manufacturer or by the National Bureau of Standards as being of or equivalent to research grade.

i.-v. (No change.)

2. In the absence of the referenced data above, the vapor pressure of the single VOC may be determined by the following methods:

i. "Method 1-Dry RVP Measurement Method" or "Method 2-Herzog Semi-Automatic Method" promulgated at 40 CFR 80, Appendix E; or any other test Method approved in advance in writing by the Department and the EPA, (N.J.A.C. 7:27B-3.18, Reference 3). This method may be used only if the sensitivity of the pressure measuring device is sufficient for the vapor pressure level. The results must be converted to and reported as the true vapor pressure at standard conditions (N.J.A.C. 7:27B-3.18, Reference 5); or

ii. (No change.)

(b) The vapor pressures of mixtures of known VOC in known proportions shall be determined as follows:

1. Data on partial pressure for certain mixtures of VOC are published in the International Critical Tables and in scientific journals. The vapor pressure of a mixture which has been reported in such sources will be acceptable provided the source is documented by a reprint which shall be submitted for review by the Department, pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

2. The vapor pressure may also be determined by the method set forth in (a)2i above. The Reid method is applicable to volatile crude oil and volatile nonviscous petroleum products and other mixtures of VOC. For petroleum and petroleum distillates, refer to American Petroleum Institute (API) Bulletin 2517, "Selecting the Proper Nomograph" (N.J.A.C. 7:27B-3.18, Reference 5). The Reid vapor pressure can be converted to true vapor pressure at standard conditions. For mixtures other than petroleum and petroleum distillates, the resulting Reid vapor pressure may be converted to true vapor pressure at standard conditions using Table 1.

TABLE 1

CONVERSION OF REID VAPOR PRESSURES TO TRUE VAPOR PRESSURES

Reid Vapor Pressure Psia	True Vapor Pressure Psia
1	0.5
2	1.1
3	1.7
4	2.3
5	2.9
6	3.6
7	4.2
8	4.8
9	5.5
10	6.1
11	6.7
12	7.4
13	8.0
14	8.6
14.7	9.0

NOTE: Straight-line interpolation is to be used for intermediate values. Applicable for VOC other than petroleum and petroleum distillates.

(c) The vapor pressure of mixtures of known and/or unknown VOC shall be determined as follows:

1.-3. (No change.)

7:27B-3.7 Procedures for the direct measurement of volatile organic compounds using a flame ionization detector (FID), a photoionization detector (PID) or a non-dispersive infrared analyzer (NDIR)

(a) The method in this section is applicable for the determination of the concentration and the mass emission rate of a known VOC or a mixture of known VOC in known proportions in systems with constant emissions and flow rates. For the same circumstances as described above, the procedures specified in N.J.A.C. 7:27B-3.8 or 3.9 may be used in place of this method. Any other alternative test method shall be submitted to the Department for review, pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) (No change.)

(c) The following is a summary of this method:

1. The instrument is calibrated with standard gas mixtures to establish the instrument response to the VOC being analyzed. A representative sample of the source gas is drawn into the instrument under conditions which prevent any condensation of the source gas and which remove particulate matter. The response is recorded at specific intervals during the test period, and the true concentration of the VOC is calculated from previously determined response factors. The total gas flow rate, moisture content, and the average molecular weight of the gas are determined during the sampling period, and the mass emission rate of the VOC is calculated and reported as pounds per hour.

2. (No change.)

(d) The following is a list of equipment used in this method:

1.-4. (No change.)

5. Detector: a total hydrocarbon analysis instrument having a flame ionization, a photoionization or a non-dispersive infrared detector and a sampling system capable of preventing any condensation of the sample gas. The detector must be capable of meeting or exceeding the manufacturer's specifications by demonstration, preferably by the manufacturer, and the other specifications listed below:

i. Linearity: the instrument response to the VOC being measured shall not deviate from linearity by more than five percent of the full scale value of the range being used.

ii.-iv. (No change.)

6.-10. (No change.)

(e) The procedure for this section shall be as follows:

1. A presampling survey of the source operation shall be conducted to establish certain basic information including, but not limited to: sampling location; stack temperature and pressure; stack gas moisture content; approximate particulate concentrations; composition of the gases; and the identification and approximate concentrations of the VOC to be analyzed. It may be necessary to take samples for analysis to acquire any information that is not readily available.

2.-3. (No change.)

(f) The calculations shall be performed as follows:

1. Establish the molecular weight of each VOC and calculate a weighted average molecular weight if more than one VOC is present.

2. Calculate the total gas flow rate from the source in SCFM (70°F and 1 atm) including the contribution of the VOC and any moisture present.

3. (No change.)

4. Calculate the concentration of VOC as the standard as follows:

$$C \text{ (VOC as std.)} = \text{Instrument Response} \times \text{RF}$$

5. Calculate the emission rate in lbs/hr. expressed as the laboratory standard calibration gas.

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$$\frac{\text{lbs. VOC}}{\text{hr}} = \frac{\text{Avg. C ppm (VOC as std.)} \times \text{SCFM} \times \text{MW (std.)} \times 60 \text{ (min/hr)}}{387 \times 10^6}$$

Where:

C ppm (std) = the concentration in ppm of the standard mixture.

Avg. C ppm (VOC as std.) = average parts per million of VOC over the test period as laboratory standard calibration gas.

MW (std) = molecular weight of laboratory calibration standard (pounds per pound-mol).

SCFM = cubic feet per minute at 70°F and 1 atm emitted from the source operation.

387 = molar volume at standard conditions in cubic feet per pound-mol.

RF = response factor for VOC.

NOTE: This formula is based upon the assumption that both the standards and the sample have been passed through the same sampling system and are diluted by the same amount.

(g) The test report shall include the following information submitted on the required reporting forms in Appendix B (any alternative reporting form shall be submitted to the Department for review prior to use pursuant to N.J.A.C. 7:27B-3.2(c) and (e)):

1.-7. (No change.)

8. The emission rate measured in lbs/hr of each VOC for each test;

9.-10. (No change.)

7:27B-3.8 Procedures for the direct measurement of volatile organic compounds using a gas chromatograph (GC) with a flame ionization detector (FID) or other suitable detector

(a) The method in this section is applicable for the determination of the concentrations and the mass emission rates of any known VOC in unknown proportions in systems with constant emissions and flow rates. For the same circumstances as described above, the procedure specified in N.J.A.C. 7:27B-3.9 may be used in place of this method. Any other alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d), and (e).

(b) This method is based upon the following principles:

1. Gas chromatography, whereby VOC are separated by passing an inert gas stream containing a known volume of the sample gas or a standard gas through a column containing a suitable stationary phase and/or a solid support; and

2. Ionization produced when each VOC in the gas sample as eluted from the gas chromatography is combusted in a hydrogen flame. The ions and electrons formed in the flame enter an electrode gap, decrease the gas resistance, and thus permit a current flow in an external circuit. The resulting current is proportional to the instantaneous concentration of the VOC. Any alternative detector shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(c) The following is a summary of this method:

1. The GC-FID is calibrated with standard gas mixtures containing each VOC being measured to establish the calibration curves and retention times. A representative sample is drawn into the gas sampling loop under conditions which prevent any condensation of the sample gas and which remove particulate matter. The sample is injected into the GC, the responses and retention times of the individual VOC are recorded on a strip chart recorder, and the peak areas of each VOC are measured. The peaks are identified from the established retention times. The concentration of each VOC is determined by referring to the calibration curve. The total gas flow rate, moisture content, and the average molecular weight of the gas are determined during the sampling period, and the mass emission rate of the VOC is calculated and reported as pounds per hour.

2. (No change.)

3. In situations where safety considerations, location, or number of sample points prohibit direct analysis at the VOC source, the samples are collected in accordance with the method prescribed in N.J.A.C. 7:27B-3.9 and transported to the GC-FID for analysis.

(d) (No change.)

(e) The procedure for this section shall be as follows:

1. A presampling survey of the source operation(s) shall be conducted to establish certain basic information including, but not limited to: sampling location; stack temperature and pressure; stack gas moisture content; approximate particulate concentration; composition of the gases; and the identification and approximate concentrations of the VOC to be analyzed. It may be necessary to take samples for analysis to acquire any information that is not readily available.

2. The instrument shall be calibrated as follows:

i. (No change.)

ii. The operating parameters of the instrument, such as column selections, temperatures, carrier gas flow rate, and chart speed, shall be established for the VOC to be measured and verified in the laboratory prior to actual sampling. The conditions selected should produce baseline separation of the individual VOC peaks, if possible, but in no case should the height of the valley between the two peaks measured from the baseline to the lowest point in the valley be greater than 30 percent of the height of the shorter of the two peaks. More than one set of conditions may be necessary for complete resolution;

iii.-vii. (No change.)

viii. Repeat steps iv through vii for each calibration gas until two consecutive analyses agree within five percent. The corresponding peak areas for each VOC shall then be averaged;

ix. (No change.)

x. Draw a straight line through the points to establish a calibration curve for each VOC. Calculate the unknown VOC concentrations from their peak areas by reading from the appropriate calibration curve or by multiplying the peak area by the slope of the calibration curve. Extrapolation beyond the calibrated range is not acceptable.

xi. (No change.)

3. (No change.)

(f) The calculations shall be performed as follows:

1. Establish the molecular weight of each VOC.

2. Calculate the total gas flow rate from the source operation(s) in SCFM (70°F and 1 atm) including the contribution of the VOC and any moisture present.

3. Record the individual concentrations (C ppm) and determine the average concentration (C) of each VOC in ppm (avg. C ppm) for each test run from the calibration curves.

4. Calculate the emission rate in lbs/hr of each VOC as follows:

$$\frac{\text{lbs VOC}}{\text{hr}} = \frac{\text{Avg. C ppm (VOC)} \times [\text{SCFM}]^* \times \text{MW (VOC)} \times \text{SCFM}}{387 \times 10^6}$$

Where:

Avg C ppm (VOC) = average parts per million of VOC over the test period.

MW (VOC) = molecular weight of VOC (pounds per pound-mol).

SCFM = cubic feet per minute at 70°F and 1 atm emitted from the source operation.

387 = molar volume at standard conditions in cubic feet per pound-mol.

NOTE: This formula is based upon the assumption that both the standards and the sample have been passed through the same sampling system and diluted by the same amount.

5. Calculate the total emission rate in lbs/hr of the VOC by totaling the individual VOC calculated in (f)4 above.

(g) The test report shall include the following information submitted on the required reported form in Appendix C (any alternative

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reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27-3.2(c) and (e):

1.-8. (No change.)

9. The emission rate measured in lbs/hr of each VOC for each test;

10.-11. (No change.)

7:27B-3.9 Procedures for the sampling and remote analysis of known volatile organic compounds using a gas chromatograph (GC) with a flame ionization detector (FID) or other suitable detector

(a) The method in this section is applicable for the determination of the concentration and the mass emission rates of known VOC from a source where it is not practical to conduct a direct analysis at the source or in systems where the flow rates are not constant. For the same circumstances as described above, any other alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the following principles:

1. The reduction of the moisture and VOC levels in the source gas by condensation or dilution:

2. (No change.)

3. Gas chromatography whereby each VOC is separated by passing an inert gas stream containing a known volume of the sample gas or standard gas through a column containing a stationary phase and/or a solid support; and

4. Ionization produced when each VOC in the sample gas as eluted from the gas chromatograph is combusted in a hydrogen flame. The ions and electrons formed in the flame enter an electrode gap, decrease the gap resistance, and thus permit a current flow in an external circuit. The resulting current is proportional to the instantaneous concentration of the VOC. Any alternative detector shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(c) The following is a summary of this method:

1. A representative sample from the source is drawn at a constant rate through a heated sample line to a series of condensers in an ice bath where the moisture and condensable VOC are removed, or to a dilution system which reduces the concentration of the source gas by a known amount with hydrocarbon-free air. The dry sample gas is collected in a Tedlar or equivalent sampling bag which, along with any collected condensate, is transported to the GC-FID for analysis.

2. The GC-FID is calibrated with standard gas mixtures of each VOC being measured to establish the calibration curve and retention times. Representative portions of any condensate and the bag sample are injected separately into the calibrated GC-FID. The responses and retention times of the individual VOC are recorded on a strip chart recorder, and the peak areas of each VOC are measured. The peaks are identified from the established retention times. The concentration of each VOC is determined by referring to the calibration curve. The total gas flow rate, moisture content, and the average molecular weight of the gas are determined during the sample period, and the mass emission rate of the VOC is calculated and reported as pounds per hour.

3. (No change.)

(d) The following is a list of equipment used in this method:

1.-14. (No change.)

15. Condenser (VOC): a system as specified in (e)3 below for collecting condensible VOC and moisture from the source gas consisting of: a probe, three midget impingers (two containing ten ml. of distilled water and one dry, all three immersed in an ice bath), a pump, and a dry gas meter all connected in series;

16.-17. (No change.)

18. Charcoal tube: A drying tube filled with activated charcoal with glass wool plugs in both ends to absorb organic vapors from the vented sample gas and to prevent the release of VOC into the work area:

19. (No change.)

20. Sparger module: a sparge-desorb module to strip VOC from the impinger condensate and trap the VOC on a suitable absorbant.

(e) The procedure for this section shall be as follows:

1. A presampling survey of the source operation(s) must be conducted to establish certain basic information including, but not limited to: sampling location, stack temperature and pressure, stack gas moisture content, approximate particulate concentration, composition of the gases, and the identification and approximate concentrations of the VOC to be analyzed. It may be necessary to take samples for analysis to acquire any information that is not readily available;

2. The instrument shall be calibrated as follows:

i. (No change.)

ii. The operating parameters of the instrument, such as column selections, temperatures, carrier gas flow rate, and chart speed, must be established for the VOC to be measured, and verified in the laboratory prior to the actual sampling. The conditions selected should produce baseline separation of the individual VOC peaks, if possible, but in no case should the height of the valley between the peaks measured from the baseline to the lowest point in the valley be greater than 30 percent of the height of the shorter of the two peaks. More than one set of conditions may be necessary for complete resolution;

iii.-vii. (No change.)

viii. Repeat steps iv through vii for each calibration gas until two consecutive analyses agree within five percent. The corresponding peak areas for each VOC shall then be averaged.

ix. (No change.)

x. Draw a straight line through the points to establish a calibration curve for each VOC. Calculate the unknown VOC concentrations from their peak areas by reading from the appropriate calibration curve or by multiplying the peak area by the slope of the calibration curve. Extrapolation beyond the calibrated range is not acceptable.

xi. (No change.)

3. Sampling shall be conducted as follows when using a condenser system:

i.-xi. (No change.)

xii. Rinse the probe, all connecting lines through the impingers and the impingers with an appropriate solvent. The rinse solution and impinger collect shall be placed in an opaque leak-proof container for later analysis. The container should be filled to minimize loss of VOC in the headspace.

xiii.-xvi. (No change.)

4.-5. (No change.)

6. The condensation trap shall be analyzed as follows:

i.-ii. (No change.)

iii. Sparge the sample into an appropriate trap for a minimum of \*[ten]\* \*10\* minutes with an inert gas. Thermally desorb the VOC from the trap onto the GC column and analyze the VOC employing the same instrument conditions used during the calibration procedures. Measure the area under each VOC peak. Save the sparged solution;

iv.-vi. (No change.)

(f) The calculations shall be performed as follows:

1. Establish the molecular weight of each VOC from the literature.

2. Calculate the total gas flow rate from the source operations in SCFM (70° and 1 atm) including the VOC and any moisture present.

i.-ii. (No change.)

3. (No change.)

4. Bag Sample: Determine the concentration (C) of each VOC in ppm (C<sub>ppm</sub> VOC) by using the calibration curves developed in (e)2x above and the area of each VOC. If the sample is collected using a dilution system, the concentrations shall be corrected by the dilution factor (Df) as determined by the following formula:

$$Df = \frac{\text{ml/min dilution gas} + \text{ml/min source gas}}{\text{ml/min source gas}}$$

5. Condensate and rinse: Convert the calibration curves used in (e)2x above from ppm vs. area to microgram (ugm) vs. area. Determine the concentration (C) of each VOC in the condensate and rinse in ppm (C<sub>ppm</sub> VOC) in the vapor phase from the VOC peak areas and the calibration curves using the following formula:

$$\text{C}_{\text{ppm VOC}} = \frac{(\text{Area}) (\text{slope}) \times V_c \times 24.1}{V_j \times \text{MW (VOC)} \times V_g}$$

Where:

- Area = area of VOC peak (area units).
- Slope = slope of calibration curve (ugm/area unit).
- V<sub>c</sub> = Condensate Volume (millimeters).
- V<sub>j</sub> = injection volume (millimeters).
- V<sub>g</sub> = Volume of gas sampled (liters).
- MW VOC = molecular weight of VOC (gram per gram mol).
- 24.1 = molar volume at standard conditions in liters per gram mol.

6. Determine the total concentration (c) of each VOC in the source gas in ppm (C<sub>ppm</sub>) by summing the results of each VOC from 4 and 5 above;

7. Calculate the emission rate in lbs/hr of each VOC as follows:

$$\frac{\text{lbs. VOC}}{\text{hr}} = \frac{\text{C}_{\text{ppm (VOC)}} \times \text{SCFM}}{\text{MW (VOC)} \times 60 \text{ min/hr}} \times \frac{1}{387 \times 10^6}$$

Where:

- C<sub>ppm (VOC)</sub> = sum of bag sample and condensate concentrations in part per million of each VOC.
- MW (VOC) = molecular weight of VOC (pounds per pound-mol).
- SCFM = cubic feet per minute at 70°F and 1 atm emitted from the source operation (dry if impingers used; wet if no impingers used).
- 387 = molar volume at standard conditions in cubic feet per pound-mol.

8. Calculate the total emission rate of VOC in lb/hr by totaling the emission rates of each individual VOC as calculated in 6 above.

(g) The test report shall include the following information submitted on the required reporting forms listed in Appendices D and E (any alternative reporting forms shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e)):

- 1.-8. (No change.)
- 9. The emission rate measured in lbs/hr of each VOC for each test;
- 10.-11. (No change.)

7:27B-3.10 Procedures for the determination of volatile organic compounds in surface coating formulations

(a) The method in this section is applicable for the determination of the VOC contained in formulations used in surface coating operations. Any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the determination of the amount of VOC and water, if present, in a surface coating formulation, the density of the surface coating formulation, and the density of the volatile fraction of the surface quality.

(c) The procedure for this section shall be as follows:

- 1. Completely fill a container with a representative sample of the surface coating formulation to be analyzed. Seal the container so that the VOC present will not escape; and
- 2. (No change.)
- (d) The coating samples shall be analyzed as follows:
  - 1. Class I surface coatings shall be analyzed as follows:
    - i. (No change.)
    - ii. Determine the VOC content by using the procedure specified in ASTM Designation D 2369-81, "Standard Method of Test for Volatile Content of Coatings" (N.J.A.C. 7:27B-3.18, Reference 8);
    - iii. Calculate the VOC content in kg/L as follows:

$$\text{VOC kg/L} = \frac{W_1 - W_2 (\text{DM}) \times \text{kg} \times 1000\text{ml}}{S \times 1000 \text{ gm} \times L}$$

Where:

- W<sub>1</sub> = weight of dish + sample (gm)
- W<sub>2</sub> = weight of dish + sample after heating (gm)
- DM = density of coating (gm/ml)
- S = sample weight (gm)
- L = liters

iv. Sources included in a mathematical combination regulated by N.J.A.C. 7:27-16.5(a) shall be analyzed as follows:

- (1) (No change.)
- (2) Calculate the density of the VOC fraction in gm/ml as follows:

$$D(\text{VOC}) = \frac{W}{V}$$

Where:

- W = weight of the volatile fraction
- V = volume of the volatile fraction

(3) Convert density VOC from gm/ml to lb/gal as follows:

$$D(\text{VOC}) \text{ lb/gal} = 8.345 D(\text{VOC}) \text{ gm/ml}$$

2. Class II surface coatings shall be analyzed as follows:

- i.-ii. (No change.)
- iii. Determine the VOC content by using the procedure specified in ASTM Designation D2369-81, "Standard Method of Test for Volatile Content of Coatings" (N.J.A.C. 7:27B-3.18, Reference 8);
- iv. Calculate the VOC content in kg VOC per liter of coating less water as follows:

$$\text{VOC kg/L} = \frac{(W_1 - W_2 - 0.01 \text{ PS})}{(1 - 0.01 \text{ PD}_m)} \times \frac{D_m \times \text{kg} \times 1000\text{ml}}{S \times 1000 \text{ gm} \times L} \times \frac{1}{D_H}$$

Where:

- W<sub>1</sub> = weight of dish + sample (gm)
- W<sub>2</sub> = weight of dish + sample after heating (gm)
- P = percentage of water (%)
- D<sub>m</sub> = density of coating (gm/ml)
- D<sub>H</sub> = density of water (gm/ml)
- S = sample weight (gm)
- L = liters

Convert VOC content from kg/l to lb/gal as follows:

$$\frac{\text{VOC lb}}{\text{gal}} = \frac{\text{VOC kg} \times 8.345}{L}$$

v. Sources included in a mathematical combination shall be analyzed as follows:

- (1)-(2) (No change.)
- (3) Calculate the density of the VOC in gm/ml.

$$D(\text{VOC}) \text{ gm/ml} = \frac{(1-P) w(\text{mix}) D(w) D(\text{mix})}{D(w) W(\text{mix}) - P W(\text{mix}) D(\text{mix})}$$

Where:

- P = percentage of water (%)
- W(mix) = weight of the volatile fraction (gm)
- D(mix) = density of the volatile fraction (gm/ml)
- D(w) = density of water (gm/ml)

(4) (No change.)

7:27B-3.11 Procedures for the determination of volatile organic compounds emitted from transfer operations using a flame ionization detector (FID) or a non-dispersive infrared analyzer (NDIR)

(a) The procedure in this section is applicable for the determination of the mass emission of VOC rates from the transfer or loading of gasoline. Any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon one of the following two principles:

- 1. Flame Ionization, which involves ionization produced when the VOC in the sample is combusted in a hydrogen flame. The ions and electrons formed in the flame enter an electrode gap, decrease

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the gap resistance, and thus permit a current flow in an external circuit. The resulting current is proportional to the instantaneous concentration of the VOC; or

2. (No change.)

(c) The following is a summary of this method:

1. The instrument is calibrated with a propane or butane calibration gas to establish the response of the instrument. A representative sample of the VOC is drawn into the detector and the instrument response is recorded on a strip chart recorder. The total gas flow rate and the volume of gasoline pumped are determined for each five minute period. The mass emission rate of VOC is calculated as propane, and the results are summed for each five minute period and reported as either percent control efficiency or pounds of VOC per 10,000 gallons of gasoline transferred.

2.-3. (No change.)

(d) (No change.)

(e) The procedure for this section shall be as follows:

1.-4. (No change.)

5. For the determination of VOC concentration at the exhaust vent, procedures outlined in N.J.A.C. 7:27B-3.7 shall be used. The calibration gas shall be either propane or butane.

6.-7. (No change.)

8. An emission testing interval shall consist of each five-minute period during the performance test. For each interval:

i. (No change.)

ii. The volume discharged and the average VOC concentration in the exhaust vent shall be determined, as specified in the appropriate test method. The average VOC concentration shall correspond to the volume measurement and shall be adjusted by the sampling system response time.

9.-10. (No change.)

(f) The calculations shall be performed as follows:

1. Calculate the mass emitted during each testing interval as follows:

$$\frac{\text{lbs VOC}}{\text{Less interval}} = \frac{\text{Cpmm (as std)} \times 5 \text{ min}}{387 \times 10^6 \times \text{SCFM} \times \text{MW (std)}}$$

Where:

Cpmm (as std) = parts per million of VOC as standard (propane or butane).

MW (std) = molecular weight of standard (propane or butane).

SCFM = Cubic feet per minute at 70°F and 1 atm emitted by the source.

387 = Molar volume at standard conditions in cubic feet per pound-mol.

2. Calculate the total VOC emitted during the test period by summing the lbs. VOC per each test interval as calculated in 1 above.

3. Calculate the efficiency of the emission control system as follows:

$$\% \text{ Efficiency} = \frac{(\text{lbs/test inlet} - \text{lbs/test outlet}) \times 100}{(\text{lbs/test inlet})}$$

4. Calculate the total emission rate of the VOC in lbs per 10,000 gallons of gasoline transferred as follows:

$$\frac{\text{lbs VOC}}{10,000 \text{ gallons}} = \frac{\text{lbs VOC} \times 10,000}{\text{gallons of gasoline transferred}}$$

(g) The test report shall include the following information submitted on the required reporting form found in Appendix B (any alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e)):

1.-8. (No change.)

9. Concentration of VOC in gas displaced from delivery vessel, volume percent, if required;

10.-11. (No change.)

7:27B-3.12 Procedures for the determination of volatile organic compounds in cutback and emulsified asphalts

(a) The method in this section is applicable for the determination of VOC in cutback or emulsified asphalts. For the same circumstances as described above, any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) (No change.)

(c) The procedure for this section shall be as follows:

1.-2. (No change.)

3. The calculations shall be performed as follows:

i. Calculate the sample volume from the sample weight and its density using the following formula:

$$\text{volume of sample (cc)} = \frac{\text{sample grams}}{\text{density gms/cc}}$$

ii. Calculate and report the VOC distillate as a volume percent of the total sample using the following formula:

$$\text{Volume \%} = \frac{\text{Volume VOC distillate} \times 100}{\text{Volume Sample}}$$

7:27B-3.14 Procedures for the direct detection of fugitive volatile organic compound leaks

(a) The method in this section is applicable for the detection of fugitive VOC leaks. Any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the detection of VOC leaks from individual sources by a portable instrument. The instrument detector type is not specified but shall meet the performance criteria of (d)4 below. This procedure is intended to locate and classify leaks only and shall not be used to measure mass emission rates from individual sources.

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

7:27B-3.15 Procedures for the direct detection of fugitive volatile organic compound leaks from gasoline tank trucks and vapor collection systems using a combustible gas detector

(a) The method in this section is applicable for the detection of fugitive VOC leaks from gasoline tank trucks and vapor collection systems. For the same circumstances as described above, any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the detection of VOC leaks from individual sources by a portable instrument. The instrument detector type is not specified but must meet the performance criteria of N.J.A.C. 7:27B-3.14(d)4. This procedure is intended to locate and classify leaks only and shall not be used as a measure of mass emission rates from individual sources.

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

7:27B-3.17 Procedures for the determination of volatile organic compounds emitted from petroleum solvent dry cleaning operations

(a) The method in this section is applicable for the determination of the final recovered solvent flow rate at the completion of the recovery cycle and the VOC content in all filtration waste. For the same circumstances as described above, any alternative method shall be submitted to the Department for review, pursuant to N.J.A.C. 7:27B-3.2(c), (d), and (e).

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

(d) The procedure for this section shall be as follows:

1. (No change.)

2. The solvent content in filtration waste shall be determined as follows:

i-iv. (No change.)

v. Report the results as mass of VOC per mass of dry weight of articles dry cleaned in kilograms per kilogram.

7:27B-3.18 Test methods and sources incorporated by reference

(a) The following sources and test methods are incorporated by reference in this subchapter:

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1.-2. (No change.)

3. Code of Federal Regulations, Title 40, Part 80, Appendix E—"Method 1—Dry RVP Measurement Method" and "Method 2—Herzog Semi-Automatic Method" are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

4.-16. (No change.)

Editor's Note: In addition to the above text, Appendices A through H were filed with these rules, but not reproduced herein. Further information regarding these Appendices may be obtained by contacting:

Bureau of Technical Services  
Division of Environmental Quality  
Department of Environmental Protection  
CN 411 (380 Scotch Road)  
Trenton, New Jersey 08625-0411

### (a)

## PINELANDS COMMISSION

### Pinelands Comprehensive Management Plan

**Adopted Amendments: N.J.A.C. 7:50-2.11, 4.2, 4.61, 4.67, 4.68, 4.69, 4.70, 5.27, 5.28, 5.32, 6.6 and 6.13**

**Adopted Repeal and New Rule: N.J.A.C. 7:50-5.30**

**Adopted New Rules: N.J.A.C. 7:50-4.62 through 4.65**

**Adopted Repeal: N.J.A.C. 7:50-4.66**

Proposed: August 19, 1991 at 23 N.J.R. 2458(b).

Adopted: December 6, 1991 by the New Jersey Pinelands Commission, Terrence D. Moore, Executive Director.

Filed: January 24, 1992, as R.1992 d.91, **with substantive and technical changes** not requiring additional public notice (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:18A-6j.

Effective Date: March 2, 1992.

Expiration Date: Exempt.

### Summary of Public Comments and Agency Responses:

In association with publication of the proposed rules in the August 19, 1991 edition of the New Jersey Register, the Pinelands Commission transmitted the proposal to each Pinelands Area municipality and county for review and comment. Additionally, the Pinelands Commission:

—sent notice of the hearing to all persons and organizations which subscribe to the Commission's public hearing registry;

—placed advertisements of the hearing in the five official newspapers of the Commission;

—sent notice to all those who had participated in the review of the previous pre-proposal concerning this matter; and

—submitted the proposed rules to the members of the Pinelands Municipal Council pursuant to N.J.S.A. 13:18A-7f.

A formal public hearing was held before the Pinelands Commission on September 19, 1991 and an informal meeting of the Pinelands Municipal Council was held on September 17, 1991. Oral testimony was received from five individuals. Written comments were received from four individuals and 15 organizations. Forms of comment and a list of commenters follows:

### Written Comments

August 21, 1991 letter from James N. Williamson, Sr.

August 26, 1991 letter from Douglas E. Ruhlin, Environmental Evaluation Group

August 16, 1991 letter from the Estell Manor Planning Board

September 18, 1991 letter from Robert A. Bradel

September 17, 1991 statement of Ralph Bitter, Chairman of the Plumsted Township Environmental Commission

September 20, 1991 letter from Michael J. Gross on behalf of Medford Pines, Inc.

September 20, 1991 letter from Richard G. Bizub, Chairman of the Jackson Township Environmental Commission

September 26, 1991 letter from Robert H. Karen, President of the New Jersey Builders Association

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September 30, 1991 statement of Sally Brecht Price, Executive Director, Pinelands Preservation Alliance

September 30, 1991 letter from Stephen J. George, President, New Jersey Farm Bureau

September 30, 1991 letter from Samuel Garrison, Assistant Secretary, New Jersey Department of Agriculture

September 25, 1991 letter from Lauren Warner, Vice Chairwoman of the Manchester Township Environmental Commission

September 30, 1991 letter from F. Howard Zahn, Director of the Division of Project Development of the New Jersey Department of Transportation

September 30, 1991 letter from Jack Plackter, attorney with Horn, Kaplan, Goldberg, Gorny & Daniels, representing R.C. Maxwell Company and Gannett Outdoor Advertising Company

September 30, 1991 letter from Ava J. Goldman, Atlantic County Department of Regional Planning & Development

September 30, 1991 letter from Alexander M. Churchill, Alexander M. Churchill Associates, Engineer for Winslow Township

September 27, 1991 letter from Sally Dudley, Executive Director of the Association of New Jersey Environmental Commissions

October 11, 1991 letter from Timothy M. Prime

### Oral Comments (No Written Comments Submitted)

September 17, 1991 comments of Ronald S. Dancer, Mayor of Plumsted Township

September 17, 1991 comments of David Banisch, Banisch Associates

September 17, 1991 comments of William S. Haines, Jr., Mayor of Washington Township

September 17, 1991 comments of William Neyenhouse, Mayor of Barnegat Township

September 19, 1991 oral testimony of Larry Angel

September 19, 1991 oral testimony of David Jungblood

Oral comments were recorded on magnetic tape which is on file at the Commission's office at Springfield Road, New Lisbon, N.J. Written comments may be examined or the tapes may be heard during normal business days from 9:00 A.M. to 5:00 P.M.

COMMENT: Three organizations objected to the definition of contiguous lands contained in N.J.A.C. 7:50-2.11 on the basis that roads, rights-of-way, streams and easements do make land non-contiguous. Two organizations also felt that the term "substantial physical barrier" needed to be defined more specifically. One organization suggested that land should be considered contiguous even when separated by a paved public road.

RESPONSE: The proposed definition of contiguous lands is intended to limit the type of roads which will render land discontinuous and to specify that barriers must be substantial in nature before contiguity will be affected. The Commission has had over 10 years of experience in dealing with such cases and is comfortable with the proposed changes in the definition of contiguous lands. With regard to roads, those that are paved will not automatically be deemed to make land non-contiguous, although this will usually be the case. Unpaved roads, on the other hand, will never affect contiguity unless a substantial physical barrier is present. The term "substantial physical barrier" has not been more specifically defined so as to allow the Commission to analyze the effects of such barriers on a case-by-case basis, taking into account the specific land use proposed and the type of barrier involved. To be any more specific would require an analysis of many theoretical situations and would likely result in anomalies because of the variable conditions which would be encountered.

COMMENT: Four organizations objected to the proposed definition of fair market value in N.J.A.C. 7:50-2.11, stating that it was contrary to existing case law and should be revised to be consistent with the definition established under the Municipal Land Use Law. Another organization cited the potential for confusion on the part of local zoning and planning boards if the Commission's definition of fair market value did not match that used under the Municipal Land Use Law. One person felt that the development standards of the Comprehensive Management Plan were too vague to be relied upon in a determination of fair market value.

RESPONSE: The proposed definition of fair market value relies on the value of a parcel of land absent the Commission's granting of a waiver of strict compliance. The Attorney General's office has reviewed the proposed definition and has concluded that the proposed definition is legally justified. The differences in the statutory purposes and provisions of the Municipal Land Use Law and the Pinelands Protection Act support the Commission's decision to have a different definition of fair

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market value than that used in variance proceedings. The requirement of the Pinelands Protection Act that waivers only be approved if an extraordinary hardship exists further supports the Commission's determination to have a more limiting definition of fair market value than that used under the Municipal Land Use Law. Also, the Municipal Land Use Law approach to fair market value assumes that the lot being valued is otherwise eligible for a variance, an inoperative assumption in Commission waiver situations. Finally, the proposed definition appears to be generally consistent with a recent Appellate Division decision in *Kogene Building & Development Corp. v. Edison Township*, 249 N.J. Super. 445 (App. Div. 1991) which did address legal standards pursuant to the Municipal Land Use Law.

The Commission believes that there will be no confusion between the definition contained in the Comprehensive Management Plan and that applied under the Municipal Land Use Law, primarily because in most situations, only one will apply. For the limited cases where both will apply, the situation is the same as it is currently: Commission action on a waiver application will be completed first and any municipal variance is entirely at the prerogative of the municipality and subject to the standards of the Municipal Land Use Law.

COMMENT: Three organizations suggested the proposed definition of "impaired wetlands" in N.J.A.C. 7:50-2.11 should define wetlands to mean property which is flooded at least 21 days, rather than seven days. Another organization objected to the definition on the basis that isolated wetlands in developed areas should not be defined as impaired as they retain value and are worthy of protection. Another organization suggested that the term "substantial hydrologic barrier" contained in the definition be more clearly defined.

RESPONSE: The Commission's definition of impaired wetlands to exclude property which is flooded at least seven days is based on the 1990 National Technical Committee for Hydric Soils report as well as the Commission's own wetlands delineation criteria. The definition does not rely on the currently proposed Federal manual (which relies on the 21 day standard), in part because these standards have not yet been adopted and, more importantly, because they represent a national standard which is not applicable to the special conditions of the Pinelands Area. Furthermore, the proposed Federal standards are for Federal use; other governmental units may always choose to select different, more appropriate local standards. The Commission remains convinced that even if the proposed Federal manual is adopted, the proposed definition of impaired wetlands as well as the Commission's current definition of wetlands are necessary to protect the resources of the Pinelands.

It should be noted that the proposed definition has been very narrowly drafted so as to include only those wetlands which have been substantially altered or impacted. In addition, as was the case with the term "substantial physical barrier" in the definition of "contiguous lands," the term "substantial hydrologic barrier" has not been more specifically defined so as to give the Commission latitude in determining whether or not the existence of specific conditions results in a wetland which is effectively isolated. Not all such cases may be foreseen and provided for in any definition.

COMMENT: Two organizations objected to the "forced" purchase of Pinelands Development Credits if environmental standards are waived by the Commission as set forth in N.J.A.C. 7:50-4.62(c)liii. These organizations voiced the same objection to proposed N.J.A.C. 7:50-5.27(c) which would require the purchase of Pinelands Development Credits when variances from density or lot area requirements in Pinelands Towns or Pinelands Villages are granted. Another organization commented that landowners should not be forced to pay for waivers in addition to establishing extraordinary hardships. Another organization suggested that municipalities should not be required to purchase Pinelands Development Credits when environmental standards have been waived. Finally, one individual objected to the requirement because it does not take into account differences among municipalities in the Pinelands Area.

RESPONSE: With regard to the purchase of Pinelands Development Credits when environmental standards are waived, the Commission does not believe that municipalities or other public entities should be exempted from this requirement. In this matter, public development that does not meet the Commission's normal environmental standards must be treated in the same fashion as private development.

In general, the requirement is intended to reduce the overall environmental impact of each waiver on the resources of the Pinelands by permanently protecting important forested or agricultural lands in the Pinelands most sensitive areas. In the pre-proposal and proposed rules, numerous reasons for this aspect of the proposal were cited. They remain valid.

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As to differences among Pinelands municipalities, both local zoning and real estate markets reflect such differences and counterbalance any potential impact of the regionwide cost of Pinelands Development Credits. In addition, the proposal itself reduces the impacts on some landowners by removing requirements to buy additional contiguous lands in certain situations.

COMMENT: Three organizations felt that fair market value for Pinelands Development Credits, as indicated in proposed N.J.A.C. 7:50-4.62(c)2, will be very difficult to ascertain.

RESPONSE: Although determining fair market value for Pinelands Development Credits will require coordination between the Commission and the Pinelands Development Credit Bank, the Commission does not believe that this will be a difficult task. There is currently a high degree of coordination between the Bank and the Commission which includes the regular provision of information concerning the sales price of Pinelands Development Credits.

COMMENT: One organization felt that landowners in the proposed "presumptive" hardship categories set forth in N.J.A.C. 7:50-4.63(a)1 should still be required to attempt to sell their property to adjacent landowners or interested non-profit organizations. Another organization suggested that applicants for cultural housing and farm-related housing should not be required to demonstrate extraordinary hardships.

RESPONSE: Although landowners who qualify for the Commission's proposed "presumptive" hardships will not be required to participate in the traditional "buy/sell" process with adjacent landowners, landowners and other interested organizations will be able to obtain from the Commission information concerning properties for which waivers are being sought if they are interested in making offers to purchase land. Cultural housing and farm-related housing are specifically provided for as permitted uses in the Comprehensive Management Plan; the proposed requirements only apply if these uses do not meet the normal environmental standards of the Comprehensive Management Plan. In these cases where waivers are necessary, the uses should be treated in the same fashion as other types of development.

COMMENT: Two organizations objected to the requirement in N.J.A.C. 7:50-4.63(a)2 that applicants for waivers must combine all contiguous lands in common ownership on the basis that this requirement was inappropriate from a land use perspective. These organizations felt that such combination of lands would result in the development of large lots in areas where small lot development is the predominant pattern.

RESPONSE: It should first be noted that this is not a new requirement, only a restatement of the Commission's existing regulations. In cases where waivers from the Commission's normal environmental standards are sought, it is the Commission's goal to maximize the size of the lot to be developed in order to minimize the environmental impact of the development.

COMMENT: One individual felt that the proposed amendment in N.J.A.C. 7:50-4.63(a)4 to require waiver applicants to obtain municipal variances before waivers are granted would merely shift the burden of lawsuits from the Commission to the municipalities and encourage the belief that municipalities need not grant variances. Four organizations thought that the requirement was unfair as it would require applicants to go through the time and expense of the municipal variance process without the guarantee of obtaining a waiver from the Commission. One organization supported the requirement but suggested that language be added to indicate that obtaining a municipal variance does not necessarily justify the Commission's granting of a waiver.

RESPONSE: It must first be noted that in no way does the issuance of an approval by a municipality (that is, a variance) or by the Commission (that is, a waiver) necessitate the approval of the other entity. The municipality will be reviewing the application based on the requirements of the Municipal Land Use Law. The Commission will be reviewing the application based on the requirements contained in its regulations. These two requirements are different so neither entity should be influenced by the decision of the other. Only the Commission is authorized by the Pinelands Protection Act to grant waivers from the Comprehensive Management Plan. While a municipal variance is a prerequisite to obtaining certain waivers, the granting of the variance does not determine whether an applicant qualifies for the approval of a waiver by the Commission. The Commission's regulations have always expressly contained a provision (now N.J.A.C. 7:50-4.70(a)) that states that the granting of a waiver does not provide relief from the requirements of a certified municipal ordinance. In requiring that applicants obtain variances from local jurisdictions before granting certain waivers, the Commission is merely attempting to preserve insofar as is possible local decision-making authority. The Commission is also attempting to

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develop a process that will not prove to be cumbersome for applicants. Striking a balance between these two goals is difficult, but not necessarily impossible.

To this end, a change is being made to N.J.A.C. 7:50-4.2, Application requirements, to ensure that applicants for waivers submit sufficient environmental information to enable the Commission staff to make a preliminary determination as to whether an applicant could potentially qualify for a waiver. Essentially, applicants for waivers will be required to submit the same information required of applicants for major development. In those cases where the submitted information, as confirmed by a site visit, indicates that it is unlikely that an applicant could meet the substantial impairment criteria contained in proposed N.J.A.C. 7:50-4.65, the applicant will be advised not to seek a municipal variance unless and until information is submitted that indicates substantial impairment criteria will not be contravened. Applicants in these cases will also be advised that submission of a detailed site plan (one of the revised waiver application requirements) is not necessary, unless the applicant believes this information would demonstrate that substantial impairment criteria could be satisfied. In this manner, the Commission hopes to be able to provide some guidance to applicants and save those applicants who do not appear to qualify for waivers from the time and expense of the municipal variance process as well as from any unnecessary expense involved with the Commission's application requirements.

To further simplify the application process and provide additional assistance to applicants, a new subsection (h) is being added to the recodified N.J.A.C. 7:50-4.66. This new subsection will allow waiver applicants who must obtain municipal variances to satisfy the two sets of legal notice requirements associated with municipal variances and waivers of strict compliance by combining the two and providing notice only once. It should be noted that this dual notice provision applies only to applicants who are required to obtain municipal variances before obtaining waivers (that is, only to those applicants seeking waivers for certain single family dwellings pursuant to N.J.A.C. 7:50-4.63(a)).

COMMENT: Three organizations questioned whether the term "fair market value" in proposed N.J.A.C. 7:50-4.63(b)2 as it relates to the purchase of contiguous lands at fair market value is the same as that defined in N.J.A.C. 7:50-2.11.

RESPONSE: As used in N.J.A.C. 7:50-4.63(b)2 and throughout the proposed regulations, the term "fair market value" is intended to be consistent with the proposed definition contained in N.J.A.C. 7:50-2.11. In order to clarify the relationship between the proposed definition and the definition of fair market value used by the Commission in the past, a change is being made to N.J.A.C. 7:50-4.63(b)3v(2). In general, the definition of fair market value is consistent with past Commission practice in determining whether an offer was reasonable. In certain instances, such as when the owner of a contiguous developed lot offered to buy a vacant parcel for which a waiver was being sought, the definition of fair market value does differ from past Commission practice. The change in the language is to make it explicit that an applicant would not be prejudiced for rejecting an offer that the Commission would not have viewed as reasonable at the time it was made, even though that offer would now meet the definition of fair market value. It should be noted that many applicants will be covered under the new "presumptive hardship" provisions where buying or selling contiguous lands is no longer required and the past failure to accept fair market value or reasonable offers is no longer relevant.

COMMENT: One organization cautioned that the term "essential health or safety need" as used to determine whether a compelling public need exists in N.J.A.C. 7:50-4.64(a)1 should be strictly defined and applied.

RESPONSE: The Commission believes that these standards, which are not being changed from those currently used, have proven to be workable and therefore do not need to be changed.

COMMENT: One individual felt that the Commission's proposed substantial impairment criteria set forth in N.J.A.C. 7:50-4.65(b) could prevent all waivers from being granted.

RESPONSE: While the Commission believes that its proposed substantial impairment criteria will, in the long run, reduce the number of waivers granted from the Comprehensive Management Plan, waivers will continue to be granted. The Commission recognizes its legal obligation under the Pinelands Protection Act to grant waivers of strict compliance provided these waivers will not result in a substantial impairment of the resources of the Pinelands.

COMMENT: One organization felt that N.J.A.C. 7:50-4.65(b)1 standards for substantial impairment should be limited to environmental

issues and not include land uses that the Commission feels are unacceptable.

RESPONSE: The Commission believes that land uses themselves have significant environmental implications, particularly within the more conservation oriented management areas in the Pinelands. In addition, waiver relief, when granted, is always to provide for the minimum beneficial use which generally should be one of the uses permitted by the Comprehensive Management Plan.

COMMENT: With regard to the N.J.A.C. 7:50-4.65(b)3 and 4 requirements that pollution from septic systems not exceed a nitrate-nitrogen level of five mg/1, two organizations indicated their preference for a three mg/1 standard and one organization felt that a standard of two mg/1 in conservation oriented areas and three mg/1 in development areas should be used. Another organization suggested that the proposed five mg/1 standard should apply only within the Preservation Area and that 10 mg/1 should be the standard in the Protection Area. Another organization felt that the current 10 mg/1 standard should not be changed. One organization also objected to the five mg/1 standard on the basis that it was contrary to the Comprehensive Management Plan's goal of preserving and enhancing agriculture in the Pinelands Area.

RESPONSE: With regard to the affect of the proposed standard on agriculture, it should be noted that the proposed five mg/1 standard applies only to structures (for example, roadside farm stands) served by septic systems and not to agricultural activities such as crop production of any type.

As noted in the rule proposal, the Commission's current normal environmental standard is two mg/1 and the maximum level currently permitted in waiver situations is the potable water standard of 10 mg/1. As the comments clearly indicate, there is a divergence of opinion as to how much relief should be granted from the normal standard in waiver situations. Nevertheless, the Commission has determined that the current practice of permitting a five fold increase in the amount of pollution loading is unwise, particularly in terms of long term protection of the region's water resources.

Establishing a lower threshold (and thus establishing a point at which substantial impairment of Pinelands resources is determined to exist) must, however, take into account a number of factors. First, the Pinelands Protection Act requires the Commission to grant relief from normal standards in these exceptional, or waiver, situations. Establishment of a threshold level (that is, two mg/1) for the majority of the Pinelands which is the same as the normal standard is not felt to be in keeping with the intent of the Pinelands Protection Act considering that this will represent one of the most frequently applied standards of the substantial impairment test. More importantly, however, this standard can not be viewed in isolation. For example, application of a standard higher than five mg/1 might be acceptable if it occurred in only a handful of cases. This is because the total amount of pollutant loading would be minimal. Similarly, a lower standard (for example, three mg/1) might also be unacceptable if that level would be reached in a multitude of cases. Because of the other substantial impairment criteria, virtually all of the situations where waivers will allow the two mg/1 standard to be exceeded will be located in Regional Growth Areas and Pinelands Towns and Villages—those areas where development is supposed to be concentrated. In addition, the granting of the waiver will require the purchase of 0.25 Pinelands Development Credits which will result in the permanent protection of land located in the more sensitive portions of the Pinelands. Considering these factors, a maximum level of five mg/1 should be adequate to avoid, over the long term, a substantial impairment of Pinelands water resources. In addition, the two mg/1 standard will only be waived if it cannot be met by the applicant. The requirement that the relief only be the minimum necessary also would only allow deviation from the two mg/1 standard to the extent necessary to alleviate the extraordinary hardship or compelling public need. In many instances, this would result in the applicant being required to adhere to a standard that is less than the five mg/1 maximum.

COMMENT: One organization objected to the substantial impairment criterion contained in proposed N.J.A.C. 7:50-4.65(b)5 on the basis that all wetlands deserve protection and that development on any wetland should be prohibited.

RESPONSE: It must be stressed that N.J.A.C. 7:50-4.65(b)5 will permit development only on those wetlands which may be defined as "impaired." As noted previously, the definition of "impaired wetlands" has been very narrowly drafted so that only small, isolated wetlands that have already been significantly altered or impacted will qualify. It should also be noted that current Commission policy allows waivers to be

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granted which permit development on more wetlands than would be the case under these new rules.

**COMMENT:** With regard to the proposed wetlands buffer standard contained in N.J.A.C. 7:50-4.65(b)6, one organization felt that wetlands buffers should not be reduced below 50 feet in any Pinelands management area. One individual objected to the proposal to allow zero foot buffers in Regional Growth Areas.

**RESPONSE:** Current Commission policy permits the reduction of wetlands buffer requirements to zero feet in all Pinelands management areas. The proposed standard in N.J.A.C. 7:50-4.65(b)6 is therefore more restrictive than the Commission's current policy in that it requires a minimum buffer of 50 feet to non-impaired wetlands in conservation oriented management areas. It should also be noted that the proposed standard permits a reduction of the required buffer in any management area only after an extraordinary hardship has been established and it is demonstrated that no beneficial use of the property would be possible if normal buffers (up to 300 feet) were maintained. To supplement the standard, contained in N.J.A.C. 7:50-4.62, a new subsection (d) is being added to N.J.A.C. 7:50-4.65 in order to make it perfectly clear that the Commission may grant only the minimum relief necessary to relieve a hardship or satisfy a public need. This section is intended to apply not only to wetlands buffer requirements, but also to all of the other substantial impairment criteria. As it relates to wetlands buffers, this standard simply means that the largest possible buffer must be maintained and that there is no entitlement to the minimum specified buffer unless there is no other way for the waived development to be positioned on the property in question.

**COMMENT:** One organization felt that septic disposal fields should be required to maintain a distance of 75 feet from all water bodies, rather than the 50 feet specified in proposed N.J.A.C. 7:50-4.65(b)8.

**RESPONSE:** The Commission bases its requirements for the location of septic systems, both in terms of distance from water bodies and location where the depth to seasonal high water table is at least two feet, on the standards of the Department of Environmental Protection and Energy. The Commission believes that these standards are sufficient.

**COMMENT:** Two organizations suggested that the term "direct discharge" contained in proposed N.J.A.C. 7:50-4.65(b)9 should be defined.

**RESPONSE:** Although the Commission does not believe it is necessary to include a definition of "direct discharge" in the Comprehensive Management Plan, clarification is warranted for purposes of this response document. As is the case currently, the Commission will rely on its past interpretation and experience with this term which is similar to the Department of Environmental Protection and Energy's use of the terms "point source" and "non-point source" when it considers NJPDES permits. Therefore, a "direct discharge" will be generally viewed as discharge coming from any discernible, confined and discrete structure or conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit or well. The term is not intended to include flows dispersed over land from such a discharge or return flows from irrigated agriculture.

**COMMENT:** In cases where waivers for compelling public needs would result in substantial impairment, one organization suggested that offsetting measures other than the purchase of Pinelands Development Credits should be explored.

**RESPONSE:** The Commission agrees that a variety of offsetting measures in addition to the purchase of Pinelands Development Credits should be considered and believes that N.J.A.C. 7:50-4.64, as currently proposed, provides an opportunity for the Commission to do so. However, all waivers which allow on-site development will still require some Pinelands Development Credit purchase as required by N.J.A.C. 7:50-4.62(c).

**COMMENT:** With regard to the proposed addition to N.J.A.C. 7:50-4.68 concerning reconsideration rights, one individual felt that courts should make final decisions on contested applications, not administrative law judges. Three organizations objected to the proposed process because they felt it would place an unfair burden on applicants and was designed to prevent applications from being made in the first place.

**RESPONSE:** Before it makes a final decision on waiver requests, the Pinelands Commission has only two options when a staff recommendation is disputed: (1) refer the matter to the Office of Administrative Law for fact finding; or (2) conduct a fact finding hearing itself. Only after a final decision is made by the Commission can an aggrieved party seek judicial review. It should be noted that the Office of Administrative Law procedure often proves to be less expensive than a formal court proceeding and is therefore generally less burdensome for applicants.

The Office of Administrative Law was established to hear such cases from administrative agencies.

**COMMENT:** With regard to the expiration of waivers granted under prior municipal development approval standards contained in proposed N.J.A.C. 7:50-4.70(b), one organization felt that the proposal constituted an improper retroactive regulation.

**RESPONSE:** The proposed addition of N.J.A.C. 7:50-4.70(b) actually reflects the Commission's current policy relating to waivers granted under prior municipal development approvals and is not being applied retroactively. The language change reflects the Commission's original intent when it adopted this provision in 1987 and is being adopted to minimize the rule's being misconstrued by applicants.

**COMMENT:** Three organizations objected to the proposed expiration of waivers after five years contained in N.J.A.C. 7:50-4.70(c) on the basis that it is not reasonable due to the current economic climate. One individual felt that no expiration date should be set and that, in any case, the provision should not apply retroactively. Likewise, one organization felt that the five year limitation should not be applied retroactively and also noted that it would create problems for public projects which must obtain multiple permits.

**RESPONSE:** It should first be noted that the proposed five year expiration clause will apply only to waivers granted to relieve extraordinary hardships and not to those granted to satisfy compelling public needs. Therefore, virtually all public projects will not be subject to the expiration provision. In addition, the provision is intended to apply only to waivers granted under the new regulations; it will not be applied retroactively.

The Commission continues to believe that it is reasonable to establish a time period within which waivers must be utilized. This practice, as well as the five year period chosen by the Commission, is not dissimilar to the time limits placed on certain municipal development approvals by the Municipal Land Use Law. Even if a waiver expires, an applicant may reapply and, if conditions and regulations have not changed, will receive a new waiver or what is essentially an extension for another five years.

**COMMENT:** One person suggested that a "grandfather" clause be established for applications submitted under the Commission's current regulations.

**RESPONSE:** The Commission agrees that applicants who have proceeded through the Commission's current waiver process to a certain point should continue to be evaluated under the current regulations. To that end, an addition is being made at N.J.A.C. 7:50-4.70(e) which will allow those applicants who have obtained a formal determination from the Executive Director (that is, a written staff recommendation) prior to the effective date of these rules (March 2, 1992) to be considered under the regulations which were in effect at the time their applications were made. It is anticipated that this provision will apply only to a very limited number of applicants.

It should be noted that the proposed addition at N.J.A.C. 7:50-4.70(e) will also allow applicants who have received staff determinations the option of requesting that their applications be evaluated in accordance with the new regulations if they believe this would be to their benefit. The Commission staff is currently in the process of informing applicants with active applications of their options.

**COMMENT:** With regard to the proposed requirement for development transfer programs in all Forest and Rural Development Areas set forth in N.J.A.C. 7:50-5.30, one organization felt that the Commission should restrict the uses permitted on deed-restricted lands, particularly with regard to commercial forestry. Another individual cautioned that the programs may be difficult for municipalities to administer.

**RESPONSE:** N.J.A.C. 7:50-5.30 is intended to provide municipalities with flexibility in designing transfer programs. This flexibility extends to specifying the uses which a municipality wishes to allow to remain on deed-restricted, non-contiguous lands, although the Commission believes that it is only reasonable to permit some uses (for example, agriculture and forestry) on these lands to the same extent as they would be permitted on the lot being developed.

The Commission also recognizes that the development transfer programs may prove to be difficult for municipalities to administer, at least at the outset. Commission staff will be assisting each municipality not only in the initial development of the programs, but also in the establishment of administrative procedures.

**COMMENT:** One organization felt that the additional regulations and costs associated with proposed N.J.A.C. 7:50-5.32(b) should not be imposed on persons who qualify for cultural housing; these people should

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not be required to obtain municipal variances or purchase Pinelands Development Credits. Likewise, one individual felt that the mandated purchase of PDCs would be particularly unfair to persons who qualify for cultural housing.

RESPONSE: Under normal circumstances, a minimum lot size of 3.2 acres is required for cultural housing. The amendment would permit pre-existing lots as small as one acre to qualify for cultural housing, without the need for the applicant to obtain a waiver from the Commission. However, because smaller than normal lots could be developed, applicants would be required to obtain municipal variances and purchase 0.25 Pinelands Development Credits. The Commission believes that this amendment furthers the goal of the Comprehensive Management Plan to permit those people with long-standing ties to the Pinelands to continue these traditions, even though the lots proposed for development do not meet normal size requirements, and does not impose an unreasonable burden.

COMMENT: With regard to the changes made to N.J.A.C. 7:50-6.13, Linear improvements, one organization suggested that clearer standards for linear development in wetlands buffer areas were needed and that these standards should be less stringent than those for development within wetlands. Another organization felt that standards for linear improvements should also apply to the expansion of non-linear facilities (for example, airports and maintenance yards).

RESPONSE: The Commission agrees that clarification is advisable concerning the extent to which uses permitted in wetlands are also permitted in wetlands transition areas. To that end, a change is being made to N.J.A.C. 7:50-6.6 to indicate that activities permitted in wetlands, including linear development, are also permitted in wetlands buffer areas. It also makes clear that activities precluded in wetlands are also precluded in wetlands transition areas. The Commission does not agree, however, that non-linear public developments should be treated in the same fashion as linear developments. The environmental impacts of these two types of development may differ greatly, as may their locational options.

## Summary of Agency-Initiated Changes:

Several other changes are being made, although not directly in response to public comment. First, the reference to lots 0.5 acres in size contained in N.J.A.C. 7:50-4.63(a)1v and 4.65(b)3 is being replaced with the phrase "20,000 square feet, excluding road rights-of-way." This change is being made in recognition of the fact that, administratively, questions often arise as to whether an applicant's property must be exactly 0.5 acres in size. The change also recognizes the existence of a number of previously subdivided lots approximately 20,000 square feet in size (for example, lots with dimensions of 100 feet by 200 feet) in the Pinelands Area and takes into account the fact that a significant portion of these lots could be developed without exceeding the five mg/l threshold established in N.J.A.C. 7:50-4.65. It should be noted that this change is being made with the caveat that road rights of way may not be included in calculations of lot size, since these areas are generally not considered to be available for septic dilution from rainfall.

Two other minor changes are being made to N.J.A.C. 7:50-4.63: the word "standards" in paragraph (a)5 is being changed to "criteria" for purposes of consistency with other sections of the new rules; and the beginning of subsection (b) is being changed to clarify the means by which a "non-presumptive hardship" must be established. N.J.A.C. 7:50-4.65(b)4 is being added to clarify that applicants who have "non-presumptive hardships" must meet substantial impairment criteria, just as applicants with "presumptive hardships" must. Likewise, N.J.A.C. 7:50-4.64(b) is being added to clarify that applicants for compelling public need waivers must satisfy substantial impairment criteria. N.J.A.C. 7:50-4.70(d) is being added to reflect the Commission's current policy of requiring that the conditions associated with its waiver approvals be recorded in the deeds to the properties involved. By recording the entire waiver approval, future purchasers of the parcel will be aware of all the provisions of the waiver, including the conditions imposed and the expiration period. Finally, minor technical changes are being made to N.J.A.C. 7:50-4.62(c)1iii and (c)2, N.J.A.C. 7:50-4.65(b)5 and 6, N.J.A.C. 7:50-4.67 and N.J.A.C. 7:50-4.68 to correct errors in the publication of the original rule proposal. All of these are changes of language only, with no change of substance involved.

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

## 7:50-2.11 Definitions

When used in this Plan, the following terms shall have the meanings herein ascribed to them.

...  
 "Contiguous lands" means land which is connected or adjacent to other land so as to permit the land to be used as a functional unit; provided that separation by lot line, streams, dedicated public roads which are not paved, rights-of-way, and easements shall not affect the contiguity of land unless a substantial physical barrier is created which prevents the land from being used as a functional unit.

...  
 "Fair market value" means the value of a parcel based on what a willing buyer will pay a willing seller in an arms length transaction for the parcel if no Waiver of Strict Compliance is approved. The determination of fair market value shall include consideration of the extent to which the parcel would contribute to the value of a developable parcel if combined with one or more other parcels.

...  
 "Wetlands, impaired" means any wetland that meets each of the following three tests:

1. The wetland meets at least one of the following two criteria:
  - i. The entire wetland is less than one acre; or
  - ii. The overall wetland area is larger than one acre but the portion of the wetland that is to be directly impacted is less than one acre and the impacted area is separated from the remainder of the wetland by a substantial hydrologic barrier; and
2. The wetland meets at least one of the following three criteria:
  - i. The wetland is within an area that is predominantly developed, has direct access to a paved public road and is serviced by a municipal wastewater treatment system; or
  - ii. The wetland was filled prior to February 8, 1979, the fill is at least one foot in depth, and the seasonal high water table is not within one foot of the altered land surface; or
  - iii. The wetland is an actively cultivated non-berry agricultural field which was cleared and in production prior to February 8, 1979; and
3. The wetland is not:
  - i. An Atlantic white cedar swamp;
  - ii. A wetland which is frequently ponded or flooded for a period of at least seven days during the growing season;
  - iii. A herbaceous or shrub dominated wetland type found in naturally occurring circular or nearly circular depressions within upland or wetland complexes;
  - iv. Located within 300 feet of a lake, pond, river or permanent stream; or
  - v. A wetland supporting plant species which are designated as endangered pursuant to N.J.S.A. 13:1B-15.151 et seq. or supporting plant or wildlife species designated as threatened or endangered pursuant to N.J.A.C. 7:50-6.24 and N.J.A.C. 7:50-6.33.

## 7:50-4.2 Pre-application conference; application requirements

- (a) (No change.)
- (b) **\*[Applicants]\* \*Application\*** requirements
- 1.-7. (No change.)
8. Application for waiver: An application for a waiver of strict compliance filed pursuant to N.J.A.C. 7:50-4, Part V shall include at least the following information:
  - i. All information required in an application for development approval as set out in (b)4 **\*[i through vi]\* \*above\***;
  - ii. The waiver sought, the provisions or standards of this Plan from which a waiver is requested and a statement of the reasons for the waiver;
  - iii. At the option of applicant, all other information required in (b) **\*[4 and]\* 5 above**;
  - iv. A **\*[statement]\* \*demonstration\*** of the **\*existence of an\*** extraordinary hardship **\*[imposed on the applicant]\*** based on the criteria set forth in N.J.A.C. 7:50-**\*[4.66(a)1]\* \*4.63(a) or (b)\*** or **\*[an explanation]\* \*a demonstration\*** of **\*[any]\* \*the\*** compelling public need for the proposed development based on the criteria set forth in N.J.A.C. 7:50-**\*[4.66(a)2]\* \*4.64(a)1 or 2\***; and

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v. A [statement as to]\* **\*demonstration of\*** whether the requested waiver will meet the requirements set forth in N.J.A.C. 7:50-[4.66(a)3, 4 and 5]\* **\*4.65\***.

## 7:50-4.61 Purpose

This Part establishes procedures and standards pursuant to which the Commission may waive strict compliance with the Plan. Waivers from the standards of N.J.A.C. 7:50-5 or 6 may be granted in limited circumstances. Waivers granted pursuant to this Part are intended to provide relief where strict compliance with this Plan will create an extraordinary hardship or where the waiver is necessary to serve a compelling public need. The relief provided will be consistent with the protection of the resources of the Pinelands. The relief granted will only be the minimum necessary to alleviate the extraordinary hardship or the compelling public need. For some extraordinary hardship cases, the minimum relief granted will allow the development of the property in question; in others the minimum relief will include an allocation of Pinelands Development Credits. These provisions are designed to provide all property owners with at least a minimum beneficial use of their property consistent with constitutional requirements. For some compelling public need cases, special measures may need to be taken so there will be an overall improvement to the resources of the Pinelands.

## 7:50-4.62 General standards

(a) Waivers may only be granted when either:

1. An extraordinary hardship has been established pursuant to N.J.A.C. 7:50-4.63(a) or (b); or

2. A compelling public need has been established pursuant to N.J.A.C. 7:50-4.64.

(b) Notwithstanding (a) above, the requested relief may not be granted if it will either result in a substantial impairment of the resources of the Pinelands Area or be inconsistent with the purposes and provisions of the Pinelands Protection Act, the Federal Act or this Plan pursuant to the criteria set forth in N.J.A.C. 7:50-4.65.

(c) When approved, the waiver may only grant the minimum relief necessary to relieve the extraordinary hardship or satisfy the compelling public need.

1. Any waiver which grants relief from the standards of this Plan to permit development of the property in question shall require:

i. The reduction as set forth in N.J.A.C. 7:50-5.43(b)3 of any Pinelands Development Credits which are allocated to the property pursuant to N.J.A.C. 7:50-5.43(b);

ii. The acquisition and redemption of any Pinelands Development Credits that are otherwise required pursuant to N.J.A.C. 7:50-5.27, 5.28 or 5.32;

iii. The acquisition and redemption of 0.25 Pinelands Development Credits whenever the waiver provides relief from one or more of the standards of N.J.A.C. 7:50-6 and the acquisition and redemption of an additional 0.25 Pinelands Development Credits whenever the waiver provides relief from one or more of the wetlands protection standards contained in N.J.A.C. 7:50-6\*, **Part I\***; and

iv. The development meets the criteria set forth in N.J.A.C. 7:50-4.65(c) if the waiver is based on compelling public need pursuant to N.J.A.C. 7:50-4.64 and involves one or more of the criteria set forth in N.J.A.C. 7:50-4.65(b).

2. Any parcel for which an extraordinary hardship exists pursuant to N.J.A.C. 7:50-4.63 but which is precluded from on-site development pursuant to N.J.A.C. 7:50-4.65(b) shall receive an additional use right of an allocation of Pinelands Development Credits based on the fair market value of the parcel. The allocation shall be based on the market value of the Pinelands Development Credits at the time the application for a waiver is completed, provided that the applicant shall be entitled to a minimum allocation of 0.25 Pinelands Development Credits. Unless severed from the parcel pursuant to N.J.A.C. 7:50-5.47, any conveyance, sale or transfer of the parcel shall include the Pinelands Development Credits allocated herein. The applicant shall be entitled to demonstrate that the allocation of Pinelands Development Credits based on fair market value in conjunction with the permitted uses on the parcel does not give the parcel a beneficial use. If the applicant believes that even considering this allocation of Credits the parcel does not have a beneficial use,

the applicant is entitled to request reconsideration pursuant to N.J.A.C. 7:50-[4.64]\*\***4.68\***.

\*[7:5]\*\***7:50\***-4.63 Standards for establishing extraordinary hardship

(a) An extraordinary hardship is deemed to exist when the applicant demonstrates based on specific facts and the Pinelands Commission verifies that all of the following conditions exist:

1. The only relief sought is from one or more of the standards contained in N.J.A.C. 7:50-6 for one of the following:

i. Cultural housing pursuant to N.J.A.C. 7:50-5.32 on a parcel at least 1.0 acres in size;

ii. A single family dwelling or a permitted commercial use within an infill area designated pursuant to N.J.A.C. 7:50-5.22(b)7 and located on a parcel at least 1.0 acres in size;

iii. A single family dwelling on a substandard parcel containing at least 1.0 acres pursuant to N.J.A.C. 7:50-5.31;

iv. A single family dwelling on a parcel within a Regional Growth Area, Pinelands Town or Pinelands Village which will be served by a centralized waste water treatment system;

v. A single family dwelling on a parcel within a Regional Growth Area, Pinelands Town or Pinelands Village which is at least \*[0.5 acres]\* **\*20,000 square feet, excluding road rights of way,\*** in size and is not served by a centralized waste water treatment system;

vi. A single family dwelling on a parcel within a Forest Area that complies with the density and lot area standards set forth in N.J.A.C. 7:50-5.23(a)2 and (c);

vii. A single family dwelling on a parcel within a Rural Development Area that complies with the density and lot area standards set forth in N.J.A.C. 7:50-5.26(a) and (c);

viii. A single family dwelling on combined properties in either the Forest Area or Rural Development Area which meets the density transfer standards of N.J.A.C. 7:50-5.30;

ix. A single family dwelling accessory to an active agricultural operation in an Agricultural Production Area pursuant to the criteria contained in N.J.A.C. 7:50-5.24(a)2;

x. A single family dwelling accessory to an active agricultural operation in a Special Agricultural Production Area pursuant to the criteria contained in N.J.A.C. 7:50-5.25(b)1; or

xi. An agricultural commercial establishment with a gross floor area no greater than 500 square feet which is located on a property which otherwise qualifies for a single family dwelling accessory to an active agricultural operation pursuant to either N.J.A.C. 7:50-5.24(a)2 or 5.25(b)1;

2. The parcel includes all contiguous land in common ownership on or after January 14, 1981, including lands which are contiguous as a result of ownership of other contiguous lands;

3. The proposed use will be the sole principal use on the entire contiguous parcel, except as expressly provided in N.J.A.C. 7:50-5.1(c);

4. All necessary municipal lot area and density variances have been obtained if the property is located in a municipality whose master plan and land use ordinances have been fully certified by the Pinelands Commission pursuant to N.J.A.C. 7:50-3; and

5. The development of the property will not violate any of the \*[standards]\* **\*criteria\*** contained in N.J.A.C. 7:50-4.65(b).

(b) \*[In addition to (a) above, an]\* **\*An\*** extraordinary hardship as distinguished from a mere inconvenience **\*also\*** exists when the applicant demonstrates and the Pinelands Commission verifies that all of the following conditions exist:

1. The parcel includes all contiguous lands in common ownership on or after January 14, 1981, including lands which are contiguous as a result of ownership of other contiguous lands;

2. The parcel includes all contiguous land with no substantial improvements which is available in whole or in part for purchase at fair market value, including lands which become contiguous as a result of the acquisition of other contiguous lands;

3. The parcel, including all contiguous lands which are available pursuant to (b)1 and 2 above, may not have a beneficial use considering the following factors:

i. The value of any existing development or use of the parcel, including any allocation of Pinelands Development Credits to the parcel pursuant to N.J.A.C. 7:50-5.43(b);

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- ii. The value of any use or development of the parcel that is authorized by the provisions of this Plan;
- iii. The ability of the property owner to sell the subject parcel to the owner of a contiguous parcel, any governmental agency or to a nonprofit conservation group for its fair market value;
- iv. The ability of the property owner to either buy non-contiguous land or sell the subject property to a non-contiguous property owner under a transfer of density provision contained in a certified municipal land use ordinance or pursuant to N.J.A.C. 7:50-5.30 in an uncertified municipality; and
- v. Any inability to have a beneficial use relates to or arises out of the characteristics of subject parcel and results from unique circumstances peculiar to the subject property which:

(1) Are not the result of any personal situation of the applicant including the necessity of purchasing additional land to attempt to either meet the minimum lot size, density or management standards of the Plan or to increase the parcel size so it is capable of having a beneficial use; and

(2) Are not the result of any action or inaction by the applicant **\*[or] \* ,\* the owner \*[of] \* \*or\* any predecessor in title including any transfer of any contiguous lands which were in common ownership on or after January 14, 1981 or the refusal \*on or after January 14, 1981\* of the applicant, the owner or any predecessor-in-title to either sell the subject parcel for its fair market value \*at the time the offer was made\* or to buy a \*[reasonably available]\* contiguous parcel \*[on or after January 14, 1981.]\* \*for its fair market value at the time the offer was made; and\***

**\*4. The development of the property will not violate any of the criteria contained in N.J.A.C. 7:50-4.65(b).\***

7:50-4.64 Standards for establishing compelling public need

(a) An applicant shall be deemed to have established compelling public need if the applicant demonstrates based on specific facts and the Pinelands Commission verifies that one of the following conditions exist:

1. The proposed development will serve an essential health or safety need of the municipality or, in the case of an application serving more than one Pinelands municipality, the county in which the proposed development is located, and:

- i. The public health and safety require the requested waiver;
- ii. The public benefits from the proposed use are of a character that override the importance of the protection of the Pinelands as established in the Pinelands Protection Act or the Federal Act;
- iii. The proposed use is required to serve existing needs of the residents of the Pinelands; and
- iv. No feasible alternatives exist outside the Pinelands Area to meet the established public need and that no better alternatives exist within the Pinelands Area; or

2. The proposed development constitutes an adaptive reuse of a historic resource designated by the Pinelands Commission pursuant to N.J.A.C. 7:50-6.154, and:

- i. The reuse is the minimum relief necessary to ensure the integrity and continued protection of the designated historic resource; and
- ii. The designated historic resource's integrity and continued protection cannot be maintained without the granting of a Waiver of Strict Compliance.

**\*(b) The applicant shall also demonstrate either that the development of the property will not violate any of the criteria contained in N.J.A.C. 7:50-4.65(b) or that if one or more of the criteria are violated that the development meets the requirements of N.J.A.C. 7:50-4.65(c).\***

7:50-4.65 Substantial impairment and consistency

(a) No Waiver of Strict Compliance which permits a parcel to be developed shall be approved unless such development will be consistent with the purposes and provisions of the Pinelands Protection Act, the Federal Act and this Plan and will not result in a substantial impairment of the resources of the Pinelands Area.

(b) Unless alleviating measures are taken pursuant to (c) below for waivers based on compelling public need, the following circumstances do not comply with (a) above:

- 1. Development of any non-permitted use in the Preservation

Area District, any Special Agricultural Production Area, any Forest Area or any Agricultural Production Area;

2. Any residential use in the Preservation Area District, any Special Agricultural Production Area or any Agricultural Production Area which does not meet the requirements set forth in N.J.A.C. 7:50-5.22(b)7, 5.24(a)2, (a)3 or (c), 5.25(b)1 or (c), 5.31 or 5.32;

3. Any residential use to be served by an on-site sewage disposal system where the overall density is greater than one dwelling unit per **\*[0.5 acres]\* \*20,000 square feet, excluding road rights of way,\*** or where any dwelling will be located on a lot smaller than **\*[0.5 acres]\* \*20,000 square feet, excluding road rights of way\*;**

4. Any non-residential used to be served by an on-site sewage disposal system where the nitrate-nitrogen level exceeds five mg/l at the property line;

5. Any development, except for development permitted in wetlands pursuant to N.J.A.C. 7:50-6\*, **Part I\***, which will be located on any wetland unless that wetland is an impaired wetland;

6. Any development, except for development permitted in wetlands buffers pursuant to N.J.A.C. 7:50-6\*, **Part I\***, which will be located within 50 feet of any wetland unless the wetland is either an impaired wetland or located in a Regional Growth Area, Pinelands Town or Pinelands Village;

7. Any development which will violate the threatened and endangered species protection requirements contained in N.J.A.C. 7:50-6.24 and 6.33;

8. Any development which will require the location of a waste water disposal field in an area where the seasonal high water table is within two feet of the natural ground surface or within 50 feet of any surface water body;

9. Any development which will result in a new direct discharge of storm water into any fresh water wetlands which are not impaired wetlands; or

10. In addition to the criteria specified above, the existence of special or unusual circumstances will be evaluated in determining whether a particular development complies with (a) above.

(c) If an application meets the criteria for establishing a compelling public need pursuant to N.J.A.C. 7:50-4.64, but one or more of the circumstances in (b) above exist, then the application does not meet the criteria of (a) above unless the applicant demonstrates, based on particular facts, that the development, when evaluated in its entirety, including any special measures that are part of the development proposal, will result in an overall improvement of the resources of the Pinelands Area.

**\*(d) Even if an applicant does not violate any of the criteria contained in (b) above, the waiver may only grant the minimum relief necessary to relieve the extraordinary hardship or satisfy the compelling public need.\***

**\*[7:50-4.62]\*\*7:50-4.66\*** Application

(a)-(g) (No change.)

**\*(h) For an application submitted pursuant to N.J.A.C. 7:50-4.63(a) for which a municipal lot area or density variance is required pursuant to N.J.A.C. 7:50-4.63(a)4, the notice required pursuant to (b) above shall not be separately required by the Pinelands Commission provided that the notice for the municipal variance is submitted to the Pinelands Commission and contains at least the information specified in (d) above and the application to the Pinelands Commission is completed within one year of the municipal approval of the variance.\***

**\*[7:50-4.63]\*\*7:50-4.67\*** Action by the Executive Director on Application

Within 90 days following the receipt of a complete application for waiver, the Executive Director shall review the application and all information submitted by the applicant and any other person relating to the application and upon completion of such review make a determination whether the application should be approved, approved with conditions or disapproved. The application may be recommended for approval or approval with conditions only if the applicant, subject to any conditions which may be imposed, meets the standards for a Waiver of Strict Compliance established in N.J.A.C. 7:50-4.66\*\***4.62\***. The Executive Director shall give written notification of his findings and conclusion to the applicant, the

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Commission, interested persons, including all persons who have submitted information concerning the application as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

## 7:50-4.68 Reconsideration rights

Any interested person who is aggrieved by any determination made by the Executive Director pursuant to this Part may within 15 days seek reconsideration by the Commission \*[by]\* \*of\* the Executive Director's determination as provided by N.J.A.C. 7:50-4.91. Additional information not included in the Executive Director's determination may be presented to the Pinelands Commission only by requesting a hearing pursuant to N.J.A.C. 7:50-4.91. If the reconsideration is based on an allegation that the parcel does not have a beneficial use even considering the allocation of Pinelands Development Credits pursuant to N.J.A.C. 7:50-4.62(c)2, the applicant must include specific documentation concerning the economic value of each of the permitted uses of the parcel once the Pinelands Development Credits are transferred and documentation of the value necessary to give the property a beneficial use as part of the reconsideration process. If the applicant demonstrates that the allocation of Pinelands Development Credits based on fair market value along with the other permitted uses of the parcel does not result in the parcel having a beneficial use, the allocation of Pinelands Development Credits shall be increased to the number necessary to provide the parcel with a beneficial use.

## 7:50-4.69 (No change in text.)

7:50-4.70 Effect of grant of waiver; expiration; **\*recodification; effective date\***

(a) Any waiver granted under the provisions of this Part shall only be considered a waiver of the particular standard of this Plan which the Commission waived. It shall not constitute an approval of the entire development proposal. Nor shall it constitute a waiver from any requirements contained within any certified local ordinance.

(b) Waivers approved under former N.J.A.C. 7:50-4.66(a)1ii, repealed effective November 2, 1987, and former N.J.A.C. 7:50-4.55(a)1iii, repealed effective September 12, 1985, shall expire as follows:

1. Any waiver previously approved under the final subdivision standard contained in the now repealed N.J.A.C. 7:50-4.55(a)1iii shall continue to be subject to the condition that the waiver shall expire after two years if substantial construction of improvements is not commenced, or if fewer than 10 percent of the total number of lots in the subdivision are sold or built upon within any succeeding 12 month period; and

2. Any waiver previously approved under the prior municipal development approval standard contained in the now repealed N.J.A.C. 7:50-4.66(a)1ii expired, without exception, as of January 14, 1991 unless all necessary approvals for the proposed development were obtained by that date from the municipal planning board and board of adjustment or, where no such approval was required, all necessary construction permits have been issued prior to that date and no such permit or approval is subsequently allowed to expire, lapse, or needs to be renewed or extended after that date.

(c) Any waiver approved pursuant to N.J.A.C. 7:50-4.63 which authorizes development of the parcel shall expire five years after the Waiver is approved unless all necessary construction permits have been issued within said five year period. The waiver shall expire if any such permit is allowed to expire or lapse after the end of the five year period or if any renewal or extension of any such permit or issuance of a new construction permit is necessary after the five year period.

**\*(d) A copy of any approval of a Waiver of Strict Compliance by the Pinelands Commission shall be recorded in the office of the county recording officer of the county wherein the real estate that is subject to the Waiver is situated pursuant to N.J.S.A. 46:16-2 within 60 days of the approval of the Waiver. Said recording shall be notice to all subsequent judgement creditors, purchasers and mortgagees of the existence and contents of the approved Waiver of Strict Compliance.**

(e) The N.J.A.C. 7:50-2.11 definitions of "contiguous lands," "fair market value" and "impaired wetlands," and N.J.A.C. 7:50-4.2(b)8 and 4.61 through this section, as amended or adopted effective March 2, 1992, shall apply to all applications except for those applications on which an Executive Director's determination was issued prior to March 2, 1992. For those applications, the above-referenced provisions in effect prior to March 2, 1992 shall govern, provided that:

1. The Pinelands Commission action on the Waiver of Strict Compliance is based on information that was submitted to the Pinelands Commission prior to March 2, 1992;

2. The applicant has not requested that the application be reviewed pursuant to the N.J.A.C. 7:50-2.11 definitions of "contiguous lands," "fair market value" and "impaired wetlands," and N.J.A.C. 7:50-4.2(b)8 and 4.61 through this section, as amended or adopted effective March 2, 1992; and either

3. The Pinelands Commission acts on the application at its next regularly scheduled meeting after the time to request reconsideration under N.J.A.C. 7:50-4.91 has expired and no request for reconsideration has been received; or

4. A timely request for reconsideration is received under N.J.A.C. 7:50-4.91 or the Executive Director's determination is referred to the Office of Administrative Law by the Pinelands Commission pursuant to N.J.A.C. 7:50-4.69 (formerly N.J.A.C. 7:50-4.65).\*

## 7:50-5.23 Minimum standards governing the distribution and intensity of development and land use in Forest Areas

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

(c) No residential dwelling unit shall be located on a lot of less than 3.2 acres, except as provided in N.J.A.C. 7:50-5.30.

(d) (No change.)

## 7:50-5.27 Minimum standards governing the distribution and intensity of development and land use in Pinelands Villages and Towns

(a) (No change.)

(b) No residential dwelling units or nonresidential use shall be located in a parcel of less than one acre unless served by a centralized waste water treatment plant.

(c) Any municipal variance approval which grants relief from density or lot area requirements shall require that Pinelands Development Credits be used for all dwelling units or lots in excess of that permitted without the variance.

## 7:50-5.28 Minimum standards governing the distribution and intensity of development and land use in Regional Growth Areas

(a) Any use may be permitted in a Regional Growth Area, provided that:

1.-3. (No change.)

4. Any municipal variance approval which grants relief from density or lot area requirements shall require that Pinelands Development Credits be used for all dwelling units or lots in excess of that permitted without the variance.

5. (No change.)

6. Any municipal variance for an approval of nonresidential development in a zone in which the approved nonresidential development is not otherwise permitted, and in which density may be increased through the use of Pinelands Development Credits pursuant to (a)3ii above shall require that Pinelands Development Credits be used at the maximum rate permitted for the zone in which the development is located.

7. (No change.)

(b) No residential dwelling unit or nonresidential use shall be located on a parcel less than one acre unless served by a centralized waste water treatment plant.

## 7:50-5.30 Development transfer programs in Forest Areas and Rural Development Areas

(a) Each municipality with land in either a Forest Area or a Rural Development Area shall establish within said area or areas a program which permits residential development on otherwise under-sized lots if other land, equivalent to that needed to meet the assigned density, is protected through a permanent deed restriction.

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(b) The density transfer programs shall adhere to the following minimum standards:

1. No lot less than one acre can be developed;
2. All parcels involved in the density transfer shall be located within the same Pinelands management area and within the same municipal zoning district;
3. The total acreage of the parcels involved in the density transfer shall at least equal the density required for that zoning district; and
4. Any parcel whose acreage is being utilized to meet the density requirement but which will not be developed shall be permanently dedicated as open space through recordation of a restriction on the deed to the property with no further development permitted except agriculture, forestry and low intensity recreational use.

(c) A municipality may adapt the program to its particular circumstances by either identifying specific areas to receive the development transfers or excluding certain areas from the program considering:

1. Land ownership and subdivision patterns;
2. Infrastructure availability;
3. Environmental constraints; and
4. Protection of important natural resources.

(d) The Pinelands Commission shall not approve any transfer program which:

1. Has extremely limited applicability because of ownership and subdivision patterns or environmental constraints; or
2. Negatively impacts important natural resources including critical subbasins or publicly managed conservation lands.

7:50-5.32 Special provisions for cultural housing

(a) (No change.)

(b) Residential dwelling units on a lot smaller than 3.2 acres existing as of February 8, 1979 or created as a result of an approval granted by the Pinelands Development Review Board or by the Pinelands Commission pursuant to the Interim Rules and Regulations prior to January 14, 1981 which otherwise meets the standards of (a) above provided that:

1. The lot contains at least 1.0 acres;
2. The applicant qualifies for and receives a variance from the 3.2 acre lot size requirement from the municipality in which the lot is located;
3. The applicant acquires and redeems 0.25 Pinelands Development Credits in addition to the reduction in the Pinelands Development Credit allocation that will result from the development of the dwelling unit pursuant to N.J.A.C. 7:50-5.43(b)3; and
4. Any Pinelands Development Credits allocated to the lot are reduced pursuant to N.J.A.C. 7:50-5.43(b)3.

7:50-6.6 Development prohibited

Development shall be prohibited in all wetlands **\*and wetlands transition areas established pursuant to N.J.A.C. 7:50-6.14\*** in the Pinelands except as specifically authorized in this Part. **\*Only activities permitted in wetlands pursuant to this Part shall be permitted in wetlands transition areas pursuant to N.J.A.C. 7:50-6.14.\***

7:50-6.13 Linear improvements

(a) Bridges, roads, trails and utility transmission and distribution facilities and other similar linear facilities shall be permitted in wetlands provided that:

1. There is no feasible alternative route for the facility that does not involve development in a wetland or, if none, that another feasible route which results in less significant adverse impacts on wetlands does not exist;
2. The need for the proposed linear improvement cannot be met by existing facilities or modification thereof;
3. The use represents a need which overrides the importance of protecting the wetland;
4. Development of the facility will include all practical measures to mitigate the adverse impact on the wetland; and
5. The resources of the Pinelands will not be substantially impaired as a result of the facility and its development as determined exclusively based on the existence of special and unusual circumstances.

(a)

**NEW JERSEY LOW LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY SITING BOARD**

**Assessment of Generators for the Cost of Siting and Developing a Low-Level Radioactive Waste Disposal Facility**

**Adopted New Rules: N.J.A.C. 7:60**

Proposed: November 18, 1991 at 23 N.J.R. 3410(b).  
 Adopted: February 6, 1992 by the New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board,  
 Paul E. Wyszowski, Chairman.

Filed: February 6, 1992 as R.1992 d.109, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1E-177 et seq., specifically 13:1E-181(o)-181.1; N.J.S.A. 32:31-1 et seq.

Effective Date: March 2, 1992.

Expiration Date: March 2, 1997.

**Summary of Public Comments and Board Responses:**

Secondary notice was accomplished by publication in The Trenton Times, Newark Star Ledger, Asbury Park Press, Camden Courier Post, New Brunswick Home News, Bergen Record, Plainfield Courier, Atlantic City Press, Burlington County Times, Bridgeton Evening News and Gloucester County Times, and by direct mail to 390 persons whose facilities use or have utilized low-level radioactive waste disposal facilities.

Public hearings were held at the Human Resource Development Institute, 600 College Road East in Princeton, New Jersey on December 9, 1991 and at Stockton State College in Pomona, New Jersey on December 12, 1991. One person, Pamela J. Hersh, Director, Community and State Affairs, Princeton University, offered oral comments and provided written testimony at the public hearing held in Princeton. No one offered public comment at the public hearing held in Pomona.

The New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board (Board) reviewed written comments from three individuals received within the comment period, which ended on January 3, 1992.

The following individuals submitted comments:

1. Bret G. Wien, President, Wien Laboratories
2. Pamela J. Hersh, Director, Community and State Affairs, Princeton University
3. Paul O. Shapiro, Vice President, Regulatory Affairs, Process Technology of North Jersey

**General Comments**

**COMMENT:** Wien Laboratories: The new fees will have an enormous effect on all businesses, especially small firms. The new assessment is another open ended attack on small business.

**RESPONSE:** The Board is concerned about the impact of the fee on small businesses. In developing its fee formula, the Board did not base the fee on the fact that the generator has a United States Nuclear Regulatory Commission (NRC) license, but based the fee on the amounts of low-level radioactive waste generated requiring disposal in a low-level radioactive waste disposal facility. In general, small businesses generate small quantities of low-level radioactive waste. Based on Wien Laboratories' quantity of low-level radioactive waste, the estimated fee for the first assessment is approximately \$1,000. In addition, N.J.A.C. 7:60-1.5(g) has been added to the rules to limit the annual assessment fee for a small business to no more than 1.000 percent of its annual gross revenues.

**COMMENT:** Wien Laboratories: As an NRC licensee in New Jersey, we have already been unfairly assessed new fees by the NRC which makes our firm less competitive against a firm in an Agreement State. The NRC has assessed its budget on only those firms in non-agreement states making New Jersey businesses responsible for a greater share of the nation wide budget of the federal NRC. The Board should address the NRC fees as unfairly burdensome of New Jersey facilities, and the NRC should be required to assess all radioactive users (including those in Agreement States) for fees applicable to general NRC regulatory overhead which includes issuing of regulations and radioactive disposal guidance.

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**RESPONSE:** The purpose of the fees proposed by the Board is to implement the amendments to the Regional Low-Level Radioactive Waste Disposal Facility Siting Act, N.J.S.A. 13:1E-177 et seq. (Siting Act). The Siting Act requires generators of low-level radioactive waste in New Jersey to fund the cost of implementing the Siting Act. Since the Commission on Radiation Protection is responsible for regulating radiation in this State, it would be inappropriate for the Board to comment on the NRC fee system.

**COMMENT:** Wien Laboratories: It is proposed that the fees for small businesses be payable quarterly without additional interest providing payment is made within 10 days of due date.

**RESPONSE:** Based on Wien Laboratories' quantity of low-level radioactive waste, the estimated fee for the first assessment would be about \$1,000. According to the rules, the Board shall notify each generator by April 15 of its fee. The fee is due on May 15. Regardless of the size of the business, if the fee is more than \$100,000 then the business may elect to pay its fee in quarterly installments with interest being calculated from May 16 on the unpaid portions of the fee. The fee level of \$100,000 was selected because it provided generators with very large fees the ability to pay quarterly and it provided the Board with the minimum increase in accounting workload. The Board did not provide for an interest-free quarterly installment schedule because it would be unfair to those whose fee is under \$100,000 and due May 15.

**COMMENT:** Wien Laboratories: The projected expenses are too difficult to estimate two years in advance. There is no hope of cost control. The current mandate for prepaying expected expenses in one lump sum is unfair, confiscatory and poor financial management.

**RESPONSE:** The estimated annual budgets for seven fiscal years are provided in the proposed new rules in order to give information on the potential financial impact of siting and developing a low-level radioactive waste disposal facility. In accordance with State law, funding must be available prior to expenses being incurred. Budgets are to be proposed and funding is to be available to cover anticipated expenses in the upcoming fiscal year. If the expenses are less than anticipated, the next year's budget will reflect the surplus and less money will be collected for that year. With respect to the comment on one lump sum, the rules permit quarterly payments for those generators whose fees exceed \$100,000. Under Federal and State laws, New Jersey is siting and developing a low-level radioactive waste disposal facility. Siting disposal facilities is a difficult process to say the least. The siting criteria and process must meet numerous regulatory requirements and be consistent with the values and concerns of the public, including public health, cultural and natural resources, and economic impacts. Amendments to the Siting Act require generators to fund the cost of siting and developing the low-level radioactive waste disposal facility. These fee rules require the Board to provide public notice of the public meetings at which it shall approve a budget for the next fiscal year and of the availability of the proposed budget for review. Consistent with the Board's conduct of the public meeting, public comment will be invited prior to approval of the budget. In addition, N.J.A.C. 7:60-1.4(e) requires an annual audit of the fund and all expenditures of moneys from the fund. The audit shall include a determination of the extent to which the expenditures directly relate to costs incurred in the implementation of the relevant provisions of the Siting Act, the Low-Level Radioactive Waste Policy Act of 1980 (P.L. 96-573) (Policy Act) and the Low-Level Radioactive Waste Policy Amendments Act (P.L. 99-240) (Amendments Act), 42 U.S.C. §2021b et seq. The annual audit shall be subject to review by the State Auditor, and shall be transmitted to the presiding officer of each House of the Legislature and to the respective chairpersons of the Senate Land Use Management and Regional Affairs Committee, the Senate Environmental Quality Committee, the Assembly Waste Management, Planning and Recycling Committee, the Assembly Energy and Environmental Committee, and the Assembly Conservation and Natural Resources Committee. With all these reviews, there should be good cost control.

**COMMENT:** Wien Laboratories: Money collected should be held only for the purpose of developing a radioactive disposal facility and not commingled into the State's general fund.

**RESPONSE:** In accordance with N.J.S.A. 13:1E-181.3, the money collected under these rules is to be deposited in The Low-Level Radioactive Waste Disposal Facility Fund, a nonlapsing revolving fund. The money in the fund is not available for use by the State other than for purposes consistent with the Siting Act.

**COMMENT:** Wien Laboratories: The duty of the Board should be more than just siting a disposal facility. If all NRC licensees must support

the Board financially, then the Board should undertake other related matters that would benefit the New Jersey licensees.

**RESPONSE:** The duties of the Board are defined by the Siting Act which created it. The Board can only undertake matters that it has legislative authority to do.

**COMMENT:** Wien Laboratories: The Board should seek NRC regulatory approval for declassifying certain low-level radioactive waste so that it does not require radioactive burial. This would include classifying low-level radioactively contaminated medical waste.

**RESPONSE:** The Board is aware of the position taken by the Attorney General of New Jersey that if low-level radioactive waste is to be declassified by the Federal government, then the states should have jurisdiction over the declassified material in the absence of Federal regulation. At the present time, the Board has no plans to seek NRC regulatory approval for declassifying certain low-level radioactive waste such as low-level radioactively contaminated medical waste.

**COMMENT:** Wien Laboratories: The Board should interact with other states to build a national low-level radioactive waste facility on federal land.

**RESPONSE:** The Board supports the efforts of the Northeast Interstate Low-Level Radioactive Waste Management Compact Commission (of which New Jersey is a member) in its efforts to find alternative disposal options in other states. The Board does interact with other States on the issue of developing additional disposal capacity for low-level radioactive waste under the Amendments Act. The Board concurs that national or regional solutions would be preferred. In a good faith effort, New Jersey sought a regional solution for the northeastern states by joining the Northeast Compact. However, only one other state is a member and both states are developing disposal facilities.

**COMMENT:** Wien Laboratories: The rules should provide primary access to the facility at a discounted rate to those generators who have paid for development of the disposal facility.

**RESPONSE:** As noted in the Background section of the proposed new rules, the Board is aware that there may be institutions, companies and other facilities who as a result of not generating low-level radioactive waste or as a result of not being in existence during the years of assessment may end up using the future disposal facility without having paid for the facility's development. The Board intends to examine in the future the issue of credit and surcharge for use of the disposal facility. The Board hopes to devise a method whereby those who have not paid for the facility's development will pay more for use of the disposal facility.

**COMMENT:** Wien Laboratories: The location of the Board's meetings makes it difficult for concerned facilities to send a representative. Realizing that the Board must meet in varying locations, it is suggested that the proposed agenda and an opportunity to submit written comments be provided to each NRC licensed facility.

**RESPONSE:** The Board's regular meetings are usually held monthly in the Trenton area. The Board has met in other locations and intends to hold additional meetings in other areas of the State as it deems necessary. Its meetings are held in accordance with the Open Public Meetings Act. Prior to each Board meeting, the meeting agenda and location is published in 11 major newspapers covering New Jersey as well as sent to approximately 2100 persons on the Board's mailing list, including NRC licensees who generate low-level radioactive waste. Public comment is invited at the meetings and any written comments received by the Board have been responded to. Final, approved minutes of the meetings are available upon request.

**COMMENT:** Princeton University: The proposed rules fail to account for the fact that it is much more difficult for non-profit education and research institutions to absorb the assessment costs than for utility companies and for profit-making corporations.

**RESPONSE:** The Board examined a number of ways other states are assessing generators for the cost of developing a low-level radioactive waste disposal facility. Some states assess only the nuclear power plants, other states assess all generators based on the volume of low-level radioactive waste generated. Assessing only the nuclear power plants would mean many who generate low-level radioactive waste would not have to pay for a facility they would utilize. Assessing all generators but only on a volume basis would not recognize that some wastes contain more radioactivity than others. The fee assessment formula is based on volume and activity of low-level radioactive waste disposed rather than on the volume and activity of low-level radioactive waste generated, recognizing that many generators particularly research facilities can dispose, utilizing 10 CFR 20.306, certain types and quantities of licensed materials without regard to its radioactivity. Generally, the use of volume

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and radioactivity disposed rather than solely volume in the assessment formula reduced the fee by about 50 percent for a generator who has little radioactivity in its waste. This fee reduction was provided to all generators whether they were non-profit or profit-making institutions or companies.

COMMENT: Princeton University: Inclusions of the material from the one-time decommissioning and demolition of the Princeton Pennsylvania Accelerator substantially exaggerates the University's annual volume of low-level radioactive waste.

RESPONSE: The Princeton Pennsylvania Accelerator is not licensed under the Atomic Energy Act but is licensed by the State of New Jersey under its authority over naturally occurring or accelerator produced radioactive materials. A review of the Congressional Record of the discussions which occurred prior to Congress approving the Amendments Act supports the Board's position that the definition of low-level radioactive waste was not intended to include materials contaminated with naturally occurring or accelerator produced radioactive materials. Therefore, the Policy Act and Amendments Act do not make it a Federally imposed responsibility for a state to provide disposal capacity for materials contaminated with naturally occurring accelerator produced materials. Based on the State's Siting Act, the Board is charged with the responsibility for developing a disposal facility for low-level radioactive waste. The definition of low-level radioactive waste in the Siting Act is comparable with the definition of low-level radioactive waste in the Amendments Act. Since waste resulting from materials contaminated by naturally occurring or accelerator produced radioactive materials would not be defined as low-level radioactive waste in the current statute, such waste would not be included in the calculation of the assessment fees to cover costs for the State to implement the Siting Act.

COMMENT: Process Technology of North Jersey: It does not seem fair that a retroactive assessment equalling about 40 percent of the company's working capital is warranted or reasonable. Please consider exempting such one time situations to reduce the unusually large effect it causes.

RESPONSE: The Board is concerned about unusually large financial impacts of its fees on small businesses. As stated in the Regulatory Flexibility Analysis of the proposed rules, generally, small businesses generate smaller quantities of low-level radioactive wastes. In order to address the issue of unusually large financial impact on a small business with an infrequent but very large quantity of low-level radioactive waste, N.J.A.C. 7:60-1.5(g) has been added to the rules to limit the annual assessment fee for a generator who meets the requirements of a small business under the Regulatory Flexibility Act to no more than 1.000 percent of the generator's annual gross revenues as reported in the most recent annual audited report filed with the Securities and Exchange Commission (or its financial equivalent). The addition of N.J.A.C. 7:60-1.5(g) will have no or a small impact on the other generators' fees. The Board can reduce its activities accordingly, or, if the Board does not reduce its activities and a deficit occurs, the Board estimates that the impact on the other generators' fees is about one percent.

COMMENT: Process Technology of North Jersey: The basic formula would be workable if it is modified to take into account one time disposal activities that have taken place in the last three years. Please consider exempting such one time situations to reduce the unusually large effect it causes. It is recommended that the fee schedule exclude one time disposal if the generator has alternate agreements for disposal should such a need arise.

RESPONSE: The Board has a concern that an occurrence thought to be a one time occurrence could recur as long as the license is in effect. Depending on the nature of the agreements for disposal, the agreements might be rescinded or altered in the future. Therefore the Board will not exclude waste based on present arrangements for handling future waste.

COMMENT: Process Technology of North Jersey: The rationale used in the formula uses the word "annually". It is inherent in the word that "annually" implies recurrence, therefore one time items should not be included.

RESPONSE: Annually is used to mean pertaining to a year. Since the annual quantities of low-level radioactive waste disposed by New Jersey generators vary year to year, the examples of approximate fees for a generator based on constant annual quantities were provided rather than varying annual quantities because it simplified the calculations of the approximate fees.

COMMENT: Process Technology of North Jersey: In the interest of positive social impact, a disposal operation in 1989 resulted in a one

time disposal of about 26,000 curies contained in a sealed source. If one time cleanup is included in the fee schedule, this generator will be paying more than its fair share. In the history of the company for the last 10 years, 1989 was the only year that such an amount was disposed and will not occur again.

RESPONSE: The Board cannot foresee whether a particular cleanup will be a one time event in the life span of a generator's facility.

COMMENT: Process Technology of North Jersey: The Economic Impact evaluation did not consider the extremely large economic impact that a one time disposal would have on a small firm required to pay a large unbudgeted fee within a short period of time.

RESPONSE: The rules permit quarterly payments if the fee exceeds \$100,000 in order to enable a generator to pay on a more extended time schedule. In addition, a new subsection has been added to the rules to limit the annual assessment fee for a small business to no more than 1.000 percent of its annual gross revenues.

#### Summary of Hearing Officer's Report and Board Response:

Samuel F. Penza, Executive Director, New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board, served as hearing officer at the public hearings. After reviewing the testimony presented at the public hearing, Mr. Penza recommended that the Board adopt the proposed new rules, without change. However, Mr. Penza recommended that the Board review whether the waste containing naturally occurring or accelerator produced radioactive materials be considered low-level radioactive waste subject to these rules.

The Board accepts the recommendations. However, based upon written comments which the Board received, the Board has made the following changes from the proposal:

1. In response to oral and written comments, the Board reviewed the discussions in the Congressional Record on the issue of naturally occurring or accelerator produced radioactive materials and the definition of low-level radioactive waste in the Amendments Act. A review of the definition of low-level radioactive waste in the Amendments Act and the Siting Act supports the Board's position that waste containing naturally occurring or accelerator produced radioactive materials is not considered low-level radioactive waste, therefore not subject to these rules.

2. In response to written comments, the Board has limited the fee for a generator who meets the requirements of the Regulatory Flexibility Act to no more than 1.000 percent of its annual gross revenues.

Mr. Penza's recommendations are set forth in more detail in the hearing officer's report. A copy of the record of public hearing, which includes the hearing officer's report, is available upon payment of the Board's normal charges for copying. Persons requesting copies should contact:

Mr. Samuel F. Penza, Executive Director  
New Jersey Low-Level Radioactive Waste Disposal Facility  
Siting Board  
CN 410  
Trenton, New Jersey 08625-0410.

#### Summary of Board-Initiated Changes:

Additional changes have been made on adoption to clarify the rules as follows:

In order to implement N.J.A.C. 7:60-1.5(g) which limits the annual assessment fee for a generator who meets the requirements of a small business, a definition of "small business" has been added. The definition of "small business" is the same as the definition of Small Business contained in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed new rules incorrectly stated the postal call number as CN 402 for the Department of Environmental Protection and Energy's Bureau of Revenue. The correct postal call number is CN 417.

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

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## CHAPTER 60

## ASSESSMENT OF GENERATORS FOR THE COST OF SITING AND DEVELOPING A LOW LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY

## SUBCHAPTER 1. FEES AND REPORTING REQUIREMENTS

## 7:60-1.1 Scope

This subchapter establishes low-level radioactive waste reporting requirements and a process to annually assess generators for all the costs of siting, developing, licensing and constructing a low-level radioactive waste disposal facility, as well as the costs of implementing the Northeast Interstate Low-Level Radioactive Waste Management Compact, N.J.S.A. 32:31-1 et seq., and the Regional Low-Level Radioactive Waste Disposal Facility Siting Act, N.J.S.A. 13:1E-177 et seq.

## 7:60-1.2 Definitions

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

“Activity” means the rate of disintegration (transformation) or decay of radioactive material. It is expressed in curies or becquerels, or their multiples.

“A(Y,G)” means the individual generator’s (G) annual activity (A) of low-level radioactive waste produced in New Jersey and disposed in a low-level radioactive waste disposal facility in a calendar year (Y), as compiled from the manifests and maintained in the U.S. Department of Energy’s National Information Management System.

“A(Y,NJ)” means the sum of all the individual generator’s (G) annual activity (A) of low-level radioactive waste produced in New Jersey (NJ) and disposed in a low-level radioactive waste disposal facility in a calendar year (Y), as compiled from the manifests and maintained in the U.S. Department of Energy’s National Information Management System.

“Assessment Budget” means that portion of the Board’s budget which shall be collected as fees from the generators.

“Becquerel” means the amount of a specific radionuclide or combination of radionuclides which disintegrates at the rate of one atom per second.

“Board” means the New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board established pursuant to N.J.S.A. 13:1E-180.

“Curie” means the amount of a specific radionuclide or combination of radionuclides which disintegrates at the rate of 37 billion atoms per second. One curie equals 37 billion becquerels.

“Fiscal Year” means July 1 through the following June 30.

“Generator” means any person, association, public utility, hospital, clinic, research laboratory, corporation, society, radiopharmaceutical facility, academic facility, or nuclear medical research facility that produces low-level radioactive waste, or any other entity identified by the Board that produces low-level radioactive waste, or that is licensed by the United States Nuclear Regulatory Commission to use, possess, handle or dispose of radioactive materials.

“Low-level Radioactive Waste” means radioactive waste that is neither high-level waste, nor spent fuel, nor by-product material as defined in paragraph (2) of subsection (e) of 42 U.S.C. §2014; and is classified by the Federal government as low-level waste, consistent with existing law; but does not include waste generated as a result of atomic energy defense activities of the Federal government, as defined in the “Low-Level Radioactive Waste Policy Act”, Pub.L.96-573 (42 U.S.C. §§2021b et seq.) and the “Low-Level Radioactive Waste Policy Amendments Act of 1985”, Pub.L.99-240 (42 U.S.C. §§2021b et seq.) or Federal research and development activities.

“Low-Level Radioactive Waste Disposal Facility Fund” means the fund established pursuant to N.J.S.A. 13:1E-181.2.

“Manifest” means the document accompanying each shipment of waste intended for disposal or treatment as low-level radioactive waste.

“Radioactive waste” means radioactive material which is discarded or intended to be discarded; or is accumulated, stored or physically,

chemically or biologically treated prior to, or in lieu of being discarded; or is applied to the land or placed on the land or contained in product that is applied to or placed on the land in a manner constituting disposal; or has served their intended purpose; or has an expired shelf line.

\*“Small business” means any business which is resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees.\*

“Storage” means the holding of waste for a temporary period of time, at the end of which the waste is either treated or disposed as low-level radioactive waste.

“Volume” means the volume of radioactive waste as measured by the outermost package or container in which the low-level radioactive waste is contained ready for storage or disposal. Volume shall be expressed in cubic feet or cubic meters.

“V(Y,G)” means the individual generator’s (G) annual volume (V) of low-level radioactive waste produced in New Jersey and disposed in a low-level radioactive waste disposal facility in a calendar year (Y), as compiled from the manifests and maintained in the U.S. Department of Energy’s National Information Management System.

“V(Y,NJ)” means the sum of all the individual generator’s (G) annual volume (V) of low-level radioactive waste produced in New Jersey (NJ) and disposed in a low-level radioactive waste disposal facility in a calendar year (Y), as compiled from the manifests and maintained in the U.S. Department of Energy’s National Information Management System.

## 7:60-1.3 Reporting requirements for generators

(a) By March 1 of each year, each generator shall provide to the Board information on the radioactive wastes managed by the generator in the preceding calendar year.

(b) The Board will provide to the generators the form on which the information shall be recorded or notify the generators as to the form in which the information shall be provided.

(c) Each generator shall completely fill out the form and submit it to the Board. The report shall include, at a minimum, the following:

1. A copy of all permits, licenses and generator identification numbers to use, possess, handle or dispose of radioactive materials;

2. A description of each low-level radioactive waste stream, including volume, activity, radionuclides, waste characteristics and waste form, generated, disposed of, treated and/or stored on-site or sent for storage off-site during the previous calendar year;

3. The manner and conditions of disposal, treatment and/or storage of radioactive waste; the disposal/storage site name, location and the identity of the owner/operator thereof, including the date of disposal/storage;

4. Information on radioactive waste in storage, at the end of the reporting year, including type of waste, volume, activity, waste form, waste characteristics, container type, storage location, date waste was placed into storage, storage capacity used and unused storage capacity remaining;

5. Information on radioactive waste treated or processed, including treatment/processing methods, processor identity, volume, activity, waste form, waste characteristics, packaging and shipment destination;

6. Information on radioactive waste disposed, including disposal methods, processor/broker identity, volume, activity, waste form, waste characteristics, packaging and shipping information, and disposal destination;

7. Information on radioactive wastes for which there is written approval from the appropriate regulatory agency to dispose, or to store for decay then dispose, without regard to its radioactivity. The information shall include a description of the treatment/processing/storage/disposal procedure, waste stream, type of waste, volume, activity, waste form, waste characteristics, container type, treatment/processing/storage disposal site name, location and the identity of the owner/operator thereof, and date at which time the radioactive waste may be disposed without regard to its radioactivity;

8. A description of each low-level radioactive waste stream, including volume, activity, radionuclides, waste characteristics and waste

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form, expected to be generated annually in next five calendar years; and

9. Steps taken to reduce the volume and activity of radioactive waste generated at the facility.

(d) The report required by this section shall be submitted by the generator to:

NJ Low-Level Radioactive Waste  
Disposal Facility Siting Board  
CN 410  
Trenton, New Jersey 08625-0410.

**7:60-1.4 Establishment of annual budget**

(a) The Board shall assess and collect from each generator an annual fee for the fiscal year (July 1 through June 30), starting with fiscal year 1992.

(b) At a public meeting to be held annually, the Board shall approve a budget for the next fiscal year. The Board shall provide public notice of the public meeting and the availability from the Board of the proposed budget for review, in the New Jersey Register and several newspapers with general circulation, at least 30 days prior to the date of the public meeting. At the public meeting, the Board will take comments on the proposed budget.

(c) In determining the portion of the annual budget which comprises the assessment budget, the Board shall take into consideration any surpluses which can be credited or deficits to be assessed and other available sources of funds.

(d) The Board's approved budget shall be reviewed and approved by the New Jersey Department of Treasury.

(e) The Board shall cause an annual audit pursuant to N.J.S.A. 13:1E-181.3(b).

(f) The Board shall provide public notice of the availability from the Board of the approved budget, the list of fees calculated in accordance with N.J.A.C. 7:60-1.6, and the results of the most recent annual audit, in the New Jersey Register and several newspapers with general circulation before sending out the bills.

**7:60-1.5 Process for paying fees**

(a) The Board shall notify each generator by April 15 of each year of its fee.

(b) Payment of all fees shall be made only by check or money order, payable to "Treasurer, State of New Jersey," and submitted to:

NJ Low-Level Radioactive Waste Disposal Facility Fund  
c/o Department of Environmental Protection and Energy  
Bureau of Revenue  
CN \*[402]\* \*417\*  
Trenton, New Jersey 08625-\*[0402]\*\*\*0417\*.

(c) The fee shall be paid by May 15 of each year. Interest shall accrue on any unpaid portion of the annual fee beginning on May 16. The rate of interest shall be that established by the New Jersey Supreme Court for interest rates on judgments as set forth in the rules governing the Courts of the State of New Jersey. If the fee remains unpaid, the Board may preclude the generator from utilizing the low-level radioactive waste disposal facility.

(d) Fees shall not be pro-rated nor shall any refunds be made. However, for annual fees of greater than \$100,000, the payment of the fee may be made in four equal payments due May 15, July 15, October 15 and January 15 in addition to interest due on that payment.

(e) The Board shall take any other appropriate legal actions to collect all fees due to it.

(f) If the generator objects to the assessment, the Board shall recalculate the fee upon receipt of a request from the generator setting forth the basis for the recalculation in writing within 15 days of assessment of the fee. The Board or its designee will not recalculate a fee where the generator has failed to submit information required.

**\*(g) If a generator qualifies as a small business, the Board shall limit the fee to no more than 1.000 percent of the annual gross revenues of the generator as reported in the most recent audited annual report filed with the Securities and Exchange Commission (or its financial equivalent). The generator seeking such limitation shall submit a request, in writing within 15 days of assessment of**

**the fee, setting forth the basis for the fee reduction, proof of the generator's status as a small business, and a copy of its most recent audited annual report. The Board or its designee will not consider the request if the generator has failed to submit information required.\***

**7:60-1.6 Fees for generators**

(a) The annual fee for each generator shall be calculated according to this section.

(b) For the first assessment covering fiscal years 1992 and 1993 assessment budget, each generator's base fee shall be calculated using the following formula:

$$\left[ \frac{1}{6} \right] \left[ \frac{V(1988,G)}{V(1988,NJ)} + \frac{V(1989,G)}{V(1989,NJ)} + \frac{V(1990,G)}{V(1990,NJ)} + \frac{A(1988,G)}{A(1988,NJ)} + \frac{A(1989,G)}{A(1989,NJ)} + \frac{A(1990,G)}{A(1990,NJ)} \right]$$

multiplied by [ 93% of the Assessment Budget ]

(c) For the second assessment covering fiscal year 1994 assessment budget, each generator's base fee shall be calculated using the following formula:

$$\left[ \frac{1}{6} \right] \left[ \frac{V(1989,G)}{V(1989,NJ)} + \frac{V(1990,G)}{V(1990,NJ)} + \frac{V(1991,G)}{V(1991,NJ)} + \frac{A(1989,G)}{A(1989,NJ)} + \frac{A(1990,G)}{A(1990,NJ)} + \frac{A(1991,G)}{A(1991,NJ)} \right]$$

multiplied by [ 93% of the Assessment Budget ]

(d) For the third assessment covering fiscal year 1995 assessment budget, each generator's base fee shall be calculated using the following formula:

$$\left[ \frac{1}{6} \right] \left[ \frac{V(1990,G)}{V(1990,NJ)} + \frac{V(1991,G)}{V(1991,NJ)} + \frac{V(1992,G)}{V(1992,NJ)} + \frac{A(1990,G)}{A(1990,NJ)} + \frac{A(1991,G)}{A(1991,NJ)} + \frac{A(1992,G)}{A(1992,NJ)} \right]$$

multiplied by [ 93% of the Assessment Budget ]

(e) For each assessment, each nuclear power plant unit will be assessed an additional fee, in addition to its base fee, calculated using the following formula:

- Hope Creek Nuclear Generating Station:  
2.544% of the Assessment Budget
- Oyster Creek Nuclear Generating Station:  
2.549% of the Assessment Budget
- Salem I Nuclear Generating Station:  
0.943% of the Assessment Budget
- Salem II Nuclear Generating Station:  
0.964% of the Assessment Budget

**ADOPTIONS**

**HUMAN SERVICES**

**HUMAN SERVICES**

**(a)**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Bundled Drug Services**

**Pharmacy Manual, Manual for Hospital Services, Manual for Special Hospital Services, Manual for Physician's Services, Manual for Dental Services, Podiatry Services Manual, Independent Clinic Manual**

**Adopted Amendments: N.J.A.C. 10:51-1.1, 1.14, 3.3 and 3.12; 10:52-1.1; 10:53-1.1; 10:54-1.1 and 1.16; 10:56-1.1 and 1.4; 10:57-1.1 and 1.18; and 10:66-1.2**

**Adopted New Rules: N.J.A.C. 10:52-1.22; 10:53-1.17; and 10:66-1.10**

Proposed: February 4, 1991 at 23 N.J.R. 281(a).

Adopted: January 27, 1992, by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: January 28, 1992 as R.1992 d.98, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4D-6a(1)(2)(3)(5)b(3)(6)(8), 7, 7a, b and c; N.J.S.A. 30:4D-12; 42 USC 1396 r-8(d)(2)(H); 42 CFR 440.120.

Effective Date: March 2, 1992.

Expiration Date:

MANUAL	N.J.A.C. CITATION	EXPIRATION DATE
Pharmacy Manual	10:51	10-9-95
Manual for Hospital Services	10:52	2-8-95
Manual for Special Hosp. Services	10:53	4-27-95
Manual for Physician's Services	10:54	2-15-96
Manual for Dental Services	10:56	8-21-96
Podiatry Services Manual	10:57	2-13-96
Independent Clinic Services Manual	10:66	12-15-93

**Summary of Public Comments and Agency Responses:**

There were written comments received from the following persons listed below:

- Peter W. Reilly, Esq.
- Joseph A. Masciandro, Executive Director, Mid-Bergen Community Mental Health Center, Inc.
- Dorothy Ambruso, President Concerned Citizens for Chronic Psychiatric Adults
- Linda Ballin, R.N.C.
- Gail Levinson, Director of Public Policy & Legislation The Mental Health Association of New Jersey

Approximately 25 individual comments from Medicaid recipients and/or their families, whose identities must remain confidential pursuant to N.J.A.C. 10:49-1.22.

- Wilfredo Caraballo, Public Advocate New Jersey Department of the Public Advocate
- Leon R. Langley, Pharmacist Director of Government Affairs New Jersey Pharmaceutical Association
- Gloria Blumenthal, Chair Government Affairs Committee New Jersey Alliance for the Mentally Ill
- A concerned parent

Prior to a discussion of the public comments, it should be noted that the proposed amendments and new rules were proposed in the February 4, 1991 issue of the New Jersey Register (23 N.J.R. 281(a)). A public hearing was held May 31, 1991 at the request of the New Jersey Department of the Public Advocate pursuant to the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-4(a)(3). Comments were permitted until June 7, 1991. The record of the public hearing may be reviewed or a copy obtained by contacting Henry W. Hardy, Esq., Administrative Practice Officer, Division of Medical Assistance and Health Services, CN-712, Trenton, NJ 08625. While the topic of the proposed rule and resulting public hearing was "bundled drugs," the public response was specifically concerned with the proposal's potential impact on Clozaril, which is a drug used to treat patients diagnosed as schizophrenic. Clozaril is manufactured by Sandoz Pharmaceutical Corporation and was marketed through the Clozaril Patient Management System (CPMS). Sandoz has terminated the exclusive CPMS method of distribution, and therefore the drug Clozaril is no longer considered a "bundled drug."

The New Jersey Medicaid Program has provided, and will continue to provide, the drug Clozaril when there is medical necessity.

COMMENT: Peter W. Reilly, Esq., Attorney-at-Law, filed personal comments with a disclaimer that his comments may not be those of his employer, the Community Health Law Project. The commenter acknowledged there was considerable "national debate" on the "bundled" drug known as Clozaril. The commenter thought that rather than impose an across-the-board prohibition on bundled drugs, it would be better to proceed on a case-by-case basis allowing for limited availability based upon medically relevant criteria, such as diagnosis, past history, etc.

RESPONSE: The agency's response is that the Clozaril is no longer "bundled," and continues to be available to Medicaid patients.

With respect to any future drug or drug product that might be marketed as bundled, the agency's position is that the rule allows the Commissioner to exercise discretion and authorize Medicaid payment for a bundled drug if the proper criteria are met.

COMMENT: Joseph A. Masciandro had two requests. This commenter requested "reimbursability of a comprehensive capitation approach," and eligibility of "case management" services for the dispensation of Clozapine. The commenter was concerned that the cost of case management would be passed on to the community mental health center(s).

RESPONSE: The agency's response is that the proposed new reimbursement methodologies, while beyond the purview of these rules, will be taken under consideration. The Department of Human Services is conducting an administrative review of this issue. A survey of mental health providers has been initiated by the Division of Mental Health and Hospitals to assist the Department of Human Services in determining the needs of the Clozaril patient for case management services.

COMMENT: Dorothy Ambruso indicated that monitoring was essential to "prevent serious risks" to patients using the drugs.

RESPONSE: The agency's response is that the patient's physician conducts the monitoring.

COMMENT: Linda Ballin, R.N.C., urged continuation of Clozaril because of its positive effects on patients afflicted with mental illness.

RESPONSE: The agency's response is that Clozaril continues to be available to Medicaid patients.

COMMENT: Gail Levison was concerned that the method of pricing would deny access to the bundled drug Clozaril.

RESPONSE: The agency's response is that Medicaid currently pays for Clozaril in the same manner as other covered drugs.

COMMENT: There were approximately 25 individual commenters whose identity must remain confidential pursuant to N.J.A.C. 10:49-1.22. The commenters were Medicaid recipients, or family members who mentioned the name(s) of Medicaid recipients in their letters. Many of the commenters used a pre-printed form letter. All commenters requested Medicaid continue to pay for Clozapine because they felt the drug was beneficial.

RESPONSE: The agency's response (to continue coverage of the drug) has already been stated.

The last four commenters listed above appeared and testified at the public hearing. Therefore, their statements and the agency's response are discussed in the Hearing Officer's report below.

**Hearing Officer's Report**

(OFFICE OF ADMINISTRATIVE LAW NOTE: References below to Exhibits A through F are to documents accompanying the actual

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hearing officer's report, and are not reproduced in this notice of adoption. These exhibits may be inspected by contacting the Office of Administrative Law or the Division of Medical Assistance and Health Services.)

**I. Description of the Proposed Rule**

The proposed amendments authorize the Commissioner of the New Jersey Department of Human Services (hereafter referred to as the "Commissioner" and the "Department") to deny payment under the New Jersey Medical Assistance and Health Services (Medicaid) Program for bundled drug services. A "bundled drug service" is defined in the proposal as one that is marketed or distributed by the manufacturer or distributor as a combined package, which includes not only the cost of the drug but also ancillary services such as case management or laboratory testing.

The proposal authorizing the Commissioner to deny payment for bundled drug services has certain exceptions. One exception has to do with cost. If the cost of the bundled drug service is less than or equal to the total cost of the unbundled components if reimbursed separately, then the Commissioner has the authority to waive the prohibition on payment and to cover the bundled drug service. Manufacturers or distributors must submit cost data to the Department's Division of Medical Assistance and Health Services (the "Division") if they wish to qualify under this provision.

The other exception to the prohibition on payment concerns medical necessity. There are two medical necessity situations under which the Commissioner may cover a bundled drug service: (1) when withdrawal of the drug would be harmful; (2) when use of the drug has resulted in marked improvement in clinical status. If the Commissioner decides under either the cost exception or the medical necessity exceptions that a bundled drug service should be covered, a patient who has been receiving this service must then obtain prior authorization from the Division, which must then determine if it is medically necessary for the particular patient to continue the bundled drug service.

**II. Legal Authority for the Rule**

The legal authority for promulgating the proposed amendments and proposed new rules is N.J.S.A. 30:4D-7, 7a, 7b and 7c. The proposal is also specifically authorized by section 4401 of the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508, codified as Section 1927(d)(2)(H) of the Social Security Act, 42 U.S.C. 1396 r-8(d)(2)(H), which permits state Medicaid Programs to exclude from coverage or otherwise restrict "[c]overed outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee."

**III. Procedural History of the Proposed Rule**

The Division originally announced its intention to promulgate this rule for both the Medicaid and the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Programs in a Notice of Intention to Rulemake which appeared in the October 15, 1990 issue of the New Jersey Register at 22 N.J.R. 3258(a). The actual proposed amendments and proposed new rules appeared in the February 4, 1991 issue of the New Jersey Register at 23 N.J.R. 281(a) (Exhibit A), but applied only to the New Jersey Medicaid Program.

In a letter dated February 6, 1991, to Saul M. Kilstein, Director of the Division, Harold B. Garwin, Assistant Commissioner of the New Jersey Department of the Public Advocate, requested a public hearing.

In response, the Division published a Notice of Public Hearing which appeared in the May 6, 1991 issue of the New Jersey Register at 23 N.J.R. 1310(a), which announced that a public hearing would be held on May 31, 1991.

The hearing was conducted as scheduled on May 31, 1991 from 10 A.M. to 12 noon, and 1:00-4:00 P.M. in Mercerville, New Jersey. Robert E. Popkin, Esquire, Assistant Director of the Division, presided as Hearing Officer.

**IV. The Department's summary of the testimony at the public hearing is attached as Exhibit B, and the full transcript is attached as Exhibit C.****V. Written Questions and Agency Responses**

Written questions were submitted to DMAHS by the National Alliance for the Mentally Ill (NAMI) (attached to Exhibit C and marked A-2) and by the Department of the Public Advocate (attached to Exhibit C and marked A-3).

The Division's answers to those questions are attached as Exhibit D, and the questions and agency answers also appear below.

**VI. Hearing Officer's Discussion and Analysis of Testimony and Exhibits**

Five witnesses and one Division official (all identified below) testified at the public hearing. In addition, four letters were submitted, two at the hearing (attached to Exhibit C and marked A-1 and A-2) and two after the hearing (Exhibits E and F). What follows is a brief summary and analysis of the major concerns expressed by those witnesses and letters, although not necessarily in the order of presentation at the hearing:

1. Mr. Leon Langley, Director of Government Affairs for the New Jersey Pharmaceutical Association, testified generally in support of the proposal. However, he expressed the concern that a patient receiving a bundled drug approved by the Commissioner from a restricted pharmacy could be vulnerable to drug interactions if other drugs are obtained by that patient from another pharmacy.

While the Hearing Officer appreciates Mr. Langley's concern about the potential for harmful drug interactions, the proper practice of pharmacy should provide adequate protection for patients. Appropriate precautions by pharmacists could include questioning the patient about other medications, contacting the patient's physician, clinic or other case manager, and entering all relevant information on to the patient profile. It is also the responsibility of the bundled drug manufacturer to alert distributors, prescribers, and pharmacists to possible drug interactions by means of package inserts and other professional literature.

2. A parent, whose son had improved after starting Clozaril in July 1990, was concerned whether as a result of this proposal the Division would discontinue coverage for this drug. Clozaril is manufactured by Sandoz Pharmaceuticals and used in the treatment of schizophrenia.

In response to this parent's concerns, it should be noted that while Sandoz's bundled drug distribution system for Clozaril, as originally implemented, would have been impacted by this rule, effective April 1, 1991 Sandoz "unbundled" Clozaril and began converting to a non-exclusive distribution system. As a result, Clozaril is no longer a bundled drug service and therefore would not be affected by these rules.

In addition, Sanford Luger, who at the time of the public hearing was Chief Pharmaceutical Consultant for the Division, testified at the hearing that the Division had paid for Clozaril since it was first marketed in the United States in February 1990, and continues to cover it. According to Mr. Luger: "There are no plans to stop paying for Clozaril." Mr. Luger also pointed out that the drawing of blood, the blood test, the laboratory work and physician services are all covered services under the New Jersey Medicaid Program.

Moreover, as the Division's response to question 2 submitted by NAMI states: "The Division will reimburse for the drug Clozaril for all Medicaid eligible clients." (See Exhibit D)

Finally, it should be noted that following Sandoz's unbundling of Clozaril, the Director of the Medicaid Bureau within the Health Care Financing Administration (HCFA) of the United States Department of Health and Human Services issued a memorandum dated May 17, 1991 to all HCFA Regional Administrators ruling that in light of Sandoz's actions State Medicaid Programs must cover the drug and associated laboratory services, and may cover the remaining services of phlebotomy and case management. At this time, the New Jersey Medicaid Program covers phlebotomy, but does not cover case management except in certain limited circumstances.

3. In a letter dated May 24, 1991 (attached to Exhibit C and marked A-1), Jacob Stump, M.D., Medical Director of the Mid-Bergen Community Mental Health Center, Inc., expressed his unwillingness to prescribe Clozaril for any new patients without a mandatory case management program. He noted that because of the effort involved in case management, his facility could only case manage the three patients currently on Clozaril.

Similar concerns about the safety of Clozaril without mandatory case management were expressed by Ed Manos, representing the Collaborative Support Programs of New Jersey, by Gloria Blumenthal representing the New Jersey Alliance for the Mentally Ill (NJAMI), and in the letter introduced by Mrs. Blumenthal dated April 25, 1991 from Thomas M. Posey, President of NAMI (attached to Exhibit C and marked A-2).

In reply, the Hearing Officer notes the testimony of Mr. Langley to the effect that drugs with serious side effects have been administered safely to patients on an unbundled basis. As Mr. Langley mentioned, there is an established physician-pharmacist system which should adequately protect patients even if a drug is not bundled or is unbundled, and therefore there is no mandatory case management system. For example, Mr. Langley testified that carbamazepine, which has many side effects similar to Clozaril, is available to patients on an unbundled basis.

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Similarly, the letter of June 4, 1991 (Exhibit E) from Dorothy D. Flemming, Executive Director of the New Jersey State Nurses Association, contends that it is the responsibility of licensed physicians, nurses and pharmacists to educate patients in the proper administration of drugs and to follow up to assure that those drugs are being used safely and effectively.

The issue of the safety of patients taking Clozaril now that it has been unbundled was also addressed by the Division in its answers to two questions posed by NAMI (See attachment A-2 to Exhibit C, and Exhibit D). In answer to NAMI's question #1, the Division noted that Sandoz's unbundling of Clozaril "only altered the nature of how necessary ancillary services were to be rendered while still utilizing an established nationwide monitoring network for this drug." The Division concluded: "The combination of close FDA scrutiny and an approval system for all participating providers should continue to provide an uninterrupted and comprehensive monitoring network for patients utilizing a bundled drug, such as Clozaril."

In a related safety issue, NAMI's question #4 asked how can uncooperative patients, e.g., those who refuse to come in for weekly blood tests, be tracked and monitored. The Division's first reply notes that "[t]he absence of weekly blood monitoring results will prohibit further dispensing of this drug." This statement is confirmed by Mr. Posey's own letter, in which he acknowledges that Sandoz's new unbundled distribution system requires that physicians and pharmacies sign an agreement providing that Sandoz be given the results of the weekly blood test, and "if the results of a blood test are not available or if the white blood count falls below a certain level, they agree not to provide the medication." Although Mr. Posey expressed a lack of confidence in this system, his letter notes that if a pharmacy or physician fails to comply with the Sandoz agreement, "they will no longer be allowed to prescribe or dispense the drug . . . ."

The Division's second reply to NAMI's question #4 points out that provider outreach can help to assure patient compliance: "Outreach by the provider community, such as the physician, or more likely a mental health clinic, would attempt to encourage consistent monitoring of blood work and counsel those clients who are unwilling to participate."

Therefore, in the absence of any evidence that Clozaril has been harmful to patients taking the drug without mandated case management, or that Clozaril's unbundled distribution system is not working, the Hearing Officer is unwilling to assume that the existing health care network is incapable of protecting the health and safety of patients taking Clozaril.

4. William Culleton, Esq., Assistant Deputy Advocate with the New Jersey Department of the Public Advocate, argued that the proposal could result in the denial of Medicaid coverage for a bundled drug service solely on cost considerations and without regard to medical necessity. Similar concerns were expressed in the letter dated June 7, 1991 submitted by Marilyn Goldstein, President of NJAMI (Exhibit F).

However, the Hearing Officer's reading of the proposal is that the Commissioner may cover a bundled drug service, even if its cost exceeds the total cost of the unbundled components when reimbursed separately, if either of the following two medical necessity grounds for waiver set forth in the proposal are present: (1) where inability of a patient to continue receiving the drug "would result in deprivation of life saving or life prolonging benefits of the drug or would cause potential harm or serious exacerbation of the illness being treated;" or (2) "where use of the bundled drug has resulted in or produced marked improvement in the recipient's clinical status reflected in alleviation of symptoms, and elevation of level of function and independence."

5. Mr. Culleton also argued that if the decision-making process is lengthy, patients could suffer before a coverage decision is made. He recommended that if an anti-bundling regulation is necessary, at least it should permit Medicaid coverage pending a final decision.

In reply, it is the clear intent of this proposal that the New Jersey Medicaid Program will not pay for a bundled drug service unless and until documentation is submitted by bundled drug manufacturers or distributors which would justify the granting of a waiver by the Commissioner. To require the Commissioner to pay for a bundled drug service before the Department's review and analysis of the documentation is complete would defeat the very purpose behind the proposal. Indeed, the only reason why such a review process was established was because of the Department's concern about the restrictive manner in which bundled drugs are marketed. Were an essential drug to be marketed in an unbundled fashion, the administrative review and approval procedure established by the proposal would not be necessary or applicable. Finally, the Hearing Officer has been advised that it will

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be the Department's policy to provide a timely response to any application for a waiver once the necessary and appropriate documentation has been submitted by a bundled drug manufacturer or distributor.

6. Mr. Culleton also expressed the concern that the Department's proposal would ignore the full impact of a new bundled drug on state expenditures. For example, he pointed out that the use of Clozaril may result in the discharge of some patients from an institutional setting, thereby resulting in substantial savings to the Medicaid Program.

As previously discussed, one of the two grounds for the granting of a waiver requires a showing that the cost of the bundled drug service is less than or equal to the total cost of the unbundled components if reimbursed separately. Under this exception, if this specific cost standard is not met, a waiver will not be granted even if a broader cost-benefit analysis can be demonstrated. However, as discussed in paragraph VI 4 above, a waiver can be granted under the medical necessity exception even if it could not be granted under the cost exception.

7. Mr. Culleton recommended that if the Department adopts an anti-bundling regulation, it should require public notice and comment or public hearings with regard to each bundled drug service considered.

Public notice and comment or public hearings are required under the Administrative Procedure Act only if the Department's decisions to cover or not cover particular bundled drug services must be published as formal rules. There has been no legal authority submitted to the Hearing Officer which supports the proposition that such individual drug-by-drug coverage decisions are required to be published as formal rules.

Indeed, one of the purposes behind this proposal was to establish by regulation an expeditious administrative procedure that would avoid the more cumbersome aspects of traditional administrative rulemaking. To mandate that each bundled drug coverage decision be subject to the rulemaking requirements of the Administrative Procedure Act would defeat this purpose by creating the kinds of delays and potential harm to patients which concerned the Department of the Public Advocate (see paragraph VI 5 above).

**VII. Hearing Officer's Recommendation and Agency Action**

After reviewing the full record of this public hearing, the Hearing Officer recommends that the proposal be adopted as published. The agency accepts the Hearing Officer's report and recommendation. The agency notes that the majority of drugs are not marketed or distributed as "bundled" and therefore are not affected by this rule. However, the agency believes that this regulatory process is necessary to establish an orderly administrative process for reviewing those drugs which are marketed as "bundled" by a manufacturer or distributor. The agency believes that this rule is in furtherance of the Commissioner's statutory authority to review rules, regulations, and establish fee schedules to administer the Title XIX (Medicaid) Program. (Reference is made to N.J.S.A. 30:4D-7). The agency recognizes the concerns regarding availability and patient safety and believes the proposed amendments and new rules insure an orderly process whereby these factors can be taken into consideration.

**Questions and Answers—Department of the Public Advocate**

Question 1: Please identify any drugs which are or have been marketed in bundled form.

Answer: Clozaril, manufactured by Sandoz Pharmaceuticals, was marketed as a "bundled" drug.

Question 2: Please identify any drugs which are expected to be marketed in the future as bundled drugs.

Answer: The Division of Medical Assistance and Health Services (the Division) is unaware of any drug to be marketed as a "bundled" drug.

Question 3: Please state whether there is any economic or accounting methodology which has been used in the past to permit the Division to determine whether the cost of a drug is excessive where the drug is patented and sold by a single manufacturer.

Answer: The Division does not have access to any economic or accounting methodology which could be utilized to evaluate the cost of a drug patented by a single manufacturer. Unfortunately, cost considerations and profitability established by a manufacturer falls outside of Medicaid's sphere of influence.

Question 4: Please state whether there is any such economic or accounting methodology which could be used in the future by the Division.

Answer: The Division has always applied competitive cost analysis to available market services and compares the results to any unique marketing of a drug, such as is the case with a "bundled" drug.

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Question 5: Please describe in detail the steps that the Division will take to allocate for its own purposes the appropriate relative cost of a drug and its ancillary bundled services.

Answer: The drug manufacturer offering the bundled drug package must submit documentation to the satisfaction of the Commissioner which indicates the appropriate relative cost of a drug and its ancillary services. A comparative analysis would be undertaken (by the agency) to evaluate the cost differential, if any, between the bundled drug product and these same services, and Medicaid reimbursement therefor, covered by the New Jersey Medicaid program. The results of this analysis would be used by the Commission in making the determination of whether to cover the bundled drug product.

Question 6: Please describe in detail the steps that the Division will take to evaluate the manufacturer's asserted allocation of the relative cost of a drug and the ancillary bundled services, as well as any modification in the allocation of relative costs offered by the manufacturer.

Answer: The cost of the drug is established by the manufacturer. The Division cannot assess or regulate any manufacturer cost for a drug and the ancillary bundled services. The waiver provision places the burden of proof on the drug manufacturer to supply documentation to the Division in order for the Division to perform a review. The type of documentation that must be supplied by the manufacturer is specified in the regulation. (Reference is made to N.J.A.C. 10:51-1.14(a)17iii; N.J.A.C. 10:52-1.22(b); N.J.A.C. 10:53-1.17(b), N.J.A.C. 10:57-1.18(a)15iii, and N.J.A.C. 10:66-1.10(b)).

Question 7: Please state whether the Division will take into account the overall fiscal impact of including a bundled drug in the Medicaid formulary, when deciding whether or not to cover a "bundled" drug.

Answer: This regulation does not address cost-effectiveness of alternative treatments to the bundled drug. This regulation addresses the costs of the components of the bundled service and is proposed to avoid Division coverage of a bundled drug in which the sum of the components costs are greater than coverage of the drug and Medicaid reimbursable ancillary services independently. The Division cannot be forced to incur any unnecessary costs due to drugs entering the market with restricted distribution (i.e., drug bundling).

Question 8: If the answer to question 7 above is "yes", please describe in detail the steps that the Division will take to determine and measure the fiscal impact and to weigh it in the Division's decision-making process.

Answer: Not applicable.

**Questions and Answers—National Alliance for the Mentally Ill**

Question 1: What provisions are required to ensure complete patient safety?

Answer: The bundling of a drug to achieve FDA approval for distribution is clearly defined and must be implemented in order for the bundled drug to be prescribed in this country. The unbundling of Clozaril by Sandoz Pharmaceuticals only altered the nature of how necessary ancillary services were to be rendered while still utilizing an established nationwide monitoring network for this drug. The combination of close FDA scrutiny and an approval system for all participating providers should continue to provide an uninterrupted and comprehensive monitoring network for patients utilizing a bundled drug, such as Clozaril.

Question 2: What provisions are being made to ensure that the medication is available at the least possible cost to all who might be helped?

Answer: The cost of all drugs, including Clozaril, is subject to marketing considerations of their manufacturers. The Division is unable to establish drug costs. The Division will, however, continue to provide coverage of the drug Clozaril for all Medicaid clients.

Question 3: Will the system developed allow for mobility and ensure access regardless of where the person lives, taking into account accessibility and ability to travel?

Answer: The "unbundled" system developed by Sandoz must meet the criteria established by the FDA which allows the approved distribution of this drug. The system will accommodate client mobility. Accessibility will increase as the "approved" provider community, which is authorized to dispense Clozaril by Sandoz, increases to meet the medical needs of clients utilizing this drug.

Question 4: How will those who refuse to come in weekly or those who are unwilling to engage the traditional mental health system be tracked and monitored?

Answer: The absence of weekly blood monitoring results will prohibit further dispensing of this drug. Outreach by the provider community, such as the physician, or more likely a mental health clinic, would attempt

to encourage consistent monitoring of blood work and counsel those clients who are unwilling to participate.

Question 5: In those states that are part of the anti-trust suit, what does the state expect as a result of the suit?

Answer: Clozaril was unbundled in April 1991. The Federal government directed state Medicaid programs to reimburse Medicaid clients for Clozaril. The status of the suit is unknown.

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

10:51-1.1 Introduction

(a) This subchapter gives information relative to providing pharmaceutical services to all Medicaid recipients except those who are patient/residents in nursing facilities. For regulations concerning provision of services to Medicaid recipients in nursing facilities, refer to N.J.A.C. 10:51-3.

(b) "Bundled drug service" means a drug that is marketed or distributed by the manufacturer or distributor as a combined package which includes in the cost the drug product and ancillary services such as, but not limited to, case management services and laboratory testing. (Reference is made to N.J.A.C. 10:51-1.14(a)17.)

10:51-1.14 Services not eligible for reimbursement

(a) (No change.)

1.-16. (No change.)

17. Any bundled drug service shall not be eligible for reimbursement by the New Jersey Medicaid Program.

i. This provision may be waived at the discretion of the Commissioner if he/she determines that a bundled drug service is less than or equal to the total cost of the unbundled components if reimbursed separately; or

ii. The Commissioner may waive the provisions for reasons of medical necessity for a bundled drug and in accordance with terms approved by the Department as follows:

(1) Those instances where discontinuation, withdrawal, or elimination of the use of the bundled drug in someone who has been receiving bundled drug would result in deprivation of life saving or life prolonging benefits of the drug or would cause potential harm or serious exacerbation of the illness being treated; or

(2) Those instances where use of the bundled drug has resulted in or produced marked improvement in the recipients clinical status reflected in alleviation of symptoms, and elevation of level of function and independence.

iii. In order to determine eligibility for reimbursement, manufacturers or distributors of a bundled drug service shall submit complete product information, including the cost to the Program of the total bundled drug service, discrete costs of each component of the bundled drug service, cost benefit analyses, and other information as requested by the Department, to the Chief Pharmaceutical Consultant, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625-0712.

iv. If the Commissioner determines that a bundled drug is eligible for reimbursement under 10:51-1.14(a)17, New Jersey Medicaid recipients shall be eligible for the bundled drug service if prior authorization is requested and approved. Prior authorization shall be obtained by completing the appropriate "Request for Authorization Form" requesting medication management authorization and providing sufficient documentation to establish that it is medically necessary to continue the bundled drug services. Mail all the information to:

Medical Director  
Division of Medical Assistance and Health Services  
CN 712  
Trenton, NJ 08625-0712

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

10:51-3.3 Definitions

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

"Bundled drug service" means a drug that is marketed or distributed by the manufacturer or distributor as a combined package

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which includes in the cost the drug product and ancillary services such as, but not limited to, case management services and laboratory testing.

...

### 10:51-3.12 Services not eligible for reimbursement

(a) The following classes of prescription drugs are not eligible for reimbursement:

1.-13. (No change.)

14. Radiopaque contrast materials (that is, Telepaque);

15. Any bundled drug service shall not be eligible for reimbursement by the New Jersey Medicaid Program.

i. This provision may be waived at the discretion of the Commissioner if he or she determines that a bundled drug service is less than or equal to the total cost of the unbundled components if reimbursed separately; or

ii. The Commissioner may waive the provisions for reasons of medical necessity for a bundled drug and in accordance with terms approved by the Department as follows:

(1) Those instances where discontinuation, withdrawal, or elimination of the use of the bundled drug in someone who has been receiving bundled drug would result in deprivation of life saving or life prolonging benefits of the drug or would cause potential harm or serious exacerbation of the illness being treated; or

(2) Those instances where use of the bundled drug has resulted in or produced marked improvement in the recipients clinical status reflected in alleviation of symptoms, and elevation of level of function and independence.

iii. In order to determine eligibility for reimbursement, manufacturers or distributors of a bundled drug service shall submit complete product information, including the cost to the Program of the total bundled drug service, discrete costs of each component of the bundled drug service, cost benefit analyses, and other information as requested by the Department, to the Chief Pharmaceutical Consultant, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625-0712.

iv. If the Commissioner determines that a bundled drug is eligible for reimbursement under this paragraph, New Jersey Medicaid recipients shall be eligible for the bundled drug service if prior authorization is requested and approved. Prior authorization shall be obtained by completing the appropriate "Request for Authorization Form" requesting medication management authorization and providing sufficient documentation to establish that it is medically necessary to continue the bundled drug service, and mailing the completed form and documentation to:

Medical Director  
Division of Medical Assistance and Health Services  
CN 712  
Trenton, NJ 08625-0712

### 10:52-1.1 Definitions

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

...

"Bundled drug service" means a drug that is marketed or distributed by the manufacturer or distributor as a combined package which includes in the cost, the drug product and ancillary services such as, but not limited to, case management services and laboratory testing.

...

### 10:52-1.22 Bundled drug services

(a) Any bundled drug service shall not be eligible for reimbursement by the New Jersey Medicaid Program.

1. This provision may be waived at the discretion of the Commissioner if he or she determines that a bundled drug service is less than or equal to the total cost of the unbundled components if reimbursed separately; or

2. The Commissioner may waive the provisions for reasons of medical necessity for a bundled drug or in accordance with terms approved by the Department as follows:

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i. Those instances where discontinuation, withdrawal, or elimination of the use of the bundled drug in someone who has been receiving bundled drug would result in deprivation of life saving or life prolonging benefits of the drug or would cause potential harm or serious exacerbation of the illness being treated; or

ii. Those instances where use of the bundled drug has resulted in or produced marked improvement in the recipients clinical status reflected in alleviation of symptoms, and elevation of level of function and independence.

(b) In order to determine eligibility for reimbursement, manufacturers or distributors of a bundled drug service shall submit complete product information, including the cost to the Program of the total bundled drug service, discrete costs of each component of the bundled drug service, cost benefit analyses, and other information as requested by the Department, to the Chief Pharmaceutical Consultant, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625-0712.

(c) If the Commissioner determines that a bundled drug is eligible for reimbursement under this section, New Jersey Medicaid recipients shall be eligible for the bundled drug service if prior authorization is requested and approved. Prior authorization shall be obtained by completing the appropriate "Request for Authorization Form" requesting medication management authorization and providing sufficient documentation to establish that it is medically necessary to continue the bundled drug services, and mailing the completed form and documentation to:

Medical Director  
Division of Medical Assistance and Health Services  
CN 712  
Trenton, NJ 08625-0712

### 10:53-1.1 Definitions

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

...

"Bundled drug service" means a drug that is marketed or distributed by the manufacturer or distributor as a combined package which includes in the cost, the drug product and ancillary services such as, but not limited to, case management services and laboratory testing.

...

### 10:53-1.17 Bundled drug services

(a) Any bundled drug service shall not be eligible for reimbursement by the New Jersey Medicaid Program.

1. This provision may be waived at the discretion of the Commissioner if he or she determines that a bundled drug service is less than or equal to the total cost of the unbundled components if reimbursed separately; or

2. The Commissioner may waive the provisions for reasons of medical necessity for a bundled drug or in accordance with terms approved by the Department as follows:

i. Those instances where discontinuation, withdrawal, or elimination of the use of the bundled drug in someone who has been receiving bundled drug would result in deprivation of life saving or life prolonging benefits of the drug or would cause potential harm or serious exacerbation of the illness being treated; or

ii. Those instances where use of the bundled drug has resulted in or produced marked improvement in the recipients clinical status reflected in alleviation of symptoms, and elevation of level of function and independence.

(b) In order to determine eligibility for reimbursement, manufacturers or distributors of a bundled drug service shall submit complete product information, including the cost to the Program of the total bundled drug service, discrete costs of each component of the bundled drug service, cost benefit analyses, and other information as requested by the Department, to the Chief Pharmaceutical Consultant, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625-0712.

(c) If the Commissioner determines that a bundled drug is eligible for reimbursement under this section, New Jersey Medicaid reci-

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patients shall be eligible for the bundled drug service if prior authorization is requested and approved. Prior authorization shall be obtained by completing the appropriate "Request for Authorization Form" requesting medication management authorization and providing sufficient documentation to establish that it is medically necessary to continue the bundled drug services, and mailing the completed form and documentation to:

Medical Director  
 Division of Medical Assistance and Health Services  
 CN 712  
 Trenton, NJ 08625-0712

10:54-1.1 Definitions

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

"Bundled drug service" means a drug that is marketed or distributed by the manufacturer or distributor as a combined package which includes in the cost the drug product and ancillary services such as, but not limited to, case management services and laboratory testing.

...

10:54-1.16 Pharmaceutical services not eligible for payment

(a) The following classes of prescription drugs will not be honored for payment:

1.-17. (No change.)

18. Radiopaque contrast material (Telepaque);

19. Any bundled drug service shall not be eligible for reimbursement by the New Jersey Medicaid Program.

i. This provision may be waived at the discretion of the Commissioner if he or she determines that a bundled drug service is less than or equal to the total cost of the unbundled components if reimbursed separately; or

\*[2.]\*ii.\* The Commissioner may waive the provisions for reasons of medical necessity for a bundled drug or in accordance with terms approved by the Department as follows:

\*[i.]\*\*(1)\* Those instances where discontinuation, withdrawal, or elimination of the use of the bundled drug in someone who has been receiving bundled drug would result in deprivation of life saving or life prolonging benefits of the drug or would cause potential harm or serious exacerbation of the illness being treated; or

\*[ii.]\*\*(2)\* Those instances where use of the bundled drug has shown marked improvement in the recipients clinical status reflected in alleviation of symptoms, and elevation of level of function and independence.

iii. In order to determine eligibility for reimbursement, manufacturers or distributors of a bundled drug service shall submit complete product information, including the cost to the Program of the total bundled drug service, discrete costs of each component of the bundled drug service, cost benefit analyses, and other information as requested by the Department, to the Chief Pharmaceutical Consultant, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625-0712.

iv. If the Commissioner determines that a bundled drug is eligible for reimbursement under this section, New Jersey Medicaid recipients who were already receiving a bundled drug service prior to \*[the effective date of this rule]\* **March 2, 1992**, shall continue to be eligible for this treatment if prior authorization is requested and approved. Prior authorization shall be obtained by completing the appropriate "Request for Authorization Form" requesting medication management authorization and providing sufficient documentation to support the need for treatment, and mailing the completed form and documentation to:

Medical Director  
 Division of Medical Assistance and Health Services  
 CN 712  
 Trenton, NJ 08625-0712

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

10:56-1.1 Definitions

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

...

"Bundled drug service" means a drug that is marketed or distributed by the manufacturer or distributor as a combined package which includes in the cost the drug product and ancillary services such as, but not limited to, case management services and laboratory testing.

...

10:56-1.4 Noncovered services

(a) A noncovered service is that procedure which is primarily for cosmetic purposes or for which dental necessity cannot be demonstrated.

(b) Any bundled drug service shall not be eligible for reimbursement by the New Jersey Medicaid Program.

1. This provision may be waived at the discretion of the Commissioner if he or she determines that a bundled drug service is less than or equal to the total cost of the unbundled components if reimbursed separately; or

2. The Commissioner may waive the provisions for reasons of medical necessity for a bundled drug or in accordance with terms approved by the Department as follows:

i. Those instances where discontinuation, withdrawal, or elimination of the use of the bundled drug in someone who has been receiving bundled drug would result in deprivation of life saving or life prolonging benefits of the drug or would cause potential harm or serious exacerbation of the illness being treated; or

ii. Those instances where use of the bundled drug has shown marked improvement in the recipients clinical status reflected in alleviation of symptoms, and elevation of level of function and independence.

3. In order to determine eligibility for reimbursement, manufacturers or distributors of a bundled drug service shall submit complete product information, including the cost to the Program of the total bundled drug service, discrete costs of each component of the bundled drug service, cost benefit analyses, and other information as requested by the Department, to the Chief Pharmaceutical Consultant, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625-0712.

4. If the Commissioner determines that a bundled drug is eligible for reimbursement under this section, New Jersey Medicaid recipients shall be eligible for the bundled drug service if prior authorization is requested and approved. Prior authorization shall be obtained by completing the appropriate "Request for Authorization Form" requesting medication management authorization and providing sufficient documentation to establish that it is medically necessary to continue the bundled drug services and mailing the completed form and documentation to:

Medical Director  
 Division of Medical Assistance and Health Services  
 CN 712  
 Trenton, NJ 08625-0712

10:57-1.1 Definitions

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

"Bundled drug service" means a drug that is marketed or distributed by the manufacturer or distributor as a combined package which includes in the cost the drug product and ancillary services such as, but not limited to, case management services and laboratory testing.

...

10:57-1.18 Pharmaceutical services not eligible for payment

(a) Pharmaceutical services not eligible for payment include:

1.-14. (No change.)

15. Any bundled drug service shall not be eligible for reimbursement by the New Jersey Medicaid Program.

i. This provision may be waived at the discretion of the Commissioner if he or she determines that a bundled drug service is

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less than or equal to the total cost of the unbundled components if reimbursed separately; or

ii. The Commissioner may waive the provisions for reasons of medical necessity for a bundled drug or in accordance with terms approved by the Department as follows:

(1) Those instances where discontinuation, withdrawal, or elimination of the use of the bundled drug in someone who has been receiving bundled drug would result in deprivation of life saving or life prolonging benefits of the drug or would cause potential harm or serious exacerbation of the illness being treated; or

(2) Those instances where use of the bundled drug has shown marked improvement in the recipients clinical status reflected in alleviation of symptoms, and elevation of level of function and independence.

iii. In order to determine eligibility for reimbursement, manufacturers or distributors of a bundled drug service shall submit complete product information, including the cost to the Program of the total bundled drug service, discrete costs of each component of the bundled drug service, cost benefit analyses, and other information as requested by the Department, to the Chief Pharmaceutical Consultant, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625-0712.

iv. If the Commissioner determines that a bundled drug is eligible for reimbursement under this section, New Jersey Medicaid recipients shall be eligible for the bundled drug service if prior authorization is requested and approved. Prior authorization shall be obtained by completing the appropriate "Request for Authorization Form" requesting medication management authorization and providing sufficient documentation to establish that it is medically necessary to continue the bundled drug services and mailing the completed form and documentation to:

Medical Director  
 Division of Medical Assistance and Health Services  
 CN 712  
 Trenton, NJ 08625-0712

10:66-1.2 Definitions

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

...  
 "Bundled drug service" means a drug that is marketed or distributed by the manufacturer or distributor as a combined package which includes in the cost, the drug product and ancillary services such as, but not limited to, case management services and laboratory testing.

10:66-1.10 Bundled drug services

(a) Any bundled drug service shall not be eligible for reimbursement by the New Jersey Medicaid Program.

1. This provision may be waived at the discretion of the Commissioner if he or she determines that a bundled drug service is less than or equal to the total cost of the unbundled components if reimbursed separately; or

2. The Commissioner may waive the provisions for reasons of medical necessity for a bundled drug or in accordance with terms approved by the Department as follows:

i. Those instances where discontinuation, withdrawal, or elimination of the use of the bundled drug in someone who has been receiving bundled drug would result in deprivation of life saving or life prolonging benefits of the drug or would cause potential harm or serious exacerbation of the illness being treated; or

ii. Those instances where use of the bundled drug has shown marked improvement in the recipients clinical status reflected in alleviation of symptoms, and elevation of level of function and independence.

(b) In order to determine eligibility for reimbursement, manufacturers or distributors of a bundled drug service shall submit complete product information, including the cost to the Program of the total bundled drug service, discrete costs of each component of the bundled drug service, cost benefit analyses, and other information as requested by the Department, to the Chief Pharmaceutical Con-

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sultant, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625-0712.

(c) If the Commissioner determines that a bundled drug is eligible for reimbursement under this section, New Jersey Medicaid recipients shall be eligible for the bundled drug service if prior authorization is requested and approved. Prior authorization shall be obtained by completing the appropriate "Request for Authorization Form" requesting medication management authorization and providing sufficient documentation to establish that it is medically necessary to continue the bundled drug service and mailing the completed form and documentation to:

Medical Director  
 Division of Medical Assistance and Health Services  
 CN 712  
 Trenton, NJ 08625-0712

**(a)**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Notice of Administrative Correction**

**New Jersey Care . . . Special Medicaid Programs  
 Manual Income Eligibility Limits**

**N.J.A.C. 10:72-4.1**

Take notice that the Division of Medical Assistance and Health Services has discovered an omission in N.J.A.C. 10:72-4.1(b). In the New Jersey Register publication of the most recent amendment to this subsection (see 23 N.J.R. 2543(a) and 3144(a)), the first sentence phrase "shall be based on 133 percent of the poverty income guideline," adopted effective March 28, 1991 (see 23 N.J.R. 1200(a) and 1945(a)), inadvertently appeared as "shall be based on the poverty income guideline," and was subsequently incorporated into the Code. Through this notice of administrative correction, published pursuant to N.J.A.C. 1:30-2.7, the omission of "133 percent" is corrected.

Full text of the corrected rule follows (addition indicated in boldface **thus**):

10:72-4.1 Income eligibility limits

(a) (No change.)

(b) Income limits for children aged one through five years covered under the provisions of this chapter shall be based on **133 percent** of the poverty income guideline as defined by the 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 133 percent of the annual poverty income guideline rounded down to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

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

**(b)**

**DIVISION OF ECONOMIC ASSISTANCE**

**Notice of Administrative Correction**

**Assistance Standards Handbook  
 Establishing Monthly Earnings**

**N.J.A.C. 10:82-2.14**

Take notice that the Division of Economic Assistance has discovered an error in the current text of N.J.A.C. 10:82-2.14(d). The current published text of this subsection, codified as N.J.A.C. 10:82-2.14(f), was deleted effective February 5, 1981 and a new subsection (f) added concerning contract earnings (see 13 N.J.R. 16(a) and 147(b)). The new subsection (f) was subsequently recodified as (e) (see 13 N.J.R. 300(a) and 432(b)) and then as (d) (see 18 N.J.R. 260(a) and 2388(b)), without change. However, in the last recodification, effective December 1, 1986, the correct text of the subsection was inadvertently deleted from the

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Code, and replaced by the text of subsection (f) which was deleted in 1981. By this notice of administrative correction, published pursuant to N.J.A.C. 1:30-2.7, the erroneous text of N.J.A.C. 10:82-2.14(d) is deleted and replaced with the correct text.

Full text of the corrected rule follows (addition indicated in boldface **thus**; deletions indicated in brackets [thus]):

10:82-2.14 Establishing monthly earnings

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

[(d) Earned income of a teacher or other professional or non-professional school employee shall be considered on a yearly basis. So long as the individual is employed at the end of the school term and there is no indication that he/she will not be employed at the beginning of the following term, total earnings shall be prorated over a 12-month period regardless of frequency of payment.]

**(d) Contract earnings: Earnings payable under the terms of a renewable contract, e.g., earnings of school teachers, are to be prorated over the stated term of the contract only.**

**(a)**

**DIVISION OF ECONOMIC ASSISTANCE**

**Assistant Standards Handbook**

**DYFS Monthly Foster Care Child Rates**

**Adopted Amendment: N.J.A.C. 10:82-4.9**

Proposed: November 18, 1991 at 23 N.J.R. 3420(a).

Adopted: January 30, 1992, by Alan J. Gibbs, Commissioner,

Department of Human Services.

Filed: February 4, 1992, as R.1992 d.106, **without change**.

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Effective Date: March 2, 1992.

Expiration Date: August 24, 1994.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the adoption follows.

10:82-4.9 Division of Youth and Family Services

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

(c) The basic monthly rates for foster care as established by the Division of Youth and Family Services are as follows:

Age	New Base Rate/Child
0-5	\$244.00 per month
6-9	\$259.00 per month
10-12	\$287.00 per month
13 and over	\$305.00 per month

**INSURANCE**

**(b)**

**DIVISION OF THE REAL ESTATE COMMISSION**

**Inspection of Records**

**Adopted Amendment: N.J.A.C. 11:5-1.13**

Proposed: November 18, 1991 at 23 N.J.R. 3428(a).

Adopted: February 6, 1992 by the New Jersey Real Estate

Commission, Micki Greco Shillito, Executive Director.

Filed: February 6, 1992 as R.1992 d.107, **without change**.

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

Effective Date: March 2, 1992.

Expiration Date: October 28, 1993.

**Summary of Public Comments and Agency Responses:**

COMMENT: The Real Estate Commission received one written comment on this proposed amendment from Gertrude M. Stefanik, broker of Gertrude M. Stefanik, Inc. The comment suggested that the amended

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rule be revised to prohibit individuals whose license affiliation with a particular broker has been terminated from removing copies of documents in the broker's files, in addition to being prohibited from removing the original documents in those files.

RESPONSE: In considering this comment the Commission noted that the purpose of this rule was to aid Commission investigators in conducting effective and complete investigations by assuring that the transaction files maintained by broker licensees remain complete and intact. The removal of documents from those files by licensees no longer affiliated with such brokers had in the past frustrated that intent. However, precluding licensees leaving the employ of a broker from removing copies of documents in the broker's file would not further that objective.

In addition, the Commission noted that it would be extremely difficult to enforce a prohibition upon the removal of copies of documents from a broker's file. In the everyday course of business, licensees affiliated with brokers routinely make copies of documents in a broker's file. It would be extremely difficult for the Commission to prove when a particular copy was made, so as to establish a violation of a rule which prohibited the making of copies after a certain point in time, that is, after the affiliation between a licensee and their broker had been terminated.

For the foregoing reasons, the Commission determined not to revise the text of the amendment as suggested in this comment.

Full text of the adoption follows.

11:5-1.13 Inspection of records

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

(c) All files on pending and closed sale, exchange or lease transactions, all files on listings for sales or rentals, and all property management files shall be maintained or stored at the offices of brokers licensed as employing brokers or corporate or partnership brokers. Upon terminating their employment with such a broker, and/or transferring to the employ of another such broker, no salesperson or broker-salesperson shall remove or cause to be removed any of the contents of such files from the offices of the broker. The term "files" as used herein shall be construed to mean all transaction records required to be kept by brokers pursuant to N.J.A.C. 11:5-1.12.

**LAW AND PUBLIC SAFETY**

**(c)**

**DIVISION OF CONSUMER AFFAIRS**

**BOARD OF EXAMINERS OF OPHTHALMIC**

**DISPENSERS AND OPHTHALMIC TECHNICIANS**

**Fees**

**Adopted Amendments: N.J.A.C. 13:33-1.20, 1.21, 1.22, 1.23 and 1.41**

Proposed: December 2, 1991 at 23 N.J.R. 3631(a).

Adopted: January 15, 1992 by the Board of Examiners of

Ophthalmic Dispensers and Ophthalmic Technicians, Robert Troast, President.

Filed: January 30, 1992, as R.1992 d.103, **without change**.

Authority: N.J.S.A. 52:17B-41.13.

Effective Date: March 2, 1992.

Expiration Date: March 12, 1995.

The Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians afforded all interested parties an opportunity to comment on the proposed amendments to its fee schedule. The official comment period ended on January 1, 1992. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on December 2, 1991 at 23 N.J.R. 3631(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Society of Dispensing Opticians of New Jersey and to other interested parties.

**Summary of Public Comments and Agency Responses:**

The Board received no written comments during the 30-day comment period. One individual who declined to identify himself telephoned the Board and stated his opinion that the fee increases were excessive,

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particularly in light of the current economic recession and the fact that people are losing their jobs. In response, the Board states that it recognizes the adverse impact of rising costs on individuals and businesses today and notes that the Board has also experienced increases in many of its administrative costs. However, pursuant to N.J.S.A. 45:1-3.2, each board is required to be self-funding; that is, operating costs must be met through licensing and other fees. The statute also requires the Board to assess fees which are estimated not to exceed the amount required. The Board is confident that the estimate of fees required to continue its operations complies with these statutory requirements. In the unlikely event excess funds are raised, they will be carried over for the benefit of the Board.

Full text of the adoption follows.

**13:33-1.20 Replacement certificates of registration**

The Board will issue a replacement certificate of registration, upon payment of the appropriate certificate replacement fee, when it shall be certified that the original has been lost or destroyed.

**13:33-1.21 Renewal of licenses; deadline**

Renewal applications for ophthalmic dispenser, ophthalmic technician and/or branch office licenses must be mailed no later than midnight of December 31 of each renewal year or a penalty will be imposed.

**13:33-1.22 Payment of license registration fee; penalty**

Any applicant who satisfactorily passes the examinations given by this Board shall be required to pay the license registration fee within 30 days after receiving notification from this Board that he or she has passed the examination or a penalty will be imposed.

**13:33-1.23 Change of name**

(a) The Board shall issue a new registration certificate to any licensee whose name has been legally changed, upon receipt of:

1. Satisfactory evidence of the legality of such change.
2. The return of the original certificate with satisfactory evidence that he or she is the same person to whom the certificate was issued; and
3. The appropriate certificate replacement fee.

**13:33-1.41 Fee schedule**

(a) The following fees shall be charged by the Board effective upon promulgation:

1. Application fee ..... \$100.00
2. Examination:
  - i. Ophthalmic Dispenser ..... 75.00
  - ii. Ophthalmic Technician ..... 50.00
  - iii. Qualifying Technical ..... 50.00
3. Initial license fee:
  - i. Ophthalmic Dispenser:
    - (1) During the first year of a biennial renewal period ..... 230.00
    - (2) During the second year of a biennial renewal period ..... 115.00
  - ii. Ophthalmic Technician:
    - (1) During the first year of a biennial renewal period ..... 175.00
    - (2) During the second year of a biennial renewal period ..... 87.50
  - iii. Branch Office Ophthalmic Dispenser:
    - (1) During the first year of a biennial renewal period ..... 165.00
    - (2) During the second year of a biennial renewal period ..... 82.50
  - iv. Branch Office Ophthalmic Technician:
    - (1) During the first year of a biennial renewal period ..... 110.00
    - (2) During the second year of a biennial renewal period ..... 55.00
4. Biennial renewal:
  - i. Ophthalmic Dispenser ..... 230.00
  - ii. Ophthalmic Technician ..... 175.00
  - iii. Branch Office Ophthalmic Dispenser ..... 165.00
  - iv. Branch Office Ophthalmic Technician ..... 110.00

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5. Permits and permit renewals:
  - i. Temporary ..... 50.00
  - ii. Apprentice Dispenser ..... 50.00
  - iii. Apprentice Technician ..... 50.00
6. Late renewal of license or permit ..... 100.00
7. Late application for licensure ..... 100.00
8. Replacement certificate of registration:
  - i. License ..... 50.00
  - ii. Branch Office License ..... 50.00
  - iii. Permit ..... 30.00

**(a)**

**DIVISION OF CONSUMER AFFAIRS**

**Sellers of Health Club Services**

**Registration Fees**

**Adopted Amendments: N.J.A.C. 13:45A-25.2 and 25.4**

Proposed: December 2, 1991 at 23 N.J.R. 3637(a).

Adopted: January 16, 1992 by Emma N. Byrne, Director, Division of Consumer Affairs.

Filed: January 28, 1992 as R.1992 d.101, **without change.**

Authority: N.J.S.A. 56:8-40 and 56:8-48.

Effective Date: March 2, 1992.

Expiration Date: November 9, 1995.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the adoption follows.

**13:45A-25.2 Registration; fees**

(a) Applicant(s) shall request information from the Health Club Coordinator, Office of Consumer Protection, Post Office Box 45025, Newark, New Jersey 07101 regarding the initial registration of a facility; thereafter an application shall be forwarded to the applicant, along with a copy of the Act and a copy of all current rules.

(b) Any person who offers for sale or sells health club services shall pay to the Director of the Division of Consumer Affairs a registration fee of \$300.00 every two years for each health club facility operated, \$150.00 if paid during the second half of the biennial period.

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

(e) The following shall be the text of the Notice to be provided by the Division to each registered facility:

**NOTICE**

This facility is registered as a seller of health club services by the State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, 124 Halsey Street, Newark, New Jersey 07102. Such registration does not mean that this facility has been approved or endorsed by that agency. Patrons are advised that under New Jersey law, facilities offering contracts for health club services for longer than a three-month period must post with the Division of Consumer Affairs security against failure to provide such services.

(f) (No change.)

(g) All registrations shall expire every two years on the 10th day of February.

**13:45A-25.4 Exemption from security requirement**

A separate Declaration of Exemption from Security Requirement shall be filed for each facility claiming exemption from the bond/letter of credit/security requirement of N.J.S.A. 56:8-41 because its membership contracts are for a period no longer than three months. When the Declaration of Exemption from Security Requirement is filed, it must be accompanied by a copy of a written contract as proof that the contract duration is for a period of no longer than three months. The Declaration of Exemption from Security Requirement shall be available upon request from the Health Club Coordinator, Office of Consumer Protection, Post Office Box 45025, Newark, NJ 07101.

**LAW AND PUBLIC SAFETY**

**ADOPTIONS**

**(a)**

**DIVISION OF CONSUMER AFFAIRS  
LEGALIZED GAMES OF CHANCE CONTROL  
COMMISSION**

**Rules of Legalized Games of Chance**

**Readoption with Amendments: N.J.A.C. 13:47**

Proposed: December 2, 1991 at 23 N.J.R. 3638(b).

Adopted: January 8, 1992 by the Legalized Games of Chance Control Commission, Robert J. Whelan, Chairman.

Filed: January 27, 1992 as R.1992 d.96, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 5:8-6.

Effective Date: January 27, 1992, Readoption;  
March 2, 1992, Amendments.

Expiration Date: January 27, 1997.

The Legalized Games of Chance Control Commission afforded all interested parties an opportunity to comment on the proposed readoption of N.J.A.C. 13:47, the rules of the Legalized Games of Chance Control Commission. The official comment period ended on January 1, 1992. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on December 2, 1991, at 23 N.J.R. 3638(b). Announcements were also forwarded to interested parties pursuant to N.J.A.C. 1:30-3.1(h)4ii(5).

A full record of this opportunity to be heard can be inspected by contacting the Legalized Games of Chance Control Commission, 31 Clinton Street, Newark, New Jersey 07102.

**Summary of Public Comments and Agency Responses:**

Comments were received from Russell Triolo, Executive Director of the Boys and Girls Clubs of Union County, and Jeff Shapiro, Chairman, Temple Beth Am Bingo.

COMMENT: Mr. Triolo stated that he fully supports the amendments, which he believes will provide better control.

RESPONSE: The Commission acknowledges and appreciates Mr. Triolo's support.

COMMENT: Mr. Shapiro expressed the opinion that the Commission has lost its regulatory power and that the present regulations do not enable the Commission to fulfill its statutory responsibility. He stated the following more specific concerns:

1. The \$5.00 bingo licensing fee, which has been in effect for a very long time, should be raised to enable the Commission to increase its operating ability.

2. Because there are currently only two State bingo inspectors and over 1,000 active bingo games each week throughout the State, the ability of the Commission to control improper bingo activity has been severely hampered. As a result, organizations which follow the letter of the law are being forced to close down because organizations which engage in improper activities are pulling patrons away to play for more exciting prizes.

3. The regulations do not provide an opportunity for organizations to increase their fundraising ability. The bingo rules should be amended to allow for paper 50-50 games, progressive jackpots and additional varieties of bingo games.

4. Licensing fees paid to the Commission should not be deposited into the State's general fund but rather should go directly to the Commission to increase its enforcement and regulatory abilities.

RESPONSE: In response, the Commission states that it shares all of these concerns; however, it has no statutory authority to make the suggested regulatory changes. The readopted regulations, as amended, are based upon the Bingo and Raffles Licensing Laws, N.J.S.A. 5:8-24 et seq. and N.J.S.A. 5:8-50 et seq. The amendments suggested by Mr. Shapiro are not within the scope of these laws, which govern all areas of the conduct of games, including the amount of licensing fees and the manner in which fees are collected and used. However, the Department of Law and Public Safety is presently considering legislation to amend the Bingo and Raffles Licensing Laws to address these and other issues.

**Summary of Agency Initiated Change Upon Adoption:**

N.J.A.C. 13:47-4.9(a)4, which sets forth the statutory licensing fee for an off-premises draw raffle for merchandise prizes (see N.J.S.A. 5:8-53),

has been amended to add the phrase "above the original \$1,000 value of prizes awarded." This phrase was inadvertently omitted from the proposal and brings the rule into conformity with the statute.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:47.

Full text of the adopted amendments follows (additions to proposal indicated by boldface with asterisks **\*thus\***).

**SUBCHAPTER 1. DEFINITIONS**

**13:47-1.1 Words and phrases defined**

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

"Authorized purpose" means an educational, charitable, patriotic, religious or public-spirited purpose, which terms are defined to be the purpose of benefiting an indefinite number of persons either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life or by erecting or maintaining public buildings or works, or otherwise lessening the burden of government or, in the case of a senior citizen association or club, the support of such organization. Such terms do not include the erection, acquisition, improvement, maintenance or repair of property, real, personal or mixed, unless such property is and shall be used exclusively for one or more of the purposes hereinabove stated.

"Authorized use" means the use of funds for an authorized purpose.

"Bingo" means a specific kind of game of chance played for prizes with cards bearing numbers or other designations five or more in one line, the holder covering numbers, as objects, similarly numbered, are drawn from a receptacle and the game being won by the person who first covers a previously designated arrangement of numbers on such card, by selling tickets or rights to participate in such games.

"Bingo equipment" means the receptacle and numbered objects to be drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address systems, and all other articles essential to the operation, conduct and playing of bingo.

"Control Commission" means the Legalized Games of Chance Control Commission.

"Draw raffle" means a raffle in which the winners are determined by drawing from a container having therein counterparts of all tickets sold.

"Duck race raffle" means a variation of an off-premise draw raffle wherein a player is sold a ticket, share or right to participate. Game pieces representing all tickets, shares or rights to participate are released into a running waterway which has been barricaded in an acceptable form to create a gate which will permit the passage of only one game piece at a time. The winner is the holder of the ticket, share or right to participate on which is printed the number that corresponds with the number on the game piece that passes through the gate in the predetermined sequence required to win a particular prize.

"Goods, wares and merchandise" means prizes, equipment as defined in this section, chairs and tables, and articles of a minor nature such as pencils, crayons, tickets, envelopes, paper clips and coupons necessary to the conduct of games of chance.

"Merchandise" means any objects, wares, goods or commodities not specifically prohibited by this chapter.

"Net proceeds," as pertains to bingo, means the gross income received from all activities engaged in on an occasion when bingo is played, less only such actual expenses incurred as are authorized in the Bingo Licensing Law and this chapter.

"Net proceeds," as pertains to raffle, means the gross income from the sale of tickets or rights to participate in a raffle, whether sold

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in advance of the occasion or not, less only such actual expenses incurred as are authorized in the Raffles Licensing Law and this chapter. In the case of a special door prize raffle, "net proceeds" means the entire net income derived from the assemblage at which such raffle is held.

"Non-draw raffle" means a raffle conducted by means other than drawing from a container having therein the counterparts of all tickets or rights to participate, that is, any wheel or game approved by the Control Commission to be licensed as an allotment of a prize(s) by chance.

"Occasion" means a single gathering or session at which a series of successive bingo games is played not to exceed 35 in number.

"Off-premise draw raffle" means a raffle conducted by a drawing, for a merchandise prize(s), with respect to which tickets may be sold in advance of the occasion of the drawing and the winner(s) need not be present to win.

"Off-premise 50-50 raffle" means a raffle conducted by a drawing for a cash or money prize or prizes with respect to which tickets may be sold in advance of the occasion of the drawing and the winner(s) need not be present to win, the prize or prizes equaling 50 percent of the amount received for all tickets or rights to participate.

"On-premise draw raffle" means a raffle conducted by a drawing for a merchandise prize or prizes, with respect to which all tickets are sold only to persons present at the place of the drawing, the winner(s) determined and the prize(s) awarded to a person or persons present at the drawing.

"On-premise 50-50 raffle" means a raffle conducted by a drawing for cash or money prizes with respect to which all tickets are sold only to persons present at the place of the drawing, the winner(s) determined and the prize(s) awarded equaling 50 percent of the amount received for all tickets or rights to participate.

"Person" means a natural person, firm, association, corporation or other legal entity.

"Playing board" means a board containing more than one playing card.

"Playing card" means a card bearing 24 numbers or other designations and a free space, upon which "Bingo" is played.

"Qualified organization" means a bona fide organization or association of veterans, religious congregation, religious organization, charitable organization, educational organization, fraternal organization, civic and service club, officially recognized volunteer fire company, officially recognized first aid squad, and officially recognized rescue squad, and senior citizens association or club which:

1. If incorporated, is incorporated in New Jersey as a religious corporation or as an association not for pecuniary profit and is empowered by its articles of incorporation to further one or more of the authorized purposes;

2. If unincorporated, is organized in New Jersey as a religious organization or as an organization not for pecuniary profit and is authorized by its written constitution, charter or by-laws, or by the written constitution, charter or by-laws of a parent organization of which it is a part, to further one or more of the authorized purposes;

3. Has a membership of not less than 25 persons;

4. Has actively engaged prior to its initial application for registration in serving one or more of the authorized purposes in this State for a period of not less than one year; and

5. Has received and used and in good faith expects to continue to receive and use funds from sources other than the conducting of games of chance for the furtherance of an authorized purpose.

"Raffle" means a specific kind of game of chance played by drawing for prizes or the allotment of prizes by chance, by the selling of shares or tickets or rights to participate in such a game. Nothing contained in this chapter shall be deemed to authorize as a raffle the playing for money or other valuable thing at roulette wheels, at cards, dice or other game, with one or more dice, having one or more figures or numbers, or at billiards, pool, tennis, bowls or shuffleboard, or A.B.C. or E.O. table, or other tables, or at faro bank, or other bank of a like nature by whatever name known; or with any slot machine or device in the nature of a slot machine, or with any other instrument, engine, apparatus or device having one or more figures or numbers thereon.

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"Raffle equipment" means implements, devices and machines designed, intended or used for the conduct of raffles and the identification of the winning number or unit and the ticket or other evidence of rights to participate in raffles.

"Regular bingo game" means a game in which a player is entitled to participate without additional charge, upon payment of the charge for admission to the room or place where the game is played.

"Senior citizens association or club" means an association or club that is formed and is functioning as an organization not for profit to the benefit of its membership in general and is comprised predominantly of persons who are at least 62 years of age.

"Special bingo game" means a game that is played in addition to a "regular" bingo game, for which a player must pay a charge in addition to the charge for admission to the room or place where the game is played. A "special" game must be played on a non-reusable card that is indelibly marked.

"Special door prize raffle" means a raffle for a door prize(s) of donated merchandise, the total retail value of which shall not exceed \$50.00, for which no extra charge is made, at an assemblage where no other game of chance is held, operated or conducted, and the net proceeds of which are devoted to an authorized purpose.

"Services rendered" means repair to equipment and reasonable compensation to bookkeepers or accountants who assist by rendering their professional services for an amount conforming to the schedule of authorized fees fixed by this chapter (see N.J.A.C. 13:47-16.2, Schedule of Fees, "B"). In the case of bingo "services rendered" also means rental of premises (see N.J.A.C. 13:47-14, Rental of Premises for Bingo). Where premises are not rented for a fee, "services rendered" may include a reasonable amount for janitorial service. In the case of raffles, "services rendered" does not include rental of premises but does include rental of equipment for raffles, when rented from an approved person in an amount conforming to the schedule of authorized rates fixed by these rules. In the case of raffles, "services rendered" shall not be an authorized expense unless rendered solely for the conduct of the raffle.

### 13:47-2.3 Copies of form

(a) Each organization requesting registration shall submit a written request signed by an officer together with sufficient proof of eligibility for registration. Such proofs shall include at least:

1. The by-laws and constitution or any other written authority under which the applicant organization operates;

2. A detailed financial summary, showing all sources and amounts of income and expenditures, including the amounts, recipients and the purpose for which the expended funds were used, for a period of not less than one year from the date of application;

3. A complete list of the organization's members, including the name, address and age of each member; and

4. If incorporated, a copy of the applicant organization's articles of incorporation which have been filed with the Secretary of State of New Jersey.

(b) The Control Commission, when provided with all information required by this section and upon its considered review of such qualifying information, and being satisfied that the applicant organization is a qualified organization, shall direct the Secretary to provide two copies of Form 1-A to the applicant organization. The applicant organization shall complete and file both copies with the Secretary. The Secretary shall assign an identification number to the organization and affix that number to both copies of Form 1-A. The Secretary shall retain one copy and return the other copy to the organization.

### 13:47-2.5 Municipal approval

Neither registration nor the assignment of an identification number shall entitle any organization to hold, operate or conduct, or assist in the holding, operating or conducting of, any game or games of chance without the approval of the governing body of the municipality in which the game or games are to be held, operated or conducted.

### 13:47-2.9 License to conduct games of chance

No registered organization shall conduct bingo, any type of raffle, or other forms of games of chance, except a special door prize raffle,

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without having first obtained a license to conduct the same from the municipality in which the game or games are to be held, operated or conducted. No registered organization shall conduct any unauthorized raffle or game of chance.

### 13:47-3.1 Bingo license application form; certificate for rented premises

Applications for bingo licenses shall be made on Form 2B-A, which is hereby adopted. Where premises are to be rented, a certificate of the landlord shall be obtained from the landlord and attached to the application, such certificate to be on Form 10-A which is hereby adopted.

### 13:47-3.2 Raffles license application form; certificate for leased equipment

Applications for raffles licenses shall be made on Form 2R-A, which is hereby adopted. Where raffles equipment is to be leased, a certificate of the lessor shall be obtained from the raffle equipment supplier and attached to the application, such certificate to be Form 13 which is hereby adopted.

### 13:47-3.6 Separate application and license

(a) A separate application and license shall be used for each of the following types of raffles and shall in each instance specify the particular type of raffle as follows:

1. On-premise draw raffle;
2. On-premise 50/50 raffle;
3. Off-premise draw raffle;
4. Non-draw raffle; and
5. Off-premise 50/50 raffle.

(b) In the case of a special door prize raffle, see N.J.A.C. 13:47-3.11, Notice to clerk, and N.J.A.C. 13:47-8.4, Special door-prize raffle.

### 13:47-4.9 Fees payable by law

(a) The fees payable by law are:

1. Bingo: \$10.00 for each occasion on which any game or games of bingo are to be conducted under the license. Five dollars of the fee shall be remitted to the municipality in which the application is filed and the remaining \$5.00 for each such occasion shall be forwarded to the Control Commission by check payable to the Treasurer of the State of New Jersey;

2. On-premise draw raffle for cash (50/50) or merchandise prizes: \$5.00 for each day on which a drawing is to be conducted under the license, payable to the municipality in which the application is filed;

3. Non-draw raffle: \$5.00 for all non-draw raffles concurrently held on any one day, or any series of consecutive days not exceeding six in any one week at one location, payable to the municipality in which the application is filed;

4. Off-premise draw raffle for merchandise prizes: \$5.00 for each day on which a drawing is to be conducted under the license, payable to the municipality in which the application is filed, plus \$10.00 for each \$1,000 or part thereof of the retail value of the prize or prizes **\*above the original \$1,000 value of prizes awarded\***. Five dollars of the latter fee shall be remitted to the municipality in which the application is filed and the remaining \$5.00 for each \$1,000, or part thereof, of retail value of the prize or prizes **\*above the original \$1,000 value of prizes awarded\*** shall be forwarded to the Control Commission by check payable to the Treasurer of the State of New Jersey;

5. Off-premise cash (50/50) raffle: \$5.00 for each day on which a drawing is to be conducted under the license, payable to the municipality in which the application is filed;

6. Special door prize raffle: no fee is payable and no license is required, provided the merchandise is wholly donated, has a total retail value of less than \$50.00, and the raffle is conducted in accordance with N.J.A.C. 13:47-3.11 and 8.14.

### 13:47-6.11 Frequency of games

(a) No organization shall conduct any game(s) of chance more often than as set forth in this section:

1. Bingo shall not be conducted more often than six days in any calendar month.

2. On-premise draw raffles awarding either cash or merchandise as prizes shall not be conducted more often than six days in any calendar month.

3. Off-premise draw raffles awarding merchandise prizes shall not be conducted more often than six days in any calendar month.

4. Non-draw raffles (wheels and games) shall not be conducted more often than six days in any calendar month.

5. Off-premise 50/50 cash draw raffles shall not be conducted more often than once in any calendar month.

(b) Only the day upon which a drawing or allotment of prizes takes place shall be considered when determining the frequency of games prescribed by this section.

### 13:47-6.19 Prohibited prizes

(a) No licensee shall offer or award any prize consisting of real estate of an interest therein, bonds, shares of stock, securities or evidences of indebtedness, weapons, live animals, personal or professional services, alcoholic beverages, foreign or domestic coins, or any merchandise refundable in any of the foregoing or in money or cash.

(b) No prize consisting of cash or money may be offered or awarded except in the case of:

1. A raffle conducted by a drawing with the prize(s) equaling 50 per cent of the amount received for all tickets or right to participate; or

2. Any bingo game(s) conducted in accordance with the provisions of this chapter and the Bingo Licensing Law, N.J.S.A. 5:8-24 et seq.

### 13:47-7.7 Notice

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

(d) The notice shall also bear the statement "no tipping of bingo workers."

### 13:47-7.8 Person conducting bingo; restriction

No licensee shall permit any person to engage in the conduct of bingo for it or on its behalf who has engaged in the conduct of bingo for or on behalf of any unaffiliated licensee during the same calendar year.

### 13:47-7.9 Equipment; general operation of bingo

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

(d) Objects shall not be drawn from the receptacle until the caller is ready to announce the number on the object. Numbers on objects drawn from the receptacle shall not be announced if a player declares bingo prior to the caller starting vocally to make the announcement. Numbers on the objects drawn from the receptacle shall be announced so as to be visible or audible to all players.

(e) The card used by the player shall be part of a deck, group or series of cards, no two of which shall contain the same number pattern. No deck, group or series of cards shall be prepared or arranged as to prefer any card.

(f) All cards shall be sold for a uniform unit price without any discount or allowance for the purchase of more than one card.

### 13:47-7.11 Arrangement of numbers; limitations; required notice

(a) The licensee shall describe and illustrate in the application for license the arrangement of numbers required to be covered in order to win each game.

(b) No arrangement of numbers shall require a player to cover fewer than four numbers on any one card.

(c) No arrangement of numbers shall require the use of more than four cards.

(d) An illustration of the arrangement of numbers required to win the game must be clearly visible to all players during the conduct of the game.

### 13:47-8.3 Amount of prize limitation

(a) No prize having a retail value greater than that set forth in this section shall be offered or awarded in any raffle.

(b) The aggregate retail value of all prizes to be offered or awarded by a licensee in raffles in any one calendar year shall not exceed \$50,000 except that in the case of licensees having one or more auxiliary organizations, the principal licensee shall not offer or award prizes having a total retail value in excess of \$25,000 and

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the auxiliary licensee shall not offer or award prizes having a total retail value in excess of \$25,000.

(c) In lieu of the limits set forth in (a) above, a licensee may offer or award as a prize one article of merchandise having a retail value in excess of the applicable limits. Any licensee that avails itself of this option shall not be permitted to conduct any other raffle subject to the limits herein prescribed in the same calendar year.

(d) The limit of the aggregate retail value of prizes which may be awarded in any one calendar year shall not apply to on-premise draw raffles where all of the prizes are wholly donated, nor shall it apply to any on-premise 50/50 cash raffle.

(d) No prize having a retail value greater than \$250.00 shall be offered or awarded in a non-draw raffle.

**13:47-8.7 Contents of ticket; off-premise raffle awarding merchandise as a prize**

(a) When tickets are sold for an off-premise raffle awarding merchandise as a prize, each ticket shall contain at least the following information:

1. Name and identification number of the qualified organization and number of the license issued for the occasion;

2.-6. (No change.)

7. The statement: "No substitution of the offered prize may be made and no cash will be given in lieu of the prize."

(b) (No change.)

(c) The stub or counterpart of each ticket shall bear the name and address of the holder, the number of the ticket, the raffle license number issued for the occasion and the identification number of the licensed organization.

(d) All information required by (a), (b) and (c) above shall be clearly and conspicuously set forth on the face of the ticket.

**13:47-8.8 Contents of ticket; off-premise raffle awarding cash or money as a prize**

(a) When tickets are sold for an off-premise raffle awarding cash or money as a prize, each ticket shall contain at least the following information:

1. Name and identification number of the qualified organization and number of the license issued for the occasion;

2. Place where the occasion will be held and the date and time thereof;

3. The statement: "This is a 50/50 cash raffle and the winner will receive 50 percent of the amount received for all tickets or rights to participate";

4. If the prize pool is to be divided among multiple winners, the ticket must indicate the percentage of the prize pool that each winner will receive;

5. The number of the ticket;

6. Price of the ticket;

7. The purpose to which the entire net proceeds will be devoted; and

8. The statement: "No substitution of the offered prize may be made."

(b) The presence of the holder of a ticket shall not be required in order to win unless the ticket bears the statement "NOT VALID UNLESS HOLDER IS PRESENT AT THE DRAWING."

(c) The stub or counterpart of each ticket shall bear the name and address of the holder, the number of the ticket, the raffle license number issued for the occasion and the identification number of the licensed organization.

(d) All information required by (a), (b) and (c) above shall be clearly and conspicuously set forth on the face of the ticket.

Recodify existing N.J.A.C. 13:47-8.8 to 8.15 as 8.9 to 8.16 (No change in text.)

**13:47-8.17 Conduct of "duck race" raffle**

(a) Equipment for the conduct of a duck race raffle must be used in accordance with N.J.A.C. 13:47-8.13.

(b) Each player must be provided with a ticket printed in accordance with N.J.A.C. 13:47-8.7. Tickets may be represented by the actual duck shaped objects used for the conduct of the race.

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(c) Each object used for the conduct of the race shall be equal as to size, weight, shape and balance and as to all other characteristics that may control its selection.

(d) Each object used for the conduct of the race shall bear the name and identification number of the licensee and the license number issued for the occasion.

(e) Live animals may not be used in the conduct of the race.

(f) In the event a race for which tickets have been sold cannot be conducted, the winner(s) shall be determined by drawing from a container having in it the stub or counterpart of all tickets sold, and prize(s) shall be awarded at the time and place indicated on the license.

**SUBCHAPTER 12. APPEALS: HEARINGS AND DISPOSITION**

**13:47-12.1 Date and place**

Upon receipt of the Counterstatement of Appeal, the matter shall be transmitted to the Office of Administrative Law or scheduled for hearing before the Control Commission. Such hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14-1 et seq. and 52:14F-1 et seq. and Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

13:47-12.2 (Reserved)

13:47-12.3 (Reserved)

13:47-12.4 (Reserved)

13:47-12.5 through 13:47-12.8 (No change in text.)

**(a)**

**DIVISION OF CRIMINAL JUSTICE  
Notice of Administrative Correction  
Chemical Breath Testing  
Purpose of Subchapter  
N.J.A.C. 13:51-1.1**

**Take notice** that the Division of Criminal Justice has discovered three typographic errors in N.J.A.C. 13:51-1.1, concerning a statutory citation, punctuation and spelling. These errors arose in the course of the recent promulgation of amendments to this section (see 23 N.J.R. 2248(b) and 3032(c)). This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

**Full text** of the corrected rule follows (addition indicated in boldface **thus**; deletions indicated in brackets [thus]):

**13:51-1.1 Purpose of subchapter**

This subchapter prescribes the requirements for certification of a person to conduct chemical analysis of the breath of a person arrested pursuant to N.J.S.A. 39:4-50 et seq., N.J.S.A. 39:3-10.13, N.J.S.A. [30:3-10.20] **39:3-10.20** N.J.S.A. 39:3-10.24, N.J.S.A. 39:3-10.25, N.J.S.A. 12:7-34.19, N.J.S.A. 12:7-46, N.J.S.A. 24:4A-23 or N.J.S.A. 12:7-54 et seq., the conditions under which certification can occur and the general rules for holders of certificates, pursuant to the statutory requirements of P.L. 1966, c.142, Sec. 3, as amended by P.L. 1971, c.273, Sec. 1 (N.J.S.A. 39:4-50.3), hereinafter denoted as N.J.S.A. 39:4-50.3; or P.L. 1990, c.103, Sec. 17 (N.J.S.A. 39:3-10.25), [hereinafter] **hereinafter** denoted as N.J.S.A. 39:3-10.25; or P.L. 1986, c.39, Sec. 8 (N.J.S.A. 12:7-56), hereinafter denoted as N.J.S.A. 12:7-56.

**TRANSPORTATION**

**ADOPTIONS**

**TRANSPORTATION**

**(a)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID  
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Restricted Stopping and Parking  
Route U.S. 9 in Cape May County**

**Adopted Amendment: N.J.A.C. 16:28A-1.7**

Proposed: January 6, 1992 at 24 N.J.R. 77(a).  
Adopted: February 6, 1992 by Richard C. Dube, Director,  
Division of Traffic Engineering and Local Aid.  
Filed: February 7, 1992 as R.1992 d.111, **without change**.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-138.1.  
Effective Date: March 2, 1992.  
Expiration Date: June 1, 1993.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text of the adoption follows.**

16:28A-1.7 Route U.S. 9

(a) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no stopping or standing" zones.

1.-11. (No change.)

12. No stopping or standing in Middle Township, Cape May County for the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in bus stops and time limited parking areas designated by this section.

13.-20. (No change.)

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

**(b)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID  
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Restricted Stopping and Parking  
Time Limit Parking  
Route U.S. 202 in Somerset County**

**Adopted Amendment: N.J.A.C. 16:28A-1.55**

Proposed: December 16, 1991 at 23 N.J.R. 3742(a).  
Adopted: January 17, 1992, by Richard C. Dube, Director,  
Division of Traffic Engineering and Local Aid.  
Filed: February 6, 1992 as R.1992 d.108 **without change**.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-138.1.  
Effective Date: March 2, 1992.  
Expiration Date: June 1, 1993.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text of the adoption follows.**

16:28A-1.55 Route U.S. 202

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

(d) The certain parts of State highway Route U.S. 202 described in this subsection shall be designated and established as "Time Limit Parking" zones. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established Time Limit Parking zones:

(1) Time Limit Parking zones in Bernardsville Borough, Somerset County;

- i. Two-hour time limit parking, between 7:00 A.M. to 6:00 P.M.:
  - (1) (No change.)
  - (2) Along the east side:
    - (A) From a point 158 feet south of the southerly curb line of Mt. Airy Road to a point 100 feet north of the northerly curb line of Depot Square;
    - ii. (No change.)

**OTHER AGENCIES**

**(c)**

**CASINO CONTROL COMMISSION**

**24 Hour Gaming**

**General Provisions**

**Accounting and Internal Controls**

**Gaming Equipment**

**Roulette; Inspection Procedures; Security Procedures**

**Dice; Receipt, Storage, Inspections and Removal from Use**

**Cards; Receipt, Storage, Inspections and Removal from Use**

**Dealing Shoes**

**Approval of Gaming Equipment; Retention by Commission or Division; Evidence of Tampering**

**Adopted New Rule: N.J.A.C. 19:45-1.1A**

**Adopted Amendments: N.J.A.C. 19:40-1.2; N.J.A.C. 19:45-1.15, 1.20, 1.25, 1.27, 1.31, 1.33, 1.34, 1.35, 1.39, 1.40, 1.40A, 1.41, 1.42, 1.43 and 1.46A; N.J.A.C. 19:46-1.1, 1.6, 1.9, 1.16, 1.18, 1.19 and 1.20**

Proposed: November 4, 1991 at 23 N.J.R. 3243(a).  
Adopted: February 5, 1992 by the Casino Control Commission,  
Steven P. Perskie, Chairman.  
Filed: February 6, 1992 as R.1992 d.110, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).  
Authority: N.J.S.A. 5:12-69(a); 70(f), (g), (l); 97 and P.L. 1991, c.182.

Effective Date: March 2, 1992.

Expiration Dates: N.J.A.C. 19:40—August 24, 1994;  
N.J.A.C. 19:45—March 24, 1993;  
N.J.A.C. 19:46—April 28, 1993.

**Summary of Public Comments and Agency Responses:**  
**COMMENT:** The Division of Gaming Enforcement supports the proposal.

**RESPONSE:** Accepted.

**COMMENT:** Caesars Atlantic City and Sands Hotel, Casino and Country Club generally support the proposal, but offered various specific comments as well. For example, Caesars and Sands have commented that the proposed changes to N.J.A.C. 19:45-1.42(a) appear to require Commission approval of the drop pick-up schedule instead of continuing the existing practice of having the Commission's Principal Inspector in each hotel-casino facility approve this schedule.

**RESPONSE:** Rejected. Adoption of the changes to N.J.A.C. 19:45-1.42(a) is not intended to change the current procedures by which the Commission has delegated authority to its Principal Inspectors to approve slot drop pick-up schedules. In the near future, the Commission will publish a proposed rule for public comment that clarifies that, consistent with current practice, certain Commission responsibilities may be delegated to its staff.

**COMMENT:** Caesars and Sands have commented that the proposed changes to N.J.A.C. 19:45-1.25(d)1v, incorporating a definition of a calendar day "extending from one midnight to the next," rather than incorporating the definition of a "gaming day," for check cashing purposes will generate confusion.

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RESPONSE: Accepted. The Commission has not adopted the proposed change to N.J.A.C. 19:45-1.25(d)1v at this time. In the near future, the Commission will publish comprehensive rules concerning check cashing requirements which reflect the amendments to the Casino Control Act, which were enacted last year.

COMMENT: Sands has commented that the use of the term "date" instead of "gaming day" in N.J.A.C. 19:45-1.27, 1.40, 1.40A and 1.41 will generate confusion.

RESPONSE: Rejected. Adoption of a definition of "gaming day" as a specific period of time does not affect the current practice of using the gaming day "date" on gaming documentation, if a casino licensee so desires.

COMMENT: Sands has commented that the proposed language of N.J.A.C. 19:45-1.35(c) could be interpreted to mean that count sheets should be sent to accounting before the end of the current gaming day or that the previous gaming day's count sheets should be sent to accounting before the close of the next gaming day and has suggested clarification.

RESPONSE: Accepted. The Commission has made minor technical changes to the language of N.J.A.C. 19:45-1.35(c) to clarify that the previous gaming day's count sheets should be sent to accounting before the close of the next gaming day.

COMMENT: Sands has commented that the proposed changes to N.J.A.C. 19:45-1.42(b) requiring three people to collect and transport slot cash storage boxes should be changed to require only two people, similar to the regulatory requirements applicable to collection and transportation of table game drop boxes.

RESPONSE: Rejected. The Commission thinks that the difference between the procedures governing the collection of table game drop boxes and slot cash storage boxes and its general security concerns with slot drop collection, warrant the presence of an additional person when slot drop boxes are collected while a casino is open to the public.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

## 19:40-1.2 Definitions

All words and terms which are defined in the New Jersey Casino Control Act (P.L. 1977, c.110, as amended) are used in these rules and regulations as defined in that Act. The following words and terms, when used in these rules and regulations, shall have the following meanings, unless the context clearly indicates otherwise.

...

"Gaming day" is defined in N.J.A.C. 19:45-1.1A.

...

"On a daily basis" means something which occurs or is performed each gaming day.

...

## 19:45-1.1A Gaming day

(a) The "gaming day" for a casino licensee on a calendar day which has not been approved for extended hours of operation pursuant to N.J.S.A. 5:12-97(a) shall commence at 10:00 A.M. or the actual time when the casino opens to the public, whichever is later, and shall terminate:

1. At 4:00 A.M. on the next calendar day, if the next calendar day is a weekday which is not a holiday;

2. At 6:00 A.M. on the next calendar day, if the next calendar day is a Saturday, Sunday or State or Federal holiday;

3. In accordance with (b) below, if the next calendar day has been approved by the Commission for extended hours of casino operation pursuant to N.J.S.A. 5:12-97(a); or

4. When the casino actually closes if such time is earlier than the time specified in (a)1 through 3 above.

(b) The "gaming day" for a casino licensee on a calendar day which has been approved for extended hours of operation pursuant to N.J.S.A. 5:12-97(a) shall commence and terminate, and the end of the gaming day for the previous calendar day shall terminate, at those times set forth in the approved system of internal procedures and administrative and accounting controls of each casino licensee. Each casino licensee may establish a gaming day for slot machines which is different from its gaming day for table games; provided, however, that no gaming day shall be longer than 24 hours.

19:45-1.15 Accounting controls within the cashiers' cage

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

(d) At the end of each gaming day, at a minimum, a copy of the Cashiers' Count Sheets and related documentation shall be forwarded to the accounting department for agreement of opening and closing inventories, agreement of amounts thereon to other forms, records, and documents required by this chapter, agreement of transportation reimbursement disbursements with supporting documentation and recording of transactions.

19:45-1.20 Table inventories

(a) (No change.)

(b) Whenever a gaming table is not open for gaming activity, the table inventory and the Table Inventory Slip prepared in conformity with the procedures set forth in N.J.A.C. 19:45-1.31 shall be stored in a separate, locked clear container which shall be clearly marked on the outside with the game and the gaming table number to which it corresponds. The information on the Table Inventory Slip shall be visible from the outside of the container. All containers shall be stored either in the cashiers' cage or secured to the gaming table, provided that there is adequate security, as approved by the Commission.

(c) (No change.)

19:45-1.25 Procedures for exchange of checks submitted by gaming patrons

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

(d) All checks sought to be exchanged at the cashiers' cage shall be:

1. Presented directly to the general cashier who shall:

i-iv. (No change.)

v. Immediately exchange the check for currency and coin in an amount equal to the amount for which the check is drawn, not to exceed two hundred dollars (\$200.00) per patron per day, \*defined for purposes of this subparagraph as the 24 hour period extending from one midnight to the next,\* if such check is exchanged for the purpose of nongaming; and

vi. (No change.)

(e)-(o) (No change.)

(p) At the end of each gaming day, at a minimum, the following procedures and requirements shall be observed:

1.-2. (No change.)

19:45-1.27 Procedures for granting credit, and recording checks exchanged, redeemed or consolidated

(a)-(m) (No change.)

(n) At the end of each gaming day, at a minimum, the following procedures shall be performed:

1.-3. (No change.)

(o)-(p) (No change.)

19:45-1.31 Procedure for closing game tables

(a) Whenever gaming activity at a gaming table is concluded, the gaming chips, coins and plaques remaining at the gaming table shall be counted by the dealer or boxman assigned to the gaming table and observed by a casino supervisor assigned to the gaming table.

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

(f) Upon meeting the signature requirements described in (d) above, the Opener and the gaming chips and plaques remaining at the table shall be placed in the container specified in N.J.A.C. 19:45-1.20, after which the container shall be locked and either transported directly to the cashiers' cage by a security department member or secured to the gaming table provided that there is adequate security, as approved by the Commission. If the locked containers are transported to the cashiers' cage, a cage cashier shall determine that all locked containers have been returned, or if the locked containers are secured to the gaming table, a casino representative shall account for all the locked containers.

19:45-1.33 Procedure for opening, counting and recording contents of drop boxes and slot cash storage boxes

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

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(i) Procedures and requirements at the conclusion of the count for each gaming shift shall be the following:

1.-2. (No change.)

3. The Slot Cash Storage Box Report, after signing, shall be transported directly to the accounting department and shall not be available to any cashiers' cage personnel. The Accounting Department shall record the figures from the Slot Cash Storage Box Report on the Slot Win Report and calculate the total drop for that gaming day.

4. (No change.)

(j) (No change.)

19:45-1.34 Slot booths

(a) (No change.)

(b) The slot booth shall be designed and constructed to provide at all times maximum security for the materials housed therein and for the activities performed therein.

19:45-1.35 Accounting controls for slot booths and change machines

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

(c) \***[Prior to]**\* \***At**\* the end of \***[the]**\* \***each**\* gaming day, \***at a minimum**\*, a copy of the Slot Cashiers' Count Sheets for the previous gaming day shall be forwarded to the accounting department for agreement of opening and closing inventories, agreement of amount thereon to other records and documents required by this regulation, and recording of transactions.

(d)-(f) (No change.)

19:45-1.39 Progressive slot machines

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

(j) The amount indicated on the "progressive meter(s)" and "in meter" on each slot machine shall be recorded on a Progressive Slot Summary, at a minimum, once each gaming day and each summary shall be signed by the preparer. Supporting documents shall be maintained to explain any reduction in the registered amount from the previous entry and shall indicate the date, asset number of the slot machine, and the amount of reduction.

(k) Unless otherwise authorized by the Commission, a progressive slot machine removed from the gaming floor shall be returned to or replaced on the gaming floor within five gaming days. The amount on the "progressive meter(s)" on the returned or replacement machine shall not be less than the amount of the "progressive meter(s)" at the time of removal. If the machine is not returned or replaced, then the "progressive meter(s)" amount at the time of removal shall be added to like machine or machines as approved by the Commission.

19:45-1.40 Jackpot payouts of cash

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

(j) At the end of each gaming day, at a minimum, the original and duplicate of the Jackpot Payout Slip shall be forwarded as follows:

1.-2. (No change.)

19:45-1.40A Jackpot payouts of merchandise or other things of value

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

(j) At the end of each gaming day, at a minimum, the original Slip and duplicate copy of the Slip shall be forwarded as follows:

1.-2. (No change.)

(k)-(o) (No change.)

19:45-1.41 Procedure for filling payout reserve containers of slot machines

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

(k) At the end of each gaming day, at a minimum, the original and duplicate Hopper Fill Slip shall be forwarded as follows:

1.-2. (No change.)

19:45-1.42 Removal of slot drop buckets and slot cash storage boxes; meter readings

(a) For each slot machine and attached bill changer on the gaming floor, the slot drop bucket and slot cash storage box shall be removed at least once a week on specific days and at times designated by

the casino licensee on a schedule which shall be filed with the Commission and the Division. No slot drop bucket or, slot cash storage box shall be emptied or removed from its compartment at other than the times specified on such schedule except with the express approval of the Commission. Prior to emptying or removing any slot drop bucket or slot cash storage box, a casino licensee shall notify the Commission and the surveillance department of the transportation route that will be utilized.

(b) Procedures and requirements for removing a slot drop bucket or slot cash storage box from its compartment shall be the following:

1. If the slot drop bucket or slot cash storage box meets the requirements of N.J.A.C. 19:45-1.36(b), (c), (d) and (e):

i. When the casino is not open to the public, the removal of a slot drop bucket or slot cash storage box shall be performed by at least three employees, one of whom shall be a security department member and two of whom shall be accounting department members. Such removal shall be in the presence of a Commission inspector.

ii. When the casino is open to the public, the removal of a slot bucket or slot cash storage box shall be performed by at least four employees, two of whom shall be security department members and two of whom shall be accounting department members. Such removal shall be in the presence of a Commission inspector.

2. If the slot drop bucket meets the requirements of N.J.A.C. 19:45-1.36(h), the removal of a slot drop bucket shall be performed by at least one employee of the security department and one employee of the accounting department.

(c) Procedures and requirements for removing slot drop buckets and slot cash storage boxes from the casino shall be the following:

1. If the slot drop buckets and slot cash storage boxes are removed in conformity with (b)1 above:

i. The slot drop bucket shall be removed from its compartment and an empty slot drop bucket shall be placed in the compartment after which the compartment shall be closed and locked; and on those slot machines where a bill changer is attached, the slot cash storage box shall be removed from its compartment and an empty slot cash storage box shall be placed in the compartment after which the compartment and the bill changer door shall be closed and locked;

ii. All slot drop buckets removed from the compartments shall be transported by at least the employees described in (b)1 above and a Commission inspector directly to and secured in the count room for the counting of their contents; and

iii. All persons participating in the slot drop bucket and the slot cash storage box removal procedure, except for representatives of the Commission and Division, shall wear as outer garments only a full-length, one piece pocketless garment with openings only for the arms, feet and neck.

2. If the slot drop buckets are removed in conformity with (b)2 above:

i. The slot drop bucket shall be removed from its compartment and an empty slot drop bucket shall be placed into the compartment; and

ii. All slot drop buckets removed from compartments shall be transported by at least a Commission inspector, security department member and count room supervisor directly to, and secured in, the count room for the count of the contents, except that slot cash storage boxes removed on an emergency basis shall be transported by at least a Commission inspector, a security department member and a cage supervisor or count room supervisor directly to and secured in the count room.

(d) In addition to complying with the procedures included in (b) and (c) above, a casino licensee shall submit to the Commission for approval its procedures detailing how the slot drop bucket and slot cash storage box for each slot machine and attached bill changer on the gaming floor will be emptied or removed from its compartment when the casino is open to the public for 24 hours. Such submission shall include at least the following:

1. How patrons will be notified that a slot machine will be closed for emptying or removing slot drop buckets or slot cash storage boxes;

2. How patrons will be removed from slot aisles;

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3. How the area will be secured while the slot drop buckets or slot cash storage boxes are emptied or removed; and

4. How the compartments in which the full slot drop buckets or slot cash storage boxes are transported will be secured when in the casino.

(e) Accounting department employees with no incompatible functions shall, at least once a week read and record on a Slot Meter Sheet the number on the in-meter, drop meter, jackpot meter, manual jackpot meter, change meter and bill meters. These procedures shall be performed in conjunction with the removal and replacement of the slot drop buckets or slot cash storage boxes prior to opening the slot machines for patron play.

Recodify existing [(e)] as (f) (No change in text.)

19:45-1.43 Slot count; procedure for counting and recording contents of slot drop buckets

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

(f) Immediately prior to counting the contents of the slot drop buckets, the doors to the count room shall be securely locked, the counting devices to be used shall be checked for accuracy by employees with no incompatible functions, and, except as required by (j)2 below, no person shall be permitted to enter or leave the count room, except during a normal work break or in an emergency, until the entire counting and recording process is completed. During a work break or in the event of an emergency, the counting and recording process shall be discontinued unless the appropriate number of personnel as described in (c) above are present.

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

(i) Procedures and requirements for conducting the count shall be the following:

1. Before each slot drop bucket is emptied, one count team member shall hold up the slot drop bucket, in full view of the closed circuit television camera and the person recording the count, to properly record the slot drop bucket number;

2. The contents of each slot drop bucket shall be emptied, counted, and recorded separately and such procedures shall at all times be conducted in full view of the closed circuit television cameras located in the count room;

3. The coin contents of each slot drop bucket shall be emptied separately into either a machine that automatically counts the coins placed therein or a scale that automatically weighs the coins placed therein;

4. Immediately after the coin contents of each slot drop bucket are emptied into either the count machine or scale or, if currency, on a table in the count room, the inside of the slot drop bucket shall be held up to the full view of the closed circuit television camera and shall be shown to at least one other slot count team member and the Commission inspector to assure all contents of the slot drop bucket have been removed;

5. As the contents of each slot drop bucket is counted by the count machine or weighed by the scale, or, if currency, by two count team members, one member shall record on the Slot Win Sheet, or supporting document, the asset number of the slot machine to which the slot drop bucket contents corresponds, if not preprinted thereon and the number of coin or the weight of the coin and/or the value of the coin and/or currency counted. If the coin value is not converted until after the count is completed, the conversion shall be prepared and the dollar value of the drop shall be entered by denomination on the Slot Win Report;

6. After the contents of all the slot drop buckets are counted or weighed and recorded, each count team member shall sign the Slot Win Sheet or other document as approved by the Commission attesting to their involvement in the count;

7. After the contents of all the slot drop buckets are counted or weighed and recorded, any count team employees not required pursuant to (i)7ii below may be permitted to exit the count room provided that the following requirements are satisfied:

i. The Slot Win Sheet or other approved document must be signed by each employee exiting the count room, in accordance with (i)6 above;

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ii. At least three count team employees must remain in the count room until the verification process is completed;

iii. Surveillance must be notified prior to any employees exiting the count room;

iv. All activity in the hard count room shall be discontinued during any period when an employee is exiting the count room; and

v. A security department employee shall check all persons leaving the count room with metal detector, in the presence of a Commission inspector, at a location approved by the Commission and Division; and

8. At the conclusion of the count process any slugs that are found during the slot drop bucket pick-up or count process will be delivered to an agent of the Division together with a copy of the Slug Report. The Slug Report shall be a three-part form, at a minimum, which shall include the date, the total number of slugs received and the signature of the preparer and shall be distributed as follows:

i.-iii. (No change.)

(j) Procedures and requirements at the conclusion of the count shall be the following:

1. At least one count team member shall sign the Slot Win Sheet attesting to the accuracy of the information recorded thereon.

2. The wrapped coin and currency removed from the slot drop buckets shall be counted in the count room, in the presence of a count team member and a Commission inspector, by a cage cashier or slot cashier, prior to the cashier having access to the information recorded on the Slot Win Sheet. The cage cashier or slot cashier shall attest by signature on the Slot Win Sheet to the accuracy of the amount of coin and currency received from the slot machines; after which the Commission inspector shall sign the Slot Win Sheet evidencing the inspector's presence during the count and the fact that both the cashier and count team have agreed on the total amount of coin and currency counted. The coin and currency thereafter shall remain in the custody of cage cashiers or slot cashiers.

Recodify existing 2.-5. as 3.-6. (No change in text.)

19:45-1.46A Procedures and requirements for the use of an automated coupon redemption machine

(a)-(g) (No change.)

(h) At the end of each gaming day, a slot cashier, accompanied by a security department representative, shall remove the coupons accepted by the automated coupon redemption machine. Any coin or slot tokens removed from the automated coupon redemption machine during the removal of coupons or during any other time shall be placed in a secured container, as approved by the Commission, with the automated coupon redemption machine asset identification number attached or recorded thereon. Upon removal of the coupons and/or coins or slot tokens from the automated coupon redemption machine, a serially prenumbered three-part form, at a minimum, shall be prepared by the slot cashier. Each series of forms shall be used in sequential order, and the series numbers of all forms received by a casino shall be accounted for by employees with no incompatible functions. All original, duplicate and triplicate void forms shall be marked "VOID" and shall require the signature of the preparer. The following copies shall contain, at a minimum, the following information:

1.-2. (No change.)

(i)-(n) (No change.)

(o) At the end of each gaming day, at a minimum, the original, duplicate and triplicate copies of the forms referenced in (h), (i), (j), (k), (m) and (n) above shall be forwarded to the accounting department for agreement and shall be used to reconcile each automated coupon redemption machine in a manner as approved by the Commission.

(p) (No change.)

19:46-1.1 Gaming chips; value and non-value; physical characteristics

(a)-(k) (No change.)

(l) An impressment of each roulette table on the gaming floor shall be completed at least once a week. A casino licensee shall not complete a roulette table impressment unless it provides at least one-half hour prior notice to the Commission. The casino licensee shall

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record the results of such impressment in the Chip Inventory Ledger and shall utilize a "Non-Value Roulette Chip Impressment" form to perform such impressments as follows:

1. A casino department supervisor shall complete the "Non-Value Roulette Chip Impressment" form to record missing and excess chips and shall deliver the form and excess chips to the main bank or fill bank;

2. Upon receipt of the "Non-Value Roulette Chip Impressment" form, a main bank cashier or fill bank cashier shall immediately prepare the chips needed to impress the table; and

3. The casino department supervisor shall then deliver, directly to the appropriate table, the chips needed to impress that table.

(m) The completed "Non-Value Roulette Chip Impressment" form shall be maintained by the Accounting Department and shall contain, at a minimum, the following:

1.-2. (No change.)

3. Signature of the casino department supervisor who completes the "Non-Value Roulette Chip Impressment" form and the roulette table impressment; and

4. Signature of the main bank cashier or fill bank cashier preparing the impressment.

(n)-(p) (No change.)

19:46-1.6 Receipt of gaming chips, tokens or plaques from manufacturer or distributor; inventory, storage and destruction of chips, tokens and plaques

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

(f) At the end of each gaming day, a casino licensee shall compute and record the unredeemed liability for each denomination of chips and plaques, and shall cause to be made, at least on a monthly basis, an inventory of chips and plaques in circulation and in reserve and shall cause the result of such inventory to be recorded in the chip inventory ledger. The procedures to be utilized to compute the unredeemed liability and to inventory chips and plaques in circulation and reserve shall be submitted to the Commission for approval. A physical inventory of chips and plaques in reserve shall only be required annually if the inventory procedures incorporate the sealing of the locked compartment.

(g) (No change.)

(h) When the casino is not open to the public, all chips and plaques in the possession of the casino shall be stored in the chip bank, in the casino vault, or in a locked compartment in the cashiers' cage, except that chips or plaques may be locked in a transparent compartment on gaming tables provided that there is adequate security as approved by the Commission.

(i) (No change.)

19:46-1.9 Roulette; inspection procedures; security procedures

(a) Prior to opening a roulette table for gaming activity, a casino supervisor or member of the casino security department shall:

1.-4. (No change.)

(b) If a casino licensee uses a roulette wheel which has external movable parts, any adjustments to the movable parts shall be made by a casino supervisor or a member of the casino maintenance department, in the presence of a security department member. Adjustments to the movable parts of a roulette wheel that is located on the casino floor shall only be made:

1. When the casino is not open to the public; or

2. If the roulette wheel is moved to a secure location off the casino floor as approved by the Commission.

(c) All adjustments shall be completed prior to the required inspections in (a) above.

(d) The casino licensee may replace any of the movable parts at any time, provided, however, if any one or more of the movable parts are external then an inspection must be completed by the Division prior to reopening the roulette wheel and table for gaming activity.

(e) A log shall be maintained which shall include, at a minimum, the date, the roulette table number, whether an adjustment or replacement was completed and the signature of the person making the adjustment or replacement.

(f) When a roulette table is not open for gaming activity, the roulette wheel shall be secured by placing a cover over the entire wheel and securely locking such cover to the roulette table.

19:46-1.16 Dice; receipt, storage, inspections and removal from use

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

(c) Immediately prior to the commencement of each shift or gaming day and at such other times as may be necessary, the assistant shift manager or person above him or her, in the presence of a security officer, shall open the cabinet or primary storage area and shall remove the appropriate number of sets of dice for that shift or gaming day.

(d) All envelopes and containers used to hold or transport preinspected dice to the casino floor and those collected by security at the end of each shift or gaming day shall be transparent.

1. (No change.)

2. The envelopes or containers and seals shall be approved by the Commission.

(e) Unless otherwise approved by the Commission, all dice shall be inspected and distributed to the gaming tables in accordance with one of the following alternatives:

1.-2. (No change.)

3. Alternative No. 3: Inspection in storage area and distribution to tables:

i.-iii. (No change.)

iv. At the beginning of each shift or gaming day and at such other times as may be necessary, an assistant shift manager or person above him or her and a security officer shall distribute the envelopes or containers to a craps supervisor in each craps pit or place them in a locked compartment in the pit stand, keys to which shall be in the possession of the pit boss or those persons above him or her in the organizational hierarchy;

v.-viii. (No change.)

(f) (No change.)

(g) At the end of each shift or gaming day, a craps supervisor other than the one who originally inspected the dice, shall reinspect each die for evidence of tampering. Such evidence discovered at this time or at any other time shall be immediately reported to an agent of the Commission and Division by the completion and delivery of an approved three-part Dice Discrepancy Report.

1. Such dice shall be placed in a sealed envelope or container.

i.-ii. (No change.)

iii. The Commission Inspector receiving the dice shall sign the original, duplicate and triplicate copy of the Dice Discrepancy Report and retain the original at the Commission Booth.

(1) (No change.)

(2) The triplicate copy shall be returned to the pit and shall be maintained in a secure place within the pit until a security officer collects it at the end of each shift or gaming day.

2. All other dice at this time shall be put into envelopes or containers.

i. (No change.)

ii. The envelope or container shall be appropriately sealed and maintained in a secure place within the pit until a security officer collects it at the end of each shift or gaming day.

(h) All extra dice in dice reserve that are to be destroyed or cancelled shall be placed in a sealed envelope or container, with a label attached to each envelope or container which identifies the date and time and is signed by the pit boss.

(i) At the end of each shift or gaming day, a security officer shall collect and sign all envelopes or containers of used dice and any dice in dice reserve that are to be destroyed or cancelled and shall transport them to the security department for cancellation or destruction. The security officer shall also collect all triplicate copies of Dice Discrepancy Reports, if any. No dice that have been placed in a cup for use in gaming shall remain on a table for more than 24 hours.

(j) At the end of each shift or gaming day, a security officer may collect all extra dice in dice reserve.

1. If collected, dice shall returned to the cabinet or primary storage area; provided, however, that any such dice must be re-

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inspected in accordance with one of the alternatives listed in (e) above, prior to their use for gaming.

2. If not collected, all dice in dice reserve must be reinspected in accordance with one of the alternatives listed in (e) above, prior to their use for gaming, except for those dice maintained in a locked compartment pursuant to (e)2v(2) or (e)3vi above.

(k) The casino licensee shall submit to the Commission for approval, procedures for:

1. (No change.)

2. A reconciliation on a daily basis of the dice distributed, the dice destroyed and cancelled and/or returned to the storage room and, if any, the dice in dice reserve; and

3. (No change.)

(l) All dice, other than those retained for Commission or Division inspections, shall within 48 hours of collection be either destroyed or cancelled.

1.-2. (No change.)

3. The destruction and cancellation of dice shall take place in a secure place, the location and physical characteristics of which shall be approved by the Commission.

19:46-1.18 Cards; receipt, storage, inspections and removal from use

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

(c) Immediately prior to the commencement of each shift or gaming day and at such other times as may be necessary, the assistant shift manager or person above him or her, in the presence of a security officer, shall open the cabinet or primary storage area and shall remove the appropriate number of decks of cards for that shift or gaming day.

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

(f) Card inspection at the gaming table shall require each pack to be used to be sorted into sequence and into suit to assure that all cards are in the deck.

1. (No change.)

2. All envelopes and containers used to hold or transport cards collected by security at the end of each shift or gaming day shall be transparent.

i. (No change.)

ii. The envelopes or containers and seals shall be approved by the Commission.

iii. The casino supervisor shall maintain the envelopes or containers in a secure place within the pit until a security officer collects them at the end of the shift or gaming day.

(g) No cards that have been used in gaming shall remain on a table for more than 24 hours. Additionally, cards used to game at baccarat shall be changed at least once during the gaming day.

(h) Cards damaged during the course of play shall be replaced by the dealer who shall request a casino supervisor to bring cards in substitution from the pit stand.

1. (No change.)

2. The casino supervisor shall maintain the envelopes or containers in a secure place within the pit until a security officer collects them at the end of the shift or gaming day.

(i) At the end of each shift or day and at such other times as may be necessary, the casino supervisor shall collect all cards used to play out the shift or gaming day.

1. (No change.)

2. The casino supervisor shall maintain the envelopes or containers in a secure place within the pit until a security officer collects them at the end of the shift or gaming day.

(j) (No change in text.)

(k) All extra decks in card reserve with broken seals shall be placed in a sealed envelope or container, with a label attached to each envelope or container which identifies the date and time and is signed by the pit boss.

(l) At the end of each shift or gaming day, a security officer shall collect and sign all envelopes or containers with damaged cards, cards used during the shift or gaming day, and all extra decks in card reserve with broken seals and shall return the envelopes to the security department.

(m) At the end of each shift or gaming day, a security officer may collect all extra decks in card reserve. If collected, all sealed decks shall either be cancelled or destroyed or returned to the cabinet or primary storage area.

(n) When the envelopes or containers of used cards and reserve cards with broken seals are returned to the security department, they shall be inspected for tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play.

1. The casino licensee shall cause to be inspected either:

i. All decks used during the gaming day; or

ii. A sample of decks selected at random or in accordance with an approved stratification plan provided that the procedures for selecting the sample size and for assuring a proper selection of the sample is submitted to and approved by the Commission;

2.-4. (No change.)

5. The casino licensee shall submit the training procedures for those employees performing the inspection, which shall be approved by the Commission;

6. Evidence of tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play discovered at this time, or at any other time, shall be immediately reported to the Commission and the Division by the completion and delivery of an approved three-part Card Discrepancy Report.

i. The report shall accompany the cards when delivered to the Commission.

ii.-iii. (No change.)

(o) The casino licensee shall submit to the Commission for approval, procedures for:

1. (No change.)

2. A reconciliation on a daily basis of the cards distributed, the cards destroyed and cancelled or returned to the storage room and, if any, the cards in card reserve;

3. A physical inventory of the cards at least once every three months.

i. This inventory shall be performed by an individual with no incompatible functions and shall be verified to the balance of cards on hand required in (o)1i above.

ii. (No change.)

(p) Where cards in an envelope or container are inspected and found to be without any indication of tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play, those cards and all other used cards shall within 48 hours of collection be destroyed or cancelled. Once released by the Commission and Division, the cards submitted as evidence shall immediately be destroyed or cancelled.

1.-2. (No change.)

3. The destruction and cancellation of cards shall take place in a secure place, the location and physical characteristics of which shall be approved by the Commission.

19:46-1.19 Dealing shoes

(a) (No change.)

(b) Cards used to game at blackjack, minibaccarat and red dog shall be dealt from a dealing shoe which shall be securely chained to the gaming table when the table is open for gaming activity and secured in a locked compartment when the table is not open for gaming activity. Cards used to game at baccarat shall be dealt from a dealing shoe which shall be secured in a locked compartment when the table is not open for gaming activity.

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

19:46-1.20 Approval of gaming equipment; retention by commission and division; evidence of tampering

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

(c) Any evidence that gaming equipment or other devices used in a casino including, without limitation, gaming tables, layouts, roulette wheels, roulette balls, drop boxes, big six wheels, gaming chips, plaques, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, locking devices, data processing equipment, tokens and slot machines have been tampered with or altered in any way which would affect the integrity, fairness, honesty or suitability of the gaming equipment or other device for

**OTHER AGENCIES**

**ADOPTIONS**

use in a casino shall be immediately reported to an agent of the Commission and Division. A member of the casino licensee's security department shall be required to insure that the gaming equipment or other device and any evidence required to be reported pursuant to this subsection is maintained in a secure manner until the arrival of an agent of the Division. Rules concerning evidence of tampering with dice and cards may be found at N.J.A.C. 19:46-1.16(g) and 19:46-1.18(n), respectively.

**(a)**

**EXECUTIVE COMMISSION ON ETHICAL STANDARDS**

**Adopted New Rules: N.J.A.C. 19:61**

Proposed: November 18, 1991 at 23 N.J.R. 3436(b).

Adopted: January 23, 1992 by Executive Commission on Ethical Standards, Rita L. Strmensky, Acting Executive Director.

Filed: January 28, 1992 as R.1992 d.97, with **substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3), and with **portions not adopted, but still pending** (N.J.A.C. 19:61-2.2).

Authority: N.J.S.A. 52:13D-21.

Effective Date: March 2, 1992.

Expiration Date: March 2, 1997.

**Summary of Public Comments and Agency Responses:**

The Commission received five comment letters, three of which were received after the comment period closed on December 19, 1991. Notwithstanding the lateness of the three comments, the Commission considered all five comment letters. The commenters were: Peter Calderone, Assistant Commissioner, Department of Personnel; Jan Gabin, Vice-President of the Office of Legal Management, U.M.D.N.J.; Albert Price, Ethics Liaison, Treasury; Jeffrey Stoolmacher, Ethics Liaison, Department of Transportation; and Alexander P. Waugh, Jr., Assistant and Counsel to the Attorney General.

Four of the five comments addressed N.J.A.C. 19:61-2.2 of the proposed rules with regard to disclosure of secondary employment. The Commission has reserved action on the proposed N.J.A.C. 19:61-2.2, and comments relating to it will be documented separately at the time that N.J.A.C. 19:61-2.2 is adopted.

COMMENT: One comment addressed the provisions in N.J.A.C. 19:61-3.1 and 3.5 regarding discipline of a State officer or employee. The comment noted that the penalties permitted under the application of the Conflicts Law and the provisions of Title 11A and the rules of the Department of Personnel were mentioned. The commenter felt that inclusion of alternate routes for disciplinary action is confusing.

RESPONSE: The Commission agreed that reference to both its own statutory disciplinary powers and the Title 11A provision is confusing and inaccurate. Because the rules are intended to govern the Commission's exercise of its statutory powers, the reference to Title 11A and the rules of the Department of Personnel have been deleted from N.J.A.C. 19:61-3.1 and 3.5, as they are not applicable to the Commission's exercising of its authority.

COMMENT: One commenter noted that N.J.A.C. 19:61-3.5 as proposed suggested that the Commission had the right to approve another agency's final decision. The commenter suggested that the section be revised to avoid procedural disputes in the future.

RESPONSE: The Commission acknowledged that N.J.A.C. 19:61-3.5, as proposed, did not clearly state the Commission's power to review agency-imposed disciplinary actions after a finding of a conflicts violation. N.J.A.C. 19:61-3.5 has been clarified to reflect the Commission's statutory power under N.J.S.A. 52:13D-23(d) to accept, modify or reject an agency's determination with regard to a conflicts violation.

**Summary of Agency-Initiated Changes:**

The Commission also initiated several minor changes of a technical or clarifying nature as follows:

1. The Commission added a definition of "preliminary investigation" to N.J.A.C. 19:61-1.10 in order to clarify the timeframe during which the confidentiality provision of N.J.A.C. 19:61-3.1(c) applies.

2. An addition to N.J.A.C. 19:61-3.1(c) clarifies that the confidentiality provision applies to a preliminary investigation by a departmental ethics liaison officer or ethics committee.

3. The Commission has changed the term "complaint" to "allegation" in N.J.A.C. 19:61-3.1, 3.3, 3.4, and 5.1 to clarify that the term "allegation" characterizes matters handled by the Commission up to the point at which the formal "complaint" procedure is instituted preparatory to a hearing pursuant to the Administrative Procedure Act and to eliminate any confusion as to which "complaints" are available to the public.

4. A change was also made in N.J.A.C. 19:61-2.4 to eliminate any misunderstanding as to which documents maintained by the Commission are available to the public. The term "complaints" has been deleted, since a formal complaint is included in the term, "pleading".

5. Finally, a new subsection was added to N.J.A.C. 19:61-3.1 (now designated as N.J.A.C. 19:61-3.1(g)) to specifically state the Commission's ability to refer an allegation to a department for appropriate action. This power of the Commission is implied, but was not specifically stated, in subchapter 2 of this chapter.

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

**CHAPTER 61  
EXECUTIVE COMMISSION ON  
ETHICAL STANDARDS**

**SUBCHAPTER 1. ORGANIZATION**

**19:61-1.1 Scope of rules**

The rules in this chapter shall constitute the practices and procedures of the Executive Commission on Ethical Standards and shall govern all activities of the Commission pursuant to N.J.S.A. 52:13D-12 et seq.

**19:61-1.2 Meetings and offices**

The Commission shall meet at the call of its chairman upon not less than three days notice to members thereof. The Commission may maintain offices in such place or places as it may deem advisable.

**19:61-1.3 Presiding member**

The chairman shall preside, but in case of absence or inability to serve, the vice chairman shall temporarily preside in his or her stead. In the absence of both, the senior member attending shall preside. Seniority of the members of the Commission shall be determined by the order of their respective appointments to the Commission.

**19:61-1.4 Quorum**

Four members of the Commission shall constitute a quorum. If a quorum does not attend a session of the Commission, the presiding member may adjourn the Commission, or, in the absence of all the members, the Executive Director or his or her designee may adjourn the Commission from day to day.

**19:61-1.5 Executive or open meetings**

Meetings of the Commission, including open and executive sessions, shall be conducted in compliance with the provisions of the open Public Meetings Act, N.J.S.A. 10:4-6 et seq.

**19:61-1.6 Majority vote**

No determination of the Commission shall be rendered unless supported by the vote of members constituting a majority of the quorum present. Minutes of Commission meetings may be approved by a majority of eligible members. A member is eligible to vote on minutes of meetings that he or she attended.

**19:61-1.7 Conflict with agency rules**

Any conflict between the rules established by the Commission and those developed by the various State agencies to implement their respective Codes of Ethics shall be resolved in favor of the rules established by the Commission.

**19:61-1.8 Enlargement of time**

A reasonable extension of time for the taking of any action for which these rules prescribe a time limitation may be granted by the Commission upon a clear showing of good cause and the absence of prejudice.

## ADOPTIONS

## 19:61-1.9 Administrative head

The Commission may appoint an Executive Director who shall serve as the administrative head of the Commission. In the absence of an administrative head, the Chairman may designate an individual to serve as acting administrative head.

## 19:61-1.10 Definitions

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

"Commission" shall mean the Executive Commission on Ethical Standards continued and established in the Department of Law and Public Safety by the provisions of N.J.S.A. 51:13D-12 et seq.

"Chairman" and "Vice Chairman" shall mean the members of the Executive Commission on Ethical Standards designated by the Governor to serve as the Chairman and Vice Chairman thereof.

**"Preliminary investigation" means the investigative process undertaken by the Commission and/or its staff with regard to an allegation prior to review of and final action on the allegation by the Commission at a public meeting, pursuant to either N.J.A.C. 19:61-3.1(h) or (i).\***

## SUBCHAPTER 2. JURISDICTION

## 19:61-2.1 Jurisdiction of the Commission

(a) The jurisdiction of the Commission shall extend to those situations arising under the provisions of N.J.S.A. 52:13D-12 et seq., involving State officers and employees, and special State officers and employees of the Executive Branch of the government, and as granted under the provisions of Executive Orders.

(b) All determinations made by State agencies with regard to the Conflicts of Interest Law or a Code of Ethics shall be filed with the Commission. It shall be within the discretion of the Commission to review said determinations and affirm, reverse or modify same.

19:61-2.2 \*[Agency codes of ethics]\* **\*(Reserved)\***

\*[(a) State agencies shall include in their Codes of Ethics a requirement that all employees annually disclose outside employment and/or business interests.

(b) All disclosures made in accordance with said Code of Ethics requirements shall be forwarded to the Commission for review.]\*

## 19:61-2.3 Procedure where Commission is without jurisdiction

Whenever it shall appear that the Commission is without jurisdiction over a matter brought before it, it shall so notify the person bringing the matter. Where possible, the matter shall be forwarded to the proper agency for further action.

## 19:61-2.4 Access to documents

(a) Every financial disclosure statement accepted for filing by the Commission, requests for advisory opinions from the Commission and replies to requests for advisory opinions, \*[complaints or]\* pleadings related to a complaint, all final orders, decisions and opinions shall be maintained by the Commission **\*as documents available to the public\***.

(b) Any person shall, upon request, be afforded opportunity to examine a document, or a photocopy of any document so maintained at the Commission offices between 9:30 A.M. and 4:30 P.M. on business days.

## 19:61-2.5 Copies of documents; fees

(a) Photocopies of documents maintained by the Commission pursuant to N.J.A.C. 19:61-2.4 shall be provided in accordance with the procedures and fees set forth in N.J.S.A. 47:1A-1 et seq.

(b) Fees for photocopies shall be due and payable at such time as the photocopies have been prepared.

## SUBCHAPTER 3. PROCEEDINGS

19:61-3.1 \*[Complaints]\* **\*Allegations\***; procedure

(a) Every \*[complaint or]\* allegation, whether written or oral, received by the Commission shall be reviewed by the Commission's staff for an initial determination as to whether the alleged conduct falls within the jurisdiction of the Commission.

## OTHER AGENCIES

1. It shall be within the discretion of the Commission to transfer those \*[complaints]\* **\*allegations\*** involving the alleged violation of a code, rule, or regulation promulgated by a State agency, to that agency for disposition in accord with its procedures.

2. It shall be within the discretion of the Commission to transfer those \*[complaints]\* **\*allegations\*** involving the alleged violation of another State statute to the appropriate enforcing authority.

**\*3. Any preliminary investigation by a departmental ethics liaison officer or a departmental ethics committee shall be confidential.\***

(b) The Commission shall promptly conduct and complete a preliminary investigation of all \*[complaints]\* **\*allegations\***; such investigation may include interviews of the complainant, the State officer or employee involved, and any other individuals who possess knowledge of the circumstances surrounding the alleged conduct.

(c) At the beginning of the preliminary investigation, the Commission shall assign a case number to the \*[complaint]\* **\*allegation\***.

1. During the course of the preliminary investigation, the \*[complaint]\* **\*allegation\*** shall be identified only by case number, not by the name(s) of the State officer(s) or employee(s) involved.

2. No information regarding the \*[complaint]\* **\*allegation\*** shall be made public until after the Commission action in accordance with \*[(g) or] (h) \*or (i)\* below.

(d) Upon the conclusion of the preliminary investigation, a written report of the investigation shall be made to the entire Commission.

(e) The Commission shall notify the employee(s) involved and the head of the department employing said State officer(s) or employee(s) of the date of the meeting at which the Commission expects to consider the report of the preliminary investigation.

(f) If a Commission member holds office or employment in the same Department which employs the State officer or employee named in the \*[complaint]\* **\*allegation\***, he or she shall disqualify himself or herself from participation in any decisional process relating to that particular case.

**\*[(g) The Commission may, after consideration of the report of the preliminary investigation, refer the allegation to the department of the employee(s) involved for appropriate action.\***

\*[(g)]\*\*[(h)\* If the Commission, after consideration of the report of the preliminary investigation, finds that there has been no violation of N.J.S.A. 52:13D-12 et seq., or any code, rule, or regulation promulgated pursuant thereto, as alleged, it shall dismiss the \*[complaint]\* **\*allegation\***. Said dismissal, together with the report upon which it is based, shall be part of the permanent records of the Commission.

\*[(h)]\*\*[(i)\* If the Commission, after considering the report of the preliminary investigation, determines that there are indications of a violation meriting further proceedings, \*[the]\* **\*a\*** complaint shall be set down promptly for hearing at the Office of Administrative Law pursuant to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, or the Commission may hold the hearing itself. If the Commission hears the matter, it shall follow the standards of the Administrative Procedure Act.

\*[(i)]\*\*[(j)\* After the hearing is concluded, a decision shall be issued in accordance with the time frame set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-10.

\*[(j)]\*\*[(k)\* If the Commission determines that the State officer or employee has violated the provisions of N.J.S.A. 52:13D-12 et seq., or any code, rule, or regulation promulgated by any State agency pursuant thereto, it shall fine said State officer or employee in accordance with the provisions of N.J.S.A. 52:13D-21(i). An assessed penalty may be collected in a summary proceeding pursuant to the Penalty Enforcement Law (N.J.S.A. 2A:58-1).

1. The Commission may further order or direct the State agency employing the State officer or employee to suspend said officer or employee for a period not in excess of one year\*[ , in accordance with the provisions of Title 11A and the rules of the Department of Personnel]\*.

2. Should the Commission find that the conduct of said State officer or employee constitutes a willful and continuous disregard of the provisions of N.J.S.A. 52:13D-12 et seq., or any code, rule

## OTHER AGENCIES

or regulation promulgated by any State agency pursuant thereto, it may order or direct the State agency employing the State officer or employee to remove the State officer or employee from his or her office or employment and may further direct that the State agency bar such person from holding any public office or employment in this State in any capacity whatsoever for a period of not exceeding five years from the date on which he or she was found guilty by the Commission\*, in accordance with the provisions of Title 11A and the rules of the Department of Personnel]\*.

### 19:61-3.2 Subpoena for witnesses

(a) If the Commission shall determine that the testimony of any person or persons is required, it may issue a subpoena in the name of the Commission requiring such person or persons to appear and testify before the Commission, Commission member, or administrative staff member thereof, from day to day until the examination of such person or persons shall be completed. The Chairman or, in his or her absence, the Vice Chairman or, in the absence of both, the next-senior member, may make the determination, on behalf of the Commission, to issue a subpoena.

(b) The subpoena may also contain a direction that such person bring with him or her to the examination, any books, papers, or documents designated therein.

(c) If a person subpoenaed to attend any hearing refuses or fails to appear to be examined, or to answer any question or to produce any books, records, accounts, papers and documents when ordered to do so by the Commission, the Commission may apply to the Superior Court to compel the person to comply forthwith with the subpoena, directive or order of the Commission.

### 19:61-3.3 \*[Complaint]\* **\*Allegation\*** by member of Commission

Any member of the Commission may file \*[a complaint]\* **\*an allegation\*** with the Commission. Said \*[complaint]\* **\*allegation\*** shall thereafter be treated in accordance with N.J.A.C. 19:61-3.1, except that the \*[complainant]\* Commission member **\*making the allegation\*** shall thereafter be precluded from participating in any decisional processes having to do with that particular cause.

### 19:61-3.4 \*[Complaint]\* **\*Allegation\*** before State agency

\*[A complaint alleging]\* **\*An allegation of\*** the violation by a State officer or employee of a code, rule, or regulation promulgated by a State agency pursuant to the provisions of N.J.S.A. 51:13D-12 et seq., may be filed with the State agency employing said officer or employee in accord with the procedures established by the agency to process such \*[complaints]\* **\*allegations\***. Upon receipt of such \*[complaint]\* **\*allegation\***, the State agency shall file a copy of same with the Commission. It shall be within the discretion of the Commission to direct the State agency to transfer the \*[complaint]\* **\*allegation\*** to it for hearing in accord with N.J.A.C. 19:61-3.1.

### 19:61-3.5 Determination by State agency

Notice of all determinations made by State agencies in connection with hearings conducted pursuant to N.J.A.C. 19:61-3.1 shall be filed with this Commission. All determinations **\*with respect to the Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq.\*** which involve the removal of a State officer or employee or any other disciplinary actions shall be effective when approved by this Commission \*[and in accord with the provisions of Title 11A and the rules of the Department of Personnel]\*.

### 19:61-3.6 Relaxation of rules

The rules set forth in this subchapter regarding the procedural requirements for the filing of complaints may be relaxed by the Commission in any instance where it shall be manifest to the Commission that a strict adherence to them will work surprise or injustice. In any matter not expressly controlled by these rules or by statute, the Chairman shall exercise his or her discretion.

## SUBCHAPTER 4. ADVISORY OPINIONS

### 19:61-4.1 Requests for advisory opinions

Requests for advisory opinions from the Commission concerning possible violations of N.J.S.A. 52:13D-12 et seq., or any code, rules or regulations promulgated pursuant thereto, may be made by any

## ADOPTIONS

person or persons. Said request shall be made in writing; shall contain a full statement of the facts and circumstances giving rise to the question in issue; and shall be filed with the Commission.

## SUBCHAPTER 5. GENERAL PROVISIONS

### 19:61-5.1 Investigations and hearings

The Commission shall have the power to undertake investigations and hold hearings into matters having relevance to the provisions of N.J.S.A. 52:13D-12 et seq., whether or not \*[a formal complaint]\* **\*an allegation\*** has been filed or request for advisory opinion made, and to this end, the full investigative authority and subpoena power of the Commission shall obtain and be available as required.

### 19:61-5.2 Publication

(a) The Chairman of the Commission shall cause to be filed with the Office of Administrative Law:

1. All advisory opinions of the Commission rendered pursuant to N.J.S.A. 52:13D-21(g); and

2. Notice of any disciplinary action taken by the Commission pursuant to N.J.S.A. 52:13D-21(i).

### 19:61-5.3 Validity of rules of any portion declared invalid

If any rule, sentence, paragraph or section of these rules or the application thereof to any persons or circumstances shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any rule shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of these rules.

### 19:61-5.4 Procedures to request Commission action to promulgate, amend or repeal rules

(a) Persons requesting Commission action to promulgate, amend or repeal rules shall comply with Chapter 27, Laws of New Jersey 1981, Section II (N.J.S.A. 52:14B-4(f)) and any amendments thereto and any implementing rules as adopted by the Office of Administrative Law.

(b) Such persons may obtain forms for petitioning this Commission's Administrative Code Rules, from the Executive Commission on Ethical Standards.

(c) When considering the petition, the Commission shall comply with the time lines and procedures contained in Chapter 27, Laws of New Jersey 1981 Section II (N.J.S.A. 52:14B-4(f)).

### 19:61-5.5 Positions in State government with responsibility for matters affecting casino activity

(a) The Executive Commission on Ethical Standards has, in consultation with the Attorney General's Office, determined that the following positions in State government have responsibility for matters affecting casino activity and therefore are subject to the restrictions of the Casino Ethics Amendment (N.J.S.A. 52:13D-17.2):

1. Department of Environmental Protection and Energy; Division of Coastal Resources; or successor agencies;

i. Bureau of Coastal Project Review or successor agency (one chief and three regional supervisors classified as Supervising Environmental Specialists or successors performing those functions);

ii. Tidelands Resources Council or successor agency (members of the Council);

2. Department of Community Affairs (Division of Housing) or successor agencies;

i. Bureau of Construction Code Enforcement or successor agency (Chief; assistant chief; supervisor, plans approval or successors performing those functions);

ii. Bureau of Housing Inspection or successor agency (Chief; supervisor, Housing Code Compliance assistant regional supervisor, Housing Code Enforcement or successors performing those functions);

3. State Athletic Control Board or successor agency (Commissioner; three members or successors performing those functions).

(b) The list in (a) above is in addition to the persons identified in N.J.S.A. 52:13D-17.2(a) as being covered by the provisions of the Casino Ethics Amendment.

# PUBLIC NOTICES

## EDUCATION

(a)

### DIVISION OF EXECUTIVE SERVICES

#### Notice of Action on Petition for Rulemaking N.J.A.C. 6:8-9

Petitioner: Board of Education of the School District of South Orange and Maplewood.

Take notice that on January 10, 1992, the Department of Education received a petition for rulemaking concerning N.J.A.C. 6:8-9, to afford local school districts the option of utilizing alternatives for remedial course instruction during summer session in Approved Public Elementary and Secondary School Summer Sessions. Public notice of this petition was published in the February 18, 1992 New Jersey Register.

In accordance with N.J.A.C. 1:30-3.6 and after thorough review of the petition, the State Board of Education has determined that the matter will receive further deliberations. The additional time spent on review of the petition will ensure a comprehensive deliberation. A report on the results of that review will be made at the March 4, 1992 State Board meeting. The result will then be mailed to the South Orange-Maplewood School District and be submitted to OAL for publication.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

## ENVIRONMENTAL PROTECTION AND ENERGY

(b)

### OFFICE OF REGULATORY POLICY

#### Amendment to the Sussex County Water Quality Management Plan Public Notice

Take notice that on January 2, 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 Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Sussex County Water Quality Management Plan was adopted by the Department. This amendment was submitted by Lyn Halliday of the Sussex County Planning Board on behalf of the Sussex County Board of Chosen Freeholders. The adopted amendment allows for a new on-site groundwater disposal system to serve the Blue Heron Plaza development, a proposed 125,000 square foot shopping center in Sparta Township. The projected wastewater flow from this development is 16,500 gallons per day.

(c)

### OFFICE OF REGULATORY POLICY

#### Amendment to the Upper Delaware Water Quality Management Plan Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Upper Delaware Water Quality Management (WQM) Plan. This amendment, proposed by the Township of Franklin, would adopt a Wastewater Management Plan (WMP) for the Township of Franklin, Warren County. The WMP provides for the construction of the Brandywine Development Sewage Treatment Plant (STP) within the Broadway section of the Township. The industrial and commercial zoned areas of the Township and the existing Angel Valley Trailer Park and Franklin Township Elementary School have been identified for non-surface discharge under 20,000 gallons per day (gpd). The remainder

of the Township is designated for non-surface discharge under 2,000 gpd. The Warren County Vocational School STP will remain in operation.

This notice is being given to inform the public that a plan amendment has been proposed for the Upper Delaware WQM Plan. All information dealing with the WQM Plan, and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel, Office of Regulatory Policy, at the NJDEPE address cited above with a copy sent to Committeeman Adam Bowser, Township of Franklin, Route 57, P.O. Box 547, Broadway, New Jersey 08808. 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 public hearing.

(d)

### OFFICE OF REGULATORY POLICY

#### Amendment to the Upper Raritan Water Quality Management Plan Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Upper Raritan Water Quality Management (WQM) Plan. The amendment proposal was submitted by the Somerset County Board of Chosen Freeholders. This amendment would transfer wastewater management planning (WMP) responsibility from the following agencies to the Somerset County Board of Chosen Freeholders: Bedminster Township, Bernardsville Borough, Branchburg Township, Far Hills Borough, Hillsborough Municipal Utilities Authority, Manville Borough, Millstone Borough, Peapack-Gladstone Borough, Somerset Raritan Valley Sewerage Authority, and Warren Township Sewerage Authority for a portion of the Township approximating the Raritan River Basin.

This notice is being given to inform the public that a plan amendment has been proposed for the Upper Raritan WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

Interested persons may submit written comments on the proposed amendment to Mr. Edward Frankel, at the NJDEPE address cited above with a copy sent to Mr. Anthony V. McCracken, Sr., Somerset County Planning Board, P.O. Box 3000, County Administration Building, Somerville, New Jersey 08876. All comments must be submitted within 30 days of the date of this 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 and must be submitted within 30 days of the date of this notice to Mr.

## CORRECTIONS

## PUBLIC NOTICES

Frankel at the NJDEPE address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

This notice of administrative correction is published under N.J.A.C. 1:30-2.7 to correct any confusion that may have arisen due to the error in the texts of the Notices.

## CORRECTIONS

(a)

### Notice of Opportunity for Public Comment 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 New Jersey Department of Corrections is seeking public comment from interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the Department of Corrections' development of its self-evaluation plan and transition plan under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq., 28 CFR 35.105 and 35.150.

The New Jersey Department of Corrections, 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 modification, see 28 CFR 35.105(a). In the event that structural changes to facilities will be undertaken to achieve program accessibility, the New Jersey Department of Corrections shall, by July 26, 1992, develop a transition plan setting forth the steps necessary to complete such changes, see 28 CFR 35.150(d). Under the ADA, the State must provide interested persons an opportunity to participate in the State's development of its self-evaluation plan and its transition plan by submitting comments, see 28 CFR 35.105(b) and 35.150(d).

Interested persons should submit written comments by April 1, 1992 to:

Elaine E. Ballai, Esq.  
Regulatory Officer, Standards Development Unit  
Department of Corrections  
CN 863  
Trenton, New Jersey 08625

All comments timely submitted by interested persons in response to this notice shall be considered by the New Jersey Department of Corrections with respect to its self-evaluation plan and transition plan.

## TRANSPORTATION

(b)

### THE COMMISSIONER DIVISION OF POLICY, CAPITAL PROGRAMMING AND AUTHORITIES BUREAU OF POLICY AND LEGISLATIVE ANALYSIS

### Notice of Administrative Correction Notice of Receipt of Petition for Rulemaking Notice of Action on Petition for Rulemaking Speed Limits Route U.S. 9 New Gretna Village N.J.A.C. 16:28-1.41

Take notice that the Department of Transportation has discovered an error in the text of the proposed Notice of Receipt and Action on Petition for Rulemaking to N.J.A.C. 16:28-1.41 published in the New Jersey Register on December 2, 1991 and January 21, 1992 at 23 N.J.R. 3660(b) and 24 N.J.R. 306(b), respectively.

The notices filed with the Office of Administrative Law reflected that the Routes read as "Routes 679, North Maple Avenue and U.S. Highway 9, New Gretna Village" and the name of the petitioner reads as "Mrs. Joan A. Zaryck". The notices should have read "Route U.S. 9, including Parts of Route 444 in Burlington County" and the name of the petitioner should have read "Mrs. Joan A. Zarych".

## OTHER AGENCIES

(c)

### PUBLIC EMPLOYMENT RELATIONS COMMISSION APPEAL BOARD

### Notice of Receipt of and Action on Petition for Rulemaking Representation Fee in Lieu of Dues N.J.A.C. 19:17-3.4 and 4.1

Petitioner: New Jersey Education Association.  
Authority: N.J.S.A. 34:13A-5.9.

Take notice that on January 27, 1992 the New Jersey Education Association (NJEA) by Betty Kraemer, President, and Robert H. Chanin, Esq., and Richard A. Friedman, Esq., attorneys, requested the Public Employment Relations Commission and the Public Employment Relations Commission Appeal Board to amend N.J.A.C. 19:17-3.4(a) and N.J.A.C. 19:17-4.1(a), part of the administrative rules enacted by the Commission pursuant to N.J.S.A. 34:13A-5.9 to administer P.L. 1979, c.477.

The NJEA proposes changes in these rules which would allow a majority representative to retain that portion of a representation fee in lieu of dues which supports activities of a partisan political or ideological nature only incidentally related to the terms and conditions of employment unless the person paying the representation fee objects. Under the current version of N.J.A.C. 19:17-3.4(a), no representation fee payer—not simply those who object—may be charged for political expenditures. The NJEA asserts that all pertinent cases decided by the United States Supreme Court have held that a constitutional violation occurs only when political activities are subsidized by representation fees paid by nonmembers who object. The NJEA further asserts that the Legislature, in enacting the representation fee statute (P.L. 1979, c.477), contemplated that majority representative organizations would be able to retain the portion of representation fees spent on political activities absent objection from the nonmembers paying the fees. The NJEA also asserts that the decision of the New Jersey Supreme Court in *Boonton Bd. of Ed. v. Kramer*, 99 N.J. 523 (1985), cert den. 106 S. Ct. 1388 (1986) does not bar use of nonmember fees of non-objecting fee payers for political purposes.

The petitioner recommends that N.J.A.C. 19:17-3.4(a) and N.J.A.C. 19:17-4.1(a) be amended as follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

19:17-3.4 Amount of representation fee in lieu of dues; annual adjustment

(a) The maximum representation fee in lieu of dues assessed nonmembers in any dues year shall be the lower of:

1. Eighty-five percent of the regular membership dues, fees and assessments charged by the majority representative to its own members.

2. Regular membership dues, fees and assessments, charged by the majority representative to its own members, reduced by the percentage amount spent during the most recently completed fiscal year by the majority representative and any affiliate of the majority representative which receives any portion of the representation fees in lieu of dues paid or payable to the majority representative on benefits available to or benefitting only its members [and in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment]. The amount shall be based upon the figures contained in the statement provided nonmembers prior to the start of the dues year in accordance with N.J.A.C. 19:17-3.3(a)(1).

(b) Every majority representative shall annually recalculate its representation fee in lieu of dues in accordance with (a) above.

19:17-4.1 Period for filing of requests for review

(a) Each nonmember shall be afforded a period of at least 30 days after the majority representative has provided the information described in N.J.A.C. 19:17-3.3(a) within which to file a request for review of the amounts assessed by the majority representative as the nonmember's representation fee in lieu of dues or to object to payment of amounts

**PUBLIC NOTICES**

**OTHER AGENCIES**

**in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment.**

(b) Any request for review of a representation fee in lieu of dues, filed within the time period set by the majority representative in accordance with (a) above, will be deemed effective to entitle the employee to a return of any portion of the employee's representation fee in lieu of dues which is determined to be non-chargeable to the employee.

**PUBLIC EMPLOYMENT RELATIONS COMMISSION RESPONSE:**

Because the proposed rules address issues which ordinarily fall under the jurisdiction of the Public Employment Relations Commission Appeal Board, the Commission, pursuant to N.J.A.C. 1:30-3.6(c)(3), is referring

the petition for further deliberations to the Appeal Board. Although the Commission has the authority to make and amend rules to administer P.L. 1979, c.477 (see N.J.S.A. 34:13A-5.9), it will not deny the petition or propose the amendments the petition requests until the recommendation of the Appeal Board has been received. The Commission has asked the Appeal Board to issue a recommendation to the Commission on or before March 30, 1992. Following receipt of the Appeal Board recommendation, the Commission shall act pursuant to N.J.A.C. 1:30-3.6(c)1 or 2.

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## EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to Executive Order No. 66(1978), an administrative rule is assigned an expiration date not to exceed five years from the date of promulgation by a State agency, unless the rule is exempt from the provisions of the order. In the Administrative Code, a single expiration date is affixed at the chapter level and applies to the entire chapter. See N.J.A.C. 1:30-4.4 for an explanation of expiration date assignment.

The following table is a complete listing of established New Jersey Administrative Code expiration dates and exemptions, by Title and Chapter. Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code as a part of the Title Table of Contents for each executive department or agency, on the Subtitle Page for each group of chapters in a Title, and at the beginning of each Chapter.

This listing is published quarterly, in March, June, September and December, in the first issue of the month.

### OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	5/4/92
1:5	9/13/96
1:6	5/4/92
1:6A	3/19/95
1:7	5/4/92
1:10	5/4/92
1:10A	5/4/92
1:10B	9/13/96
1:11	5/4/92
1:13	5/4/92
1:13A	4/3/94
1:14	7/15/96
1:20	5/4/92
1:21	5/4/92
1:30	1/25/96
1:31	6/17/92

N.J.A.C.	Expiration Date
3:6	3/1/96
3:7	9/12/95
3:11	5/1/94
3:13	1/21/97
3:16	6/18/95
3:17	6/13/96
3:18	1/19/93
3:19	3/15/96
3:21	1/24/97
3:22	5/12/94
3:23	7/6/92
3:24	8/18/94
3:25	8/17/92
3:26	12/31/95
3:27	9/12/95
3:28	12/12/94
3:29	8/5/96
3:32	10/3/93
3:33	9/18/94
3:38	10/5/92
3:41	10/11/95
3:42	4/4/93

### AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	11/19/95
2:2	1/17/94
2:3	8/21/94
2:5	8/21/94
2:6	9/3/90
2:9	8/19/96
2:16	1/22/96
2:17	5/31/96
2:18	8/5/96
2:19	10/1/95
2:20	10/1/95
2:21	8/5/96
2:22	7/6/92
2:23	7/18/93
2:24	4/2/95
2:32	6/1/92
2:33	3/6/94
2:34	1/2/95
2:48	10/25/95
2:50	5/1/92
2:51	5/31/92
2:52	5/1/95
2:53	1/10/96
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	11/7/93
2:69	11/7/93
2:70	8/20/95
2:71	7/8/93
2:72	7/8/93
2:74	7/8/93
2:76	7/31/94
2:90	6/22/95

### PERSONNEL—TITLE 4A

N.J.A.C.	Expiration Date
4A:1	10/5/92
4A:2	10/5/92
4A:3	9/6/93
4A:4	6/6/93
4A:5	10/5/92
4A:6	1/4/93
4A:7	10/5/92
4A:8	1/16/95
4A:9	10/5/92
4A:10	11/2/92

### COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:1	2/5/95
5:2	4/10/94
5:3	9/1/93
5:4	10/5/92
5:10	11/17/93
5:11	3/10/94
5:12	12/27/94
5:13	12/24/92
5:14	11/9/95
5:15	5/1/94
5:18	1/4/95
5:18A	1/4/95
5:18B	1/4/95
5:18C	2/5/95
5:19	2/1/93
5:20	9/3/96
5:22	2/5/95
5:23	3/1/93
5:24	7/10/95
5:25	2/19/96
5:26	2/7/96
5:27	5/2/95
5:28	12/13/95

### BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/4/96
3:2	4/12/95
3:3	1/11/95

N.J.A.C.	Expiration Date
5:29	2/19/96
5:30	6/29/93
5:31	12/1/94
5:33	8/6/95
5:34	12/3/95
5:37	1/7/96
5:50	10/27/93
5:51	9/1/93
5:52	1/2/95
5:70	7/9/92
5:71	6/4/95
5:80	4/20/95
5:91	2/7/96
5:92	2/7/96
5:100	6/18/95

N.J.A.C.	Expiration Date
7:5B	6/24/93
7:5C	1/16/95
7:6	6/9/94
7:7	5/12/94
7:7A	6/6/93
7:7E	7/24/95
7:7F	1/19/93
7:8	2/5/93
7:9	1/18/96
7:9A	8/21/94
7:10	9/1/94
7:11	5/13/93
7:12	4/11/93
7:13	7/14/94
7:14	4/27/94
7:14A	6/2/94
7:14B	12/21/92
7:15	10/2/94
7:18	7/3/96
7:19	2/26/95
7:19A	3/19/95
7:19B	3/19/95
7:20	5/2/95
7:20A	12/16/93
7:22	12/27/96
7:22A	2/5/95
7:23	6/9/94
7:24	4/22/96
7:25	2/15/96
7:25A	4/23/95
7:26	10/25/95
7:26A	11/18/96
7:26B	12/21/92
7:27	Exempt
7:27A	12/4/94
7:27B	Exempt
7:28	7/30/95
7:29	5/21/95
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:38	9/18/95
7:45	2/6/94
7:50	Exempt
7:60	3/2/97

**DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A**

N.J.A.C.	Expiration Date
5A:1	3/12/95
5A:2	5/17/95
5A:3	2/3/97
5A:4	2/3/97

**EDUCATION—TITLE 6**

N.J.A.C.	Expiration Date
6:1	1/11/96
6:2	2/6/94
6:3	7/8/93
6:5	10/22/95
6:7	1/2/95
6:8	12/11/96
6:11	9/21/95
6:12	3/8/96
6:20	7/16/95
6:21	11/22/94
6:22	7/16/95
6:22A	12/19/93
6:24	1/11/96
6:28	4/10/94
6:29	2/8/95
6:30	7/5/93
6:31	11/16/94
6:39	8/14/94
6:43	8/10/95
6:46	10/5/92
6:51	8/5/96
6:53	7/7/92
6:64	1/11/93
6:68	2/26/95
6:69	6/4/91
6:70	10/17/94
6:78	11/7/93
6:79	11/25/92

**ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7**

N.J.A.C.	Expiration Date
7:1	8/15/95
7:1A	6/5/92
7:1C	6/15/95
7:1D	11/28/93
7:1E	9/3/96
7:1F	4/20/92
7:1G	9/29/94
7:1H	7/13/95
7:1I	7/18/93
7:2	10/7/96
7:3	3/21/93
7:4A	9/18/94
7:5	11/19/95
7:5A	6/24/93

N.J.A.C.	Expiration Date
7:19A	3/19/95
7:19B	3/19/95
7:20	5/2/95
7:20A	12/16/93
7:22	12/27/96
7:22A	2/5/95
7:23	6/9/94
7:24	4/22/96
7:25	2/15/96
7:25A	4/23/95
7:26	10/25/95
7:26A	11/18/96
7:26B	12/21/92
7:27	Exempt
7:27A	12/4/94
7:27B	Exempt
7:28	7/30/95
7:29	5/21/95
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:38	9/18/95
7:45	2/6/94
7:50	Exempt
7:60	3/2/97

**HEALTH—TITLE 8**

N.J.A.C.	Expiration Date
8:7	9/14/95
8:8	4/12/94
8:9	2/14/96
8:13	9/8/92
8:18	11/6/94
8:19	5/11/95
8:20	3/2/95
8:21	10/23/95
8:21A	4/1/90
8:22	7/11/96
8:23	12/13/94
8:24	5/2/93
8:25	5/19/93
8:26	4/12/96
8:31	1/16/95
8:31A	2/20/95
8:31B	8/17/95
8:31C	1/20/92
8:33	7/27/95
8:33A	2/20/92
8:33B	7/27/95
8:33C	7/17/91
8:33E	6/23/92
8:33F	11/16/94
8:33G	7/17/94
8:33H	5/16/95

N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
8:33I	9/15/91	10:37	11/2/95
8:33J	4/24/94	10:38	4/29/96
8:33K	3/27/94	10:39	5/7/95
8:33L	11/16/92	10:40	5/11/94
8:33M	7/17/94	10:41	3/20/94
8:33N	5/15/94	10:42	8/19/96
8:33P	3/19/95	10:43	8/21/94
8:33Q	11/19/95	10:44A	11/21/93
8:34	11/15/93	10:44B	7/16/95
8:38	4/3/94	10:45	2/20/95
8:39	6/20/93	10:46	9/17/95
8:40	12/6/96	10:47	11/2/95
8:41	12/6/96	10:48	12/19/95
8:41A	2/18/97	10:49	7/13/95
8:42	8/17/92	10:50	2/27/96
8:42A	6/19/94	10:51	10/9/95
8:42B	7/18/93	10:52	2/8/95
8:43	11/19/92	10:53	4/27/95
8:43A	7/27/95	10:54	2/15/96
8:43E	12/11/92	10:55	3/8/95
8:43F	2/20/95	10:56	8/21/96
8:43G	2/5/95	10:57	2/13/96
8:43H	8/21/94	10:58	2/22/96
8:43I	3/21/93	10:59	2/15/96
8:44	11/2/93	10:60	2/19/96
8:45	2/7/95	10:61	2/15/96
8:51	9/17/95	10:62	12/19/93
8:52	12/11/96	10:63	11/28/94
8:53	8/4/91	10:64	2/22/96
8:57	4/20/95	10:65	2/19/96
8:57A	4/20/95	10:66	12/15/93
8:59	9/29/94	10:67	2/19/96
8:60	5/3/95	10:68	6/28/96
8:61	10/4/96	10:69	6/6/93
8:65	6/17/96	10:69A	4/20/93
8:66	3/5/95	10:69B	11/21/93
8:66A	3/5/95	10:70	6/7/96
8:70	8/19/93	10:71	12/24/95
8:71	2/17/94	10:72	8/27/92
		10:73	7/15/96
		10:80	5/19/94
		10:81	8/24/94
		10:82	8/24/94
		10:83	1/19/94
		10:85	12/20/94
		10:87	1/27/94
		10:89	5/24/95
		10:90	10/14/92
		10:91	9/4/95
		10:95	Exempt
		10:97	5/15/94
		10:99	6/4/95
		10:109	2/4/96
		10:120	7/9/96
		10:121	7/16/95
		10:121A	12/7/92
		10:122	5/15/94
		10:122A	Exempt
		10:123	7/13/95
		10:124	12/7/92
		10:125	6/4/95
		10:126	11/7/93
		10:126A	5/7/95
		10:127	8/26/93
		10:128	2/19/96
		10:129	7/13/95
		10:130	7/2/95
		10:131	12/7/92
		10:132	10/25/96
		10:141	2/7/94

**HIGHER EDUCATION—TITLE 9**

N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
9:1	2/21/94	10:82	8/24/94
9:2	5/4/95	10:83	1/19/94
9:3	9/27/93	10:85	12/20/94
9:4	9/26/96	10:87	1/27/94
9:5	4/1/96	10:89	5/24/95
9:6	4/30/95	10:90	10/14/92
9:6A	1/4/93	10:91	9/4/95
9:7	2/28/93	10:95	Exempt
9:8	10/15/95	10:97	5/15/94
9:9	10/3/93	10:99	6/4/95
9:11	4/17/94	10:109	2/4/96
9:12	4/17/94	10:120	7/9/96
9:14	4/11/95	10:121	7/16/95
9:15	8/21/94	10:121A	12/7/92
		10:122	5/15/94
		10:122A	Exempt
		10:123	7/13/95
		10:124	12/7/92
		10:125	6/4/95
		10:126	11/7/93
		10:126A	5/7/95
		10:127	8/26/93
		10:128	2/19/96
		10:129	7/13/95
		10:130	7/2/95
		10:131	12/7/92
		10:132	10/25/96
		10:141	2/7/94

**HUMAN SERVICES—TITLE 10**

N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
10:1	11/7/93	10:126	11/7/93
10:2	12/11/96	10:126A	5/7/95
10:3	11/21/93	10:127	8/26/93
10:6	1/7/96	10:128	2/19/96
10:7	1/21/97	10:129	7/13/95
10:11	1/16/95	10:130	7/2/95
10:12	12/23/96	10:131	12/7/92
10:13	7/18/93	10:132	10/25/96
10:14	5/16/93	10:141	2/7/94
10:15	1/1/95		
10:15A	1/1/95		
10:15B	1/1/95		
10:15C	1/1/95	N.J.A.C.	Expiration Date
10:31	6/5/94	10A:1	7/6/92
10:36	6/30/92	10A:2	2/5/95

**CORRECTIONS—TITLE 10A**

N.J.A.C.	Expiration Date
10A:3	9/16/96
10A:4	5/7/96
10A:5	6/17/96
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10	2/18/97
10A:16	4/6/92
10A:17	2/3/97
10A:18	7/6/92
10A:19	8/21/94
10A:20	2/18/97
10A:21	2/4/96
10A:22	7/5/93
10A:31	3/5/95
10A:32	4/16/95
10A:33	5/2/94
10A:34	4/6/92
10A:35	4/15/96
10A:70	Exempt
10A:71	2/5/95

N.J.A.C.	Expiration Date
12:195	6/24/93
12:196	8/6/95
12:200	8/3/95
12:210	12/16/96
12:235	5/3/96

**COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A**

N.J.A.C.	Expiration Date
12A:9	3/7/93
12A:10-1	10/13/94
12A:11	9/21/92
12A:12	9/21/92
12A:31	7/16/95
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	7/2/95
12A:100	7/17/96
12A:120	9/6/93
12A:121	12/5/93

**INSURANCE—TITLE 11**

N.J.A.C.	Expiration Date
11:1	1/31/96
11:2	11/30/95
11:3	1/4/96
11:4	11/30/95
11:5	10/28/93
11:7	10/19/92
11:10	7/12/95
11:12	9/27/96
11:13	11/12/92
11:15	10/26/94
11:16	1/31/96
11:17	4/18/93
11:17A	1/2/95
11:17B	1/2/95
11:17C	1/2/95
11:17D	1/2/95
11:18	12/18/94

**LAW AND PUBLIC SAFETY—TITLE 13**

N.J.A.C.	Expiration Date
13:1	7/5/93
13:2	7/24/95
13:3	4/25/93
13:4	1/17/96
13:10	3/27/94
13:13	7/16/95
13:14	9/16/96
13:18	3/30/95
13:19	8/18/94
13:20	12/13/95
13:21	12/13/95
13:23	5/26/94
13:24	9/27/94
13:25	3/16/95
13:26	9/26/93
13:27	2/20/95
13:28	5/16/93
13:29	5/23/95
13:30	3/12/95
13:31	11/20/96
13:32	10/23/92
13:33	3/12/95
13:34	10/26/93
13:35	9/21/94
13:36	9/27/94
13:37	1/23/95
13:38	8/27/95
13:39	6/19/94
13:39A	6/21/96
13:40	8/3/95
13:40A	12/16/96
13:41	7/17/95
13:42	10/31/93
13:43	9/1/93
13:44	8/7/94
13:44B	11/2/92
13:44C	7/18/93
13:44D	8/7/94
13:44E	7/1/96
13:45A	11/9/95
13:45B	4/17/94
13:46	9/4/95
13:47	1/27/97
13:47A	10/5/92
13:47B	2/21/94
13:47C	6/9/94
13:47K	9/17/95
13:48	1/17/96
13:49	12/16/93

**LABOR—TITLE 12**

N.J.A.C.	Expiration Date
12:3	12/19/93
12:5	9/19/93
12:6	10/17/93
12:15	7/30/95
12:16	3/23/95
12:17	1/4/96
12:18	3/7/93
12:19	7/2/95
12:20	8/14/94
12:35	7/16/95
12:40	2/5/95
12:41	1/17/94
12:45	5/2/93
12:51	11/22/96
12:55	12/16/96
12:56	9/26/95
12:57	9/26/95
12:58	9/26/95
12:60	3/21/93
12:61	12/16/96
12:90	12/15/94
12:100	9/22/94
12:102	5/21/95
12:105	1/11/96
12:110	1/19/93
12:112	9/6/93
12:120	5/3/95
12:175	11/28/93
12:190	1/4/93

<b>N.J.A.C.</b>	<b>Expiration Date</b>	<b>N.J.A.C.</b>	<b>Expiration Date</b>
13:51	9/16/96	16:21B	12/3/95
13:54	11/18/96	16:22	12/18/95
13:59	7/30/95	16:24	2/5/95
13:60	1/16/97	16:25	8/15/93
13:61	3/5/95	16:25A	7/18/93
13:62	3/19/95	16:26	9/5/94
13:63	8/19/96	16:27	4/8/96
13:70	1/25/95	16:28	6/1/93
13:71	1/25/95	16:28A	6/1/93
13:75	6/5/94	16:29	6/1/93
13:76	6/27/93	16:30	6/1/93
13:77	2/1/93	16:31	6/1/93
13:78	3/20/94	16:31A	6/1/93
13:80	9/17/95	16:32	2/8/95
13:81	8/6/95	16:38	10/15/95
		16:41	7/28/92
		16:41A	1/23/95
		16:41B	7/2/95
		16:43	5/10/95
		16:44	5/25/93
		16:45	9/18/94
		16:46	11/6/94
		16:49	2/8/95
		16:51	4/6/92
		16:53	7/17/94
		16:53B	7/3/94
		16:53C	6/16/93
		16:53D	5/3/94
		16:54	3/28/96
		16:55	6/14/93
		16:56	8/7/94
		16:60	6/14/93
		16:61	6/14/93
		16:62	2/26/95
		16:72	3/20/96
		16:73	1/30/92
		16:74	12/16/96
		16:75	5/13/93
		16:76	2/6/94
		16:77	3/5/95
		16:78	12/17/95
		16:79	9/12/96
		16:80	11/7/93
		16:81	11/7/93
		16:82	9/5/94

**PUBLIC UTILITIES—TITLE 14**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
14:1	12/16/90
14:3	5/6/96
14:5	12/2/96
14:6	9/3/96
14:9	4/1/96
14:10	9/6/96
14:11	1/27/92
14:12	11/4/96
14:17	4/24/94
14:18	7/26/95
14:25	3/5/95
14:29	3/4/96
14:30	2/19/96
14:32	1/22/96
14:38	4/1/96

**ENERGY—TITLE 14A**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
14A:6	1/16/95
14A:8	1/16/95
14A:11	1/16/95
14A:13	2/2/92
14A:14	1/30/94
14A:20	2/3/91
14A:22	6/4/89

**STATE—TITLE 15**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
15:2	5/2/93
15:3	8/19/96
15:5	2/17/92
15:10	4/15/96

**PUBLIC ADVOCATE—TITLE 15A**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
15A:2	12/27/94

**TRANSPORTATION—TITLE 16**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
16:1	10/1/95
16:1A	6/16/94
16:4	9/16/96
16:5	11/20/94
16:6	8/7/94
16:7	3/6/94
16:13	9/4/95
16:20A	2/20/95
16:20B	2/20/95
16:21	8/6/95
16:21A	11/20/94

<b>N.J.A.C.</b>	<b>Expiration Date</b>
17:1	5/6/93
17:2	11/8/94
17:3	8/15/93
17:4	6/8/95
17:5	11/30/95
17:6	11/22/93
17:7	12/19/93
17:8	10/15/95
17:9	10/3/93
17:10	5/6/93
17:12	10/13/94
17:13	10/13/94
17:14	10/13/94
17:16	5/2/96
17:19	3/8/95
17:20	9/26/93
17:25	5/26/94
17:27	10/7/93
17:28	8/17/95
17:29	9/26/95
17:30	5/4/92
17:32	3/21/93
17:33	4/17/94
17:40	11/19/95
17:41	4/1/96

**TREASURY-GENERAL—TITLE 17**

**TREASURY-TAXATION—TITLE 18**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
18:1	7/21/94
18:2	9/6/93
18:3	3/14/94
18:5	3/14/94
18:6	3/14/94
18:7	3/14/94
18:8	2/24/94
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	3/14/94
18:18A	2/3/97
18:19	3/14/94
18:21	2/19/96
18:22	2/24/94
18:23	2/24/94
18:23A	9/4/95
18:24	6/7/93
18:25	2/19/96
18:26	6/7/93
18:35	6/7/93
18:36	3/19/95
18:37	7/23/95
18:38	2/16/93
18:39	9/8/92

**OTHER AGENCIES—TITLE 19**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
19:3	5/26/93
19:3A	11/4/96
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93
19:6	5/6/96
19:8	7/5/93
19:9	10/17/93
19:10	9/5/94
19:11	8/20/95
19:12	7/17/96
19:14	8/20/95
19:16	7/17/96
19:17	6/8/93
19:18	5/21/95
19:20	2/5/95
19:25	10/1/95
19:30	7/23/95
19:31	8/20/95
19:40	8/24/94
19:41	5/12/93
19:42	5/12/93
19:43	4/27/94
19:44	9/29/93
19:45	3/24/93
19:46	4/28/93
19:47	4/28/93
19:48	10/13/93
19:49	3/24/93
19:50	5/12/93
19:51	8/14/96
19:52	1/6/97
19:53	4/28/93
19:54	3/24/93
19:61	3/2/97
19:65	7/7/91
19:75	1/13/94

# REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

## A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

**At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the January 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.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT DECEMBER 16, 1991**

**NEXT UPDATE: SUPPLEMENT JANUARY 21, 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. 637 and 798	March 4, 1991	23 N.J.R. 2807 and 2898	September 16, 1991
23 N.J.R. 799 and 924	March 18, 1991	23 N.J.R. 2899 and 3060	October 7, 1991
23 N.J.R. 925 and 1048	April 1, 1991	23 N.J.R. 3061 and 3192	October 21, 1991
23 N.J.R. 1049 and 1226	April 15, 1991	23 N.J.R. 3193 and 3402	November 4, 1991
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		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>ADMINISTRATIVE LAW—TITLE 1</b>			
1:1	Uniform administrative procedure	24 N.J.R. 321(a)	
1:1-18.1	Initial decision in contested cases	23 N.J.R. 3406(a)	24 N.J.R. 404(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)	
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)	
1:31-3	Discipline of administrative law judges	23 N.J.R. 2901(a)	24 N.J.R. 87(a)
1:31-3	Discipline of administrative law judges: extension of comment period	23 N.J.R. 3179(a)	

**Most recent update to Title 1: TRANSMITTAL 1991-6 (supplement December 16, 1991)**

## AGRICULTURE—TITLE 2

**Most recent update to Title 2: TRANSMITTAL 1991-6 (supplement August 19, 1991)**

<b>BANKING—TITLE 3</b>			
3:1-16	Mortgage processing rules	23 N.J.R. 2613(b)	
3:1-16	Mortgage processing rules: extension of comment period	24 N.J.R. 3(a)	
3:1-19	Consumer checking accounts	23 N.J.R. 3682(b)	
3:6-4.5, 4.6	Banks and savings banks: reporting of crimes	23 N.J.R. 2903(a)	24 N.J.R. 580(a)
3:6-4.5, 4.6	Banks and savings banks: extension of comment period regarding reporting of crimes	24 N.J.R. 3(a)	
3:13	Bank holding companies and interstate acquisitions	23 N.J.R. 2904(a)	24 N.J.R. 229(a)
3:13	Bank holding companies and interstate acquisitions: extension of comment period	23 N.J.R. 3686(a)	
3:21	Credit unions	23 N.J.R. 3686(b)	24 N.J.R. 580(b)
3:21-1	Low-income credit unions	23 N.J.R. 2905(a)	24 N.J.R. 580(c)
3:21-1	Low-income credit unions: correction to comment period deadline	23 N.J.R. 3196(a)	
3:21-1	Low-income credit unions: extension of comment period	24 N.J.R. 3(a)	
3:26-3.1, 3.2	Savings and loan associations: reporting of crimes	23 N.J.R. 2903(a)	24 N.J.R. 580(a)
3:26-3.1, 3.2	Savings and loan associations: extension of comment period regarding reporting of crimes	24 N.J.R. 3(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 1991-9 (supplement December 16, 1991)**

## CIVIL SERVICE—TITLE 4

**Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)**

<b>PERSONNEL—TITLE 4A</b>			
4A:2-2.13	Expungement from personnel files of references to disciplinary action	23 N.J.R. 2906(a)	
4A:4-2.16	Inspection of examination scoring keys	23 N.J.R. 2906(b)	24 N.J.R. 229(b)
4A:4-7.10, 7.12	Reinstatement following disability retirement	23 N.J.R. 2907(a)	

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:4-7.11	Retention of rights by transferred employees	23 N.J.R. 1984(b)		
4A:6-1.6	Sick Leave Injury (SLI): State service	23 N.J.R. 2907(b)		
4A:6-1.6	Sick Leave Injury (SLI): withdrawal of proposal	23 N.J.R. 3093(a)		

**Most recent update to Title 4A: TRANSMITTAL 1991-3 (supplement October 21, 1991)**

**COMMUNITY AFFAIRS—TITLE 5**

5:12-2.1	Homelessness Prevention Program: eligibility	23 N.J.R. 3439(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)		
5:18-1.1, 1.5, 2.4A, 2.6, 2.9, 4.1, 4.7, 4.11, 4.17	Uniform Fire Code: compliance and enforcement	23 N.J.R. 3552(a)	R.1992 d.104	24 N.J.R. 739(a)
5:18-2.4A, 2.4B, 2.7	Uniform Fire Code: life hazard uses; permits	23 N.J.R. 2999(a)		
5:18-2.8, 2.20, 3.2, 4.3, 4.19	Uniform Fire Code: smoke detector compliance in one and two-family dwellings	23 N.J.R. 3064(a)	R.1992 d.11	24 N.J.R. 88(a)
5:18-2.19	Uniform Fire Code: identifying emblems for structures with truss construction	23 N.J.R. 2618(a)	R.1992 d.5	24 N.J.R. 89(a)
5:18-3	State Fire Prevention Code	23 N.J.R. 3554(a)	R.1992 d.105	24 N.J.R. 740(a)
5:18A-2.6	Fire Code Enforcement: collection of fees	23 N.J.R. 3552(a)	R.1992 d.104	24 N.J.R. 739(a)
5:18C-4.2	Firefighter I certification	23 N.J.R. 2084(a)		
5:19-2.12, 9.3	Continuing care retirement communities: civil penalties for violations of Financial Disclosure Act	24 N.J.R. 3(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)		
5:23-2.1, 2.15	Uniform Construction Code: licensing disputes	24 N.J.R. 4(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)		
5:23-3.8A, 3.15	Uniform Construction Code: sale of nonconforming toilets	23 N.J.R. 3602(a)	R.1992 d.67	24 N.J.R. 404(b)
5:23-3.21	UCC: one and two family dwelling subcode	23 N.J.R. 3444(b)		
5:23-4.5	Municipal enforcing agencies: UCC standardized forms	24 N.J.R. 168(a)		
5:23-4.5, 4.19	Uniform Construction Code: electronic reporting by municipal enforcing agencies	23 N.J.R. 3440(a)	R.1992 d.47	24 N.J.R. 405(a)
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: pre-proposal regarding private enforcing agencies	23 N.J.R. 1985(a)		
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: preproposal regarding private enforcing agencies	23 N.J.R. 2908(a)		
5:23-4.17	Municipal construction officials: annual budget report	24 N.J.R. 169(a)		
5:23-4.18, 4.20	UCC enforcing agencies: minimum fees	24 N.J.R. 169(b)		
5:23-5.25	Uniform Construction Code: revocation of licenses and alternative sanctions; review committees	23 N.J.R. 3441(a)	R.1992 d.68	24 N.J.R. 406(a)
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5:23-12.2	Elevator Safety Subcode: referenced standards	23 N.J.R. 2046(a)		
5:25-1.3	New home warranties: "major structural defect"	23 N.J.R. 3603(a)		
5:25A	Fire retardant treated (FRT) plywood roof sheathing failures: alternative claim procedures	23 N.J.R. 3603(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)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	23 N.J.R. 2621(a)	R.1992 d.50	24 N.J.R. 407(a)
5:80-30	Housing and Mortgage Finance Agency: residual receipts	23 N.J.R. 3733(a)		
5:80-31	Housing and Mortgage Finance Agency: attorney services	23 N.J.R. 2622(a)	R.1992 d.51	24 N.J.R. 407(b)
5:91-15	Council on Affordable Housing: municipal development fees	23 N.J.R. 2813(b)	R.1992 d.45	24 N.J.R. 235(a)
5:91-15	Council on Affordable Housing: public hearing and extension of comment period regarding municipal development fees	23 N.J.R. 3132(a)		
5:92	Council on Affordable Housing: preproposal regarding mandatory developers' fees	23 N.J.R. 646(b)		
5:92-1.3, 1.4, 8.4, 18	Council on Affordable Housing: municipal development fees	23 N.J.R. 2813(b)	R.1992 d.45	24 N.J.R. 235(a)
5:92-1.3, 1.4, 8.4, 18	Council on Affordable Housing: public hearing and extension of comment period regarding municipal development fees	23 N.J.R. 3132(a)		
5:92-1.6	Council on Affordable Housing: interim substantive certification	23 N.J.R. 3253(a)	R.1992 d.53	24 N.J.R. 408(a)

**Most recent update to Title 5: TRANSMITTAL 1991-12 (supplement December 16, 1991)**

<b>MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A</b>				
5A:3	Military service medals	23 N.J.R. 1490(a)	R.1992 d.56	24 N.J.R. 409(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5A:3-1, 2	Military service medals: reopening of comment period Brigadier General William C. Doyle Veterans' Memorial Cemetery	23 N.J.R. 3409(a)	R.1992 d.57	24 N.J.R. 410(a)
5A:4		23 N.J.R. 1491(a)		
5A:4	Brigadier General William C. Doyle Veterans' Memorial Cemetery: reopening of comment period	23 N.J.R. 3254(a)		

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6:5-2	Organization of Department	Exempt	R.1992 d.21	24 N.J.R. 90(a)
6:8	Thorough and efficient system of schools	23 N.J.R. 2908(b)	R.1992 d.22	24 N.J.R. 90(b)
6:11-6.2	Early childhood instructional certificate	23 N.J.R. 2210(b)		
6:20-4.1	Tuition for private schools for handicapped: administrative correction	_____	_____	24 N.J.R. 245(a)
6:46	Private vocational schools	24 N.J.R. 514(a)		
6:53	Vocational education safety and health standards	24 N.J.R. 516(a)		
6:79-1	Child nutrition programs (recodify to 6:20-9)	24 N.J.R. 324(a)		

**Most recent update to Title 6: TRANSMITTAL 1991-9 (supplement December 16, 1991)**

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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)		
7:1E-1.6, 1.9, 7, 8, 9, 10	Discharges of petroleum and other hazardous substances: confidentiality of information	23 N.J.R. 2848(a)		
7:1E-5.3	Discharges of petroleum and other hazardous substances: administrative correction	_____	_____	24 N.J.R. 581(a)
7:1H	County environmental health standards: request for public input concerning amendments to N.J.A.C. 7:1H	23 N.J.R. 2237(a)		
7:1K	Pollution prevention program requirements: preproposed new rules	24 N.J.R. 178(b)		
7:2-11.3-11.9, 11.12-11.14	Natural Areas and Natural Areas System (recodified to 7:5A-1)	23 N.J.R. 1985(b)	R.1992 d.77	24 N.J.R. 581(b)
7:4	New Jersey Register of Historic Places: procedures for listing of historic places	23 N.J.R. 2103(a)		
7:5A-1.3-1.9, 1.12, 1.13, 1.14	Natural Areas and Natural Areas System	23 N.J.R. 1985(b)	R.1992 d.77	24 N.J.R. 581(b)
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: water quality certification	23 N.J.R. 338(a)		
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)		
7:9-6	Ground water quality standards: request for comment on draft revisions	23 N.J.R. 1988(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)		
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 South Branch Raritan River in Hunterdon County	23 N.J.R. 647(b)		
7:13-7.1	Redelineation of East Ditch in Pequannock Township, Morris County	24 N.J.R. 203(a)		
7:14-8.2, 8.5	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(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)		
7:14B-4.5, 9.1, 13.20	Underground storage tank systems	23 N.J.R. 2854(a)	R.1992 d.99	24 N.J.R. 787(a)
7:15-1.5, 3.4, 3.6, 4.1, 5.22	Statewide water quality management planning	24 N.J.R. 344(b)		
7:22	Financial assistance programs for wastewater treatment facilities	23 N.J.R. 3282(a)	R.1992 d.42	24 N.J.R. 246(a)
7:25-16.1	Defining freshwater fishing lines	24 N.J.R. 204(a)		

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
7:25-18.1, 18.5	Atlantic sturgeon management	24 N.J.R. 205(a)		
7:25-18.1, 18.5, 18.12	Weakfish management program	24 N.J.R. 4(c)		
7:25-18.5	Haul seining and fyke netting regulation	24 N.J.R. 207(a)		
7:26-1.2, 1.4, 8.2, 8.13, 9.1, 9.4, 9.5, 9.7, 9.10, 10.4, 10.7, 10.8, 11.5, 12.1, 12.2, 12.4, 12.5, 12.9, 17.4	Hazardous waste management	23 N.J.R. 2453(b)	R.1992 d.100	24 N.J.R. 788(a)
7:26-2.4	Small scale solid waste facility permits: request for comment on draft revisions to N.J.A.C. 7:26-2.4	23 N.J.R. 2458(a)		
7:26-4.3(b)	Thermal destruction facilities: operative date of new annual compliance monitoring fees	_____	_____	24 N.J.R. 584(a)
7:26-4.6	Solid waste program fees	23 N.J.R. 3690(a)		
7:26-4A.3	Fee schedule for hazardous waste generators, facilities, and transporters: correction to proposal	23 N.J.R. 1113(a)		
7:26-4A.3, 4A.5	Fee schedule for hazardous waste generators, facilities, and transporters	23 N.J.R. 814(a)	R.1992 d.65	24 N.J.R. 412(a)
7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies	23 N.J.R. 3607(a)		
7:26-7.7, 8.2, 8.3, 8.4, 8.20, 9.1	PCB hazardous waste	23 N.J.R. 2855(a)	R.1992 d.78	24 N.J.R. 584(b)
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)		
7:26D	Cleanup standards for contaminated sites	24 N.J.R. 373(a)		
7:27-8.1, 8.2, 8.11, 16, 17.1, 17.3-17.9, 23.2, 23.3, 23.5, 23.6, 25.2	Air pollution by volatile organic compounds	23 N.J.R. 1858(b)	R.1992 d.102	24 N.J.R. 792(a)
7:27-16.5	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:27A-3.2, 3.10, 3.11	Air pollution by volatile organic compounds: civil administrative penalties	23 N.J.R. 1858(b)	R.1992 d.102	24 N.J.R. 792(a)
7:27B-3.1, 3.2, 3.4-3.12, 3.14, 3.15, 3.17, 3.18	Air pollution by volatile organic compounds: sampling and analytical procedures	23 N.J.R. 1858(b)	R.1992 d.102	24 N.J.R. 792(a)
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)		
7:28-1.4, 20	Particle accelerators for industrial and research use	23 N.J.R. 1401(c)	R.1992 d.52	24 N.J.R. 416(a)
7:50-2.11, 4.61-4.70, 5.27, 5.28, 5.30, 5.32, 6.13	Pinelands Comprehensive Management Plan: waivers of strict compliance	23 N.J.R. 2458(b)	R.1992 d.91	24 N.J.R. 832(a)
7:60-1	Low-level radioactive waste disposal facility: assessment of generators for cost of siting and developing	23 N.J.R. 3410(b)	R.1992 d.109	24 N.J.R. 840(a)
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8:20-1.2	Birth Defects Registry: reporting requirements	24 N.J.R. 171(a)		
8:21A	Good drug manufacturing practices: reopening of comment period	23 N.J.R. 1252(a)		
8:31B	Hospital rate setting	23 N.J.R. 3097(a)	R.1992 d.62	24 N.J.R. 425(a)
8:31B-3.73	Hospital rate setting: correction to proposed amendment and extension of comment period	23 N.J.R. 3442(a)		
8:31B-5.3	Hospital reimbursement: Diagnosis Related Groups	23 N.J.R. 3114(a)	R.1992 d.43	24 N.J.R. 452(a)
8:31C-1	Residential alcoholism treatment facilities: cost accounting and rate evaluation	23 N.J.R. 3609(a)		
8:33-5.1	Certificate of Need moratorium: exceptions	24 N.J.R. 173(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)		
8:39-4.1, 9.1, 9.5, 11.2, 13.4, 35.2	Long-term care facilities: patient advance directives	23 N.J.R. 3611(a)		
8:39-9.2	Long-term care facilities: mandatory administration policies and procedures	23 N.J.R. 3613(a)		
8:40	Invalid coach and ambulance services	23 N.J.R. 2566(a)	R.1992 d.16	24 N.J.R. 119(a)
8:41-8	Mobile intensive care units: administration of medications	23 N.J.R. 3734(a)		
8:41A	Emergency medical technician-defibrillation programs: certification and operation	23 N.J.R. 1254(a)	R.1992 d.63	24 N.J.R. 585(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:42-1.1, 6.1, 6.2, 11.2	Home health agency standards: patient advance directives	23 N.J.R. 3254(b)		
8:43-4.7, 4.15, 4.16, 7.2	Residential health care facilities: patient advance directives	23 N.J.R. 3616(a)		
8:43E-3.10, 3.15	Adult closed acute psychiatric beds: liaison participation and discharge planning	23 N.J.R. 3128(a)	R.1992 d.64	24 N.J.R. 465(a)
8:43G-4.1, 5.2, 5.3, 5.5, 5.7, 5.9, 5.12, 5.16, 5.18, 7.5, 7.16, 7.22, 7.23, 7.24, 7.26, 7.28, 7.32, 7.33, 7.34, 7.37, 7.40, 8.4, 8.7, 8.11, 9.7, 9.14, 9.19, 10.1, 10.4, 11.5, 12.2, 12.3, 12.7, 12.10, 13.4, 13.13, 14.1, 14.9, 15.2, 15.3, 16.1, 16.2, 16.6, 16.7, 18.4-18.7, 19.2, 19.5, 19.13, 19.14, 19.15, 19.17, 19.18, 19.22, 19.23, 19.33, 20.1, 20.2, 22.2, 22.3, 22.12, 22.17, 22.20, 23.1, 23.2, 23.6, 24.9, 24.13, 25.1, 26.2, 26.3, 26.9, 28.1, 28.8, 28.10, 29.13, 29.17, 30.1, 30.2, 30.3, 30.5, 30.6, 30.8, 30.11, 32.3, 32.5, 32.9, 32.12, 33.6, 35.2	Hospital licensing standards	23 N.J.R. 2590(a)	R.1992 d.72	24 N.J.R. 590(a)
8:43G-5.1, 5.2, 5.9, 15.2	Hospital licensing standards: patient advance directives	23 N.J.R. 3256(a)		
8:43H-3.4, 5.3, 5.4, 17.2, 19.3, 19.5	Rehabilitation hospitals: patient advance directives	23 N.J.R. 3614(a)		
8:52	Local boards of health: activities and standards	23 N.J.R. 2825(a)	R.1992 d.24	24 N.J.R. 144(a)
8:57-2.1, 2.2, 2.3	AIDS prevention and control: reporting requirements	23 N.J.R. 3735(a)		
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)		
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8:71	Interchangeable drug products	23 N.J.R. 1509(a)	R.1992 d.26	24 N.J.R. 145(a)
8:71	Interchangeable drug products	23 N.J.R. 2610(a)	R.1992 d.25	24 N.J.R. 144(b)
8:71	Interchangeable drug products	23 N.J.R. 3258(a)	R.1992 d.27	24 N.J.R. 145(b)
8:71	Interchangeable drug products	24 N.J.R. 59(b)		
8:71	Interchangeable drug products	24 N.J.R. 61(a)		
8:80	HealthStart Plus: eligibility criteria	24 N.J.R. 62(a)		

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9:4-1.12	Capital projects at county colleges	23 N.J.R. 3196(b)		
9:4-3.12	Noncredit courses at county community colleges	23 N.J.R. 1056(a)		
9:7-9.1, 9.2, 9.4, 9.8	Paul Douglas Teacher Scholarship Program	24 N.J.R. 8(a)		
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	23 N.J.R. 1739(a)		

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10:7	Role of county adjuster	23 N.J.R. 2953(a)	R.1992 d.31	24 N.J.R. 278(a)
10:12-3	Referral of handicapped students for adult educational services	23 N.J.R. 2959(a)	R.1992 d.37	24 N.J.R. 287(a)
10:16	Child Death and Critical Incident Review Board concerning children under DYFS supervision	23 N.J.R. 3417(a)		

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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)		
10:49-10	Prepaid health care services for Medicaid eligibles	24 N.J.R. 64(a)		
10:50	Transportation Services Manual	23 N.J.R. 3619(a)	R.1992 d. 83	24 N.J.R. 610(a)
10:51 et al.	Bundled drug services reimbursement: public hearing	23 N.J.R. 1310(a)		
10:51-1.1, 1.14, 3.3, 3.12	Bundled drug services	23 N.J.R. 281(a)	R.1992 d.98	24 N.J.R. 845(a)
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10:53-1.1, 1.17	Bundled drug services	23 N.J.R. 281(a)	R.1992 d.98	24 N.J.R. 845(a)
10:54-1.1, 1.16	Bundled drug services	23 N.J.R. 281(a)	R.1992 d.98	24 N.J.R. 845(a)
10:56-1.1, 1.4	Bundled drug services	23 N.J.R. 281(a)	R.1992 d.98	24 N.J.R. 845(a)
10:57-1.1, 1.18	Bundled drug services	23 N.J.R. 281(a)	R.1992 d.98	24 N.J.R. 845(a)
10:66-1.2, 1.10	Bundled drug services	23 N.J.R. 281(a)	R.1992 d.98	24 N.J.R. 845(a)
10:66-1.6, 1.7, 3.2	Ambulatory surgical center reimbursement	23 N.J.R. 3265(a)	R.1992 d.69	24 N.J.R. 465(b)
10:69B-4.8	Lifeline Programs: submission date for utility assistance eligibility applications	23 N.J.R. 3267(a)	R.1992 d.48	24 N.J.R. 466(a)
10:71-4.8, 5.4, 5.5, 5.6, 5.9	Medicaid Only eligibility computation amounts and income standards	Emergency (expires 3-22-92)	R.1992 d.84	24 N.J.R. 651(a)
10:72-4.1	New Jersey Care income eligibility limits: administrative correction	_____	_____	24 N.J.R. 851(a)
10:72-6.1-6.5	New Jersey Care: presumptive eligibility process for pregnant women	23 N.J.R. 2827(a)	R.1992 d.10	24 N.J.R. 100(a)
10:81-3.19, 8.22, 14.8, 14.20	REACH/JOBS Program: Medicaid eligibility	23 N.J.R. 2988(a)	R.1992 d.36	24 N.J.R. 287(b)
10:81-8.2	Securing information from Social Security Administration: administrative correction	_____	_____	24 N.J.R. 466(b)
10:82-1.1A	AFDC Standard of Need	23 N.J.R. 285(a)	R.1992 d.1	24 N.J.R. 101(a)
10:82-1.1A	AFDC Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:82-1.2	Emergency Assistance benefits for SSI recipients	24 N.J.R. 326(a)		
10:82-2.14	Established monthly earnings: administrative correction	_____	_____	24 N.J.R. 851(b)
10:82-4.9	Assistance Standards Handbook: DYFS monthly foster care rates	23 N.J.R. 3420(a)	R.1992 d.106	24 N.J.R. 852(a)
10:82-5.3	Assistance Standards Handbook: child care rates	24 N.J.R. 213(a)		
10:83-1.11	Supplemental Security Income payment levels	Emergency (expired 2-24-92)	R.1992 d.39	24 N.J.R. 300(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)		
10:85-4.1	General Assistance Program: Standard of Need	23 N.J.R. 286(a)	R.1992 d.2	24 N.J.R. 103(a)
10:85-4.1	General Assistance Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:89-2.3, 3.3, 3.5, 3.6, 4.1	Home Energy Assistance Program	Emergency (expired 2-24-92)	R.1992 d.38	24 N.J.R. 300(b)
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)		
10:122B	Division of Youth and Family Services: requirements for foster care	23 N.J.R. 3693(a)		
10:122C	DYFS: approval of foster homes	23 N.J.R. 3696(a)		
10:122D	DYFS: foster care services	23 N.J.R. 3703(a)		
10:122E	DYFS: removal of foster children and closure of foster homes	23 N.J.R. 3708(a)		
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10:123A	Youth and Family Services: Personal Attendant Services Program	23 N.J.R. 2091(b)		
10:133	DYFS: initial response and service delivery	23 N.J.R. 3714(a)		
10:133A	DYFS: initial response and screening	23 N.J.R. 3717(a)		
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10:133C-3	DYFS: assessment of family service needs	24 N.J.R. 217(a)		

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10A:9	Inmate classification process	23 N.J.R. 3721(a)	R.1992 d.79	24 N.J.R. 612(a)
10A:16-13	Inmate commitment for psychiatric treatment	23 N.J.R. 1890(a)	R.1992 d.23	24 N.J.R. 104(a)
10A:17	Inmate social services	23 N.J.R. 3065(a)	R.1992 d.49	24 N.J.R. 468(a)
10A:17-7	Inmate marriage	23 N.J.R. 3422(a)	R.1992 d.55	24 N.J.R. 469(a)
10A:18-2.9	Identification of inmate outgoing correspondence	23 N.J.R. 2468(a)	R.1992 d.3	24 N.J.R. 107(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10A:20-4	Residential Community Release Agreement Programs for adult inmates	23 N.J.R. 3624(a)	R.1992 d.80	24 N.J.R. 616(a)
10A:22-2.6	Availability of medical information to inmates	23 N.J.R. 3424(a)	R.1992 d.54	24 N.J.R. 471(a)

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11:2-17.7	Automobile insurance: payment of PIP claims	23 N.J.R. 2830(a)	R.1992 d.93	24 N.J.R. 622(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)		
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11:3-16.5, 16.8, 16.10, 16.11, App.	Private passenger automobile insurance: rate filing requirements	23 N.J.R. 3199(a)		
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13:31-1.11, 1.17	Electrical contractor's business permit: telecommunications wiring exemption	24 N.J.R. 339(a)		
13:32-1.8	Licensed master plumber: scope of practice	23 N.J.R. 1062(a)		
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13:39-5.8	Prescriptions and medication orders transmitted by technological devices	23 N.J.R. 2469(a)		
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13:40-5.1	Land surveys: extension of comment period regarding setting of corner markers	24 N.J.R. 554(a)		
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13:44D-1.1, 2.1, 4.6	Public movers and warehousemen: moving vehicle requirement	24 N.J.R. 341(a)		
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13:44E-2.3	Chiropractic practice: insurance claim forms	23 N.J.R. 1279(b)		
13:44E-2.6	Chiropractic practice identification	23 N.J.R. 1896(a)		
13:44F-8.1	Board of Respiratory Care: fee schedule	24 N.J.R. 52(a)		
13:45A-25.2, 25.4	Sellers of health club services: registration fees	23 N.J.R. 3637(a)	R.1992 d.101	24 N.J.R. 853(a)
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13:70-13A.8	Thoroughbred racing: stay pending appeal of officials' decision	24 N.J.R. 555(a)		
13:70-14A.9	Thoroughbred racing: first-time respiratory bleeders	23 N.J.R. 2919(c)	R.1992 d.19	24 N.J.R. 108(b)
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13:71-1.1	Harness racing: authority of executive director of Racing Commission	23 N.J.R. 3432(a)	R.1992 d.88	24 N.J.R. 647(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)		
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13:71-27.47	Harness racing: field horses in daily double races	23 N.J.R. 3432(b)	R.1992 d.85	24 N.J.R. 647(c)
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16:30-9.10	Prohibited pedestrian use of Barnegat Bay bridges in Dover Township	23 N.J.R. 3131(a)	R.1992 d.9	24 N.J.R. 115(b)
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