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NEW JERSEY REGISTER

THE JOURNAL OF STATE AGENCY RULEMAKING

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(Includes adopted rules filed through May 27, 1994)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: APRIL 18, 1994
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT MAY 16, 1994

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **July 20, 1994.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

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- **Proposals ..... August 8**
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NEW JERSEY REGISTER

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RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Board of Regulatary Commissioners Special Hearing Rule; Discovery

Reproposed New Rule: N.J.A.C. 1:14-10

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

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

Proposal Number: PRN 1994-368.

Submit comments by July 20, 1994 to:
Jeff S. Masin, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9, CN 049
Quakerbridge Road
Trenton, New Jersey 08625

The agency reproposal follows:

Summary

On January 3, 1994, the Office of Administrative Law (OAL) proposed a new rule permitting depositions in Board of Regulatory Commissioners' cases upon notice by a party. The proposal was the result of discussions among representatives of the Office of Administrative Law, the Board of Regulatory Commissioners, the Department of the Public Advocate, Division of Rate Counsel and the utility companies concerning reform of the ratemaking hearing process. A particular goal of the discussion was to develop methods to facilitate the expedition of ratemaking cases so as to complete the ratemaking proceeding within eight months as required by N.J.S.A. 48:2-21. The participants concurred that a more rapid discovery process, as a component of that expedition, could be achieved if depositions upon notice were made available. Generally, depositions are available only upon motion for good cause shown because they tend to be time consuming and to increase the cost of the hearing to the parties. However, in Board of Regulatory Commissioners' cases, requiring parties to file motions each time depositions are sought may delay the process since the widespread use of prefiled testimony and expert witnesses makes depositions appropriate in most cases. In addition, parties usually are represented by attorneys; and the amounts of money at issue are significant.

OAL received eight comments concerning the proposed new rule. Four commenters, Public Service Electric and Gas, Jersey Central Power and Light, the Board of Regulatory Commissioners and Atlantic Electric, expressed concern that the new rule was subject to abuse and suggested that some limitation on depositions by notice be incorporated into the rule. OAL concurs that language limiting the use of deposition by notice is appropriate. Such a limitation will ensure the availability of deposition by notice where appropriate, but will guard against potential misuse of the process. Since the inclusion of this limitation alters the scope of the proposal, the OAL has decided to proceed with a reproposal. This reproposal supersedes the original proposal at 26 N.J.R. 3(a).

The reproposed new rule provides that depositions on notice are available in a ratemaking proceeding for experts and other designated witnesses whose written testimony has been prefiled in the case. This change was suggested by Public Service Electric and Gas and Jersey Central Power and Light. OAL believes that this language will cover most situations where a party seeks a deposition yet will prevent abuse of the rule, that is, the deposition of persons who will not be witnesses in the case. Secondly, in small cases where the witnesses do not submit prefiled testimony, depositions will be available only on motion so that the judge can consider the cost of the deposition along with other factors. Other circumstances where a party seeks a deposition include a variety of situations which should be considered on a case-by-case basis.

The Board of Regulatory Commissioners commented that it greatly appreciated the OAL's effort to streamline the ratemaking process, but was concerned that the proposed language may be abused particularly by notice for the taking of depositions of Board staff members and persons who are not anticipated witnesses. It recommended that depositions on notice be available only for those persons who are anticipated to be witnesses in the ratemaking proceeding.

The Office of Administrative Law believes that the proposed change should satisfy the concerns of the Board of Regulatory Commissioners since depositions on notice are limited to experts or other designated witnesses whose testimony has been prefiled.

Hackensack Water Company and Mid-Atlantic Utilties Corporation submitted a joint comment objecting to the proposed new rule due to concerns that it would invite abuse particularly by intervenors whose primary purpose may be to create delay. When unwarranted depositions are sought, the party to whom the discovery request is made must seek relief via a motion to quash before an administrative law judge. Thus, the commenter felt that the process would be delayed and become more costly. The comment suggested that the rule be eliminated, or in the alternative be allowed if depositions could "reasonably provide useful or relevant information" or "upon consent of the party to be deposed."

OAL believes that the concerns of the commenter are addressed by the limitation contained in the reproposed new rule. OAL does not agree that depositions should be limited to situations where the proposed witness consents since denial of consent would frustrate the purposes of the rule. Permitting deposition on notice where it could reasonably provide use for relevant information would lead to disputes which would have to be resolved by the administrative law judge and thereby delay the process. Additionally, OAL believes that the standard for discovery set forth in N.J.A.C. 1:1-10.1 is more appropriate.

Atlantic Electric argued that the proposed new rule must incorporate checks and balances to ensure that the deposition process is not abused. It suggested: (1) limiting depositions to expert witnesses; (2) limiting the timeframe during which depositions may be permitted; (3) permitting depositions only when information is not otherwise available through discovery; and (4) requiring the cost for discovery to be borne by the requesting party.

Again, OAL believes that the reproposed new rule will provide the necessary checks on requests for deposition on notice. The recommendation to limit depositions to expert witnesses is too narrow; other designated witnesses who prefile testimony should also be included. Regarding time limits, the limitations set forth in N.J.A.C. 1:1-10.4, along with any schedule established by the administrative law judge in a particular case, are sufficient. Limiting depositions to situations where the information is not otherwise available through discovery is too narrow, would undermine the purpose of the rule, and would give rise to disputes that would have to be resolved by the administrative law judge. Finally, concerns about costs of the deposition are adequately treated by N.J.A.C. 1:1-10.3.

Middlesex Water Company suggested that informal discovery conferences, which are frequently employed in water ratemaking proceedings, be encouraged as an efficient use of time which helps to expedite the case.

The Uniform Administrative Procedure Rules permit the use of consentual informal discovery conferences, N.J.A.C. 1:1-10.2(b). The new rule does not limit the use of these conferences. Parties may continue to use informal discovery conferences as appropriate and helpful.

The Division of Rate Counsel of the Department of the Public Advocate supported the proposed new rule as a means to streamline the regulatory process, but was concerned that the type of notice, oral or written, was not specified.

The Office of Administrative Law believes that written notice is preferable as most likely to avoid disputes among the parties. The new rule therefore provides for notice in writing.

The Public Utility Section of the New Jersey State Bar Association declined to take a position on the proposal.

At the suggestion of Public Service Electric and Gas and Jersey Central Power and Light, the wording of the proposed rule has been changed from "ratemaking hearing" to "ratemaking proceeding." Proceeding is broader than hearing and therefore more inclusive.

Finally, it should be emphasized that the proposed new rule does not limit the availability of depositions upon motion for good cause shown pursuant to N.J.A.C. 1:1-10.2(c). The rule only creates a class of situations where depositions can be obtained upon written notice without intervention of an administrative law judge.

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Social Impact

The reproposed new rule, by eliminating the need to routinely make motions for depositions in BRC ratemaking cases should permit the discovery process to proceed more rapidly. By limiting depositions on motions to expert and other witnesses whose testimony has been prefiled, the rule also reduces the potential for abuse in this area. Therefore, it should accommodate the efforts of all parties to more rapidly reach a resolution.

Economic Impact

The reproposed new rule eliminates the need for motions and responses to motions in every instance where depositions are sought. The reproposed new rule should therefore result in some cost savings to parties to ratemaking proceedings, and should reduce costs to the OAL for judge's time in deciding these motions. Further, by clearly specifying those classes of cases where deposition on notice is appropriate, the potential for abuse and concurrent increased cost to the parties is reduced.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the reproposed new rule 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 reproposed rule is in fact lifting a compliance requirement from both those utilities considered large businesses (most of the public utilities) and, in the case of a few small water companies, those considered small businesses and those involved in ratemaking cases such as the Public Advocate.

Full text of the reproposed new rule follows:

SUBCHAPTER 10. DISCOVERY

1:14-10.1 Depositions

In addition to the discovery methods specified in N.J.A.C. 1:1-10.2(a), depositions upon oral examination or written questions of experts and other designated witnesses whose written testimony has been prefiled in the case shall be available upon written notice by a party in a ratemaking proceeding.

COMMUNITY AFFAIRS

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Substantive Rules

Reductions for Substantial Compliance; Zoning for Inclusionary Development

Proposed New Rule: N.J.A.C. 5:93-3.6

Proposed Amendment: N.J.A.C. 5:93-5.6

Authorized By: New Jersey Council on Affordable Housing, Christiana Foglio, Chairperson.

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.

Proposal Number: PRN 1994-357.

Submit written comments by July 20, 1994 to:
Art Bernard, Executive Director
Council on Affordable Housing
CN 813
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Fair Housing Act, N.J.S.A. 52:27D-301 et seq., creates a voluntary process for a municipality willing to address its constitutional housing obligation. The Act provides what might be termed incentives for addressing the obligation and a potential penalty for non-compliance. The main incentives for addressing the housing obligation through an administrative process is the ability for the municipality to develop its own plan to address the housing obligation. A compliant municipality may pursue its own plan through an administrative agency within the framework of sound land use planning and negotiation rather than endure costly litigation resulting from an exclusionary zoning suit. The municipality may also receive subsidy money from housing programs established pursuant to the Fair Housing Act. A municipality that does not comply with the Fair Housing Act is subject to a developer or developers receiving site specific relief in one or more areas of the municipality.

The Council's procedural rules are consistent with the intent of the Fair Housing Act. The rules provide that municipalities that have complied with the Fair Housing Act are generally not subject to site specific relief. If there are objectors to a compliant municipality's plan, the objector "shoulders" the burden of proof in any proceeding before an administrative law judge. When municipalities do not comply with the law, however, the Council's rules provide a process for a developer or developers to receive site specific relief.

The Council's substantive rules, N.J.A.C. 5:93, as adopted in the June 6, 1993 New Jersey Register, also include incentives for complying with the constitutional housing obligation. The cumulative approach used to calculate the municipal housing obligation recognizes that most municipalities did not address their 1987-1993 housing obligations. To oversimplify, the Council added the estimated 1987-1993 growth in low and moderate income households to 1990 census estimates of substandard housing and projected growth in low and moderate income household formation to develop a 1987-1993 housing obligation. The Council then recognized the efforts of municipalities who zoned for or actually created housing. As a result, municipalities that addressed their housing obligations have less of a remaining housing obligation than if they had chosen not to address the housing obligation.

N.J.A.C. 5:93 was originally proposed in the March 15, 1993 New Jersey Register at 25 N.J.R. 1118(a). Based on the comments received from the public, the Council amended these rules and republished the amended rules in the December 20, 1993 New Jersey Register at 25 N.J.R. 5763(a). In the republication, the Council provided more emphasis on crediting units built versus sites that were zoned but had not yet yielded housing. The reproposal provided a one for one credit for every unit built, a credit in excess for one of one for many rental units and the possibility of a reduction in the housing obligation for sites that were zoned but had not yielded housing.

With this system, the Council was trying to provide a clear incentive to construct rental housing. It also recognized that sites that have not yielded housing should be reviewed based on changes in housing markets and environmental regulations.

During the comment period, the Council was asked to provide greater credit for any unit that was constructed. In its response, the Council made several points. First the Council does provide a credit in excess of one for one for rental units. It does so because it does not believe it is empowered to require municipalities to construct rental units with municipal funds and it does not believe that municipalities are empowered to zone land for a specific type of tenure. Also, the Council recognizes that rental housing requires greater subsidies to construct; and that rental housing is absolutely necessary for a large percentage of low and moderate income households. Therefore, due to statutory limitations, the cost of producing rental housing and the need for its production, the Council has offered a series of incentives to produce rental housing. To provide a credit in excess of one for any sales unit constructed would, in the Council's view, weaken a very necessary incentive to construct rental housing. In addition to these concerns, the Council also was aware that providing extra credit for units constructed could result in a dilution of the housing obligation.

However, the Council accepts the premise that there is a greater benefit to low and moderate income households from a constructed unit than from a zoned site. In addition, the Council is always open to suggestions that lead to greater compliance with the constitutional housing obligation and effective incentives that lead to the production of housing units without a substantial dilution to the housing obligation.

Therefore, the Council is proposing N.J.A.C. 5:93-3.6, which provides municipalities that have actually constructed a substantial percentage of the units that were targeted for construction within the municipality with an additional reduction. The reduction is based on a sliding scale. The more units actually produced, the greater the reduction.

The Council believes that this incentive is consistent with the goals of the Supreme Court decisions and the Fair Housing Act. By basing the reduction on the number of units actually produced in the municipality that has received substantive certification, the Council is providing an incentive to produce units in the municipalities that the Court has determined have impermissibly excluded low and moderate income households in the past.

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In addition, the Council has noted that many municipal housing elements rely on the private sector to construct low and moderate income housing. Thus, the actual construction of low and moderate income housing is subject to regional market forces and economic conditions. Unfortunately, these forces have not resulted in as much production as originally hoped.

The Council believes that the provision of an incentive to produce housing within the substantive certification period will encourage municipalities to play a more active role in the production of low and moderate income housing. Rather than relying solely on the private sector, a municipality may choose to structure their housing elements so that they take more responsibility for housing production. Such increased responsibility may take the form of a joint venture with a private or non-profit developer.

In addition, the provision of an incentive in concert with the regulatory provisions within N.J.A.C. 5:93-10, Cost Generation, should help expedite municipal cooperation in the approval process of private inclusionary developments. While it is true that N.J.A.C. 5:93-10 mandates such cooperation and provides a process for a developer to obtain relief, it is apparent to the Council that the development process will be expedited much more if such procedures are not necessary. Thus, the rule proposal and the existing rules provide the types of "carrots" and "sticks" that are inherent in the *Mount Laurel* Decisions and the Fair Housing Act.

Additionally, the Council is proposing an amendment to N.J.A.C. 5:93-5.6(b)2 which allows municipalities to seek zoning at a gross density of five units per acre, with a 17.5 percent set-aside, and at six units or more per acre with a 20 percent set-aside. This text was inadvertently omitted from the reproposal, and, since the change was too substantive to make upon adoption of the reproposed rules, the Council is proposing it now, in order to include the flexibility to zone land at a density appropriate to planning considerations while balancing the need to provide low and moderate income housing market units to be constructed as single family housing.

Social Impact

The Council's records indicate that the proposed new rule will result in a relatively minor dilution of the obligation. In addition, the rule has the potential for encouraging municipalities to accept more responsibility for the production of housing than is required by the Supreme Court decisions and the Fair Housing Act. Such an incentive should stimulate the actual production of low and moderate income housing. Thus, the proposed new rule should have a positive social impact.

The addition of the amendment at N.J.A.C. 5:93-5.6(b)2 will also have a positive social impact, in that additional flexibility is permitted which is expected to help increase the supply of low and moderate income units which are constructed as single family detached housing.

Economic Impact

By fostering the production of housing, the proposed new rule should help foster jobs. By fostering municipal actions that help expedite approvals of development applications, the proposal should decrease the cost of producing housing. Thus, the rule should have a positive economic impact.

The addition of the amendment at N.J.A.C. 5:93-5.6(b)2 is expected to provide a positive economic impact for developers, in that the flexibility provided allows the marketing of a greater variety of housing types, within the context of the particular municipal housing element. Additionally, an economic benefit may accrue to those of the 40 percent of the New Jersey population which reside in low or moderate income households and for whom single-family units are desirable, in that the supply of such units is expected to be greater and access to sound shelter within their means more likely.

Regulatory Flexibility Statement

The proposed new rule and amendment do not regulate small business, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, small developers should benefit by municipal actions that expedite the development process. Those regulated by the new rule and amendment are municipalities under the Council's jurisdiction.

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

5:93-3.6 Reductions for substantial compliance

(a) A reduction of the 1987-1999 fair share obligation shall be granted according to the following schedule when the Council determines that a municipality has substantially complied with the terms of its substantive certification, and has actually created, within the municipality, a substantial percentage of the new units that were part of the municipal 1987-1993 housing obligation within the period of substantive certification (as extended by a grant of interim substantive certification pursuant to N.J.A.C. 5:91-14.1(a)):

Percentage of Units Completed	Reduction
90	20 percent
80	10 percent
70	5 percent

This reduction shall be based solely on the percentage of new low and moderate income units constructed within the municipality that received substantive certification. The percentage of units completed shall be determined by dividing the number of new low and moderate income units actually constructed within the municipality by the number of low and moderate income units designated for construction within the municipality in the 1987-1993 fair share plan.

Example: If the municipal housing element and fair share plan that received substantive certification designated 100 units to be constructed in the municipality and another 75 units to be transferred to a receiving municipality via a regional contribution agreement, the reduction shall be based on the percentage of the 100 units that were to be constructed within the municipality that received substantive certification.

(b) The reduction in (a) above shall only be applied to the inclusionary component of the 1987-1999 calculated need, as determined by the Council. This reduction shall be applied to the remaining inclusionary component after the Council has accepted all other reductions and credits (including any rental bonus).

Example: A municipality has a 1987-1999 precredited need of 200. It had a 1987-1993 inclusionary component of 100. All 100 new units were actually constructed within the municipality. The reduction for substantial compliance is 20 percent. The remaining calculated need is 100. However, the rehabilitation component is 20, leaving an inclusionary component of 80. The 20 percent reduction is applied to the 80 remaining new units, leaving an inclusionary component of 64.

5:93-5.6 Zoning for inclusionary development

(a) (No change.)

(b) The Council's review of municipal plans to zone for inclusionary development shall include, but not necessarily be limited to: the existing densities surrounding the proposed inclusionary site; the need for a density bonus in order to produce low and moderate income housing; whether the site is approvable, available, developable and suitable pursuant to N.J.A.C. 5:93-1.3; the site's conformance with the State Development and Redevelopment Plan pursuant to N.J.A.C. 5:93-5.4; the existence of steep slopes, wetlands and floodplain areas on the site; the present ability of a developer to construct low and moderate income housing at a specific density; the length of time an inclusionary site has been zoned at a specific density and set-aside without being developed; and the number of inclusionary sites that have developed within the municipality at specific densities and set-asides.

1. (No change.)

2. In all other municipalities, when the review described in (b) indicates that such densities are appropriate, the Council shall require that a substantial percentage of inclusionary sites be zoned to allow market units within an inclusionary development to be constructed as single family detached units. For these sites, the Council shall generally favor a gross density of four units per acre with a 15 percent set-aside. Municipalities may also seek to zone sites for a gross density of five (5) units per acre **with a 17.5 percent set-aside and six (6) units per acre** or more with a 20 percent set-

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aside. The Council shall determine set-asides for densities between four (4) and **five** (5) and between **five** (5) and **six** (6) through a process of interpolation.

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

CORRECTIONS

(a)

STATE PAROLE BOARD

Board Panel Action: Revocation of Parole

Proposed New Rule: N.J.A.C. 10A:71-7.16A

Proposed Amendment: N.J.A.C. 10A:71-7.16

Authorized By: New Jersey State Parole Board, Mary Keating DiSabato, Chairman.

Authority: N.J.S.A. 30:4-123.48(d), 63 and 64.

Proposal Number: PRN 1994-344.

Submit comments by July 20, 1994 to:
Robert M. Egles
Executive Director
New Jersey State Parole Board
CN 862
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed new rule would require the appropriate Board panels in the cases of adult and young adult offenders to certify parole release on a future date, in lieu of establishing a future parole eligibility term, if the revocation of parole is based on technical violations of the conditions of parole. The provisions for establishing a future parole release date would not be applicable when condition N.J.A.C. 10A:71-6.4(a)1 (obey all laws and ordinances) or N.J.A.C. 10A:71-6.4(a)6 (not to own or possess any firearm, as defined in N.J.S.A. 2C:39-1r for any purpose) are violated. In such cases, a future parole eligibility term will be established. The new rule would not impact on juvenile offenders and the Board Member panel appointed to review the cases of juvenile offenders. The new rule would have prospective application only. The proposed amendment to N.J.A.C. 10A:71-7.16 clarifies the effectiveness of its provisions to inmates who violated parole prior to the effective date of the new rule.

Social Impact

The proposed new rule will impact on those adult and young adult offenders who violate their respective parole status for technical violations of the conditions of parole. In said cases, the appropriate Board panels would be required, upon formally revoking parole, to establish a future parole release upon which the offender would be released from confinement. The parole release of the offender on the established date would be subject to the offender complying with any pre-condition established by the Board panel and the maintaining of acceptable institutional adjustment. The new rule does not impact on juvenile offenders and does not apply to adult or young adult offenders who violate parole by failing to obey all laws and ordinances (N.J.A.C. 10A:71-6.4(a)1) and by owning or possessing any firearm, as defined in N.J.S.A. 2C:39-1r, for any purpose. In said cases, a future parole eligibility term would be imposed and the offender would be required to be evaluated through the parole release hearing process for parole consideration.

The new rule will impact on the State Parole Board, the Board's staff and personnel of the Department of Corrections. The establishment of future parole eligibility dates in the cases of certain adult and young adult parole violators will eliminate the necessity of preparing these cases for future initial and possibly Board panel hearings. This reduction in the number of cases to be prepared for future hearings will permit the Board, the Board's staff and personnel of the Department of Corrections to concentrate their efforts on the processing of those adult and young adult inmates who become primarily eligible for parole or eligible for parole after having been previously denied parole.

Economic Impact

The economic impact of the proposed new rule cannot readily be identified. It is, however, anticipated that the Department of Corrections will derive some economic benefit from the proposed new rule. The reduction in the number of adult and young adult offender cases that need to be prepared for future parole hearings should increase the number of completed cases of adult and young adult inmates who are becoming primarily eligible for parole or eligible for parole after having been previously denied parole. The scheduling and conducting of the appropriate parole hearings in an efficient matter will ameliorate the problem of conducting parole hearings in some cases beyond the inmates' respective parole eligibility dates and the establishing of parole release dates in suitable inmate cases at or near the respective parole eligibility dates will eliminate for the Department of Corrections the cost of housing certain inmates for an extended period of time.

Regulatory Flexibility Statement

The proposed new rule imposes no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The new rule pertains to the establishment of future parole release dates in certain adult and young adult offender cases when revocation of parole is based on technical violations of conditions of parole. A regulatory flexibility analysis is, therefore, not required.

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

10A:71-7.16 Board panel action—schedule of future parole eligibility dates upon revocation of parole **for inmates who have violated parole prior to (the effective date of the adopted amendment)**

(a) **This section applies to inmates who violated parole prior to (the effective date of the adopted amendment).** After consideration of the hearing officer's hearing summary and opinion and any written exceptions thereto, a two member Board panel shall determine whether to revoke parole pursuant to N.J.A.C. 10A:71-7.12, and, if parole is revoked, the two-member Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

(b)-(t) (No change.)

10A:71-7.16A Board panel action—schedule of future parole eligibility dates upon revocation of parole for inmates who violated parole on or after (the effective date of the adopted new rule).

(a) This section applies to inmates who violated parole on or after (the effective date of the adopted new rule). After consideration of the hearing officer's hearing summary and opinion and any written exceptions thereto, a two member Board panel shall determine whether to revoke parole pursuant to N.J.A.C. 10A:71-7.12.

1. If parole is not revoked, the two member Board panel shall authorize the release of the parolee, if in custody, and may modify the conditions of parole or establish appropriate special parole conditions.

2. If parole is revoked in the case of an adult or young adult parolee based on the violation of any parole condition except N.J.A.C. 10A:71-6.4(a)1 and (a)6, the two member Board panel shall certify parole release by:

i. Establishing a specific parole release date which shall be no later than nine months from the date an adult parolee was placed in custody on a parole warrant or six months from the date a young adult parolee was placed in custody on a parole warrant; and

ii. Establishing appropriate pre-release conditions; and/or

iii. Establishing appropriate special parole conditions.

3. If parole is revoked in the case of an adult or young adult parolee for the violation of parole condition N.J.A.C. 10A:71-6.4(a)1 or (a)6, the two member Board panel shall establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

(b) Except as provided in this section, upon revocation of parole, an adult inmate shall serve 12 months and a young adult inmate shall serve nine months if the inmate has committed a violation of condition of parole N.J.A.C. 10A:71-6.4(a)6.

(c) Except as provided in this section, upon revocation of parole, a juvenile inmate shall serve six months, if the inmate has committed one of the following violations of parole:

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1. Failure to report to the parole officer, N.J.A.C. 10A:71-6.4(a)3, provided that such parolee is declared by the District Parole Supervisor to be missing from parole supervision;

2. Owning or possessing any firearm, as defined in N.J.S.A. 2C:39-1f, for any purpose, N.J.A.C. 10A:71-6.4(a)6;

3. Owning or possessing any weapon enumerated in N.J.S.A. 2C:39-1r, N.J.A.C. 10A:71-6.4(a)7;

4. Failure to refrain from the use, possession or distribution of a controlled dangerous substance, controlled substance analog or imitation controlled dangerous substance as defined in N.J.S.A. 2C:35-2 and N.J.S.A. 2C:35-11, N.J.A.C. 10A:71-6.4(a)8; or

5. Failure to comply with any special condition of parole imposed pursuant to N.J.A.C. 10A:71-6.4(d) or (e).

(d) The future parole eligibility date required pursuant to (b) and (c) above may be decreased or increased by up to three months when, in the opinion of the two-member Board panel pursuant to (o) or (p) below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such adjustment.

(e) Except as provided herein, upon revocation of parole, an adult inmate shall serve eight months, a young adult inmate shall serve six months and a juvenile inmate shall serve four months, if the inmate has violated, by non-criminal conduct, parole condition N.J.A.C. 10A:71-6.4(a)1.

(f) The future parole eligibility date required pursuant to (e) above may be decreased or increased by up to three months in the case of an adult inmate or by up to two months in the case of a young adult or juvenile inmate when, in the opinion of a two-member Board panel pursuant to (o) or (p) below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such adjustment.

(g) Except as provided in this section, upon revocation of parole, an adult inmate revoked for commission of a crime while on parole shall serve as follows:

1. Except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a fourth degree crime shall serve less than eight nor more than 12 months.

2. Except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a third degree crime shall serve less than 12 nor more than 16 months.

3. Except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a second degree crime shall serve less than 16 nor more than 28 months.

4. Except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a first degree crime shall serve less than 28 nor more than 48 months.

5. Except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for the commission of the crimes of murder or kidnapping shall serve less than four years, eight months nor more than eight years, four months.

6. Upon the second or subsequent revocation of parole, an adult inmate revoked for commission of a crime while on parole shall serve whatever time remains on the maximum sentence(s) or 10 years whichever is less.

(h) Except as provided in this section, upon a two-member adult Board panel determining that an adult inmate shall serve a future parole eligibility term upon revocation of parole, the two-member adult Board panel shall establish such terms as follows:

1. The two-member adult Board panel shall establish the following:

i. A term of 10 months for the commission of a fourth degree crime;

ii. A term of 14 months for the commission of a third degree crime;

iii. A term of 22 months for the commission of a second degree crime;

iv. A term of 38 months for the commission of a first degree crime; and

v. A term of six years, six months for the commission of the crime of murder or kidnapping.

2. The term established may be decreased or increased within the limits provided by (g) above when, in the evaluation of the two member adult Board panel, the mitigating and aggravating factors as set forth in (o) and (p) below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such adjustment.

(i) Except as provided in this section, upon a two member young adult Board panel determining that a young adult inmate shall serve a future parole eligibility term upon the revocation of parole, the two-member young adult Board panel shall establish the following:

1. Except as provided in (j) and (q) below, a term of eight months for the commission of a fourth degree crime;

2. Except as provided in (j) and (q) below, a term of 10 months for the commission of a third degree crime;

3. Except as provided in (j) and (q) below, a term of 16 months for the commission of a second degree crime;

4. Except as provided in (j) and (q) below, a term of 24 months for the commission of a first degree crime; and

5. Except as provided in (j) and (q) below, a term of 30 months for the commission of the crimes of murder or kidnapping.

(j) The future parole eligibility date required pursuant to (l) above may be decreased or increased when, in the opinion of the two-member young adult Board panel pursuant to (o) or (p) below, the circumstances of the parole violation and the characteristics and past records of the parole warrant such consideration. The increase or decrease shall be no more than the following:

1. Two months in the case of the commission of a fourth degree crime;

2. Four months in the case of the commission of a third degree crime or possession of controlled dangerous substance;

3. Six months in the case of the commission of a second degree crime, sale or distribution of controlled dangerous substance or possession of controlled dangerous substance with intent to distribute;

4. Eight months in the case of the commission of a first degree crime; and

5. Ten months in the case of the commission of the crimes of murder or kidnapping.

(k) Except as provided in this section, upon the juvenile Board panel determining that a juvenile inmate shall serve a future parole release term upon revocation of parole, the juvenile Board panel shall establish the following:

1. Except as provided in (l) and (q) below, a term of six months for the commission of a fourth degree crime or an offense which constitutes a crime of the fourth degree if committed by an adult;

2. Except as provided in (l) and (q) below, a term of eight months for the commission of a third degree crime or an offense which constitutes a crime of the third degree if committed by an adult;

3. Except as provided in (l) and (q) below, a term of 12 months for the commission of a second degree crime or an offense which constitutes a crime of the second degree if committed by an adult;

4. Except as provided in (l) and (q) below, a term of 16 months for the commission of a first degree crime or an offense which constitutes a crime of the first degree if committed by an adult; and

5. Except as provided in (l) and (q) below, a term of 20 months for the commission of the crime of murder or kidnapping or an offense which constitutes the crime of murder or kidnapping if committed by an adult.

(l) The future parole release term required pursuant to (k) above may be decreased or increased when in the opinion of the juvenile Board panel, pursuant to (o) or (p) below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such consideration. The decrease or increase shall be no more than the following:

1. Two months in the case of the commission of a fourth degree crime or an offense which constitutes a crime of the fourth degree if committed by an adult;

2. Four months in the case of the commission of a third degree crime or an offense which constitutes a crime of the third degree if committed by an adult;

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3. Six months in the case of the commission of a second degree crime or an offense which constitutes a crime of the second degree if committed by an adult;

4. Eight months in the case of the commission of a first degree crime or an offense which constitutes a crime of the first degree if committed by an adult; and

5. Ten months in the case of the crime of murder or kidnapping or an offense which constitutes the crime of murder or kidnapping if committed by an adult.

(m) Except as provided in this section, an inmate, upon the revocation of parole for the commission of a crime while on parole, shall serve at least six months or that portion of the custodial term remaining, whichever is less.

(n) In no case shall a future parole eligibility date established pursuant to (b), (c), (d), (e), (f), (g), (h), (i), (j) above or the future parole release date established pursuant to (k) and (l) above be greater than the balance of the custodial term remaining.

(o) A two-member Board panel may decrease, pursuant to (d), (f), (h)2 or (j) above, the future parole eligibility date required pursuant to (b), (c), (e), (g), (h)1 or (l) above, or decrease pursuant to (l) above, the future parole release date required pursuant to (k) above if the two-member Board panel determines that one or more of the following mitigating factors is present:

1. The parolee has demonstrated a positive attitude to parole supervision.

2. The parolee was employed on a full-time basis.

3. The parolee's living arrangement was stable and supportive.

4. The parolee was under parole supervision for a period of at least two years.

5. The parolee has previously adjusted successfully to parole supervision.

6. The parolee has no previous convictions.

7. The parolee's original sentence was for a non-violent offense.

(p) A two-member Board panel may increase, pursuant to (d), (f), (h)2 or (j) above, the future parole eligibility date required pursuant to (b), (c), (e), (g), (h)1, or (i) above, or increase pursuant to (l) above, the future parole release date required pursuant to (k) above, if the two member Board panel determines that one or more of the following aggravating factors is present:

1. The parolee has demonstrated a negative attitude to parole supervision.

2. The parolee was under parole supervision for a period of less than six months.

3. The parolee has previous parole failures.

4. The parolee has extensive prior convictions.

5. The parolee has violated more than one parole condition.

6. The parolee was guilty of substance abuse while on parole.

7. The parolee's original sentence was for a violent offense.

(q) A three-member Board panel may establish a future parole eligibility date which differs from that otherwise required by the provisions of this section if the future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, which would otherwise be established pursuant to this section is clearly inappropriate in consideration of the circumstances of the parole violation and the characteristics and prior criminal record of the parolee.

1. If, in the opinion of a two-member Board panel revoking parole, the future parole eligibility date or, in the case of a juvenile inmate, the future parole release date which would otherwise be established pursuant to this section is clearly inappropriate as provided in this section, the two-member Board panel shall refer such case for a three-member Board panel review for the purpose of establishing a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date.

i. In such instances, the third Board panel member shall review the record.

2. The two-member Board panel shall, at least 14 days prior to the three-member Board panel's determination, notify the inmate and the inmate's attorney, in writing, pursuant to N.J.A.C. 10A:71-7.17 that a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, pursuant to this section has not been established and the reasons therefor and that a three member Board panel review of the record will be scheduled.

3. The three-member Board panel shall, upon disposition of the case, state in writing to the inmate and the inmate's attorney the reasons for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date which differs from that otherwise required by the provisions of this section.

4. The decision of the three-member Board panel to establish a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, which differs from that required the provisions of this section shall be by unanimous decision only. Failure to reach an unanimous decision shall result in the referral of the inmate's case to the Board for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date.

5. If the three-member Board panel fails to reach an unanimous decision, the three-member Board panel shall notify the inmate and the inmate's attorney, in writing, that his case has been referred to the Board for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date.

6. The Board's establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date shall be based on the review of the record. Upon disposition of the case, the Board shall state in writing to the inmate and the inmate's attorney the reasons for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, which differs from that otherwise required by the provisions of this section.

(r) Any future parole eligibility term determined pursuant to this section shall commence on the date the parolee was returned to custody as a parole violator, unless otherwise determined as a result of a court imposing a sentence for a crime committed while on parole.

(s) In the case of a county inmate who has been granted parole and whose parole has been revoked, the inmate shall not be credited for any time served on parole and shall not be eligible for parole consideration on the remainder of the original county sentence.

(t) If an inmate's maximum sentence will expire prior to the parole release date that could be established pursuant to (a)2 above, the future parole eligibility date that could be established pursuant to (b), (c), (d), (e), (f), (g), (h), (i), (j) above or the future parole release date that could be established pursuant to (k) or (l) above, the appropriate Board panel may direct that such inmate serve his or her maximum sentence and not be eligible for parole consideration on the balance of the maximum sentence.

INSURANCE

(a)

THE COMMISSIONER

Group Self-Insurance

Proposed Readoption: N.J.A.C. 11:15

Authorized By: Edward Gross, Acting Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, 34:15-77 et seq., and 40A:10-36 et seq.

Proposal Number: PRN 1994-358.

Submit comments by July 20, 1994 to:
Donald Bryan, Acting Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Commissioner of Insurance (Commissioner) proposes to readopt N.J.A.C. 11:15, which is due to expire on October 26, 1994. The chapter contains rules which govern the formation of pooling mechanisms by groups of hospitals

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seeking to self-insure workers' compensation coverage, and by local units of government joining together to insure against liability, property damage, workers' compensation, and group health and term life insurance. As required by the Executive Order, the Department of Insurance (Department) has reviewed this chapter and has determined that the rules contained therein to be necessary, reasonable, and proper for the purpose for which they were originally promulgated.

Rules concerning the following subjects are codified in N.J.A.C. 11:15:

1. Hospital workers' compensation group self-insurance;
2. Joint insurance funds for local governmental units; and
3. Joint insurance funds for local governmental units providing group health and term life benefits.

The rules in this chapter were promulgated to implement statutory requirements in Titles 34 and 40A of the New Jersey Statutes. Subchapter 1 was promulgated to implement N.J.S.A. 34:15-77 et seq., which authorizes 10 or more hospitals licensed in this State to pool their workers' compensation liabilities through the formation of a self-insurance group or pool. Subchapter 1 implements those provisions by establishing criteria for: (1) the organization and administration of such groups; (2) obligations of the group and its members; (3) ways in which rates are established and profits and losses distributed; and (4) methods to guard against insolvency or financial deterioration of the group.

Subchapter 2 was originally promulgated to implement N.J.S.A. 40A:10-36 et seq., which authorizes two or more local units of government to form a joint insurance fund for the purpose of insuring against claims for liability, property damage and workers' compensation. Subchapter 2 provides the standards governing the establishment, operation, oversight, modification and dissolution of such funds.

Subchapter 3 was originally promulgated to implement amendments to N.J.S.A. 40A:10-36 et seq., which were enacted on November 30, 1990, and which expanded the risks which a joint insurance fund may insure to include contributory or non-contributory group health insurance or group term life insurance. Subchapter 3 sets forth the requirements for the establishment, operation, oversight, modification, and dissolution of a joint insurance fund formed for that purpose. The general requirements set forth in subchapter 3 essentially reflect the requirements set forth in subchapter 2, with appropriate modifications to address the provision of group health and term life insurance.

The Department believes that the readoption of these rules will continue to provide a regulatory framework by which the Department may ensure that hospital workers' compensation self-insurance groups and joint insurance funds formed by local units of government are operating in compliance with applicable statutory requirements. In addition, the readoption of these rules will continue to enable the Department to assess the financial condition and viability of these entities, thus lessening the likelihood of group or fund insolvencies. This, in turn, will help ensure that these entities will be in a position to pay their obligations, thus protecting the interest of claimants as well as taxpayers of this State.

The Department notes that amendments to subchapter 2 will be separately proposed in a near-future issue of the New Jersey Register, to implement amendments to N.J.S.A. 40A:10-36, which were enacted on July 17, 1992 and on September 8, 1993.

Social Impact

Readoption of N.J.A.C. 11:15 will continue to provide the Department with an appropriate regulatory framework by which it may monitor the operations of insurance pools formed by hospitals or local units of government to ensure their compliance with applicable statutory requirements, and thereby help ensure that these entities will be in a position to pay covered claims. This, in turn, will continue to benefit claimants as well as taxpayers. Failure to readopt these rules would eliminate the existing regulatory framework that both the Department and the regulated entities have relied upon for procedures governing formation and approval of these self-insurance pools, as well as the guidelines for their operation. Failure to readopt N.J.A.C. 11:15 thus would result in disruptions to the Department, as well as claimants, taxpayers of this State and the regulated entities. Through readoption of N.J.A.C. 11:15, these entities will continue to be afforded uniformity, consistency, and the flexibility to operate in a cost effective manner.

Economic Impact

Insurance pools formed pursuant to N.J.S.A. 34:15-77 et seq. or 40A:10-36 et seq., and entities that seek to join together to form such insurance pools pursuant to those statutes, will continue to file required information, obtain required actuarial certifications, bear the cost of examinations, and bear any costs associated with operating the joint insurance fund or pool pursuant to the guidelines set forth in the rules. However, these rules have been in effect for almost 10 years, and, as noted in the Social Impact statement above, the Department as well as the regulated entities have relied on the guidelines set forth in the rules for their formation as well as for providing general operating guidelines and other regulatory requirements. Accordingly, the readoption of N.J.A.C. 11:15 will continue to provide a mechanism for the creation and operation of these insurance pools, and thus avoid any disruptions and attendant costs to the Department, claimants, taxpayers, and the regulatory entities resulting from the elimination of the existing regulatory framework. Hospitals and local units of government, therefore, may stabilize insurance costs and may experience premium savings through the formation of self-insurance groups or pools. The rules also will continue to provide appropriate regulatory oversight over these entities to help ensure their solvency, adequacy of reserving and compliance with applicable statutory requirements. This will help ensure that these entities will be in a position to pay covered claims, thus benefitting both claimants and taxpayers of the State.

The Department will continue to review the information submitted in accordance with the rules and will continue to review the operations of these entities to ensure compliance with the applicable statutes and these rules. The Department notes that filing fees imposed for the review of applications for approval submitted by prospective entities will offset some of these costs.

Regulatory Flexibility Analysis

N.J.A.C. 11:15 should not directly impose reporting, recordkeeping or other compliance requirements on small businesses. The rules in N.J.A.C. 11:15 directly apply only to hospitals and public entities composed of member local units of government. The Department believes that many if not all licensed hospitals that may form a self-insurance group pursuant to N.J.S.A. 34:15-77 et seq. should employ more than 100 full-time employees. Therefore, hospitals and the public entities to which N.J.A.C. 11:15 directly applies generally do not meet the definition of "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

However, the Department notes that N.J.A.C. 11:15 will, in certain instances, indirectly impose reporting, recordkeeping and other compliance requirements on other entities that have contracted with the self-insurance group or joint insurance fund to provide specified services. For example, subchapter 2 requires that the custodian of funds, servicing organization, and fund administrator report to the fund commissioners and the Commissioner on various activities related to the services it has been retained to perform (see for example, N.J.A.C. 11:15-2.4, 2.17, 2.19 and 2.21). The Department believes that virtually all of these entities would meet the definition of "small business" as defined in N.J.S.A. 52:14B-16 et seq. Accordingly, these small businesses will continue to bear any costs involved in complying with the requirements set forth in the rules. However, for the reasons that follow, the Department does not believe that these requirements impose any undue burden on these entities or that different reporting, recordkeeping or compliance requirements are feasible. These entities have contracted with the self-insurance group or joint insurance fund to provide specified services. The information required to be reported is intended to ensure that the fund or group, which is comprised of public entities or hospitals, is fully apprised of the status of the various services being provided. Accordingly, the information required to be reported should be readily available, and indeed would undoubtedly be required by the fund or group itself, in the absence of specific regulatory requirements by the Department. Finally, any costs to the entity would be reflected in the compensation provisions voluntarily entered into between the entity and the fund or group. Compliance should not require the entities to employ professional services.

Therefore, for the reasons discussed above, and to ensure consistency and uniformity in the data reported to self-insurance groups or joint insurance funds and the Commissioner, no differentiation in compliance requirements is currently provided, or is proposed to be provided, based on business size.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:15.

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LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Carnival-Amusement Rides Safety Act Inspection Fees

Proposed Amendment: N.J.A.C. 12:195-1.9

Authorized By: Peter J. Calderone, Acting Commissioner, Department of Labor.
Authority: N.J.S.A. 5:3-31 et seq.
Proposal Number: PRN 1994-367.

A **public hearing** on the proposed amendment will be held on the following date at the following location:

Monday, July 11, 1994
10:00 A.M. to 12:00 P.M.
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625

Please call the Office of External and Regulatory Affairs at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by July 20, 1994 to:

Deirdre Webster, Regulatory Officer
External and Regulatory Affairs
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

If you need this document in braille, large print or audio cassette, contact the Office of Work and Disability at (609) 777-1727 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 12:195-1.9 is necessary to recoup the costs of implementing the carnival-amusement ride inspection and permit issuance program as required under N.J.S.A. 5:3-39.

Two alternatives are proposed at N.J.A.C. 12:195-1.9 concerning the rates for inspection of carnival-amusement rides. Alternative A establishes rates by class based on the amount of time required to inspect carnival-amusement rides. Alternative B establishes inspection rates by class based on the amount of time required to inspect carnival-amusement rides and whether the carnival-amusement ride owner's facility is permanent or traveling. Please note that the Department will adopt its amendment to this rule based on the comments received on these alternatives from interested parties.

In order to establish either of these alternatives without placing unworkable hardship on the diminished staff in this program area and to reduce the potential for application backlogs, an amendment to N.J.A.C. 12:195-1.9 has also been proposed to require all carnival-amusement ride owners to submit their applications 90 days prior to commencing operations.

Social Impact

The proposed amendments are anticipated to have a positive social impact since they ensure adequate funding of the carnival-amusement ride inspection program which is necessary for protection of public safety.

Economic Impact

The proposed inspection/permit fee increase will have an impact on all carnival-amusement ride owners. Under Alternative A, all carnival-amusement ride owners will be assessed the same fee based on the amount of time required to inspect carnival-amusement rides. Under Alternative B, traveling carnival-amusement ride owners will be assessed a higher fee than permanent carnival-amusement ride owners. This higher fee is necessary to ensure protection of the public. Traveling carnival-amusement ride facilities are routinely inspected more frequently than stationary facilities as they are erected, disassembled and reassembled when the facility relocates throughout the State, thus warranting a higher inspection fee than stationary facilities which by virtue of their one time assembly, would require less inspection. In any case, although permit fees were raised in 1991, the fee increase was not nearly enough to meet the program costs as required by N.J.S.A. 5:3-39. The law requires the Department to determine a schedule of inspection and permit fees as nearly as practicable within the limits of reasonableness to bring the fees into line with the costs of implementing the provisions of the Act.

Regulatory Flexibility Analysis

The proposed amendment imposes compliance requirements on owners of carnival-amusement rides, the large majority of which are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This inspection fee payment requirement imposes no need for the Department of Labor or owners to employ additional professional services for implementation. Lesser fees for small businesses are not imposed in the interest of public safety, since the uniform fees proposed fairly distribute costs and are necessary for the Department to maintain its ride inspection and permit program.

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

12:195-1.9 Inspection fee and permit

ALTERNATIVE A

(a) [Before] **Ninety days before** commencing operations and in each year thereafter, an owner shall apply for a permit with an application form furnished by the Division and containing such information as the Division may require. The application shall be accompanied by a certificate of insurance, bond, or other security indicating that the owner has complied with N.J.A.C. 12:195-1.14.

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

(d) [Upon] **Once an** application for a permit **has been approved**, the appropriate officials of the Division of Workplace Standards shall inspect the amusement ride for which an annual fee shall be charged [at the rate of $100.00 for each major ride and $50.00 for each kiddie ride] **in accordance with the following schedule. This schedule stratifies the carnival-amusement rides into one of four classes which are based on inspection duration time.**

Carnival-Amusement Ride Inspection/Permit Fee Schedule

Ride Type	Inspection Time in Hours	Ride Inspection Fee
Class A	0 - .9	$ 85.00
Class B	1.0–1.9	$170.00
Class C	2.0–2.9	$255.00
Class D	3.0+	$340.00

(e)-(i) (No change.)

ALTERNATIVE B

(a) [Before] **Ninety days before** commencing operations and in each year thereafter, an owner shall apply for a permit with an application form furnished by the Division and containing such information as the Division may require. The application shall be accompanied by a certificate of insurance, bond, or other security indicating that the owner has complied with N.J.A.C. 12:195-1.14.

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

(d) [Upon] **Once an** application for a permit **has been approved**, the appropriate officials of the Division of Workplace Standards shall inspect the amusement ride for which an annual fee shall be charged [at the rate of $100.00 for each major ride and $50.00 for each kiddie ride] **in accordance with the following schedules. These schedules have been divided into two categories based on whether the facility is permanent or traveling. Each schedule then stratifies the carnival-amusement rides into one of four classes which are based on inspection duration time.**

Traveling Facilities

Ride Type	Inspection Time in Hours	Ride Inspection Fee
Class A	0 - .9	$105.00
Class B	1.0–1.9	$210.00
Class C	2.0–2.9	$315.00
Class D	3.0+	$420.00

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Permanent Facilities

Ride Type	Inspection Time in Hours	Ride Inspection Fee
Class A	0 - .9	$ 70.00
Class B	1.0–1.9	$140.00
Class C	2.0–2.9	$210.00
Class D	3.0+	$280.00

(e)-(i) (No change.)

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Overweight Oceanborne Containers

Proposed Amendments: N.J.A.C. 13:18-1.5 through 1.9, 1.12 and 1.15

Authorized By: Stratton C. Lee, Jr., Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:2-3 and 39:3-84.

Proposal Number: PRN 1994-363.

Submit written comments by July 20, 1994 to:
C. Richard Kamin, Acting Director
Division of Motor Vehicles
Attention: Legal Staff
225 East State Street
CN 162
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The needs of freight shippers using oceanborne containers for transport into and through New Jersey have come increasingly to the attention of the Division and the New Jersey Department of Transportation. The goal of utilizing cargo containers is to optimize the efficiency of ocean freight transport by maximizing the weight of freight to be carried in a given volume of standard containers while at the same time minimizing the handling incident to shipment. Such containers used in international commerce are sealed by the United States Customs Service and are not opened or unloaded except in the presence of customs officials. The proposed amendment to N.J.A.C. 13:18-1.8 will allow trucks carrying these containers to obtain permits for overweight loads.

The competitive position of New Jersey has been negatively impacted by Virginia, Maryland, and Georgia, all of which permit these shipments. N.J.S.A. 39:3-84 provides in pertinent part that the Division may for "good cause" promulgate rules and regulations for the issuance of a special written permit allowing the shipment of loads "that cannot be dismembered, dismantled or divided in order to comply with [weight limitations]." It is the position of the Federal Highway Administration (23 CFR Part 658.17(g)) and correspondence from the Federal Highway Administrator, coupled with recent advice from the New Jersey Attorney General's Office (AAA #89-80197 to the Commissioner of the New Jersey Department of Transportation and the Director of the Division of Motor Vehicles), that cargo containers involved in international commerce may be treated as indivisible loads constituting good cause for the issuance of permits for passage in the State. The proposed amendments will accomplish that purpose.

N.J.A.C. 13:18-1.6 is also amended (essentially mirroring N.J.S.A. 39:3-84.4) to clarify responsibility for damage to roads, bridges, etc. from any person driving any vehicle, object or contrivance subject to and in excess of weight limitations and permit requirements, and N.J.A.C. 13:18-1.8 is amended to increase the weight limit carried by one tandem axle unit only of a mutli-axle trailer from 34,000 to 38,000 pounds.

Several other technical changes, corrections and clarifications are also made to the subchapter.

Social Impact

The proposed amendments implement the public policy of allowing increased weights to be carried by trucks using New Jersey roads for oceanborne container commerce. The economic stimulus is expected to have a favorable social impact.

Economic Impact

The free flow of commerce through New Jersey is expected to increase. Minimizing the idiosyncratic variations in requirements among the various states involved in containerized transport is expected both to increase the overall economic efficiency with which such shipments are handled and to increase the amount of such shipments into and through New Jersey. A significant beneficial impact on the competitive position of the State's economy, both regionally and internationally, is thus predicted. Moreover, permitting such loads provides a record for determining that carriers are properly insured for any damage that they might cause to New Jersey roads and bridges.

Regulatory Flexibility Statement

The proposed amendments do not impose reporting, recordkeeping or other compliance requirements on "small businesses" pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Small businesses are made liable for damages to highways or highway structures, but inasmuch as N.J.S.A. 39:3-84.4 has long provided for such liability, no additional impact is expected.

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

13:18-1.5 Fees

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

(d) No fee shall be imposed for a permit issued to [an agency of the Federal, any state, county or municipal government for the operation of a vehicle owned by such governmental agency] **a vehicle owned or operated by the United States, the State, any government or local government subdivision, agency or instrumentality thereof.**

13:18-1.6 [Application] **Liability for damage**; application requirements; insurance

(a) Any person driving any vehicle, object or contrivance subject to and in excess of statutory weight limitations and permit requirements upon any highway or highway structure, whether temporary or permanent, shall be liable for all damage which the highway or highway structure may sustain as a result of any such operation, driving or moving of such vehicle, object or contrivance.

1. Such damage may be recovered in a civil action brought by the authorities in control of such highway or highway structure.

2. The fact that the vehicle, object, or contrivance causing the damage was being operated, driven or moved within the authorized size and weight limitations or permitted by a special permit as provided by law, shall not be accepted as a defense to any action brought as provided in this subsection if damage is caused to highways or structures posted for weight limits less than those set forth by statute.

3. Whenever the driver is not the owner of such vehicle, object or contrivance, but is so operating, driving or moving with the express or implied permission of the owner, then the owner and the driver shall be jointly and severally liable for any damage.

Recodify exising (a) and (b) as **(b) and (c)** (No change in text.)

13:18-1.7 Exceptions; insurance certificate requirement

[(a)] The filing of an insurance certificate shall not be required in the case of an oversize permit issued for the operation of a private utility[,] trailer, [or] house-type trailer, or semitrailer.

[(b)] In such cases the provisions of the Security-Responsibility Law will apply.

13:18-1.8 [Invalidity of permits] **Permits generally**

(a) No permit shall be valid:

1. For the operation of a vehicle or combination of vehicles transporting a load which can be dismantled, reduced in quantity or feasibly loaded in such a manner so that the weight and dimensional limitations prescribed in Title 39 of the Revised Statutes are not exceeded, **except for sealed containers of the type commonly used for the conveyance of freight transport in international ocean-going commerce, bearing the seal of the United States Customs Service, where the per-axle weight limitation does not exceed 38,000 pounds for one tandem axle unit only in a tractor/semi-trailer combination;**

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2. On any toll road;

3. Unless there is compliance with all applicable requirements of this [Subchapter] **subchapter** and pertinent statutory provisions.

13:18-1.9 [Invalidity of overweight] **Overweight** permits

(a) An overweight permit shall not be valid:

1. For the operation of a vehicle registered or required to be registered[,] in New Jersey unless the vehicle is registered in this State at the maximum registration weight permitted under N.J.S.A. 39:3-20.

2. (No change.)

(b) (No change.)

13:18-1.12 Warning signs

(a) (No change.)

(b) The term "WIDE LOAD" or "OVERSIZE LOAD" shall be displayed on the sign in black letters **of** [ten] **10** inches minimum height on a yellow background.

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

13:18-1.15 Oversize private utility [and] **or** house-type trailer[s and] **or** semitrailer[s]

(a) A permit shall not be valid for the operation [on its own wheels,] of any private utility[,] or house-type trailer or semitrailer, **on its own wheels,** with a width of more than 14 feet.

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

(d) If the trailer or semitrailer is not more than [ten] **10** feet wide, the towing vehicle shall have a capacity of ¾ ton or more, and if the trailer or semitrailer is more than [ten] **10** feet wide, the towing vehicle capacity shall be 1½ tons or more.

(e) A private utility[,] or house-type **trailer or** semitrailer in excess of 12 feet in width, or its towing vehicle, shall be equipped with and have in operation two sway control devices [as] between the towing vehicle and [semitrailer] **the towed vehicle.**

(a)

DIVISION OF MOTOR VEHICLES

Administrative Hearings; Driver Licenses; Examination Permits; Special Learner's Permits; Identification Cards for Nondrivers; Motorized Bicycle Licenses; Motorized Bicycle Learner's Permits

Proposed Amendments: N.J.A.C. 13:19-1.1, 13:21-7.1, 8.1, 8.2 and 8.4, and 13:25-1.1, 2.1, 3.1 and 3.3

Proposed New Rules: N.J.A.C. 13:21-16 and 13:25-2.1

Proposed Repeals: N.J.A.C. 13:21-6.3 and 13:25-2.2

Proposed Repeals and New Rules: N.J.A.C. 13:21-6.1, 6.2, 7.2, 7.3 and 7.4

Authorized By: C. Richard Kamin, Acting Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:2-3, 39:3-10, 39:3-11.3, 39:3-13, 39:3-13.1, 39:3-29.9, 39:4-14.3, 39:5-30 and P.L. 1993, c.34.

Proposal Number: PRN 1994-356.

Submit written comments by July 20, 1994 to:

C. Richard Kamin, Acting Director
Division of Motor Vehicles
Attention: Legal Staff
225 East State Street
CN 162
Trenton, New Jersey 08666-0162

The agency proposal follows:

Summary

The Division of Motor Vehicles proposes repeals and new rules and amendments to existing rules relating to administrative hearings, driver licenses, examination permits, special learner's permits, agricultural licenses, identification cards for nondrivers, motorized bicycle licenses and motorized bicycle learner's permits in order to implement the public policy of this State as set forth in P.L. 1993, c.34. That Act requires a driver license, permit or nondriver identification card applicant to provide to the Division, as a condition for obtaining a license, permit or identification card, satisfactory proof that the applicant's presence in the United States is authorized under Federal law.

The proposed new rules at N.J.A.C. 13:21-6.2, 7.2 and 16.2 and 13:25-2.1 require every applicant for an examination permit, special learner's permit, nondriver identification card or motorized bicycle learner's permit, respectively, to furnish to the Division, in the manner set forth in N.J.A.C. 13:21-8.2(b) as amended, proof of identity and date of birth and proof that his or her presence in the United States is authorized under Federal law as a condition to the issuance of the permit or identification card. The proposed new rule at N.J.A.C. 13:21-16.1 sets forth definitions of "state of residence," "nondriver identification card" and "United States."

The proposed amendments to N.J.A.C. 13:19-1.1 make specific reference to cases involving denials of licenses and extend the administrative hearing rules to examination permits, special learner's permits, nondriver identification cards, motorized bicycle licenses, motorized bicycle learner's permits and driving privileges.

N.J.A.C. 13:21-8.2(b) is proposed for deletion and a new subsection (b) inserted which requires, in addition to proof of identity and date of birth, that every applicant for a driver license or agricultural license prove to the Division that his or her presence in the United States is authorized under Federal law as a condition to the issuance of the license. N.J.A.C. 13:21-8.2(b) as amended also sets forth various documents that may be submitted to the Division by such an applicant in order to establish proof of identity and date of birth and proof that his or her presence in this country is authorized under Federal law. Although proof of age, identity, and legal status in the country are separate criteria, all three must be proven in order to be eligible for licensure. As such, the specific documents enumerated in these rules are those that evidence all three criteria. Documents that evidence less than these three criteria have been omitted since they would not be sufficient to prove eligibility for licensure. Therefore, the revised list of documents in subsection (b) deletes as acceptable proof the following documents: identification cards issued by the New Jersey Casino Control Commission; driver licenses issued by other states or countries; baptismal certificates; and birth records contained in family Bibles. The revised list of documents in subsection (b) adds as acceptable proof the following documents: certificates of naturalization issued by the United States Department of Immigration and Naturalization; employment authorization cards issued by the United States Department of Immigration and Naturalization, when accompanied by a social security card; United States adoption papers; and any other documents issued by the United States which establish proof of identity and date of birth and proof that presence in the United States is authorized under Federal law.

Proposed N.J.A.C. 13:21-8.2(c) provides that the identity of the applicant shall be deemed to be the name recorded on the document(s) submitted to the Division unless evidence of a different name is established by the submission of a civil marriage certificate, divorce decree or order of court. Proposed N.J.A.C. 13:21-8.2(d) provides that any person from a foreign country who is in New Jersey for a period of one year or less may operate a motor vehicle in this State if he or she is the holder of a current driver's license in good standing from the country in which he or she resides provided that such license authorizes operation of the class of vehicle to be operated in this State. Proposed N.J.A.C. 13:21-8.2(e) provides that any person from a foreign country who is in New Jersey for a period of one year or less and who would be entitled to operate a motor vehicle in this State pursuant to N.J.A.C. 13:21-8.2(d) but for the fact that he or she is not the holder of a driver's license from the country in which he or she resides shall be eligible to make application for a New Jersey driver's license or permit. N.J.A.C. 13:21-8.2(e) further provides that the Director shall suspend or revoke any driver's license or permit issued pursuant to that subsection upon expiration of the license or permit holder's lawful presence in the United States unless it is demonstrated that the person's continued presence in the United States is authorized under Federal law. Proposed N.J.A.C. 13:21-8.2(f) provides that the Division shall not issue a driver's license to a person who is entitled to operate a motor vehicle in this State pursuant to N.J.A.C. 13:21-8.2(d), or who is entitled to operate a motor vehicle in this State under a reciprocity privilege granted by any law, unless said reciprocity privilege is revoked or termi-

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nated by the establishment of residence in this State and the surrender of said person's current out-of-state driver's license to the Division upon issuance of a New Jersey driver's license.

The proposed amendments to N.J.A.C. 13:21-6.1 include the insertion of a definition of "United States"; and technical changes to the title and text of the rule.

The existing N.J.A.C. 13:21-6.2 is recodified as N.J.A.C. 13:21-6.3 and technical changes made to the title and text of the rule.

The existing N.J.A.C. 13:21-6.3 is repealed. The proof of identity and date of birth requirement, which was previously contained in subsection (a) of the rule, is now addressed at N.J.A.C. 13:21-6.2. The medical certificate requirement, which was previously contained in subsection (b) of the rule, is now addressed at N.J.A.C. 13:21-8.4(b) as amended by this proposal.

The proposed amendments to N.J.A.C. 13:21-7.1 conform the definition of "special learner's permit" to that set forth in the governing statutes (N.J.S.A. 39:3-13.1 and 39:3-13.2a). The proposal further amends the rule by inserting a definition of "United States."

The existing N.J.A.C. 13:21-7.2 is recodified as N.J.A.C. 13:21-7.3 and technical changes made to the text of the rule.

The existing N.J.A.C. 13:21-7.3 is recodified as N.J.A.C. 13:21-7.4 and a technical correction made to the text of the rule.

The existing N.J.A.C. 13:21-7.4 is recodified as N.J.A.C. 13:21-7.5, technical changes made to the title and text of the rule, and the rule is conformed to P.L. 1993, c.287.

The proposed amendments to N.J.A.C. 13:21-8.1 include the insertion of a definition of "United States," and the deletion of an unnecessary definition of the term "requirements."

The proposed amendments to N.J.A.C. 13:25-1.1 include the insertion of a definition of "United States," and the deletion of an unnecessary definition of the term "requirements."

The existing N.J.A.C. 13:25-2.1 is recodified as N.J.A.C. 13:25-2.2 and technical changes made to the title and text of the rule. The proof of identity and date of birth requirement, which was previously contained in paragraph (a)3 of the rule, is now addressed at N.J.A.C. 13:25-2.1.

The existing N.J.A.C. 13:25-2.2 is repealed. The medical certificate requirement, which was previously contained in subsection (a) of the rule, is now addressed at N.J.A.C. 13:25-3.3(b) as amended by this proposal.

N.J.A.C. 13:25-3.1 is amended so as to require every applicant for a motorized bicycle license to prove to the Division that his or her presence in the United States is authorized under Federal law as a condition to the issuance of said license. N.J.A.C. 13:25-3.1 continues to require such applicants to furnish to the Division proof of identity and date of birth as a condition to the issuance of the license. N.J.A.C. 13:25-3.1 is amended to provide that any person from a foreign country who is in New Jersey for a period of one year or less may operate a motorized bicycle in this State if he or she is the holder of a current driver's license or motorized bicycle license in good standing from the country in which he or she resides. N.J.A.C. 13:25-3.1 is also amended to provide that any person from a foreign country who is in New Jersey for a period of one year or less and who would be entitled to operate a motorized bicycle in this State pursuant to N.J.A.C. 13:25-3.1(d) but for the fact that he or she is not the holder of a driver's license or motorized bicycle license from the country in which he or she resides shall be eligible to make application for a New Jersey motorized bicycle license or learner's permit. N.J.A.C. 13:25-3.1(e) further provides that the Director shall suspend or revoke any motorized bicycle license or learner's permit issued pursuant to that subsection upon expiration of the license or permit holder's lawful presence in the United States unless it is demonstrated that the person's continued presence in the United States is authorized under Federal law. N.J.A.C. 13:25-3.1 is also amended to provide that the Division shall not issue a motorized bicycle license to a person who is entitled to operate a motorized bicycle in this State pursuant to N.J.A.C. 13:25-3.1(d), or who is entitled to operate a motorized bicycle in this State under a reciprocity privilege granted by any law, unless said reciprocity privilege is revoked or terminated by the establishment of residence in this State and the surrender of said person's current out-of-State license to the Division upon issuance of a New Jersey driver's license or motorized bicycle license.

Social Impact

The proposed amendments and new rules have a positive social impact in that they reflect the public policy of this State embodied in P.L. 1993, c.34, which requires the Division of Motor Vehicles to refuse to issue a driver license, examination permit, special learner's permit or nondriver identification card to a person who is unable to establish that his or her presence in the United States is authorized under Federal law. The amendments and new rules conform Division rules regarding the issuance of licenses, permits and nondriver identification cards to the requirements of P.L. 1993, c.34. Driver licenses, permits and identification cards issued by the Division are often used as a means of identification and the State has a significant interest in the proper issuance of such documents. The amendments and new rules have no social impact upon the Division.

Economic Impact

The proposed amendments and new rules will have no economic impact upon those persons applying for a New Jersey driver license, examination permit, special learner's permit, nondriver identification card, agricultural license, motorized bicycle license or motorized bicycle learner's permit who are unable to establish that their presence in the United States is authorized under Federal law, since such persons are prohibited from working by Federal law by virtue of their undocumented status. The Division's amendments and new rules reflect the public policy of this State set forth in P.L. 1993, c.34, which requires a driver license, permit or nondriver identification card applicant to provide to the Division as a condition for obtaining a license, permit or identification card, satisfactory proof that the applicant's presence in the United States is authorized under Federal law.

The Division incurs expenses in connection with reviewing driver license, permit and nondriver identification card applications to ascertain whether an applicant for same is eligible for issuance of such document. The Division also incurs expenses in connection with administrative hearings conducted to determine an applicant's eligibility for the various types of licenses, permits, and identification cards issued by the Division.

Regulatory Flexibility Statement

The proposed amendments and new rules have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments and new rules impose no reporting, recordkeeping or other compliance requirements upon small businesses; therefore, a regulatory flexibility analysis is not required. The amendments and new rules impact upon individuals who apply for a driver license, examination permit, special learner's permit, nondriver identification card, agricultural license, motorized bicycle license or motorized bicycle learner's permit.

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

SUBCHAPTER 1. ADMINISTRATIVE HEARINGS

13:19-1.1 Applicability

The provisions of this subchapter shall apply to administrative hearings in cases involving **denial,** revocation, suspension or refusal to renew licenses, **examination permits, special learner's permits, nondriver identification cards, motorized bicycle licenses, motorized bicycle learner's permits, or driving privileges,** including cases involving imposition of insurance surcharges pursuant to N.J.S.A. 17:29A-35. However, the provisions of this subchapter shall not apply to hearings in fatal accident cases in which the Division has initiated administrative suspension action against a licensee pursuant to subsection b, c, or e of N.J.S.A. 39:5-30; requests for hearings and the scheduling and conduct of same in such cases are governed by the provisions of subsection b or e of N.J.S.A 39:5-30.

SUBCHAPTER 6. [DRIVER] EXAMINATION [LEARNER'S] PERMITS

13:21-6.1 [Driver examination permit defined] **Definitions**

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

["Driver examination] **"Examination** permit" means [the learner's] **a** permit issued by the Director of the Division of Motor Vehicles to a person over 17 years of age, in accordance with the provisions of N.J.S.A. 39:3-13 [or 39:3-13.1], for the purpose of fitting himself [to become an automobile driver or motorcycle operator] **or herself for the issuance of a New Jersey basic driver's license or motorcycle license.**

"United States" means any state, territory or possession of the United States and the District of Columbia, including the Com-

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monwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa and Guam.

13:21-6.2 Requirements for issuance of examination permits

In addition to any other requirements imposed by Title 39 of the Revised Statutes and the regulations promulgated thereunder, no examination permit shall be issued by the Division unless the applicant therefor submits proof of identity and date of birth and proof that the applicant's presence in the United States is authorized under Federal law in the manner set forth in N.J.A.C. 13:21-8.2(b).

13:21-[6.2]**6.3** Prerequisites **for validation of examination permits**

(a) No [driver] examination permit shall be validated for practice driving until the following prerequisites have been complied with by the holder:

1.-2. (No change.)

[13:21-6.3 Provisional requirements

(a) Proof of identity and date of birth may be required.

(b) In the case of a mental or physical disability a medical certificate, completed by a New Jersey-registered physician, may be required.

(c) An unusual circumstance will be referred to the officer-in-charge of the Driver Qualification Center for final determination.]

SUBCHAPTER 7. SPECIAL **LEARNER'S** PERMITS

13:21-7.1 [Special permit defined] **Definitions**

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

"Special **learner's** permit" means a permit issued **to a person over 16 years of age,** in accordance with the provisions of N.J.S.A. 39:3-13.1, [to students] **allowing such person, for the purpose of fitting himself or herself to become a motor vehicle driver, to operate a dual pedal controlled motor vehicle while** enrolled in a course of behind-the-wheel automobile driving education approved by the New Jersey State Department of Education **and conducted in a public, parochial or private school of this State** or **while taking** a course of behind-the-wheel automobile driving instruction conducted by a licensed [drivers'] **driving** school, **and which, in accordance with the provisions of N.J.S.A. 39:3-13.2a may, upon successful completion of a behind-the-wheel driving course, be retained by the holder to operate a motor vehicle of the class for which a basic driver's license is required except during the hours between 12:01 A.M. and 5:00 A.M. while in the company and under the control of a licensed motor vehicle driver of this State who has at least three years experience as a licensed motor vehicle driver.**

"United States" means any state, territory or possession of the United States and the District of Columbia, including the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa and Guam.

13:21-7.2 Requirements for issuance of special learner's permits

In addition to any other requirements imposed by Title 39 of the Revised Statutes and the regulations promulgated thereunder, no special learner's permit shall be issued by the Division unless the applicant therefor submits proof of identity and date of birth and proof that the applicant's presence in the United States is authorized under Federal law in the manner set forth in N.J.A.C. 13:21-8.2(b).

13:21-[7.2]**7.3** Driving test appointment requirements

(a) Driving test appointments may be granted and recorded on the [driver examination] **special learner's** permit[s] prior to 17th birthday of the applicant; provided that:

1. The student will be at least 17 years of age on the date of **the** appointment;

2. (No change.)

3. The special **learner's** permit, when presented for the driving test, bears the Snellen eye reading recorded by the school nurse or a representative of the Division of Motor Vehicles;

4. The special **learner's** permit, when presented for the driving test, bears the signatures of the **school** principal[, commercial driver] **or driving** school owner, school nurse and student. A school principal, [commercial driver] **driving** school owner or school nurse may use a signature stamp in place of **a** [hand-written] **handwritten** signature.

5. The student will have completed an approved "behind-the-wheel" training course on the date of **the** appointment.

13:21-[7.3]**7.4** Method of securing appointment

A student may present his **or her** special **learner's** permit at any Driver Testing Center for the purpose of securing an appointment for the driving test; provided, however, that the applicant has completed six hours of "behind-the-wheel" automobile driver training.

13:21-[7.4]**7.5** Validation of special [driver examination] **learner's** permits

(a) A special [driver examination] **learner's** permit [may be validated] **is valid** for practice driving a motor vehicle of the class for which a basic driver's license is required [during the hours between sunrise and sunset] while **the holder of the special learner's permit is** in the company and under the control of a licensed driver of this State who has had at least three years experience as a licensed motor vehicle driver when:

1. (No change.)

2. The Snellen eye reading has been recorded on the special **learner's** permit by the school nurse. The eye reading may be recorded by a representative of the Division of Motor Vehicles if the eye reading has not been recorded by the school nurse.

3. The signature of the **school** principal[, commercial driver] **or driving** school owner, school nurse and student must be on the special **learner's** permit. A school principal, [commercial driver] **driving** school owner or school nurse may use a signature stamp in place of a [hand-written] **handwritten** signature.

[4.]**(b)** If a student has not completed six hours of "behind-the-wheel" driving training, he **or she** must purchase [a driver] **an** examination permit before the driving test appointment.

(c) A special learner's permit is not valid during the hours beween 12:01 A.M. and 5:00 A.M.

SUBCHAPTER 8. DRIVER LICENSES

13:21-8.1 Definitions

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

"Applicant" means every person who has made application for a license as provided in N.J.S.A. 39:3-10 or who has compiled with the provisions of N.J.S.A. 39:3-11.1, **39:3-13** or [N.J.S.A.] 39:3-13.1 et seq.

"Driving test" means that portion of the [Driver License Examination] **driver license examination** wherein the applicant for a New Jersey [automobile] **basic driver's license** or motorcycle license demonstrates his **or her** ability to exercise safe and reasonable control in the operation of a motor vehicle of the type or general class of vehicles for which the license he **or she** has applied for would be valid.

"Examinations" means a test or series of tests designed to check the applicant's visual acuity, color perception, knowledge of laws and safe operation of motor vehicles administered by the [Bureau of Driver Testing] **Division of Motor Vehicles.**

"Permit" means **a special** learner's permit, [driver] examination permit or any written instrument issued under the provisions of N.J.S.A. 39:3-13 or 39:3-13.1 et seq.

["Requirements" means prerequisites applicants must meet before examinations will be administered, or applications will be approved.]

"United States" means any state, territory or possession of the United States and the District of Columbia, including the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa and Guam.

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13:21-8.2 Age requirements; proof of identity and date of birth; **proof that presence in United States is authorized under Federal law**

(a) All applicants must have reached the age of 17 years, except applicants making application under the provisions of N.J.S.A. 39:3-11.1 [and] **or** 39:3-13.1.

[(b) All applicants will be required to furnish proof of identity and date of birth. Proof of identity and date of birth may be established in the following manner:

1. Submission of the original or certified copy of a birth certificate showing the name and date of birth of the applicant and bearing the registrar's signature and seal of office, or a photo identification card issued by the New Jersey Casino Control Commission showing the name and date of birth of the applicant and bearing the seal of the Casino Control Commission.

2. Submission of one or more of the following documents when the original or certified copy of a birth certificate is unavailable, or when a photo identification card issued by the New Jersey Casino Control Commission is not presented, or when the applicant is not a citizen of the United States.

i. Government identification card issued to persons serving in the military services;

ii. Military discharge papers;

iii. Alien registration card issued by the United States Department of Immigration and Naturalization;

iv. Passport issued by the United States or passport issued by a foreign country with form I-94 attached;

v. Citizenship papers;

vi. Valid driver license issued by another state or country bearing the applicant's signature.

vii. Baptismal certificate when accompanied by a census record, if possible;

viii. Birth record contained in family Bible when accompanied by a census record, if possible.

3. Court order or judgment authorizing legal name change when accompanied by satisfactory proof of birth.

4. A photostatic copy of a document will not be accepted as proof of identity and date of birth unless the signature and seal of the official in custody of the original document appears on the copy.]

(b) As a condition for obtaining a license, all applicants shall be required to furnish to the Division proof of identity and date of birth and proof that the applicant's presence in the United States is authorized under Federal law. Such proof may be established by submission of the original or certified copy of any of the following documents:

1. A United States birth certificate showing the name and date of birth of the applicant and bearing the registrar's signature and seal of office;

2. A United States government identification card issued to persons serving in the United States military;

3. United States military discharge papers;

4. A current alien registration card issued by the United States Department of Immigration and Naturalization;

5. A passport issued by the United States or passport issued by a foreign country accompanied by a current form I-94 or equivalent document;

6. United States citizenship papers;

7. A Certificate of Naturalization issued by the United States Department of Immigration and Naturalization;

8. A current employment authorization card issued by the United States Department of Immigration and Naturalization when accompanied by a Social Security card;

9. United States adoption papers; or

10. Any other documents issued by the United States which establish the applicant's proof of identity and date of birth and proof that the applicant's presence in the United States is authorized under Federal law.

(c) The identity of the applicant shall be deemed to be the name recorded on the document(s) submitted to the Division pursuant to this section unless evidence of a different name is established by the submission of a civil marriage certificate, divorce decree or order of court.

(d) Any person from a foreign country who is in New Jersey for a period of one year or less may operate a motor vehicle in this State if he or she is the holder of a current dirver's license in good standing from the country in which he or she resides provided that such license authorizes operation of the class of vehicle to be operated in this State. The Director may deny, suspend or revoke the driving privilege conferred by this subsection for violation of any of the provisions of Title 39 of the Revised Statutes or on other reasonable grounds upon notice and an opportunity to be heard pursuant to the procedures in N.J.A.C. 13:19-1.

(e) Any person from a foreign country who is in New Jersey for a period of one year or less and who would be entitled to operate a motor vehicle in this State pursuant to (d) above but for the fact that he or she is not the holder of a driver's license from the country in which he or she resides shall be eligible to make application for a New Jersey driver's license or permit. The Director shall suspend or revoke any driver's license or permit issued pursuant to this subsection upon expiration of the license or permit holder's lawful presence in the United States unless it is demonstrated that the person's continued presence in the United States is authorized under Federal law.

(f) The Division shall not issue a driver's license or permit to a person who is entitled to operate a motor vehicle in this State pursuant to (d) above or who is entitled to operate a motor vehicle in this State under a reciprocity privilege granted by any law, unless said reciprocity privilege is revoked or terminated by the establishment of residence in this State and the surrender of said person's current out-of-State driver's license to the Division upon issuance of a New Jersey driver's license.

13:21-8.4 Physical and mental qualifications

(a) A person may be prohibited from obtaining or holding a New Jersey driver's license **or permit** if he or she:

1.-2. (No change.)

(b) In the case of a mental or physical disability, a medical certificate, completed by a New Jersey licensed physician, may be required.

SUBCHAPTER 16. [(RESERVED)] **IDENTIFICATION CARDS FOR NONDRIVERS**

13:21-16.1 Definitions

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

"Nondriver identification card" means an identification card issued by the Director of the Division of Motor Vehicles to a person whose state of residence is New Jersey and who is 17 years of age or older and who is not the holder of a valid examination or special learner's permit or a valid driver license, in accordance with the provisions of N.J.S.A. 39:3-29.2 et seq.

"State of residence" means that state where a person has a true, fixed, and permanent home and principal residence and to which the person intends to return whenever the person is absent.

"United States" means any state, territory or possession of the United States and the District of Columbia, including the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa and Guam.

13:21-16.2 Requirements for issuance of nondriver identification cards

In addition to any other requirements imposed by Title 39 of the Revised Statutes and the regulations promulgated thereunder, no nondriver identification card shall be issued by the Division unless the applicant therefor submits proof of identity and date of birth and proof that the applicant's presence in the United States is authorized under Federal law in the manner set forth in N.J.A.C. 13:21-8.2(b).

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13:25-1.1 Definitions

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

"Applicant" means every person who has made application for a **motorized bicycle** license as provided by N.J.S.A. 39:4-14.3.

"Examinations" means a test or series of tests designed to check the applicant's visual acuity, color perception, knowledge of laws and safe operation of motorized bicycles [and] administered by [motor vehicle officers of the Enforcement Bureau of] the Division of Motor Vehicles.

["Moped"] **"Motorized bicycle"** means a pedal bicycle having a helper motor characterized in that either the maximum piston displacement is less than 50 c.c. or said motor is rated at no more than 1.5 brake horsepower and said bicycle is capable of a maximum speed of no more than 25 miles per hour on a flat surface.

"Motorized bicycle [examination] **learner's** permit" means [the learner's] **a** permit issued by the Director of the Division of Motor Vehicles to a person 15 years of age or older in accordance with the provisions of N.J.S.A. 39:4-14.3 for the purpose of fitting himself to become a motorized bicycle [operator] **driver**.

"Motorized bicycle [operating] **driving** test" means that portion of the motorized bicycle operator license examination wherein the applicant for a New Jersey motorized bicycle operator license demonstrates his **or her** ability to exercise safe and reasonable control in the operation of a motorized bicycle.

"Motorized bicycle operator's license" means a **motorized bicycle** license [with the MOPED endorsement] issued by the Director of the Division of Motor Vehicles, in accordance with the provisions of N.J.S.A. 39:4-14.3, to an individual who is 15 years of age or older and who does not have a New Jersey [Driver's] **driver** license of any [kind] **class other than an agricultural license issued pursuant to N.J.S.A. 39:3-11.1**.

"Permit" means **a motorized bicycle** learner's permit issued under the provisions of N.J.S.A. 39:4-14.3. Anyone operating a motorized bicycle under a permit for the purpose of fitting himself **or herself** to become a motorized bicycle operator shall limit said operation to daylight hours under any circumstances.

["Requirements" means prerequisites applicants must meet before examinations will be administered or applications will be approved.]

"United States" means any state, territory or possession of the United States and the District of Columbia, including the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa and Guam.

SUBCHAPTER 2. MOTORIZED BICYCLE [OPERATOR EXAMINATION] LEARNER'S PERMITS

13:25-2.1 Requirements for issuance of motorized bicycle learner's permits

In addition to any other requirements imposed by Title 39 of the Revised Statutes and the regulations promulgated thereunder, no motorized bicycle learner's permit shall be issued by the Division unless the applicant therefor submits proof of identity and date of birth and proof that the applicant's presence in the United States is authorized under Federal law in the manner set forth in N.J.A.C. 13:21-8.2(b).

13:25-[2.1]**2.2** Prerequisites **for validation of motorized bicycle learner's permits**

(a) No motorized bicycle [operator examination] **learner's** permit shall be validated for practice [operating] **driving** until the following prerequisites have been complied with by the holder:

1. Successful completion of a law-knowledge test; and
2. Minimum standard in visual acuity is attained[; and
3. Proof of identify and date of birth].

[13:25-2.2 Provisional requirements

(a) In the case of a mental or physical disability, a medical certificate, completed by a New Jersey registered physician, may be required.

(b) An unusual circumstance will be referred to the officer-in-charge of the driver qualification center for final determination.]

SUBCHAPTER 3. MOTORIZED BICYCLE [OPERATOR] LICENSES

13:25-3.1 Age requirements; **proof of identity and date of birth; proof that presence in United States is authorized under Federal law**

(a) All applicants must have reached the age of 15 **years**.

(b) [All] **As a condition for obtaining a motorized bicycle license, all** applicants [will] **shall** be required to furnish **to the Division** proof of identity and date of birth **and proof that the applicant's presence in the United States is authorized under Federal law in the manner set forth in N.J.A.C. 13:21-8.2(b).**

(c) The identity of the applicant shall be deemed to be the name recorded on the document(s) submitted to the Division pursuant to (b) above unless evidence of a different name is established by the submission of a civil marriage certificate, divorce decree or order of court.

(d) Any person from a foreign country who is in New Jersey for a period of one year or less may operate a motorized bicycle in this State if he or she is the holder of a current driver's license or motorized bicycle license in good standing from the country in which he or she resides. The Director may deny, suspend or revoke the driving privilege conferred by this subsection for violation of any of the provisions of Title 39 of the Revised Statutes or on other reasonable grounds upon notice and an opportunity to be heard pursuant to the procedures in N.J.A.C. 13:19-1.

(e) Any person from a foreign country who is in New Jersey for a period of one year or less and who would be entitled to operate a motorized bicycle in this State pursuant to (d) above but for the fact that he or she is not the holder of a driver's license or motorized bicycle license from the country in which he or she resides shall be eligible to make application for a New Jersey motorized bicycle license or learner's permit. The Director shall suspend or revoke any motorized bicycle license or learner's permit issued pursuant to this subsection upon expiration of the license or permit holder's lawful presence in the United States unless it is demonstrated that the person's continued presence in the United States is authorized under Federal law.

(f) The Division shall not issue a motorized bicycle license or learner's permit to a person who is entitled to operate a motorized bicycle in this State pursuant to (d) above, or who is entitled to operate a motorized bicycle in this State under a reciprocity privilege granted by any law, unless said reciprocity privilege is revoked or terminated by the establishment of residence in this State and the surrender of said person's current out-of-state license to the Division upon issuance of a New Jersey driver's license or motorized bicycle license.

13:25-3.3 Physical and mental qualifications

(a) A person may be prohibited from obtaining or holding a New Jersey motorized bicycle [operator's] **license or learner's permit** if he **or she**:

1.-2. (No change.)

(b) In the case of a mental or physical disability, a medical certificate, completed by a New Jersey licensed physician, may be required.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
Board of Medical Examiners Rules
Proposed Readoption with Amendments: N.J.A.C. 13:35

Authorized By: Board of Medical Examiners,
Charles A. Janousek, Executive Director.
Authority: N.J.S.A. 45:9-2.
Proposal Number: PRN 1994-370.

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Submit written comments by July 20, 1994 to:
Charles A. Janousek
Executive Director
New Jersey State Board of Medical Examiners
140 E. Front St., 2nd Fl.
Trenton, NJ 08608

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:35 is scheduled to expire on September 21, 1994. The current rules have been reviewed, updated and revised by the Board. The Board has found the rules contained in the readoption to be reasonable, necessary and effective for the purposes for which they were promulgated. The current rules proposed for readoption have had an advantageous impact on the regulation and conduct of the medical profession by enabling the Board to have in place procedures that maintain high standards of practice, thus serving and protecting the public's best interests; the Board believes that its proposed changes further that purpose, inasmuch as they not only clarify and update present wording but also reflect recent developments with an impact on the profession.

Several of the revisions contained in this proposed readoption reflect statutory changes. For instance, N.J.A.C. 13:35-2.4, 3.3(c), and 7.1 can be repealed because the Board of Chiropractic Examiners is now responsible for the regulation of that practice.

Other revisions merely involve updating references to examinations, organizations or procedures that appear by name or by acronym within this chapter. N.J.A.C. 13:35-3.2 and 3.7 are being amended to reflect the creation of a new national licensing examination, the United States Medical Licensing Examination (USMLE). References to the Foreign Medical Graduate Examination (FMGEMS) at N.J.A.C. 13:25-1A.4 have been deleted since that examination is no longer available. In some instances, the Board is deleting or modifying regulatory provisions establishing a process for receiving Board authorization where, in practice, that mechanism has not been utilized. (N.J.A.C. 13:35-2.13 establishes a procedure to obtain a certificate demonstrating passage of the now-obsolete Foreign Licensing Examination (FLEX).)

The following summary outlines each subchapter and identifies and briefly explains proposed amendments.

Subchapter 1 details the means by which candidates may become eligible to sit for the licensure examination and the activities in which those candidates may engage prior to licensure. The amendments to N.J.A.C. 13:35-1.5 consist of deleting the option of a registration applicant becoming eligible for a permit to practice in a graduate medical education program by means of achieving a passing score on the FMGEMS examination. This change is being proposed because the FMGEMS examination no longer exists and because New Jersey may be the only state that, to date, does not require certification from the Educational Council on Foreign Medical Graduates (ECFMG); rather, it has merely required a passing score on the ECFMG examination. The amendment seeks to make New Jersey's regulation regarding ECFMG certification equal to those of the other states. By this proposal, the Board would also be amending the rule to accept Fifth Pathway certification (completion of an extra year of post-graduate training prior to the start of a formal residency program).

Moreover, N.J.S.A. 13:35-1.5 as proposed will establish a registration mechanism for first-year podiatry residents and a permit mechanism for unlicensed podiatry residents beyond the first year that will parallel the mechanism applicable to medical residents, as N.J.S.A. 45:9-19.12 allows. This rule will also establish the standards for podiatry resident prescribing and countersigning, and thus N.J.A.C. 13:35-6.3 becomes unnecessary and can be repealed.

Subchapter 1A establishes a comprehensive regulatory scheme to which medical schools wishing to offer clinical training in New Jersey hospitals are required to adhere. The amendments to N.J.A.C. 13:35-1A.4 consist of replaing a reference to FMGEMS with USMLE and, in conjunction with that change, replacing references to the "parts" of the FMGEMS examination with terminology that reflects the "steps" by which a USMLE examination is administered.

Subchapter 2 addresses limited licenses for chiropractic and podiatry, permissible practice for graduate physicians pending licensure (prior to the start of formalized residency training), and medical standards governing screening and diagnostic medical testing offices. N.J.A.C. 13:35-2.4, which sets forth the standards for approval of a school of chiropractic, will be deleted in this proposal because, pursuant to the enactment of P.L. 1989, c.153, chiropractic schools are to be reviewed by the Board of Chiropractic Examiners. N.J.A.C. 13:35-2.13 had allowed medical school graduates to begin training at a hospital up to six months before the start of a formalized training program, in recognition of the fact that individuals may graduate at different times and formal residency training programs generally begin on July 1. This rule amendment will assure that this pre-residency training is done at a hospital that has a formal training program approved by the national accreditation organizations, as those facilities are better equipped to meet the needs of graduates and to supervise their activities. Paragraphs (b)1 through 3 are to be deleted because the certificate issued pursuant to paragraph (b)1 is, in practice, not utilized and the provisions of these three paragraphs are in general superseded by N.J.A.C. 13:35-1.5, the registration and permit rule. (The certification mechanism had been created to give unlicensed residents some formal recognition of their status. With the permit rule in place, this route is unnecessary.)

Subchapter 2A specifically addresses limited licenses for certified nurse midwifery, including qualifications, minimum conditions of practice, and the treatment of antepartum and intrapartum women at risk. No changes are being proposed in this subchapter.

Subchapter 3 establishes regulations for physicians taking the licensing examinations, or seeking endorsements or limited exemptions from licensure. The amendments to this subchapter consist of the following. References to the two-component FLEX examination will be changed to the three-step USMLE examination, which will be administered after December of this year. The national examination will henceforth be the USMLE. A candidate shall pass the entire examination sequence within a seven-year period and shall not be granted more than five attempts to pass Step 3 of USMLE without demonstration of additional education, experience or training acceptable to the Board.

N.J.A.C. 13:35-3.2 spells out the different credential configurations (depending on the date that examinations were taken) that will be accepted for physician licensure endorsement purposes. In N.J.A.C. 13:35-3.3, references to endorsement of chiropractors have been deleted, leaving that rule applicable to podiatrists. N.J.A.C. 13:35-3.4, setting forth the old FLEX route to licensure, will be deleted because, after December of 1994, the standard licensure examination will be the USMLE. At N.J.A.C. 13:35-3.7, the prerequisite for limited exemption will be revised to reflect the shift to the USMLE examination.

N.J.A.C. 13:35-3.11(f) is being amended to reflect that ECFMG or Fifth Pathway certification is required of current foreign medical school graduates, as opposed to merely a passing score on an examination. ECFMG also reviews credentials prior to issuing a certificate, and thus this mechanism serves as an additional check to assure that all applicants are qualified for licensure. The reference to the FLEX in subsection (h) will be removed, and general language will be substituted to allow the Board to recognize examinations that may be deployed in the future.

Subchapter 4 consists of only two sections. N.J.A.C. 13:35-4.1 defines major surgery and requires the presence of a qualified surgeon and a qualified assisting physician during such surgery. N.J.A.C. 13:35-4.2 regulates the termination of pregnancy. The amendment to N.J.A.C. 13:35-4.1 distinguishes between those endoscopic procedures that do not necessitate the presence of a duly qualified assistant surgeon in the operating suite from those endoscopic procedures that do warrant a second doctor. This proposed change reflects advances in technology that now permit therapeutic endoscopic procedures which warrant the presence of a second physician. This rule will also be amended to recognize that residents rotating through a surgical residency program would qualify as assistants, in addition to those participating exclusively in surgical residency programs. Those hospitals offering family practice residency training programs with rotations in surgery can thus assure that those residents are not excluded from the reach of this rule.

Subchapter 5 addresses eye examinations, contact lenses, and the minimum standards and tolerances of optical lenses. No changes are being proposed in this subchapter.

Subchapter 6 details the general rules of practice, including: practice identification, countersigning of orders and prescriptions of unlicensed physicians, patient records, prescriptions, advertising, excessive fees, and delegation of duties to other licensed health care practitioners and unlicensed physician aides.

According to N.J.A.C. 13:35-6.2(d) and (e), paramedics were authorized to seek from the Board a certificate authorizing them to make pronouncements of death. Since this certification mechanism has not been used in practice, the Board is proposing to bring its regulation into conformance with N.J.A.C. 8:41-7.5, which authorizes paramedics with

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mobile intensive care units to relay findings, including telemetered electrocardiograms if feasible, to base-situation physicians so that those physicians can make pronouncements. In addition, new language calls for the notification of the County Medical Examiners if the attending physician is unavailable.

The Board is also proposing to repeal N.J.A.C. 13:35-6.3 because requirements for the countersignature of orders by unlicensed physicians and podiatrists are now codified at N.J.A.C. 13:35-1.5. Those more recent provisions require countersignature of first-year resident orders within 24 hours.

The proposed amendment to N.J.A.C. 13:35-6.7 expands the named medical conditions for which prescribing of amphetamines and sympathomimetic amines is permissible to include idiopathic hypersomnia. It appears that amphetamines are a legitimate treatment for idiopathic hypersomnia, which is a recognized sleep disorder. The available literature indicates that a patient suffering from the sleepiness of idiopathic hypersomnia responds in substantially the same manner to stimulant drugs as does the patient suffering from the sleepiness of narcolepsy. The regulation already recognized narcolepsy as a disorder for which amphetamine-like drugs are a legitimate treatment.

The amendments to N.J.A.C. 13:35-6.10(a) consist of deleting language that would appear to limit the manner by which licensees may disseminate truthful information, in recognition that all modes of dissemination are protected. Proposed amendments to N.J.A.C. 13:35-6.10(m) of the advertising regulation would alter the provision allowing only licensees possessing certification by a certifying agency recognized by the Board of Medical Examiners to advertise that credential. The regulation further states that a list of agencies recognized by the primary national organizations shall be maintained by the Board. In lieu of officially recognizing specialty boards, the Board is hereby proposing an alternative means of protecting the public. While the new rule will not bar licensees from advertising attainment of certification from any certifying agency, it calls upon the Board to maintain a list of those certifying boards that are approved or recognized by the American Board of Medical Specialties (A.B.M.S.), the American Osteopathic Association (A.O.A.) or the American Podiatric Medicine Association (A.P.M.A.). Thus the Board will serve as a source of consumer information about boards, but it will not participate in the process of recognizing boards.

The Board is proposing that 13:35-6.12 be deleted in its entirety because this rule has not proven to be a valuable mechanism for review of excessive fees. The Board's Preliminary Evaluation Committees will continue to play this role, and the Board sees no reason to have a separate body set up for this purpose.

In N.J.A.C. 13:35-6.13, the Board is proposing including the $50.00 permit fee for residents in medicine and podiatry programs in the fee schedules as set forth in N.J.A.C. 13:35-1.5 and 1.6.

In N.J.A.C. 13:35-6.14, the Board is proposing to delete references to certain physical modalities from the rule, by which licensees have been authorized to delegate tasks to unlicensed personnel. On July 17, 1990, legislation was enacted that enumerated a list of physical modalities which could no longer be delegated to unlicensed personnel pursuant to N.J.A.C. 13:35-6.14.

That rule had previously permitted physicians to direct their employees to administer the following modalities, subject to supervision: heat, diathermy, cold, ultrasound, ultraviolet rays, cold quartz rays and electromagnetic rays. Rehabilitation exercise programs, T.E.N.S. and traction were expressly excluded and thus were always non-delegable.

The new legislation, P.L. 1990, c.68, now codified at N.J.S.A. 45:9-22.10, sets forth specific modalities that are no longer delegable to unlicensed persons: ultraviolet (B and C bands) and electromagnetic rays, including, but not limited to, deep heating agents, microwave diathermy, shortwave diathermy and ultrasound. By this proposed amendment, the Board is revising its rule to reflect the legislative change and to identify for its licensees those specific modalities that it will still recognize to be delegable to unlicensed persons.

In addition, the Board is identifying the specific licensed health care providers who are authorized to administer the modalities that were enumerated in the new statute. Specifically, physicians and podiatrists still can direct unlicensed office personnel to administer the following modalities: hot packs, cold packs, paraffin baths, contrast baths, and whirlpool baths. The Board has identified those modalities as not presenting any significant risks to patients so long as physicians supervision is provided as specified in this rule.

Licensed health care providers are defined in this section to include physical therapists, registered nurses, licensed practical nurses, physician assistants, chiropractors, and athletic trainers. In accordance with the statute, these professionals (consistent with their training) may administer the above modalities in addition to ultraviolet (B and C bands) and electromagnetic rays including, but not limited to, deep heating agents, microwave diathermy, shortwave diathermy and ultrasound. As before, the delegating physician must make all medical judgments associated with the administration of the specific modality and assure that those following through on his or her directions have attained sufficient training and competence in performing these tasks. Additionally, the doctor must remain on the premises. The rule also reflects that chiropractors are no longer subject to the jurisdiction of the Board of Medical Examiners.

Subchapter 6A takes as its specific focus declarations of death upon the basis of neurological criteria. No changes are being proposed in this subchapter.

Subchapter 7 regarding chiropractic practice will be deleted in its entirety based on P.L. 1989, c.153.

Subchapter 8 regulates the practice of hearing aid dispensers. No changes are being proposed in this subchapter.

Subchapter 9 regulates the practice of acupuncture. The Acupuncture Examining Board is proposing to amend N.J.A.C. 13:35-9.13(f)6vi in order to ensure that the theoretical and didactic training of acupuncturists as it pertains to the study of general sciences in anatomy, physiology and pathology shall be obtained in a post-secondary-educational setting approved by the Board. This amendment reflects the Board's original intent regarding suitable educational training and clarifies that, instead of retaining an inadvertently optional standard, the Board has always sought to require that the study of these academic subjects must take place in a post secondary-educational setting approved by the Board.

Subchapter 10 outlines the fee structure for athletic trainer registration and the general rules for athletic trainers. No changes are being proposed in this subchapter.

Subchapter 11 is reserved.

Social Impact

The rules proposed for readoption provide various procedures for the orderly administration of the Board's operations to ensure that qualified individuals are practicing in the medical profession. The current rules have satisfied the Board's desire to protect and serve the public with high levels of professionalism. It is therefore anticipated that this readoption will have an advantageous social impact in that it will maintain these high standards.

In specific, the proposed changes will have the following social impact.

Proposed amendments to N.J.A.C. 13:35-1.5 will have a beneficial social impact on consumers by providing them with guarantees that podiatry residents will be regulated like medical residents. Residents and hospitals will have notice of the prerequisites for licensure.

The amendments to N.J.A.C. 13:35-4.1 will benefit consumers and licensees alike, affording protection by clarifying that endoscopic procedures that transverse a body wall do have similar potential for risk as other major surgery and, therefore, require the presence of a second doctor.

Proposed N.J.A.C. 13:35-6.7(a)1ii is anticipated to have significantly positive social impact. The Board is aware that the use of amphetamines for idiopathic central nervous system hypersomnia has been espoused by reputable practitioners and journal articles and does not wish to bar physicians from utilizing an apparently legitimate treatment. There is concern that expanding the conditions for which amphetamines may be prescribed may lead to expanded opportunity for drug abuse with its concomitant adverse social impact. This concern should be allayed by the requirement that idiopathic central nervous system hypersomnia must be diagnosed by established diagnostic criteria in order to justify treatment with amphetamines, and that prescribing for any of the specified conditions requires documentation of testing and consultation where appropriate.

The amendments to N.J.A.C. 13:35-6.10 may benefit licensees by lifting bars to the dissemination of truthful information.

While the rule revisions being proposed in N.J.A.C. 13:35-6.14 limit the number and type of modalities that may be performed by unlicensed aides in the doctor's office, thus requiring patients to obtain more sophisticated services at locations that they may not find as convenient, it does nothing more than effect those changes implicated by the enactment of P.L. 1990, c.68. The Board, through this rule, continues to recognize that there are some modalities that can be administered safely, efficiently and conveniently in the office setting, subject to doctor

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supervision. It also provides notice to licensees as to who may perform or administer the specific modalities enumerated in the subsequent legislative enactment.

Economic Impact

The readoption with amendments will have no significant adverse economic impact on the general public or Board licensees. It is anticipated that, for those rules having any financial impact, the benefits to the public will be real and substantial albeit not always quantifiable. Where there is any possible adverse economic impact on a Board licensee, that impact is deemed to be substantially outweighed by the anticipated benefit to the public.

Certain existing rules to be readopted without amendment need to be addressed in this statement as follows.

N.J.A.C. 13:35-6.13, 8.17, 9.6 and 10.9, respectively, detail fee schedules for the Board of Medical Examiners, and for its satellites: the Acupuncture Board, the Hearing Aid Dispensers Advisory Committee and the Athletic Trainers Advisory Committee. These fee schedules have an economic impact on licensees and applicants for licensure by establishing fees that are the minimum necessary for the Board and its advisory committees to be self-funding and thus in compliance with N.J.S.A. 45:1-3.2.

N.J.A.C. 13:35-6.16 details professional practice structure requirements, including generalized requirements in subsection (b) related to standards for security and professional equipment that may be deemed to have an economic impact on licensees.

N.J.A.C. 13:35-6.17 details professional fees and investment requirements and prohibits kickbacks. These provisions may be deemed to have an economic impact on licensees in that standards and restrictions are established regarding the monetary arrangements in which licensees may be engaged.

N.J.A.C. 13:35-8.18 and 9.17 have an economic impact on licensees by establishing continuing education requirements that necessitate nominal tuition payments on the part of licensees.

Certain proposed changes need to be addressed in this statement as follows.

Amendments to N.J.A.C. 13:35-1.5 establish a permit fee for podiatry residents in an effort to recoup costs associated with the administration of that program.

The amendments to N.J.A.C. 13:35-4.1 reflect advancement in technology that allow for therapeutic endoscopic procedures. While there certainly will be an economic impact by requiring a second physician to be present, safe practice warrants this expenditure.

For consumers, the amendments to N.J.A.C. 13:35-6.7 are expected to result in the increased productivity of individuals who suffer from idiopathic central nervous system hypersomnia because of enabling treatment by means of prescribing amphetamines and sympathomimeticamine drugs. Any increased cost due to the requirement of a consultation or testing as appropriate for the conditions specified is justified by the need to assure that treatment is initiated only where warranted. For licensees, these amendments may potentially expand their practices, and thus also their incomes.

Since the amendments being proposed for N.J.A.C. 13:35-6.14 merely bring this section into conformance with N.J.S.A. 45:9-22.10, there should be no separate economic impact associated with its promulgation. The recognition of specific health care practitioners will perhaps facilitate the ability of practitioners to obtain reimbursement for permitted services from insurers.

Regulatory Flexibility Analysis

If, for purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., physicians are deemed "small businesses" within the meaning of the statute, the following analysis is applicable regarding the approximately 32,000 physicians licensed in this State.

Certain existing rules that have been proposed to be readopted without amendment need to be addressed in this statement as follows.

N.J.A.C. 13:35-6.5 has recordkeeping requirements in that it requires licensees to maintain records relating to billings made to patients and third-party carriers for professional services.

N.J.A.C. 13:35-6.8 has recordkeeping requirements in that it requires licensees to maintain records related to prescribing, administering or dispensing laetrile, including a complete record of dates of office visits, examinations and evaluations of the patient.

N.J.A.C. 13:35-6.10 has recordkeeping requirements in that it requires licensees to maintain records of patient names and dates of service for all patients for whom he or she has provided free or discounted services.

N.J.A.C. 13:35-6.16 details professional practice structure requirements that may involve other costs of compliance if a licensee needs to upgrade facilities in order to be in compliance with the generalized standards of cleaniness of premises, professional equipment and security, including drug storage, as set forth by this rule.

N.J.A.C. 13:35-6.17 has both reporting and recordkeeping requirements in that the Board may require a licensee to submit financial and familial information sufficient to determine the financial interest in an investment.

N.J.A.C. 13:35-8.6 and 8.8 have both reporting and recordkeeping requirements in that the sponsor of a trainee shall maintain a daily log for each day of supervising and training and notify the Board within five days of any termination in the sponsorship arrangement.

N.J.A.C. 13:35-8.10 may involve initial capital costs in that it requires the equipment necessary to dispense hearing aids to be available for use in all place(s) of practice.

N.J.A.C. 13:35-8.14 and 9.11, respectively, have recordkeeping requirements in that licensees shall maintain all record pertaining either to the fitting or dispensing of hearing aids or to acupuncture treatment.

N.J.A.C. 13:35-8.18 and 9.17 involve other costs of compliance in that it requires licensees to make whatever tuition payments are necessary in order to be in compliance with the continuing education requirement outlined in these rules.

Certain rules that have been proposed to be readopted with amendments need to be addressed in this statement as follows.

Proposed N.J.A.C. 13:35-6.7(a)1ii may potentially impact on any or all of the Board's current licensees. However, it is also expected that as idiopathic hypersomnia is an uncommon ailment only a small number of licensees are likely to be affected by the rule amendment. The proposed amendment expands the patient population for whom a physician may legitimately prescribe amphetamines. As with any other treatment or prescription, physicians will be obligated to keep appropriate patient records including justification for the treatment and prescription. In addition, this proposed amendment requires establishment of the diagnosis of idiopathic central nervous system hypersomnia by recognized diagnostic criteria. This compliance requirement is considered necessary to safeguard against inappropriate amphetamine prescribing and abuse. In regard to the proposed subparagraph, there should be no initial capital costs. Since a recordkeeping system is already required for all medical treatment, the only additional cost would be that entailed in documenting that the disorder has been established by recognized diagnostic criteria. The costs should not be substantial, but the Board is unable to estimate them as they may vary from case to case. The costs should be the same regardless of the size or type of practice of the physician licensee. There is no adverse economic impact anticipated on the physician's practice, as the proposed subparagraph merely expands the class of patients for whom a physician may prescribe a particular class of drugs.

Because these rules seek to promote and protect the public health and welfare through regulation of physicians, no differentiation in compliance based upon business size is provided.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:35.

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

SUBCHAPTER 1. MEDICAL SCHOOLS, COLLEGES, EXTERNSHIPS, CLERKSHIPS AND POST-GRADUATE WORK

13:35-1.5 Registration and permit requirements for graduate medical education programs

(a) The following terms shall have the following meanings unless the context in this section indicates otherwise:

"Applicant" means a graduate of a medical **or podiatric** school, unlicensed in this State, seeking authorization to engage in the practice of medicine **or podiatry** as a resident in a graduate medical education program. A registration applicant is seeking authorization to participate in the first year of a graduate medical education program. A permit applicant is seeking authorization to participate in his or her second year (or beyond) of a graduate medical education program.

"Director" means a physician holding a plenary license to practice medicine and surgery in New Jersey who is responsible for the

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conduct of a graduate medical education programs at a hospital licensed in this State and whose responsibilities shall include generally overseeing the selection, training and evaluation of residents. **With respect to graduate medical education programs in podiatry, the director shall be a podiatric physician licensed to practice podiatry in New Jersey.**

"Graduate Medical Education Program" means an education program, whether denominated as an internship, residency, or fellowship, which is accredited by the Accreditation Council on Podiatric Medical Education on Graduate Medicine Education (ACGME) or by the American Osteopathic Association (AOA) in which the graduates of medical schools participate for a limited period of time under the supervision of plenary licensed physicians. **With respect to podiatry, "Graduate Medical Education Program in Podiatry" means an education program, whether denominated as an internship, residency, or fellowship, which is accredited by the Council on Podiatric Medical Education of the American Podiatric Medicine Association (APMA) in which the graduates of podiatric schools participate for a limited period of time under the supervision of a licensed podiatric physician.**

"Master list" means a list prepared by the director setting forth the name of each person seeking to practice medicine **or podiatry** in that graduate medical education program in New Jersey, designating the [social security number,] date of birth[,] and medical **or podiatric** schools attended.

"Permit" means a document issued by the New Jersey State Board of Medical Examiners authorizing the holder to engage in the practice of medicine **or podiatry** in the second year of a graduate medical education program (or beyond) in medicine **or podiatry** in this State, subject to the limitations set forth in this rule.

"Permit holder" means a person authorized to engage in the practice of podiatry in the second year of a graduate medical education program (or beyond) in podiatry in the [state] **State** of New Jersey, subject to the limitations set forth in this rule.

"Registered resident" means an applicant granted authorization to engage in the practice of medicine **or podiatry** in the [state] **State** of New Jersey in the first year of a graduate medical education program, subject to the limitations set forth in this rule.

"Registration" means authorization to engage in the practice of medicine **or podiatry** in this State in the first year of a graduate medical education program subject to the limitations set forth in this rule.

"Resident" means a participant in training in a graduate medical education program in podiatry at a licensed hospital in this State. For purposes of this rule, persons serving in internships and fellowships shall be deemed residents.

(b) No unlicensed person shall engage in the practice of medicine **or podiatry** in the first year of a graduate medical education program unless and until he or she is registered with the Board. No unlicensed person shall engage in the practice of medicine **or podiatry** in the second year of graduate medical education or beyond unless or until he or she has been issued a permit by the Board.

(c) A registration applicant shall certify that he or she:

1. Has attained the preliminary educational prerequisites for licensure, including:

i. Completion of at least 60 undergraduate level credits, at a college or university attained prior to medical **or podiatric** school[,]. **With respect to medical residents, the credits shall include** [including] at least one course each in biology, chemistry and physics.

ii. [Graduation] **With respect to medical residents, graduation** from a medical school which, during each year of attendance, was either accredited by the Liaison Committee on Medical Education (LCME) or the AOA or listed in the World Directory of Medical Schools. If the applicant has attended more than one medical school, he or she shall certify that each school attended was accredited or listed in the World Directory during the same time he or she was matriculated. **With respect to podiatry residents, graduation from a podiatric school accredited by the Council on Podiatric Medical Education of the American Podiatric Medicine Association (APMA). If the applicant has attended more than one podiatric school, he or she shall certify that each school attended was accredited or listed.**

iii. Attendance at medical **or podiatric** school for at least 32 months prior to graduation.

iv. [Where] **With respect to medical students, where** clinical clerkships have been completed away from the site of a medical school not approved by the LCME or the AOA, satisfactory completion of clinical clerkships of at least four weeks duration each in internal medicine, surgery, obstetrics and gynecology, pediatrics and psychiatry at hospitals which maintained at the time of the clerkship a graduate medical education program in that field.

2.-3. (No change.)

4. Is not physically or mentally incapacitated to a degree which would impair his or her ability to practice medicine **or podiatry,** and is not at the time of application habituated to alcohol or a user of any controlled dangerous substance except upon good faith prescription of a physician.

5. Has [achieved a passing score on the] **obtained** ECFMG **or Fifth Pathway certification** [or FMGEMS examination], if he or she is a graduate of a foreign medical school.

(d) (No change.)

(e) The Board shall review the Director's certification, and shall issue to the Director a list of residents registered to engage in the practice of medicine **or podiatry** in the first year of the graduate medical education program conducted by that hospital. The Board shall provide to the Director a permit application for dissemination to each registered resident.

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

(h) A registered resident may engage in the practice of medicine **or podiatry** provided that such practice shall be confined to a hospital affiliated with the graduate medical education program and outpatient facilities integrated into the curriculum of the program, under the supervision of licensed plenary physicians **or licensed podiatric physicians, as appropriate.** All prescriptions and orders issued by registered residents in the inpatient setting shall be countersigned by **either** a licensed physician, **a licensed podiatric physician;** or a permit holder at the minimum upon the patient's discharge, or sooner if the Director so requires. All prescriptions issued by registered residents in the outpatient setting which are to be filled in a pharmacy outside a licensed health care facility shall be signed by **either** a licensed physician **or licensed podiatric physician, as appropriate.**

(i) (No change.)

(j) In addition to any practice declared to be a basis for sanction, pursuant to P.L. 1978, c.73 (N.J.S.A. 45:1-14 et seq.,) the practices listed below, upon proof, shall also provide a basis for the withdrawal of the authorization to engage in the practice of medicine **or podiatry** as a registered resident. Upon receipt of the notice of proposed withdrawal, the registered resident may request a hearing, which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

1.-3. (No change.)

(k) Upon a duly verified application of the Attorney General, alleging a violation of any act or regulation administered by the Board, which palpably demonstrates that the resident's continued practice would constitute a clear and imminent danger to the public health, safety and welfare, upon notice, the Board may enter an order temporarily suspending the resident's authority to engage in the practice of medicine **or podiatry** pending a plenary hearing on the charge.

(l) A permit applicant shall submit to the Board a permit application form certifying that he or she has attained the prerequisites set forth in (c) above, and in addition, shall forward to the appropriate individuals requests for the production of the documentation listed below. The documentation sought by the permit applicant shall be sent directly to the Director by the certifying individual. The permit applicant shall also submit to the Director a check or money order in the sum of $50.00 made payable to the New Jersey State Board of Medical Examiners.

1. (No change.)

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2. Registrar's certification of attendance or [medical] school transcript from each medical **or podiatric** school attended[:];

3. [Certification of] **With respect to medical residents,** ECFMG or [FMGEMS scores] **Fifth Pathway certification**, if applicable.

4. (No change.)

(m) The Director shall obtain from the permit applicant the application form and the $50.00 fee and shall also receive and retain certified documentation, set forth in (l) above. No later than four months before the date on which the applicant is scheduled to begin participating in the second year of a graduate medical education program (or beyond), the Director shall submit to the Board a complete application packet for each person to whom an offer of employment has been extended. This packet shall include:

1.-2. (No change.)

3. Registrar's certification for each medical **or podiatric** school attended, or medical **or podiatric** school transcript for each medical **or podiatric** school attended.

4. [Certification of] **With respect to medical residents,** ECFMG or [FMGEMS scores] **Fifth Pathway certification**, if applicable.

5.-6. (No change.)

(n) (No change.)

(o) Upon receipt of the permit application packet, the Board shall review each permit packet and if it is satisfied that the permit applicant has the necessary prerequisites, it shall issue to the applicant a permit authorizing that person to engage in **either** the practice of medicine **or the practice of podiatry, as appropriate,** in the second year (or beyond) of a graduate medical education program.

(p)-(q) (No change.)

(r) A permit holder may engage in the practice of medicine **or podiatry** provided that such practice shall be confined to a hospital affiliated with the graduate medical education program and outpatient facilities integrated into the curriculum of the program, under the supervision of licensed plenary physicians **or licensed podiatric physicians, as appropriate**. Prescriptions and order may be issued by permit holders in the inpatient setting without countersignature. All prescriptions issued by permit holders in the outpatient setting which are to be filled in a pharmacy outside of a licensed health care facility shall be signed by a licensed physician **or licensed podiatric physician, as appropriate.**

(s)-(t) (No change.)

(u) Upon a duly verified application of the Attorney General alleging a violation of any act or regulation administered by the Board which palpably demonstrates that the resident's continued practice would constitute a clear and imminent danger to the public health, safety and welfare, the Board may enter an order temporarily suspending the resident's permit to engage in the practice of medicine **or podiatry** pending a plenary hearing on the charge.

(v) (No change.)

(w) Each hospital offering a program(s) **in medicine** shall designate one physician who would qualify as a Director to fulfill the responsibilities set forth in this rule. **Each hospital offering a podiatry program shall designate one podiatric physician who would qualify as a Director of a podiatry program to fulfill the responsibilities set forth in this rule.** The Director may delegate to individual program directors these responsibilities, so long as he retained ultimate responsibility for the conduct of the program, except that the Director may not delegate the authority to issue temporary authorizations. In addition to the responsibilities placed upon [the] **any** Director by this rule, he or she shall:

1.-4. (No change.)

(x)-(y) (No change.)

SUBCHAPTER 1A. STANDARDS FOR NEW JERSEY CLINICAL TRAINING PROGRAMS SPONSORED BY MEDICAL SCHOOLS NOT ELIGIBLE FOR EVALUATION AND NOT APPROVED BY THE L.C.M.E., THE A.O.A. OR OTHER AGENCY RECOGNIZED BY THE NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

13:35-1A.4 Education programs

(a) Student eligibility for participation in the program shall be subject to the following:

1.-2. (No change.)

3. Preparedness of each student applying for the clinical training program shall in addition be demonstrated by achievement of either the following:

i. A passing grade on Part 1 of the National Board of Medical Examiners Examination; or

ii. A passing grade on [Part I of the Foreign Medical Graduate Examination in Medical Sciences (FMGEMS)] **USMLE—Step 1.**

4. (No change.)

(b) (No change.)

SUBCHAPTER 2. LIMITED LICENSES: PODIATRY, [CHIROPRACTIC, MIDWIFERY AND CERTIFIED NURSE MIDWIFERY,] DIAGNOSTIC TESTING CENTERS AND MISCELLANEOUS

13:35-2.4 [Requirements for approval of college of chiropractic] **(Reserved)**

[(a) Organization: The Chiropractic College shall be incorporated as a nonprofit institution of learning and shall be lawfully chartered to grant the degree of Doctor of Chiropractic within the state of its residence.

(b) Faculty:

1. The basic science: division and each department within such division shall be a person possessing at least a Master of Science degree.

2. Each member of the chiropractic science division shall be headed by a person possessing a degree of Doctor of Chiropractic and shall be eligible for licensure within the state in which the institution is located.

(c) Plant:

1. The school shall have sufficient space to provide lecture rooms, laboratories, library, administrative and faculty offices, as well as outpatient clinics for men and women.

2. The library shall be headed by a full-time librarian with a degree in library science, and shall consist of at least 10,000 volumes whose quality reflects current knowledge in the field.

3. There shall be a medical museum containing sufficient pathological, embryological, histological and anatomical specimens to augment the teaching of related subjects.

4. There shall be sufficient, useful auxiliary equipment sufficient for the teaching of the student body, such as mannikin, charts, skeletons, model, projectors, microscopes, adjusting tables and other equipment peculiar to the teaching of chiropractic.

(d) Clinical facilities: Each college of chiropractic shall operate a general chiropractic clinic or clinics in which the student shall gain clinical chiropractic practice with patients with chiropractic case management, which shall include the chiropractic clinical aspects of the courses which are required in the curriculum, for a proper understanding of the knowledge gained from the classroom and laboratory instruction. The clinic shall include proper experience in various aspects of patient examination for the purpose of determining the appropriateness of chiropractic care. Clinical instruction shall encourage the student to refer patients to doctors in the practice of medicine when impressions obtained as a result of a chiropractic examination indicate a consultation is in the patient's best interest.

(e) Resources: The school shall have sufficient resources to ensure financial stability and continuous operation.

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(f) Administration: There shall be responsible supervision of the entire school by the dean or other executive officer who, by training and experience, is qualified to interpret the prevailing standards in chiropractic and therapeutic education and who shall possess sufficient authority to integrate such standards into the school's curriculum.

(g) Records: There shall be a comprehensive system of records showing conveniently and in detail the credentials, grades and accounts of the students, by means of which an exact knowledge of each student's work can be obtained. Records should also be kept showing the clinical work of each student and attendance. Except for good cause, such as illness, no credit shall be given for any course when the attendance has been less than 80 percent of the full time, or when the student fails to satisfactorily complete course requirements.

(h) Requirements for admission: Prior to commencing a course of study in the approved school of chiropractic, the student shall have successfully completed academic study in an accredited school or college of arts and sciences as required by the Chiropractic Practice Act, N.J.S.A. 45:9-41.1 et seq.

(i) Publications: The school shall issue, at least annually, a bulletin setting forth the nature and content of the courses of study offered. Such announcements shall contain a list of the faculty with their respective qualifications, academic degree received and the name of the degree-granting institution. The courses available should be set forth by departments (anatomy, physiology, pathology, etc.) showing for each course its contents, character, number of hours, etc. Information should be given regarding entrance requirements, tuition and other fees.

(j) Curriculum: The entire course of four years shall consist of 3,600 to 4,400 class hours of not less than 45 minutes each, distributed as from 900 to 1,100 hours per year, and shall be grouped as set forth in the following schedule. Each group is to be allotted approximately the percentage of the whole number of hours in the course as follows:

	Percentage of Total
1. Anatomy, including dissection wherever possible, embryology and histology	25%
2. Principles of Chiropractic	37½%
3. Physiology	6¼%
4. Diagnosis and Symptomatology	7½%
5. Pathology, Bacteriology and Laboratory Technique	8¾%
6. Chemistry	2½%
7. Neurology	5%
8. Hygiene	1¼%
9. Jurisprudence	1¼%
10. Gynecology, Obstetrics, Spinography, Endocrinology, Dermatology, Pediatrics, Special Senses	5%
	100%

(k) An applicant for chiropractic licensure shall have graduated from an approved school(s), institution(s), or college(s) of chiropractic approved during the entire course of the applicant's training by the Council on Chiropractic Education or other Federally recognized accrediting agency having prior approval of the Board. Board approval of a college's accreditation shall be effective for a period not to exceed five years. Renewed approval may be sought prior to the end of that period. The Board may also inspect the school prior to determining its approval. However, any graduate of a chiropractic college who was a bona fide student in good standing enrolled at a school which, prior to March 18, 1988, was approved by the Board, shall upon proof of satisfaction of all other statutory prerequisites, be deemed eligible to sit for the licensure examination in this State.]

13:35-2.13 Limited privileges and conditions of practice permitted for a graduate physician pending licensure

(a) Persons who are graduates of medical schools recognized by the Board may commence a period of supervised post-graduate training in a licensed hospital **with an Accreditation Council on Graduate Medical Education (ACGME) or American Osteopathic Association (AOA) approved residency training program** in this State immediately upon graduation. A training period commencing prior to the [formal] start of [an L.C.M.E.] **a formal ACGME** or [A.O.A.] **AOA** approved post-graduate year term shall not exceed six months and shall be documented in the hospital record.

(b) Persons who are graduates of foreign medical schools recognized by the Board but who are not yet deemed eligible for licensure in this State because of the requirements of N.J.S.A. 45:9-8 and N.J.A.C. 13:35-3.11 may sit for the [FLEX] **USMLE Step 3** upon completion of one year of approved post-graduate training and satisfaction of all other requirements of N.J.S.A. 45:9-1 et seq.[, including payment of the application fee for the USMLE examination] **and N.J.A.C. 13:35-3.1.**

[1. The Board shall issue to a person passing the FLEX in this circumstance a Certificate which shall state that the person named on the Certificate has applied for licensure in this State, has received a passing grade on the FLEX, and may engage in the practice of medicine and surgery in a formal, supervised training program approved by the Board.

2. The holder of said Certificate may issue medical orders for treatment and for medication only under supervision and only for patients in the licensed hospital in which the physician is receiving post-graduate training.

3. The Certificate shall expire four years from the date of issuance or upon receipt of full licensure, whichever is earlier.]

SUBCHAPTER 3. LICENSING EXAMINATIONS AND ENDORSEMENTS, LIMITED EXEMPTIONS FROM LICENSURE REQUIREMENTS

13:35-3.1 [Federation licensing] **Licensing** examination; **physicians** [(FLEX)]

(a) [The] **Effective December 1994, the** standard medical and surgical licensing examination in the State of New Jersey shall be the [Federation Licensing Examination (FLEX)] **United States Medical Licensing Examination (USMLE), Step 3.**

(b) [FLEX examination for medical licensure in New Jersey, may be taken as a complete unit, that is a consecutive three-day two component examination or a candidate may take one component of the FLEX examination at a time as long as such candidate takes and passes component one first.] **Prior to January 1995, the Federation Licensing Examination (FLEX) shall serve as one of the two standard medical and surgical licensing examinations in the State of New Jersey.**

(c) [A candidate who attains a score of 75 or over in both Component I and Component II shall be adjudged to have successfully passed the examination, and the Executive Director of the Board shall be authorized to issue a certificate of medical licensure in New Jersey to the successful candidate who has met all other requirements of law for medical licensure in this State.] **A candidate for examination who has met all other requirements of law for medical licensure shall be admitted to USMLE, Step 3, upon appropriate demonstration to the Board of successful completion of one of the following examination sequences. Completion of the examination sequence includes attainment of a passing score on each portion of the sequence. (The passing score for each portion of the examination sequence will be the score that was deemed passing by the Board at the time the examination was administered.)**

1. USMLE Step 1 or National Board Part I and USMLE Step 2 or National Board Part II; or

2. FLEX Component I.

(d) [A candidate shall be eligible to re-take the Component failed, but only within five years of passing the other Component. Thereafter, no passing credit shall be carried over, and a candidate shall be required to take both Components as in (b) and (c) above.] **The entire examination sequence shall be passed within a seven-year period. The seven-year period begins when the first portion of the examination is passed. No passing credit shall be carried beyond the seven-year period. Candidates shall be required to repeat the entire USMLE sequence if the entire examination is not passed within seven years of the initial date of passage.**

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(e) No candidate shall be permitted more than five attempts to pass Step 3 of USMLE without demonstration of additional education, experience or training acceptable to the Board.

13:35-3.2 Endorsement; [Federation Licensing Examination] **physicians**

(a) The Board shall grant without examination a license to practice medicine and surgery to any person who shall furnish proof that he or she can fulfill the requirements of law relating to applicants for admission by examination [provided that satisfactory proof is presented by such applicant of licensure by FLEX examination to practice medicine and surgery in another state, territory or possession of the United States, or another country, with a FLEX weighted grade of 75 or better in an examination taken prior to June 1985, or thereafter a score of 75 or better in each of the two Components of the new FLEX examination, both Components of which were passed within a five year period] **and who:**

1. Has presented certification of either the National Board of Medical Examiners or Osteopathic Examiners that the applicant has attained diplomate status from either of those organizations;

2. Has been licensed in another state upon successful passage of a non-FLEX written plenary examination taken in English prior to December 31, 1972, and submits proof of active and reputable practice of medicine and surgery for 10 or more years;

3. Has been licensed in another state upon successful passage of a non-FLEX written plenary examination and presents proof of certification as a diplomate of any specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association;

4. Has taken the FLEX exam prior to January 1981, and attained a FLEX weighted average of 74.5 or better;

5. Has taken the FLEX exam between January 1981 and June 1985, and attained a weighted score of 75 or better;

6. Has taken the FLEX exam between June 1985 and December 1994 and attained a FLEX weighted average of 75 or better in each of the two components;

7. Has presented certification from either the National Board of Medical Examiners or Osteopathic Examiners that the applicant has successfully passed the first two parts of the examination administered by those entities, as well as proof of the attainment of a score of 75 or better on Component II of the FLEX or passing scores on Step 3 of the USMLE; or

8. Has taken the full USMLE examination sequence in a manner consistent with New Jersey standards, as set forth in N.J.A.C. 13:35-3.1.

13:35-3.3 Endorsement [of sister-state M.D. or D.O. license after extended practice or specialty board or national board certifications or by any combination of national boards and FLEX examinations; also, podiatric board endorsement and chiropractic endorsement]; **podiatric physicians**

[(a) The Board may grant without examination, at its discretion, a license to practice medicine and surgery to any person who shall furnish proof of satisfaction of the requirements of law relating to applicants for admission by examination and who shall further furnish proof of any of the following:

1. Certification of either the National Board of Medical Examiners or Osteopathic Examiners that the applicant has attained a passing score in said examination; or

2. Licensure by non-FLEX written plenary examination taken in English prior to December 31, 1972 in a sister state, followed by proof of active engagement in the reputable practice of medicine and surgery for three or more years in all such other state or states; or

3. Licensure by Non-FLEX plenary examination in English in a sister state, and proof of certification as a diplomate of any of the specialty boards approved by the A.M.A. or the A.O.A.; or

4. Certification of either the National Board of Medical Examiners or of Osteopathic Examiners that the applicant has attained a passing score in the first two parts of the National Boards as well as the third part of the FLEX examination taken in another state and passed with a score of 75 or better prior to June 1985, or FLEX component II passed in New Jersey or another state with a score of 75 or better. Such license granted under this provision shall be deemed FLEX examination license.]

[(b)] The Board shall grant without examination a license to practice podiatry to any person who shall furnish proof of satisfaction of the requirements of law relating to applicants for admission by examination **and** who shall further furnish proof of certification [of] **by** the National Board of Podiatric Medical Examiners certifying that the applicant has attained a passing score in said examination.

[(c) The Board shall grant a license to practice chiropractic, by endorsement, to any person who shall furnish proof of satisfaction of the requirements of law relating to applicants for admission by examination who shall furnish proof of:

1. Certification of the National Board of Chiropractic Examiners certifying that the applicant has attained a passing score in said examination; and

2. Passing a clinical examination administered under the authority of this Board.]

13:35-3.4 [Examination in FLEX Component II after proof of passing the first two parts of the National Boards of Medical or Osteopathic Examiners] **(Reserved)**

[An applicant who provides certification of passing the first two parts of the National Board of Medical Examiners or of Osteopathic Examiners examination, as applicable, and who satisfies the requirements of law relating to admission by examination, shall be permitted to take FLEX Component II alone. Such applicant, upon attaining a passing score of 75 or better in the FLEX examination Component II, shall be granted a license to practice medicine and surgery. The license herein to be granted shall be a FLEX examination license.]

13:35-3.7 Limited exemption from licensure; **physicians**

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

(c) [As of the effective date of this rule, August 1, 1983, any] **Any** physician employed or to be employed under an exemption from licensure must:

1. Satisfy all statutory and regulatory requirements preceding [licensure] **examination** required by law [and N.J.A.C. 13:35-6.3];

2. Take and pass the earliest [FLEX] **USMLE Step 3** examination given subsequent to the physician's start of employment;

3. Make application for licensure within 10 days after notification of successfully passing [FLEX] **USMLE** or cease employment.

(d) Following the physician's start of employment, the exemption will automatically terminate either on the date of the earliest [FLEX examination] **USMLE Step 3** not taken or on the date the physician is notified of failure on the earliest [FLEX examination] **USMLE Step 3** taken, whichever is later.

13:35-3.11 Standards for licensure of physicians graduated from medical schools not approved by American national accrediting agencies

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

(f) [A graduate of a foreign medical school shall demonstrate a document indicating a passing score on the examination administered by the Educational Commission on Foreign Medical Graduates (FMGEMS) or ECFMG, as applicable.)] **A graduate of a foreign medical school shall demonstrate to the satisfaction of the Board that he or she holds certification issued by the Educational Commission for Foreign Medical Graduates (ECFMG) which was granted following the attainment of a passing score on an acceptable examination and verification of his or her credentials by ECFMG. The Board shall accept certification of successful completion of an approved Fifth Pathway program in lieu of issuance of the ECFMG Certificate.**

(g) (No change.)

(h) [The applicant shall demonstrate attainment of a grade of at least 75 on the F.L.E.X.] **The applicant shall demonstrate attainment of a passing grade on an examination approved by the New Jersey Medical Board for purposes of medical licensure in this State.**

(i) An applicant who has successfully completed the full medical curriculum in a foreign medical school approved by the Board of Medical Examiners pursuant to law but who has completed clinical

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training in the United States in a program not specifically approved by the Board, [must] **shall** demonstrate prior licensure in [a sister] **another** state and compliance with all other provisions of this section and of law, and may then be [licensed] **eligible to be considered for licensure** in this state by endorsement. An applicant from a program specifically disapproved by the Board or conducted outside of an available approved-program procedure, shall not be eligible under this subsection.

[(j) A graduate of a foreign medical school satisfying each of the above subsections, as pertinent, but who has been licensed in a sister state with a F.L.E.X. grade of less than 75, may be eligible for endorsement of license in this State upon demonstration of good and reputable clinical practice in the sister states for no less than 10 years, and compliance with all other requirements of law. Proof of good and reputable practice shall include, but not necessarily be limited to:

(1) Review, to the satisfaction of the Board, of all malpractice claims, if any, filed against the applicant:

(2) Certification of all hospital affiliations during the pertinent time and letters of recommendation from each such institution. There must be at least one such affiliation; and

(3) Letters of recommendation from all professional society affiliations.]

[(k)]**(j)** Any applicant having received a medical degree **from a medical school not eligible for and not accredited by the Liaison Committee on Medical Education or the American Osteopathic Association** on or after July 1, 1985 shall also demonstrate successful completion of a three-year post-graduate training **program**.

SUBCHAPTER 4. SURGERY

13:35-4.1 Major surgery; qualified first assistant

(a) A major surgical procedure is one with a substantial hazard to the life, health or welfare of a patient. By way of example, but not limitation, a major surgical procedure includes:

1. A procedure in which an opening is made into any of the three major body cavities (abdomen, chest or head), exclusive of endoscopic approaches **which explore existing channels and involve no transverse of a body wall (for example, bronchoscopy, colonoscopy) or are exclusively diagnostic (for example, laporoscopy, colposcopy.) With respect to endoscopic procedures requiring the transverse of a body wall, a duly qualified assistant surgeon shall be immediately available in the operating suite**;

2.-3. (No change.)

(b) A major surgical procedure shall be performed by a duly qualified surgeon with a duly qualified assisting physician who may be a duly qualified [surgical] resident in **or rotating through** a surgical training program approved by the [Educational Council of the American Medical Association] **Accreditation Council on Graduate Medical Education** or the American Osteopathic Association, except in matters of dire emergency.

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

SUBCHAPTER 6. GENERAL RULES OF PRACTICE

13:35-6.1 Practice identification

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

(c) A licensee with a limited license issued by the [board] **Board** shall identify himself or herself for professional purposes in a manner clearly indicating the licensed profession by name or by using the recognized and accepted abbreviation of the degree actually conferred by the professional college; for example: [John Doe, Chiropractor or John Doe, D.C.;] Jane Smith, Podiatrist or Jane Smith, D.P.M.; John Doe, Bioanalytical Laboratory Director or John Doe, B.L.D. or John Doe, Specialty Bioanalytical Laboratory Director in Chemistry, etc.; Jane Smith, Certified Nurse Midwife or C.N.M.

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

13:35-6.2 Pronouncement of death

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

(d) Where the apparent death has occurred outside a licensed hospital and the attending or covering physician has been notified but is unable to go to the location to make the determination and pronouncement, said physician may specify another physician or may arrange with a professional nurse (R.N.) or a paramedic [certified by the Board of Medical Examiners] **in accordance with N.J.A.C. 8:41-7.5, which requires the relay of findings, including telemetered electrocardiograms, if feasible** to attend the presumed decedent and make the determination and pronouncement. In every such instance a written record, which may be contained within a police record, shall be prepared describing the circumstance and identifying the physician and any other person designated as above to perform the death pronouncement responsibility. Such report shall be promptly communicated orally to the attending physician for use in preparation of the death certificate. A copy of the report shall be provided to the physician as soon as practicable.

(e) Where the probable death has occurred outside a licensed hospital and the attending or recovering physician is known but cannot be reached after exercise of reasonable diligence, or no attending physician is known, then any physician, professional nurse or paramedic [certified by the Board] **in accordance with N.J.A.C. 8:41-7.5** may proceed to the scene and make the determination and pronouncement of death. A written record shall be prepared as set forth in (d) above. Following pronouncement of death, the information shall be promptly communicated to the physician for preparation of the death certificate and a copy of the report provided as soon as practicable. If no attending physician is known **or if an attending physician is not available to sign in a reasonable period of time**, the death shall be immediately reported to the County Medical Examiner.

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

13:35-6.3 [Countersigning of order and prescriptions of unlicensed physicians] **(Reserved)**

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

"Intern" or "PGY 1" (a person studying in postgraduate year one) shall mean an unlicensed graduate of a medical school or college of pediatric medicine, who is engaged in a program which has been approved by the Board and which consists of supervised practice in the science and art of medicine or podiatry among patients in a hospital with continued instruction by the staff of the facility. The internship period shall be limited to one year.

"Resident" or "PGY 2 or 3" shall mean a licensed or unlicensed graduate of an approved internship or PGY I who is engaged in an approved program for advanced training in podiatric medicine or in a clinical division of medicine, surgery or other special field in preparation for the practice of a specialty, which training shall be continuously supervised by the staff of the facility. Such approved program must be properly accredited for residency training in the specialty program or programs offered.

"Unlicensed physician" shall mean any unlicensed graduate of a medical school or college of podiatric medicine such as, but not limited to, an intern or resident who is engaged in an approved program or a person possessing an exemption pursuant to law.

(b) A doctor's order written for a patient's care by an unlicensed person engaged in an intern or residency training program in a hospital or institution approved by the Board, or the doctor's order written by a person exempted from the prohibitory provisions of the Medical Practice Act pursuant to law shall be countersigned within 24 hours by a physician possessing a current unrestricted license to practice medicine and surgery in this State. However, a podiatric physician may countersign an order written by a podiatric intern or resident.

(c) Prescriptions written by unlicensed physicians which are to be filled by a pharmacy located outside the hospital or institution where such unlicensed physician is engaged must be countersigned by a physician possessing a current, unrestricted license to practice medicine and surgery in this State. However, a podiatric physician may countersign prescriptions written by a podiatric intern or resident.]

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13:35-6.7 Prescribing of amphetamines and sympathomimetic amine drugs

(a) No physician shall prescribe, order, dispense, administer, sell or transfer any amphetamine or sympathomimetic amine drug or compound designated as a Schedule II Controlled Dangerous Substance pursuant to the laws of New Jersey, to or for any person except:

1. For the treatment of the following conditions. A patient's records shall contain documentation to justify the prescribing including the use of appropriate testing, and with respect to those conditions which are not readily diagnosed by objective testing, documentation that appropriate consultation has been secured.

i. (No change.)

ii. **Idiopathic Central Nervous System Hypersomnia established by recognized diagnostic criteria;**

Recodify existing ii.-v. as **iii.-vi.** (No change in text.)

2-4. (No change.)

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

13:35-6.10 Advertising and solicitation practices

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

1.-3. (No change.)

4. The term "print media" shall include newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers, billboards, signs, matchcovers and other similar items, documents or comparable publications, the content of which is disseminated by means of the printed word. [The term shall not include aerial displays.]

5. The term "electronic media" shall include radio and television[, but shall not include communications made by sound equipment from a motor vehicle].

6.-7. (No change.)

(b)-(l) (No change.)

(m) Any licensee advertising Board certification in a specialty [must] **shall** possess certification by a certifying agency [recognized by the Board of Medical Examiners]. A list of [recognized] **certifying** agencies **recognized by the American Board of Medical Specialties, the American Osteopathic Association, and/or the American Podiatric Medicine Association** shall be maintained by the Board.

(n)-(o) (No change.)

13:35-6.12 [Excessive fee review committees] **(Reserved)**

[(a) The Board of Medical Examiners may establish one or more Excessive Fee Review Committee for each county or region of this State.

(b) Physicians and plenary licensees: With respect to the review of excessive fees for services charged by the holder of a plenary license, the Excessive Fee Review Committee shall consist of at least seven persons, to include two members of the general public and five physicians each possessing a plenary license to practice medicine and surgery, one of whom shall also be a member of the Board of Medical Examiners or the designee of the board who shall also be the chairperson of such committee.

(c) Limited licensees: Matters involving committee review concerning excessive fees for services charged by a holder of a limited license shall be considered by a committee consisting of seven persons, to include five licensed members of such discipline, one of whom shall also be a member of the Board of Medical Examiners or the designee of the Board and who shall be the chairperson of such committee, and two members of the general public.

(d) Committee appointment and terms of service: Committee members shall be appointed by the Board for three year terms and shall serve at the pleasure of the Board and until a successor is appointed. The chairperson shall appoint a secretary and such officers as may be necessary, subject to the approval of the Board. The members of each committee shall serve without compensation but shall be reimbursed for all reasonable expenses incurred in the performance of their duties. The Board may provide each committee with necessary ancillary services consistent with the duties of the committee.

(e) Conduct of inquiry: Each Excessive Fee Review Committee shall make a determination within 60 days from the conclusion of review of a complaint, which may be documented and attested to, from a patient or other responsible party by referral from the Board, by conducting such inquiry or investigation as may be necessary which may include:

1. Conducting an inquiry into and keeping an appropriate record of matters concerning excessive fees for professional services, provided that the Board is regularly apprised of all reviews which are conducted:

i. The committee shall meet within 90 days after the receipt of a complaint;

ii. The committee shall provide notice of the time, date and place of all inquiries to:

(1) The Board;

(2) The license;

(3) The complainant and any other person or party who has a direct personal or economic interest in or information relating to such matter.

2. The committee may:

i. Conduct such investigation as may be appropriate;

ii. Take testimony as necessary;

iii. Request the issuance of subpoenas from the Board as may be necessary to accomplish a full and complete consideration of a particular matter.

3. Within 10 days of the adoption of a recommendation the committee shall report to the Board, in writing, its recommendations with respect to the matter under consideration. Thereafter, at its next regular meeting the Board shall review the recommendation of the committee and determine as soon thereafter as practicable whether any formal action is appropriate.

(f) The Board may, as warranted, conduct such further inquiry or investigation as may be necessary or, after a prima facie finding, institute formal action after notice and hearing thereon and further order restitution and/or impose disciplinary sanctions upon such licensee in accordance with the provisions of the Medical Practice Act, N.J.S.A. 45:9-1 et seq. and the Uniform Enforcement Act, N.J.S.A. 45:1-14 et seq.]

13:35-6.13 Fee schedule

(a) The following fees shall be charged by the Board of Medical Examiners:

1. Medicine and Surgery (M.D. or D.O. license)

i.-viii. (No change.)

ix. Permit **$50.00**

2. Podiatry (license)

i.-v. (No change.)

vi. Permit **$50.00**

3.-9. (No change.)

13:35-6.14 Delegation of physical modalities to **a licensed health care provider or an** unlicensed physician aide[s]

(a) "Physician," [or "doctor,"] for the purpose of this section, shall mean a doctor of medicine (M.D.), a doctor of osteopathic medicine (D.O.) or a doctor of podiatric medicine (D.P.M.) [and a doctor of chiropractic (D.C.)].

1. "Licensed health care provider," for the purpose of this section, shall mean an individual holding a current, valid license in this State as a physical therapist, registered nurse, licensed practical nurse, physician assistant, chiropractor or athletic trainer.

(b) (No change.)

(c) A physician may direct a licensed health care provider with training and experience to administer to the physician's patients physical modalities including ultraviolet (B and C bands) and electromagnetic rays including, but not limited to, deep heating agents, microwave diathermy, shotwave diathermy, ultrasound, and those modalities listed in (d) below. The physician shall retain responsibility for examining the patient, determining the appropriate modalities, assessing training and experience, as well as providing the appropriate level of supervision consistent with practice standards, applicable to the specific licensed health care provider.

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[(c)]**(d)** [Physical modalities, for the purpose of this section, shall be limited to heat, diathermy, cold, ultrasound, ultraviolet rays, cold quartz rays and electro-magnetic rays.] **A physician may direct an unlicensed aide to administer the following physical modalities: hot packs, cold packs, paraffin baths, contrast baths, and whirlpool baths.** The aide shall not be permitted to [do] **perform** any rehabilitative exercise programs. No other modalities including T.E.N.S. or traction shall be performed by the unlicensed physician's aide.

[(d)]**(e)** A physician may direct the administration of an appropriate physical modality by [the] **an** unlicensed assistant only where the following conditions are satisfied:

1. (No change.)

2. The doctor shall determine all **the** components of the precise treatment to be given at the present therapy session, including the type of modality to be used, extent of area to which it shall be applied, [dosage or wattage, etc.,] the length of treatment, and any other factors peculiar to the risks of that modality such as strict avoidance of certain parts of the body [or of static placement of the applicator]. This information shall be written on the patient's chart and made available at all times to the assistant carrying out the instructions. The doctor shall assure that the aide administering the treatment is identified in the patient chart on each such occasion.

3.-5. (No change.)

Recodify existing (e)-(g) as **(f)-(h)** (No change in text.)

SUBCHAPTER 7. [CHIROPRACTIC PRACTICE] **(RESERVED)**

[13:35-7.1 Standards and scope

(a) The practice of chiropractic is that discipline whose methodology is the adjustment and manipulation of the articulations of the spine and related structures and whose purpose is the relief of certain abnormal clinical conditions of human body causing discomfort resulting from the impingement upon associated nerves. During the initial consultation and before commencing chiropractic care, the chiropractic physician shall identify a clinical condition warranting chiropractic trreatment. That clinical condition shall include a subjective complaint of patient discomfort or related objective finding(s). An objective finding includes subluxation which, for the purpose of this section, means alteration of normal dynamics of the anatomical physiological relationships of contiguous articular structures. However, a finding of subluxation alone or subluxation unrelated to the subjective complaint or objective finding(s) shall not warrant chiropractic treatment.

(b) The chiropractic diagnosis or analysis shall be based upon a pertinent chiropractic examination limited to the spine and contiguous musculoskeletal structures height and weight and the vital signs which include pulse, respiration, blood pressure, and temperature, and an adequate history which will enable the chiropractic physician to determine either that chiropractic care is appropriate or that it is not appropriate. Should the evaluation indicate abnormality not generally recognized as treatable by chiropractic methods, the chiropractic physician shall refer the patient to a physician holding a plenary license, preferably a physician of the patient's choice.

1. The chiropractic physician may take or order x-rays limited to the osseous system.

2. The chiropractic physician may order, but may not perform, bioanalytical laboratory tests that are consistent with chiropractic practice. In the event that such test results are beyond the laboratory reference range and the condition is not amenable to chiropractic care, the patient shall be referred to a plenary licensed physician.

(c) The chiropractic physician shall prepare and maintain a proper patient record, including progress notes.

1. The patient record shall contain all relevant information drawn from the patient's history, including the patient's subjective complaint and other subjective statements, and all relevant findings derived from the physical examination. If laboratory tests or x-rays are ordered, their results shall be recorded. If the chiropractic physician identifies a subluxation by means of the physical examination, its location shall be noted.

2. The record shall contain a working evaluation enabling the chiropractic physician either to establish a regimen of chiropractic treatment or to determine that the patient should be referred to a physician holding a plenary license or a podiatrist or a dentist.

(d) If the chiropractic physician determines that chiropractic treatment of the patient is appropriate, the chiropractic physician shall render that treatment in accordance with the appropriate standard of care.

1. The chiropractic physician shall render chiropractic treatment only after identifying during the initial consultation and examination a clinical condition which can appropriately be addressed through chiropractic as that discipline is defined in (a) above.

2. The chiropractic physician may recommend that the patient return on subsequent occasions for additional chiropractic evaluation or treatment if such additional care is warranted as a means by which the patient's acute clinical condition might be resolved.

3. The chiropractic physician may recommend that the patient return on subsequent occasions for additional chiropractic evaluation or treatment if such additional care is warranted as a means by which a chronic clinical condition might be resolved or ameliorated.

4. The chiropractic physician may recommend, in addition or as an alterative, that the patient return on occasion for chiropractic evaluation in the interest of the patient's health.

5. The chiropractic physician may offer to the patient nutritional advice when such advice is incidental to the chiropractic care being provided. Nevertheless, the chiropractic shall not offer nutritional advice as treatment for specific disease, and the chiropractic physician shall not sell or dispense vitamins, food products or nurtitional supplements. The chiropractic physician shall not present himself or herself as a nutritional consultant.

6. The chiropractic physician may order and administer, as preparation for an adjustment, the application of heat light, electric, hydrotherapy, soft tissue massage and traction, when these additional services are deemed necessary. The billing statement for chiropractic care shall specify the services rendered.]

SUBCHAPTER 9. ACUPUNCTURE

13:35-9.13 Tutorial applications and design of tutorial program

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

(f) Requirements for approval of an acupuncture tutorial are as follows:

1.-5. (No change.)

6. The theoretical and didactic training shall consist of a minimum of 600 hours in the following areas:

i.-v. (No change.)

vi. Study of general sciences in anatomy, physiology and pathology, which training [may] **shall** be obtained in a post secondary-educational setting approved by the Board, provided that each of the courses is for at least three academic credits.

(g)-(j) (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MORTUARY SCIENCE
Board of Mortuary Science Rules
Proposed Readoption with Amendments: N.J.A.C. 13:36

Authorized By: Board of Mortuary Science, Paul Brush, Executive Director.

Authority: N.J.S.A. 45:7-38.

Proposal Number: PRN 1994-371.

Submit written comments by July 20, 1994 to:

Paul Brush
Executive Director
New Jersey State Board of Mortuary Science
124 Halsey St.
P.O. Box 45009
Newark, New Jersey 07101

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The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:36 is scheduled to expire on September 27, 1994. The current rules have recently been reviewed, updated and revised by the Board of Mortuary Science and its Rules and Regulations Committee. The Board has found the rules contained in the readoption to be reasonable, necessary and effective for the purposes for which they were promulgated. The current rules proposed for readoption have benefited the regulation and conduct of the mortuary science profession by enabling the Board to have in place procedures that maintain high standards of practice, thus serving and protecting the public's interests; the Board believes that its proposed changes further that purpose, inasmuch as they either clarify and update present wording or address developments within the profession.

Many revisions are merely technical changes that include the following: throughout the Board's rules, references to licensees as "practitioner," "mortician," "funeral director," "embalmer," "provider" and so forth have been made uniform and simplified under one heading: "licensed practitioner of mortuary science." Gender references that were once exclusively masculine have also been changed throughout the chapter to reflect the participation of women in the profession.

The following summary outlines each subchapter and identifies and briefly explains proposed amendments.

Subchapter 1 establishes the administrative mechanisms for the Board. N.J.A.C. 13:36-1.6 is being amended to include time-period references regarding the late renewal fee and reinstatement fee so as to clarify for licensees the intervals during which these fees are applicable.

N.J.A.C. 13:36-1.8 and 1.9 are being updated to comply with Funeral Industry Rule 453.2(b)(4)(ii)(cnd), and Federal Trade Commission (FTC) rule revisions as published in the Federal Register, volume 59, number 7, regarding the funeral industry. These revisions embody an attempt to avoid duplication and to clarify and simplify the rules for practitioners and consumers. Duplication will be avoided by deleting existing paragraph N.J.A.C. 13:36-1.9(b)2, which required the following statement to appear on the itemization of funeral expenses form: "The State of New Jersey Does Not Require You to Sign the Below Contract." This provision is unnecessary and confusing to licensees and consumers alike, and in practice has merely resulted in licensees generating a separate contract so as to secure the customer's signature. Moreover, existing N.J.A.C. 13:36-1.8 and 1.9 are redundant in that they each require the generating of itemization records, which will hereby be detailed exclusively in N.J.A.C. 13:36-1.9. In N.J.A.C. 13:36-1.9, simplification is accomplished by creating the opportunity for licensees to offer a package price to consumers for direct cremation or direct burial and to offer goods and services accordingly.

Other proposed changes involving these two sections are as follows. N.J.A.C. 13:36-1.8(b) is being amended to clarify that records may be kept electronically and that they should be kept for six years so as to coincide with laws generally relating to limitations on contract actions. N.J.A.C. 13:36-1.8(c) is being revised so that a practitioner's records regarding individual funerals are required to include the Statement of Funeral Goods and Services Selected form, and certain information or records not available to the practitioner at the time that he or she prepares the Statement of Funeral Goods and Services Selected form: paragraph (c)2, the cemetery or crematorium and any charges resulting from their use for the occasion; paragraph (c)3, the name and address of any church, synagogue and/or clergy who participated in the funeral service; paragraph (c)4, the date of disposition; and paragraph (c)5, the final bill. Paragraphs (c)1 and (c)5 are new and are hereby proposed in order to ensure accurate, comprehensive records. Paragraphs (c)2 and (c)3 are recodified paragraphs (c)6 and (c)7 from existing N.J.A.C. 13:36-1.8. Paragraph (c)4 deletes the previous accompanying requirement that dates of visitation also be recorded because the Board regards that information as unnecessary. The other existing recordkeeping requirements in subsection (c) will, according to this proposal, either be incorporated into N.J.A.C. 13:36-1.9(a) or else are redundant to provisions already existing in N.J.A.C. 13:36-1.9 and will thus be deleted.

Subchapter 2 addresses the involvement of interns in the profession of mortuary science. Only technical changes are being proposed in this subchapter.

Subchapter 3 details the Board's examination requirements. N.J.A.C. 13:36-3.4 is being amended to reflect current practice and to more accurately reflect the examination subjects deemed necessary to establish professional qualifications as defined by the Conference of Funeral Service Examining Boards (CFSEB), which is the national association of state licensing boards or agencies that serve as counterparts to this Board. The examination subjects contained in this proposal include all of the examination subjects identified by CFSEB as necessary and supplement those subjects with a select number of additional subjects that ensure attention to matters such as professional ethics and public health.

Subchapter 4 concerns general provisions related to license and registration. N.J.A.C. 13:36-4.1 is being amended to confirm by regulation the Board's existing requirement that establishments need to file registration renewals on or before the last day of December of every odd-numbered year, and to clarify that practitioners need to file licensure renewals on or before the last day of February of every odd-numbered year.

N.J.A.C. 13:36-4.5 is being amended to require that whenever there are any changes in ownership of a funeral establishment, including a stock transfer, the Board will be so notified. Besides amending this section to include, rather than specifically exclude, a reporting requirement for stock transfers, this amendment also modifies the reporting timeframe from a period of at least 15 working days prior to an ownership change to a period of no more than five working days after an ownership change or stock transfer. The amendment to include stock transfers is intended to provide the Board with more complete information regarding ownership of funeral establishments so as to permit the Board to perceive any questionable aspects that might exist regarding a funeral establishment's ownership structure and thus, as necessary, act to preemptively protect consumers from deceptive or exploitative business practices. The amendment involving the reporting timeframe is intended to provide licensees with a more reasonable opportunity for compliance.

N.J.A.C. 13:36-4.6 is being amended to address instances when a limited partnership and/or a limited liability company applies for registration of a funeral establishment, as established by N.J.S.A. 42:2B-1 (P.L. 1993, c.210).

N.J.A.C. 13:36-4.8(a) is being amended to incorporate references to limited partnership or limited liability company ownership pursuant to N.J.S.A. 42:2B-1 (see amendments to N.J.A.C. 13:36-4.6). New subsections proposed for this rule include subsection (c), which is a recodification of N.J.A.C. 13:36-5.1(c) through (e). Together, these subsections will enable the Board to be better informed about the current status and qualifications of managers at funeral establishments. This state of affairs will be accomplished by requiring the following. The former manager and the establishment shall notify the Board in writing within 30 days of the manager's termination. Within 30 days of such termination, or a longer period of no more than six months if approved by the Board based on documented evidence of hardship or extenuating circumstances, the establishment shall give notice to the Board of the name of the new designated manager, whether permanent or temporary. Within 30 days of accepting the manager's position, the newly designated manager shall submit to the Board a letter indicating acceptance, a qualifying application, and the necessary fee.

N.J.A.C. 13:36-4.9 is being amended to identify terms the Board will deem to be misleading or deceptive and is meant, in particular, to address concerns that unlicensed individuals or firms purporting to be funeral consultants and the like have tended to confuse consumers.

N.J.A.C. 13:36-4.12 is being amended to create a more reasonable reporting requirement by increasing by an additional 20 days the time period in which the executor or administrator of the estate or the deceased owner's heir or heirs must notify the Board of an intention to continue the operation of a funeral establishment, pending an approved application for a certificate of registration. This section is being further amended to specifically require that when a manager submits to the Board an affidavit stating his or her willingness to act in a managerial capacity, as part of an application for a certificate of registration, such an affidavit shall be submitted in tandem with the other portions of the application. The second of these amendments is sought in order to ensure that the Board will have all of the information that it requires in order to review a submitted application for a certificate of registration in a timely manner.

N.J.A.C. 13:36-4.13 is being revised in order to simplify and clarify the provisions of subsection (a) and to delete from subsection (b) unnecessary provisions, including the requirement that written notification to the Board of an intention to enter a special use agreement with another funeral establishment must be handled by certified mail. The other provisions deemed unnecessary consist of reporting the decedent's date of death and the reasons for use of another establishment. Submit-

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ting notice to the Board of this information is immaterial as the Board does not need such data in order to be adequately informed of the special use agreement.

Subchapter 5 provides regulations regarding a number of the practical aspects of operating a mortuary, ranging from the mortuary's physical structure and equipment requirements, to advertising and the removal of human bodies. N.J.A.C. 13:36-5.1(c) is being deleted because the Board believes that this notice requirement best fits under N.J.A.C. 13:36-4.8.

N.J.A.C. 13:36-5.6, 6.2, 6.4 and 6.5 reflect changes made to comply with the Occupational, Safety and Health Administration regulations on Bloodborne Pathogens in the work place (OSHA, see 29 CFR 1910.1030).

N.J.A.C. 13:36-5.8 is being repealed pursuant to N.J.S.A. 45:7-34(9), which embodied the change in licensure terminology from embalmer or funeral director to the single category that is now to be uniformly identified as licensed practitioner of mortuary science.

Proposed new rule N.J.A.C. 13:36-5.9 addresses multiple funeral establishments with common ownership in the same location. In order to avoid confusion to the consumer and to prevent deceptive pricing, this section requires that all prices quoted and charged to customers shall be the same for all establishments in that location and that no more than three establishments shall function in one location unless the Board in its discretion finds that permitting an additional establishment will benefit the public.

N.J.A.C. 13:36-5.10 is being repealed and a new rule proposed to clarify the requirement that a sign with the firm name registered with the Board shall be located reasonably near the main entrance or clearly visible from both the street and the main entrance.

In N.J.A.C. 13:36-5.12, the reference to sign is being deleted because the concern that a sign should indicate the true firm name as registered with the Board is already adequately addressed by N.J.A.C. 13:36-5.10.

In N.J.A.C. 13:36-5.17, "residence or institution" is being inserted in place of the outdated terms "nursing or rest home." In addition, the requirement of written authorization is being removed to reflect the fact that most authorizations are by telephone. Requiring written authorization causes hardship for the consumer and licensee, and undue delay, by limiting a licensee's ability to comply with a consumer's orders for the handling of a deceased body when the consumer is not on site to provide written authorization.

Subchapter 6 regulates the embalming procedure. No non-technical changes other than those that clarify and/or reference OSHA guidelines are being proposed in this subchapter.

Subchapter 7 is reserved.

Subchapter 8 outlines general rules of practice. N.J.A.C. 13:36-8.2 is being amended to benefit consumers by extending the privacy standard previously established by this rule. Instead of merely requiring that a practitioner not divulge any privacies, confidences or secrets that may come to his or her attention through the practice of mortuary science, this section will also require a licensee not to permit his or her agents or employees to divulge confidential information inadvertently learned in the course of business.

Existing subsection N.J.A.C. 13:36-8.6(a) is being deleted because it is obsolete pursuant to N.J.S.A. 45:7-82. Based on 1982 amendments to the Social Security Act (20 CFR 416.1231), coupled with the recent adoption of the New Jersey Irrevocable Trust Act (N.J.S.A. 3B:11-16), consumers are now permitted to use irrevocable trusts to exclude the cost of pre-paid funerals from their assets when they are in receipt of Supplemental Security Income (SSI) and Medicaid benefits. Amendments to N.J.A.C. 13:36-8.6 have been proposed to bring this section into compliance with the Pre-need Act of 1993 by limiting the use of guaranteed pre-paid funeral funds, by requiring the return of unused funds to the consumer, and by limiting prices to be imposed in offering pre-need arrangements. The receipt of funds for these and other public assistance recipients in excess of the standard allowance provided by the state when there are no family assets allows persons to be buried with dignity.

N.J.A.C. 13:36-8.9 is being amended to protect consumers by clarifying in new subsection (b) that only licensees shall make funeral arrangements and quote prices in connection with any funeral services and/or goods when funeral arrangements are being made. Implicit in this subsection is the exception that support staff may quote prices when funeral arrangements are not being made. This new paragraph is intended to protect consumers against instances in which funeral arrangements and funeral prices quoted in conjunction with the making of funeral arrangements might otherwise prove to be incorrectly or misleadingly stated by a subordinate not adequately versed in the licensee's business practices.

Subchapter 9 prohibits unfair or deceptive acts and practices. N.J.A.C. 13:36-9.1 is being amended to identify merchandise that constitutes funeral goods so as to clarify this matter for licensees and consumers alike.

Social Impact

The rules proposed for readoption provide various procedures for the orderly administration of the Board's operations to ensure that truly qualified individuals are practicing in the mortuary science profession. The current rules have satisfied the Board's statutory mandate to protect and serve the public with high levels of professionalism. It is therefore anticipated that this readoption will have an advantageous social impact in that it will maintain these high standards.

Rule amendments not referenced below are not anticipated to have any social impact. Other proposed changes are expected to have the following social impact.

The amendments to N.J.A.C. 13:36-1.6 will benefit licensees by clarifying for them the time frames according to which a late renewal fee or reinstatement fee becomes applicable.

The amendments to N.J.A.C. 13:36-1.8 will benefit licensees in that they enable licensees to use electronic technology for recordkeeping purposes, and by no longer requiring licensees to include various information among their records that is either addressed in reproposed N.J.A.C. 13:36-1.9 or is in the Board's opinion simply unnecessary.

The amendments to N.J.A.C. 13:36-1.9 will be beneficial to both consumers and licensees due to the relative clarification and simplication offered by the proposed "Statement of Funeral Goods and Services Selected" form, including most notably the opportunity for licensees to offer a package price to consumers for direct cremation or direct burial and to offer goods and services accordingly.

The amendments to N.J.A.C. 13:3-36.4 will benefit licensees in that the subjects of the examination to be conducted by the Board shall more closely resemble those offered by Conference of Funeral Service Examining Boards and will thus reflect current professional terminology and methods as recognized on a nation-wide basis.

The amendments to N.J.A.C. 13:36-4.5 will protect consumers by enabling the Board to be more fully informed as to the ownership of funeral establishments. The purpose of securing more complete information regarding ownership is to enable the Board to be cognizant of changes in ownership that the Board regards as potentially detrimental to the best interests of consumers.

The amendments to N.J.A.C. 13:36-4.8 will benefit consumers in that the current manager will always be a matter of Board record available for consumer inquiry and protection.

The amendments to N.J.A.C. 13:36-4.9 will protect consumers against confusion and deception and puts unlicensed individuals on notice that they are engaging in deceptive practices by assuming professional titles that imply a professional status as a licensed practitioner of mortuary science.

The amendments to N.J.A.C. 13:36-4.12 will benefit licensees in so much as the executor or administrator of the estate or the deceased owner's heir or heirs may, according to this proposal, have an additional 20 days in which to notify the Board of an intention to continue to operate a funeral establishment, pending an approved application for a certificate of registration.

The amendments to N.J.A.C. 13:36-4.13 will benefit licensees engaging in special use arrangements by deleting provisions requiring not only notice of date of death but also why the facility is needed because those two provisions serve no constructive purpose, being in the first instance a matter addressed by the recordkeeping requirements of N.J.A.C. 13:36-1.8 and in the second instance a self-evident proposition.

The amendments to N.J.A.C. 13:36-5.6 will benefit licensees by clarifying their equipment needs.

Proposed N.J.A.C. 13:36-5.9 will benefit consumers by placing on multiple funeral establishments with common ownership in the same location the requirement of price uniformity to prevent deceptive practices and unfair pricing. The new rule also places a limit of no more than three funeral establishments in operation at a given facility, thereby avoiding a warren of facilities with scant distinctive legitimacy.

The amendments to N.J.A.C. 13:36-5.10 will benefit consumers by increasing their ability to readily identify funeral establishments based on their display of their establishment sign. Specifically, this enhanced

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ability will be accomplished by ensuring that a consumer approaching the main entrance of an establishment will be able to see at least one establishment sign.

The amendments to N.J.A.C. 13:36-5.17 will benefit consumers by removing restrictive provisions regarding the proper authorization of the removal of human remains because these provisions have proven to cause hardship to consumers by invalidating a communicated request for the removal of those remains unless written authorization is secured by the licensee prior to engaging in such a removal.

The amendments to N.J.A.C. 13:36-6.2, 6.4 and 6.5 will benefit licensees by clarifying OSHA guidelines.

The amendments to N.J.A.C. 13:36-8.1 will benefit licensees by relaxing the requirement for the carrying of the license identification card to the far more reasonable standard that the bodily possession of such a card is required of a licensee only when he or she is engaged in the conduct of business.

The amendments to N.J.A.C. 13:36-8.2 will benefit consumers by extending the privacy standard previously established by this rule. Instead of merely requiring that a practitioner not divulge any privacies, confidences or secrets that may come to his or her attention through the practice of mortuary science, this section as proposed to be amended will also require a licensee not to permit his or her agents or employees to divulge confidential information inadvertently learned in the course of business.

The amendments to N.J.A.C. 13:36-8.6 will benefit licensees by clarifying the correct manner to handle funeral arrangements involving cash or negotiable instruments. This clarification is pursuant to the following: the passage in 1993 of the Pre-need Act, amendments to the Social Security Act in 1982 regarding SSI/Medicaid prepaid funeral resource exclusions, the recent adoption of the New Jersey Irrevocable Trust Act, and changes in social service policies over the years since this section was originally adopted by the Board.

The amendments to N.J.A.C. 13:36-8.9 will protect consumers against instances in which funeral arrangements and funeral prices quoted in conjunction with the making of funeral arrangements might otherwise prove to be incorrectly or misleadingly stated by a subordinate not adequately versed in the licensee's business practices.

The amendments to N.J.A.C. 13:36-9.1 will benefit consumers and licensees alike by clarifying merchandise to be regarded as duly constituting funeral goods.

Economic Impact

The readoption with amendments will have no significant adverse economic impact on the general public or Board licensees. It is anticipated that, for those rules having any financial impact, the benefits to the public will be real and substantial albeit not always quantifiable. Where there is any possible adverse economic impact on a Board licensee, that impact is deemed to be substantially outweighed by the anticipated benefit to the public.

Existing rules will have the following economic impact.

N.J.A.C. 13:36-1.6 sets the Board's fee schedule so that the Board will be self-funding, and thus in compliance with N.J.S.A. 45:1-3.2. These fees constitute a nominal operating expense on the part of licensees.

N.J.A.C. 13:36-5.4 details the Board's requirements for the physical structure of a mortuary and compliance with these provisions may require some licensees to engage in the remodeling or upgrading of mortuary establishments.

N.J.A.C. 13:36-5.5 details the Board's requirements for the conditions of the preparation room and compliance with these provisions may require some licensees to engage in the remodeling or upgrading of preparation rooms.

The proposed changes will have the following economic impact:

The amendments to N.J.A.C. 13:36-1.8 will streamline paperwork requirements and remove redundant requirements while enabling the use of current technology for the purposes of recordkeeping.

The amendments to N.J.A.C. 13:36-1.9 will necessitate the printing of new forms and the revision of the General Price List and the Statement of Funeral Goods and Services Selected form and thus will involve costs for licensees that the Board considers to be offset by the overall benefits that these amendments represent in terms of greater clarity, simplication and the long-term economic benefit of no longer preparing a contract separate from the one prepared in conjunction with the itemization of goods and services. The amended section will be economically beneficial to some consumers in that it affords licensees the opportunity to offer a package price to consumers for direct burials and immediate cremations that will have the net impact of reducing costs.

The amendments to N.J.A.C. 13:36-4.6 are not expected to have any economic impact other than to acknowledge the opportunity for a limited partnership and/or limited liability company to be an entry in the field of mortuary science (see N.J.S.A. 42:2B-1, "The New Jersey Limited Liability Company Act"). The Act provides for the organization of limited liability companies to conduct business in New Jersey and allows foreign limited liability companies and limited liability partnerships to register and conduct business in this State. The Act makes the following allowances. It permits an unlimited number of shareholders. It permits income not to be taxed under the New Jersey Gross Income Tax Act but rather as income by members of a partnership (no corporate tax). It permits limited liability for all members (as in a corporation). It permits the conduct of any business that a partnership or limited partnership may conduct. Finally, it permits the created entities to be treated as partnerships for Federal tax purposes if they possess no more than two of four characteristics of a corporation (continuity of life, centralization of management, an arrangement whereby shareholders and directors have limited liability, and the free transfer of non-management interest).

The amendments to N.J.A.C. 13:36-4.9 may have an economic impact on consumers in that they will be better protected against unlicensed and deceptive practice.

The economic impact of the amendments to N.J.A.C. 13:36-5.6, 6.2, 6.4 and 6.5 is no more than that already imposed by OSHA law.

New section N.J.A.C. 13:36-5.9 will have a beneficial economic impact on consumers by protecting them against being quoted and charged prices at variance with, and therefore potentially higher than, those of other establishments with the same ownership at the same location.

The amendments to N.J.A.C. 13:36-5.10 will have an economic impact on licensees to the extent that it might require some licensees to erect new signs or move existing signs in order to ensure that a consumer approaching the establishment's main entrance will be adequately informed as to the establishment's identity.

The amendments to N.J.A.C. 13:36-5.17 will result in savings for those consumers, such as family members, who will not be required to travel to the funeral establishment to sign the authorization for the removal of human remains in that verbal authorization will now become sufficient.

The amendments to N.J.A.C. 13:36-8.6 adhere to the passage in 1993 of the Pre-need Act, to amendments to the Social Security Act in 1982 regarding SSI/Medicaid pre-paid funeral resource exclusions, and to the recent passage of the New Jersey Irrevocable Trust Act. In ensuring that consumers are permitted to use irrevocable trusts to exclude the cost of pre-paid funerals from their assets when they are in receipt of Supplemental Security Income (SSI) and Medicaid benefits, these proposed amendments do not impose an economic burden on licensees.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., funeral establishments are deemed "small businesses," then within the meaning of the statute the following statements are applicable:

The Board of Mortuary Science currently has registered approximately 800 funeral establishments and has licensed approximately 2,000 individual practitioners. The rules proposed for readoption do contain reporting (N.J.A.C. 13:36-4.2), recordkeeping (N.J.A.C. 13:36-1.8 and 9.18) and compliance requirements relating to licensure and practice that may affect licensees who practice as small businesses. Specifically, certain existing rules that have been proposed for readoption without amendment need to be addressed in this statement as follows.

N.J.A.C. 13:36-2.2 requires a prospective intern's preceptor to receive in writing an application which, implicitly, becomes a document to be retained for recordkeeping purposes by the preceptor. N.J.A.C. 13:36-2.5 requires that the Board receive signed and dated monthly report forms from interns that the preceptor will also wish to retain for recordkeeping purposes. N.J.A.C. 13:36-2.11 involves both reporting requirements and, implicitly, recordkeeping requirements as it states that an affidavit recommendation form shall be filed with the Board by the preceptor upon termination of an internship.

N.J.A.C. 13:36-5.4 and 5.5 involve initial capital costs for any licensees who need to bring the physical structure of a mortuary or a preparation room into compliance with the provisions of these two sections.

Certain proposed amendments need to be addressed in this statement as follows.

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N.J.A.C. 13:36-1.8 details recordkeeping requirements. Existing provisions to be readopted without amendment require the maintaining of full, accurate records of funerals. Amendments being proposed will allow for the keeping of such records by electronic means, and will require that such records be kept for six years. Certain of the existing recordkeeping requirements detailed in subsection (c) will hereby be incorporated into N.J.A.C. 13:36-1.9 as amended or else will be deleted as either unnecessary or redundant to provisions contained in amended N.J.A.C. 13:36-1.9.

N.J.A.C. 13:36-1.9 details how the itemization should be handled in regard to the "Statement of Funeral Goods and Services Selected" form and, in conjunction with N.J.A.C. 13:39-1.8, has the recordkeeping requirement that this form be retained by the practitioner on an annualized basis for six years.

Under N.J.A.C. 13:36-4.5, registered establishments must give notice to the Board within five business days after a change of ownership or stock transfer. N.J.A.C. 13:36-4.6 requires a funeral establishment to register with the Board and supply the name, residence address and telephone number of officers, a copy of the certificate of incorporation, and a letter from the manager verifying acceptance of said position.

The amendments to N.J.A.C. 13:36-4.8 create the following reporting requirements. Whenever a manager's services are terminated, the manager and the establishment shall each notify the Board in writing within 30 days of the termination of the manager. Within 30 days of such termination, or a period of up to six months if approved by the Board based on documented evidence of hardship or extenuating circumstances, the establishment shall give notice to the Board of the name of the new designated manager, whether permanent or temporary. Within 30 days of accepting the manager's position, the newly designated manager shall submit to the Board a letter indicating such acceptance, a qualifying application, and the appropriate fee.

N.J.A.C. 13:36-4.12 has the reporting requirement that, in the event of the death of a licensee or owner, the Board shall be notified within 30 days should the deceased owner's heir or heirs intend to continue the mortuary practice.

Pursuant to N.J.A.C. 13:36-4.13, parties involved in a special use agreement will no longer need to set forth in the agreement the date of death or an explanation of why the facility is needed but will nevertheless notify the Board of such a special use agreement and shall include with such notification the following information: the title and address of the firm being used and the name of the manager, the name and address of the firm using the establishment and the name of the licensee in charge, the name of the decedent, and the exact date(s) the establishment is to be used.

N.J.A.C. 13:36-5.6 may involve other costs of compliance for licensees who need to upgrade their equipment to be in compliance with the contemporary standards set forth in this amendment.

N.J.A.C. 13:36-5.10 may involve other costs of compliance for licensees who need to erect a sign or move an existing sign in order to be in compliance with the new requirement that the establishment sign be located reasonably near the main entrance or clearly visible from the street and the main entrance. This amendment may possibly, though not necessarily, involve an expense for licensees depending on the placement of existing signs.

N.J.A.C. 13:36-5.16 has the reporting requirement that a licensee in charge of an establishment who intends to be away from his or her establishment or practice for a period in excess of 30 days shall so notify the Board and furnish it with the name of the licensed employee who will remain in charge.

N.J.A.C. 13:36-8.6 has the reporting requirement that whenever ownership of a mortuary is being transferred or dissolved, each client shall be notified in writing of the transfer and that the trust funds may be withdrawn if so desired. N.J.A.C. 13:36-8.6 has the recordkeeping requirement that the estimated account of funeral service expenses, along with copies of any communications written pursuant to this regulation, shall be retained on record for a period of no less than six years after the demise of the purchaser.

Because these rules seek to promote and protect the public health and welfare through regulation of practitioners of mortuary science, no differentiation in compliance based upon business size is provided.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:36.

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

SUBCHAPTER 1. ADMINISTRATION

13:36-1.4 Duties of Executive [Secretary] **Director**

(a) The Executive [Secretary] **Director** shall be in full charge of office administration. It shall be his **or her** duty to:

1.-3. (No change.)

4. Perform any and all duties which the Board may from time to time impose upon him **or her**.

13:36-1.5 Inspector's duties

(a) The inspector shall:

1. Inspect mortuaries for cleanliness wherein practitioners of mortuary science[, embalmers and funeral directors] are practicing;

2. Where necessary, view dead human bodies which have been placed in the care of any practitioner of mortuary science[, embalmer or funeral director];

3. Inspect the license and registration of practitioners of mortuary science[, embalmers and funeral directors];

4.-6. (No change.)

(b) (No change.)

13:36-1.6 Fees and charges

(a) There shall be paid to the State Board of Mortuary Science the following fees:

1.-8. (No change.)

[11.]**9.** Biennial license renewal fees:

i.-iv. (No change.)

v. Late renewal fee **(first 30 days)** $100.00

10.-13. (No change.)

14. Reinstatement fee **(after 30 days)** plus initial license fee $150.00

15. (No change.)

13:36-1.8 Recordkeeping by practitioner of mortuary science

(a) All [persons engaged in the practice] **licensed practitioners** of mortuary science shall be required to maintain full, accurate records of all funerals which they conduct or in which they participate in any manner.

(b) Such records are to be kept, **electronically or otherwise,** on [a yearly] **an annualized** basis **for six years** and each funeral will be designated by a number assigned consecutively at the time funeral arrangements are made. The information on such records shall be recorded after the completion of each funeral.

(c) Such records are to include the following:

1. [Name and last address of deceased] **The Statement of Funeral Goods and Services Selected;**

2. [Date and place of death] **Cemetery in which burial was made or name of crematorium where appropriate, and the charges made by the cemetery or crematorium;**

3. [Name and address of person making funeral arrangements] **The name and address of any church, synagogue and/or clergy who participated in the funeral service and who received any offering or honorarium, and the amount thereof, if paid by the funeral home;**

4. [Dates of visitation and date] **Date** of disposition; **and**

5. **The final bill.** [Itemization of all merchandise and service provided as required by the rule entitled "Itemization of funeral expenses" promulgated in conjunction herewith but including in addition thereto the wholesale price of any merchandise provided in conjunction with the funeral service and the name and address of the person or company from which such merchandise was purchased. Merchandise provided in conjunction with funeral services is defined to include, but not be limited to casket, vault or other enclosure (including model and invoice numbers, date of purchase and wholesale cost), clothing, flowers, prayer cards, registration book, religious artifacts and any other item purchased by the practitioner for resale without substantial alteration;

6. Cemetery in which burial was made or name of crematorium where appropriate, and the charges made by the cemetery or crematorium;

7. The name and address of any church, synagogue and/or clergy who participated in the funeral service and who received any offering or honorarium, and the amount thereof, if paid by the funeral home;

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8. A specific enumeration of all services charged for in conjunction with the rendering of funeral services.]

[13:36-1.9 Itemization of funeral expenses

(a) No one, but a duly licensed practitioner of mortuary science or funeral director, shall make funeral arrangements or quote funeral prices to a consumer in connection with a service when funeral arrangements are being made. No unlicensed person shall act in the licensee's stead, except that a duly registered intern may do so under the supervision of a licensee. The licensee shall compile a specific itemization of charges which will be made for such arrangements.

(b) Such itemization form shall be on a single sheet of paper and shall include the full name, legal address and date of death of the deceased and at least the five general categories as listed below. All charges relative to the funeral are to be listed on the itemization form with sub totals and grand totals as indicated, and the name and address of the person making funeral arrangements. It shall be exclusive of promissory notes and other non-related items except that a contract may appear at the bottom of the itemization form. If such contract is included on the itemization form:

1. It shall be separated from the itemization section by a horizontal line extending across the face of the page;

2. The statement, "The State of New Jersey Does Not Require You to Sign the Below Contract" shall appear immediately below the horizontal line and shall be printed in bold face letters no less than one-quarter inch in height and;

3. The heading "Contract" shall appear immediately below the statement of as required by (b)2 above and shall be printed in bold face letters no less than one-quarter inch in height.

(c) Each general category must be further itemized at least to the extent indicated below by the licensee handling the funeral arrangements. Cash advancements (disbursements) paid by the family shall be noted on the itemization form with the amount, if known. If any category is not applicable, that item shall be so marked. Estimated charges shall be so noted.

ITEMIZATION FORM FOR FUNERAL EXPENSES

Category I—Professional Services
A. Arrangements and Supervision
B. Preparation and Care of Deceased
1. Embalming
2. Sanitary Care, without Embalming
3. Other (Specify) CATEGORY I TOTAL $

Category II—Facility Charge
A. Facility Charge, excluding Visitation and/or Ceremony
B. Use of Funeral Home for Visitaton and/or Ceremony
$ Per Day and Total $
C. Other (Specify) CATEGORY II TOTAL $

Category III—Transportation
A. Transfer of Deceased to Funeral Home
B. Use of Hearse
C. Use of Limousine(s)
D. Use of Flower Car(s)
E. Other (Specify) CATEGORY III TOTAL $

Category IV—Merchandise
A. Casket (Description)
B. Vault or Other Outer Enclosure (Description)
C. Clothing
D. Miscellaneous Items of Merchandise
(List separately) CATEGORY IV TOTAL $
Subtotal for Categories I-IV $

Category V—Cash Disbursements
A. Cemetery or Crematory
B. Clergy or Church
C. Newspaper Notices
D. Certified Copies of Death Certificate and Permit Fee
E. Pallbearers
F. Other (Specify) Subtotal for Category V $
Grand Total $

(d) Immediately upon completing the itemization form, the licensee shall have the consumer sign the following statement on the completed itemization form: "I have read and received a copy of the Itemization of Funeral Expenses". The licensee shall also sign his name and license number under the following statement, "I have prepared the above Itemization of Funeral Expenses". The licensee shall also date the form and immediately provide a copy to the person for whom the itemization form was prepared.

(e) Any change, addition or deletion authorized by the purchaser after the completion of the itemization form, shall be included on the final funeral bill.

(f) A copy of the "Itemization of Funeral Expenses" and final funeral bill shall be retained by the licensee for at least six years thereafter and each itemization form shall bear a number corresponding to the funeral record number required by the funeral record keeping rule, N.J.A.C. 13:36-1.8.]

13:36-1.9 Statement of Funeral Goods and Services Selected

(a) The practitioner shall compile a "Statement of Funeral Goods and Services Selected" form. The form shall be on a single sheet of paper and shall include at least the following information:

1. The full name of the funeral home, address, telephone number, manager's name and funeral file number;

2. The full name, legal address, and date and place of death of the deceased;

3. The name and address of the person making the funeral arrangements;

4. Estimated charges;

5. All charges relative to the funeral, broken down into at least the five general categories set forth in (d) below, with subtotals and grand totals as indicated;

6. Cash disbursements paid by the family; and

7. The funeral record number as required by N.J.A.C. 13:36-1.8(b).

(b) Promissory notes and other non-related items shall not be included on the form.

(c) A contract may appear at the bottom of the form. If included, it shall be separated from the form by a horizontal line extending across the face of the page, and the heading "Contract" shall appear immediately below the horizontal line.

(d) All charges relative to the funeral shall be categorized as follows:

STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED

Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below.

CATEGORY I—PROFESSIONAL SERVICES
1. Basic Services of Funeral Director and Staff $
2. Embalming (including use of preparation room and sanitary care) $
If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain below.
3. Sanitary Care, Without Embalming $
4. Other (Specify) $
Category I TOTAL $

CATEGORY II—OTHER STAFF AND RELATED FACILITIES
1. Use of Facilities and Staff for Viewing $
2. Use of Facilities and Staff for Funeral Ceremony $
3. Use of Facilities and Staff for Memorial Service $
4. Use of Equipment and Staff for Graveside Service $
5. Other (Specify) $
Category II TOTAL $

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CATEGORY III—TRANSPORTATION

1. Transfer of Remains to Funeral Home $
2. Use of Hearse $
3. Use of Limousine(s) $
4. Use of Flower Car(s) $
5. Other (Specify) $
Category III TOTAL $

OPTIONAL PACKAGED SERVICES—Direct Cremation, Immediate Burial. $

If an optional packaged service is selected, categories I through III are not applicable.

CATEGORY IV—MERCHANDISE $

1. Casket (Description to include manufacturer, name or model number, type of material and interior material) $
2. Vault/Outer Burial Enclosure (Description to include manufacturer, name or model number, and type of material) $
3. Clothing $
4. Other (Specify—Items may be packaged for individual items less than $100.00 each) $
Category IV TOTAL $

CATEGORY V—CASH DISBURSEMENTS (Estimated)

1. Cemetery or Crematory $
2. Clergy (and/or Church) $
3. Pallbearers $
4. Certified Copies of Death Certificate and Permit Fee $
5. Newspaper Notices $
6. Other (Specify) $
Category V TOTAL $
GRAND TOTAL $

I have prepared the above Statement of Funeral Goods and Services Selected.	**I have read and received a copy of the Statement of Funeral Goods and Services Selected.**
Signature of Practitioner and License #	**Signature of Person Making Arrangements and Date**
For Name of Funeral Home	**Relationship of Deceased Street Address City, State, Zip Code**

IF ANY LAW, cemetery or crematory requirements have required the purchase of any of the items listed above, the law or requirement is described below.

☐ **Crematory requires container to surround the remains.**
☐ **Your cemetery requires an outer burial container**
☐ **Other: _____**

REASONS FOR EMBALMING:

☐ **Family authorized.**
☐ **Other: _____**

(e) A practitioner who offers the Optional Packaged Services and has that offer accepted by a consumer shall not be required to detail the charges for Categories I through III, which are then not applicable. It shall not be mandatory for practitioners to include the category of "Optional Packaged Services" on the Statement of Funeral Goods and Services Selected form.

(f) Immediately upon completing the "Statement of Funeral Goods and Services Selected" form, the practitioner and the consumer shall sign the form where indicated. The practitioner shall immediately provide a copy to the person for whom the form was prepared.

(g) Any change, addition or deletion authorized by the purchaser after the completion of the form shall be included on the final bill.

SUBCHAPTER 2. INTERNS

13:36-2.1 Qualification for intern registration

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

(c) An intern who is registered while concurrently attending college to complete the two year academic educational licensure requirement shall:

1. (No change.)

2. Achieve a minimum of eight degree program credits per semester with a minimum cumulative average of 2.0 or its academic equivalent throughout the concurrent registration program. A person who receives less than a 2.0 cumulative average, withdraws from a course, or who takes more than one remedial or basic course per semester shall have his **or her** internship terminated unless good cause is established for the continuation of the internship.

3.-4. (No change.)

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

13:36-2.4 Intern identification card

During the course of his **or her** training, every student intern shall at all times carry [on his person] the intern card **issued** [to him] by the Board.

13:36-2.6 Credit for embalming body

No **licensed** practitioner of mortuary science shall credit more than one student intern for the embalming of any one body.

13:36-2.7 Intern qualifications for employment

No **licensed** practitioner of mortuary science shall engage a student intern unless, prior to such engagement, his **or her** case volume during the previous calendar year shall meet a minimum requirement of 25 cases which shall not include stillbirths.

13:36-2.8 Absence from training

If for any reason it becomes necessary for an intern to absent himself **or herself** during his **or her** internship for a period longer than 30 days, [he] **the intern** must submit to the Board in letter form the reason for his **or her** absence and the length of time he **or she** intends to be away.

13:36-2.9 Termination of training

Upon termination of any internship, the licensee preceptor shall immediately request of the Board a notice of termination form to be completed by him **or her** and filed with the Board within five days of its receipt.

13:36-2.10 Return of intern identification card

Upon completion or termination of an internship for any reason, the intern shall be charged with the responsibility of returning his **or her** intern identification card immediately to the Board.

13:36-2.11 Affidavit recommendation form

(a) Upon termination of an internship, an affidavit recommendation form shall be filed with the Board. Any **licensed** practitioner of mortuary science who refuses to certify any intern for the internship served under his **or her** license shall furnish the Board with a statement under oath setting forth the reasons for such refusal. If not satisfied with such statement, the Board may take such action as it may deem proper.

(b) (No change.)

SUBCHAPTER 3. EXAMINATIONS

13:36-3.3 Examination procedure

All examination papers shall be designated by numbers. Each applicant shall be given, at the time of appearing for examination, a sealed envelope containing a certain number. [He] **The applicant** shall use the number contained therein in his **or her** examination papers, writing his **or her** name and address upon a card bearing the same number and sealing the same in an envelope. This envelope shall not be opened by the Board until all of the examination papers are finally rated and marked. The applicant shall not, under penalty of forfeiture of examination, disclose to any member of the Board, or to any other person, the number so assigned to him **or her**.

13:36-3.4 Examination subjects

(a) The scope, character and content of the examination to be conducted by the Board shall be determined by the Board, shall be the same for all candidates at each examination and may include the following subjects:

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1. Anatomy, including histology and embryology;
2. [Physiology, pathology] **Pathology;**
3. Chemistry, including toxicology;
4. Disinfection**, hygiene, sanitary science;**
5. [Hygiene] **Funeral directing;**
6. [Sanitary science] Business law;
7. Public health;
8. [Bacteriology] **Embalming;**
9. [Dissection] **Microbiology;**
10. Restorative art[, including dermasurgery];
11.-17. (No change.)
18. Psychology [and counseling];
19. Funeral service law; and
20. Funeral merchandising.

SUBCHAPTER 4. LICENSE AND REGISTRATION GENERALLY

13:36-4.1 License renewals

(a) All applications for **biennial** license renewal shall be filed with the Board on or before the [first] **last** day of [March] **February of every odd-numbered year** or such other date established for renewal by the Division of Consumer Affairs. If the licensee fails to receive such renewal application on or before 30 days prior to the renewal date, he **or she** shall notify the Board in writing and request that the Board forward [him] the necessary form.

(b) All applications for biennial establishment registration renewal shall be filed with the Board on or before the last day of December of every odd-numbered year or such other date established for renewal by the Division of Consumer Affairs. If the applicant fails to receive such renewal application on or before 30 days prior to the renewal date, he or she shall notify the Board in writing and request that the Board forward the necessary form.

13:36-4.2 Notice of residence address change

Every licensee shall give notice in writing to the Board of Mortuary Science of any change of his **or her** residence address within [ten] **10** days after such change of address.

13:36-4.5 Change of ownership

Whenever there are any changes whatsoever in ownership, [except] **including** a change of stockholders in an existing and continuing corporation, it shall be necessary for the new ownership to notify the Board [at least 15] **within five** working days [before] **after** the ownership changes **or stock transfer.**

13:36-4.6 Corporation's application for registration of funeral establishment

(a) Applications for registration of a funeral establishment to be operated by a corporation, a limited partnership and/or a limited liability company shall be accompanied by:

1. A copy of the certificate of incorporation or certificate or agreement of formation certified by the Secretary of State;

2. The name, residence addresses and residence telephone numbers of the following:

i. The officers of the corporation;

ii. The general partner(s) of a limited partnership (and, if a general partner is a corporation, the officers of the corporation); and/or

iii. The managing or operating members of a limited liability company (and, if a member of a limited liability company is a corporation, the offices of the corporation);

3. A copy of the corporate resolution (certified by the secretary of the corporation and impressed with the corporate seal) or limited partnership or limited liability company statement (certified by the general partner of the limited partnership or the managing or operating member of the limited liability company) designating the licensed practitioner of mortuary science; and

4. A letter forwarded to the Board by the funeral establishment manager indicating that he or she accepts the position.

[(a) Application for registration of a funeral establishment to be operated by a corporation must be accompanied by:

1. A copy of the certificate of incorporation, certified by the Secretary of State;

2. The name, residence addresses and residence telephone numbers of the actual officers of the corporation and of the directors of the corporation;

3. A certified copy of the notice from the Secretary of State showing that the corporation had been duly incorporated;

4. A copy of the corporate resolution designating the licensed practitioner of mortuary science or funeral director who is to serve as the licensed manager, certified by the secretary of the corporation and impressed with the corporate seal.

(b) The manager shall forward to the Board a letter that he accepts the position.]

13:36-4.8 Full-time licensed manager

(a) Every [firm] **establishment** operating under corporate**, limited partnership or limited liability company** ownership, authorized to carry on the practice of mortuary science, shall be under the direct supervision of a full-time licensed manager.

(b) (No change.)

(c) Whenever the manager's services are terminated, the manager and the licensee in charge of the establishment shall notify the Board, in writing, within 30 days of the termination.

(d) Except as set forth in (e) below, the licensee in charge of the establishment shall within 30 days of such termination give notice to the Board of the name of the newly designated manager, whether permanent or temporary. Within 30 days of accepting the manager's position, the newly designated manager shall submit to the Board the following:

1. A letter indicating such acceptance;

2. An application to become a manager; and

3. The fee prescribed for the application.

(e) The licensee in charge of the establishment may within 30 days of such termination submit to the Board documented evidence of hardship or extenuating circumstance. The Board, if it deems such evidence acceptable, may grant the establishment an extension of time up to, but not exceeding, six months after the termination of the former manager in which to secure the services of a new manager.

13:36-4.9 Participation of unlicensed persons

(a) No unlicensed person shall actively participate in any capacity in the actual funeral arrangements, preservation, preparation or disposal of dead human bodies.

(b) The use by an unlicensed person of the words "mortician," "funeral director," "undertaker" or any other words or title of like import or signification, including, but not limited to, "consultant," "counselor" or "provider" in connection with the offering of any funeral service or merchandise, shall constitute a deceptive practice pursuant to N.J.S.A. 45:7-47.

13:36-4.11 Trade Names

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

(c) The trade name firm shall forward to the Board the name of the full-time manager in charge. The manager shall also forward to the Board an affidavit stating he **or she** accepts said position.

(d) Whenever an individual licensed owner conducts an establishment under his **or her** own surname, then such use of the surname shall not be considered a trade name.

13:36-4.12 Death of licensee or owner

(a) The practice of a mortuary establishment shall cease and the certificate of registration **shall** become void upon the death of an owner and shall not be [recommended] **renewed** unless the executor or administrator of the estate [of] **or** the deceased owner's heir or heirs informs the Board within [10] **30** days of their intention to continue the mortuary practice and apply for a certificate of registration. Such notice must be in writing and conform with the following requirements:

1.-2. (No change.)

3. The manager [must] **shall simultaneously** submit to the Board an affidavit stating his **or her** willingness to act in such capacity.

4. (No change.)

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13:36-4.13 Use of a registered mortuary owned by another

(a) A person who owns a registered mortuary may use another registered mortuary without obtaining a certificate of registration or complying with new funeral home installation requirements[.] **up to but not exceeding three times a year. The owner of a registered mortuary may permit the owner of another registered mortuary to use his or her mortuary up to but not exceeding three times a year** [provided, however, that the number of times an owner may permit such use of the owner's mortuary by another or that the owner of a registered mortuary shall use a mortuary owned by someone else shall be limited to three times a year, regardless of location]. The Board may waive [this limit] **such limits of three times a year** upon receipt of a special application showing good cause for the waiver.

(b) All parties involved in such a special use agreement shall immediately forward written notice to the Board [by certified mail] before each use of the establishment. This notice shall include the following information:

1.-2. (No change.)

3. Name of decedent [and date of death]; **and**

4. The exact date(s) the establishment is to be used[;]**.** [and

5. A brief explanation of why the facility is needed.]

(c) (No change.)

SUBCHAPTER 5. MORTUARIES

13:36-5.1 Display of "Manager" sign

(a) Whenever a firm is required to be operated under the supervision, management and control of a licensed manager, the name of the manager shall be conspicuously displayed with the title "manager" on a sign at or about the main entrance of the establishment or on the firm sign, provided, however, that at the option of the firm the term, "senior director" **or "executive director"** may be substituted for "manager." This sign shall contain legible letters that are no less than 1½ inches in height.

(b) The name of the licensee in charge must also appear with the title "manager," [or] "senior director" **or "executive director"** on all stationery, billheads, advertising, and in all other instances where the firm name is used.

[(c) Whenever the manager's services are terminated, the Board is to be notified, in writing, immediately by the manager and the establishment.]

13:36-5.6 Equipment requirements

(a) Every funeral establishment in the State shall have in its preparation or embalming room and shall be equipped with, but not limited to the following:

1.-4. (No change.)

5. [Porcelain drainage] **Drainage or viscera** bucket;

6.-10. (No change.)

11. [Sheets—a minimum of two sanitary smocks;] **For each licensee and trainee, protection, apparel and/or equipment as required by the Occupational Safety and Health Administration Agency (OSHA) pursuant to Bloodborne Pathogens Rule (29 CFR 1910.1030);**

[12. Two pairs rubber impervious gloves for each licensee and/or trainee];

Recodify existing 13.-28. as **12.-27** (No change in text.)

(b) (No change.)

13:36-5.8 [Employment of licensed embalmer] **(Reserved)**

[Any licensed funeral director, who is not a licensed embalmer, and operates a mortuary establishment in the State, shall continue to have in his employ a licensed embalmer or practitioner of mortuary science or may use a licensed trade embalmer, and continue to file monthly reports certifying all embalments.]

13:36-5.9 [(Reserved)] **Multiple funeral establishments in same location**

(a) Any individual, partnership, corporation or limited liability company that applies to register any additional funeral establishment(s) in a location already registered as a funeral establishment by the State of New Jersey shall comply with N.J.A.C. 13:36-4 and this subchapter.

(b) In the event an establishment has the same or similar ownership of individuals, partnerships, corporations or limited liability companies as the primary funeral establishment, prices quoted and charged to consumers shall be the same for all establishments in that location.

(c) No more than three funeral establishments shall operate in one facility unless, upon application, the Board in its discretion finds that permitting an additional establishment will be in the best interest of consumers.

13:36-5.10 Display of establishment sign

[Every establishment shall display a sign clearly visible from the street displaying the firm name as registered in the certificate of registration]. **Every funeral home, except a trade service, shall display the firm name as registered in the certificate of registration on a sign located reasonably near the main entrance or clearly visible from the street and the main entrance.**

13:36-5.12 Advertising

(a) Definitions: The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

1.-2. (No change.)

3. "Licensee" means **licensed** practitioner of mortuary science as defined by N.J.S.A. 45:7-34(g).

4. (No change.)

5. "Testimonial" means a statement by a person referring to his **or her** family's personal experience with a mortuary or licensee.

(b) All [signs,] stationery[,] and advertisements must indicate the true firm name as registered with the Board of Mortuary Science; however, this shall not apply to small novelty items where the space of advertising is limited.

(c)-(i) (No change.)

13:36-5.15 Unlicensed persons in funeral directing or embalming practice

A [funeral director, embalmer or] **licensed** practitioner of mortuary science shall not permit any unlicensed person to engage in or take charge of the activities for which a license to engage in the business or practice of funeral directing or embalming is required by the provisions of the Mortuary Science Act.

13:36-5.16 Notice of absence from practice

In cases where a **licensed** practitioner of mortuary science[, funeral director or embalmer] **in charge of an establishment** intends to remain away from his **or her** establishment or practice for a period in excess of 30 days, he **or she** shall so notify the Board and furnish it with the name of the licensed employee who will remain in charge.

13:36-5.17 Removal of human bodies; authorization

[(a)] No person shall remove human remains from any [nursing or rest home] **residence or institution** without first securing [written] authorization consenting to the removal from the next of kin or a person legally entitled to grant said authorization.

[(b) The removal authorization shall indicate the name of the funeral home; date of execution and be signed by the next of kin or legal representative and licensee, and the authorization shall be retained by the licensee for a period not less than one year subsequent to the date of removal.

(c) This Section shall not preclude the licensed holder of the authorization from engaging another licensee to act as an agent.]

13:36-5.18 Disposition of dead human remains

(a) Whenever dead human remains are entrusted to the care of a [licensee] **licensed practitioner of mortuary science** for a disposition, the [licensee] **practitioner** shall conform with N.J.A.C. 8:9-1 et seq. and shall not remove any part or dispose of the remains in any manner whatsoever except as permitted by law [or] **and as authorized** by the person legally entitled to grant said authorization.

(b) (No change.)

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SUBCHAPTER 6. EMBALMING PROCEDURE

13:36-6.1 Privacy of burial preparation

(a) The preparation for burial or other disposition of all dead human bodies shall be performed in privacy. No one shall be permitted to be present in the embalming, operating or preparation room while a dead human body is being embalmed, washed or otherwise prepared for burial or other disposition, except the following:

1. Licensed [funeral directors or embalmers] **practitioner of mortuary science** and their employees;

2.-6. (No change.)

13:36-6.2 Dress requirement for embalming

(a) Every person, while engaged in the actual embalming of a dead human body, shall be attired in a clean and sanitary smock or gown, **which does not permit blood or other potentially infectious materials to pass through to or reach the employee's work clothes, street clothes, undergarments, skin, eyes, mouth or other mucous membranes,** and shall while so engaged[,] wear [rubber impervious gloves] **protective apparel in compliance with OSHA regulations (see 29 CFR 1910.1030).**

(b) (No change.)

13:36-6.4 Disposal of blood and excretion

All blood and excretions of a dead human body shall be disposed of in a sanitary manner. **Licensees shall comply with the OSHA regulations (see 29 CFR 1910.1030) in the operation of a licensed funeral establishment and shall use universal precautions according to the Centers for Disease Control recommendations (see Morbidity and Mortality Weekly Reports, including Volume 38, S-6, June 23, 1989, and subsequent volumes available from the Centers for Disease Control, Atlanta, Georgia 30333), incorporated herein by reference. These precautions shall include taking due care to prevent any spread of infection in the handling of dead human body during transportation, in preparing and during embalming, and after contact with such body, and shall also include the disinfecting of hands and the removal of any soiled clothing.**

13:36-6.5 Marking receptacles

(a) All receptacles containing embalming fluid, **formaldehyde** or any poisonous or dangerous substances shall be plainly marked to indicate the contents thereof **in compliance with 29 CFR 1910.1048.**

(b) Receptacles containing blood or other potentially infectious materials shall be placed in a container that prevents leakage during collection or storage.

13:36-6.6 Unnatural deaths

No [embalmer shall embalm, nor shall any funeral director, embalmer or] **licensed** practitioner of mortuary science **shall** permit the embalming of a dead human body where he **or she** has information reasonably indicating that death occurred as a result of accidental, homicidal or suicidal means or under [suspicous] **suspicious** or unnatural circumstances, until the body has been duly released to him **or her** for embalming or other preparation by the proper authority in accordance with the State Medical Examiners Act **(N.J.S.A. 52:17B-87).**

SUBCHAPTER 8. GENERAL RULES OF PRACTICE

13:36-8.1 Carrying license identification card

Every [licensed embalmer, funeral director and] **licensed** practitioner of mortuary science shall [at all hours] **in the conduct of business** carry on his **or her** person the current license identification card.

13:36-8.2 Divulging secrets

[No] **A licensed** practitioner of mortuary science[, funeral director or embalmer] shall **not** divulge **or permit his or her agents or employees to divulge** any privacies, confidences or secrets [which] **that** may come to his **or her** attention through the practice of **mortuary science.** [his art; provided, however,] **However,** this rule shall not be [in derogation of] **invoked to circumvent** the Board's legal powers to carry out its duties and responsibilities under the law, nor the powers of the courts and other public bodies to compel the giving of testimony.

13:36-8.3 Safeguarding public health and decedent's dignity

Every **licensed** practitioner of mortuary science[, funeral director or embalmer] shall adopt all proper means and methods to safeguard the public health and dignity of the decedent.

13:36-8.4 Restrictions on employment

[No] **A licensed** practitioner of mortuary science[, funeral director or embalmer] shall **not** employ **or engage** the services of any **person** other than his **or her** registered [trainee or trainees] **intern or interns or another practitioner** in the embalming of cadavers or in the practice of funeral management **pursuant to N.J.S.A. 45:7-47**[; provided, however, that he may engage the services of a duly licensed practitioner of mortuary science, funeral director or embalmer to perform the services for which they are respectively licensed].

13:36-8.5 Unauthorized license use

No licensed practitioner of mortuary science[, funeral director or embalmer] shall lend his **or her** license to any other person, or employ it in such a way as to defeat the purposes of the law; provided, however, this rule shall not prevent the aforesaid licensee from embalming cadavers or supervising funerals and burials on behalf of out-of-State practitioners of mortuary science, funeral directors, or embalmers.

13:36-8.6 Funeral arrangements involving cash or negotiable instrument

(a) [Upon receipt of pre-need funds or any valuable consideration for a pre-need funeral, every licensed person responsible for the arrangements made shall:

1. Immediately execute an agreement between the funeral home and the person with whom the arrangements are made. Said agreement shall show the client's name, address, date of agreement and the total amount of charges involved.

2. Include any arrangements made regarding the accrual of interest on the account.

3. Place the funds received in an interest-bearing account immediately after receipt thereof in a financial institution as defined in the Banking Act of 1948, N.J.S.A. 17:9A-1 **et seq.** or the Savings and Loan Act of 1963, N.J.S.A. 17:12B-1 **et seq.** Said funds shall be so held on deposit, together with any accrued interest thereon. The monies deposited shall be placed in an account in the name of the person for whom the funeral arrangements have been made and shall be payable at death to the funeral director or the named person with whom arrangements have been made upon presentation of a certified copy of death.] **Every licensed person responsible for pre-need arrangements shall comply with N.J.S.A. 45:7-82 through 45:7-94, 2A:102-13 through 16.1, and 3B:11-16 through 18.**

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

(d) [Any funeral home accepting pre-need funeral funds from a welfare recipient shall not accept funds over and above that amount allowed pursuant to N.J.S.A. 44:7-13. Violation of any section of this regulation may constitute unethical and unprofessional conduct, fraud and the performance of a fraudulent act in the conduct of practice.] **If the licensed practitioner of mortuary science guarantees the funeral home charges and accepts moneys for cash advance items at the time pre-need arrangements are made, the practitioner shall first apply the interest generated by those moneys paid for cash advance items so as to cover any increased costs of those items, and shall refund any surplus therein to the purchaser and/or his or her legal representative or shall apply the surplus to other use as directed. A practitioner shall not apply any surplus derived from the cash advance portion of a guaranteed price contract to any other part of the contract.**

(e) In offering pre-need arrangements on behalf of an establishment, a licensed practitioner of mortuary science shall not impose prices that are greater than those on the price lists utilized by the establishment for its pre-need offerings.

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13:36-8.7 Authorized surrender of cadavers

A licensed practitioner of mortuary science[, funeral director or embalmer] shall promptly surrender a cadaver upon proper direction and authorization of the person lawfully entitled to its custody.

13:36-8.8 Authorization to embalm cadaver

No licensed practitioner of mortuary science [or embalmer] shall take possession of or embalm a cadaver without first being directed and fully authorized to do by those charged with the duties of interment.

13:36-8.9 [Licensees to make funeral arrangements] **Funeral arrangements or quotation of funeral prices**

(a) No unlicensed person shall be permitted to make funeral arrangements on behalf of any **licensed** practitioner of mortuary science [or funeral director], except that duly registered [trainees] **interns** may make **such** arrangements [under the supervision of a licensed preceptor] **pursuant to N.J.S.A. 45:7-47.**

(b) When funeral arrangements are being made, no one but a duly licensed practitioner of mortuary science shall quote prices to a consumer in connection with any funeral services and/or goods. Nothing contained in this section shall preclude quotation of prices when funeral arrangements are not being made.

13:36-8.10 Presence of licensee for disposition of dead human body

No interment, disinterment, cremation or other disposition of a dead human body shall be made in the State of New Jersey unless a New Jersey licensed practitioner of mortuary science [or funeral director] is present at the time of disposition, provided, however, that this rule shall not apply to a disinterment resulting from a court order in connection with a criminal investigation.

13:36-8.11 Multiple burials

(a) No **licensed** practitioner of mortuary science [or funeral director] shall place the remains, or any part of the remains, of more than one deceased person, stillborn infant, or fetus in a coffin, casket, or other container for the purpose of interment or cremation, or cause the remains, or any part of the remains, of more than one deceased person, stillborn infant, or fetus, to be interred or cremated together unless specific, written authorization to do so has been **signed** by a person charged with the duties of interment, or by a court of competent jurisdiction.

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

13:36-9.1 Definitions

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

. . .

"Funeral goods" means goods which are sold or offered for sale directly to the public for use in connection with funeral services **including, but not limited to, merchandise such as casket, vault or other enclosure, clothing, prayer cards, register book, religious artifacts and any other items purchased by the practitioner for resale without substantial alteration.**

. . .

(a)

NEW JERSEY RACING COMMISSION

Casino Simulcasting
Ticket Claims; Cancellation of Tickets
Proposed Amendment: N.J.A.C. 13:72-2.11 and 4.10

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

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

Proposal Number: PRN 1994-362.

Submit written comments by July 20, 1994 to:
Michael Vukcevich, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Effective March 1, 1994, the New Jersey Racing Commission issued Directive No. 3-1994, which explains the circumstances under which pari-mutuel tickets may be cancelled at New Jersey racetracks. This proposal, which is being made jointly by the Casino Control Commission pursuant to N.J.S.A. 5:12-210 (see proposal published elsewhere in this issue of the New Jersey Register), would similarly amend the cancellation policy as it pertains to casino simulcasting.

A patron wagering on horse racing at a New Jersey casino simulcasting facility is given a large menu of wagering choices. These choices include numerous simulcast races from New Jersey tracks and tracks across America. The new technologies permit the wagering public to place wagers on the entire day's or evening's race card. As a result, it has been brought to the Commission's attention that it has become increasingly more common for incorrect mutuel tickets to be issued to the patron, either as a result of patron or clerk error. The current policy provides, except in limited circumstances, that such tickets may not be cancelled once the patron has left the window before they were purchased.

The current strict policy was put into place to prevent the manipulation of mutuel pools. The expansion of simulcasting and common pool wagering has led to much larger pools because the sending track's pools are available to a much larger audience. As a result of larger pools, and checks already in place, the possibility of such manipulation has been greatly decreased.

The proposed amendments would permit the cancellation of any mutuel ticket with a total value of $500.00 or less by a clerk and would also permit a supervisor to cancel any ticket with a higher value if he or she determined, in accordance with the criteria set forth by this Commission, that the cancellation would not significantly alter a mutuel pool. The factors to be considered before approving or disapproving a cancellation request includes the size of the mutuel pool; the reason for the requested cancellation; current odds; minutes to post time; and any late changes such as track conditions or jockey (driver) changes. All such requests to cancel a mutual ticket with a total value over $500.00, whether approved or disapproved, must be reported to this Commission within 48 hours.

As under current regulations, any ticket may be cancelled if a patron has not left the wagering window, or if the ticket is on an advance race or the wager does not have probable odds displayed.

Social Impact

The proposed amendments will benefit the public by permitting patrons who are issued incorrect tickets, and who do not realize the error until they have left the pari-mutuel window, to have them cancelled.

Economic Impact

The proposed amendments are expected to have little or no economic impact. While more tickets are expected to be cancelled if the amendments are adopted, patrons who have been issued incorrect tickets will generally then purchase the correct ticket in a similar amount.

Regulatory Flexibility Statement

The proposed amendments will only affect casino licenses, none of which are a small business as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

13:72-2.11 Ticket claims

(a) (No change.)

(b) [Any claim by a patron that he or she has been issued an incorrect ticket shall be made before leaving the pari-mutuel window at which it was purchased. No claim shall be considered thereafter, and no] **No** claim shall be considered for tickets which have been discarded, lost, altered, destroyed or mutilated beyond identification.

(c) (No change.)

13:72-4.10 Cancellation of tickets

(a) Except as provided in this section, no pari-mutuel ticket [on a current race shall be cancelled once a patron has left the pari-mutuel window where the ticket was purchased] **shall be cancelled.**

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(b) [Pari-mutuel tickets on wagers such as trifectas where probable pay-offs or odds are not displayed to the public may be cancelled at any time prior to off-time.] **A pari-mutuel ticket with a total value of $500.00 or less may be cancelled at any time prior to off-time.**

(c) [No pari-mutuel ticket purchased at a self-service pari-mutuel machine on a current race shall be cancelled.] **A pari-mutuel ticket of any value may be cancelled prior to the end of the delay period if the patron has not left the pari-mutuel window at which the ticket was purchased or if the patron left the window without paying for or accepting the ticket.**

(d) [Pari-mutuel tickets on advance races, whether purchased from a casino pari-mutuel cashier or a self-service pari-mutuel machine, may be cancelled by any casino pari-mutuel cashier until the race immediately preceding the race for which the cancellation has been requested has been declared official.] **A pari-mutuel ticket of any value may be cancelled prior to off-time if the ticket is on a wager (such as trifecta) where probable payoffs or odds are not displayed to the public.**

(e) [A casino pari-mutuel cashier may cancel a pari-mutuel ticket on a current race during the delay period provided the ticket was purchased in the final transaction at the pari-mutuel window before off-time, and further provided that the ticket was incorrectly issued by the cashier or that the patron who ordered the ticket left the pari-mutuel window without paying for or accepting the ticket.] **A pari-mutuel ticket of any value may be cancelled if the ticket is on an advance race and the race immediately preceding the race for which the cancellation has been requested has not been declared official.**

(f) A pari-mutuel ticket with a total value exceeding $500.00 which is not otherwise cancellable pursuant to this section may be cancelled by a simulcast counter shift supervisor or supervisor thereof at any time prior to off-time if he or she determines that the cancellation will not significantly alter a pari-mutuel pool. The factors to be considered before approving or disapproving a cancellation request include the size of the mutuel pool, the reason for the requested cancellation, current odds, minutes to post time, and any late changes such as track conditions or jockey (driver) changes. Any request to cancel such a ticket shall be reported to the Racing Commission on a form approved by the Racing Commission within 48 hours.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Turn Prohibitions
Route U.S. 206
Hillsborough Township, Somerset County
Proposed Amendment: N.J.A.C. 16:31-1.1

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-183.6 and 39:4-199.1.

Proposal Number: PRN 1994-326.

Submit comments by July 20, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation is proposing to delete N.J.A.C. 16:31-1.1(a)3 prohibiting left turn movement on Route U.S. 206 at Valley Road in Hillsborough Township, Somerset County, between the hours of 7:00 A.M. to 9:00 A.M. and 4:00 P.M. to 6:30 P.M.

This Amendment is proposed at the request of the New Jersey Department of Transportation's Bureau of Traffic Engineering and Safety Programs. A field investigation proved that the no left turn prohibition should be modified to restrict the left turns only during the hours of 7:00 A.M. to 9:00 A.M. and 4:00 P.M. to 6:30 P.M., Monday through Friday. In accordance with N.J.A.C. 16:27, the new left turn restriction was made as part of the traffic signal plan and was approved as part of that signal plan on February 3, 1994.

Social Impact

The proposed amendment will rescind the turn restriction along Route U.S. 206 since the current traffic signal plan also incorporates the same left turn prohibition. Thus, no social impact is anticipated.

Economic Impact

As the proposed amendment deletes a turn prohibition regulation now covered as part of a traffic signal plan, no economic impact is anticipated.

Regulatory Flexibility Statement

The proposed deletion of the provision of N.J.A.C. 16:31-1.1(a)3 does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The deletion conforms the rule to the traffic signal plan effective February 3, 1994.

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

16:31-1.1 Route U.S. 206

(a) Turning movement of traffic on certain parts of State highway Route U.S. 206 described in this subsection are regulated as follows:

1.-2. (No change.)

[3. No left turn north bound to West on Valley Road, Hillsborough Township, Somerset County between the hours of 7:00 A.M. to 9:00 A.M. and 4:00 P.M. and 6:30 P.M.]

Recodify existing 4. and 5. as **3.** and **4.** (No change in text.)

(b)

REGIONAL OPERATIONS, REGION 5
BUREAU OF CONSTRUCTION ENGINEERING
Construction Control
Proposed Readoption with Amendments: N.J.A.C. 16:45

Authorized By: W. Dennis Keck, Acting Assistant Commissioner, Policy and Planning.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 27:2-1 to 2-8.

Proposal Number: PRN 1994-366.

Submit comments by July 20, 1994 to:
Administrative Practice Officer
New Jersey Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Under the "sunset" and other provisions of Executive Order No. 66(1978), N.J.A.C. 16:45, Construction Control, will expire on September 18, 1994. This chapter reflects the present practices and procedures governing the agency-level review and resolution of claims that arise under a construction contract. The rules were reviewed and analyzed by the Department's staff of the Bureau of Construction Engineering, and were found to be necessary, reasonable, and proper for the purpose of which they were originally promulgated. The Department, therefore, proposes to readopt with amendments N.J.A.C. 16:45.

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Proposed new subchapter 1, General Provisions, describes the scope and purpose of the chapter, and provides definitions for "Specifications," "Standard Specifications" and "Supplementary Specifications."

Subchapter 2 (recodified from subchapter 1) contains rules establishing a claims committee, which reviews contractual disputes; the contractors' obligations; and the method of disposition of claims.

Subchapter 3 (recodified from subchapter 2) defines substantial completion. While no amendments to this subchapter are proposed as part of this rulemaking, the Department is considering proposing amendments to the definition in the near future.

New subchapter 4 adds a claims review board to review and resolve claims, supplemental to the claims committee review process. This subchapter provides the procedures to be used to present claims to the claims review board for administrative resolution.

Changes were made throughout the regulation in Department persons/titles referenced due to Department reorganization. Various word phrasing changes and/or rewrites have been made to clarify or better describe chapter procedures and requirements.

Social Impact

The proposed readoption with amendments will continue to provide contractors with practices and procedures governing the review and resolution of claims that arise under a construction contract. The proposed amendments reflect actual current procedural and administrative practices and departmental organization. Contractors are provided copies of the Department's Standard Specifications, which are incorporated in each contract.

The addition of new subchapter 4 provides a supplemental avenue to review and resolve claims that arise under contract, for specific contracts in which the specifications provide for the review of claims by the claims review board. Only where the contractor and the Department agree to such a review may claims be presented to this board for administrative resolution. This new avenue of claims review should be considered beneficial to any person(s) who have a construction contract where the specifications provide for a claims review by this board.

Economic Impact

The proposed readoption with amendments will provide the necessary practices and procedures governing the review and resolution of claims that arise under a construction contract. In addition, the amendments codify the existence of a claims review board which provides a supplemental forum for contract disputes resolution. There will be no adverse economic impacts on contractors as a result of this proposed readoption with amendments. A positive impact, may be provided in that the amendments providing for review may reduce expenses for contractors.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments impose compliance requirements on Department construction contractors, some of which may be small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These requirements include compliance with Contract Specifications concerning review of claims and provide specific time frames for notice and decision response. Contractors would incur the costs of their claims, including document preparation and, if needed, professional services which costs would vary with the circumstances of each claim. As these requirements are designed to ensure a uniform, fair and efficient method of claims review, no lesser requirements or exemptions are provided based upon business size.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:45.

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

SUBCHAPTER 1. GENERAL PROVISIONS

16:45-1.1 Scope and purpose

The rules of this chapter outline when it is appropriate, and the procedures to be followed, to bring contract claims matters before the Department's claims committee and the Department's claims review board. These two groups may each provide a level of claims review above that which is routinely available at the Department's construction project field staff level and its regional management level. Also, this chapter indicates whether the claims committee is the final level of agency review available for a particular claimant or whether the review can go a step further, that is, to the claims review board level.

16:45-1.2 Definitions

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

"Specifications" means the Standard Specifications and the Supplemental Specifications.

"Standard Specifications" means the 1983 and the 1989 edition of the book entitled "New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction," as appropriate, as amended and supplemented.

"Supplementary Specifications" means amendments or revisions that update the Standard Specifications, or which customize the Standard Specifications for particular road and/or bridge construction contracts.

SUBCHAPTER [1.]**2.** CLAIMS COMMITTEE

16:45-[1.1]**2.1** Claims committee

(a) (No change.)

(b) The claims committee [is] **shall be** comprised of the following:

1. [Chairman—Director, Division of Construction and Maintenance Engineering Support (Chief Engineer, Construction and Maintenance);] **Chairperson—Executive Director, Regional Operations, Region 5;**

2. Director, Division of Regional Design [(Chief Engineer, Regional Design)];

3.-4. (No change.)

5. Secretary for the claims committee (non-voting member to be designated by the [chairman] **chairperson**).

16:45-[1.2]**2.2** [Contractor obligations] **Claims committee procedures**

(a) The procedures set forth in this section establish a method of reviewing contractual disputes and in no way constitute a waiver by the State of New Jersey of its sovereign immunity from suit.

(b) For contracts in which the specifications do not provide for the review of claims by the claims committee prior to contract completion, the following procedures apply:

[(a)]**1.** The contractor shall comply with the provisions of the [applicable NJDOT standard] **contract** specifications [and the supplementary specifications] which govern the documentation and submission of claims [for the specific contract].

[(b)]**2.** The claims committee will accept for consideration all claims which have been properly presented and reserved under the [applicable NJDOT standard] specifications [and supplementary specifications] and which have not been resolved prior to the completion of the contract.

[(c)]**3.** The contractor shall notify the secretary of the claims committee in writing of its desire to have unresolved claims reviewed by the committee. This written notice shall be given within 30 days of the completion of the contract and a copy of this notice shall be sent by the contractor to the [regional director] **executive director (also referred to as the regional director) of the region in charge of administering the contract**. The [regional director] **appropriate executive director** shall forward to the secretary of the claims committee all information previously submitted by the contractor in support of its claims. Failure by the contractor to give such written notice within 30 days of the completion of the contract shall bar review by the claims committee.

[(d)]**4.** Within 45 days of the receipt of the contractor's written request for claims committee review, the claims committee will schedule a meeting for review of the claims submitted. The contractor may appear at the meeting and make an oral presentation in support of its claims. If the contractor does not appear at the meeting, the claims committee will base its review of the claims on the written information previously supplied by the contractor and forwarded to the committee by the [regional director] **appropriate executive director.**

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(c) For contracts in which the specifications provide for the review of claims by the claims committee prior to contract completion, the procedure shall be as set forth in contract specifications Section 100—General Provisions (typically found in Sections 107 and 109 of the specifications).

[(e) The procedure set forth herein establishes a method of reviewing contractual disputes and in no way constitutes a waiver by the State of New Jersey of its sovereign immunity from suit.]

16:45-[1.3]**2.3** Disposition

(a) The [deputy commissioner] **Commissioner or the Commissioner's designee** shall make final determination on all claims reviewed by the Department's claims committee. [There shall be no further departmental review of the claims.]

[(b) The secretary of the claims committee shall notify the contractor of the deputy commissioner's decision and the contractor shall accept or reject the decision within 60 days. If the disposition of the claim is acceptable to the contractor, the Department will pay any amount due the contractor upon execution by the contractor of a release of the State, the Commissioner and the Department, their agents, officers and employees as to all claims. Such payment will be made pursuant to the terms of the New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq. If the contractor rejects the deputy commissioner's decision, no further departmental action will be taken. If the disposition of the claim is not acted upon by the contractor within the 60 day time limit, the Department will consider its decision to have been rejected and no further departmental action will be taken.]

(b) For contracts in which the specifications do not provide for the review of claims prior to contract completion, the secretary of the claims committee shall notify the contractor of the Commissioner's or Commissioner designee's decision and the contractor shall accept or reject the decision within 60 days. The contractor shall, within 60 days of that notification, indicate that the decision is acceptable by executing and delivering an unconditional release of all claims against the State, the Commissioner and the Department, their agents, officers and employees as to all claims. If the contractor rejects the decision, no further Departmental action will be taken. If the contractor has not indicated its acceptance of the decision in the manner stated above, the claims committee decision will be considered rejected and no further Departmental action will be taken. Upon acceptance of the claims committee decision, the Department shall pay the decision amount to the contractor in accordance with the New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq.

(c) For contracts in which the specifications provide for the review of claims by the claims committee prior to contract completion, the Department and the contractor shall comply with the provisions of the specifications which govern the disposition of claims as set forth in contract specifications Section 100—General Provisions (typically found in Sections 107 and 109 of the specifications).

(d) For contracts in which the specifications do not provide for the review of claims by a claims review board, and where the claims committee has completed its review and a final Commissioner (or designee) determination has been made, there shall be no further Departmental review of the claims.

SUBCHAPTER [2.]**3.** (No change in text.)

SUBCHAPTER 4. CLAIMS REVIEW BOARD

16:45-4.1 Claims review board

(a) The claims review board is an administrative body available to review and resolve claims that arise under the contract; and its function is supplemental to the claims committee review process. Only for specific contracts in which the specifications provide for the review of claims by the claims review board, and only where the contractor and the Department agree to such a review, may claims be presented to the claims review board for administrative resolution. The presentation of a claim to the claims review board shall in no way alter or affect other rights of the contractor, including the right, pursuant to the Contractual Liability Act, N.J.S.A. 59:13-1 et seq., to seek redress in the courts. Said presentation to the claims review board shall in no way alter or affect the applicable statute of limitations.

(b) The claims review board is comprised of three members appointed by the Commissioner for a two year term:

1. Chairperson—a Department manager;

2. A Construction Industry Advancement Program (CIAP) representative; and

3. A member who is a subject matter expert (such as an engineer), who is not involved with the Department or with the contractor.

16:45-4.2 Claims review board procedures

(a) The procedure set forth in this section establish a method of reviewing contractual disputes and in no way constitute a waiver by the State of New Jersey of its sovereign immunity from suit.

(b) The contractor shall comply with the provisions of the specifications which govern the reservation, presentation, documentation and submission of claims to the claims review board as set forth in contract specifications Section 100—General Provisions (typically found in Sections 107 and 109 of the specifications). Claims review board matters are further limited to those cases in which there is full compliance with the bid document escrow requirement, the cost sharing requirement, and other such requirements, if any, as set forth in contract specifications Section 100—General Provisions (typically found in Sections 103, 107 and 109 of the specifications).

16:45-4.3 Disposition

The Department and the contractor shall comply with the provisions of the specifications which govern the disposition of claims as set forth in contract specifications Section 100—General Provisions (typically found in Sections 107 and 109 of the specifications).

(a)

DIVISION OF TRANSPORTATION SYSTEMS PLANNING

BUREAU OF AUTHORITY COORDINATION AND LOCAL TRANSPORTATION PLANNING

State Highway Access Management Code

Definitions, Unsignalized Access Points, Access Point Control Dimensions for Streets and Driveways, Curb, General Restrictions, Municipal and County Actions, Permit Process, Permits and Permit Fees, Companion Department Permits, Minor Access Permits Checklist for Single-Family Residential and Residence and Business Combined, Minor Access Permits Checklist for Other Minor Traffic Generators, Major Access Permits Checklist, Major Access Permits with Planning Review Process, Major Access Permits with Planning Review Checklist, General Level of Service Standards, Uninterrupted-flow Standards, Signalized Intersection Standards, Unsignalized Intersection Standards, Ramp Standards, Department Initiated Projects and Permits, Fair-share Financial Contributions, Waivers, Traffic Impact Study Area, Traffic Counts, Application Requirements for Change in Classification

Proposed Amendments: N.J.A.C. 16:47-1.1, 3.5, 3.8, 3.9, 3.12, 3.16, 4.3, 4.6, 4.7, 4.9, 4.10, 4.12, 4.14, 4.24, 4.25, 4.26, 4.27, 4.29, 4.33, 4.34, 4.35, 4.36, 4.37, 5.2 and Appendices B, C, and E

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Proposed Repeal: N.J.A.C. 16:47 Appendix L
Proposed Repeal and New Rule: N.J.A.C. 16:47 Appendix B

Authorized By: W. Dennis Keck, Acting Assistant Commissioner for Policy and Planning.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-44.1 and State Highway Access Management Act, P.L. 1989, c.32.

Proposal Number: PRN 1994-353.

Submit comments by July 30, 1994 to:
Administrative Practice Officer
New Jersey Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, NJ 08625

Department staff would be pleased to meet with interested parties to discuss the proposal. Please contact: Kathleen C. Aufschneider, Manager, Bureau of Authority Coordination and Local Transportation Planning, New Jersey Department of Transportation, 1035 Parkway Avenue, CN 609, Trenton, NJ 08625 or telephone 609-530-2860.

The agency proposal follows:

Summary

On April 20, 1992, the New Jersey Department of Transportation adopted new rules at N.J.A.C. 16:47 to implement the provisions of the State Highway Access Management Act, P.L. 1989, c.32 (N.J.S.A. 27:7-89 et seq.). These rules were subsequently amended on March 1, 1993, April 2, 1993, July 19, 1993 and November 30, 1993.

The Department met with representatives of the public to monitor progress under the Access Code and discuss clarifications and improvements to the regulations. These proposed changes are consistent with the intent of the Act and make the regulations more responsive to the regulated public.

Under N.J.A.C. 16:47-1.1, several definitions are new or changed. New definitions added to the Code are: "adjustment of access," "designated center," "emergency access," "fire house," "half-trip," "modification of access," "rural lot," "site," "study area location," "traffic signal" and "urban lot." Definitions changed are: "high speed rural," "high speed urban," "lot," "low speed rural," "low speed urban," "rural" to "rural area" and "urban" to "urban area." The definition changes to "urban area," "rural area" and addition of "designated centers" are consistent with Executive Order No. 114(1994) Department policy and N.J.A.C. 16:47-8.4. Clarifications to the definitions of "corner clearance (C)", and "intersection" are proposed.

Executive Order No. 114(1994) recognizes that the State Planning process encouraged open communication at all levels of government including public participation and a sustained effort to develop a plan for rational and managed growth in urban and rural areas. Furthermore, the State Plan provides a framework for streamlining permitting procedures. The Department of Transportation and NJ Transit have issued a Memorandum of Understanding with the Office of State Planning to incorporate as part of the Department's mission, policies which comport with the State Plan. The proposed urban and rural changes and treatment of designated centers will help implement the common framework established under the State Plan without unnecessarily complicating the Department's regulations. The proposal eliminates applicants' problems with different State agencies using different definitions for the same terms. Furthermore, under N.J.A.C. 16:47-8.4, the Department committed to "modify the Access Code, as appropriate, to support an adopted State Development and Redevelopment Plan."

Under N.J.A.C. 16:47-3.5, Unsignalized access points, the Department proposes to allow, by rule, subdivisions which it has been approving only after granting waivers. N.J.S.A. 27:7-96 restricts the grant of access to nonconforming lots created after September 21, 1992. The proposed changes establish a standard that enables the Department to grant access when a nonconforming lot is created. An improper reference to Figure 5-14 is corrected to refer to Figure 5-15. An improper restrictive reference to N.J.A.C. 16:47-3.8 is expanded to refer to this entire subsection. Also, gated access points are now addressed. Three additional conditions have been identified since the implementation of the Access Code where the Department has determined access to a lot may be located along a striped right or left-turn lane. Instead of continuing to accept waivers for these situations, it is more efficient to change the regulation. In situations under N.J.A.C. 16:47-35(e)6ii and iii, traffic conflicts due to granting access along the striped lane are minimal and do not impact the safe and efficient use of the State highway. In subparagraph (e)6iv, the traffic impacts from a single-family residential unit are minimal and this general prohibition is unduly restrictive for that use.

Under N.J.A.C. 16:47-3.8, Access point control dimensions for streets and driveways, maximum allowable width of 100 feet for a firehouse driveway is created. Provisions are provided in subsection (s) to establish requirements for emergency access to the State highway system. N.J.A.C. 16:47-3.8(t) is added since emergency access is not intended for routine daily use. The Access Code limits the number of access points to each applicant under N.J.A.C. 16:47-3.5(c); therefore, the Department proposes to clearly indicate that the emergency access will not be counted against the other Department requirements.

Under N.J.A.C. 16:47-3.9, the Department proposes eliminating confusion among the applicant, the applicant's representatives and Department's forces when curb is added and depressed curb is required. Departmental experience with this provision carried over from N.J.A.C. 16:41 indicates that the provision of either islands in the driveway or a daily traffic volume of 1,500 vehicles had little direct bearing on whether a depressed curb was required. Therefore, the proposed change is to delete this requirement.

Under N.J.A.C. 16:47-3.12, General restrictions, a reference to N.J.A.C. 16:47-4.3(n)8 is corrected to N.J.A.C. 16:47-4.3(n)5.

Under N.J.A.C. 16:47-3.16, Municipal and county actions, subsection (a) is modified to be consistent with the proposed modification allowing the Department approval of a nonconforming lot with conditions under N.J.A.C. 16:47-3.5(d).

Under N.J.A.C. 16:47-4.3, Permit process, a new paragraph (k)8 is added to indicate that an old access permit expires when a new permit is issued for the same lot. This will eliminate any confusion as to which permit is in effect. Changes are proposed to subsection (n) to make the Access Code parallel to N.J.S.A. 27:7-94c. The Act is structured to make a decision on the use of the lot based on the existing or zoned use, whichever is more intense, prior to determining which category of revocation applies. The Department will recognize the more intense of the existing use or permitted zoned use in determining the proper revocation standard to apply. The changes will make the rules consistent with the Act. Therefore, the Department proposes moving N.J.A.C. 16:47-4.3(n)1iv to N.J.A.C. 16:47-4.3(n) and deleting N.J.A.C. 16:47-4.3(n)1iv.

Under N.J.A.C. 16:47-4.6, Permits and permit fees, a new subsection (o) will require the applicant to include a standard title block on permit plans. This enables the Department to accurately make reference to the plans which are a part of a permit.

Under N.J.A.C. 16:47-4.7, Companion Department permits, a modification to allow a left-turn slot to be included with access applications is proposed. This request may be combined with the access application instead of requiring a separate left-turn slot application. This is beneficial to the applicant by reducing the number of applications, applicant fees, and paperwork that the applicant shall submit to the Department.

Under N.J.A.C. 16:47-4.9, 4.10, 4.12 and 4.14, the sections dealing with Checklists for various types of access applications, revisions to include a current deed for the lot to be covered by the access application and permit are proposed. This helps the Department determine when a lot was created, which must be established before access may be approved to a nonconforming lot.

Under N.J.A.C. 16:47-4.24, General level of service standards, revisions to the Level of Service standards for urban and rural areas and application of the standards based on the location of the lot are proposed. This will encourage development in urban areas. Also, the change in level of service standards will more equitably divide the remaining highway capacity among potential applicants. Under the initial adoption, there is a sudden drop off point where the applicant's traffic is no longer permitted without mitigation.

Along some State highway segments, existing traffic conditions preclude approval of major applications with a planning review without traffic mitigation. These proposed changes will lessen the frequency of mitigation. In urban areas, a portion of the remaining capacity on State highway approaches is proposed to be available for traffic from a major applicant with a planning review before mitigation is required. In rural

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areas, a portion of the remaining capacity to the bottom of LOS D on State highway approaches is proposed to be available for traffic from a major applicant with a planning review before mitigation is required.

Under N.J.A.C. 16:47-4.25, Uninterrupted-flow standards, a definition for LOS B for limited access highways is proposed. The Highway Capacity Manual does not define LOS B for this analysis. Under the Access Code, LOS B needs to be quantified to apply the general level of service standards. At N.J.A.C. 16:47-4.25(a)2 and 3, changes are proposed based on the Highway Capacity technical measure of effectiveness, for uninterrupted-flow capacity analysis which is the level of service and volume to capacity (v/c) ratio. These measures are defined in order to determine compliance with the Access Code standards for both urban and rural areas.

Under N.J.A.C. 16:47-4.26, Signalized intersection standards, a modification to the signalized intersection capacity analysis is proposed to be consistent with the general LOS standards. In urban areas, 25 percent of the remaining capacity to the bottom of LOS E on State highway approaches is proposed to be available for traffic from a major applicant with a planning review before traffic mitigation is required. In rural areas, 25 percent of the remaining capacity to the bottom of LOS D on State highway approaches is proposed to be available for traffic from a major applicant with a planning review before traffic mitigation is required. For non-State highway approaches, no changes are proposed to the existing adopted LOS standards. Since the Tables in Appendix L, LOS Standards for Signalized Intersections, will no longer be applicable, repeal of Appendix L is proposed.

Under N.J.A.C. 16:47-4.27, Unsignalized intersection standards, a modification to the unsignalized intersection capacity analysis is proposed to be consistent with the general LOS standards. At N.J.A.C. 16:47-4.27, changes are proposed which use the Highway Capacity technical measure of effectiveness, reserve capacity. The level of service for unsignalized intersections is measured using reserve capacity and defined for urban and rural areas.

Under N.J.A.C. 16:47-4.29, Ramp standards, modifications to the ramp standards are proposed to be consistent with the general LOS standards. At N.J.A.C. 16:47-4.29 changes are proposed which use the Highway Capacity technical measurement of effectiveness, flow rate. The flow rate allows comparison to the Access Code standards to be calculated which is necessary to determine compliance with the Access Code.

Under N.J.A.C. 16:47-4.33, Department initiated projects and permits, the section heading is changed to "Highway improvement projects and permits." This reflects the Department's intent and practice to apply the same standards, regardless of who initiates the highway improvements.

Under N.J.A.C. 16:47-4.34, Fair-share financial contributions, a modificiation is proposed to enable the Department to include a fee for the administration of the custodial fair-share account. The Department neglected to provide for the administrative cost of the custodial account in the initial adoption. This provision will serve to recognize the incremental realities of transportation improvements and the period of time needed to implement a fair-share investment. It will help protect the public's expectation that identified transportation improvements will be made and save Department costs in returning unspent monies.

Under N.J.A.C. 16:47-4.36, Traffic impact study area, a modification to the determination of the locations that need to be studied by major access applicants with a planning review is proposed. This improved technical process will reduce the number of locations to be studied and is more likely to require study at locations where mitigation may be required than did the initially adopted method. This benefits both the Department and regulated community.

Under N.J.A.C. 16:47-4.37, Traffic counts, a clarification to subsection (c) is proposed stating that peak season applies only to tourist or recreational areas. The clarification will help both the Department and applicants.

Under N.J.A.C. 16:47-5.2, Application requirements for change in classification, a modification to include allowing the applicant to substantiate the change based on future planned characteristics of the area is proposed. This provides more flexibility to the regulated community.

Under Appendix B, State Highway Access Levels by Route and Milepost, modifications have been made to reflect three conditions. First, the desirable typical section (DTS) listing "1A" was inadvertently left out of the initial Access Code adoption. The Department is reinserting the DTS and ROW and DESCRIPTION that accommodated the 1A designation in earlier publications. Second, Appendix B changes to certain routes and mileposts are proposed due to changed mileposting or route designation by the Department since the Access Code was adopted. Third, Appendix B changes to certain routes and mileposts are proposed to be modified to have urban and rural areas defined to correspond to the State Planning areas and designated centers. In some cases, the access cell change necessitates changing the access level.

Under Appendix C, Figure C-3, Residential or Residence and Business Driveway on Divided or Undivided Highway, the inset showed a 5′ (five foot) minimum edge clearance. This dimension conflicted with the edge clearance shown elsewhere on the figure as well as the edge clearance set forth in N.J.A.C. 16:47-3.8(c). The dimension is being revised to 12 feet to eliminate the inconsistency.

Under Appendix E, Access Application Thresholds, the planning review permit determination threshold for a fast food restaurant with a drive-through window is reached at 2,900 square feet rather than at 3,300 square feet. This is based on the Institute of Transportation Engineers, Trip Generation Report, 5th edition data for Sunday peak hour use.

Appendix L, LOS Standards for Signalized Intersections, is proposed for repeal since the change in LOS standards would make the tables incorrect.

Social Impact

The proposed amendments will have positive social impacts since the regulated public will be able to more easily comply with the Access Code. Applicants will be required to submit less detailed traffic studies.

The changes increase predictability for the development community and improve the consistent application of standards due to clarification of these standards. The Department maintains sufficient requirements to protect the safe and efficient mobility of the public along the State highway system.

The coordination of urban and rural designations under the Access Code with the State Planning Commission's planning areas and designated centers will increase the efficient use of existing infrastructure and help protect the environment from negative impacts.

Economic Impact

The proposed amendments will save those major access applicants with a planning review time and money. Applicant costs associated with the approval process will be reduced by the narrowing of focus of the traffic impact studies. Each applicant saves approximately $2,000 in application preparation costs for each location dropped from the study area. Considerable time will be saved in the preparation of studies by consultants for applicants. The Department approval process will be simplified.

Furthermore, the modified LOS Standards may reduce the capital costs for fair-share financial contributions from access applicants. No definitive amount of savings to access applicants can be calculated as this will vary from application to application and location to location.

The proposed amendments do not substantially impact the general public. There are neither increases in permit fees, nor substantial changes proposed which would significantly increase costs for applicants to comply with the Access Code.

Requiring a copy of the current deed should pose no hardship on any access applicant. The minor increase of specifying that a Title Block be included may add a slight engineering cost increase to a few access applicants whose applications do not conform to generally accepted industry standards.

Changes in deed requirements when shared access is required may increase costs in preparing a deed and recording the modified deed; however, these costs are minor. In the long-run, when property ownership changes, the new lot owner, public, and Department are better served by having actual conditions recognized on the deed.

Regulatory Flexibility Analysis

The proposed amendments will only slightly change the Department's permit issuing process for applicant/permittees who seek State highway access, some of whom are considered small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The overall impact of the proposed changes is to reduce several requirements for access applicants.

The minor increase in requirements for a few new small businesses developing property abutting the State highway system and requesting direct access to the State highway is not determinable as it will vary from case-to-case.

Changes to the urban and rural classifications are not expected to adversely change the development patterns for most small businesses. There may be slight adjustments to the decisionmaking process involved in choosing a location for development by some small businesses. Additionally, other means to address this situation are contained in the

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Access Code. The Access Code provides a waiver process, if access applicants, including all small businesses, document that granting exemptions will not be a substantial detriment to the safety and efficiency of the State highway under (N.J.A.C. 16:47-4.35). Also, a procedure for changes in classification including changing the urban and rural categorization of a highway segment is available to anyone (N.J.A.C. 16:47-5).

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 16:47 Appendices B and L.

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

16:47-1.1 Definitions

The following words and terms, when used in this Access Code, shall have the following meanings unless the context clearly indicates otherwise:

...

"Adjustment of access" means changes to an access point, in conjunction with the implementation of a highway improvement project, which result in changing the width of an access point by five feet or less, changing the location of an access point by 10 feet or less, or moving an access point away from the centerline of the highway.

...

"Corner clearance (C)" means the distance along the curbline between the point of curvature of the corner radius and the point of curvature of the nearest curbline opening **at an intersection.**

...

"Designated center" means a specific area where a compact form of development (exists or is planned) with a core or node (focus of residential, commercial and service development) which is listed in Appendix C of the State Development and Redevelopment Plan adopted June 12, 1992 or superseding issue, or other designated center officially recognized by the State Planning Commission. Other designated centers, recognized after the June 12, 1992 adoption of the State Development and Redevelopment Plan or superseding issue are shown on the approved Resource, Planning and Management Maps of the State Plan and Redevelopment Plan available at the Office of State Planning.

...

"Emergency access" means a driveway which shall only be used by police, fire, and emergency service vehicles when responding to an emergency service situation. Such driveways shall not include the access to a police station, fire house, or emergency service facility.

...

"Fire house" means a lot where fire service vehicles are stored.

...

"Half-trip" means half the distance of a vehicle trip.

"High speed rural" means the access classification for roadways in **planning areas other than Planning Area 1, Planning Area 2 or a designated center whose boundaries are shown on the approved Resource, Planning and Management Maps of the State Development and Redevelopment Plan adopted by the State Planning Commission or** rural [environments] **areas within the Pinelands or within the Hackensack Meadowlands District as identified by the Access Code Appendix B** where the posted speed limit is 50 miles per hour (mph), or greater.

"High speed urban" means the access classification for roadways in urban [environments] **Planning Area 1, Planning Area 2, or a designated center whose boundaries are shown on the approved Resource, Planning and Management Maps of the State Development and Redevelopment Plan adopted by the State Planning Commission, or urban areas within the Pinelands or within the Hackensack Meadowlands District as identified by the Access Code Appendix B** where the posted speed limit is 45 mph or greater.

...

"Intersection" means the location where two or more roadways, other than driveways, cross at grade, without a bridge. **The intersection is the largest area encompassing the curb returns, stop bars, and crosswalks.**

...

"Lot" means a single tax map parcel **or two or more tax lot parcels which are in common ownership, have a unity of use and are contiguous.** All land adjacent to a State highway is considered to be [on] **part of** a lot.

...

"Low speed rural" means the access classification for roadways in rural [environments] **planning areas other than Planning Area 1, Planning Area 2 or a designated center whose boundaries are shown on the approved Resource, Planning and Management Maps of the State Development and Redevelopment Plan adopted by the State Planning Commission or rural areas within the Pinelands or within the Hackensack Meadowlands District as determined by the Access Code Appendix B** with posted speed limits 45 mph or less.

"Low speed urban" means the access classification for roadways in urban [environments] **Planning Area 1, Planning Area 2, or a designated center whose boundaries are shown on the approved Resource, Planning and Management Maps of the State Development and Redevelopment Plan adopted by the State Planning Commission or rural areas within the Pinelands or within the Hackensack Meadowlands District as identified by the Access Code Appendix B** with posted speed limits 40 mph or less.

...

"Modification of access" means changes to access in conjunction with the implementation of a highway improvement project, which results in changing the number of access points, changing the width of an access point by more than five feet, or changing the location of an access point by more than 10 feet.

...

"Rural **area**" means [an environment used for access classification purposes based on the U.S. Census Bureau data and standards and definitions in the Highway Federal Aid Law, 23 U.S.C.A. 101 et seq.] **any area of the State which is not within Planning Area 1, Planning Area 2 or a designated center whose boundaries are shown on the approved Resource, Planning and Management Maps of the State Development and Redevelopment Plan adopted by the State Planning Commission or rural areas within the Pinelands or within the Hackensack Meadowlands District as identified by the Access Code Appendix B.**

"Rural lot" means a lot with 50 percent or more of its State highway frontage located in a rural area.

...

"Site" means the lot which is the subject of an access application or permit.

...

"Study area location" means access point locations or those other locations on the State highway system exceeding both 100 new half-trips during the critical peak hour(s) and 10 percent of the anticipated daily site traffic which are analzyed in a traffic impact study. Applicant's driveways, intersections, uninterrupted flow sections, weaving sections, merges, and diverges are examples of study locations.

...

"Traffic signal" means an electrically operated device that assigns time to conflicting transportation movements. For the purposes of this Access Code, traffic control devices which are installed for the exclusive purpose of allowing pedestrians to cross the highway or traffic control devices installed to meter traffic are not considered to be traffic signals in the Access Code.

...

"Urban **area**" means [a type of roadway environment used for access classification based on the U.S. Census Bureau data and standards and definitions in the Highway Federal Aid Law, 23 U.S.C.A. 101 et seq.] **an area of the State which is included in Planning Area 1, Planning Area 2 or a designated center whose boundaries are shown on the approved Resource Planning and Management Maps of the State Development and Redevelopment**

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Plan adopted by the State Planning Commission or an area within the Pinelands or within the Hackensack Meadowlands District identified as urban by the Access Code Appendix B.

"Urban lot" means a lot with more than 50 percent of its State highway frontage located in an urban area.

16:47-3.5 Unsignalized access points

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

(d) **The following provisions apply to shared access:**

1. Two or more adjacent lots can be treated as a single lot if the lots share a single driveway. The determination of conformance set forth in (a)4 above, shall then be made for the combination. If the combination is conforming, then no vehicular use limitations shall be applied. If the combination is nonconforming, then the permissible vehicular use limitations set forth in (b) above shall be determined for the combination.

2. The Department will only approve a subdivision which creates a nonconforming lot if all of the following conditions are provided:

i. The nonconforming lot created shares access with an adjacent lot;

ii. The shared access is the only direct state highway access for the lots; and

iii. There is a perpetual condition written into the deed for each lot establishing the shared access.

3. No bonus pursuant to (b)4i above shall apply to nonconforming lots created under (d)2 above. In addition, if a nonconforming lot is subdivided, the permissible vehicular use limitation shall not increase as a result of the subdivision.

(e) The location of unsignalized access points shall be established using the access point control dimensions set forth in N.J.A.C. 16:47-3.8[(h) and (k)] and safety considerations based on sight distance and other geometric requirements found in the "New Jersey Department of Transportation Design Manual—Roadways". Unsignalized access points shall only be located where the traffic volumes at the access points do not meet the warrants set forth in Part 4C of the "Manual on Uniform Traffic Control Devices for Streets and Highways" (U.S. Department of Transportation, Federal Highway Administration 1988 edition or a superseding edition). Unsignalized access points, whether on conforming or nonconforming lots, shall also be subject to the following requirements:

1.-5. (No change.)

6. No access point shall be located along a striped right or left-turn lane where the lane is at its full width. This prohibition does not apply:

i. [along] **Along** two-way left-turn lanes[.];

ii. To a right turn in-only access point from a divided highway adjacent to a left-turn lane;

iii. To access points on the opposite side of a highway within the limits of a right-turn lane; or

iv. To access to a lot zoned and used for a single-family residential unit.

7. (No change.)

8. A left-turn lane shall be provided for access points on State highway segments with access level 4 when the criteria set forth in "Transportation and Land Development", Figure [5-14] **5-15** and "Highway Research Record 211", "Volume Warrants for Left-Turn Storage Lanes at Unsignalized Grade Intersections", incorporated herein by reference, are met. Left-turn access shall be prohibited if the criteria have been met but there is insufficient space for a left-turn lane, unless the Commissioner determines that left-turns can be made safely, considering traffic volumes and sight distances.

9. If the criteria set forth in "Transportation and Land Development", Figure [5-14] **5-15**, and "Highway Research Record 211", "Volume Warrants for Left-Turn Storage Lanes at Unsignalized Grade Intersections", incorporated herein by reference, have not been met, the Commissioner may decide to permit left-turn access, pursuant to (e)8 above, if the applicant improves the highway shoulder to enable the bypassing of vehicles waiting to turn left into the access point.

10. (No change.)

11. Access points shall be designed to enable vehicles to leave the State highway without restriction, queuing, or hesitation on the highway. Access shall not be approved for parking areas that require backing maneuvers within the State highway right-of-way. All off-street parking areas must include on-site maneuvering areas and aisles to permit vehicles to enter and exit the site without hesitation. **An applicant shall not place a gate on Department right of way. If an access point is gated, the gate shall be a minimum of 50 feet from the curbline, and there shall be provisions for U-turns without the need for vehicles to back onto the highway.**

12. (No change.)

(f) (No change.)

16:47-3.8 Access point control dimensions for streets and driveways

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

(e) Driveway width (W) shall be as follows:

1. (No change.)

2. Non-residential as follows:

i.-ii. (No change.)

iii. Fire house: maximum allowable 100 feet.

3. (No change.)

(f)-(r) (No change.)

(s) The Department may approve one emergency access on a lot which has no other means to address emergency access. The Department will consider the merits of the requested emergency access on a case-by-case basis based on need, safety, and conformity to this Access Code. In no event shall such a driveway be approved unless all of the following conditions are met:

1. As part of the access application, the lot owner shall provide the Department with an official letter from the head of the emergency service unit which supports the need for an emergency access. The Department may also accept as supporting documentation general requirements such as fire codes;

2. Neither depressed curb nor curb returns shall be provided at the emergency access;

3. The sidewalk area shall not be paved. It shall be strengthened by gravel or pavers over which grass shall be grown. This requirement supersedes the provisions of N.J.A.C. 16:47-3.10(a). If there is existing or proposed sidewalk, the sidewalk across the emergency access shall be strengthened to support emergency vehicles; and

4. The emergency access shall have sufficient length in advance of any gate to allow the anticipated emergency vehicles to temporarily park in the driveway without interfering with highway traffic.

(t) Emergency access shall not be counted as an access point for the purposes of determining the number of access points under N.J.A.C. 16:47-3.5(c).

16:47-3.9 Curb

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

(g) Where curb exists or is to be constructed, all driveways are to have depressed curbs, constructed in accordance with Figure 4 below[, except depressed curbs may be omitted if there is an island in the driveway or if the driveway will carry more than 1,500 vehicles per day].

1.-5. (No change.)

(h) (No change.)

16:47-3.12 General restrictions

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

(d) No advertising signs or devices shall be erected on or overhanging State highway right-of-way, nor shall any portion thereof be used for the display of merchandise. The Department can only authorize the erection and maintenance of signs on public property that are regulatory, directional, and warning signs allowed by State laws or authorized by the Department in conjunction with alternative access as set forth in N.J.A.C. 16:47-4.3[(n)8] **(n)5.**

(e)-(n) (No change.)

16:47-3.16 Municipal and county actions

(a) As of September 21, 1992, no lot abutting a State highway shall be subdivided in a manner which would create additional lots abutting that highway unless all the abutting lots created are conforming under the Access Code, [or] restricted from access to the

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State highway, **or established pursuant to N.J.A.C. 16:47-3.5(d)2.** Subdivisions are considered to be created on the date of preliminary municipal approval. Direct access from subdivided lots to a State highway shall only be permitted by the Department if the access meets the requirements of conforming lots under this Access Code. Nonconforming lots in existence as of September 21, 1992 shall not be subdivided in a manner which would make them less conforming, except that those nonconforming lots on State highways classified as access level 2 may be subdivided because of the creation of new street intersections.

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

16:47-4.3 Permit process

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

(k) Permits expire when the permittee violates any permit conditions. In addition to site-specified conditions imposed by the Department, all future permits shall include the following conditions:

1.-5. (No change.)

6. The permittee shall make a copy of the permit available for review at the construction site; [and]

7. The conditions of the permit are binding upon all successors in interest in the lot[.]; **and**

8. An access permit expires on the date when another access permit is issued for the same lot.

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

(n) The Department may revoke any permit after the Commissioner determines that reasonable alternative access is available for the lot served by the permit and that elimination of direct access will benefit the safety and efficiency of the State highway. **For a lot with existing direct access that is used for purposes more intense than it is zoned for, the existing use shall be used to classify which revocation standards apply.** The permit shall not be revoked until the alternative access is completed and available for use. Prior to revocation, the Department shall:

1. Determine that the lot has reasonable access to the general system of streets and highways in the State, other than its State highway access, and that:

i. (No change.)

ii. For a lot zoned or used for industrial purposes, has access onto any improved public street, highway, access road, or assessment across an industrial access road, which is of sufficient design to support necessary truck and employee access as required by the industry; **and**

iii. For a lot zoned or used for residential or agricultural purposes (except as provided in (n)1i(6) above), has access onto any improved public street or highway[; and].

[iv. For a lot used for purposes other than that for which it is zoned, has access as required above for the more intense use;]

2.-6. (No change.)

(o)-(r) (No change.)

16:47-4.6 Permits and permit fees

(a)-(n) (No change.)

(o) In order to obtain a permit, the applicant shall include a title block on the permit plans. The title block shall be located in the lower right corner of the plans and should be three inches high and seven inches wide and shall include the block, lot, municipality, county, date, and name of the lot owner.

16:47-4.7 Companion Department permits

Access permits do not cover all types of occupancy of the Department's right-of-way. Other permit applications may be required in conjunction with the access application. These applications will become companion applications to the access application. They will be reviewed together. All of the required permits will be issued at the same time. The Department may accept one access application for combining activities for access, drainage, curb, sidewalk, **left-turn slots,** lot consolidation or subdivision and landscape and issue a single access permit to authorize all of these activities.

16:47-4.9 Minor access permits checklist for single-family residential and residence and business combined

(a) (No change.)

(b) The following information shall be submitted with the application:

1.-22. (No change.)

23. Location of any access easements on the lot; [and]

24. Applicability of the Pinelands Act[.]; **and**

25. A copy of the current deed for the lot.

(c) (No change.)

16:47-4.10 Minor access permits checklist for other minor traffic generators

(a) (No change.)

(b) The following information shall be submitted with the application:

1.-37. (No change.)

38. Location of any access easements on the lot; [and]

39. Applicability of the Pinelands Act[.]; **and**

40. A copy of the current deed for the lot.

(c) (No change.)

16:47-4.12 Major access permits checklist

(a) (No change.)

(b) The following information shall be submitted with the application:

1.-44. (No change.)

45. Location of any access easements on the lot; [and]

46. Applicability of the Pinelands Act[.]; **and**

47. A copy of the current deed for the lot.

(c) (No change.)

16:47-4.14 Major access permits with planning review checklist

(a) (No change.)

(b) The following information shall be submitted with the application:

1.-47. (No change.)

48. Applicablility of the Pinelands Act; [and]

49. Travel demand management plan (optional)[.]; **and**

50. A copy of the current deed for the lot.

(c) (No change.)

16:47-4.24 General level of service standards

(a) General LOS standards [for State highway segments and State highway approaches to intersections] **applicable to traffic from a lot** are based on **whether the lot is located in an urban or rural area and** the LOS of the highway segments at the time the access opens [and the urban or rural designations of the highway segments as determined using Appendices A and B]. These LOS standards, and those in N.J.A.C. 16:47-4.25 through 4.29, apply to applications classified as majors with planning review.

1. For **study locations, applicable to an** urban **lot, for** highway segments anticipated to operate **under the no-build condition** at:

i. LOS A, [or] B, **C, D, or E, some** deterioration [to the midpoint of LOS C will be allowed] **will be allowed, provided that the LOS does not drop below LOS E;**

[ii. LOS C or D, deterioration of one-half of LOS D will be allowed, provided the LOS does not enter LOS E;]

[iii.]**ii.** LOS [E or] F, no deterioration will be allowed.

2. For **study locations, applicable to a** rural **lot, for** highway segments anticipated to operate **under the no-build condition** at:

i. LOS A, [or] B, **C, or D, some** deterioration [may not drop] **will be allowed, provided that** the LOS **does not drop** below [B] **D;**

ii. LOS [C, D,] E[,] or F, no deterioration will be allowed.

16:47-4.25 Uninterrupted-flow standards

(a) Uninterrupted-flow standards for determining fair-share financial contributions are as follows:

1. The general standards listed in N.J.A.C. 16:47-4.24 apply. LOS will be measured by the volume to capacity ratio (V/C) and coform to the values shown in Tables 3-1, 7-1, and 8-1 of the "1985 Highway Capacity Manual," Special Report 209, or superseding issue. Table 3-1 does not define LOS B [or the midpoint of LOS C. Both are herein defined as a V/C equal to 0.67] **for limited access highways having a design speed of 50 mph. For these limited access highways, LOS B is defined as a V/C ratio equal to or less than 0.50.**

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2. For [a section of] **study locations, applicable to an** urban [highway operating at or below LOS C under the no-build condition, the uninterrupted-flow V/C ratio shall not increase more than 0.1.] **lot, which are anticipated under the no-build condition to operate at:**

i. LOS A or B, increase in the uninterrupted-flow V/C ratio to the midpoint of LOS C will be allowed;

ii. LOS C, D, or E, increase in the uninterrupted-flow V/C ratio of 0.1 will be allowed, provided that the LOS does not drop below LOS E; and

iii. LOS F, no increase in the uninterrupted-flow V/C ratio will be allowed.

3. For study locations, applicable to a rural lot, which are anticipated under the no-build condition to operate at:

i. LOS A or B, increase in the uninterrupted-flow V/C ratio to the midpoint of C will be allowed;

ii. LOS C, or D increase in the uninterrupted-flow V/C ratio of 0.1 will be allowed, provided that the LOS does not drop below LOS D; and

iii. LOS E or F, no increase in the uinterrupted-flow V/C ratio will be allowed.

16:47-4.26 Signalized intersection standards

(a) Signalized intersection standards for determining fair-share contributions for State highway approaches are as follows:

1. (No change.)

2. For all movements [on] **at:**

i. **Study locations, applicable to** [An] **an** urban **lot, on a** State highway approach operating at [or below] LOS **A, B,** C, **D, or E** [delay exceeds 15 seconds,] under the no-build condition[, the delay for the approach under the build condition shall not exceed the delay for the approach under the no-build condition by more than 7.5 seconds, and the actual delay shall not exceed 40 seconds, the maximum possible at LOS D.] **, deterioration by 25 percent of the difference between the no-build condition to the bottom of level of service at the E (60 seconds) will be allowed. If a State highway approach operates under the no-build condition at LOS F, no deterioration will be allowed.** Exceptions may be made to the delay standards for left turn lanes on State highway approaches, but the left turns must not back up onto the through lanes;

ii. **Study locations, applicable to** [A] **a** rural **lot, on a** State highway approach operating at [or above] LOS **A, B, C, or D** under the no-build condition[, the delay for the approach under the build condition shall not exceed 15 seconds, the maximum possible at LOS B.] **, deterioration by 25 percent of the difference between the no-build condition to the level of service at the bottom of LOS D (40 seconds) will be allowed. If the state highway approach operates under the no-build condition at LOS E or F, no deterioration will be allowed.** Exceptions may be made to the delay standards for left turn lanes on State highway approaches, but the left turns must not back up onto the through lanes.

3. (No change.)

4. If any no-build movement [on] **at a State highway approach:**

i. **For study locations, applicable to** [A] **an** urban **lot** [State highway approach has] **operating at** a V/C ratio greater than 1.2, then the build conditions shall not increase the V/C ratio on that movement.

ii. **For study locations, applicable to** [A] **a** rural [State highway approach] **lot** [operates] **operating** at a LOS [below B (delay exceeds 15 seconds)] **E or F (delay equal to or greater than 40 seconds)**, then the build conditions shall not increase the delay on that movement. Also, a no-build V/C ratio exceeding 1.2 shall not be increased.

5.-6. (No change.)

(b) (No change.)

[(c) The tables in Appendix L, incorporated herein by reference, summarize the requirements of this section.]

16:47-4.27 Unsignalized intersection standards

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

(c) For **a study location at** street intersections [in]:

1. **Applicable to an** [Urban] **urban** [areas with a no-build] **lot which operates under the no-build condition** with a no-build LOS of A or B, the reserve capacity may decrease to 250. With a no-build LOS of C, D, or E the reserve capacity may decrease by 50, but shall not [be] **drop to** less than 0. No-build reserve capacities below 0 shall not be decreased.

2. **Applicable to a** [Rural] **rural** [areas] **lot which operates under the no-build condition** [with a no-build] LOS of A or B, the build reserve capacity may decrease to [300] **250. With a no-build LOS of C or D, the reserve capacity may decrease by 50, but shall not drop to less than 100.** No-build reserve capacities below [300] **100** shall not be decreased.

(d) For **site** driveways [in]:

1. **Applicable to an** [Urban] **urban** [areas] **lot which operates under the no-build condition** with a no-build LOS [of] **at A, B, C, D or** E [or better], the reserve capacity may decrease to 0. Reserve capacities for **a** new driveway[s] shall not [be] **drop to** less than 0. **No-build reserve capacities below 0 shall not be decreased.**

2. **Applicable to a** [Rural] **rural** [areas] **lot:**

i. Left turns from the State highway to the driveway [with no-build] **which operates under the no-build condition** LOS of A or B, the reserve capacity may decrease to [300] **250**. No-build reserve capacities below [300] **250** shall not be decreased **by more than 50 provided that the reserve capacity does not drop below 100**. Reserve capacities for new driveways shall not be less than [300] **100. No-build reserve capacities below 100 shall not be decreased.**

ii. Right and left turns from the driveway [with no-build] **which operates under the no-build condition at** LOS [of] **A, B, C, D or** E [or better], the reserve capacity may decrease to 0. No-build reserve capacities below 0 shall not be decreased. Reserve capacities for new driveways shall not be less than 0.

16:47-4.29 Ramp standards

(a) (No change.)

(b) [On] **For a study location, applicable to an** urban **lot on** State highway segments**, with:**

1. [For a] **A** merge or diverge [operating] **which operates** at LOS A, [or] **B, C, D or E** under the no-build condition, [the LOS shall be allowed to deteriorate to the midpoint of LOS C] **the increase in the merge or diverge flow rate shall not exceed 25 percent of the difference between the no-build flow rate and the flow rate at the bottom of LOS E.**

[2. For a merge or diverage operating at or below LOS C under the no-build condition, the increase in the merge or diverge flow rate shall not exceed 150, and the] **The** actual merge flow rate shall not exceed [1,750] **2,000** and the diverge flow rate shall not exceed [1,800] **2,000**. These are the maximum merge and diverge traffic flow rates possible for LOS [D] **E.**

[3.] **2. A merge-diverge flow rate under the no-build condition operating at** [For no-build] LOS [E or] F, [no increase] shall **not** be allowed [in] **to increase** the merge and diverge traffic flow rates.

(c) [On] **For a study location, applicable to a** rural **lot on** State highway segments**, and with:**

1. [For a] **A** merge or diverge [operating] **which operates** at LOS A [or], **B, C or D** under the no-build condition, [the LOS shall not deteriorate below LOS B.] **the increase in the merge or diverge rate shall not exceed 25 percent of the difference between the no-build flow rate and the flow rate at the bottom of LOS D and the actual merge rate shall not exceed 1,750 and the diverge flow rate shall not exceed 1,800. These are the maximum merge and diverge traffic rates possible for LOS D.**

2. [For a] **A** merge or diverge [operating at or below LOS C] **which operates** under the no-build condition[, no increase] **at LOS E or F** shall **not** be allowed **to increase** [in] the merge [and] **or** diverge traffic flow rate.

16:47-4.33 [Department initiated] **Highway improvement** projects and permits

(a) The Department, either in conjunction with its construction projects**, in conjunction with projects advanced by others,** or through separate access projects, may construct, revoke or modify highway access to provide access conforming to this chapter. The [Depart-

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ment project] design may use rules in existence at the time [it initiated the design of] **the design was initiated for** those projects that have advanced beyond the completion of Phase 2 of the Department's plan development process.

(b) (No change.)

(c) Permits issued by the Department for [Department initiated] **the** actions **in (a) and (b) above** shall be at no cost to the lot owner.

16:47-4.36 Traffic impact study area

(a) Traffic impact study locations shall be established as follows:

1. (No change.)

2. Those locations [having] **exceeding both** [the greater of] 100 new half-trips during the **critical peak hour(s), determined in accordance with N.J.A.C. 16:47-4.30(d)1i and** [highway or site peak-hours or] 10 percent of the anticipated daily site traffic shall be analyzed. Intersections, uninterrupted flow sections, weaving sections, merges, and diverges are examples of locations which [are subject to analysis] **shall be analyzed.**

3. When determining whether the new 100 peak hour half trips and the 10 percent of the anticipated daily site traffic in accordance with (a)2 above have been met, the following criteria shall be utilized:

i. For signalized intersections:

(1) The number of existing separate traffic signal phases shall be determined;

(2) For each signal phase, the number of new site-generated peak hour half trips assigned to each traffic movement on each approach shall be determined. When a traffic movement is allotted green time in two or more signal phases, the traffic volume based on the percentage of the available green time for traffic movement shall be proportional;

(3) For each signal phase, the site-generated traffic volumes that conflict shall be added together. In the event that the signal phasing and geometry preclude traffic conflict, the highest site-generated half trips traffic volume for any given signal phase by direction shall be considered the traffic volume in conflict. The higher traffic volume in conflict under each signal phase shall be taken;

(4) The traffic volumes for all traffic signal phases obtained in (a)3i(3) above shall be added. This is the total number of new site-generated peak hour vehicle trip impacts for determining study area locations at the signalized intersection;

(5) If the total number of new site-generated peak hour half trips is greater than or equal to 100, then this location may be a study area location and the above four steps shall be repeated for anticipated daily site-generated traffic. If the number is less than 100, then the signalized intersection is not a study area location; and

(6) If the total number of new site-generated daily half trips at the location is greater than or equal to 10 percent of the new site-generated daily trips, then this location is a study area location. If the number is less than 10 percent, then the signalized intersection is not a study area location.

ii. For divided highways, at ramps and ramp junctions, unsignalized intersections, uninterrupted flow sections, weaving sections, merges and diverges, the assignment of site-generated traffic volumes within the half trip length shall be determined as follows:

(1) Turning site trips are defined as that component of the site-generated traffic volume, within the half trip length, which will turn on to or off of the highway within 2,000 feet of a site access point. Through site trips are defined as that component of the site traffic volume, within the half trip length, which will not turn on to or off of the highway within 2,000 feet of a site access point;

(2) Through site trips shall be uniformly distributed among the through lanes on the highway. Assign turning site trips to the right-most through lane;

(3) If the total number of turning site trips plus through site trips in the right-most through lane during the peak hour is greater than or equal to 100, then this location may be a study area location and this test shall be repeated for anticipated daily site-generated traffic. If the number during the peak hour is less than 100, then the location is not a study area location; and

(4) If the total number of turning site-generated daily trips is greater than or equal to 10 percent of the daily trips, then this location is a study area location. If the number is less than 10 percent, then the location is not a study area location.

iii. For all other locations, the general standards in accordance with (a)1 and 2 above shall be applied.

[3.]**4.** Driveways to lots except for the applicant's driveways shall not be considered study area locations.

16:47-4.37 Traffic counts

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

(c) [Traffic] **Only traffic** counts performed outside the seasonal peak period **(in tourist or recreational areas)** shall be adjusted to the peak period. Traffic count data taken within 12 months of the application date are required. Classified manual turning-movement counts for one day shall be supported by one week of machine counts. To be acceptable, a manual count must be within 10 percent of the machine count on each approach that day, considering the total for the manual counting period. Weekday peak-hour manual counts shall be factored to agree with the weekday machine count for the highest hour of the week. Saturday manual counts, if within 10 percent of the machine counts, need not be factored but shall encompass the machine peak hour for the day. There shall be a machine count for each approach to a signalized intersection. All count material shall be included in the traffic impact study as an appendix. The Department may require evidence of proper calibration of automatic traffic recorder (ATR) equipment.

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

16:47-5.2 Application requirements for change in classification

(a) (No change.)

(b) The application shall include:

1.-10. (No change.)

11. The planned characteristics of the area through which a highway segment passes;

Recodify existing 11. and 12. as **12. and 13.** (No change in text.)

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APPENDIX B
STATE HIGHWAY ACCESS LEVELS BY ROUTE AND MILEPOST

ACCESS LEVEL (AL)

1 Fully Controlled Access
2 Access along Street or Interchange Only
3 Right-turn Access with Provision for Left-turn Access via Jughandle
4 Driveway with Provision for Left-turn Access via Left-turn lane
5 Driveway with Provision for Left-turn Access (Limited by Spacing Requirements and Safety Considerations)
6 Driveway Access Limited by Edge Clearance and Safety Considerations

DESIRABLE TYPICAL SECTIONS CODES (DTS) AND RIGHT OF WAY WIDTHS (R.O.W.)
DESCRIPTION

DTS		ROW		DESCRIPTION
1A	—	**Existing**	—	**SAME LANE, SHOULDER, AND PARKING CONDITIONS AS EXIST (See Note 2)**
2A	—	78′	—	2 LANES, WITH SHOULDERS
2B	—	92′	—	2 LANES, WITH SHOULDERS, WITH 14′ TWO WAY LEFT TURN LANE
2C	—	68′	—	2 LANES, WITHOUT SHOULDERS, WITH 14′ TWO WAY LEFT TURN LANE
2D	—	54′	—	2 LANES, WITHOUT SHOULDERS
4A	—	114′	—	4 LANES, DIVIDED, WITH SHOULDERS
4B	—	90′	—	4 LANES, DIVIDED, WITHOUT SHOULDERS
4C	—	102′	—	4 LANES, UNDIVIDED, WITH SHOULDERS
4D	—	78′	—	4 LANES, UNDIVIDED, WITHOUT SHOULDERS
4E	—	102′	—	4 LANES, UNDIVIDED, WITH SHOULDERS, PARKING (URBAN SITUATION)
4F	—	116′	—	4 LANES, UNDIVIDED, WITH SHOULDERS, WITH 14′ TWO WAY LEFT TURN LANE
4G	—	92′	—	4 LANES, UNDIVIDED, WITHOUT SHOULDERS, WITH 14′ TWO WAY LEFT TURN LANE
5A	—	131′	—	5 LANES, (2 LANES, 1 DIRECTION + 3 LANES, OPPOSITE DIRECTION), DIVIDED, WITH SHOULDERS
6A	—	148′	—	6 LANES, DIVIDED, WITH SHOULDERS
6B	—	124′	—	6 LANES, DIVIDED, WITHOUT SHOULDERS
6C	—	210′	—	6 LANES, DIVIDED, WITH CD ROADS
8A	—	172′	—	8 LANES, DIVIDED, WITH SHOULDERS
8B	—	148′	—	8 LANES, DIVIDED, WITHOUT SHOULDERS
8C	—	234′	—	8 LANES, DIVIDED, WITH CD ROADS

FOR CELL NUMBER SEE APPENDIX A

[1]These show the maximum acceptable expanded width of a State highway segment. The widths of lanes, shoulders, parking, sidewalk areas and rights-of-way are those derived from the standards for desirable geometric design elements. The right-of-way width needed for the construction of the highway improvement may be less than the dimensions shown when less than desirable widths are used.

[1]This designation means that social, environmental, or economic constraints may limit the desirability of State highway segment expansion. If compelling safety needs dictate, the Department will construct, or require a permittee to construct, highway improvements consistent with the design standards.

	MILEPOST				
ROUTE	**BEGIN**	**END**	**AL**	**DTS**	**CELL**
1	**0.60**	**5.46**	**1**	**6A**	**0**
1	**5.46**	**5.94**	**3**	**6A**	**1**
1	**5.94**	**7.20**	**3**	**6C**	**1**
1	**7.20**	**10.79**	**3**	**6A**	**1**
1	**10.79**	**11.29**	**3**	**6B**	**1**
1	**11.29**	**22.40**	**3**	**6A**	**1**
1	**22.40**	**38.34**	**3**	**8A**	**1**
1&9	**38.34**	**40.45**	**3**	**6A**	**1**
1&9	**40.45**	**41.80**	**3**	**6A**	**4**
1&9	**41.80**	**43.20**	**3**	**6A**	**1**
1&9	**43.20**	**45.45**	**3**	**6A**	**4**
1&9	**45.45**	**48.68**	**1**	**8C**	**0**
1&9	**48.68**	**51.09**	**1**	**6C**	**0**
1&9	**51.09**	**54.65**	**1**	**4B**	**0**
1&9	**54.65**	**62.00**	**3**	**6A**	**4**
1&9	**62.00**	**62.13**	**3**	**4A**	**10**
1&9	**62.13**	**62.80**	**4**	**4A**	**10**
1&9	**62.80**	**62.93**	**3**	**4A**	**4**
1&9	**63.93**	**63.20**	**3**	**6C**	**1**
1&9	**63.20**	**64.90**	**3**	**5A**	**1**
1 B	**0.00**	**2.73**	**3**	**4A**	**1**
1&9 T	**0.00**	**2.29**	**3**	**6A**	**1**
1&9 T	**2.29**	**4.11**	**3**	**6A**	**4**
3	**0.00**	**6.00**	**3**	**8A**	**1**
3	**6.00**	**10.40**	**1**	**6C**	**0**
3	**10.40**	**10.73**	**1**	**4A**	**1**
3	**10.73**	**10.84**	**3**	**4A**	**1**
4	**0.00**	**2.20**	**3**	**4B**	**4**
4	**2.20**	**10.89**	**3**	**6A**	**1**
5	**0.00**	**0.39**	**5**	**2A**	**12**
5	**0.39**	**0.97**	**4**	**2B**	**12**
5	**0.97**	**1.80**	**4**	**2A**	**12**
5	**1.80**	**2.16**	**4**	**4E**	**11**
5	**2.16**	**3.34**	**6**	**2A**	**18**
7	**0.00**	**0.53**	**4**	**4D**	**5**
7	**0.53**	**1.40**	**3**	**4A**	**1**
7	**1.40**	**1.60**	**3**	**4A**	**4**
7	**1.60**	**4.16**	**4**	**4C**	**5**
7	**4.16**	**5.29**	**4**	**4D**	**11**
7	**5.99**	**9.17**	**4**	**4D**	**11**
7	**9.36**	**10.10**	**4**	**4D**	**11**
9	**3.02**	**6.50**	**4**	**4C**	**32**
9	**6.50**	**9.63**	**4**	**4C**	**35**
9	**9.63**	**11.00**	**4**	**4C**	**32**
9	**11.00**	**13.00**	**6**	**2A**	**42**
9	**13.00**	**15.08**	**6**	**2A**	**39**
9	**15.08**	**23.50**	**4**	**4C**	**32**
9	**23.50**	**24.00**	**4**	**4C**	**35**
9	**24.00**	**28.30**	**4**	**4C**	**32**
9	**28.30**	**28.73**	**4**	**4C**	**35**
9	**28.73**	**29.30**	**4**	**4C**	**29**
9	**29.30**	**29.80**	**4**	**4C**	**26**
9	**29.80**	**30.35**	**4**	**4C**	**32**
9	**30.35**	**30.72**	**4**	**4C**	**35**
9	**31.84**	**32.11**	**4**	**4C**	**29**
9	**32.11**	**32.63**	**4**	**4C**	**2**
9	**32.63**	**33.22**	**4**	**4C**	**5**
9	**33.22**	**36.00**	**4**	**4C**	**2**
9	**36.00**	**41.40**	**4**	**4C**	**5**
9	**41.40**	**42.80**	**4**	**4C**	**2**

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9	42.80	44.53	4	4C	5
9	44.53	45.30	4	4C	2
9	45.30	45.56	4	4C	35
9	45.56	46.18	4	4C	32
9	46.18	47.21	4	4C	35
9	47.21	48.08	4	4C	32
9	48.08	49.04	4	4C	35
9	49.04	52.58	4	4C	32
9	54.85	55.23	4	4C	32
9	55.23	57.30	4	4C	35
9	57.30	61.60	4	4C	32
9	61.60	62.50	4	4C	35
9	62.50	63.30	4	4A	34
9	63.30	64.60	2	4A	31
9	64.60	68.28	3	4A	34
9	68.28	69.34	4	4F	34
9	69.34	70.20	4	4F	7
9	70.20	70.50	3	4B	7
9	70.50	71.08	3	4A	10
9	71.08	74.48	3	4A	7
9	74.48	75.47	3	4A	10
9	75.47	79.15	3	4A	7
9	79.15	80.70	3	4A	34
9	80.70	81.90	4	4D	35
9	81.90	84.22	3	4A	34
9	84.22	86.56	3	4A	7
9	86.56	88.75	3	4A	1
9	88.75	89.95	3	4A	4
9	89.95	90.97	3	4A	1
9	94.47	100.20	3	4A	1
9	100.20	102.96	3	4A	4
9	102.96	123.09	3	6A	1
9	123.09	136.25	3	8A	1
9 W	0.00	0.35	3	4B	4
9 W	0.35	0.76	3	4A	4
9 W	0.76	1.45	4	4E	5
9 W	1.45	11.00	3	4A	1
9 W	11.00	11.17	4	2A	3
10	0.00	10.63	3	4A	1
10	10.63	19.70	3	6A	1
10	19.70	23.47	3	4A	1
12	0.95	1.01	4	4A	34
12	1.01	10.44	2	4A	31
12	10.44	11.70	4	4A	34
13	0.00	0.43	4	4D	11
13	0.43	0.58	4	4B	10
15	0.00	2.05	4	4C	5
15	2.05	2.29	3	6A	1
15	2.29	2.46	3	8B	1
15	2.46	3.66	3	6A	1
15	3.66	6.35	2	6A	31
15	6.35	6.75	3	6A	1
15	6.75	14.13	1	6A	0
15	14.13	16.70	5	4E	38
15	16.70	18.29	5	4E	41
15	18.20	19.52	4	4E	32
17	0.00	3.35	4	4E	5
17	3.35	3.50	4	4E	2
17	3.50	26.81	3	6A	1
18	5.14	30.85	1	4A	0
18	30.85	34.25	3	4A	1
18	34.25	36.94	3	6A	1
18	36.94	41.75	3	8A	1
18	41.75	42.00	3	6A	1
18	42.00	43.71	1	6A	1
19	0.00	0.70	1	4A	0
19	0.70	2.91	1	6A	0
20	0.00	0.70	3	6A	4
21	0.00	0.91	2	6B	1
21	0.91	4.00	4	6B	4
21	4.00	4.10	3	6A	1
21	4.10	12.45	1	6A	0
22	0.30	0.62	1	6B	0
22	0.62	1.47	3	6N	4
22	1.47	2.00	3	6B	1
22	2.00	4.45	3	4A	1
22	4.45	5.12	1	6A	0
22	19.22	19.39	3	4A	7
22	19.39	20.04	3	4A	7
22	20.04	28.60	3	4A	7
22	28.60	30.63	3	4A	1
22	30.63	30.92	3	4A	1
22	30.92	31.50	3	4A	1
22	31.50	37.10	3	6A	1
22	37.10	41.59	3	5A	1
22	41.59	60.53	3	6A	1
22 A	2.38	3.47	4	4D	5
22 A	3.47	3.56	4	4D	2
22 A	3.56	4.05	4	4D	2
23	0.00	2.06	4	4D	5
23	2.06	3.99	4	4D	2
23	3.99	5.05	4	4D	5
23	5.05	6.30	1	6A	0
23	6.30	17.00	3	6A	1
23	17.00	27.20	2	6A	25
23	27.20	28.78	4	4C	26
23	28.78	41.15	4	4C	29
23	41.15	45.20	4	4C	26
23	45.20	45.21	4	4C	29
23	45.21	45.80	4	4C	29
23	45.80	46.65	4	4C	26
23	46.65	52.53	4	4C	29
24	0.00	7.20	1	4A	0
24	7.20	10.59	1	6A	0
26	0.00	0.70	4	4E	8
26	0.70	2.10	4	4E	11
27	0.00	1.49	5	1A	6
27	1.49	4.00	5	1A	3
27	4.00	6.80	4	2B	3
27	6.80	9.50	4	4F	2
27	9.50	10.20	4	4F	5
27	10.20	11.54	4	4F	2
27	11.54	13.85	4	4F	5
27	13.85	15.37	4	4E	5
27	16.55	18.23	4	4D	5
27	18.23	23.85	4	4F	5
27	23.85	27.18	4	4F	2
27	27.18	35.79	4	4E	2
28	0.00	2.22	4	4D	2
28	2.22	3.00	4	4D	5
28	3.00	3.70	4	2B	5
28	3.70	5.08	4	4D	5
28	5.08	6.80	4	4D	2
28	6.80	12.47	4	4D	5
28	17.50	23.00	5	1A	6
28	23.00	26.63	4	4A	4
29	3.20	6.20	1	4A	0
29	6.20	6.70	3	4A	4
29	6.70	9.55	1	4A	0
29	9.55	13.80	5	2A	9
29	13.80	16.72	5	2A	36
29	16.72	18.10	6	2A	42
29	18.10	18.60	6	4C	41
29	18.60	19.60	5	2A	42
29	19.60	20.30	6	4C	41
29	20.30	23.36	6	2A	42
29	23.36	34.26	6	1A	39
30	0.96	1.20	3	6A	4
30	1.20	3.15	3	8B	1
30	3.15	3.32	3	8B	4
30	3.32	4.26	3	8A	1
30	4.26	6.40	4	4E	2
30	6.40	7.95	3	6A	4
30	7.95	12.70	3	4A	1
30	12.70	16.30	3	4A	7
30	16.30	17.05	3	4B	10
30	17.05	18.00	3	4B	7
30	18.00	21.60	3	4A	7
30	21.60	27.97	2	4A	31
30	27.97	32.60	4	4G	2

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30	32.60	35.10	4	4G	32
30	35.10	40.35	3	4A	32
30	40.35	42.10	4	4A	34
30	42.10	46.00	4	4G	32
30	46.00	52.09	4	4G	2
30	52.09	52.20	4	4G	2
30	52.39	52.42	4	4G	2
30	52.42	53.45	3	4A	1
30	53.45	54.39	2	4A	25
30	54.39	55.42	2	6B	25
30	55.42	56.75	2	8B	25
30	56.75	56.79	3	8B	28
30	56.79	57.47	3	8B	4
30	57.47	58.23	3	6C	4
31	1.15	3.82	4	4C	5
31	3.82	4.30	4	4C	2
31	4.30	4.70	4	4F	2
31	4.70	6.34	3	4A	1
31	6.34	7.19	3	4A	28
31	7.19	8.08	4	4C	29
31	8.08	12.37	4	4C	26
31	12.37	16.26	3	4A	25
31	21.95	22.10	2	4A	25
31	22.10	24.40	3	4A	28
31	24.40	30.26	2	4A	25
31	30.26	34.24	3	4A	1
31	34.24	42.12	2	4A	25
31	42.12	43.56	3	4A	28
31	43.56	46.12	2	4A	25
31	46.12	49.00	3	4A	28
32	0.00	1.18	3	4A	7
33	0.00	0.20	4	4D	5
33	1.46	2.30	4	4D	5
33	2.30	5.50	4	4C	5
33	5.50	7.86	4	4C	2
33	12.39	12.70	3	6A	1
33	12.70	13.38	4	2B	1
33	13.38	13.68	4	4C	2
33	13.68	14.70	4	2C	6
33	14.70	14.77	4	4D	2
33	14.77	15.01	3	6B	1
33	15.01	18.90	3	6A	1
33	18.90	24.32	2	6A	25
33	24.32	29.30	1	4A	0
33	29.35	29.74	4	4E	2
33	29.74	29.91	4	4E	26
33	29.91	33.04	4	4C	32
33	33.04	33.25	2	4A	25
33	33.25	36.49	3	4A	1
33	36.49	36.65	3	4A	1
33	36.65	38.30	3	4A	1
33	38.30	40.28	4	4C	2
33	40.28	40.63	1	6A	0
33	40.63	41.82	4	4C	5
33	41.82	42.46	4	4C	11
33 B	0.00	0.60	1	2D	7
33 B	0.60	2.24	4	4C	8
33 B	2.24	2.57	3	6A	4
33 B	2.57	3.36	5	4D	17
33 B	3.36	3.86	4	4E	11
33 B	3.86	4.35	5	4C	14
33 B	4.35	5.03	5	4C	17
34	0.00	0.33	3	4A	1
34	0.33	7.70	3	4A	7
34	8.75	12.60	2	4A	31
34	12.60	20.44	4	4C	32
34	20.44	21.20	4	4C	2
34	21.20	22.56	4	4C	5
34	22.56	26.79	4	4C	2
35	0.00	0.26	4	4B	34
35	0.26	0.58	5	2A	36
35	0.58	1.44	4	4A	34
35	1.44	2.07	4	6A	34
35	2.07	2.32	4	6B	34
35	2.32	2.48	4	8B	34
35	2.48	3.51	1	6A	0
35	3.51	3.65	3	6B	28
35	3.65	3.77	3	4B	28
35	3.77	7.29	3	4A	28
35	7.29	9.12	4	4A	28
35	9.12	12.76	4	4E	29
35	12.76	13.00	4	4E	5
35	13.00	14.55	4	4A	4
35	14.55	16.04	3	4A	4
35	16.04	20.10	4	4F	2
35	20.10	20.56	3	4A	1
35	20.56	21.05	3	4A	4
35	21.05	21.39	4	4D	5
35	21.39	22.30	3	6A	4
35	22.30	24.61	4	4C	5
35	24.61	24.94	3	4A	1
35	24.94	29.50	3	6A	1
35	29.50	31.20	4	4F	5
35	31.20	33.15	4	4C	5
35	33.15	34.37	4	4E	5
35	34.37	35.80	3	4A	1
35	35.80	43.91	3	6A	1
35	43.91	44.62	3	6B	1
35	44.62	49.52	3	6A	1
35	50.79	51.00	1	6A	0
35	51.00	52.32	4	4E	5
35	52.32	53.35	4	4F	5
35	53.35	54.87	4	4C	2
35	54.87	58.06	4	4C	5
36	0.00	4.00	3	6A	1
36	4.00	5.72	4	4D	5
36	5.72	6.55	3	4A	4
36	6.55	6.71	4	4C	2
36	6.71	9.74	4	4C	29
36	9.74	11.60	4	4C	2
36	11.60	11.80	4	4D	2
36	11.80	13.00	3	5A	1
36	13.00	19.52	3	4A	1
36	19.52	24.18	3	6A	1
36	24.18	24.40	3	4A	1
37	0.00	1.53	3	4A	7
37	1.53	2.90	3	4A	1
37	2.90	6.02	3	6A	1
37	6.02	6.50	3	4A	1
37	6.50	6.75	3	8A	1
37	6.75	11.45	3	6A	01
37	11.45	12.39	1	6A	0
37	12.39	13.42	2	6A	25
38	0.00	12.00	3	6A	1
38	12.00	15.40	3	4A	1
38	15.40	16.80	3	4A	4
38	16.80	17.38	4	4A	1
38	17.38	18.31	2	4C	25
38	18.31	19.23	4	4C	32
40	1.85	5.47	2	4A	31
40	5.47	8.03	4	4C	32
40	8.03	8.55	4	4C	35
40	8.55	10.02	4	4C	32
40	10.02	10.21	4	4D	35
40	10.21	10.40	4	4D	8
40	10.40	11.20	4	4D	11
40	11.20	11.25	4	4D	35
40	11.25	11.66	4	4C	35
40	11.66	19.54	4	4C	32
40	19.54	20.27	4	4C	35
40	20.27	25.25	4	4C	32
40	25.50	25.73	4	4C	8
40	25.73	26.30	4	4C	2
40	26.30	26.42	4	4C	2
40	26.42	26.60	4	4C	5
40	26.60	27.37	4	4C	5
40	27.37	29.10	4	4C	2
40	29.10	29.27	4	4C	26
40	29.27	32.55	4	4C	32
40	32.55	33.79	3	4A	1

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40	33.79	34.40	3	4A	4
40	34.40	35.21	3	4A	1
40	35.21	44.95	2	4A	31
40	44.95	45.63	3	4A	34
40	45.63	46.25	2	4A	31
40	46.25	47.48	4	4C	35
40	47.48	53.15	2	4A	31
40	53.15	53.85	2	6A	31
40	53.85	56.79	3	6A	1
40	56.79	59.00	3	4A	1
40	59.00	59.72	3	4A	4
40	59.72	59.98	4	4F	5
40	59.98	60.23	3	4A	4
40	60.23	60.37	3	4A	28
40	60.37	61.63	4	4F	29
40	61.63	61.65	4	4F	26
40	61.65	63.38	2	4A	25
40	63.38	63.57	3	4A	1
40	63.57	63.97	4	4F	5
40	63.97	64.07	4	4C	5
41	0.00	2.32	4	4D	8
41	2.32	3.00	4	4C	8
41	3.00	3.86	4	4F	8
41	3.86	3.91	4	4F	11
41	3.91	4.94	4	4C	5
41	10.68	11.95	4	4F	5
41	11.95	13.02	4	4F	2
41	13.02	13.98	3	5A	1
42	0.00	6.40	3	6A	1
42	6.40	14.28	1	8A	0
44	0.00	1.28	6	2A	51
44	1.28	2.60	6	2A	39
44	2.60	6.28	5	2A	12
44	6.28	8.40	5	2A	9
44	8.40	9.10	5	2A	12
44	9.10	9.60	5	2A	9
45	0.00	0.42	4	4E	29
45	0.42	2.32	4	4E	35
45	2.32	8.79	4	4E	32
45	8.79	9.23	4	4E	34
45	9.23	10.14	4	4D	11
45	10.14	10.45	4	4E	8
45	10.45	16.98	4	4E	32
45	16.98	17.32	4	4E	35
45	17.32	17.77	4	4D	35
45	18.16	18.35	4	4E	35
45	18.35	20.24	4	4E	32
45	20.24	20.88	4	4E	26
45	20.88	20.96	4	4E	29
45	29.96	22.13	4	4E	2
45	22.13	22.53	4	4E	5
45	22.53	22.59	3	4A	4
45	22.59	24.82	3	4A	1
45	24.82	24.90	3	4A	4
45	24.90	26.90	5	4D	5
45	26.90	28.51	4	4D	2
46	0.00	0.85	1	4A	0
46	0.85	6.86	4	2A	27
46	6.86	7.45	4	4A	25
46	7.45	9.63	4	4C	26
46	9.63	10.05	4	4C	29
46	10.05	10.12	4	4C	35
46	10.12	15.82	4	4C	32
46	15.82	20.63	4	4C	35
46	20.63	21.82	4	4D	29
46	21.82	22.40	4	4B	34
46	22.40	22.48	4	4A	34
46	22.48	24.58	4	4A	31
46	24.58	25.50	2	4A	31
46	25.50	27.12	2	4A	25
46	27.12	28.42	3	4A	28
46	28.42	29.60	2	4A	25
46	29.60	30.43	3	4A	28
46	30.43	31.52	2	4A	25
46	31.52	33.30	2	4A	1
46	33.30	33.45	3	4A	1
46	33.45	34.25	4	4C	2
46	34.25	35.10	4	4C	5
46	35.10	35.38	4	4C	2
46	35.38	36.05	3	4A	1
46	36.05	36.58	3	4A	4
46	36.58	37.22	3	4A	1
46	37.22	42.38	3	4A	4
46	42.38	42.50	3	6B	4
46	42.50	43.18	3	6A	4
46	43.18	61.60	3	6A	1
46	61.60	62.26	3	6A	4
46	62.26	68.28	3	6A	1
46	68.28	69.00	3	8A	1
46	69.00	69.18	3	6A	1
46	69.18	69.38	4	4F	2
46	69.38	70.08	4	4F	5
46	70.08	70.40	1	4D	0
46	70.40	70.73	3	6A	4
46	70.73	71.55	3	8B	1
46	71.55	72.15	3	6B	1
47	0.66	1.16	4	4A	40
47	1.16	3.18	4	4A	37
47	3.18	3.73	4	4D	41
47	3.73	3.90	4	4D	35
47	3.90	4.32	4	4C	35
47	4.32	6.10	4	4C	32
47	6.10	7.00	4	4C	35
47	7.00	17.43	4	4C	32
47	17.43	17.63	2	4B	31
47	17.63	25.60	4	4C	32
47	25.60	26.62	4	4C	35
47	26.62	33.12	4	4C	32
47	33.12	34.12	4	4C	35
47	34.12	34.80	4	4C	32
47	34.80	36.08	6	2A	39
47	36.08	36.73	5	2A	33
47	36.73	38.50	4	2A	9
47	38.50	40.80	4	2C	12
47	40.80	42.20	4	2C	9
47	42.20	45.88	4	4D	8
47	45.88	46.75	4	4D	11
47	46.75	52.03	4	4D	8
47	52.03	52.36	4	4C	11
47	52.82	56.00	4	4C	8
47	56.00	56.78	4	4C	11
47	56.78	58.17	4	4C	8
47	58.17	58.29	4	4C	2
47	58.29	59.80	4	4C	5
47	59.80	61.96	4	4C	2
47	61.96	62.29	4	4C	5
47	62.66	63.15	4	4D	5
47	63.15	64.12	4	4C	2
47	64.12	74.00	4	4C	8
47	74.00	74.98	4	4C	11
48	0.00	0.61	4	4C	11
48	0.61	0.66	4	4C	8
48	0.66	2.10	4	4C	32
48	2.10	4.26	6	2A	39
49	0.00	0.70	4	4C	2
49	0.70	3.00	4	4C	5
49	3.00	6.29	4	4C	2
49	6.29	8.30	4	4C	32
49	8.30	10.10	4	4C	29
49	10.10	11.00	4	4C	35
49	11.00	12.30	4	4C	32
49	12.30	12.88	4	4C	35
49	12.88	21.10	4	4C	32
49	21.10	21.62	4	4D	35
49	21.62	22.10	4	4D	32
49	22.10	23.13	4	4C	32
49	23.13	24.50	4	4C	2
49	24.50	26.25	4	4C	5
49	26.25	26.50	3	4B	4
49	26.50	26.60	4	4C	5

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49	26.60	27.20	4	4C	2	70	20.10	26.10	4	4C	32
49	27.20	29.84	4	4C	8	70	26.10	26.50	2	4C	31
49	29.84	30.80	4	4C	32	70	26.50	43.25	4	4C	32
49	30.80	31.45	4	4C	26	70	43.25	43.45	4	4C	35
49	31.45	35.03	4	4C	2	70	43.45	44.80	3	4A	34
49	35.03	36.10	4	4C	5	70	44.80	48.58	3	4A	7
49	36.10	37.37	4	4D	5	70	48.58	59.84	3	4A	1
49	37.37	38.10	4	4D	2	71	0.00	0.61	6	2A	18
49	38.10	38.37	4	4C	2	71	0.61	7.40	5	4D	17
49	38.87	40.80	4	4C	26	71	7.40	9.40	5	4E	17
49	40.80	53.78	4	4C	32	71	9.40	10.48	5	4D	17
50	0.00	0.24	3	4B	34	71	10.48	11.64	4	4A	16
50	0.24	6.18	4	4C	32	71	11.64	12.53	4	2B	17
50	6.18	7.03	4	4C	35	71	12.53	13.77	4	2C	17
50	7.03	7.15	4	4C	32	71	13.77	15.71	4	4D	11
50	7.15	18.56	4	4C	32	71	15.71	16.76	4	4C	11
50	19.18	19.67	4	4C	35	72	0.00	5.96	4	4E	32
50	19.67	20.91	4	4C	32	72	5.96	11.47	4	4C	32
50	20.91	21.20	1	4A	0	72	11.47	13.70	4	4E	32
50	21.20	23.50	4	4C	32	72	13.70	18.06	2	4A	31
50	23.50	24.20	2	4A	31	72	18.06	26.32	3	4A	7
50	24.20	25.53	4	4C	32	72	26.32	27.18	2	4A	31
50	25.53	26.08	4	4C	35	72	27.18	27.40	2	5A	31
52	0.00	1.96	4	4E	29	72	27.40	27.55	2	6A	31
52	1.96	2.74	4	4E	5	72	27.55	28.18	2	4A	31
53	0.00	1.55	4	2B	8	72	28.18	28.72	3	5A	34
53	1.55	2.35	4	4C	8	73	6.00	10.89	2	6A	31
53	2.35	3.32	4	4C	11	73	10.89	12.70	3	6A	1
53	3.32	4.66	4	4E	11	73	12.70	14.46	2	6A	31
54	0.00	1.11	4	4C	2	73	14.46	32.00	3	6A	1
54	1.11	8.20	4	4C	32	73	32.00	32.35	3	8A	1
54	8.20	8.46	4	4C	2	73	32.35	34.10	3	6A	1
54	8.46	9.12	3	4A	1	76	0.00	1.85	1	1A	0
54	9.12	9.98	4	4C	2	77	0.00	2.19	4	4D	5
54	9.98	11.88	4	4C	5	77	2.70	3.90	4	2A	3
55 F	20.00	60.53	1	4A	0	77	3.90	5.06	5	1A	9
56	0.00	0.17	4	4D	8	77	5.06	7.18	5	2A	33
56	0.17	1.60	5	4D	14	77	7.18	8.05	5	2A	36
56	1.60	2.00	5	4D	38	77	9.81	22.18	5	2A	33
56	2.00	7.50	6	2A	39	78	4.16	17.85	1	6A	0
56	7.50	7.84	3	4B	7	78	17.85	19.22	1	8A	0
56	7.84	9.23	4	4D	11	78	19.22	29.85	1	6A	0
57	0.00	0.55	4	4C	26	78	29.85	33.13	1	8A	0
57	0.55	2.20	4	4C	32	78	33.13	48.54	1	6A	0
57	2.20	2.80	4	4C	35	78	48.54	58.50	1	1A	0
57	2.80	4.38	4	4C	32	79	0.00	0.35	4	4F	11
57	4.38	5.28	4	4C	35	79	0.35	0.57	4	2B	12
57	5.28	6.40	4	4C	32	79	0.57	1.75	4	2C	18
57	6.40	9.10	4	4C	35	79	1.75	2.50	5	4D	17
57	9.10	9.78	4	2B	33	79	2.50	3.90	5	4D	14
57	9.78	9.81	4	2B	27	79	3.90	4.81	5	4C	14
57	9.81	11.60	4	2B	30	79	4.81	5.08	4	4A	13
57	11.60	11.80	4	2B	36	79	5.08	5.33	4	4A	7
57	11.80	11.90	4	2B	33	79	5.33	5.38	4	4A	10
57	11.90	14.44	4	2C	32	79	5.38	5.79	4	4C	11
57	14.44	15.23	4	2B	33	79	5.79	9.38	4	4C	8
57	15.23	18.60	4	4C	32	79	9.38	10.18	4	4C	11
57	18.60	19.55	4	4C	35	79	10.18	10.95	4	4C	8
57	19.55	20.53	4	4C	32	79	10.95	11.38	4	4C	11
57	20.53	21.10	4	4D	29	79	11.38	12.13	4	4D	11
59	0.00	0.15	4	4B	22	80	0.50	42.10	1	8A	0
63	0.00	0.06	3	4A	4	80	42.10	42.90	1	8C	0
63	0.06	3.00	4	2B	6	80	42.90	43.90	1	8A	0
63	3.00	3.09	3	4A	4	80	43.90	46.13	1	1A	0
64	0.00	0.33	3	4B	4	80	46.13	62.50	1	8A	0
66	0.00	0.40	3	4A	10	80	62.50	63.35	1	1A	0
66	0.40	3.62	3	4A	7	81	0.51	1.18	3	5A	1
67	0.00	1.86	4	4E	11	82	0.00	2.65	4	4E	5
68	0.00	0.60	2	4A	1	82	2.65	3.35	4	4E	2
68	0.60	1.07	3	4A	1	82	3.35	4.25	4	4E	5
68	1.07	7.66	2	4A	31	82	4.25	4.93	4	4E	2
68	7.66	8.02	3	4A	7	83	0.00	0.24	2	4B	31
70	0.00	8.50	3	6A	1	83	0.24	3.84	2	4A	31
70	8.50	14.83	3	4A	1	87	0.00	0.57	3	8A	7
70	14.83	20.10	2	4A	31	87	0.57	0.80	3	6A	7

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87	0.80	1.72	3	4A	7	147	3.30	4.20	4	4D	41
88	0.00	0.30	4	2B	12	152	0.00	0.17	4	4D	5
88	0.30	5.21	4	2C	12	152	0.17	1.58	4	4D	2
88	5.21	8.60	4	2C	6	152	1.58	1.72	4	4D	5
88	8.60	8.96	5	4D	5	152	1.72	3.16	4	4D	2
88	8.96	9.64	4	2C	6	154	0.00	0.30	4	4C	11
88	9.64	10.02	3	4B	4	154	0.30	1.70	4	4C	8
90	2.35	3.20	3	8A	1	156	0.00	1.21	5	2A	12
91	0.00	1.30	4	4C	8	157	0.00	0.43	5	2A	6
91	1.30	2.31	4	4C	11	157	0.43	0.91	4	2A	3
93	0.00	3.52	5	2A	12	159	0.00	0.45	3	4A	1
94	0.20	0.72	4	4D	35	159	0.45	0.56	3	4A	4
94	0.72	2.55	4	4C	32	159	0.56	1.36	4	4E	11
94	2.55	3.36	4	4C	35	161	0.00	1.10	4	2B	12
94	3.36	3.91	4	4C	32	162	0.00	0.73	6	2A	39
94	3.91	9.33	4	4C	35	163	0.00	0.33	6	2A	51
94	9.33	11.82	4	4C	32	165	0.00	0.10	4	4A	40
94	11.82	12.60	4	4D	35	165	0.10	0.26	5	4D	41
94	12.60	14.80	4	4C	35	166	0.00	1.86	4	2C	6
94	14.80	21.25	4	4C	32	166	1.86	1.98	4	4D	5
94	21.35	21.55	4	4D	2	166	1.98	2.23	4	2C	6
94	21.55	22.51	4	4D	5	166	2.23	3.75	4	2C	3
94	24.89	27.68	4	4C	35	167	0.00	0.62	6	2A	54
94	27.95	32.90	4	4C	35	167	0.95	1.49	6	2A	51
94	32.90	35.15	4	4C	32	167	1.52	1.66	6	2A	51
94	35.15	45.76	4	4C	35	167	1.67	2.78	6	2A	51
95	0.00	8.77	1	6A	0	168	0.00	0.78	3	4A	1
109	1.37	1.95	4	4C	35	168	0.78	1.20	4	4C	2
109	1.95	2.50	4	4A	34	168	1.20	2.65	4	2C	6
109	2.50	3.06	4	4C	35	168	2.65	4.73	4	2C	3
120	0.00	0.95	2	6A	25	168	4.73	7.38	4	2C	6
120	0.95	2.65	3	6A	28	168	7.38	8.72	4	4C	5
124	0.00	0.40	5	4E	5	168	8.72	9.79	3	4A	1
124	0.40	1.50	5	4D	5	168	9.79	9.92	3	4B	4
124	1.50	2.80	4	4D	11	168	9.92	10.81	4	4C	5
124	2.80	4.50	5	2A	12	169	0.85	2.25	3	4A	1
124	4.50	5.90	5	2A	6	169	2.25	4.65	3	4A	4
124	5.90	7.45	4	4D	5	169	4.65	5.73	3	4A	1
124	7.45	9.00	4	4A	19	171	0.00	0.08	2	4A	10
124	9.00	10.03	4	4A	22	171	0.08	1.00	4	4F	23
124	10.03	11.70	4	4E	5	172	0.00	0.35	6	4E	23
124	11.70	12.58	3	4A	4	172	0.35	0.81	3	4A	10
124	12.58	14.84	4	4E	5	173	0.00	0.25	5	2A	33
129	0.00	0.29	4	2A	3	173	0.25	0.35	4	2B	33
129	0.29	2.41	1	4A	0	173	0.35	3.19	4	2B	39
130	0.00	0.65	4	4D	11	173	3.19	4.20	4	2B	45
130	0.65	2.25	4	4D	8	173	4.20	4.50	4	2B	48
130	2.25	4.15	4	4D	11	173	4.50	12.07	4	2B	45
130	4.15	5.28	4	4D	8	173	12.43	12.80	4	2B	45
130	5.28	5.88	6	2A	15	173	12.80	13.50	4	2B	48
130	5.88	8.90	6	2A	39	173	13.50	14.62	4	2B	54
130	8.90	11.70	4	4A	13	175	0.27	1.58	6	2A	21
130	11.70	14.30	1	4A	0	175	1.58	2.15	6	2A	24
130	23.53	25.43	3	4A	1	175	2.15	2.73	6	2A	21
130	25.43	29.40	3	6B	1	175	2.73	2.90	4	4A	19
130	30.34	37.10	3	6B	1	179	0.12	0.37	6	2A	42
130	37.10	45.90	3	6A	1	179	0.37	1.13	5	4D	41
130	45.90	46.65	4	8B	4	179	1.13	1.45	5	4D	38
130	46.65	55.43	3	6A	1	179	1.45	6.13	6	2A	39
130	55.43	55.77	3	6A	4	179	6.13	7.46	6	2A	42
130	55.77	56.43	3	8B	4	181	0.00	1.65	4	4C	35
130	56.43	70.85	3	4A	1	181	1.65	4.40	5	4C	41
130	70.85	80.38	3	4A	7	181	4.40	5.98	4	4C	11
130	80.38	83.37	3	4A	1	181	5.98	7.43	5	4C	38
138	0.00	3.52	3	4A	1	182	0.00	0.98	4	4D	29
139	0.00	1.45	3	8B	1	183	0.00	0.20	2	4B	31
140	0.00	0.48	6	2A	18	183	0.20	0.43	2	4A	25
140	0.48	0.95	5	2A	12	183	0.43	0.58	3	4A	28
143	0.00	1.00	6	2A	48	183	0.58	2.12	5	2B	30
143	1.00	1.93	6	2A	45	184	0.00	0.32	3	6A	10
143	1.93	2.27	6	2A	48	184	0.32	1.37	3	4A	10
143	2.27	2.35	6	2A	45	185	0.00	1.42	3	4A	4
147	0.00	0.80	4	4D	35	187	0.00	0.47	4	4E	8
147	0.80	1.63	3	4D	32	195	0.00	34.17	1	4A	0
147	1.63	3.30	4	4D	35	202	0.37	19.04	2	4A	25

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202	19.04	26.25	3	4A	1
202	26.25	29.00	4	4F	2
202	29.00	29.55	3	4A	1
202	29.55	29.69	3	4A	4
202	29.69	30.02	3	4B	4
202	30.02	31.12	3	4A	1
202	31.12	31.50	2	4A	25
202	31.50	31.80	3	4A	28
202	31.80	32.17	4	2C	35
202	32.17	32.56	4	2C	35
202	32.56	32.77	5	2A	36
202	32.77	32.95	6	2A	42
202	32.95	34.10	6	2A	39
202	34.10	35.80	5	2A	33
202	35.80	36.20	5	2A	9
202	36.20	36.40	5	2A	12
202	36.40	37.85	4	2B	12
202	37.85	39.06	4	4C	8
202	39.06	39.30	5	2A	9
202	39.30	41.03	6	2A	42
202	41.03	42.31	6	2A	39
202	42.31	42.67	5	2A	9
202	42.67	43.90	5	2A	12
202	43.90	45.30	5	4E	11
202	45.30	45.70	5	4C	11
202	45.70	46.31	4	4E	11
202	46.31	47.00	4	4D	11
202	50.03	50.70	3	4B	1
202	51.43	51.87	4	2C	5
202	62.99	64.32	3	6A	1
202	65.32	65.68	5	2A	6
202	72.44	72.66	4	4D	5
206	0.00	0.10	3	4A	1
206	0.10	2.33	4	4F	2
206	2.33	6.27	4	4C	2
206	6.27	9.00	4	4C	26
206	9.00	23.30	4	4C	32
206	23.30	23.70	4	4F	32
206	23.70	30.36	4	4C	32
206	30.36	31.28	2	4A	31
206	31.28	33.26	4	4C	32
206	33.26	33.40	4	4C	8
206	33.40	34.00	3	4A	7
206	34.00	35.50	3	4A	1
206	35.50	35.61	3	4A	4
206	36.27	38.49	3	4A	1
206	38.49	38.90	3	6A	1
206	38.90	39.00	3	6A	4
206	39.00	40.73	3	4A	4
206	44.50	45.01	6	4A	23
206	45.01	46.62	4	4C	5
206	46.62	47.90	4	4C	29
206	47.90	48.50	1	2A	0
206	48.50	49.80	5	1A	30
206	59.80	52.38	4	2C	29
206	52.38	52.90	4	2C	2
206	52.90	54.25	4	1A	3
206	54.25	54.50	4	1A	5
206	54.50	55.77	4	2C	5
206	55.77	55.80	4	2C	2
206	55.80	57.20	4	2C	35
206	57.20	57.38	4	2B	11
206	57.38	57.90	4	2B	8
206	57.90	58.24	3	4A	1
206	58.24	62.69	2	4A	25
206	62.29	68.90	3	4A	1
206	68.90	71.25	3	6A	1
206	78.32	79.25	2	4A	25
206	79.25	89.49	2	4A	31
206	89.49	95.61	2	4A	25
206	97.01	97.51	2	4A	25
206	97.51	97.80	2	4A	31
206	97.80	98.40	2	4A	25
206	98.40	99.23	3	4A	28
206	99.23	102.72	2	4A	31
206	102.72	103.35	4	4A	34
206	103.35	104.50	4	2C	35
206	104.50	107.18	2	4A	31
206	107.18	107.48	3	4A	34
206	107.48	108.18	3	4A	1
206	108.18	109.93	4	2B	6
206	109.93	111.10	4	4C	35
206	111.10	114.10	2	4A	31
206	114.10	116.28	3	4A	34
206	116.28	128.20	2	4A	31
206	128.20	129.22	3	4A	34
208	0.00	11.02	3	6A	1
278	0.00	0.90	1	6A	0
280	0.00	7.66	1	6A	0
280	7.66	12.50	1	8A	0
280	12.50	13.28	1	1A	0
280	13.28	16.80	1	6A	0
284	0.00	0.63	5	2A	36
284	0.63	7.03	5	2A	33
287	0.00	0.73	1	1A	0
287	0.73	17.82	1	8A	0
287	17.82	21.20	1	1A	0
287	21.20	42.10	1	8A	0
287	42.10	60.00	1	6A	0
287	60.00	67.54	1	4A	0
295	0.95	26.40	1	6A	0
295	26.40	27.00	1	8A	0
295	27.00	42.90	1	6A	0
295	42.90	44.78	1	8A	0
295	44.78	68.06	1	6A	0
322	2.24	6.30	2	4A	31
322	6.30	10.85	4	4D	39
322	10.85	11.53	4	4D	35
322	11.53	14.41	4	4C	32
322	14.41	16.10	4	4C	35
322	16.10	16.75	4	4D	2
322	16.75	18.55	4	4D	5
322	18.55	19.50	4	4D	2
322	19.50	23.05	4	4C	11
322	23.05	24.10	4	4C	2
322	24.10	24.50	4	4C	5
322	24.50	26.85	4	4C	2
322	26.85	32.90	4	4C	32
322	32.90	48.70	2	4A	31
322	48.70	50.10	2	6A	31
324	0.90	1.51	6	2A	51
439	0.00	3.94	4	4E	5
440	0.00	3.10	1	6A	0
440	3.10	3.98	1	6C	0
440	17.60	23.28	3	6A	1
495	0.80	1.97	1	6A	0
524	0.45	0.90	4	4B	13
676	0.00	3.79	1	6A	0

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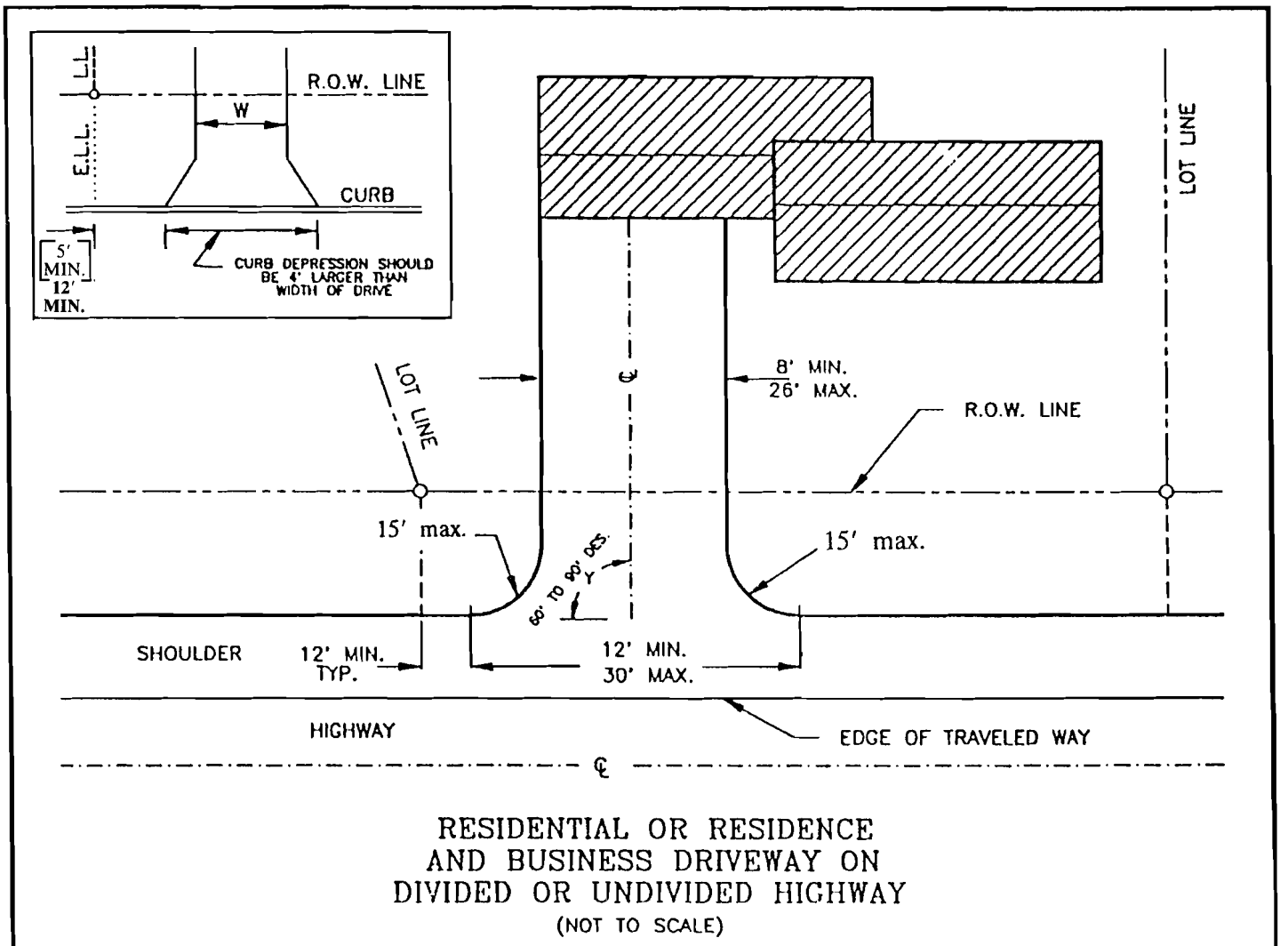

RESIDENTIAL OR RESIDENCE
AND BUSINESS DRIVEWAY ON
DIVIDED OR UNDIVIDED HIGHWAY
(NOT TO SCALE)

8924-15

FIGURE C-3

APPENDIX E
ACCESS APPLICATION THRESHOLDS

Category	Land Use Code	Use	Unit	For Major† 500 Trips Per Day	For Major With Planning 200 Peak Hour Trips
...					
Food	...				
	833	Fast Food Restaurant w/o	1,000 sf	0.6	1.9
	834	w/drive through	1,000 sf	0.7	[3.3] 2.9

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

General Provisions

Proposed Readoption: N.J.A.C. 19:40

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

Authority: N.J.S.A. 5:12-54, 60, 63c, 69a and 74; N.J.S.A. 52:14B-3.

Proposal Number: PRN 1994-365.

Submit written comments by July 20, 1994 to:
Mary S. LaMantia, Senior Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 19:40 (General Provisions) is scheduled to expire on August 24, 1994. (Note, however, that N.J.A.C. 19:40-6, Disability Discrimination Grievance Procedure, is exempt from Executive Order No. 66). The Casino Control Commission

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(Commission) has reviewed these rules and determined that the chapter is necessary, reasonable and proper for the purposes for which it was originally promulgated.

The rules in N.J.A.C. 19:40 provide a description of the Commission's organization and its operations and procedures. The rules also set forth the methods whereby the public may obtain information from the Commission or file submissions or requests, as mandated by the Administrative Procedure Act at N.J.S.A. 52:14B-3.

The chapter was originally adopted by the Casino Control Commission ("Commission") in 1977 (9 N.J.R. 547(a)), and was readopted in 1984 with amendments (16 N.J.R. 2259(a), 16 N.J.R. 2832(a)). The readopted chapter was updated to conform to amendments to the Casino Control Act, N.J.S.A. 5:12-1 et seq., as well as to reflect changes in Commission procedures and, consistent with the relevant caselaw, to eliminate rules concerning child labor violations. A new subchapter of rules concerning the receipt, review and maintenance of confidential information was adopted in 1983. 15 N.J.R. 238(a), 15 N.J.R. 1604(c).

In 1989, the Commission again readopted N.J.A.C. 19:40 with amendments that substantially reorganized and updated the rules therein. 21 N.J.R. 1975(b), 21 N.J.R. 3022(b). The readopted chapter set forth a new subchapter 1 limited to the topic of construction and application of Commission rules, including a new rule regarding temporary rulemaking experiments pursuant to N.J.S.A. 5:12-69e. Rules concerning the organization and operation of the Commission were recodified into subchapter 2. Likewise, both new and recodified rules concerning information and filings were set forth in a new subchapter 3, and rules regarding confidentiality and professional practice were updated, clarified and recodified into subchapters 4 and 5, respectively.

The Commission has continued to review and update chapter 40 since the 1989 readoption. Amendments to the definitions in N.J.A.C. 19:40-1.2 reflect statutory amendments, such as a revised definition of "gaming day" (23 N.J.R. 3243(a), 24 N.J.R. 858(c)), new "authorized games" such as red dog, pai gow and sic bo (24 N.J.R. 3223(a), 24 N.J.R. 4417(a)), and new terminology related to the implementation of casino simulcasting (24 N.J.R. 3695(a), 25 N.J.R. 348(b)). A number of other amendments were necessary to conform to organizational changes within the Commission. See, e.g., 22 N.J.R. 3763(a).

New rule N.J.A.C. 19:40-2.5 was adopted in 1992 to codify standards and procedures for the delegation of authority to the Commission staff. 24 N.J.R. 2348(a), 24 N.J.R. 3737(b). New rule N.J.A.C. 19:40-2.6, adopted in 1993, addresses the post-employment restriction imposed by the Act on employees of the Commission and the Division of Gaming Enforcement. 25 N.J.R. 1501(a), 25 N.J.R. 2702(a). A new subchapter 6 was added in 1993 to set forth internal grievance procedures pursuant to the Americans with Disabilities Act, 42 U.S.C. 12101 et seq. See 25 N.J.R. 1503(a), 25 N.J.R. 5519(a).

The Commission continues to review and update N.J.A.C. 19:40 as part of its regulatory review process. For example, the Commission recently proposed amendments to subchapter 4 regarding standards and procedures for the identification and handling of confidential information in the possession of the Commission and the Division. 26 N.J.R. 1434(b). In light of this ongoing review, the chapter is proposed for readoption at this time without amendment.

Social Impact

The rules in N.J.A.C. 19:40 have served an essential purpose in providing basic information as to Commission organization, operations and procedures. The chapter also sets forth standards and definitions necessary for the construction and application of all rules in Title 19. Further, the chapter states the agency's method of operation and the manner in which the public may obtain information and file applications, requests and submissions, which rules are mandated by N.J.S.A. 52:14B-4(b). If N.J.A.C. 19:40 were allowed to expire, licensees, applicants, petitioners and those seeking general information regarding Commission business would lose an essential source of information regarding Commission standards and procedures.

Economic Impact

For the most part, N.J.A.C. 19:40 serves an informational purpose and thus has not had, and is not expected to have, any substantial economic impact. See, for example, N.J.A.C. 19:40-2, 19:40-3.

The procedural standards set forth in the chapter necessarily involve some time and expense for petitioners in preparing the requisite submissions and in complying with the applicable filing requirements. (For example, N.J.A.C. 19:40-3.6, Petitions for Rulemaking; 19:40-2.6, Post-employment restrictions). The regulatory agencies have also devoted staff time and resources to implementing these procedural standards. See, for example, N.J.A.C. 19:40-4, Confidential Information; N.J.A.C. 19:40-6, Disability Discrimination Grievance Procedures. Accordingly, readoption of these procedural standards would result in continued costs of compliance for both the regulatory agencies and the regulated public. However, expiration of these rules would leave the Commission without the administrative standards and procedures necessary to the everyday functioning of any administrative agency.

Regulatory Flexibility Analysis

N.J.A.C. 19:40 provides information to licensees, applicants and other interested persons regarding the organization and operations of the Commission. As such, the chapter for the most part does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The chapter does include standards and procedures that would apply to any person or entity filing a petition or submission with, or seeking information from, the Commission. It is possible that a small business, for example, a casino service industry licensee, would fall within this category of persons and thus incur some costs of compliance. However, the time and expense involved in conforming to these procedural requirements would be minimal. No professional services or initial capital costs would be involved. Moreover, the enforcement of uniform, consistently applied standards and procedures ensures the efficient operation of the agency and procedural fairness for all applicants and licensees. It would thus not be feasible to exempt small businesses from these rules or to adopt different procedural standards for small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:40.

(a)

CASINO CONTROL COMMISSION

Applications
Identification

Proposed Amendment: N.J.A.C. 19:41-7.2A

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

Authority: N.J.S.A. 5:12-69 and 70a.

Proposal Number: PRN 1994-364.

Submit written comments by July 20, 1994 to:
Ruth S. Morgenroth, Counsel
Casino Control Commission
Tennessee Avenue and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

N.J.A.C. 19:41-7.2A addresses the issue of establishing identification for the purpose of applying for any license or registration pursuant to the Casino Control Act (Act) and for the purpose of changing the name on a previously issued license or registration. The proposed amendment to this rule limits the kinds of student identification cards which will be accepted for this purpose.

Identity must be established by the production of certain documents from two separate lists. The first list contains documents of such reliability that only one is required. The second list contains documents of lesser reliability so that two or more documents are required.

A current student identification card with a photograph is one of the documents on the second list. Experience with student identification cards examined since the identification rule became operative on February 1, 1994, has demonstrated that certain of these cards do not contain the minimum information necessary to discourage counterfeiting, namely, a seal or logo of the school, an expiration date and the signature of the card holder. It was also determined that cards containing the card holder's signature are more reliable for identification purposes than cards without a signature. The proposed amendment would require a student identification card to include this information before it will be accepted as an identification document by the Commission.

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Social Impact

The proposed amendment applies to all applicants for any license or registration. The amendment will allow the Commission and the Division of Gaming Enforcement to have increased confidence that the student identification cards presented for identification purposes are current and valid, thus reducing the number of individuals who fraudulently obtain licenses and registrations.

Economic Impact

The proposed amendment is not expected to have any significant economic impact. However, if tightening the Commission's rules reduces the number of individuals who fraudulently obtain licenses and registrations, then the number of contested cases involving individuals who are alleged to have provided false information to gaming regulators will also reduce the number of contested cases, resulting in savings to the Commission and Division.

Regulatory Flexibility Statement

The proposed amendment affects applications by all natural persons, none of which qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:41-7.2A Identification

(a) (No change.)

(b) A natural person may establish his or her identity pursuant to (a) above by providing either:

1. (No change.)

2. Any two of the following authentic documents:

i.-iii. (No change.)

iv. A current student identification card [with] **containing** a photograph**, an expiration date, the seal or logo of the issuing institution, and the signature of the card holder**;

v.-vii. (No change.)

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

(a)

CASINO CONTROL COMMISSION

Simulcasting

Cancellation of Tickets

Proposed Amendments: N.J.A.C. 19:55-2.11 and 4.10

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

Authority: N.J.S.A. 5:12-69(a), 70(j), 193 and 210.

Proposal Number: PRN 1994-230.

Submit written comments by July 20, 1994 to:

E. Dennis Kell
Assistant General Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

Effective March 1, 1994, the New Jersey Racing Commission issued Directive #3-1994, which expands the circumstances under which pari-mutuel tickets may be cancelled at New Jersey racetracks. This proposal, which is being made simultaneously by the Racing Commission pursuant to N.J.S.A. 5:12-210, would similarly amend the cancellation policy as it pertains to casino simulcasting facilities.

The proliferation of simulcasting, in combination with advanced technology, now enables a patron to wager on races at ten or more different racetracks at a given time. As a result, it has become more common for incorrect tickets to be issued due to either patron or casino pari-mutuel cashier error. Currently, except in limited circumstances, such tickets can not be cancelled once a patron has left the window at which they were purchased.

The current strict policy governing the cancellation of tickets evolved to prevent the manipulation of mutuel pools. The expansion of simulcasting and commingled wagering has resulted in larger mutuel pools at sending tracks. As the pools have increased, the potential for such manipulation has decreased and attempts to manipulate have become more readily discernible.

The proposed amendment, would permit the cancellation of any mutuel ticket with a total value of $500.00 or less by a clerk and would also permit a supervisor to cancel any ticket with a higher value if he or she determined, in accordance with the criteria set forth by this Commission, that the cancellation would not significantly alter a mutuel pool. The factors to be considered before approving or disapproving a cancellation request include the size of the mutuel pool; the reason for the requested cancellation; current odds; minutes to post time; and any late changes such as track conditions or jockey (driver) changes. All such requests to cancel a mutuel ticket with a total value over $500.00, whether approved or disapproved, must be reported to this Commission within 48 hours. Based upon early experience with this policy at racetracks, it appears that such requests will be relatively rare.

As under the current regulations, any ticket may be cancelled if a patron has not left the window where the ticket was purchased, or if the ticket is on an advance race or on a wager where the odds or probable payoffs are not displayed.

Social Impact

The proposed amendments should benefit the public by permitting patrons who are issued incorrect tickets and who do not realize the error until they have left the pari-mutuel window to have them cancelled.

Economic Impact

The proposed amendments are expected to have little or no economic impact. While more tickets will be cancelled if the proposal is adopted, patrons who have incorrect tickets cancelled generally then purchase the correct ticket in a similar if not identical amount.

Regulatory Flexibility Statement

The proposed amendments will only affect casino licensees, none of which is a small business as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:55-2.11 Ticket Claims

(a) (No change.)

(b) [Any claim by a patron that he or she has been issued an incorrect ticket shall be made before leaving the pari-mutuel window at which it was purchased. No claim shall be considered thereafter, and no] **No** claim shall be considered for tickets which have been discarded, lost, altered, destroyed or mutilated beyond identification.

(c) (No change.)

19:55-4.10 Cancellation of tickets

(a) Except as provided in this section, no pari-mutuel ticket [on a current race shall be cancelled once a patron has left the pari-mutuel window at which the ticket was purchased] **shall be cancelled.**

(b) A pari-mutuel ticket with a total value of $500.00 or less may be cancelled at any time prior to off-time.

[(b)]**(c)** [Pari-mutuel tickets on wagers such as trifectas where probable pay-offs or odds are not displayed to the public may be cancelled at any time prior to off-time.] **A pari-mutuel ticket of any value may be cancelled prior to the end of the delay period if the patron has not left the pari-mutuel window at which the ticket was purchased or if the patron left the window without paying for or accepting the ticket.**

[(c) Except for pari-mutuel tickets which may be cancelled pursuant to (b) above, no pari-mutuel ticket purchased at a self-service pari-mutuel machine on a current race shall be cancelled.

(d) Pari-mutuel tickets on advance races, whether purchased from a casino pari-mutuel cashier or a self-service pari-mutuel machine, may be cancelled by any casino pari-mutuel cashier until the race immediately preceding the race for which the cancellation has been requested has been declared official.

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(e) A casino pari-mutuel cashier may cancel a pari-mutuel ticket on a current race during the delay period provided the ticket was purchased in the final transaction at the pari-mutuel window before off-time, and further provided that the ticket was incorrectly issued by the cashier or that the patron who ordered the ticket left the pari-mutuel window without paying for or accepting the ticket.

(f) A casino pari-mutuel cashier may cancel any pari-mutuel tickets which a patron requests, but does not pay for, provided the tickets are cancelled prior to sale of any ticket to a subsequent patron.]

(d) A pari-mutuel ticket of any value may be cancelled prior to off-time if the ticket is on a wager (such as trifecta) where probable payoffs or odds are not displayed to the public.

(e) A pari-mutuel ticket of any value may be cancelled if the ticket is on an advance race and the race immediately preceding the race for which the cancellation has been requested has not been declared official.

(f) A pari-mutuel ticket with a total value exceeding $500.000 which is not otherwise cancellable pursuant to this section may be cancelled by a simulcast counter shift supervisor or supervisor thereof at any time prior to off-time if he or she determines that the cancellation will not significantly alter a pari-mutuel pool. The factors to be considered before approving or disapproving a cancellation request include the size of the mutuel pool, the reason for the requested cancellation, current odds, minutes to post time, and any late changes such as track conditions or jockey (driver) changes. Any request to cancel such a ticket shall be reported to the Racing Commission on a form approved by the Racing Commission within 48 hours.

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RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF REGULATORY SERVICES

New Jersey Commercial Fertilizer and Soil Conditioners

Plant Food Nutrient Values

Adopted Amendment: N.J.A.C. 2:69-1.11

Proposed: April 18, 1994 at 26 N.J.R. 1560(a).
Adopted: May 26, 1994 by State Board of Agriculture, Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: May 27, 1994 as R.1994 d.312, **without change**.

Authority: N.J.S.A. 4:9-15.26.

Effective Date: June 20, 1994.
Operative Date: July 1, 1994.
Expiration Date: December 20, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

2:69-1.11 Commercial values
(a) (No change.)
(b) These values shall be effective from July 1, 1994 through June 30, 1995.

BANKING

(b)

DIVISION OF REGULATORY AFFAIRS

Notice of Administrative Correction

General Provisions

Multiple Party Deposit Accounts

Types of Contracts

N.J.A.C. 3:1-12.2

Take notice that the Department of Banking has discovered a typographic error in the text of N.J.A.C. 3:1-12.2(a). The word "contacts" in that subsection was proposed and adopted as "contracts" (see 12 N.J.R. 378(c) and 686(d)). Through this notice, published pursuant to N.J.A.C. 1:30-2.7, this error is corrected.

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

3:1-12.2 Types of contracts
(a) A financial institution may maintain different deposit [contacts] **contracts** for "joint accounts," "P.O.D. accounts," and "trust accounts."
(b)-(c) (No change.)

COMMUNITY AFFAIRS

(c)

DIVISION ON WOMEN

Displaced Homemaker Programs

Eligibility for Grants-in-Aid

Adopted New Rules: N.J.A.C. 5:60

Proposed: April 18, 1994 at 26 N.J.R. 1622(b).
Adopted: May 23, 1994 by Harriet Derman, Commissioner, Department of Community Affairs.
Filed: May 27, 1994 as R.1994 d.311, **without change**.

Authority: N.J.S.A. 52:27D-43.24c.

Effective Date: June 20, 1994.
Expiration Date: June 20, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

CHAPTER 60
DISPLACED HOMEMAKER PROGRAMS

SUBCHAPTER 1. GENERAL PROVISIONS

5:60-1.1 Title
The rules in this chapter may be known and cited as the "Regulations Governing Grants from Displaced Homemaker Trust Fund."

5:60-1.2 Purpose
The purpose of the Displaced Homemaker Trust Fund is to provide a funding source to support programs for displaced homemakers as described in this chapter and as identified by the Division on Women in the Department of Community Affairs pursuant to N.J.S.A. 52:27D-43.20. These rules are intended to govern the disbursement of grants-in-aid from the Displaced Homemaker Trust Fund to such programs.

SUBCHAPTER 2. ELIGIBILITY REQUIREMENTS

5:60-2.1 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 the Department of Community Affairs.
"Director" means the Director of the Division on Women, Department of Community Affairs.
"Division" means the Division on Women, Department of Community Affairs.
"Displaced homemaker" means an individual who has:
1. Not worked in the labor force for a substantial number of years;
2. Has, during the years of not working in the labor force, worked in the home providing unpaid services for family members;
3. Was, during the years of not working in the labor force, dependent upon the income of another family member, but is no longer supported by that income; and
4. Is a person who is:
i. Receiving public assistance because of dependent children in the home, but is within one year of no longer being eligible for that assistance; or
ii. Unemployed or underemployed and experiencing difficulty in obtaining or upgrading employment; or
iii. At least 40 years of age.
"Displaced Homemaker Trust Fund" means a trust fund administered by the Department of Community Affairs, which contains funds from divorce filing fees pursuant to P.L. 1993, c.188.

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5:60-2.2 Qualified existing programs

The Division on Women shall identify qualified existing programs funded as displaced homemaker programs as of January 1, 1994, pursuant to P.L. 1979, c.125.

5:60-2.3 Program requirements

(a) In order to be eligible for funding, programs must provide, at a minimum, the following services:

1. Job counseling;
2. Job training and placement;
3. Health education and counseling;
4. Financial management;
5. Educational services;
6. Legal counseling and referral; and
7. Outreach and information.

SUBCHAPTER 3. PROCEDURAL REQUIREMENTS

5:60-3.1 Procedures for funding

(a) The Division on Women shall initially prepare and distribute a request for proposals (RFP) to sponsors of qualified existing programs as of January 1, 1994 and shall establish a minimum level of funding for those programs. When all qualified existing programs have reached the minimum level of funding, the Division shall issue an open competitive RFP in order to fund new programs, with preference to be given to programs proposed in counties not served by qualified existing programs.

(b) Notice of each RFP shall be published in the New Jersey Register and shall be distributed to all potentially eligible program sponsors known to the Division.

(c) In order to be eligible for consideration, a program sponsor must submit its proposal within the time period indicated in the notice of the RFP in the New Jersey Register.

(d) All proposals shall be reviewed by a committee appointed by the Director of the Division that shall include representatives of the displaced homemaker community and shall reflect the racial, ethnic, regional and economic diversity of the State's population.

(e) Awards shall be set at the discretion of the Commissioner of the Department of Community Affairs, upon the recommendation of the Division on Women and shall not, in the aggregate, exceed the amount of money collected and deposited in the Displaced Homemaker Trust Fund.

(f) The Department of Community Affairs may award a program sponsor an amount different from the amount requested; provided, however, that, to the extent that available funds allow, each qualified existing program shall receive at least the amount established as a minimum by the Division on Women.

(g) New programs established after January 1, 1994 are not designated as "qualified existing programs." The Division on Women shall determine eligibility for new programs to receive the minimum funding amount through utilization of the following criteria:

1. The program must provide services listed in N.J.A.C. 5:60-2.3;
2. Preference will be given to programs located in a county or region where there are no Division on Women Programs;
3. The program must have an institutional or community based host agency to provide support services and facilities; and
4. The program must document the need for its services in the region or community in which it proposes to be located.

(h) Continuation of the minimum level of funding shall be conditioned upon the compliance of qualified existing programs and new programs with the requirements of the Displaced Homemaker Act; regulations promulgated by the Division on Women pursuant to P.L. 1993, c.188; the terms and provisions of the grant agreements to be executed between the Division and the aforementioned programs; and the efficient and effective provision of services to displaced homemakers by such programs.

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Occupancy Requirements Regarding Income

Adopted Amendments: N.J.A.C. 5:80-8

Proposed: January 3, 1994 at 26 N.J.R. 8(a).

Adopted: May 20, 1994 by the New Jersey Housing and Mortgage Finance Agency, Christiana Foglio, Executive Director.

Filed: May 26, 1994 as R.1994 d.300, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 55:14K-5g and 8a.

Effective Date: June 20, 1994.

Expiration Date: April 20, 1995.

Summary of Agency-Initiated Changes:

The Agency made a technical change at N.J.A.C. 5:80-8.1(b) to reflect that the Internal Revenue Code citation had changed. Rather than cite the actual Code section, the Agency feels it would be better to just reference the Internal Revenue Code, in order to eliminate the need to amend the rule whenever the Internal Revenue Code changes. In addition, the term "reenactment" was added, as the Agency believes that the changes to the Internal Revenue Code were done via a reenactment with amendments.

Summary of Public Comments and Agency Responses:

The Agency received comments from Richard Zarin.

COMMENT: Mr. Zarin indicated that the maximum income limits, even as revised, may be too low and that, upon vacancies, the project should be able to exceed the limit to ensure viability of the project. The commenter also suggested that the current provision in the regulation for Special Multiple Family Units be expanded to all projects. (Special Multiple Family Units are those which are located in areas affected by casino gaming. The units are also characterized by being able to accommodate two families by having separate sleeping and bathrooms to accommodate two families.)

The commenter also expressed concern that "increasing the percentage of low and moderate income tenants in an existing project from 15% to 18% and 20% to 23% can put an unnecessary financial burden on these projects . . ." (referencing N.J.A.C. 5:80-8.3).

RESPONSE: The Agency does not recommend any changes to the rules based on the comments received. The maximum income limit under the proposed amendments is the highest limit that the Agency may establish. This limit is set forth in the Agency statute and, accordingly, the Agency does not have the authority to exceed the limit in its regulations. In addition, the Agency does not currently support the expansion of Special Multiple Family Units outside the casino gaming area. The designation of such units was done to address a unique situation arising from the housing shortage created by the casino gaming industry. Should a similar situation arise elsewhere in the State, the Agency would be willing to reconsider the expansion of such unit designation to those areas. The second area referred to by the commenter, N.J.A.C. 5:80-8.3, is not a section for which any changes were proposed. The 18 percent and 23 percent low income unit requirement was established in the regulation when it was first adopted in 1985. These percentages exceeded Tax Code requirements then in effect as a safe harbour. The higher percentages were established to ensure that there would be compliance with the low income requirements under the Tax Code and the Agency maintains the continuation of these percentages is necessary.

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

5:80-8.1 General applicability

(a) The rules within this subchapter shall apply to all Agency financed housing projects except as provided in (b) below.

(b) *[Four]* ***For*** housing projects assisted by subsidies from the United States Department of Housing and Urban Development, or financed with the proceeds of tax exempt bonds pursuant to *[Sec-

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tion 103(b)4 of]* the Internal Revenue Code or financed by a loan which is insured or guaranteed by the United States or any agency thereof or financed or assisted, in whole or in part under any program of the United States (collectively "Federal Programs"), the rules, regulations and/or requirements under the Federal Programs for occupancy requirements regarding income shall be used in addition to or in place of, as appropriate, the rules within this subchapter. Reference to any statutes, State or Federal, shall include any amendments ***or reenactments*** which have been or may be made ***as*** to such statutes.

(c) For purposes of this subchapter, "Family" shall be defined as follows:

1. For projects receiving subsidies under Section 236 or Section 8 Programs, family shall be as defined under the applicable Section 236 or Section 8 rules, regulations or requirements.

2. (No change.)

5:80-8.2 Maximum gross aggregate family income

(a) Admission to Housing Projects shall be limited to families whose gross aggregate family income at the time of admission does not exceed six times the annual rental or carrying charges approved by the Agency except for families with three or more dependents whose incomes may be up to seven times the annual rental or carrying charges. Annual rental or carrying charges shall include the value or cost of heat, light, water, sewerage, parking facilities and cooking fuel which are provided to or incurred by the family in connection with its occupancy of a dwelling. In addition, carrying charges include rent normally associated with rental projects as well as other costs associated with cooperative apartments. There may also be included an amount equal to six percent of the original cash investment of the family in a mutual or cooperative housing project and the value or cost of repainting and replacing any fixtures or appliances.

(b) Notwithstanding (a) above, the Agency, in conjunction with any financing, may impose income limits at levels lower than those set forth above.

5:80-8.4 Special Multiple Family Unit within Housing Projects located in municipalities affected by casino gaming

(a) (No change.)

(b) A Special Multiple Family Unit is a dwelling unit specifically designed to accommodate two or more families as defined in N.J.A.C. 5:80-8.1(c), and which has been so certified by the Agency after adequately meeting the following minimum criteria:

(1)-(3) (No change.)

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

5:80-8.5 Recertification of income

The procedure for calculation and certification of gross aggregate family income in determining a family's eligibility for admission to a housing project as required under this subchapter shall be conducted as set forth in N.J.A.C. 5:80-20.

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Rent Increases for Low and/or Moderate Income Projects without Federal Project-Based Rent Subsidies

Adopted New Rule: N.J.A.C. 5:80-9.13

Proposed: March 7, 1994 at 26 N.J.R. 1188(a).

Adopted: May 20, 1994 by the New Jersey Housing and Mortgage Finance Agency, Christiana Foglio, Executive Director.

Filed: May 26, 1994 as R.1994 d.301, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with proposed new rule N.J.A.C. 5:80-9.15 not being adopted at this time.**

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

Effective Date: June 20, 1994.

Expiration Date: April 20, 1995.

Summary of Agency-Initiated Changes:

The Agency is changing the codification of this adopted new rule from N.J.A.C. 5:80-9.14, as it was proposed, to N.J.A.C. 5:80-9.13. This is due to the fact that, prior to the proposal, the rules at N.J.A.C. 5:80-9 ended at N.J.A.C. 5:80-9.12 and the proposed new rules should have begun with N.J.A.C. 5:80-9.13.

The rule proposed as N.J.A.C. 5:80-9.15 is not being adopted at this time. This is due to the Agency's decision to reconsider some of the substantive provisions of the proposal. The Agency will either adopt the proposal at a later time or republish with changes.

Summary of Public Comments and Agency Responses:

The Agency received comments from the following nine individuals: Beatrice Moretti, Ike Harris, Mary Lanza, Barry Boubacar, Odessa Merriweather, Ester Lee Coward, Mildred Pegran, Mike and Theresa Ognewchuk, and Ronald S. Ladell, Esq. The first six of the commenters listed above reside in projects not affected by the amendments (A Notice to Tenants was posted at all projects to be affected by the proposed rules. However, the Notice was also inadvertently posted at several projects **not** affected by the amendments, which accounts for why these six commenters responded). All six commenters expressed opposition to rent increases which they thought would be applied to them. Staff advised these commenters that the proposed amendments do not affect them and believe that this would alleviate their concerns.

COMMENT: Two commenters reside at projects affected by the new rules. Both commenters indicated that yearly increases of up to 20 percent for moderate units and 10 percent for low income units was unfair. Both indicated that they would be unable to afford such increases.

RESPONSE: The Agency does not recommend any changes to the new rule as it believes the rule serves to advance the providing of low and moderate income units. Currently, the projects affected by the new rules do not require the units to be occupied by low and/or moderate-income tenants. Income is limited to the Agency's maximum income formula which, in many cases, is in excess of HUD's low and moderate income limits. The amendments will require that 10 percent of the units be occupied by low income tenants and 90 percent occupied by moderate income tenants.

COMMENT: Mr. Ronald S. Ladell, an attorney representing the owner of one of the projects affected by the new rules pointed out that HUD's maximum income limits are based on family size. He indicated that if the rule is applied, it would require owners to ascertain the number of household members to determine the maximum rent applicable to that household. Such a procedure, he believes, would result in (1) different rents for the same size unit, (2) adjusting rents as family size changes, (3) the potential for abuse by tenants who may attempt to conceal the actual number of family members to reduce the maximum rents, and (4) owners seeking to rent to larger families to produce higher rent levels. The commenter concludes that the monitoring and paperwork would be an onerous imposition for owners. The commenter suggests that the Agency establish the family size to be used for each unit size regardless of actual famly size (for example, base one-bedroom units on a family size of two, two-bedroom units on a family size of four, etc.).

RESPONSE: The Agency believes this suggestion is comparable to the procedure followed by projects financed by the Agency with low income units. New projects financed by the Agency for low-income housing must comply with applicable Internal Revenue Code requirements set forth at Sections 42 and 142. The requirements of the Code adjust the maximum income limit for low-income units based on family size. Family size is based on one and one-half persons per number of bedrooms in the unit. Accordingly, the Agency is making substantive change to the rule to clarify that family size for low and moderate income units will be based on the same standard as is currently used for other low income units.

COMMENT: Mr. Ladell also suggests that the Agency require owners to submit a conversion plan to the Agency for approval which outlines the procedure for implementing the conversion.

RESPONSE: While the Agency believes that a conversion plan can be a useful tool in implementing a conversion, the Agency does not feel that it is mandatory and does not recommend adding it as a requirement of the rules. Sponsors are free to develop a conversion plan, in their discretion, if they feel it would help them with the conversion.

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COMMENT: Additionally, Mr. Ladell points out that the rules do not, but should, establish the procedures for conversion of a project which may have more than 10 percent low-income units prior to conversion.

RESPONSE: The Agency does not intend for a conversion to displace any existing tenants. Accordingly, if a project currently has more than 10 percent low income residents, such units must be maintained as low income until vacancies occur. Upon vacancies, the sponsor may place moderate income tenants into the units formerly occupied by low-income tenants until the 10 percent low-income level is attained. Accordingly, staff does not recommend any changes to the rules based on this comment.

COMMENT: Mr. Ladell also made a few suggestions of a non-substantive nature regarding the organizational format and to clarify certain provisions.

RESPONSE: The Agency concurs with these suggestions and has made the following technical changes to the rules:

At N.J.A.C. 5:80-9.13(a) the proposed rule was intended as an alternative procedure for increasing rents from the procedures already codified at N.J.A.C. 5:80-9.1-9.12. Upon adoption of N.J.A.C. 5:80-9.13, sponsors would have the option of continuing to increase rents pursuant to N.J.A.C. 5:80-9.1-9.12 or to use the alternative procedures at N.J.A.C. 5:80-9.13. The commenter understood the intent behind the proposed rule but felt that it was not entirely clear in the actual text of the rules. The Agency concurred and made the change at N.J.A.C. 5:80-9.13(a) to clarify that the new rules represented an optional alternative procedure for increasing rents.

At N.J.A.C. 5:80-9.13(b)2 the first sentence is being deleted as being redundant and confusing. The last sentence in the same section says the same thing.

At proposed N.J.A.C. 5:80-9.13(b)3, this paragraph is being recodified as subsection (c) rather than paragraph (b)3 as it more appropriately stands as a separate provision from subsection (b). The commenter as well as the Agency felt that it was not appropriately codified as a subsection to (b).

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

5:80-*[9.14]***9.13*** Rent increases for low and/or moderate income projects without Federal project-based rent subsidies

(a) *[Rent increases for]* ***Sponsors of*** housing projects without project-based Federal rent subsidies ***may elect to implement rent increases in accordance with the rules in this section rather than those in N.J.A.C. 5:80-9.1 through 9.12. The rules within this section may be used only after the owner demonstrates that*** *[and in which]* at least 10 percent of the units are rented to low income families and the balance rented to moderate income families *[shall be governed only by this section]*. HUD's definition of low and moderate income families shall be used for the purposes of the following:

1. Sponsors shall submit a written request to the Agency, accompanied by the most recent HUD median income figures and the maximum rents corresponding to the median income figures. The Agency will review and verify the information contained therein and, if accurate, approve the rent increase, up to a maximum of 10 percent for low income units and 20 percent for moderate income units. The Agency will provide written notice of the approval to the Sponsor.

2. Upon approval from the Agency, the Sponsor shall notify tenants in writing. Notice shall be by mail or hand delivery to each tenant's unit or by personal service. The notice shall include the calculation of how the increase was determined pursuant to HUD's increase in median income.

3. The new rents shall be effective on the first day of the month following one calendar month's written notice to the tenants.

(b) Sponsors of projects without project-based Federal ***rent*** subsidies, which do not meet the low and moderate income unit distribution set forth in (a) above, may elect to convert their project to that unit distribution and thereby be subject to (a)1 through 3 above.

1. Sponsors who elect to convert shall get credit toward the 10 percent low income, 90 percent moderate income unit distribution for any existing tenants meeting such standard. As vacancies occur, the units shall first be rented to fulfill the 10 percent low income requirement and then 90 percent to moderate income families.

2. *[Upon conversion, rent increases may be implemented pursuant to (a)1 through 3 above.]* In the event that any of the 90 percent moderate income units have current rents at less than the maximum moderate income rent, rent increases for the first five years following conversion shall be permitted up to 20 percent per year (without regard to HUD increases in median income) until HUD's maximum moderate income rent is reached. Thereafter, rents shall be implemented pursuant to (a)1 through 3 above.

*[3.]***(c)* Low income units shall revert to moderate income units 15 years after the conversion. At such time, rent increases for the next five years shall be permitted up to 10 percent per year (without regard to HUD increases in median income) until HUD's maximum moderate income rent is reached. Thereafter, rents shall be implemented pursuant to (a)1 through 3 above.

(d) When calculating the maximum rent for low and moderate income units, sponsors shall use the following formula for determining family size:

1. For efficiency units, family size shall be based on a one person household.

2. For all other units, family size shall be based on one and one-half persons per number of bedrooms in the unit.*

*[(c)]***(e)* Sponsors who wish to implement rent increases in excess of those permitted in (a) and (b) above may request such increase in writing. The excess rent increase amount shall be subject to the procedures at N.J.A.C. 5:80-9.4 through 9.12. The entire rent increase amount shall be considered for determining whether or not a hearing is required pursuant to N.J.A.C. 5:80-9.10. No increase may be approved which would increase rents in excess of those permitted by other applicable rent restrictions, for example, low income tax credit restrictions, tax-exempt bond financing restrictions.

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Housing Incentive Note Purchase Program Fees; Subordinate Financing

Adopted Amendments: N.J.A.C. 5:80-23.7 and 23.9

Proposed: January 3, 1994 at 26 N.J.R. 9(a).

Adopted: May 20, 1994 by the New Jersey Housing and Mortgage Finance Agency, Christiana Foglio, Executive Director.

Filed: May 26, 1994 as R.1994 d.302, **without change**.

Authority: N.J.S.A. 55:14K-5s and 12a.

Effective Date: June 20, 1994.

Expiration Date: April 20, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

5:80-23.7 Housing incentive note purchase commitment and requirements

(a) (No change.)

(b) Each commitment to issue a housing incentive note purchase agreement shall require that:

1.-3. (No change.)

4. The mortgage in favor of the qualified lender financing the eligible project be the only first lien encumbrance on the eligible project securing indebtedness for borrowed money. Subordinated financing may be permitted with the approval of the Agency provided the subordinated financing, collectively with the first lien financing provided by qualified lenders, meet standard underwriting criteria used in the lending industry; and

5. (No change.)

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5:80-23.9 Fees

(a) No application for a housing incentive note purchase agreement shall be accepted unless it is accompanied by a nonrefundable application fee of $3,500.

(b) No commitment to enter into a housing incentive note purchase agreement shall be issued by the Agency pursuant to N.J.A.C. 5:80-23.5 unless on or before the date of issuance of such commitment there has been paid to the Agency a nonrefundable commitment fee as follows:

1. No commitment fee shall be due for projects of 12 units or less;

2. $300.00 for every unit over 12 for projects of 13 to 41 units.

3. $9,000 for projects of 42 units or more.

(c) No housing incentive note purchase agreement shall be entered into by the Agency unless on or before the date of entering into such agreement, there has been paid to the Agency a nonrefundable purchase fee (the "HINPA Fee") in an amount equal to one percent of the principal amount of the respective loan in which an undivided interest is being purchased, but not to exceed $67,000.

(d) (No change in text.)

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Investment of Housing Project Funds

Adopted Amendments: N.J.A.C. 5:80-29

Proposed: November 1, 1993 at 25 N.J.R. 4830(a).

Adopted: May 20, 1994 by the New Jersey Housing and Mortgage Finance Agency, Christiana Foglio, Executive Director.

Filed: May 26, 1994 as R.1994 d.303, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: June 20, 1994.

Expiration Date: April 20, 1995.

Summary of Agency-Initiated Changes:

The Agency has made a change to N.J.A.C. 5:80-29.1 regarding a project sponsor's eligibility for investments permitted by the rules. As proposed, sponsors whose mortgages were insured by HUD or whose projects received Section 8 subsidies were limited to investments permitted by HUD. All other projects were permitted to invest in both investments permitted by HUD as well as the additional investments set forth in N.J.A.C. 5:80-29.1(b)1 through 6. The change upon adoption would place sponsors of projects receiving Section 8 subsidies into the category of "all other projects." Such projects are not limited to HUD permitted investments but others can invest in both HUD permitted investments as well as the additional investments set forth in N.J.A.C. 5:80-29.1(b)1 through 6. The change reflects the investment latitude HUD permits such sponsors. The Agency believes this change does not require additional public notice for the following reasons:

(1) The change which affects sponsors of projects receiving Section 8 subsidies does not impose any new conditions or recordkeeping, reporting or compliance requirements. Rather the change operates to lessen limitations that were originally proposed. The change would operate so that such sponsors are no longer limited to HUD permitted investments. Such sponsors would now be able to make investments permitted by HUD as well as the other permitted investments under the rules.

(2) The expanded list of permitted investments which sponsors of projects receiving Section 8 are eligible for under the change is optional. Such sponsors may still invest in the HUD permitted investments as originally proposed and do not have to invest in any of the other permitted investments under the rules. The change simply makes such sponsors eligible for a wider range of permitted investments.

Summary of Public Comments and Agency Responses:

The Agency received one comment from Peter A. Breuniger, Vice President of Franklin Institutional Services Corporation.

COMMENT: Mr. Breuniger suggested that the regulation which now permits investment into bonds of municipalities, instrumentalities or agencies of the State of New Jersey or New Jersey bond funds, also permit investment into bonds of municipalities, instrumentalities or agencies of other States and national bond funds.

RESPONSE: The Agency believes that the suggestion is practical only if the majority of the owners in the entity owning the project reside in a state other than New Jersey. However, it would be an administrative hardship for the Agency to ascertain and verify the residential status of all the individual owners in the various partnerships. Additionally, the current investments permitted under the rule serves to benefit New Jersey municipalities and agencies. Accordingly, the Agency does not recommend any change to the 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]*):

SUBCHAPTER 29. INVESTMENT OF HOUSING PROJECT FUNDS

5:80-29.1 Permitted investments

(a) Housing sponsors whose mortgages are insured by the U.S. Department of Housing and Urban Development (HUD), *[or whose housing projects have executed an Annual Contributions Contract to receive Section 8 subsidies subsequent to February, 1980]* may, with prior Agency approval, invest available funds including escrow funds in taxable or tax free investments permitted by HUD, provided that they have not incurred operating losses for the past three years and provided that all escrows are fully funded at the time of the request.

(b) *[All]* ***Housing sponsors of all*** other projects, with prior Agency approval, may invest available funds including escrow funds in the following, provided that they have not incurred operating losses for the past three years and provided that all escrows are fully funded at the time of the request:

1.-7. (No change.)

(c) (No change.)

(d) Agency staff, at the sponsors' written request, shall respond within 30 days after the complete request is received. The sponsors shall submit a certification that the investments requested are within the permissible investments listed in these rules.

(e) Investment of escrow funds shall be made by an Agency designated investment services firm.

MILITARY AND VETERANS' AFFAIRS

(b)

DIVISION OF VETERANS' LOANS, GRANTS AND SERVICES

Veterans' Programs and Services Policies and Procedures

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CHAPTER 6
DIVISION OF VETERANS' LOANS, GRANTS AND SERVICES
VETERANS' PROGRAMS AND SERVICES

SUBCHAPTER 1. GENERAL PROVISIONS

5A:6-1.1 Scope

(a) This chapter is applicable to all residents of the State who are veterans of the Armed Services of the United States of America and their families when appropriate as further identified herein.

(b) This chapter does not refer to the policies and procedures involved in the admission to and operation of the three veterans memorial homes of the Department nor does it cover burial entitlements at the B.G. William C. Doyle Veterans' Memorial Cemetery.

5A:6-1.2 Purpose

The purpose of this chapter is to outline, identify and establish the eligibility requirements, policies and procedures for the entitlement programs and services authorized for provision to New Jersey resident veterans by the State.

SUBCHAPTER 2. POST-TRAUMATIC STRESS DISORDER/ READJUSTMENT COUNSELING PROGRAM

5A:6-2.1 Scope

The New Jersey Post-Traumatic Stress Disorder/Readjustment Counseling Program (PTSD/R) has been established to provide assistance in the form of clinical counseling and continuity of care to veterans discharged other than dishonorably from the Armed Forces of the United States and their families. The New Jersey program is intended as a supplement to similar United States Department of Veterans Affairs or other government sponsored programs or when such assistance is exhausted.

5A:6-2.2 Eligibility

Eligibility for the PTSD/R Program is limited to New Jersey resident veterans who have an other than dishonorable discharge from the Armed Forces of the United States and who suffer mental or emotional disorders as a result of combat related experiences. Family members of such veterans whose problems date to the veteran's emotional/mental disorder are also eligible.

5A:6-2.3 Definitions

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

"Client" means a veteran or family member with a veteran participating in the PTSD/R Program.

"Family member" means the veteran's immediate family and includes significant others.

"Resident" means a veteran living in New Jersey as verified by:

1. Driver's license;
2. Tax bill;
3. Utility bill;
4. Doctor's bill; or
5. Notarized statement from the individual.

"Significant other" means a person who is cohabitating with the veteran in a manner to a spouse.

5A:6-2.4 Scope of service

(a) The PTSD/R Program consists of an initial evaluation period covering four visits after which the clinician will recommend the level of additional services. Additional services will be based on a quarterly evaluation and determination made by the clinician.

(b) Services will be provided for a period of two years. After two years fees paid to contract clinicians by the Department for client counseling sessions will be reduced on an annual basis until at the end of six years the clinicians will be compensated at a rate of five percent of the standard cost per hourly session.

5A:6-2.5 Procedures

(a) Application for services will be made directly to a Veteran Service Officer (VSO) of the Division of Veterans' Loans, Grants and Services (DVLGS). The VSO will conduct an interview and make an initial determination of eligibility.

(b) If the applicant meets the criteria established in N.J.A.C. 5A:6-2.2, the VSO will contact the Chief of Program Support, Division of Veterans' Loans, Grants and Services to determine current status of the program.

(c) Referrals to a clinician will be made on DMAVA Form 50, Contract Services Authorization (see Appendix A, incorporated herein by reference) which is filled out by the VSO. Copies of the form are to be given to the Chief of Program Support, DVLGS; the clinician and the individual. One copy shall be retained by the VSO for the individual's file.

(d) All individuals applying for services must be seen by a VSO. Clinicians (providers) may not assume the responsibility of taking on clients under the auspices of this program without following the procedures outlined in N.J.A.C. 5A:6-2.6. Any clients accepted by a clinician without proper referral will be the responsibility of the clinician.

(e) A veteran shall exhaust all avenues of counseling through the Federal system before making application to the Department of Military and Veterans' Affairs program. However, exceptions may be made by the Division Director, Division of Veterans' Loans, Grants and Services upon recommendation of the VSO when the Director feels that it is in the best interest of the veteran.

5A:6-2.6 Responsibilities

(a) The responsibilities of a Veterans' Service Officer (VSO) are as follows:

1. The VSO will be the PTSD/R contact person conducting initial screening interviews and giving authorization for services.

2. The VSO will coordinate with the clinician when the veteran is accepted into the program. DMAVA Form 50, Contract Services Authorization (Appendix A), shall be utilized to refer a client to a clinician by the VSO.

3. In the event that the veteran is placed on a waiting list, the VSO will maintain personal contact with the veteran at a minimum of once every 30 days advising him or her of his or her status on the waiting list.

(b) The responsibilities of the Division of Veterans' Loans, Grants and Services (DVLGS) are as follows:

1. The Director, DVLGS shall oversee the funding of the program and the services provided by the clinician to eligible veterans.

2. The Chief of Program Support, DVLGS, shall maintain any necessary waiting list advising VSOs when referrals may or may not be made.

3. DVLGS shall contract only with licensed mental health professionals in the State of New Jersey and Mental Health Agencies approved by the State of New Jersey under the certificate of need process and staffed in accordance with N.J.S.A. 30:9A-1 to 30:9A-11 and who have or are willing to gain experience with combat/military related Post Traumatic Stress Disorder.

4. DVLGS shall make all efforts to seek out funding sources.

5. The Director, DVLGS, through the Deputy Commissioner Veterans' Affairs and the Adjutant General, shall appoint a committee consisting of clinicians, representatives of veterans' organizations and State service officers which will advise the Division on aspects of the PTSD program.

(c) The responsibilities of clinicians are as follows:

1. After the initial evaluation, the clinician shall make recommendations as to the course of therapy for the client through the VSO to the Chief of Program Support, Division of Veterans' Loans, Grants and Services.

2. Clinicians will provide quarterly evaluations of the client outlining the continued level of service required through the VSO to the Chief of Program Support, DVLGS, utilizing DMAVA Form 51, Quarterly Review (see Appendix B, incorporated herein by reference).

3. At the completion of each counseling session, verification of the service provided shall be prepared by the clinician and presented to the client for signature.

4. Monthly expenditure reports will be submitted to the Fiscal Division, Department of Military and Veterans' Affairs by clinicians

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on the tenth of each month following the close of the reporting period.

5. If a client misses three or more consecutive sessions, he or she will be terminated from the program. However, the clinician must notify the individual in writing prior to said termination.

(d) The responsibilities of veterans/veterans' family member(s) (clients) are as follows:

1. The client will make the contact with the clinician within five business days of being contacted by the VSO that he or she has been accepted into the program.

2. Any client who misses three consecutive sessions is subject to termination from the program.

3. Any client who has been terminated, or ceased attending sessions, will have the right to appeal within 30 days to the Director, DVLGS through the VSO.

5A:6-2.7 Waiting list

(a) When the program reaches its client capacity, as determined by funding, a waiting list will be maintained.

(b) The date service was requested is the primary factor used to determine when clients are admitted into the program.

(c) At the time of the initial interview, if the veteran is placed on the waiting list he or she will be advised of the status.

(d) The VSO will maintain personal contact with the veteran at a minimum of once every 30 days advising him or her of his or her status on the waiting list.

5A:6-2.8 Funding

Funding will be determined annually by the State budget appropriation.

5A:6-2.9 Confidentiality

(a) The personal data of both the veteran and family members in the program and on the waiting list will not be disseminated to any other agency, department or entity on the Federal, State, county or municipal level without the approval of the individual veteran and/or family member.

(b) Statistical data compiled without reference to the individual may be used for presentation to all parties who require such for evaluation in support of funding or research.

SUBCHAPTER 3. VETERANS' TUITION CREDIT PROGRAM (N.J.S.A. 18A:71-64 et seq.)

5A:6-3.1 Scope

The Veterans' Tuition Credit Program provides an educational support entitlement to full-time and part-time students who are New Jersey resident veterans and served in the Armed Forces of the United States between December 31, 1960 and May 7, 1975.

5A:6-3.2 Residency

(a) The veteran will be considered a resident of the State if he or she:

1. Was domiciled in New Jersey at the time of induction into the Armed Forces of the United States;

2. Was domiciled in New Jersey at the time of separation from active duty; or

3. Was domiciled in New Jersey for a period of not less than 12 consecutive months prior to the date of application, exclusive of any time spent on active duty.

(b) Domicile is defined as the place where a person has a true, fixed, permanent home and principal establishment to which, when absent, there is the intention of returning.

5A:6-3.3 Approved educational institution

(a) An educational institution is:

1. Any academic, professional or vocational school operating within the State;

2. Any graduate level school operating within the United States; or

3. Any academic, professional or vocational school operating outside the State.

(b) To qualify as an "approved educational institution," any such institution must have been approved for veterans educational assistance pursuant to Federal law.

5A:6-3.4 Approved course of study

The eligible veteran shall be enrolled in any curriculum or any combination of unit courses or subjects at an educational institution which is approved for veterans educational assistance pursuant to Federal law.

5A:6-3.5 Full-time course requirements

(a) An institutional trade or technical course offered at a nonaccredited school on a clock-hour basis involving shop practice as an integral part thereof, shall be considered a full-time course when a minimum of 30 hours per week of attendance is required with no more than two and one-half hours of rest periods per week and no more than three hours of supervised study per week allowed.

(b) An institutional course offered at a nonaccredited school on a clock-hour basis in which theoretical or classroom instruction predominates shall be considered a full-time course when a minimum of 25 hours per week net of instruction (which may include customary intervals not to exceed 10 minutes between hours of instruction) is required and no more than three hours of supervised study per week is allowed.

(c) An institutional trade or technical course offered at an accredited school on a clock-hour basis which leads to a standard trade or technical degree and involves shop practice as an integral part thereof, shall be considered a full-time course when a minimum of 22 hours per week of attendance is required with no more than two and one-half hours of rest periods per week and no more than three hours of supervised study per week is allowed.

(d) An institutional course offered at an accredited school on a clock-hour basis which leads to a standard trade or technical degree in which theoretical or classroom instruction predominates shall be considered a full-time course when a minimum of 18 hours per week of instruction (which may include customary intervals not to exceed 10 minutes between hours of instruction) is required and no more than two and one-half hours of supervised study is allowed.

(e) An academic high school course requiring 16 units for a full course shall be considered a full-time course when a minimum of four units per year is required. A unit is defined to be not less than 120, 60-minute hours or their equivalent of study in a subject in one academic year.

(f) An institutional undergraduate or graduate course offered by a college or university on a quarter- or semester-hour basis shall be considered a full-time course when a minimum of 14 semester hours or the equivalent thereof, for which credit is granted toward a standard college degree (including those for which no credit is granted but which are required to be taken to correct an educational deficiency), is required. Where such college or university certifies that full-time tuition is charged to all undergraduate or graduate students carrying a minimum of less than 14 such semester hours or the equivalent thereof, or all undergraduate or graduate students carrying a minimum of less than 14 such semester hours or the equivalent thereof are considered to be pursuing a full-time course for other administrative purposes, then such an institutional undergraduate or graduate course offered by such college or university with such minimum number of such semester hours shall be considered a full-time course. In the event such minimum number of semester hours is less than 12 semester hours or the equivalent thereof, then 12 semester hours or the equivalent thereof shall be considered a full-time course.

5A:6-3.6 Half-time course requirements

Any course of study which is less than the full-time requirements outlined in N.J.A.C. 5A:6-3.5 must not be less than one-half of the full-time requirements to be eligible. Payment for half-time veterans is described in N.J.A.C. 5A:6-3.8.

5A:6-3.7 Calculation of tuition credit

(a) Each eligible veteran shall be entitled to tuition credit in accordance with the following schedule:

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1. For a period of one semester (or the equivalent thereof in part-time tuition credit), in the case of educational institutions regularly operated on the semester system, for each three months or fraction thereof of the veteran's service on active duty after December 31, 1960 and before May 7, 1975. If an eligible veteran has served a period of 18 months or more on active duty during such period of time, he or she shall be entitled to tuition credit for a period of eight semesters (or the equivalent thereof in part-time tuition credit). The maximum credit under this paragraph shall be for the period of eight semesters;

2. For a period of one-quarter (or the equivalent thereof in part-time tuition credit) in the case of educational institutional regularly operated on the quarter system, for each two months or fraction thereof of the veterans' service on active duty after December 31, 1960 and before May 7, 1975. If an eligible veteran has served a period of 18 months or more on active duty during such period of time, he or she shall be entitled to tuition credit for a period of 12 quarters. The maximum credit under this paragraph shall be a period of 12 quarters; or

3. For a period of 1½ months of any tuition period (or the equivalent thereof in part-time tuition credit) in the case of educational institutions not operated on the quarter or semester system, for each month or fraction thereof of the veteran's service on active duty after December 31, 1960 and before May 7, 1975. If an eligible veteran has served a period of 18 months or more on active duty during such period of time, he or she shall be entitled to tuition credit for 36 months of tuition credit (or the equivalent thereof in part-time tuition credit). The maximum credit under this paragraph shall be for the period of 36 months.

(b) If an eligible veteran shall change his or her program of study from an educational institution regularly operated on the quarter or semester system or otherwise, to an educational institution regularly operated on a different system, he or she shall submit a written request to the Director, Division of Veterans' Loans, Grants, and Services for a re-evaluation of the remaining tuition credits.

5A:6-3.8 Award amount

(a) Benefits under this subchapter shall be in the form of tuition credits limited by the lesser of full tuition or:

1. For educational institutions regularly operated on a semester system, $200.00 per semester;

2. For educational institutions regularly operated on the quarter system, $100.00 per quarter;

3. For educational institutions not regularly operated on the semester quarter system, $400.00 per full school year prorated on an equal basis as determined by the Director of the Division of Veterans' Loans, Grants and Services.

(b) The award amounts shown in (a) above will be granted to all eligible veterans who are enrolled as full-time students as determined by the institution provided this determination meets the minimum requirements as described in N.J.A.C. 5A:6-3.5. For half-time students, the award will be one-half the amount shown.

(c) In the event that Program appropriations are insufficient to pay all eligible veterans the amount in (a) above, the Director of the Division of Veterans' Loans, Grants and Services shall prorate the available funds.

SUBCHAPTER 4. VIETNAM VETERANS TUITION AND AID PROGRAM (N.J.S.A. 18A:71-76.1 et seq.)

5A:6-4.1 Scope

The Vietnam Veterans Tuition Aid Program is available to renewal applicants who reside in New Jersey and who received a Vietnam Service Medal or an Armed Forces Expeditionary Medal and who are pursuing an initial undergraduate degree program in an approved New Jersey two- or four-year college or university. The Program is open only to those veterans who applied for acceptance during a legislated open enrollment period which closed on April 9, 1990.

5A:6-4.2 Eligible Vietnam veterans

(a) An eligible Vietnam veteran shall have:

1. Served in the Armed Forces of the United States in Southeast Asia in the Vietnam Conflict and received a Vietnam Service Ribbon or an Armed Forces Expeditionary Medal;

2. Been honorably discharged or generally discharged under honorable conditions; and

3. Been domiciled in New Jersey at the time of the effective date of N.J.S.A. 18A:71-76.1 et seq. for a period of not less than two consecutive years, exclusive of any time spent on active duty.

5A:6-4.3 Eligible institutions

Tuition benefits are available to eligible veterans enrolled in a public institution of higher education in this State or at an independent college or university located in this State licensed by the Board of Higher Education or approved for the training of veterans by the Department of Higher Education.

5A:6-4.4 Undergraduate enrollment

(a) The eligible Vietnam veteran must be enrolled or plan to enroll in an approved undergraduate degree program on at least a one-half time basis, that is, six credits per term, to be eligible to receive tuition benefits.

(b) The eligible Vietnam veteran with a 30 percent or more service connected disability as rated by the United States Department of Veterans Affairs shall be exempted from the six credit per term requirement and shall be allowed to register for less than six credit hours and still receive tuition assistance.

(c) The program is only applicable to the student's initial undergraduate degree program. A student who has earned the highest undergraduate degree offered by an institution shall not be eligible for benefits under this program at that institution. Students already possessing a baccalaureate degree are not eligible.

5A:6-4.5 Award amount

(a) Eligible Vietnam veterans attending a public institution of higher education pursuant to N.J.A.C. 5A:6-4.4 shall be entitled to tuition assistance in an amount not to exceed the tuition which they are charged.

(b) Eligible Vietnam veterans attending an independent college or university pursuant to N.J.A..C. 5A:6-4.4 shall be eligible for tuition assistance in an amount not to exceed the tuition which they are charged; however, the award shall not exceed the maximum tuition charged a resident undergraduate student at Rutgers, the State University.

(c) Students who attend less than full-time will be eligible to receive awards during summer terms as long as their total award during the period from September 1 to the following August 31 of any academic year does not exceed the award amount to a full-time undergraduate student at the same institution participating in this program during the regular academic year.

5A:6-4.6 Other financial aid programs

The amount of tuition assistance through this program when combined with other scholarships and grant assistance shall not exceed the student's educational budget.

5A:6-4.7 Period of eligibility

Eligibility for this program shall be limited to a period of five years from the effective date of this program, April 9, 1985. A Vietnam veteran shall be eligible for a tuition award for four academic years, unless enrolled in an undergraduate program regularly requiring five academic years for completion, in which case the student shall be entitled to a tuition award for a fifth year.

5A:6-4.8 Renewal

In order to continue to receive tuition benefits under this program, the eligible veteran must maintain good academic standing as defined in accordance with the standards established and enforced by the institution and approved by the Department of Higher Education, State Approving Agency, pursuant to 38 U.S.C. 1775 and 1776.

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SUBCHAPTER 5. TUITION ASSISTANCE FOR CHILDREN OF POW/MIAs (N.J.S.A. 18A:71-61 et seq.)

5A:6-5.1 Scope

The Tuition Assistance for Children of POW/MIAs program is available to any dependent of a United States' Armed Forces prisoner of war or a person missing in action (POW/MIA) who was a resident of the State upon being accepted to pursue a course of undergraduate study in any private institution of higher education in this State or in any public institution of higher education of this State as enumerated in N.J.S.A. 18A:62-1. The dependent shall be allowed to obtain a bachelors degree, or certificate of completion, for so long as he or she is eligible, free of tuition.

5A:6-5.2 Dependent

"Dependent" means any child born before or during the period of time its parent was a prisoner of war or a person missing in action, or any child legally adopted or in the legal custody of the parent prior to and during the time the parent was a prisoner of war or a person missing in action.

5A:6-5.3 Prisoner of war and person missing in action (POW/MIA)

"Prisoner of war and person missing in action (POW/MIA)" means any person who was a resident of the State at the time he or she entered service of the United States Armed Forces, or whose official residence is within this State, and who, while serving in the Armed Forces has been declared to be a prisoner of war, or to be a person missing in action as established by the Secretary of Defense after January 1, 1960.

5A:6-5.4 Application procedures and terms of eligibility

(a) Once a person qualifies as a dependent there shall be no situation such as the return of the parent or the reported death of the parent that will terminate the eligiblity of the dependent.

(b) Once a dependent has been determined eligible for benefits, the student does not reapply for the program.

(c) Prior to the start of each academic year, each renewal student's file will be reviewed for remaining eligibility. Students may receive up to 2.5 years (five semesters) of payment at the two-year college level and up to four years (eight semesters) of payment at four-year institution (up to 5 years or 10 semesters of payment, if the student is enrolled in a regular program which requires five years of study). Renewal students with remaining eligibility should be contacted during the summer, prior to the start of each academic year, regarding their upcoming enrollment plans.

SUBCHAPTER 6. TUITION ASSISTANCE FOR WAR ORPHANS (N.J.S.A. 38:20-1 et seq.)

5A:6-6.1 Scope

The Tuition Assistance for War Orphans program provides for the educational assistance of State war orphans.

5A:6-6.2 War orphans

"War orphan" means any child between the ages of 16 and 21 years, domiciled in the State for at least 12 months prior to the time of application for benefits under this program, who being otherwise qualified is the child of any resident of this State who was killed in action or died from other causes while a member of the Armed Forces of the United States in time of war or emergency, or who is officially listed as "Missing in Action" by the Department of Defense, or who died or shall hereafter die of disease or disability resulting from such war or emergency.

5A:6-6.3 War and time of emergency

(a) "War" means:

1. World War I: April 6, 1917 to July 2, 1921; and
2. World War II: September 16, 1940 to September 2, 1945.

(b) "Time of emergency" means and includes any time after June 28, 1950, and prior to termination, suspension or revocation of the proclamation of the existence of a national emergency issued by the President of the United States on December 16, 1950, or termination of the existence of such national emergency by appropriate action of the President or Congress of the United States. "Time of Emergency" also includes any time of armed hostility or conflict with foreign adversary after December 31, 1960, and prior to the termination of the existence of such armed hostility or conflict with a foreign adversary by appropriate action of the President or Congress of the United States.

5A:6-6.4 Educational awards

(a) Educational awards shall be used to defray the cost and expense of the attendance of any eligible orphan at any State educational or other technical or professional school of education located in the State, approved by the State Board of Education located in the State or outside the State if desired course is not offered by a school or college in the State.

(b) Educational awards will be allocated for tuition or matriculation fees, board and room rent, books and supplies and other purposes incidental thereto.

(c) No more than four annual allotments of $500.00 each will be allowed to any one applicant.

5A:6-6.5 Application

(a) Application by otherwise eligible children will be made by letter directly to the Director Division of Veterans' Loans, Grants and Services, New Jersey Department of Military and Veterans' Affairs. The application shall include:

1. Proof of relationship to deceased Armed Forces service member, that is, a birth certificate;
2. Proof of New Jersey residency as indicated in N.J.A.C. 5A:6-6.2;
3. Proof of acceptance into a recognized New Jersey institution of higher learning as indicated in N.J.A.C. 5A:6-6.4(a);
4. POW/MIA—DD Form 1300; and
5. A War Orphans Death Certificate of the deceased showing that the veteran was either killed in action or died as a result of a disease or disability resulting from his or her military service.

SUBCHAPTER 7. VETERANS' CATASTROPHIC ENTITLEMENT (N.J.S.A. 38:18-1 et seq.)

5A:6-7.1 Scope

(a) This subchapter is applicable to all residents of the State who served in any capacity with the Armed Forces of the United States including the National Guard or Reserve during a wartime period and who have a 100 percent permanent service-connected disability rating from the United States Department of Veterans Affairs for one of seven disabilities declared to be catastrophic in nature by the New Jersey Department of Military and Veterans' Affairs.

(b) In addition to eligible New Jersey veterans, this subchapter applies to all widows/widowers of those New Jersey veterans who were in receipt of the veteran's catastrophic entitlement prior to the death or who would have been entitled had the veteran made application prior to death.

5A:6-7.2 Veterans' Catastrophic Entitlement eligibility criteria

(a) In order to be eligible for a Veterans' Catastrophic Entitlement, a veteran must:

1. Have been a legal resident of New Jersey at time of initial induction into the Armed Services of the United States;
2. Provide proof of discharge from the Armed Services of the United States indicating that the character of service was other than dishonorable or undesirable; and
3. Be a legal resident of New Jersey at time of application and must reside in the State of New Jersey while in receipt of the entitlement except for reasons of health or employment.

(b) Residency is defined as the place where a veteran has a true, fixed permanent home and permanent establishment, and to which, whenever the veteran is absent, there is the intention of returning.

(c) Proof of New Jersey residency is considered to be one of the following:

1. A New Jersey Driver's license;
2. A New Jersey Voter's Registration Card;
3. A paid New Jersey real estate tax bill;
4. A deed to New Jersey property;
5. Utility bills with the veteran's name and New Jersey address appearing thereon; or
6. Other similar documentation indicating New Jersey residency.

(d) The veteran must be in receipt of a 100 percent permanent service-connected disability rating from the United States Department of Veterans Affairs that resulted from war-time service for one of seven disabilities recognized to be catastrophic in nature by the Department of Military and Veterans' Affairs. The seven catastrophic disabilities for the Veterans' Catastrophic Entitlement are defined as the following conditions resulting from injury to the spinal cord, skeletal structure, brain or eyes sustained during wartime and through enemy action, an accident or from disease contracted while serving in the Armed Forces of the United States:

1. Loss of sight;
2. Amputation of both hands, both feet or one hand and one foot;
3. Hemiplegia and permanent paralysis of one leg and one arm or either side of the body;
4. Paraplegia and permanent paralysis of both legs and lower parts of the body;
5. Osteochondritis and permanent loss of the use of both legs;
6. Multiple Sclerosis and the loss of use of both feet or both legs;
7. Quadriplegia.

(e) In the absence of a 100 percent permanent wartime service-connected catastrophic disability, the veteran must be in receipt of a single 100 percent permanent wartime service-connected disability or a combination of permanent wartime service connected disabilities totaling 100 percent that are equivalent in nature to the medical symptomatology of one or a combination of the seven recognized catastrophic disabilities.

5A:6-7.3 Application

(a) Application by veterans shall be filed at any district office of the New Jersey Division of Veterans' Loans, Grants and Services. An application shall include:

1. A copy of DD 214 indicating induction into service;
2. Proof of New Jersey residency as indicated in N.J.A.C. 5A:6-7.2; and
3. A marriage certificate, if applicable.

(b) A certified marriage certificate will be submitted to the Division of Veterans' Loans, Grants and Services within one year of marriage when the marriage is subsequent to entitlement.

(c) An application for each catastrophic disability shall be filed separately in the event the veteran has more than one disability.

5A:6-7.4 Entitlement awards

(a) Entitlement awards will be granted by the date the application was received in the district office of the Division of Veterans' Loans, Grants and Services.

(b) For each catastrophic disability, the award is $750.00 annually.

5A:6-7.5 Change of address within State

Changes of address within the State shall be submitted by the veteran within 30 days of the address change to the Division of Veterans' Loans, Grants and Services.

5A:6-7.6 Change of address out-of-State

(a) Continuity of entitlement for a veteran receiving the entitlement who moves out-of-State shall be granted if the move was for reasons of the veteran's health or employment, pursuant to this section.

(b) A change of address shall be submitted to the Division of Veterans' Loans, Grants and Services within 30 days of address change.

(c) The following medical or employment documentation shall be submitted by a veteran moving out-of-State who wishes to continue his or her entitlement:

1. A doctor's statement indicating the disability and necessity for change of address; or
2. An employer's statement indicating the out-of-State position's title and date of hire.

(d) Entitlement awards shall be suspended by the New Jersey Division of Pensions for 90 days pending submission of documentation set forth in (c) above to the Division of Veterans' Loans, Grants and Services within 30 days of the effective date of the requested change of address.

(e) Retroactive payment shall be granted upon receipt of documentation as indicated in (c) above.

(f) Entitlement shall be terminated if documentation is not submitted as indicated in (c) above by the end of the 90-day suspension period.

(g) Entitlement without retroactive payment may be granted pending the filing of a new application as indicated in N.J.A.C. 5A:6-7.2 through 7.4.

(h) In states where substantially similar compensation is available pursuant to an act where the veteran establishes new residency, the veteran may elect to continue to receive the entitlement from the State of New Jersey to the exclusion of payment from that state.

(i) The Director of the Division of Veterans' Loans, Grants and Services shall notify the veteran in letter if similar compensation is available from the state to which the veteran moved. In the event that such state provides similar compensation and the veteran elects continued entitlement from the State of New Jersey, verification of non-receipt of similar compensation payments shall be provided by the veteran within 30 days.

(j) In the event a veteran visits friends or relatives out of State for more than 60 days, the veteran shall notify the Division of Veterans' Loans, Grants and Services within 30 days for continuity of entitlement. Out-of-State visiting for more than six months shall be considered an out-of-State address change. Continuity of entitlement shall be granted as indicated in (a) through (h) above.

5A:6-7.7 Right to appeal

A veteran, a veteran's representative or next of kin may appeal a decision for eligibility for entitlement within one year of notification of decision. The appeal will be in writing and submitted with any new and material evidence to the Catastrophic Program Specialist who will forward the request for reconsideration with all documentation to the Director, Division of Veterans Loans, Grants and Services, Department of Military and Veterans' Affairs for final determination. The Director will respond to the appeal with a final decision within 60 days. If the appeal is received subsequent to the one year appeal period, it will be considered a new claim.

5A:6-7.8 Spouse Catastrophic Entitlement

(a) Spouse Catastrophic Entitlement will be in accordance with the provisions of the application process, eligibility criteria, approval criteria and termination as they apply to the veteran as indicated in N.J.A.C. 5A:6-7.2 through 7.4.

(b) The procedure for a change of address within or to another state are the same as those for the veteran as indicated in N.J.A.C. 5A:6-7.5 and 7.6(a) through (j).

1. Entitlement will be granted to a spouse living out-of-State at time of application when the veteran was granted out-of-State entitlement prior to death.

2. In the event said spouse moves out-of-State to a state other than New Jersey, entitlement and retroactive payment shall be granted as indicated in N.J.A.C. 5A:6-7.6(a) through (h).

(c) Entitlement shall be granted for each catastrophic disability that the deceased veteran was granted prior to death or would have been granted had the veteran made application as indicated in N.J.A.C. 5A:6-7.4(b). Application for each catastrophic disability will be filed separately as directed in N.J.A.C. 5A:6-7.3(b).

(d) Eligibility shall be granted as of the date the application was received in a district office of the New Jersey Division of Veterans' Loans, Grants and Services in the event the veteran's death occurred prior to April 9, 1985.

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APPENDIX A

NEW JERSEY DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS
DIVISION OF VETERANS' LOANS, GRANTS AND SERVICES

CONTRACT SERVICES AUTHORIZATION

1. CONTRACTOR INFORMATION

A. Name of Contractor to provide services:	B. Provider #:

C. Address of Service Provider and Phone Number:

2. VETERAN INFORMATION

D. Name of Veteran (Last, First, Middle):	E. Social Security #:

F. Veteran Administration (VA) File Number:

G. This Veteran/Client has been determined eligible for the following:

H. I/We have informed the Veteran/Client of the following:

(1) He/She is eligible for an initial three (3) visits for assessment.
(2) If additional services are indicated, a treatment plan must be provided, to authorize continued contract services.

3. RELEASE STATEMENT/INFORMATION

I. The Provider must treat all personal records of applicants for and the recipients of contract services in accordance with all applicable Federal and State legislation and regulations, including Executive Orders, governing access to and confidentiality of records. With exceptions specified below, the Provider may not release or disclose records except to authorized personnel of the Provider, the State Agency or another appropriate unit, agency, or agent of State or Federal government which is approved by the State Agency for receipt of the information. Exceptions are as follows:

(1) When release or disclosure is court ordered;
(2) When the applicant or recipient gives prior written approval as to the information to be released or disclosed and the person(s) and/or agency(ies) to receive the information.

4. AUTHORIZATION INFORMATION

J. County:	K. Signature:	L. Title:	M. Date:	N. Telephone No.

NJDMAVA Form 50, 1 Feb 93 (Previous Editions are Obsolete)
ORIGINAL: Central Office; YELLOW: VSO; PINK: Contractor; GOLD: Client

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APPENDIX B

NEW JERSEY DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS
DIVISION OF VETERANS' LOANS, GRANTS AND SERVICES

QUARTERLY REVIEW

Administrative Information:

Patient's Name	ID#	Age	Sex (M/F)
Address	City	State	Zip Code

Education status (check one):
_____ pre-school _____ elementary school _____ high school _____ some college
_____ undergraduate degree _____ graduate degree _____ post-graduate degree _____ other

Date of onset of difficulty: _____
Date of initial consultation: _____

Sessions
Dates/Character—anticipated number of sessions (frequency) _____

_____ individual _____ group Fee(s) per session $ _____

Diagnosis: AXIS I _____ AXIS II _____ AXIS III _____ NO _____ YES _____
Status of the patient: _____ voluntary _____ involuntary
_____ inpatient _____ outpatient

Reason for continuing mental health services
The reason for continuing mental health services, limited to an assessment of the patient's current level of impairment and level of distress (both described by the term mild, moderate, severe or extreme)

Level of impairment: _____ mild _____ moderate _____ severe _____ extreme
Level of distress: _____ mild _____ moderate _____ severe _____ extreme

Prognosis: (Limited to the estimated minimal time during which treatment might continue): _____

Date Request Received: _____

Name of Treating Therapist: _____

Date Information Sent: _____ Signature: _____

NJDMAVA Form 51, 24 Nov 93

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Rules Implementing the Higher Education Facilities Trust Fund Act

Adopted New Rules: N.J.A.C. 9:18

Proposed: April 4, 1994 at 26 N.J.R. 1486(a).
Adopted: May 25, 1994 by Board of Higher Education, Edward D. Goldberg, Chancellor and Secretary.
Filed: May 26, 1994 as R.1994 d.304, **without change.**

Authority: N.J.S.A. 18A:3-15 and P.L. 1993, c.375.

Effective Date: June 20, 1994.
Expiration Date: June 20, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adopted new rules follows:

CHAPTER 18
RULES AND PROCEDURES FOR IMPLEMENTATION OF THE HIGHER EDUCATION FACILITIES TRUST FUND ACT

SUBCHAPTER 1. GENERAL PROVISIONS

9:18-1.1 Purpose and authority
The following rules and procedures are established to implement the Higher Education Facilities Trust Fund Act, P.L. 1993, c.375, an act supplementing the New Jersey Educational Facilities Authority Act, Chapter 72A of Title 18A of the New Jersey Statutes.

9:18-1.2 Definitions
The following words and terms, when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.
"Act" means the New Jersey Educational Facilities Authority Act, N.J.S.A. 18A:72A-1 et seq.
"Amending Act" means the Higher Education Facilities Trust Fund Act, P.L. 1993, c.375.
"Authority" means the New Jersey Educational Facilities Authority or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the Authority shall be given by law.
"Board" means State Board of Higher Education.

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"Bond" or "bonds" means bonds or notes of the Authority issued pursuant to the authority granted by the Amending Act.

"Chancellor" means the Chancellor of Higher Education.

"Institution" means a public or private institution of higher education which is eligible to receive State aid.

"Project" means a capital construction project to construct, reconstruct, develop, extend, or improve instructional, laboratory, communication, or research facilities.

"South Jersey multi-institutional economic development facilities" means facilities which whould promote economic development in the eight southernmost counties of the State including Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem; which involve more than one public and/or private institution of higher education.

"Trust fund" means the Higher Education Facilities Trust Fund as created by chapter 375, P.L. 1993.

9:18-1.3 Process for application for grant

(a) The Board shall consider for approval grant requests from institutions for the cost, or a portion of the cost, of the construction, reconstruction, development, extension, or improvement of instructional, laboratory, communication, and research facilities. The grants shall be used exclusively for those purposes.

(b) Upon approval by its governing board at a duly authorized meeting, a participating institution shall apply to the Board for a grant from the trust fund. Proposals shall include the following information:

1. A copy of the institutional governing board resolution approving the institution's application that includes an institutional commitment to support the annual operating costs and maintenance requirements for any new space to be constructed or acquired as a result of the project;

2. A brief description of the process used to generate the request;

3. A statement describing how the proposed project relates to the current institutional mission, plans, and priorities;

4. The program(s) or function(s) to be served by the project, including specific educational objectives to be met;

5. A complete description of the project, including design information if appropriate for the project;

6. The estimated schedule for the completion of the project;

7. Cost data for the project along with the identification of all sources of revenue to be used to pay any costs not funded by the grant;

8. Certification by the institution that the project would be in compliance with existing codes, statutes and government guidelines;

9. Space justification for any new space to be constructed or acquired as a result of the project; and

10. Other information as may be required by the Chancellor on a case by case basis and relating to a specific proposal.

(c) The grant request shall be submitted in a format provided by the Chancellor.

(d) Grant applications shall be approved at a public meeting of the Board.

(e) The total dollar amount of a grant approved for any institution shall not exceed the institution's allocation as approved by the Board.

(f) The Board shall forward to the Authority a copy of the resolution approved by the Board including the amount of the grant.

(g) The Board shall submit to the Legislature a copy of the resolution approving the grant along with the amount of the grant. If the Legislature does not disapprove the grant by the adoption of a concurrent resolution within 60 days, the grant shall be deemed to be authorized.

(h) Each grant awarded shall be contingent upon the recipient governing board entering into a contract or contracts for the commencement of the construction, reconstruction, development, extension, or improvement of the facility no later than one year from the date on which the grant funds are made available. The funds shall be considered available on the date of issuance by the Authority of the corresponding bond.

(i) No bonds shall be issued by the Authority without the prior written consent of the State Treasurer.

(j) Proceeds from the sale of bonds shall cover the cost of bond issuance and administrative costs of the program.

(k) The term of any bond issued shall not exceed 10 years.

9:18-1.4 Payment of principal and interest

The State Treasurer shall contract with the Authority to pay to the Authority the amount necessary to pay the principal and interest on all bonds subject to the appropriation of State Lottery Funds.

9:18-1.5 Allocation of funds

(a) The money deposited into the fund created pursuant to section 3 of the Amending Act shall initially be allocated in the following manner:

1. $48,000,000 for facilities at the State colleges;

2. $38,880,000 for facilities at Rutgers, the State University;

3. $20,160,000 for facilities at the University of Medicine and Dentistry of New Jersey;

4. $12,960,000 for facilities at the New Jersey Institute of Technology;

5. $44,000,000 for facilities at the county colleges;

6. $21,000,000 for facilities at private institutions of higher education; and

7. $15,000,000 for South Jersey multi-institutional economic development facilities.

8. $20,000,000 for a new facility for Rutgers, the State University, School of Law, Newark.

(b) The Board shall, by resolution, allocate funds to individual State colleges, county colleges, and private institutions of higher education within the sector allocations above.

(c) The Board may reallocate to any institution or to the "South Jersey multi-institutional economic development facilities" any balance in the amounts authorized if the amounts are not approved by the Board for a grant within 18 months of the effective date of the Amending Act (January 10, 1994) or within 18 months of subsequent allocations by the Board.

(d) No reallocation shall be made pursuant to (c) above if:

1. The grant application has been received by the Board within 15 months of January 10, 1994 or within 18 months with respect to any amounts that are subsequently allocated by the Board; or

2. Delays are the result of Federal, State, or local governmental approvals or regulatory requirements not attributable to the institution; or

3. In the sole determination of the Board there are other compelling and documentable reasons.

(e) The Chancellor shall contact all institutions to which funds have been allocated 15 months following such allocation to determine what, if any, funds will become available for reallocation after 18 months.

(f) The Board shall determine the allocation of money available from the authorization of new bonds by the Treasurer as a result of the retirement of bonds previously issued by the Authority.

9:18-1.6 Higher Education Facilities Trust Fund Board

(a) The Higher Education Facilities Trust Fund Board shall consist of six members, as follows:

1. The Chair and Vice Chair of the Board;

2. The State Treasurer or a designee;

3. The President of the Senate or a designee;

4. The Speaker of the General Assembly or a designee; and

5. The Chancellor who shall serve ex officio without vote.

(b) The Higher Education Facilities Trust Fund Board shall ensure that the revenue provided to the trust fund is adequate to support the grants approved by the Board.

(c) At the end of each three-year period following the effective date of the Amending Act (January 10, 1994), the Higher Education Facilities Trust Fund Board shall review, in consultation with the Board, the physical plant needs of public and private institutions in the State and shall recommend to the Governor and Legislature a plan to increase, if necessary, the availability and uses of grants made from the trust fund.

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CORRECTIONS

(a)

THE COMMISSIONER

Notice of Administrative Correction
Administration, Organization and Management Research
Procedure for Submitting a Request to Conduct Nonmedical, Nonpharmaceutical, and Noncosmetic Research Projects

N.J.A.C. 10A:1-10.2

Take notice that the Department of Corrections has discovered an error in the text of N.J.A.C. 10A:1-10.2(d). The reference in that subsection to Form 981-I is in error, and should instead be a reference to Form 980-I, in conformance with the other form references throughout the rule. This reference is corrected through this notice, published pursuant to N.J.A.C. 1:30-2.7.

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

10A:1-10.2 Procedure for submitting a request to conduct nonmedical, nonpharmaceutical, and noncosmetic research projects

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

(d) When the research activity involves the review of inmate or parolee records or the participation of inmates or parolees, the correctional facility Superintendent, Parole District Supervisor or the noninstitutional operational unit administrator shall complete Section IV of Form [981-I] **980-I** and submit the Form to the appropriate Assistant Commissioner with a recommendation for approval or disapproval.

1.-4. (No change.)

INSURANCE

(b)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Obligation of Licensees to the Public and to Each Other; Advertising Rules

Adopted Amendments: N.J.A.C. 11:5-1.15 and 1.23

Proposed: February 7, 1994 at 26 N.J.R. 729(a) (see also 26 N.J.R. 1194(a) and 1222(a)).

Adopted: May 3, 1994 by the New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.

Filed: May 4, 1994 as R.1994 d.266, **without change.**

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

Effective Date: June 20, 1994.

Operative Date: July 1, 1994.

Expiration Date: October 15, 1998.

Summary of Public Comments and Agency Responses:

The proposed rule amendments were published in the February 7, 1994 New Jersey Register at 26 N.J.R. 729(a). Administrative corrections to the text of the amendments were published in the March 7, 1994 New Jersey Register at 26 N.J.R. 1194(a). The comment period was extended until March 25, 1994 after a Notice of Extension was published in the March 7, 1994 New Jersey Register at 26 N.J.R. 1222(a). During the comment period, the Commission received one comment from the New Jersey Association of Realtors.

COMMENT: The New Jersey Association of Realtors supported the rule change to N.J.A.C. 11:5-1.23 as proposed. However, with regard to the proposed amendment to N.J.A.C. 11:5-1.15(i), it requested that the Commission clarify that it is not the intent of the proposal to prohibit licensees from advertising in publications directed to particular ethnic or religious groups, or to individuals of a particular sexual or affectional orientation.

RESPONSE: The Commission agrees with the interpretation of this rule change as stated in the comment, but does not believe that a change to the rule's text is needed to clarify its meaning. The amended rule is not intended to and does not prohibit licensees from advertising in publications targeted to any particular group of persons such as a church bulletin or an ethnic or foreign language newspaper. However, the specific ads may not contain language which expresses, directly or indirectly, any limitation, specification or discrimination as to members of the protected classes of persons identified in the New Jersey Law Against Discrimination and the federal fair housing laws.

Full text of the adoption follows:

11:5-1.15 Advertising rules

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

(i) No licensed individual, limited or general partnership, firm or corporation shall advertise or use any form of application or make any inquiry which expresses directly or indirectly any limitation, specification or discrimination as to race, religion, creed, color, sex, affectional or sexual orientation, marital status, national origin, ancestry or as to whether a person is handicapped as that term is defined in N.J.A.C. 11:5-1.23(h).

(j)-(n) (No change.)

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

(a)-(g) (No change.)

(h) No licensee shall deny real estate brokerage services to any person for reasons of race, religion, color, sex, affectional or sexual orientation, marital status, national origin or because a person is handicapped; and no licensee shall participate or otherwise be a party to any plan, scheme or agreement to discriminate against any person on the basis of race, religion, color, sex, affectional or sexual orientation, marital status, national origin or because a person is handicapped. For the purposes of this subsection, the term "handicapped" means suffering from physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or from any mental, physiological or developmental disability resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Handicapped shall also mean suffering from AIDS or HIV infection, as defined in N.J.S.A. 10:5-5(ff) and (gg).

(c)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Prelicensure Schools and Real Estate Instructors; Requirements

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

Proposed: February 7, 1994 at 26 N.J.R. 730(a) (see also 26 N.J.R. 1194(b) and 1222(a)).

Adopted: May 3, 1994 by the New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.

Filed: May 4, 1994 as R.1994 d.267, **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. 45:15-6, 45:15-10.3 and 10.9.

Effective Date: June 20, 1994.

Operative Date: July 1, 1994.

Expiration Date: October 15, 1998.

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Summary of Agency-Initiated Changes:

The word "execute" in N.J.A.C. 11:5-1.28(h) has been changed to "executed" in order to make that sentence grammatically correct. Also, the term "Secretary-Director" in that subsection has been changed to "Executive Director," which is the current title designation for that position with the Commission.

The word "approved" in N.J.A.C. 11:5-1.28(q) has been changed to the word "licensed" in order to make the language consistent with N.J.S.A. 45:15-10.4, effective July 1, 1994.

Summary of Public Comments and Agency Responses:

The proposed rule amendments were published in the February 7, 1994 New Jersey Register at 26 N.J.R. 730(a). Administrative corrections to the text of the amendments were published in the March 7, 1994 New Jersey Register at 26 N.J.R. 1194(b). The comment period was extended until March 25, 1994 after a Notice of Extension was published in the March 7, 1994 New Jersey Register at 26 N.J.R. 1222(a). During the comment period, the Commission received comments from the New Jersey Association of Realtors and Frank W. Kovats, Director of Kovats Real Estate and Insurance Schools in Paramus, New Jersey.

COMMENT: Under subsection (i), which recites the qualification requirements for real estate school directors, directors will be required to fulfill all the educational requirements imposed upon candidates for instructor licenses, thereby requiring all school directors to be qualified as brokers. Since the role of a school director is more administrative than instructional, it is not necessary for directors to have the same knowledge of broker activities as instructors.

RESPONSE: The Commission disagrees with this comment. Initially, the comment incorrectly describes the proposal. The new subsection addressed by the comment does not apply to all school director candidates, but only those who will be directors of school programs administered by public adult education programs conducted under the auspices of a board of education in New Jersey, or an accredited college or university. The amended licensing law provides that an individual not licensed as an instructor may function as a director of such a program if he has attended a real estate instructor course approved by the Commission within two years of applying to the Commission for approval as the director of the program. See N.J.S.A. 45:15-10.9. The Commission has determined that the real estate instructor prelicensure course shall consist of the full 150 hours of broker prelicensure education. N.J.A.C. 11:5-1.28(k)3. See 26 N.J.R. 801(a). Thus, this rule amendment simply codifies the statutory requirement that these prospective directors of these types of licensed real estate schools, who are not themselves licensed as instructors, must fulfill the instructor education requirement, that is, the three broker prelicensure courses.

The Commission believes that this level of education is necessary to insure the quality of teaching and administration in these programs. Like the directors of private real estate schools, who under the law must be licensed instructors, directors of public school and college programs must be familiar with the subject matter of the courses to be taught in their schools in order to properly monitor the quality of teaching by their instructors and to ensure that the curriculum taught to their students conforms with Commission regulations N.J.A.C. 11:5-1.27(f) and (g) which establish specific course content requirements for the salesperson and broker prelicensure courses. Moreover, the requirement is analogous to the requirements for principal certification in the State's public schools. Those regulations state that practical teaching competencies are essential to lead and manage a school. See N.J.A.C. 6:11-9.5.

Lastly, the comment is incorrect in stating that the rule amendment would require all school directors to be qualified as brokers. Directors of public school and college programs will not be required to pass either the broker or the instructor prelicensure examination, nor fulfill any of the experiential requirements for licensure as a broker.

COMMENT: The rule amendment should clarify whether a school that is licensed to conduct both real estate and insurance courses but ceases to offer real estate courses, is required to comply with the real estate school closing procedures imposed in subsection (u) if it continues to offer the insurance courses.

RESPONSE: The Commission believes that the rule amendment is sufficiently clear in this regard and that no addition to the rule's text is necessary. Any school that permanently ceased to offer real estate prelicensure courses would be required to comply with the school closing requirements of the rule, even though it continued to offer other courses.

COMMENT: The comment states an objection to the renewal of the requirement that a real estate school maintain a bona fide office open to the public during normal business hours.

RESPONSE: The requirement that real estate schools maintain a bona fide office to the public during normal business hours has not been removed from the rule, but rather has been relocated to subsection (f). The Commission agrees that this requirement is essential to the proper administration of real estate schools.

COMMENT: The requirement in subsection (o) that tuition and fees be set forth in a student contract gives the false impression that the Commission has the authority to regulate these costs, and does not take into account that some schools offer the course free.

RESPONSE: This requirement is not an amendment to the rule, but rather existed in the earlier version of the rule. The Commission believes that the text of the rule is clear and does not imply that the Commission has the authority to regulate tuition rates and fees. This provision is intended to require schools to explicitly state in their student contracts what their fee policy is, thereby providing notice of that policy to all prospective students in writing. If a school offers the courses for free, it will be required to set forth that fact, along with any conditions for free tuition, in its student contract.

COMMENT: The rule should clarify whether or not individuals who preregister for a course at a school, then cancel and enroll elsewhere before classes at the first course have commenced, are considered "transfer students" under subsection (q).

RESPONSE: The provision referred to in this comment is not an amendment to the rule, but rather existed in the earlier version of the rule. The rule is not intended to apply to students who cancel their registration to attend a particular course. Rather, it only applies to students who have already begun attending classes.

COMMENT: A school should be required to maintain student records for longer than the three years prescribed under subsection (r), since many students request transcripts of courses that were taken as far back as the 1970s.

RESPONSE: The provision is not an amendment to the rule, but rather existed in the earlier version of the rule. In any event, the Commission believes that it should be left to the individual real estate schools whether they choose to maintain student records for more than three years. Since all license applicants must apply for licensure no later than one year after completing their prelicensure education, the three year time period is sufficient for students to have access to their records so they might become licensed.

COMMENT: The comment states several objections to certain provisions in subsection (x), which addresses broker-owned prelicensure schools, none of which were proposed to be substantively amended in the instant proposal.

RESPONSE: The proposed amendments made only technical changes to the original text of subsection (x), that is, changing the word "approved" to "licensed," to reflect changes to the licensing law. Because the comments addressing this subsection of the rule are beyond the scope of this current rulemaking, the Commission has chosen not to respond to them. The commenter may petition the Commission for amendments to subsection (x) as referenced in the comment.

COMMENT: Within 14 days of a school closing, the director should be required to return all education certificates to the Commission. This would be consistent with N.J.A.C. 11:17-3.1(f)8 regarding closure of insurance schools.

RESPONSE: The Commission agrees that all education certificates should be returned to the Commission when a school closes. This additional requirement will prevent fraud and abuse that might occur if these certificates were in circulation after a school closed and imposes only a negligible additional administrative burden on closing schools. Therefore, the Commission adopts the rule amendment with this change. However, the 14-day time frame suggested in the comment will be changed to 10 days to make this additional requirement consistent with the rest of the subsection on school closing procedures.

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

11:5-1.28 Licensed schools and instructors; requirements

(a) (No change.)

(b) The Commission shall require any school or instructor in making application for licensure to submit certain documents, statements and forms, which shall form the basis for the Commission's judgment whether to grant a license. Where the Commission initially denies an application for a school or instructor license, it shall

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provide to the applicant notification in writing with reasons for such action. The school may appeal such a decision to the full Commission. N.J.A.C. 11:5-5.1 shall be applicable to all such appeals.

(c) Public adult education programs conducted under the auspices of a board of education in this State and any college or university accredited as such by the State Department of Higher Education shall be presumed to be qualified providers of real estate courses, so long as their real estate prelicensure education program is under the direction of a licensed instructor or other qualified individual who has affirmatively demonstrated to the Commission his or her good moral character and has met the other requirements of N.J.S.A. 45:15-10.9.

(d) Except as provided in (c) above, all other applicants for a license to operate a real estate prelicensure school, and in the case of a corporation, or limited or general partnership, the members, officers, directors and owners of a controlling interest thereof, shall demonstrate their good moral character, including the absence of any conviction for the crimes or other offenses specified under the provisions of N.J.S.A. 45:15-12.1. The Commission may make such further investigation and require such proof as it deems proper as to the honesty, trustworthiness, character and integrity of an applicant.

(e) When a school is to be conducted in the name of a corporation, a certified copy of its certificate of incorporation shall accompany the application for licensure. When a school is to be conducted under a trade name, whether a sole proprietorship, firm, general partnership, or limited partnership, a true copy of the certificate of trade name or articles of the general or limited partnership as filed in the office of the county clerk shall accompany the application. A school shall not use the designation of "College" or "University," as part of its name or in any other manner, unless it, in fact, meets the standards and qualifications of the State agency having jurisdiction and has been approved by that agency.

(f) Every school licensed by the Commission shall maintain a bona fide office open to the public during normal business hours for the purpose of assisting former and current students. Schools shall provide adequate space, seating, equipment and instructional materials for their students. The premises, equipment and facilities of the school shall comply with all local, city, county and State regulations, such as fire codes, building and sanitation codes. A certificate from proper authority covering these requirements shall accompany an application for school licensure. The Commission may require proof of ownership or a copy of the lease if the facility is rented. Public adult education programs conducted under the auspices of a board of education in this State and any college or university accredited as such by the State Department of Higher Education, the facilities of which have been approved by a State agency, shall be presumed to have met the requirements of this paragraph, so long as the real estate courses offered are held at the approved facility.

1. Any additional teaching locations must be licensed by the Commission and must comply with all the requirements applicable to licensed schools, their directors and instructors as set forth in the Act and this rule. School directors shall have oversight responsibility for these locations. All courses conducted at such locations must be taught by licensed instructors or guest lecturers, pursuant to N.J.S.A. 45:15-10.5 and this rule.

(g) All schools shall furnish to the Commission at the time of application for initial licensure the school policy and regulations pertaining to standards for satisfactory completion of the courses offered at the school and the issuance of a Certificate, conditions for dismissal of a student and conditions for reinstatement.

1. Any changes in school policy and regulations, as set forth in paragraph (g) above, from the information submitted with the original application for school licensure or as otherwise previously supplied, shall be promptly disclosed to the Commission in writing, or on a form which the Commission prescribes.

(h) When a school fulfills all of the requirements for licensure, then a license shall be *[execute]* ***executed*** by the President of the Commission as attested by the *[Secretary-Director]* ***Executive Director***. School licensure shall be limited to the specific ownership and school locations identified on the license document(s).

(i) An individual seeking approval as a director of a licensed real estate school administered by a public adult education program or an accredited college or university who is not licensed as a real estate instructor may nevertheless qualify as the director of such a school, so long as he or she is at least 18 years of age; has a background of good moral character, including the absence of any conviction for the crimes or other offenses specified under the provisions of N.J.S.A. 45:15-12.1; and has fulfilled all of the education requirements imposed upon candidates for licensure as real estate instructors within two years of applying to the Commission for approval to be the director of such a school.

(j) In order to enable the Commission to confirm that courses offered by real estate schools include the required number of hours of instruction as prescribed in N.J.S.A. 45:15-10.1(a) and (b) and N.J.A.C. 11:5-1.27, every six months, each school director shall submit data on courses to be offered by their school in the forthcoming six month period, the starting and ending dates of the courses, the days and hours of class sessions and teaching locations. Such course information shall be provided on forms prescribed by the Commission and shall be retained as permanent records for not less than three years after submission.

(k)-(l) (No change.)

(m) The maximum teaching load per instructor or guest lecturer shall not exceed the ratio of one instructor or guest lecturer to 60 students per class. Each prelicensure course offered by a licensed school shall be under the supervision of an instructor licensed pursuant to N.J.S.A. 45:15-10.5 and N.J.A.C. 11:5-1.28(k), below. At least one licensed instructor shall be present in the classroom at all sessions. However, additional instructors or guest lecturers may be utilized for instruction so long as not more than 25 percent of the required instruction is done by guest lecturers. Broker prelicensure courses may be taught by up to three instructors, provided that one licensed instructor is designated as having the responsibility for the quality of instruction in that course. School directors shall maintain as a business record the names of any persons teaching as guest lecturers or as a group of instructors, with an indication of the designated supervising instructor.

(n) (No change.)

(o) The tuition and fees shall be specifically set forth in a student contract. The contract shall expressly state the school's policy regarding the return of unearned tuition when a student is dismissed or withdraws voluntarily or because of hardship.

(p) Any person who has a permanent disability or physical handicap which precludes that person from attending regular scheduled classes at a licensed school may request Commission approval to receive special instruction through a licensed school provided this request is supported by sworn statements of doctors or other persons having knowledge of the facts and provided a licensed school is willing to undertake such an agreement.

(q) No school shall, without the approval of the Commission, accept for enrollment as a transfer student any person concurrently enrolled with any other *[approved]* ***licensed*** school, unless upon the showing of good cause by said student to the Commission in writing.

(r) Every school shall permanently establish and maintain for each student, complete, accurate and detailed records for a period of not less than three years after student matriculation. Such records shall be available for inspection during regular school hours by the Commission and shall contain the following information:

1. The total number of hours of instruction undertaken by the student;

2. Completed areas of study in real estate subjects prescribed by the Act and these regulations;

3. The student's attendance record; and

4. The names of all supervising instructors and guest lecturers.

(s) To satisfactorily complete any prelicensure course, a student must receive a passing grade and attend at least 80 percent of the class session hours required for that course by N.J.A.C. 11:5-1.27.

(t) Upon a student's satisfactory completion of a course in real estate, the school shall issue to the student a Certificate.

(u) The director of a real estate school shall be responsible for properly closing the school in compliance with this subsection.

1. No later than 10 days after the date on which the school ceases operations, the director shall return the school license *[and]* *,* stamp*, and all education certificates* to the Commission and shall advise the Commission in writing of the date on which the school closed.

2. Within 30 days of the date on which the school ceases operations, the director shall submit an affidavit to the Commission certifying the following:

i. The location where student records are to be kept in compliance with (r) above and the name of the person who is to act as custodian of the records. The Commission shall be notified immediately of any change in such information. Records shall be kept for a period of not less than three years;

ii. The name of the owner or authorized representative of the school and the address where he or she may be contacted by the Commission;

iii. That the school license and school stamp have been returned to the Commission;

iv. That all students have been timely notified of the school closing, and any tuition received by the school for future courses or courses which were not completed has been returned to the students;

v. That all signs have been removed, and all advertisements and trade materials which refer to the school have been recalled;

vi. That the appropriate telephone services have been advised that the school is closed and that future telephone directories should not contain the name of the school; and

vii. That there are no outstanding fees, fines or penalties due and owing the Commission.

(v) No school shall use any name other than the name in which it is licensed for advertising or publicity purposes; nor shall any school advertise or imply that it is "recommended," "endorsed," "accredited," or "approved" by the Commission, but a licensed school may indicate that it has been "licensed" to conduct courses of education in real estate subjects to qualify applicants for licensure examination. No school shall make any warranties or guarantees that a student will pass the State license examination as a result of taking its course.

(w) (Reserved)

(x) The purpose of this subsection is to assure that there is a total separation between instructional activity conducted by licensed schools and any solicitation of students, which, as defined in (x)2ii below, means any recruiting efforts or brokerage activity directed at students. These provisions will be construed in a manner consistent with that regulatory objective. A violation of any of these provisions will be considered by the Commission as conduct demonstrating unworthiness for licensure, thereby subjecting the offending licensee to sanctions pursuant to N.J.S.A. 45:15-17(e) and (t). The Commission may also impose sanctions for a violation of these provisions pursuant to N.J.S.A. 45:15-10.11. Requirements regulating the involvement of licensed schools in soliciting students to become salespersons for particular real estate brokers are as follows:

1. At the beginning of the first class session of all salesperson prelicensure courses, all licensed schools shall distribute to all students in writing the following:

NOTICE
TO: ALL SALESPERSON COURSE STUDENTS
FROM: NEW JERSEY REAL ESTATE COMMISSION
RE: SOLICITATION OF SALESPERSON LICENSE CANDIDATES AT PRELICENSURE SCHOOLS:

It is the policy of the New Jersey Real Estate Commission that there be a complete and total separation between the instruction you receive in your prelicensure education course and any efforts by brokers to recruit you to join the firm and/or to secure listings or offers on listed properties from you. This policy is reflected in Commission rule N.J.A.C. 11:5-1.28(x), which is reproduced in its entirety below.

If you are subjected to any recruitment efforts or are solicited for listings or offers during class time you should immediately notify your instructor, the Director of your school, and the New Jersey Real Estate Commission by writing to:

New Jersey Real Estate Commission
20 West State Street, CN 328
Trenton, New Jersey 08625
Attn: Director, Real Estate Education

You are free to negotiate the terms of your employment with any broker. It is in your own best interest to talk to several prospective employing brokers before deciding which offers the best compensation plan, including post-termination payment provisions, and support package for you. You should also consider a prospective employer's professionalism and reputation for honesty and integrity when deciding which broker to work for.

In the event an enrolled student does not attend the first session of a salespersons course, a copy of the foregoing notice shall be delivered to that student at the commencement of the first class session which that student does attend.

2. For the purposes of this subsection, the following definitions shall apply:

i-ii. (No change.)

iii. The phrase "successful completion" means the receipt by the student of a Real Estate Commission school certificate form, duly signed by the instructor and the school director and stamped by the licensed school, certifying to the student's having completed and passed a prelicensure course conducted by that school.

3. (No change.)

4. No in-person or electronic solicitation of students to apply for employment as salespersons with a particular real estate broker or any referral program shall be permitted at a licensed school location during the prescribed class hours, nor in the breaks between such class hours. Such soliciting may be scheduled and held at licensed schools before, after or separate from the prescribed class hours, for example as a "career night" for students, provided that students are notified in writing in advance that their attendance at such recruitment functions is completely voluntary. However, no school director, instructor, guest lecturer or staff member shall engage in such activity at any time prior to, nor within seven days following, a student's successful completion of a course. Licensed instructors who are also licensed brokers or salespersons may conduct prelicensure courses, and licensees who are not licensed instructors may appear as guest lecturers in such courses, so long as their presentations do not include the solicitation of students.

5. Any licensed school which posts, distributes or displays written material which solicits students to inquire about employment as a salesperson with a particular broker must similarly post, distribute or display comparable written material from any real estate broker who requests the school to do so. However, no written material soliciting students to apply for employment with a particular real estate broker or any referral program shall be distributed during the prescribed class hours.

6. No licensed school may offer a reduced tuition rate to students where eligibility for the lower tuition is contingent upon a student making a commitment to becoming licensed through a particular broker subsequent to their qualifying for licensure and no licensed school may otherwise make or imply any promise or guarantee of employment to any student.

7. No oral statements or written text referring to a licensed school may be included or contained in any advertisement by a real estate licensee, and no advertisement of a licensed school may refer to the brokerage operation or include the telephone number of any licensee except that a school which is owned by a real estate licensee or franchisor may use that name in its school name.

i. (No change.)

ii. No advertisement referring to a licensed school may be placed in the Help Wanted classified section of any newspaper or periodical.

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8. No licensed school shall conduct prelicensure course sessions in any area which is part of a location which is licensed as a main or branch office of a real estate broker. For the purposes of this paragraph, an area will be considered as part of a licensed office location if any brokerage activity is conducted in that area at any time.

i.-ii. (No change.)

iii. In all situations where prelicensure courses are conducted in the same building in which brokerage activity occurs under the authority of a broker in any way affiliated with the licensed school conducting such courses, the broker shall post signs either on the exterior of the building of in any common foyer or lobby, directing students either to the separate exterior entrance to the school location or to the primary route of access to the school location from such foyer or lobby.

9. No licensed school shall allow any person to, solicit students enrolled in, or considering enrolling in, a prelicensure course to list, purchase or lease any property; or for referrals of prospective sellers, purchasers or lessees at any time while such students are on school premises.

(a)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Collection of Social Security Numbers of Licensees

Adopted New Rule: N.J.A.C. 11:5-1.44

Proposed: February 7, 1994 at 26 N.J.R. 735(a) (see also 26 N.J.R. 1222(a)).

Adopted: May 3, 1994 by the New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.

Filed: May 4, 1994 as R.1994 d.268, without change.

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

Effective Date: June 20, 1994.

Operative Date: July 1, 1994.

Expiration Date: October 15, 1998.

Summary of Public Comments and Agency Responses:

The proposed rule was published in the February 7, 1994 New Jersey Register at 26 N.J.R. 735(a). The comment period was extended until March 25, 1994 after a Notice of Extension was published in the March 7, 1994 New Jersey Register at 26 N.J.R. 1222(a). During the comment period, the Commission received comments from Ned H. Sawyers, Broker of Sawyers Realty Company, Inc. in Vineland, New Jersey and the New Jersey Association of Realtors.

COMMENT: Both Mr. Sawyers and the New Jersey Association of Realtors supported adoption of the rule as proposed.

RESPONSE: The Commission is encouraged by the support expressed in these comments and adopts the rule as proposed.

Full text of the adoption follows:

11:5-1.44 Collection of Social Security numbers of licensees

(a) All application forms for licensure or relicensure, including the forms utilized to register for a license examination, shall include a request that each applicant voluntarily submit his or her Social Security number to the Commission. The Commission shall include on all forms containing that request the following information:

1. That disclosure of the Social Security number is voluntary, not mandatory;

2. That the Social Security number will be used as an internal identifier so as to enhance the Commission's ability to correctly identify applicants for licenses and current licensees; and

3. A specific reference to this rule as the legal authority on the basis of which the Commission is making the request.

(b)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Commission Records Open to Public Inspection; Investigative Files Not Open to the Public

Adopted New Rule: N.J.A.C. 11:5-2.5

Proposed: February 7, 1994 at 26 N.J.R. 736(a) (see also 26 N.J.R. 1222(a)).

Adopted: May 3, 1994 by the New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.

Filed: May 4, 1994 as R.1994 d.269, without change.

Authority: N.J.S.A. 47:1A-1 et seq. and 45:15-6.

Effective Date: June 20, 1994.

Operative Date: July 1, 1994.

Expiration Date: October 15, 1998.

Summary of Public Comments and Agency Responses:

The proposed rule was published in the February 7, 1994 New Jersey Register at 26 N.J.R. 736(a). The comment period was extended until March 25, 1994 after a Notice of Extension was published in the March 7, 1994 New Jersey Register at 26 N.J.R. 1222(a). During the comment period, the Commission received one comment from the New Jersey Association of Realtors.

COMMENT: The New Jersey Association of Realtors supported adoption of the rule as proposed.

RESPONSE: The Commission is encouraged by the association's support and adopts the rule as proposed.

Full text of the adoption follows:

11:5-2.5 Commission records open to public inspection; investigative files not open to the public

(a) The New Jersey Real Estate Commission makes, maintains and keeps records as listed in (b) through (g) below.

(b) Current and computerized public licensing records are available at the Commission's office for inspection and copying during normal business hours upon sufficient notice to the Commission staff. The Commission staff may require several weeks notice to locate records other than computerized records. Except as otherwise noted in this section, records are maintained for a minimum of three years. Older records may be unavailable. Copies of records can be purchased from the Commission at the fees established in the Right to Know Law, N.J.S.A. 47:1A-2.

(c) Requests for certified copies of the Commission's public licensing records (or for a certificate of the absence of a public record) shall be submitted in writing and must specify which records are requested and the time period covered by the request. The Commission staff requires at least 10 working days to provide certified copies of public records.

(d) The following records are maintained pursuant to the Real Estate Licensing Act:

1. Certifications of license history and status based upon computerized licensing records;

2. Real estate broker, broker-salesperson, salesperson, school and instructor license applications, and materials submitted therewith to obtain, transfer, reinstate or renew such licenses, and the final disposition of such applications. However, criminal history information obtained by the Commission pursuant to N.J.A.C. 11:5-1.29 and personal data on a licensee such as home address, home telephone number and date of birth are considered confidential;

3. Real Estate Commission meeting minutes;

4. Orders to Show Cause and complaints issued by the Attorney General's office charging that a licensee or an unlicensed person has violated provisions of the Real Estate License Act or the Commission's administrative rules; documents accepted into the agency record in any such proceeding; and the final disposition of such proceedings including settlements; and

5. Notices, proposals and other records concerning rulemaking required to be kept or distributed to the public by the Commission pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et

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seq. and N.J.A.C. 1:30-3 and 4 et seq. Complete records of unadopted proposals are available for one year after publication of the proposal. Complete records of adopted rules are available for three years after each rule's effective date.

(e) The following records are maintained by the Bureau of Subdivided Land Sales Control, pursuant to the Real Estate Sales Full Disclosure Act, N.J.S.A. 45:15-16.27 et seq.:

1. Statements of record and additions or corrections thereto filed with the Bureau pursuant to N.J.S.A. 45:15-16.33, 16.36, 16.39 and 16.41(a);

2. Annual reports submitted by a subdivider pursuant to N.J.S.A. 45:15-16.40;

3. Public offering statements and amended public offering statements prepared pursuant to N.J.S.A. 45:15-16.38;

4. Orders to Show Cause and other pleadings charging violations of N.J.S.A. 45:15-16.27 et seq. and the final disposition of such orders, including Orders to Cease and Desist and/or imposing penalties or sanctions; documents accepted into the agency record in any such proceedings; and

5. Applications for exemption of a subdivision filed with the Bureau pursuant to N.J.S.A. 45:15-16.32(c) and N.J.A.C. 11:5-6.19 and the final disposition of any such exemption application.

(f) The following records are maintained pursuant to the Real Estate Guaranty Fund Act, N.J.S.A. 45:15-34 et seq.:

1. Court orders for payment from the Real Estate Guaranty Fund; and

2. Pleadings served upon the Commissioner of Insurance or any duly authorized agent or employee of the Department of Insurance pursuant to N.J.S.A. 45:15-39.

(g) The following licensee records are nonpublic in accordance with N.J.S.A. 47:1A-1 et seq.:

1. Criminal complaints, indictments, judgments of conviction and other separate documents submitted in connection with a license application concerning whether an applicant is disqualified by reason of indictment for or conviction of a crime;

2. Criminal history records obtained as the result of any criminal history check;

3. Petitions or discharges in bankruptcy, complaints, orders or other pleadings in actions for assignment to creditors and other separate documents submitted in connection with a license application concerning whether the applicant is disqualified by reason of unworthiness;

4. Copies of orders of suspension or revocation issued by professional or occupational licensing authorities, and other separate documents submitted in connection with a license application concerning whether the applicant is disqualified from licensure;

5. Records concerning the medical disability of any licensee;

6. Investigative files in any matter pending investigation, or in any completed investigation in which no formal disciplinary action was taken;

7. Personal data on a licensee such as home address, home telephone number and date of birth; and

8. The Social Security numbers of any applicants or licensees which were submitted to the Commission on a license application or otherwise obtained by the Commission.

(a)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Applications for Temporary Suspension

Adopted New Rule: N.J.A.C. 11:5-4.9

Proposed: February 7, 1994 at 26 N.J.R. 737(a) (see also 26 N.J.R. 1222(a)).

Adopted: May 3, 1994 by the New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.

Filed: May 4, 1994 as R.1994 d.270, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: June 20, 1994.

Operative Date: July 1, 1994.

Expiration Date: October 15, 1998.

Summary of Agency-Initiated Change:

After considering further how best to entertain applications for temporary suspensions made during time periods when the Commission is not scheduled to meet, or when a quorum cannot be obtained, in delegating to three Commissioners the authority to temporarily suspend a license, the Commission decided to require that at least one of those three Commissioners be the President or Vice-President of the Commission, and that at least one of those three Commissioners be a public member. By comprising the three-Commissioner panel in this manner, there will be assurance that decisions on the imposition of temporary suspensions during such time periods will be made by a representative cross-section of the members of the entire Commission.

Summary of Public Comments and Agency Responses:

The proposed rule was published in the February 7, 1994 New Jersey Register at 26 N.J.R. 737(a). The comment period was extended until March 25, 1994 after a Notice of Extension was published in the March 7, 1994 New Jersey Register at 26 N.J.R. 1222(a). During the comment period, the Commission received one comment from the New Jersey Association of Realtors.

COMMENT: The New Jersey Association of Realtors supported adoption of the rule as proposed.

RESPONSE: The Commission is encouraged by the association's support and adopts the rule substantially as proposed.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***):

11:5-4.9 Applications for temporary suspension

(a) The Commission may on its own motion, and upon the terms and conditions as set forth in N.J.S.A. 45:15-17.1 and as the Commission deems appropriate, enter an order temporarily suspending the license of any licensee upon making a finding that prima facie evidence exists that:

1. The licensee has failed to account for or to pay over any moneys belonging to others that have come into the possession of the licensee, in violation of N.J.S.A. 45:15-17(d); or

2. The licensee has commingled his or her personal money or property with the money or property of others or has failed to maintain and deposit such moneys in a special account, separate and apart from personal or other business accounts, when acting in the capacity of a real estate broker, or escrow agent, or as the temporary custodian of the funds of others, in a real estate transaction, in violation of N.J.S.A. 45:15-17(o).

(b) At least 24 hours prior to ordering a temporary suspension, the Commission shall give notice to the licensee of the application for the order and provide the licensee an opportunity to appear before the Commission to show cause why the license should not be suspended pending a full hearing of the matter. Such notice shall be given in writing or telephonically.

1. Written notice shall be served personally or sent by certified mail to the last known business address of the licensee.

2. Telephonic notice shall be confirmed in a writing sent to the licensee's last known business address as soon as practicable after the delivery of the telephonic notice.

3. The person who personally or telephonically delivers notice of an application for a temporary suspension shall execute a certification confirming that he or she has provided the notice, which certification shall be submitted into the record of the proceeding on the application for the temporary suspension.

(c) At the hearing on the application for the temporary suspension, the Commission shall consider evidence presented by the licensee to explain, disprove or rebut the prima facie evidence upon which the application for the temporary suspension is based. Unless otherwise provided in N.J.S.A. 45:15-17.1, the provisions of N.J.A.C. 1:1-12.6(f) shall apply to proceedings on applications for temporary suspensions.

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(d) Prior to entering any order imposing a temporary suspension as provided in (a) above, the Commission shall also make findings that:

1. An adequate good faith effort to provide notice to the licensee was made and that the licensee was afforded an opportunity to be heard. Submission of the certification referred to in (b) above shall be sufficient to establish that an adequate good faith effort was made to provide notice of the proceeding;

2. Based on the evidence presented, there is a substantial likelihood that the charging party will prevail on the merits when the matter is fully argued before the Commission; and

3. Immediate and irreparable harm will probably result before the licensee can be fully heard. Prima facie evidence of a violation of N.J.S.A. 45:15-17(d) or (o) shall be considered sufficient to satisfy this criterion.

(e) All orders imposing temporary suspensions shall advise the suspended licensee of the date upon which the Commission shall hold a full evidentiary hearing on the violations upon which the temporary suspension is based, which date shall be no more than 30 days following the effective date of the temporary suspension. Such a hearing shall be a plenary hearing, conducted in accordance with N.J.A.C. 1:1-14.1 through 14.7.

(f) The temporary suspension shall become effective upon issuance by the Commission, and the licensee and his or her broker shall promptly be notified of its issuance, whereupon the license of the suspended person shall immediately be returned to the Commission. The Commission shall confirm the suspension in a written order which shall be served upon the licensee and his or her broker via personal service or by certified mail, return receipt requested at the licensee's last known business address.

(g) In order to entertain applications for temporary suspensions made during time periods when the Commission is not scheduled to meet, or when a quorum cannot be obtained, the Commission may delegate to three commissioners*, **at least one of whom shall be either the President or Vice-President of the Commission and at least one of whom shall be a public member,*** the authority to temporarily suspend a license as provided in (a) through (f) above. In such circumstances, all references in these rules to the Commission shall be construed as referring to the three commissioners so designated by the Commission.

(a)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM

Small Employer Health Benefits Program Board Plan of Operation

Board Structure and Meetings

Adopted Amendment: N.J.A.C. 11:21-2.5

Proposed: March 16, 1994 in accordance with N.J.S.A. 17B:27-30, 31 and 51, at 26 N.J.R. 1940(a).

Adopted: May 26, 1994 in accordance with N.J.S.A. 17:27-51(e).

Filed: May 31, 1994 as R.1994 d.319, **without change.**

Authority: N.J.S.A. 17B:27A-30, 31 and 51.

Effective Date: May 31, 1994.

Expiration Date: October 15, 1998.

These amended rules were proposed and are being adopted pursuant to the procedures set forth at N.J.S.A. 17B:27A-51.

Accordingly, notice of the proposal of these amended rules was sent for publication in three newspapers of general circulation in New Jersey, mailed to all known interested parties, and submitted to the Office of Administrative Law (OAL) for publication in the New Jersey Register.

Pursuant to N.J.S.A. 17B:27A-51, interested parties were provided a comment period of at least 20 days. As set forth in the notice of proposed new rules, the comment period ended on April 28, 1994. The Small Employer Health Benefits Program Board submitted the rules, which amended the Boards Plan of Operation, to the Commissioner of Insurance for approval in compliance with the requirements of N.J.S.A. 17B:27A-30. Pursuant to N.J.S.A. 17B:27A-30, a public hearing on the rules was held by the Department of Insurance, conducted by a Hearing Officer designated by the Department, on May 4, 1994. A copy of the transcript of the proceeding can be obtained by interested parties by contacting Chanell McDevitt, Hearing Officer, Department of Insurance, CN 325, Trenton, New Jersey 08625. Ms. McDevitt recommended to the Commissioner that the amendments be approved as proposed. On May 4, 1994, the Small Employer Health Benefits Program Board adopted the rule amendments, subject to approval of the Commissioner of Insurance pursuant to N.J.S.A. 17B:27A-30. On May 19, 1994 the Department of Insurance approved the amendments to the Plan of Operation.

Summary of Public Comments and Agency Responses:
No written comments were received by the Board. No public comment was received at the public hearing on May 4, 1994.

Full text of the adoption follows:

11:21-2.5 Board structure and meetings

(a) The Program shall exercise its power through a Board.

1. (No change.)

2. Intially, three of the public members shall serve for a term of three years; three shall serve for a term of two years; and three shall serve for a term of one year. Thereafter, all public members shall serve for a term of three years. Vacancies shall be filled in the same manner as original appointments. The public directors shall serve their terms of office until their replacements are duly elected.

i.-iv. (No change.)

v. Elections shall be by the highest number of votes properly cast in person and absentee.

vi. (No change.)

3. (No change.)

(b)-(l) (No change.)

LAW AND PUBLIC SAFETY

(b)

DIVISION OF MOTOR VEHICLES

Identifying Marks

Adopted Amendments: N.J.A.C. 13:20-34.2 and 34.3

Proposed: April 4, 1994 at 26 N.J.R. 1487(a).

Adopted: May 16, 1994 by C. Richard Kamin, Acting Director, Division of Motor Vehicles.

Filed: May 27, 1994 as R.1994 d.314, **without change.**

Authority: N.J.S.A. 39:2-3, 39:3-33.3 et seq., 39:3-33, 39:3-19, 39:3-19.2, 39:3-24, 39:3-25, 39:3-27.4, 39:3-27.45, 39:3-27.46, 39:3-27.48, 39:3-27.55 and 39:3-33.10.

Effective Date: June 20, 1994.

Expiration Date: December 13, 1995.

Summary of Public Comment and Agency Response:
No comment received.

Full text of the adoption follows:

13:20-34.2 Registration numbers reserved

(a) The following registration numbers are reserved as specified:

1.-8. (No change.)

9. QQA 1 through QQZ 999, 1 QQA through 999 QQZ, QQ1 A through QQ999 Z, 100 AQQ through 999 ZQQ, and QQ 1000 through QQ 99999 for "historic" vehicles registered pursuant to N.J.S.A. 39:3-27.3 et seq.; Q1 through Q9999 for "historic" motorcycles;

10.-25. (No change.)

26. SA 1000 through SA 9999 and SA 100A through SZ 999Z, except that the letters I, O and Q shall not be utilized in such non-personalized plate combinations. Designated for use on Coastal Protection license plates issued by the Division pursuant to N.J.S.A. 39:3-27.48;

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27. IM 1000 through IM 9999 and IM 100A through IM 999Z, except that the letters O and Q shall not be utilized in such non-personalized plate combinations. Designated for use on Animal Welfare license plates issued by the Division pursuant to N.J.S.A. 39:3-27.55;

28. CW 1000 through CW 9999, 1000 CW through 9999 CW, and CW 100A through CW 999Z, except that the letters I, O and Q shall not be utilized in such non-personalized plate combinations. Designated for use on Wildlife Conservation license plates issued by the Division pursuant to N.J.S.A. 39:3-33.10;

29. AA 100A through AZ 999Z are reserved for future use;

Recodify existing 26. as 30. (No change in text.)

(b) (No change.)

13:20-34.3 Registration numbers excluded

(a) The following registration numbers shall be excluded from issuance as "particular identifying marks" and, where so indicated, shall be used for the purpose specified:

1. Any combination except those hereinbefore reserved having the following arrangements: three alphabetic followed by three numeric characters (for example ABC 123); three numeric followed by three alphabetic characters (for example 123 ABC); three alphabetic followed by two numeric and one alphabetic character (for example, ABC 12D); two alphabetic followed by three numeric and one alphabetic character (for example, BA 123C), except that the letters I, O and Q shall not be utilized in this type of six character non-personalized plate combination; three alphabetic followed by four numeric characters (for example, ABC 1234), except that the letters I, O and Q shall not be utilized in such seven character non-personalized plate combinations. Any combination herein excluded and not in a series designated for special classes of vehicles may be reissued as "personalized marks" if the registrant to whom the marks were previously issued has surrendered said marks and corresponding registration certificate. Designated for general issue;

2.-3. (No change.)

4. Except as otherwise provided by N.J.A.C. 13:20-34.2(a)1 and 13:20-34.2(a)9, any combination consisting of less than three characters or more than seven characters;

5.-7. (No change.)

8. F 10000 through F 99999, FA 10000 through FA 99999, and FA 10A through FZ 99Z. Designated for "farm use registrations" issued pursuant to N.J.S.A. 39:3-24(b);

9.-12. (No change.)

13. S1 100A through S1 999Z and 100A S1 through 9999Z S1 for School Vehicle Type I; S2 100A through S2 999Z and 100A S2 through 9999Z S2 for School Vehicle Type II;

14. TA 100 through TZ 9999, TAA 100 through TZZ 9999, TA100A through TZ999Z, 100 TAA through 999 TZZ, and T100AA through T999ZZ for commerial trailers and semitrailers; provided, however, that the letters I, O and Q shall not be utilized in seven character combinations issued for commercial trailers and semitrailers;

15. XA 100 through XZ 9999, XAA 100 through XZZ 9999, XA1000 through XZ9999, X10000 through X99999, X1A100 through X9Z999, XAA10A through XXZ99Z, XX10AA through XX99ZZ, and X100AA through X999ZZ for commercial motor vehicles; provided, however, that the letters I, O and Q shall not be utilized in seven character combinations issued for commercial motor vehicles;

Recodify existing 18. as 16. (No change in text.)

17. ACE 21 through ACE 99 and 21 ACE through 99 ACE for vehicles owned by the New Jersey Expressway Authority; HAA 1 through HAZ 999 and 1 HAA through 999 HAZ for vehicles owned by the New Jersey Highway Authority; TPA 1 through TPA 999, 1 TPA through 999 TPA, and TPA 10A through TPA 99Z for vehicles owned by the New Jersey Turnpike Authority.

18. OXV 100 through OZZ 9999 for vehicles utilized as buses for hire;

19. XYA 10A through XZD 99Z and XY 10AA through XZ99ZZ for vehicles utilized as farmer trucks;

Recodify existing 22.-26. as 20-24. (No change in text.)

25. Any combination except those hereinbefore reserved having the following arrangements: AAA 100 through ZZZ 9999, 100 AAA through 999 ZZZ and AAA 10A through ZZZ 99Z for vehicles utilized as pleasure vehicles; provided, however, that the letters I, O and Q shall not be utilized in seven character non-personalized plate combinations issued for vehicles utilized as pleasure vehicles; BA 100A through ZZ 999Z for vehicles utilized as pleasure vehicles, except that the letters I, O and Q shall not be utilized in this type of six character non-personalized plate combination issued for vehicles utilized as pleasure vehicles;

Recodify existing 28.-30. as 26-28. (No change in text.)

29. 1000 SS through 9999 SS for vehicles owned or leased by persons who have been awarded the Silver Star medal;

30. CI 1000 through CI 9999 and 1000 CI through 9999 CI for vehicles owned or leased by persons who are holders of the Combat Infantryman Badge;

31.-34. (No change.)

(a)

DIVISION OF MOTOR VEHICLES

Driving Schools

Readoption with Amendment: N.J.A.C. 13:23

Proposed: March 21, 1994 at 26 N.J.R. 1299(a).

Adopted: April 28, 1994 by C. Richard Kamin, Acting Director, Division of Motor Vehicles.

Filed: May 19, 1994 as R.1994 d.294, **without change.**

Authority: N.J.S.A. 39:12-4.

Effective Date: May 19, 1994, Readoption;
June 20, 1994, Amendment.

Expiration Date: May 19, 1999.

Summary of Public Comment and Agency Response:
No comment received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:23.

Full text of the adopted amendment follows:

13:23-2.34 Requirements at driving test

Applicants appearing for the driving test in a vehicle used for instruction by a driving school shall be accompanied by a licensed driver who has in his or her possession a valid New Jersey instructor's license or a New Jersey authorized agent identification certificate, a valid registration and a valid insurance identification card.

(b)

DIVISION OF CONSUMER AFFAIRS
BOARD OF ARCHITECTS

Fees

Adopted Amendments: N.J.A.C. 13:27-5.8 and 8.15

Proposed: April 4, 1994 at 26 N.J.R. 1490(a).

Adopted: May 12, 1994 by the Board of Architects, Charles A. Spitz, President.

Filed: May 27, 1994 as R.1994 d.315, **without change.**

Authority: N.J.S.A. 45:3-3 and 7 and N.J.S.A. 45:1-3.2.

Effective Date: June 20, 1994.

Expiration Date: February 20, 1995.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows:

13:27-5.8 Fees

(a) (No change.)

Recodify existing (c)-(e) as (b)-(d) (No change in text.)

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13:27-8.15 Fees

(a) The following fees shall be charged by the Board of Architects for Landscape Architect Certification matters. Unless otherwise provided herein, all fees are nonrefundable.

1. (No change.)

2. Examination fee for the New Jersey portion of the Landscape Architect Registration Examination (LARE) when Board administered: $35.00

3.-11. (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF ACCOUNTANCY

Applications for Original Examination and for Reexamination

Adopted Amendments: N.J.A.C. 13:29-1.6 and 1.7

Proposed: March 7, 1994 at 26 N.J.R. 1217(a).

Adopted: May 19, 1994 by the Board of Accountancy, Joel Rogoff, President.

Filed: May 27, 1994 as R.1994 d.316, **without change.**

Authority: N.J.S.A. 45:28-1.

Effective Date: June 20, 1994.

Expiration Date: May 23, 1995.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows:

13:29-1.6 Applications for original examination

(a) (No change.)

(b) An applicant for examination for the Certified Public Accountant's certificate who meets the requirements of (a) above to the Board's satisfaction shall be granted admission to sit for the examination in financial accounting and reporting business enterprises (previously theory of accounts); accounting and reporting-taxation, managerial, and governmental and not for profit organizations (previously accounting practice); business law and professional responsibilities (previously commercial law); and auditing.

13:29-1.7 Applications for reexamination; conditional credit

(a) Applications for reexamination shall be allowed as follows in (b) below, and all fees shall be paid by check or money order.

(b) Rules on conditional credit are as follows:

1. A candidate who takes the examination for the first time shall be required to take all four sections. On reexamination, the candidate shall be required to take all sections for which he or she has not yet received a passing grade of 75.

2. The candidate who receives a passing grade of 75 or more in at least two of the four sections shall be granted conditional credit provided that the candidate also attains an average grade of 50 on those section(s) not passed.

3. To add to conditional credit pursuant to (b)2 above, the candidate shall attain a grade of 75 or more in the section(s) passed and a grade of 50 on the section not passed.

4. A candidate who received conditional credit for accounting practice alone prior to 1994 shall be granted conditional credit for passing an additional section provided that the candidate also attains an average score of 50 on the two remaining sections not passed.

5. In the event that a candidate fails to successfully complete the examination during the 10 examinations immediately following the first examination at which conditional credit was earned, the candidate shall forfeit all conditional credit, shall revert to the status of a new applicant, and shall be required to take all four sections of the examination.

6. (No change in text.)

7. (No change in text.)

(b)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF MEDICAL EXAMINERS

Notice of Administrative Correction Fee Schedule

N.J.A.C. 13:35-6.13

Take notice that the Board of Medical Examiners has discovered an error in the current text of N.J.A.C. 13:35-6.13. In N.J.A.C. 13:35-6.13(a)3iii, "Examination (plenary license)" is an erroneous duplication of the fee caption in N.J.A.C. 13:35-6.13(a)3ii. The correct fee caption, as proposed and adopted at 15 N.J.R. 784(a) and 1865(e), is "Exemption" adopted effective November 7, 1983. The deletion of the adopted fee caption occurred inadvertently during a subsequent Code update. This notice is published in accordance with N.J.A.C. 1:30-2.7.

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

13:35-6.13 Fee schedule

(a) The following fees shall be charged by the Board of Medical Examiners:

1.-2. (No change.)

3. Bio-analytical laboratory directorship, plenary license

i.-ii. (No change.)

iii. [Examination (plenary license)] **Exemption** $150.00

iv.-v. (No change.)

4.-9. (No change.)

(c)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF NURSING

Fees

Adopted Amendment: N.J.A.C. 13:37-12.1

Proposed: April 4, 1994 at 26 N.J.R. 1490(b).

Adopted: May 17, 1994 by the State Board of Nursing, Golden Bethune, President.

Filed: May 27, 1994 as R.1994 d.317, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:11-24.

Effective Date: June 20, 1994.

Expiration Date: January 23, 1995.

Summary of Public Comments and Agency Response:
The New Jersey State Nurses Association, the Family Planning Association of New Jersey and the New Jersey Family Planning League, Inc. expressed support for the amended fee schedule for certification of advanced practice nurses.

Full text of the adoption follows (deletion from proposal indicated in brackets with asterisks *[thus]*):

13:37-12.1 Fee Schedule

(a) The following fees shall be charged by the Board in connection with licensure of professional and practical nurses.

1.-8. (No change.)

9. *[(Reserved)]* Change of name or address 15.00

10.-14. (No change.)

(b) (No change.)

(c) The following fees shall be charged by the Board in connection with certification of nurse practitioners:

1. Application fee $100.00

2. Initial certification fee

i. If paid during the first year of a biennial renewal period 75.00

ii. If paid during the second year of a biennial renewal period 37.50

3. Renewal of certification (biennial) 75.00

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4. Certification by endorsement	75.00
5. Late renewal of certificate (one to 30 days)	50.00
6. Reinstatement fee (after 30 days)	100.00
7. Duplicate certificate	25.00

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF CHIROPRACTIC EXAMINERS

Notice of Administrative Correction
Referral of Patients to Physical Therapists
Adopted New Rules: N.J.A.C. 13:44E-2.14

Take notice that the Board of Chiropractic Examiners has discovered an error in the Summary of Public Comments and Agency Responses for adopted new rule N.J.A.C. 13:44E-2.14, published in the March 7, 1994 New Jersey Register at 26 N.J.R. 1234(a). In the Response to the fifth Comment summary in the notice of adoption, the term "physician-directed adjustments" is the result of a typographic error in the original adoption notice (see R.1994 d.123). The term intended by the Board was "physician-directed assessments." This notice is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected Comment and Response follows:

COMMENT: Two respondents wrote to protest against the statement, "it confirms their ability to make professional judgments regarding the patients referred to them." This statement was deemed to be both vague and ill-advised, since it seems to mean that a referring chiropractor is surrending authority regarding the prescribing of a specific program of treatment.

RESPONSE: Physical therapists are required by law to provide physician-directed assessments and, in doing so, retain the right to offer professional judgments. The Board wishes to reassure the respondents that a surrendering of authority is not what this rule is about; rather, it serves to clarify and affirm the professional relationship between chiropractors and physical therapists.

(b)

DIVISION OF CONSUMER AFFAIRS
BOARD OF SOCIAL WORK EXAMINERS

Licensure without Examination; Certification without Proof of Educational Criteria
Adopted Amendments: N.J.A.C. 13:44G-5.1, 5.2 and 5.3

Proposed: April 18, 1994 at 26 N.J.R. 1604(b).
Adopted: May 23, 1994 by the Board of Social Work Examiners, Joseph P. Bordo, President.
Filed: May 31, 1994 as R.1994 d.320, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 45:15BB-11(e).
Effective Date: June 20, 1994.
Expiration Date: January 4, 1988.

The Board of Social Work Examiners afforded all interested parties an opportunity to comment on the proposed amendments to N.J.A.C. 13:44G-5.1, 5.2 and 5.3. Consistent with Attorney General advice, these amendments extend to eight years the existing statutory five-year period during which a social worker may have acquired full time experience sufficient to be either licensed without examination or certified without a baccalaureate degree in social work (the "window").

A notice of proposal appeared in the New Jersey Register on April 18, 1994 at 26 N.J.R. 1604(b), and copies of the published proposal were forwarded to the Star Ledger, the Trenton Times and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Social Work Examiners, Post Office Box 45033, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

During the official 30-day comment period which ended on May 18, 1994, the Board received two written comments.

In support of the proposal, the New Jersey Association of Health Care Facilities stated that the Board's action will ensure that many social workers with recent practical experience will be eligible for immediate licensure and certification and therefore will be able to continue to practice social work in New Jersey. The Center for Non-Profit Corporations responded on behalf of a coalition of non-profit organizations (PASS) that extension of the window will provide relief to certain individuals who have gained their professional experience during the three-year delay between passage of the Act and adoption of the regulations.

The Center for Non-Profit Corporations stated, however, that the main purpose of its letter was to reiterate the strong concerns in the non-profit community about the regulations published in the April 4, 1994 New Jersey Register. Since these concerns do not relate to the subject matter of the within proposal, the Board will not use this forum to respond but rather will respond individually to the additional concerns raised by this commenter.

Both commenters also requested that the proposed timeframes for the window and the 180-day application period be amended.

Specifically, the Association requested that the regulation not be adopted until a pending legislative initiative (A-1160) extending the window to May 6, 1994 (not April 4, 1994 as proposed by this regulation) achieves final passage on June 30, 1994. At that time, the Board can amend the regulation to insert the May 6 date consistent with the law.

As pointed out by the commenter, the Board determined that the close of the window would be April 4, 1994, the effective date of the regulations. Nevertheless, upon further consideration the Board agrees with the commenter that the window should be extended through May 1994 in order to provide for a full eight-year window. The Board notes further that since the Attorney General advice did not limit the window's closing date to the effective date of the regulations, the rule may be amended upon adoption to reflect a May closing date. (Parenthetically, the Board points out that the beginning of the window is the effective date of the Social Workers Licensing Act, May 6, 1991; therefore, the eight year period would run until May 5, 1994 and not May 6, 1994. The Board has requested that A-1160 be amended accordingly.)

The Center for Non-Profit Corporations requested that the proposed deadline for submitting applications be amended to provide a full 180 days from the effective date of this regulation.

The Board notes that the statute defines the 180-day period to run from the date application procedures are established. While the Board initially anticipated that licensing would begin in May (and therefore proposed the November 1, 1994 application deadline), it now appears that the start-up date for licensure will be June 3, 1994. Therefore, the Board is amending the regulations upon adoption to reflect that applications will be accepted until December 1, 1994.

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

13:44G-5.1 Licensure without examination; clinical social worker

(a) Until *[November 1]* ***December 1***, 1994, an individual who has not completed the board-approved examination may qualify for licensure as a licensed clinical social worker upon submission of the following, on forms provided by the Board:

1.-2. (No change.)

3. An affidavit indicating that the applicant has acquired at least three years of full time clinical social work experience during any consecutive five-year period during the period May 6, 1986 through *[April 4]* ***May 5***, 1994;

4.-5. (No change.)

(b) (No change.)

13:44G-5.2 Licensure without examination; licensed social worker

(a) Until *[November 1]* ***December 1***, 1994, an individual who has not completed the Board-approved examination may qualify for licensure as a social worker upon submission to the Board of the following, on forms provided by the Board:

1.-2. (No change.)

3. An affidavit indicating that the applicant has acquired three years of full time social work experience during any consecutive five-

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year period during the period May 6, 1986 through *[April 4]* ***May 5***, 1994; and

4. (No change.)

(b) (No change.)

13:44G-5.3 Certification without baccalaureate degree in social work

(a) Until *[November 1]* ***December 1***, 1994, an individual who has not received a baccalaureate degree in social work may qualify for certification as a social worker upon submission to the Board of the following, on forms provided by the Board:

1.-2. (No change.)

3. An affidavit indicating that the applicant has acquired two years of full-time social work experience during any consecutive five year period during the period May 6, 1986 through *[April 4]* ***May 5***, 1994.

(b) (No change.)

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

General Policies and Procedures
Payment of Taxes by Electronic Funds Transfer
Failure to Comply

Adopted Amendment: N.J.A.C. 18:2-3.9

Proposed: April 18, 1994 at 26 N.J.R. 1612(a).

Adopted: May 25, 1994 by Robert K. Thompson, Acting Director, Division of Taxation.

Filed: May 26, 1994 as R.1994 d.305, **without change**.

Authority: N.J.S.A. 54:50-1.

Effective Date: June 20, 1994.

Expiration Date: November 1, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

18:2-3.9 Failure to comply

(a) If a taxpayer is required to remit a tax payment by EFT and the taxpayer pays (with sufficient funds) by check, draft or similar instrument, payment shall be deemed to have been made on the third business day after the date the Director receives the check, draft or similiar paper instrument.

Example 1: Funds represented by a check on a bank seized by bank regulators are considered received when honored, rather than tendered, even though there were sufficient funds at the time of tender.

Example 2: A check drawn on sufficient funds is considered received when honored, rather than tendered, if honoring the check is delayed due to computer failure (other than a failure of the Division's computers).

(b) (No change.)

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Applications
Business Entity Disclosure Forms

Adopted New Rules: N.J.A.C. 19:41-5.6 and 5.6A

Proposed: April 4, 1994 at 26 N.J.R. 1437(a).

Adopted: May 18, 1994 by the Casino Control Commission, James R. Hurley, Acting Chairman.

Filed: May 24, 1994 as R.1994 d.296, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63c, 69a, 70a, 92a and 92b.

Effective Date: June 20, 1994.

Expiration Date: April 15, 1995.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement (Division) and GOVA, Inc.

COMMENT: The Division commented that the proposed codification accurately reflects the Business Entity Disclosure Forms currently in use. The Division noted that these forms are presently under review by the Commission and the Division.

RESPONSE: The Commission agrees, as evidenced by this adoption. Any revisions to current disclosure forms will be reflected in proposed amendments to these rules, as necessary.

COMMENT: GOVA, Inc. requested that the Commission modify N.J.A.C. 19:41-5.6(a)19 upon adoption to apply the $10,000 threshold therein to information regarding goods and services supplied within the past six months.

RESPONSE: At the outset, it should be noted that such a substantive addition could not be included in this adoption, but would require additional public notice and comment. Moreover, the rules adopted herein simply codify the content of the forms. As such, the provisions of N.J.A.C. 19:41-5.6 and 5.6A reflect the questions as they appear on the current disclosure forms. No modification could be made to these rules except so as to reflect a revision in the corresponding question on the actual form. However, as noted above, the BED forms are presently under review by the Commission and the Division and the commenter's suggested revision will be considered as part of this review process.

Summary of Agency-Initiated Changes:

A typographical error is corrected at N.J.A.C. 19:41-5.6(a)28v to correctly refer to a Form 10Q.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

19:41-5.6 Business Entity Disclosure Form—Corporate

(a) A Business Entity Disclosure Form Corporate (BED—Corporate) shall be in a format prescribed by the Commission and may require the applicant to provide the following information:

1. Current or former official and trade names used by the corporation, and the dates of use;

2. The reason for filing, including the name of the license applicant and the type of license sought and, if the license applicant is other than the corporation, the nature of the corporation's relationship to the license applicant;

3. Date and place of incorporation;

4. Current or former business addresses of the corporation;

5. A description of the present and any former business engaged in by the corporation and its holding companies, subsidiaries and intermediary companies;

6. The name, last known address, occupation and date of birth of each incorporator;

7. The name, home address, business address, date of birth and occupation of current and former directors and trustees, and the dates such position was held;

8. The name, home address, business address, date of birth and title of current officers of the corporation, and the dates of office;

9. The name, last known address, date of birth and occupation of former officers of the corporation, and the dates of office;

10. Annual compensation of partners and officers;

11. The name, business address, date of birth and position of each person, other than a partner or officer, who receives annual compensation of more than $25,000, and the length of time employed and amount of compensation;

12. A description of all bonus, profit sharing, pension, retirement, deferred compensation or similar plans;

13. A description of the nature, type, number of shares, terms, conditions, rights and privileges of all classes of stock issued or to be issued;

14. The name, home address and date of birth of each shareholder, the class of stock held, number of shares held and the percentage of outstanding voting or non-voting stock held;

15. A description of the nature, type, terms, covenants, conditions and priorities of all outstanding debt and security devices utilized by the corporation;

16. The name, address and date of birth of each person holding the debt or security devices in (a)15 above, the type of debt instrument held, the original debt amount and current balance;

17. A description of the nature, type, terms and conditions of all securities options, including the title and amount of securities subject to option, the name of each option holder and the market value at the time of issuance;

18. The following information for each account held in the name of the corporation or its nominee, or otherwise under the direct or indirect control of the corporation:

i. The name and address of the financial institution;

ii. Type of account;

iii. Account number; and

iv. Dates held;

19. The name and address of all persons with whom the corporation has contracts or agreements of over $10,000 in value, including employment contracts of more than one year duration, or who have supplied goods and services within the past six months, and the nature of such contract or the goods and service provided;

20. The name and address of each company in which the corporation holds stock, type of stock held, purchase price per share, number of shares held, and percentage of ownership;

21. Information regarding any transaction involving a change in the beneficial ownership of the corporation's equity securities on the part of any director, officer or beneficial owner of more than 10 percent of any class of equity security;

22. A description of any civil, criminal and investigatory proceedings in any jurisdiction, for the corporation and each director, trustee or officer as follows:

i. Any arrest, indictment, charge or conviction for any criminal or disorderly persons offense;

ii. Any criminal proceeding in which such person has been a party or has been named as an unindicated co-conspirator;

iii. Existing civil litigation to which the corporation is a party, if damages are reasonably expected to exceed $10,000, except for claims covered by insurance; and

iv. Any judgment, consent decree or consent order entered against the corporation pertaining to a violation or alleged violation of the federal antitrust, trade regulation or securities laws or similar laws of any jurisdiction;

23. For the corporation and any holding or intermediary company, information regarding any judgments or petitions for bankruptcy or insolvency and any relief sought under any provision of the Federal Bankruptcy Act or any state insolvency law; and any receiver, fiscal agent, trustee or similar officer appointed for the property or business of the partnership or any partner;

24. Whether the corporation has had any license or certificate denied, suspended or revoked by any government agency in this State or any other jurisdiction, the nature of such license or certificate, the agency and its location, the date of such action, the reasons therefor and the facts related thereto;

25. Whether the corporation or any director, officer, employee or person acting on behalf of the corporation has made bribes or kickbacks to any employee, company, organization or government official;

26. Whether the corporation has:

i. Donated or loaned corporate funds or property for the use or benefit of or in opposing any government, political party, candidate or committee;

ii. Made any loans, donations or disbursements to its directors, officers or employees for the purpose of making political contributions or reimbursing such individuals for political contributions; or

iii. Maintained a bank account or other account not reflected on the books or records of the corporation, or maintained any account in the name of a nominee of the corporation;

27. The names and addresses of any current or former directors, officers, employees or third parties who would have knowledge or information concerning (a)26i-iii above;

28. A copy of each of the following:

i. Annual reports to shareholders for the last five years;

ii. Any annual reports prepared within the last five years on Form 10K pursuant to Sections 13 or 15d of the Securities Exchange Act of 1934;

iii. An audited financial statement for the last fiscal year, including, without limitation, an income statement, balance sheet and statement of sources and application of funds, and all notes to such statements and related financial schedules;

iv. Copies of all annual financial statements prepared in the last five fiscal years, any exceptions taken to such statements by an independent auditor and the management response thereto;

v. The most recent quarterly unaudited financial statement prepared by or for the corporation which, if the corporation is registered with the Securities Exchange Commission (SEC), may be satisfied by providing a copy of the most recently filed Form *[10Q]* *10Q*;

vi. Any current report prepared due to a change in control of the corporation, acquisition or disposition of assets, bankruptcy or receivership proceedings, changes in the corporation's certifying accountant, or other material events, which, if the corporation is registered with the SEC, may be satisfied by providing a copy of the most recent filed Form 8K;

vii. The most recent Proxy or Information Statement filed pursuant to Section 14 of the Securities Exchange Act of 1934;

viii. Registration Statements filed in the last five years pursuant to the Securities Act of 1933; and

ix. All reports and correspondence submitted in the last five years by independent auditors for the corporation which pertain to the issuance of financial statements, managerial advisory services or internal control recommendations;

29. A certified copy of the articles of incorporation, charter and by-laws of the corporation, and all amendments and proposed amendments thereto;

30. An organizational chart of the corporation, including position descriptions and the names of persons holding each position;

31. Copies of Internal Revenue Service Forms 1120 (Corporate Income Tax Return) and 941 (Employer's Quarterly Federal Tax Return) filed for the last five years; and

32. A listing of any records, documents or other information submitted as appendices to the BED-Corporation.

(b) In addition to the information in (a) above, a completed BED-Corporate may include the following documents, which shall be dated and signed by the president, chief executive officer or sole proprietor, and notarized:

1. A Release Authorization directing all courts, probation departments, selective service boards, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the corporation as requested by the Commission or the Division;

2. A waiver of liability as to the State and its instrumentalities and agents for any damages resulting to the corporation from any disclosure or publication of information acquired during the license or investigation process, in accordance with N.J.S.A. 5:12-80b;

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3. Consent to inspection, searches and seizures and the supplying of handwriting exemplars, in accordance with N.J.S.A. 5:12-80c; and
4. An affidavit of truth.

19:41-5.6A Business Entity Disclosure Form—Partnership

(a) A Business Entity Disclosure Form Partnership (BED—Partnership) shall be in a format prescribed by the Commission and may require the applicant to provide the following information:

1. Current and former official or trade names used by the partnership, and the dates of use;

2. The reason for filing, including the name of the license applicant, the type of license sought and, if the license applicant is other than the partnership, the nature of the partnership's relationship to the license applicant;

3. Current or former business addresses of the partnership;

4. The name, home address, business address, date of birth and occupation of each partner, a description of the partnership interest held and the dates of the partnership interest;

5. Name, last known address, occupation, date of birth of former partners, the percentage of interest last held and the dates of the partnership interest;

6. If the partnership is a license applicant, any assignment, pledge, hypothecation or sale of any partnership interest;

7. A description of the present and any former business engaged in by the partnership;

8. The name, home address, business address, date of birth and title of each officer, and the dates of office;

9. The name, last known address, date of birth and occupation of former officers, and the dates of office;

10. Annual compensation of partners and officers;

11. The name, business address, date of birth and position of each person, other than a partner or officer, who receives annual compensation of more than $25,000, and the length of time employed and amount of compensation;

12. A description of all bonus, profit sharing, pension, retirement, deferred compensation or similar plans;

13. A description of all outstanding debt, and the name, address and date of birth of each debtholder, the type of debt instrument held, the original debt amount and current balance;

14. The following information for each account in the name of the partnership or its nominee, or otherwise under the direct or indirect control of the partnership:

i. The name and address of the financial institution;

ii. Type of account;

iii. Account number; and

iv. Dates held;

15. The name and address of all persons with whom the applicant has contracts or agreements of over $10,000 in value, including employment contracts of more than one year duration, or who have supplied goods and services within the past six months, and the nature of such contract or the goods and service provided;

16. A description of any civil, criminal and investigatory proceedings in any jurisdiction, for the partnership and each partner or officer as follows:

i. Any arrest, indictment, charge or conviction for any criminal or disorderly persons offense;

ii. Any criminal proceeding in which such person has been a party or has been named as an unindicted co-conspirator;

iii. Any existing civil litigation in which such persons are parties in their official capacity, if damages are reasonably expected to exceed $10,000, except for claims covered by insurance; and

iv. Any judgment, consent decree or consent order entered against the partnership or any partner pertaining to a violation or alleged violation of the federal antitrust, trade regulation or securities laws or similar laws of any jurisdiction;

17. For the partnership and any partner, information regarding any judgments or petitions for bankruptcy or insolvency and any relief sought under any provision of the Federal Bankruptcy Act or any state insolvency law; and any receiver, fiscal agent, trustee or similar officer appointed for the property or business of the partnership or any partner;

18. Whether the partnership or any partner has had any license or certificate denied, suspended or revoked by any government agency in this State or any other jurisdiction, the nature of such license or certificate, the agency and its location, the date of such action, the reasons therefor and the facts related thereto;

19. Whether the partnership or any partner, officer or employee, or any person acting on behalf of the partnership made bribes or kickbacks to any employee, company, organization or government official;

20. Whether the partnership has maintained a bank account or other account not reflected on the books or records of the partnership, or maintained an account in a name of a nominee of the partnership;

21. The names of any current or former partners, officers, employees or third parties who would have knowledge or information concerning the (a)19 and 20 above;

22. An organizational chart of the partnership, including position descriptions and the names of persons holding each position;

23. A copy of all partnership agreements and amendments and proposed amendments thereto, and all contracts or agreements between any two or more partners relating to the assets, property, profits, management or control of the partnership;

24. A copy of each of the following:

i. An audited financial statement for the last fiscal year, including, without limitation, an income statement, balance sheet and statement of source and application of funds, and copies of all annual financial statements prepared in the last ten fiscal years with respect to the partnership;

ii. Any Registration Statements filed with the Securities Exchange Commission (SEC) in the last five years pursuant to the Securities Act of 1933; and

iii. All reports submitted within the last five years by independent auditors for the partnership which pertain to the issuance of financial statements or managerial advisory services;

25. Copies of Internal Revenue Service Forms 1065 (Partnership Return Form) and 941 (Employer's Quarterly Federal Tax Return) filed for the last five years; and

26. A listing of any records, documents or other information submitted as appendices to the BED—Partnership;

(b) In addition to the information in (a) above, a completed BED—Partnership may include the following:

1. A certification of truth, signed and dated by the applicant's attorney of record;

2. The following documents, which shall be dated and signed by a partner or general partner or the sole proprietor and notarized:

i. A Release Authorization directing all courts, probation departments, selective service boards, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the partnership as requested by the Commission or the Division;

ii. A waiver of liability as to the State and its instrumentalities and agents for any damages resulting to the partnership from any disclosure or publication of information acquired during the license or investigation process, in accordance with N.J.S.A. 5:12-80b;

iii. Consent to inspection, searches and seizures and the supplying of handwriting exemplars, in accordance with N.J.S.A. 5:12-80c; and

iv. An affidavit of truth.

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(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Transportation of Slot Cash Storage Boxes, Slot Drop Buckets and Slot Drop Boxes to Count Rooms

Adopted Amendments: N.J.A.C. 19:45-1.17 and 1.42

Proposed: April 4, 1994 at 26 N.J.R. 1440(a).
Adopted: May 18, 1994 by the Casino Control Commission, James R. Hurley, Acting Chairman.
Filed: May 24, 1994 as R.1994 d.297, **without change.**
Authority: N.J.S.A. 5:12-5, 69(a), 70(j), 99(a) and 100(c).
Effective Date: June 20, 1994.
Expiration Date: August 15, 1997.

Summary of Public Comment and Agency Response:
COMMENT: The Division of Gaming Enforcement and the Sands Hotel and Casino indicated they did not object to the proposal. Merv Griffin's Resorts Casino Hotel Atlantic City and Bally's Park Place supported the proposal.
RESPONSE: Accepted.

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

19:45-1.17 Drop boxes, transportation to and from gaming tables; slot cash storage boxes, transportation to and from bill changers; storage in count room
(a) (No change.)
(b) All drop boxes removed from the gaming tables shall be transported directly to and secured in the count room by one security department member and one casino supervisor, at a minimum.
(c) All slot cash storage boxes removed from bill changers shall be transported directly to and secured in the count room by a Commission inspector, security department member and a member of the casino accounting department, at a minimum.
(d)-(e) (No change.)

19:45-1.42 Removal of slot drop buckets, slot drop boxes and slot cash storage boxes; meter readings
(a)-(b) (No change.)
(c) Procedures and requirements for removing slot drop buckets, slot drop boxes and slot cash storage boxes from the casino shall be as follows:
1. (No change.)
2. All slot drop buckets, slot drop boxes and slot cash storage boxes removed from compartments shall be transported directly to, and secured in the count room by the personnel required by N.J.A.C. 19:45-1.17(c), for the counting of their contents; and
3. Except for members of the casino accounting department participating in the emergency removal of a slot cash storage box or slot drop box, casino security department employees and representatives of the Commission and Division, all persons participating in the removal of slot drop buckets, slot drop boxes and slot cash storage boxes shall wear as outer garments only a full-length, one-piece pocketless garment with openings only for the arms, feet and neck.
(d)-(q) (No change.)

(b)

CASINO CONTROL COMMISSION

Use of Match Play Coupons in Craps

Adopted Amendments: N.J.A.C. 19:45-1.18 and 1.46; 19:47-1.3 and 1.9

Proposed: April 4, 1994 at 26 N.J.R. 1441(a).
Adopted: May 18, 1994 by the Casino Control Commission, James R. Hurley, Acting Chairman.
Filed: May 24, 1994 as R.1994 d.298, **without change.**
Authority: N.J.S.A. 5:12-63(c), 69(a), 70(f), 99, and 100.
Effective Date: June 20, 1994.
Expiration Date: August 15, 1997, N.J.A.C. 19:45;
April 15, 1996, N.J.A.C. 19:47.

Summary of Public Comments and Agency Responses:
COMMENT: The Division of Gaming Enforcement indicated it did not object to the proposal.
RESPONSE: Accepted.
COMMENT: The Sands Hotel and Casino did not object to the proposal, but also suggested that the use of match play coupons in craps be extended to "Come," "Don't Come," and "Field" wagers, to eliminate any confusion which it claimed might result from restricting the use of a match play coupon to the "Pass" and "Don't Pass" bets.
RESPONSE: Accepted as to the initial proposal, rejected as to the additional suggestion. These amendments are an extension of the original match play coupon proposal, which did not permit the use of any match play coupons at craps or any other game that does not have individual betting areas. See: 25 N.J.R. 5902(a) and 26 N.J.R. 1373(b). That requirement was imposed in order to prevent any confusion as to which wager the coupon accompanied.
While the Commission does support the extension of match play coupons to the "Pass" and "Don't Pass" bets in Craps, which are directly in front of the patron and are less likely to interfere with game play, it does not believe it would be advisable to extend the use of such coupons to other craps bets.

Full text of the adoption follows:

19:45-1.18 Procedure for accepting cash and coupons at gaming tables
(a) (No change.)
(b) Whenever a match play coupon and an equivalent amount of gaming chips are presented as a wager by a patron, pursuant to N.J.A.C. 19:45-1.46(j)6, at an authorized game in which a match play coupon may be used:
1. The coupon shall be placed underneath the gaming chips in the patron's betting area, or in craps, underneath the gaming chips for the patron's wager on the Pass or Don't Pass Line, in such a way that the type and value of the coupon is visible at all times;
2.-4. (No change.)
(c) (No change.)

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs
(a)-(i) (No change.)
(j) Coupons shall be redeemed in the following manner:
1.-3. (No change.)
4. A match play coupon shall be redeemed only at a gaming table which offers an authorized game in which patrons wager only against the house and, except for the Pass and Don't Pass wagers in craps, which has an individual betting area for each player on the gaming table layout. Such a coupon shall be redeemed only by a dealer, and only if accompanied by the proper amount of gaming chips required by the coupon. The dealer shall, in accordance with N.J.A.C. 19:45-1.18, accept the coupon as part of the patron's wager and deposit the coupon into the drop box after the wager is won or lost.
(k)-(o) (No change.)

19:47-1.3 Making and removal of wager
(a) (No change.)

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(b) All wagers at craps shall be made by placing gaming chips, match play coupons (only for Pass or Don't Pass wagers) or plaques on the appropriate areas of the craps layout, except that verbal wagers accompanied by cash may be accepted provided that they are confirmed by the dealer and that such cash is expeditiously converted into gaming chips or plaques in accordance with the regulations governing the acceptance and conversion of such instruments.

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

19:47-1.9 Invalid roll of the dice

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

(d) A throw of the dice which results in the dice coming into contact with any match play coupons or chips on the table, other than the craps bank of chips located in front of the Boxman, shall not be a cause for a call of "No Roll".

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System

Adopted Amendments: N.J.A.C. 7:11-2.1, 2.2, 2.3, 2.4, 2.9, 2.10 and 2.13

Adopted New Rule: N.J.A.C. 7:11-2.4

Proposed: December 20, 1993 at 25 N.J.R. 5742(a).

Adopted: May 25, 1994 by Robert C. Shinn, Jr., Chairman, New Jersey Water Supply Authority and Commissioner, Department of Environmental Protection and Energy.

Filed: May 27, 1994 as R.1994 d.306, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 58:1B-7.

DEPE Docket Number: 62-93-11/385.

Effective Date: June 20, 1994.

Operative Date: July 1, 1994.

Expiration Date: May 3, 1998.

Summary of Public Comments and Agency Responses:

The New Jersey Water Supply Authority (Authority) is adopting amendments to the Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System. In addition to the amendment of the existing rate components mentioned above, the Authority is adopting a new "Capital Fund Component" operative July 1, 1994 to fund the Authority's Annual Capital Improvement Programs through June 30, 1999. In accordance with N.J.A.C. 7:11-2.11(a)4, Procedures for rate adjustments, the Authority held a pre-public hearing meeting with the Authority's contractual water customers to present and explain the proposed adjustments to the rate schedule embodied in these rules. Notice of the pre-public hearing meeting was provided to the contractual water customers and Public Advocate's office as required by N.J.A.C. 7:11-2.11(a)4. This meeting was held on January 4, 1994, at the Authority's Clinton, New Jersey Administration Building conference room and was attended by representatives from the Elizabethtown Water Company, Middlesex Water Company and Division of Rate Counsel.

Notice of the proposed rate adjustments, new rate component and public hearing was published in the New Brunswick Home News, Trenton Times, Newark Star Ledger, Hunterdon County Democrat, the Courier-News and the Greater Media Newspapers. A news release covering the proposed rate adjustments and new rate component was also distributed to newspapers of general circulation in the water customers' service area. In addition, a direct mailing of the Notice of Public Hearing was made to all water customers and approximately 240 interested parties on the Authority's mailing list.

A public hearing concerning this rule was held on February 3, 1994, at the Authority's West Trenton, New Jersey, Delaware and Raritan Canal Office Facility to provide interested persons the opportunity to present testimony. Nine individuals attended the hearing, four of whom presented comments. Six letters were received during the public comment period, which closed on March 14, 1994. The comments received in the letters and at the public hearing are summarized below.

The following persons made oral comments related to the proposed amendments and new rule:

Bruce Burcat, Department of the Public Advocate, Division of Rate Counsel

James Rothschild, Consultant to Department of the Public Advocate

Andrew M. Chapman, Senior Vice President, Elizabethtown Water Company

L. Mason Neely, Chief Finance Officer, Township of East Brunswick

The following persons submitted written comments related to the proposed amendments and new rule:

J. Richard Tompkins, President, Middlesex Water Company (a privately owned utility member of the Raritan Basin Water Users Association)

L. Mason Neely, Chief Finance Officer, Township of East Brunswick (a publicly owned utility member of the Raritan Basin Water Users Association)

Andrew K. Dembia, ADPA, Department of the Public Advocate, Division of Rate Counsel

Andrew W. Chapman, Senior Vice President and Chief Financial Officer, Elizabethtown Water Company (a privately owned utility member of the Raritan Basin Water Users Association)

Purpose of New Capital Fund Component

1. COMMENT: Several commenters expressed a concern that the annual funding of major maintenance projects, through the establishment of a Capital Fund Component, is a departure from the past Authority practice of issuing long-term debt to finance capital outlays. Implicit in this stated issue is a concern that the Authority will use this new Capital Fund Component as a precedence to fund future high-cost capital improvement projects on a current funding basis, beyond the proposed annual level of $1.5 to $2.0 million, instead of issuing long-term debt.

RESPONSE: The Authority's two previous Five-Year Capital Improvement Programs were financed by the issuance of $55,000,000 in long-term debt. These projects included dredging of the Delaware and Raritan Canal waterway and other projects necessary to correct the structural deterioration of the Canal and Reservoirs facilities resulting from deferred maintenance prior to the creation of the Authority. The Authority cannot responsibly continue to defer maintenance and repair and has concluded that it is prudent to annually reinvest $1.5 to $2.0 million for major maintenance and repair of the system facilities. It is anticipated that the Authority's initiative to currently fund the major annual maintenance program will continue well into the future and will avoid the issuance of new long-term debt every five years.

The annual cost of current funding of these major maintenance projects is modest in view of the importance of these water supply facilities for the health and welfare of the consumers and the economic health of central New Jersey.

The proposed current funding of the Authority's major annual maintenance programs is not proposed to be a precedent for financing significant capital programs beyond the proposed level of $1.5 to $2.0 million per year. Any capital projects beyond this magnitude and any enhancements or additions to the system would be financed through the issuance of long-term debt. Accordingly, the reference to the use of the Capital Fund Component to "upgrade" facilities has been deleted from N.J.A.C. 7:11-2.4, and N.J.A.C. 7:11-2.4(a) added for clarification. The current funding of major annual maintenance work will also enhance the financial position of the Authority and the terms of any future issuance of long-term debt.

Division of Rate Counsel Alternative Proposal I
Limit Annual Rate Increases to 3.75 Percent

2. COMMENT: Division of Rate Counsel of the Department of the Public Advocate advocated the adoption of an alternative rate proposal which it believes would provide for "greater rate stabilization, a more equitable allocation of capital costs over time and [which] can be done in a way that keeps the Authority's financial position strong."

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RESPONSE: The Division of Rate Counsel proposal indicates, as clarified in its letter of February 23, 1994, that a 3.75 percent rate of increase should be implemented during fiscal year 1995 and that the actual rate of increase to be implemented in the future years should be reevaluated each year and revised up or down as would be justified by future acts. This proposal attempts to stabilize the annual rate of increase by using a portion of the capital fund component to cover operating expenses, in addition to more extensive utilization of the Authority's reserve funds, and also requires short-term and long-term borrowing to fund the five-year major maintenance program.

The Division of Rate Counsel analysis is also based upon a projected increased sales base, which appears to the Authority to be overly optimistic. A sales base smaller than projected would result in increased rates for operations and maintenance expenses and existing debt service payments, less current funding of the major maintenance program, greater draws on the Authority's reserve funds and/or larger amounts of short-term and long-term debt.

The Authority deems that the proposed Capital Fund Component is the better alternative considering the uncertainty of future sales bases and other financial factors.

Division of Rate Counsel Alternative Proposal II
Use Reserve Funds for Capital Projects

3. COMMENT: The Division of Rate Counsel suggested that the funds which the Authority maintains in various unrestricted reserve accounts be used to fund the Capital Improvement Program.

RESPONSE: When the Authority issued its own revenue bonds in 1988, a pledge was made to the bond holders that the Authority would not decrease specified reserve account levels or use these funds for any other purposes. The levels of the Authority's unrestricted reserve funds were established with the input of all interested commenters during earlier rate hearings. These reserve funds are important to the present and future financial standing of the Authority. They serve to help stabilize the rates (for example, depreciation reserve) and, as Coopers and Lybrand concluded in 1991, the Authority's reserve levels are considered to be adequate as compared to other utilities around the country. The Authority therefore does not agree that these reserves should be used as suggested by the Division of Rate Counsel.

Deferment of Capital Projects

4. COMMENT: Several commenters suggested that the Authority consider limiting the proposed capital projects program costing $1.5 to $2.0 million annually until the 1969 Water Conservation Bonds are paid off on June 30, 2002 and possibly until the 1981 Water Supply Bonds are paid off on October 30, 2006. This would result in minimal need to increase the capital projects expense component of the water rates.

RESPONSE: By statute the Authority must operate and maintain its facilities in a prudent businesslike manner. To allow vital facilities to deteriorate and possibly jeopardize the supply of water to a significant portion of the population of the State of New Jersey due to a deliberate policy of deferred maintenance is not in the best interests of the Authority or the water users.

Consolidation of Capital Projects

5. COMMENT: The Water Users Association suggested that the Authority could achieve significant savings by bidding and awarding construction work in a "package" bid of similar reconstruction or rehabilitation projects rather than individually.

RESPONSE: The Authority finds this to be a good idea and to the extent that the flow of funds and the timing of the projects permit, the Authority will attempt to package bid such projects as suggested by the Water Users Association.

Refinance 1988 Bonds

6. COMMENT: Several commenters asked if the Authority could refinance the 1988 water system revenue bonds to achieve a lower interest rate.

RESPONSE: The Federal tax regulations applicable to the $32.4 million 1988 water system revenue bonds issue do not permit an advance refunding of these revenue bonds. However, the Authority will engage an expert consultant to advise if a forward interest rate swap is feasible.

FY95 Operational Budget Requirement

7. COMMENT: Several commenters noted that most of the actual expenditures for current FY94 are running less than the approved budget amounts. It was recommended that the Authority review the projected FY95 budget for areas of possible savings (reductions) in light of the apparently lower than budgeted expenditures for FY94.

RESPONSE: The Authority's operations and maintenance expenses are not uniform throughout the fiscal year. The FY94 expenditures to date are reasonably consistent with the Authority's cash flow projections. Significant deviations from the approved FY94 budget are not anticipated. However, any surplus FY94 funds will be applied against future operations and maintenance expenses.

Allocation of Administrative Expenses

8. COMMENT: The Water Users Association recommended that the Authority review the methods and procedures used to allocate costs between the Manasquan and Raritan systems.

RESPONSE: At the end of each fiscal year the Authority's auditors review the methodology and procedures used by the Authority to equitably distribute costs between the systems. The audit recommendations are then used to (1) establish appropriate debits and credits for the fiscal year and (2) more accurately estimate the distribution of future budget costs between the systems.

Summary of Hearing Officers' Recommendations and Agency Response:

Authority Board Members Peggy Haskin and George M. Haskew served as Hearing Officers at the February 3, 1994 public hearing. After reviewing the testimony presented at the public hearing and through the end of the public comment period as required by N.J.A.C. 7:11-2.11(a)6, Hearing Officers Haskin and Haskew made the following recommendations:

1. Due to unanticipated revenues in the budget year ending June 30, 1994 an amount of $573,200 is available for appropriation into the Rate Stabilization Fund. This amount is recommended for appropriation into the Rate Stabilization Fund to be applied to the FY95 revenue stream for the purpose of offsetting projected FY95 operational expenses.

2. For the reasons discussed in the Summary of Agency-Initiated Changes below, the proposed general rate schedule for operations and maintenance of $117.84 per million gallons should be reduced to $114.69 per million gallons at N.J.A.C. 7:11-2.2(b) and 2.10(a)1 and 2, effective July 1, 1994.

3. For the reasons discussed in the Summary of Agency-Initiated Changes below, the proposed new Capital Fund Component should be revised as follows:

Effective July 1, 1994	$10.00 per million gallons
Effective July 1, 1995	$15.00 per million gallons
Effective July 1, 1996	$20.00 per million gallons
Effective July 1, 1998	$25.00 per million gallons

4. The adoption of the Capital Fund Component in the Administrative Code shall include the following statement at N.J.A.C. 7:11-2.4:

"The Capital Fund Component is to provide for current funding of major annual maintenance and repairs of the existing facilities at a total amount of $1,500,000 to $2,000,000 per year. The total annual amount funded by the Capital Fund Component may be adjusted periodically for inflation; however, all capital projects beyond this amount and any enhancements or additions to the System shall be financed through the issuance of long term debt."

5. The sales bases for FY95 shall be as follows:

Operations and Maintenance Component	151.016 MGD
1969 Debt Service Assessment	150.521 MGD
1981 Debt Service Assessment	150.946 MGD
1988 Debt Service Assessment	150.946 MGD

6. The remaining adjustments to the rate schedule should be adopted as proposed to become effective on July 1, 1994.

The Authority accepts these recommendations, and has modified the rule accordingly upon adoption.

Summary of Agency-Initiated Changes:

N.J.A.C. 7:11-2.2(b) and 2.10(a)1 and 2

Due to a projected reduction of $45,400 in the originally proposed insurance budget for FY95 and the availability of unanticipated revenues collected during FY94, the projected operations and maintenance component of the rate schedule is changed in this adoption from $117.84 as the charge per million gallons set forth in the proposed rule to $114.69 per million gallons, a reduction of $3.15 per million gallons. This reduced rate is reflected at N.J.A.C. 7:11-2.2(b), which sets forth the operations

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and maintenance rate itself, and at N.J.A.C. 7:11-2.10(a)1 and 2, which reference N.J.A.C. 7:11-2.2 and set forth the operations and maintenance charge for standby service users.

N.J.A.C. 7:11-2.4

Due to a favorable opinion from the Authority's bond counsel concerning the use of the existing balances in the 1988 Water System Revenue Bond Rebate Fund and Construction Fund for future capital improvement projects, the projected capital fund assessments are changed in this adoption from $15.00 as the charge per million gallons to $10.00 effective July 1, 1994, from $20.00 to $15.00 per million gallons effective July 1, 1995, from $25.00 to $20.00 per million gallons effective July 1, 1996, and to $25.00 per million gallons effective July 1, 1998 through June 30, 1999.

A minor correction is also being made to delete reference to "Raritan Basin System" since System in subchapter 2 refers to the Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs which constitute the Raritan Basin System.

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

7:11-2.1 General provisions

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

(c) The total rate charged under this schedule shall include the General Rate Schedule for Operations and Maintenance set forth at N.J.A.C. 7:11-2.2, the Debt Service Assessments set forth at N.J.A.C. 7:11-2.3, and the Capital Fund Component set forth at N.J.A.C. 7:11-2.4. (See N.J.A.C. 7:11-2.13 Special user rates for exception.)

7:11-2.2 General Rate Schedule for Operations and Maintenance

(a) The General Rate Schedule for Operations and Maintenance per million gallons listed at (b) below is based on estimated annual operations and maintenance expenses consisting of all current costs, obligations and expenses of, or arising in connection with, the operation, maintenance and administration of the System, and minor additions or improvements thereof or thereto, or the performance of any water purchase contract, including, but not limited to, all of the following:

1.-7. (No change.)

8. Any other current costs, expenses or obligations required to be paid by the Authority under the provision of any agreement or instrument relating to bonds, other indebtedness of the Authority or by law. The current sales base of *[151.049]* ***151.016*** million gallons per day has been used in setting the rate listed at (b) below.

(b) General Rate Schedule for Operations and Maintenance:

Allocation	Rate/Million Gallons
Million Gallons per Day (MGD)	*[$117.84]* ***$114.69***

7:11-2.3 Debt Service Assessments

(a) (No change.)

(b) The Debt Service Assessment rate for the 1969 Water Conservation Bonds shall be based on a sales base of *[150.554]* ***150.521*** million gallons per day. This Debt Service Assessment rate does not apply to Delaware and Raritan Canal customers in the Delaware River Basin.

1. 1969 Water Conservation Bond Funds:

Period	Allocation	Rate/Million Gallons
7/1/94 to 6/30/2002	Million Gallons per Day (MGD)	$14.01

(c) 1981 Water Supply Bond funds were borrowed from the State Treasurer to retire the tax exempt commercial paper used for temporary financing of the Delaware and Raritan Canal sediment removal program. The following Debt Service Assessment rate, based on a sales base of *[150.979]* ***150.946*** million gallons per day, in addition to that included in (b) above, will be applied to all customers.

Period	Allocation	Rate/Million Gallons
7/1/94 to 10/30/2006	Million Gallons per Day (MGD)	$33.42

(d) The following Debt Service Assessment rate for the 1988 Water System Revenue Bonds, based on a sales base of *[150.979]* ***150.946*** million gallons per day, in addition to that included in (b) and (c) above, will be applied to all customers:

Period	Allocation	Rate/Million Gallons
7/1/94 to 6/30/95	Million Gallons per Day (MGD)	$57.38
7/1/95 to 6/30/98	Million Gallons per Day (MGD)	$57.34

7:11-2.4 Capital Fund Component

(a) The Capital Fund Component is to provide for current funding of major annual maintenance and repairs of the existing facilities at a total amount of $1,500,000 to $2,000,000 per year. The total annual amount funded by the Capital Fund Component may be adjusted periodically for inflation; however, all capital projects beyond this amount and any enhancements or additions to the System shall be financed through the issuance of long-term debt.

*[(a)]***(b)*** The Capital Fund Component rate per million gallons listed at *[(b)]* ***(c)*** below is based on estimated annual capital expenses to properly maintain, rehabilitate or replace*[, and/or upgrade]* the *[Raritan Basin System]* facilities.

*[(b)]***(c)*** Capital Fund Assessment

Period	Allocation	Rate/Million Gallons
7/1/94 to 6/30/95	Million Gallons per Day (MGD)	*[$15.00]* ***$10.00***
7/1/95 to 6/30/96	Million Gallons per Day (MGD)	*[$20.00]* ***$15.00***
7/1/96 to *[6/30/99]* ***6/30/98***	Million Gallons per Day (MGD)	*[$25.00]* ***$20.00***
7/1/98 to 6/30/99	***Million Gallons per Day (MGD)***	***$25.00***

7:11-2.5 Daily allotment charge

(a) Effective on the date of commencement of charges as specified in the water use agreement, and except for special use described in N.J.A.C. 7:11-2.13, the user shall pay a daily allotment charge amounting to 100 percent of the value of the quantity specified in the agreement for 24-hour withdrawal at the rates specified in this Schedule, as it may be amended from time to time.

1. The total charge shall include the General Rate Schedule for Operations and Maintenance described in N.J.A.C. 7:11-2.2, the applicable Debt Service Assessment as described in N.J.A.C. 7:11-2.3, and the Capital Fund Component as described in N.J.A.C. 7:11-2.4.

2. Water diverted, withdrawn or allocated from the Raritan River Basin as supported by Spruce Run/Round Valley Reservoir water releases shall be modified by the appropriate Production Factor as specified in N.J.A.C. 7:11-2.7.

Recodify existing N.J.A.C. 7:11-2.5 through 2.8 as 2.6 through 2.9. (No change in text.)

7:11-2.10 Standby charge

(a) A user classified under standby service, as provided in N.J.A.C. 7:11-2.9 above, shall pay a monthly minimum charge based on the capacity of the user's withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly standby charge, based on charges as set forth under N.J.A.C. 7:11-2.2, 2.3 and 2.4.

Note: MGD = million gallons daily; GPM = gallons per minute.

1. For Delaware and Raritan Canal Standby Contracts within the Delaware River Basin.

Maximum withdrawal capacity	Charge per month
Each 1 MGD (700 GPM) or fraction thereof.	*[$117.84]* ***$114.69*** plus annual debt service assessment rates for 1981 Water Supply Bonds, 1988 Water System Revenue Bonds and Capital Fund Component.

2. For Standby Contracts within the Raritan River Basin:

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Maximum withdrawal capacity	Charge per month
Each 1 MGD (700 GPM) or fraction thereof.	*[$117.84]* ***$114.69*** plus annual debt service assessment rate for 1969 Water Conservation Bonds, 1981 Water Supply Bonds, 1988 Water System Revenue Bonds and Capital Fund Component.

7:11-2.11 Rate adjustment

(a) The New Jersey Water Supply Authority reserves the right to review and revise the Schedule from time to time by the establishment of a new Schedule promulgated pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and any regulations promulgated thereto.

1. A purchaser shall be notified of such changes not less than six months in advance of the effective date of such revision pursuant to N.J.A.C. 7:11-2.12.

2. Adjustments made under this section shall be subject to public hearing and all other requirements of N.J.A.C. 7:11-2.12.

3. Any contract for the sale of water shall be subject to any adjustment resulting from this review.

(b) The New Jersey Water Supply Authority reserves the right to review the sales bases from time to time to make adjustments, if necessary, in the Schedule. Any such adjustments shall be promulgated pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and any regulations promulgated thereto.

1. If any adjustment is required, at least six months notice in advance of the effective date of such revision shall be provided to all purchasers pursuant to N.J.A.C. 7:11-2.12.

2. Adjustments made under this section shall be subject to public hearing and all other requirements of N.J.A.C. 7:11-2.12.

3. Any contract for the sale of water shall be subject to any adjustment resulting from this review.

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

Recodify existing N.J.A.C. 7:11-2.11 and 2.12 as 2.12 and 2.13. (No change in text.)

7:11-2.14 Short term user rate

"Short term service" means the supply of water from the System, to the extent from time to time available, in excess of aggregate uninterruptible service, for certain interim, interruptible, non-guaranteed or short-term uses, such as growing agricultural or horticultural products or meeting extraordinary requirements in consumer demand for potable or industrial water, which a System water purchaser is authorized to withdraw pursuant to a contract. Such purchaser shall pay at the rate specified under the General Rate Schedule for Operations and Maintenance as set forth at N.J.A.C. 7:11-2.2, the applicable Debt Service Assessments as set forth at N.J.A.C. 7:11-2.3 and the applicable Capital Fund Component as set forth at N.J.A.C. 7:11-2.4 as applied to the total water actually diverted during any month.

7:11-2.15 (No change in text.)

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Manasquan Reservoir Water Supply System

Adopted Amendments: N.J.A.C. 7:11-4.3, 4.4 and 4.9

Proposed: December 20, 1993 at 25 N.J.R. 5744(a).

Adopted: May 25, 1994 by Robert C. Shinn, Jr., Chair, New Jersey Water Supply Authority and Commissioner, Department of Environmental Protection and Energy.

Filed: May 27, 1994 as R.1994 d.307, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 58:1B-7.

DEPE Docket Number: 63-93-11/386.

Effective Date: June 20, 1994.

Operative Date: July 1, 1994.

Expiration Date: May 3, 1998.

Summary of Public Comments and Agency Responses:

The New Jersey Water Supply Authority (Authority) is adopting amendments to the Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Manasquan Reservoir Water Supply System. In accordance with N.J.A.C. 7:11-4.13(a)4, the Authority held a pre-public hearing meeting with the Authority's contractual water purchasers and interested parties to present and explain the proposed adjustment to the rate schedule embodied in these rules. Notice of the pre-public hearing meeting was provided to the contractual water purchasers and interested parties including the Public Advocate's Office and the Board of Regulatory Commissioner. This meeting was held on January 12, 1994, at the Authority's Manasquan Reservoir System Administration Building, Wall Township, New Jersey, and was attended by two persons representing contractual water users. A representative from the Public Advocate, Division of Rate Counsel also attended the meeting.

Notice of the proposed rate adjustments and public hearing was published in the Trenton Times, Newark Star Ledger, Asbury Park Press, the Greater Media Newspapers and the Herald. A news release covering the proposed rate adjustments was also distributed to newspapers of general circulation in the water customers' service area. In addition, a direct mailing of the Notice of Public Hearing was made to all water customers and approximately 258 interested parties on the Authority's mailing list.

The public hearing concerning this rule, which was originally scheduled for February 9, 1994 was postponed due to inclement weather and was rescheduled and was held on February 16, 1994, at the Authority's Manasquan Reservoir System Administration Building, Wall Township, New Jersey, to provide interested persons the opportunity to present testimony. Two individuals attended the hearing including a representative from the New Jersey-American Water Company and a representative from the Public Advocate, Division of Rate Counsel. One person presented comments. One letter was received from the New Jersey-American Water Company during the public comment period, which closed on March 24, 1994. A written statement from the New Jersey-American Water Company was read into the record at the February 16, 1994 public hearing. The comments received at the public hearing are summarized below:

The following person made oral comments related to the proposed amendments:

Robert A. Engle, Revenue Requirement Specialist, New Jersey-American Water Company

The following person submitted written comments related to the proposed amendments:

Robert A. Engle, Revenue Requirement Specialist, New Jersey-American Water Company

Projected Increases in Employee Salaries and Benefits

1. COMMENT: The New Jersey-American Water Company expressed a concern about projected increases in Authority employee salaries and benefits for FY95.

RESPONSE: The Authority's employees are members of the same bargaining unit as are State employees. The International Federation of Professional and Technical Engineers, AFL-CIO which represents the Authority's Maintenance, Craft and Security units and the Communications Workers of America which represents the Authority's Administrative and Clerical, Primary Level and Higher Level Supervisors Units reached an agreement with the State on a three year contract (July 1, 1992-June 30, 1995) which included a wage freeze through September, 1993, a 5.0 percent salary adjustment effective October, 1993 and 6.0 percent effective July, 1994.

Based upon the Authority's actual experience during FY94 and advice received from the New Jersey Division of Pensions, the Authority deems it prudent to budget 35 percent of projected FY95 salary expenses for fringe benefits.

Increases in Business Property Insurance

2. COMMENT: The New Jersey-American Water Company questioned why the projected premium for the comprehensive business

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property insurance increased a total of 31 percent since FY93 and also asked how often the Authority remarkets its entire insurance program.

RESPONSE: The Authority's insurance broker for business property coverage renewed the Authority's property policy for the period March 1, 1993 through February 28, 1994 with property values increased slightly for inflation, at an increased premium of $286,740. This increase of 17 percent over the Authority's FY93 budget was directly related to market conditions.

Based upon the market advice of the Authority's risk management consultant from Coopers and Lybrand and various insurance brokers, the Authority had for budgetary purposes anticipated a 15 percent premium increase for its Property policy upon renewal on March 1, 1994. Upon renewal on March 1, 1994, the Authority obtained a renewal quotation from the carrier, which only amounted to an 11 percent premium increase for the property policy. The total increase since FY93 amounted to 28 percent primarily due to numerous natural disasters which wreaked havoc in the property insurance marketplace.

The Authority normally remarkets its entire insurance program every three years, and the next major insurance remarketing effort will commence in the fall of 1994 for the insurance year beginning March 1, 1995. The Authority's risk management consultant has indicated that remarketing of the Authority's insurance program at intervals of less than three years is likely to result in less participation by the better brokers and carriers resulting in higher premiums in all insurance lines.

Increases in Maintenance Equipment Account

3. COMMENT: The New Jersey-American Water Company questioned why the Authority projects a 63.6 percent increase in the account for maintenance of equipment.

RESPONSE: The General and Administrative budget reflects a 63.6 percent increase from FY94 to FY95 in this account because the Authority is no longer maintaining annual service contracts for computer equipment repairs. Accordingly, monies originally scheduled to be budgeted in Account 340 (Service Contracts) for this purpose were moved to Account 330 (Maintenance of Equipment). It is anticipated that computer equipment repairs will now be done on a time and materials basis when needed.

Increases in Advertising and Promotional Expense

4. COMMENT: The New Jersey-American Water Company questioned why the Authority projects a 38.8 percent increase in the account for Advertising and Promotional Expense.

RESPONSE: This account is set up to fund legal advertisements and public bid notices. The account was adjusted due to increasing advertising costs and more activity. State law requires that public notices be included in local newspapers on all public bidding of contracts and capital purchases in excess of $11,100. The Safe Drinking Water Act also requires that certain notices be published in local newspapers.

Interest Rate on Debt Service

5. COMMENT: The New Jersey-American Water Company asked about the status of negotiations with the State of New Jersey to lower the current 7.15 percent interest rate on the Manasquan reservoir construction loan.

RESPONSE: The Authority is currently continuing its negotiations with the State Treasurer. Should these negotiations prove to be successful, any reduction in the debt service payments will be reflected in a future adjustment in the rates.

Summary of Hearing Officer's Recommendations and Agency Response:

Authority board Member Peggy Haskin served as Hearing Officer at the February 16, 1994, public hearing. After reviewing the testimony presented at the public hearing and through the end of the public comment period as required by N.J.A.C. 7:11-4.13(a)8, Hearing Officer Haskin made the following recommendations:

1. For the reasons discussed in the Summary of Agency-Initiated Changes below, the proposed Operations and Maintenance Expense Component of $350.34 per million gallons should be changed to $349.23 per million gallons, effective July 1, 1994, and the proposed Operations and Maintenance Component of the standby charge at N.J.A.C. 7:11-4.9 should similarly be changed from $350.34 to $349.23, effective July 1, 1994.

2. The proposed debt service components should not be changed and should be adopted as follows:

7/1/94-6/30/95 (120 percent coverage) $765.75/MG

The Authority accepts these recommendations, and has modified the rule accordingly upon adoption.

Summary of Agency-Initiated Changes:

N.J.A.C. 7:11-4.3(c) and 4.9

Due to a reduction in the projected insurance expenses for FY95, the projected operations and maintenance component of the rate schedule is changed in this adoption from $350.34 as the charge per million gallons set forth in the proposed rule to $349.23 per million gallons, a reduction of $1.11 per million gallons. This reduced rate is reflected at N.J.A.C. 7:11-4.3(c) which sets forth the operations and maintenance rate itself, and at N.J.A.C. 7:11-4.9 which references N.J.A.C. 7:11-4.3 and sets forth the operations and maintenance charge for standby services. A typographical error is also corrected in N.J.A.C. 7:11-4.9 with the deletion of the word "debt" from the lefthand column of the table and its appropriate placement in the righthand column.

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

7:11-4.3 Operations and maintenance expense component

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

(c) Operations and maintenance expense component:

Effective Date	Rate/Million Gallons (based upon a 16.097 mg per day sales base)
July 1, 1994	*[$350.34]* ***$349.23***

7:11-4.4 Debt service cost component

(a) (No change.)

(b) The following Debt Service rates based on a sales base of 16.097 million gallons per day, apply to all water purchasers who entered into a water purchase contract before July 1, 1990, the date upon which the Authority commenced operation of the Manasquan Reservoir System (Initial Water Purchase Contract) and began to make uninterruptible service available to the purchasers ("System Operation Date").

Period	Rate/Million Gallons
7/1/94 to 6/30/95 (Coverage 120 percent)	$765.75

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

7:11-4.9 Standby charge

A purchaser classified under standby service shall pay a monthly minimum charge based on the capacity of the purchaser's withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly standby charge based on charges as set forth under N.J.A.C. 7:11-4.3 and 4.4.

Maximum withdrawal capacity	Charge per month
Each 1 MGD (700 GPM) or fraction *[debt]* thereof.	*[$350.34]* ***$349.23*** plus annual ***debt*** service assessment rate established in N.J.A.C. 7:11-4.4.

(a)

ENGINEERING AND CONSTRUCTION

Flood Control Bond Grants

Readoption with Amendments: N.J.A.C. 7:23

Proposed: March 21, 1994 at 26 N.J.R. 1334(a).

Adopted: May 25, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.

Filed: May 27, 1994 as R.1994 d.308, **without change.**

Authority: Emergency Flood Control Bond Act (P.L. 1978, c.78) and N.J.S.A. 13:1D-1 et seq.

DEPE Docket Number: 13-94-02/306.

Effective Date: May 27, 1994, Readoption;
June 20, 1994, Amendments.
Expiration Date: May 27, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:23.

Full text of the adopted amendments follows:

7:23-1.8 Procedure for obtaining a flood control grant
(a) Each potential applicant for a flood control grant shall:
1.-3. (No change.)

7:23-2.2 Definitions
The following words and terms, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise.

...

"Administrator" means the Administrator of the Engineering and Construction Division, Natural and Historic Resources, New Jersey Department of Environmental Protection and Energy.

...

"Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection and Energy or his or her designated representative.

...

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

...

"Division" means the Engineering and Construction Division of Natural and Historic Resources.

7:23-2.3 Eligibility Criteria
(a) Any applicant with a flood control program is eligible for a grant in any year where it satisfactorily completes the application process in a timely manner, meets the eligibility criteria set out in this subchapter, receives the minimum priority score, and ranks high enough on the priority list to be funded. To receive a grant the project shall meet the following criteria:
1. The minimum priority score set out in N.J.A.C. 7:23-2.13.
2.-3. (No change.)
4. The project shall not be excessively expensive.
5.-12. (No change.)
(b) (No change.)

7:23-2.4 Preapplication procedures
(a) (No change.)
(b) Questions concerning the grant program and requests for a preapplication conference should be directed to:
Chief, Flood Plain Management Section
Engineering and Construction Division
CN 419
Trenton, New Jersey 08625
(609) 292-2296

7:23-2.5 Application procedures
(a)-(g) (No change.)
(h) Applications shall be sent to:
Chief, Flood Plain Management Section
Engineering and Construction Division
CN 419
Trenton, New Jersey 08625
(609) 292-2296
(i) (No change.)

7:23-2.11 Grant award document
The Engineering and Construction Division of the Department shall prepare and transmit four copies of the grant award document to the applicant. The applicant shall execute the grant award document and return it within 30 calendar days after receipt. The Department may, in its discretion, extend the time for execution. The grant award document shall set forth the approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project or major phases thereof. The grant award document shall be deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department in the application process. After the Department has completed its internal processing of the grant award document, it shall transmit a copy of the executed grant award document to the grantee.

7:23-2.13 Priority determination
(a)-(e) (No change.)
(f) The applicants receiving a Notice of Intent to Award a Grant shall obtain all necessary Federal, State and local permits within one year after receipt of the Notice of Intent to Award a Grant. Failure to obtain the required permits within the required time period shall make the project ineligible for a grant for that year.
(g)-(i) (No change.)

7:23-2.14 Allowable project costs
(a) (No change.)
(b) In determining acquisition costs the applicant shall:
1. Contact the Office of Green Acres, Department of Environmental Protection and Energy, CN 412, Trenton, New Jersey 08625-0412, (609) 588-3450, concerning the proposed acquisition and select appraisers from a list supplied by the Office of Green Acres in accordance with the following schedule:
i.-ii. (No change.)
2. (No change.)
(c)-(f) (No change.)

(a)

POLICY AND PLANNING/AIR QUALITY MANAGEMENT

Control and Prohibition of Air Pollution by Volatile Organic Compounds

Adopted New Rules: N.J.A.C. 7:27-16.8 through 16.11, 16.13 and 16.21

Adopted Amendments: N.J.A.C. 7:27-1.4, 2.1, 8.1, 8.2, portions of 16.1, 16.2 through 16.3, 16.17, 17.1, 17.3, 17.4, 23.1 through 23.7, 25.1, 25.7; 7:27A-3.2 and 3.10; 7:27B-3.1 and 3.10

Adopted Recodifications with Amendments: N.J.A.C. 7:27-16.1A, 16.4, 16.5, 16.6, 16.16, 16.18, 16.19, 16.20, 16.22, 16.26 and 16.27

Proposed: August 2, 1993 at 25 N.J.R. 3339(a).
Adopted: May 27, 1994 by Robert C. Shinn, Commissioner, Department of Environmental Protection and Energy.
Filed: May 27, 1994 as R.1994 d.313, 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., in particular 26:2C-8.
DEPE Docket Number: 41-93-07.
Effective Date: June 20, 1994.
Operative Date: July 26, 1994. (Agency Note: As set forth in the notice of adoption of N.J.A.C. 7:27-6.17 and portions of amendments to N.J.A.C. 7:27-16.1 and 7:27A-3.10 published in the December 20, 1993 New Jersey Register at 25 N.J.R. 6002(a), this operative date of July 26, 1994 also applies to the new rule and amendments adopted therein.)
Expiration Date: N.J.A.C. 7:27A, December 4, 1994;
N.J.A.C. 7:27 and 7:27B, Exempt.

The New Jersey Department of Environmental Protection and Energy (the Department) hereby takes final action on the remaining portions of the proposal which was published in the New Jersey Register on August 2, 1993, at 25 N.J.R. 3339(a). Final action on other portions was taken and published in the New Jersey Register on December 20, 1993, at 25 N.J.R. 6002(a).

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Two issues regarding the adopted rules require particular attention: the May 31, 1995 compliance date and the exempted categories of sources at N.J.A.C. 7:27-16.27.

May 31, 1995 Compliance Deadline

The 1990 amendments to the Federal Clean Air Act (CAA), 42 U.S.C. 7511a, require states, like New Jersey, to require major stationary sources subject to this rule (those with the potential to emit 25 tons of VOC per year) to implement Reasonably Available Control Technology (RACT) for VOCs as expeditiously as possible but not later than May 31, 1995.

The Department was required under the CAA to have its VOC RACT rule in place by November 1992, thus providing a maximum of 30 months for major facilities subject to the VOC RACT requirements to meet the May 31, 1995 compliance deadline. The Department, however, is adopting this rule significantly later than envisioned by the CAA.

The Department recognizes that the delayed promulgation of this VOC RACT rule may have resulted in owners and operators being uncertain as to the specific requirements to which their facilities are subject, thus delaying their planning for compliance. The Department further recognizes that in many cases there may no longer be sufficient time for such facilities to achieve full compliance with these VOC RACT rules by the May 31, 1995 deadline.

Therefore, the Department will consider on a case-by-case basis, and in the exercise of its statutory (N.J.S.A. 26:2C-19(c)) and traditional, judicially-recognized enforcement discretion, requests by owners and operators to enter into Administrative Consent Orders (ACOs) providing for phased in compliance with these requirements. Owners and operators that are not able to meet the May 31 compliance deadline should submit a request to enter into an ACO to:

Assistant Director
Air and Environmental Quality Enforcement
Division of Enforcement Field Operations
Department of Environmental Protection
CN 422
401 East State Street
Trenton, New Jersey 08625-0422

The Department strongly encourages all such requests to be submitted by December 1994.

Requests for ACOs shall include an explanation of the progress made toward achieving compliance to date; the reasons compliance cannot be achieved by May 31, 1995; and a proposed schedule for the remaining significant milestones, such as the submittal of an administratively complete permit application (if required), the purchase of equipment, the installation of equipment or components, and any other interim actions to be taken to achieve compliance.

When the Department determines, in the exercise of its traditional enforcement discretion, that an owner or operator subject to the requirements of this rule cannot reasonably be required to meet the May 31, 1995 compliance deadline, the Department will execute a Federally enforceable ACO with the owner or operator that stays enforcement of the May 31, 1995 deadline and requires phased compliance in accordance with a schedule of compliance. An ACO authorizing phased compliance will require an owner or operator to fully implement RACT for VOCs as expeditiously as practicable, which the Department anticipates will generally be by no later than May 31, 1996. In no case will the Department consent to a final compliance date later than December 31, 1996, 30 months from the adoption of this rule. The Department shall establish schedules of compliance on a case-by-case basis, and will, where reasonable and practicable, require full compliance with this rule before December 31, 1996.

For applications submitted by December 1994, ACOs authorizing phased compliance with this rule will, in almost all cases, not include penalties for failing to meet the May 31, 1995 Federal compliance deadline. However, they may include stipulated penalties for failing to meet the final compliance date, milestones, or other terms and conditions established in the ACO. For later applications, and regarding other terms and conditions, the Department will exercise its traditional discretion, considering a variety of factors, including the diligence with which the applicant has proceeded.

In making the forgoing commitment, the Department has used the full extent of its legal authority to protect the regulated community from being unfairly subjected to penalties for unavoidable non-compliance. The Department believes that the existence of an ACO should and would provide the party to the ACO protection against the possibility of a legal action by a citizens group or the United States Environmental Protection Agency (EPA) seeking to enforce the May 31, 1995 deadline. However, the Department must, in candor, acknowledge that it is still possible that a citizens group or the EPA might attempt to bring such an action, even though the entity has entered into an ACO with the Department. See Sections 113 and 305 of the Federal Clean Air Act, 42 U.S.C. §§7413 and 7604, and the State Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq. Accordingly, any entity considering an ACO is encouraged to discuss this possibility with its own legal counsel and other appropriate persons.

Exempted Categories

In the proposed amendments at N.J.A.C. 7:27-16.27, four categories of source operations were proposed to be exempted from the provisions of these amendments until November 15, 1994. The source categories were offset lithography, surface coating of plastic parts, industrial wastewater treatment systems, and all other wastewater treatment facilities.

The Department proposed to exempt these source categories because it anticipated that the United States Environmental Protection Agency (EPA), as required by the CAA, would develop Control Technology Guidelines (CTGs) for these source categories prior to November 15, 1994. The Department intended to utilize the EPA-issued CTGs as the basis for a future rule proposal which would set forth appropriate RACT requirements for these source categories.

The Department recognized as it was developing the proposal that EPA might not issue any or all of the CTGs by November 15, 1994. The CAA amendments require, nonetheless, that owners and operators implement VOC RACT controls at their facilities on and after that date. Unless the Department proposes and adopts VOC RACT requirements for these categories before November 15, 1994, operations that fall into these four source categories will be subject to the case-by-case VOC RACT provisions set forth at N.J.A.C. 7:27-16.17, Facility-specific VOC control requirements.

To date, EPA has issued CTGs, in draft form only, for only two of the four categories exempted at N.J.A.C. 7:27-16.27: offset lithography and industrial wastewater treatment. These draft CTGs are currently being reviewed by the Department. The Department is collecting information on the number of facilities affected, and the amount of emissions involved, and is researching whether to promulgate specific RACT requirements for these categories or allow them to be regulated case-by-case under N.J.A.C. 7:27-16.17.

Summary of Hearing Officer's Recommendations and Agency Response:

Richard V. Sinding, Assistant Commissioner of Policy and Planning, served as the hearing officer at the September 9, 1993 public hearing held at the Department of Environmental Protection and Energy, Trenton, New Jersey. After reviewing the oral testimony presented at the public hearing and the written comments submitted directly to the Department, Assistant Commissioner Sinding determined that the responses to the comments and the agency changes made to the rules should be accepted as set forth in this Summary of Public Comments and Agency Responses and this Summary of Changes in Response to Comments. Specifically, Assistant Commissioner Sinding recommended that several changes be made to the rule. Three recommendations concern the leak detection and repair (LDAR) requirements for chemical plants: the applicability threshold should be rephrased into a tons-per-year of VOC used threshold, as currently exists for the synthetic organic chemical and polymer manufacturing facilities; the leak monitoring requirements for inaccessible components should distinguish between difficult-to-monitor and truly inaccessible components; and the requirements for nonmoving parts should allow for visual inspection. The Assistant Commissioner also recommended that the applicability threshold for vapor control requirements for transferring VOCs from storage tanks should not be based on the volume of VOCs transferred from the entire facility, but from a smaller area such as the tank itself, or the local loading area.

A copy of the record of the public hearing is available upon payment of the Department normal charges for copying. Persons requesting copies should contact:

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ATTN: DOCKET #41-93-07
Department of Environmental Protection
and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

Summary of Public Comments and Agency Responses:

The Department received comments on the portions of the proposal being adopted herein from 37 persons. A public hearing was held on Thursday, September 9, 1993 at the Department's hearing room at 401 East State Street in Trenton, New Jersey. The comment period was extended to October 18, 1993, as stated in the Notice of Extension of Public Comment Period published in the New Jersey Register on Monday, October 4, 1993 at 25 N.J.R. 4551(a). The persons who commented on the portions of the proposal being adopted herein are as follows:

(1) Robert M. Baldisserotto, Associate Manager of Corporate Environmental Affairs, and Wallace Y. Chang; Hoffmann-La Roche

(2) Robert Geiger, Manager for Environmental Regulatory Affairs, and James A. Shissias, General Manager—Environmental Affairs; Public Service Electric and Gas Company

(3) Bradley S. Martin, Senior Consultant—Environmental Affairs; E.I. DuPont de Nemours

(4) Thomas V. O'Neil, Executive Vice President; The Marcus Group, Inc. (representing New Jersey Independent Liquid Terminals Association)

(5) John A. Maxwell, Associate Director, New Jersey Petroleum Council

(6) D.J. Campbell, Refinery Regulatory Affairs Advisor, and R.M. Ivory-Moore, State Regulatory Advocate; Mobil Oil Corporation

(7) Lisa Fleming, Environmental Specialist; City of Vineland Electric Utility

(8) Sanjay Rao, Manager of Environmental Affairs; Stolt-Neilson, Inc.

(9) Charles Steiner, J.D., P.E., Project Leader; Roy F. Weston, Inc.

(10) Stanley R. Lane, M.D., Chairman; Committee on Environmental Health, Medical Society of New Jersey

(11) Lenora Strohm, Staff Project Engineer; General Motors

(12) Robert W. Welsh, Jr., Chairman; American Gas Association/ Interstate Natural Gas Association of America Title I Task Group

(13) Curt Macysyn, Associate Director; Fuel Merchants Association of New Jersey

(14) Maureen A. Healey, Director—Federal Environment and Transportation Issues; The Society of the Plastics Industry, Inc.

(15) Marcia Y. Kinter, Director of Government Affairs; Screen Printing Association International

(16) Nancy A. Wildboer, Manager—Health, Environmental & Safety Policy; Sun Company, Inc.

(17) Douglas M. Vopat, P.E., Environmental Project Leader; BP Oil

(18) Jim Sinclair, P.E., Ph.D., First Vice President; New Jersey Business and Industry Association

(19) Thomas J. Detweiler, Associate Director; Chemical Industry Council of New Jersey

(20) David M. Lucas, Refinery Manager—Chevron U.S.A. Products Company

(21) Joseph R. Cerchiaro, Chairman—Environmental Subcommittee; New Jersey Health Product Council

(22) John Yavorsky, Ph.D., P.E.; Ambient Engineering Inc.

(23) W.R. Von Drehle, Staff Environmental Scientist; Tenneco Gas

(24) J.R. Gattis, Senior Vice President—Technical Services; Transcontinental Gas Pipe Line Corporation

(25) Don C. Porter, Director—Environmental Protection & Compliance; Texas Eastern Transmission Corporation

(26) Conrad Simon, Director—Air and Waste Management; United States Environmental Protection Agency

(27) Martin Eisenhart, Chief Environmental Flight; Department of the Air Force

(28) James W. Klickovich, Coordinator—Environmental Affairs, and Charles E. Ash, Engineer—Environmental Affairs; Atlantic Electric

(29) Sybron Chemicals Inc.

(30) Steven J. Picco, Counsellor at Law; Picco Mack Herbert Kennedy Jaffe & Yoskin

(31) Pamela Barsem-Brown, President; New Jersey Coalition Against Aircraft Noise

(32) David F. Vanderveer, Safety and Environmental Manager; Aqualon Company

(33) H.R. Van Handle, Director—Environmental Affairs; Bayway Refining Company

(34) Randell Abbuhl, Project Manager, and Richard A. Craig, Project Director; Weston

(35) Vincent F. Bennett, Environmental Engineer; Schering-Plough Corporation

(36) Robert G. Suozzo; MERCK—Manufacturing Division (representing Industrial Advisory Group Air Permitting Taskforce)

(37) Diane M. Krell, Site Environmental Engineer—Environmental Control; MERCK—Manufacturing Division

The following is a summary of the comments received on the portions of the proposal being adopted herein and the Department's responses. The numbers(s) in parentheses after each comment identifies the person(s), as listed above, who provided comment.

General

1. COMMENT: This commenter is pleased to take the opportunity to continue support for the leadership shown by DEPE in promoting air quality without imposing undue regulatory burdens. The commenter supports the proposal. (10)

RESPONSE: The Department appreciates the commenter's support.

2. COMMENT: These commenters appreciate DEPE's openness in developing the proposal and the workgroup, "pre-proposal consultation" process, or other discussion formats. One commenter urged DEPE to adopt this process as standard operating procedure in the regulatory development proposal. (4) (10) (30) (19)

Another commenter noted that this process was less adversarial and offered to answer any questions or address any comments. (4)

RESPONSE: The Department is committed to an open rulemaking process. By forming workgroups early in the regulatory development process, the Department is better able to achieve its regulatory objectives while minimizing the burden on the regulated community. The Department has found that workgroups contribute greatly to the development of rules by revealing the practical applications and implications of draft rules and by suggesting alternate means of achieving specific regulatory objectives. Workgroups consisting of a wide variety of perspectives enhance the rule making process. The Department will continue to seek outside input in the development of future air pollution control code rules.

3. COMMENT: This commenter acknowledges the level of effort that DEPE expended in developing the new rules and recognizes the short timeframe in which DEPE is mandated to produce the rule. (6)

RESPONSE: The Department appreciates such acknowledgement.

4. COMMENT: This commenter is pleased with the management planning process incorporated in the regulations and believes that it establishes the most effective means of ensuring compliance with the Air Pollution Control Code and the ability of New Jersey to obtain deserved credit for air pollution reduction under the State Implementation Plan (SIP). (30)

RESPONSE: The Department is committed to incorporating planning into the rulemaking process.

5. COMMENT: The workgroup wishes to make it clear that they are more than willing to make their collective technical expertise available to the DEPE in addressing any issues raised during the comment period of this proposal. (30)

RESPONSE: The Department appreciates such an offer. The workgroup was extremely valuable to the Department in the development of this rule. We anticipate convening similar workgroups for future rules.

6. COMMENT: The commenter is pleased that the proposal recognizes that the marine terminal industry is unique and that the proposal does not establish RACT requirements of a general nature, but recognizes the need to look at RACT on a facility-by-facility basis and develop specific emission control plans. (4)

RESPONSE: The Department has specified RACT requirements for those categories where sufficient information exists. Categories which are not regulated elsewhere in subchapter 16 are regulated under N.J.A.C. 7:27-16.17, Facility-specific VOC control requirements. The Department believes that the facility-specific RACT provisions at N.J.A.C. 7:27-16.17 provide flexibility within the boundaries of the definition of RACT and allow facilities to reduce VOC emissions in a cost-effective manner.

7. COMMENT: The opportunities for the public and the regulated community to play a role in the development of the VOC RACT were limited, and more limited than in the development of the NO_x RACT

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regulations. Very little was known by the commenter and others about certain sections of the rule—especially the sections dealing with boilers, stationary gas turbines, and stationary internal combustion engines—until the proposal was published. The commenter acknowledges that DEPE has been under severe pressure to develop numerous regulations mandated by the CAAA and in that context, some portions of the program are bound to get less attention than others. The commenter continues to support the free exchange of information between all parties in order to achieve the shared goal of ozone attainment in a cost-effective manner. (2)

RESPONSE: The Department met several times with different workgroups as well as held public hearings on the proposed amendments and new rules. Because the rules include many categories and were originally scheduled to be submitted to EPA in November of 1992, the Department sought public participation to the extent possible within the time constraints.

8. COMMENT: This commenter notes that the tight deadlines for submittal of comments does not allow for sufficient time to review and quantify the costs and burdens of the proposals. The commenter urges the DEPE to continue to seek input from the affected industries and to create a vehicle for ongoing dialogue on these regulations after September 17, 1993. (4)

This commenter requests more time for the affected companies to review the regulations. This will allow for a more careful review of the regulations and to track additional data (such as VOC and CO information). (5)

This commenter requests that the September 17, 1993 due date for comments be waived due to the delay in receiving the proposal from DEPE. DEPE has failed to correct the commenter's address after four notifications which make it impossible for a citizen volunteer group to respond in the allotted time. (31)

RESPONSE: The original deadline for public comments of September 17, 1993 was extended to October 18, 1993 at the request of the public. The Department will continue to work informally to solicit input from affected industries, as well as from environmental groups. With the mailing of the proposal of this rulemaking, the Air Quality Management Program is revising and updating its mailing list.

9. COMMENT: The commenter appreciates the opportunity to comment on the regulations and urges DEPE to thoroughly review the comments from interested parties before promulgating a final rule. (29)

RESPONSE: The Department has thoroughly reviewed and seriously considered all the comments received. The Department's interest in receiving public comments was the rationale behind extending the public comment period.

10. COMMENT: With regards to N.J.A.C. 7:27-16, the commenter agrees with, and incorporates by reference, the position put forth by the New Jersey Petroleum Council. (6)

RESPONSE: The Department is aware that comments such as those submitted by the New Jersey Petroleum Council represent the collective views of their members and considers them accordingly.

11. COMMENT: The commenter believes that a three-month period from the operative date of the final rule to submit an air permit application is insufficient time to read and understand the regulations, determine applicability, evaluate RACT options, and prepare an air permit application. (3)

RESPONSE: The Department has added provisions at N.J.A.C. 7:27-16.4(q), 16.7(q), and 16.21(g) which allows a 60 day renewable extension of the permit application deadline. This extension would be granted upon written request, provided that the facility will still be able to achieve compliance by May 31, 1995 or the final compliance date established in an ACO.

12. COMMENT: These commenters are concerned about the time tables for compliance with many of the provisions. (5) (18) (4) (6) (20)

One commenter believes that the time tables are unrealistic and will lead to unproductive penalties. (18)

Another commented on the complex engineering that needs to be done and suggested that implementation might have to be extended out past the May 31, 1995 deadline and phased-in to allow for compliance for large operations. (4)

Two commenters were concerned that the unreasonable timeframe is not enough time for the regulated community to determine the most cost effective means of complying as well as implementing compliance plans; 24 months should be allowed to determine the most applicable technology and submit a permit application. (5) (6)

Finally, one commenter recommended that nine to 12 months be allowed to submit an alternative control plan and two years be allowed for implementation. (20)

RESPONSE: The Department recognizes that the delayed promulgation of this VOC RACT rule may have resulted in owners or operators being uncertain as to the specific requirements to which their facilities are subject, thus delaying their planning for compliance. The Department further recognizes that in many cases there may no longer be sufficient time for such facilities to achieve full compliance with these rules by the May 31, 1995 Federal statutory deadline. However, the Department will consider, on a case-by-case basis, requests by owners or operators to phase in compliance with these requirements. When the Department receives a request for phased compliance and, in the exercise of its traditional enforcement discretion, determines that the owner or operator cannot reasonably be required to meet the requirements of this rule by May 31, 1995, the Department will execute a Federally enforceable agreement (such as an administrative consent order) authorizing phased compliance. These agreements will require an owner or operator to implement RACT as expeditiously as practicable and will establish schedules of compliance on a case-by-case basis. In these cases, the Department does not intend to impose penalties for the failure of an owner or operator to meet the Federal compliance deadline, but may impose penalties for failing to meet the final compliance date or other terms of the agreement. This issue is discussed in more detail in the preamble to this notice of adoption.

13. COMMENT: These commenters suggest that DEPE request EPA to expedite the process for developing and promulgating test methods, particularly in light of Maximum Achievable Control Technology (MACT). (34) (32)

RESPONSE: By submittal of this rule adoption document as a SIP revision, the commenter's concern is expressed to EPA.

14. COMMENT: These commenters believe that using only test methods approved by EPA or DEPE (if this means promulgated) would unreasonably limit the opportunity for the Bureau of Technical Services (BTS) to apply judgment in the application of a test method or to utilize an appropriate draft method. BTS routinely and successfully utilizes judgment in such matters and should be relied upon to continue to do so. The language "approved in advance by the Department and EPA" should be revised to read: acceptable to the Department. There is no need to have advance approval by both EPA and DEPE for any test protocol. Duplicate reviews of protocols add needless delay and expense to the process and are not in the best interests of the government or the regulated community. (34) (32)

RESPONSE: The Department agrees with the commenter that duplicate reviews are unnecessary and has made the appropriate changes to N.J.A.C. 7:27-16.22(f). The proposed revision to this section provides that all testing and monitoring be conducted using N.J.A.C. 7:27B-3 or another method approved in advance by the Department and acceptable to the EPA.

15. COMMENT: The commenter notes that EPA guidance does not permit the installation of minimum controls to a facility in order to lower its potential to emit below 25 tons per year and thereby avoid installation of RACT for the facility. (26)

RESPONSE: If a facility seeks to reduce its allowable emissions through the installation of controls and wants this reduction to be taken into consideration in the determination of whether the facility is a major VOC facility, the owner or operator must seek Departmental approval of a preconstruction permit. The Air Pollution Control Act (N.J.S.A. 26:2C) prohibits the Department from approving any preconstruction permit unless it incorporates advances in the art of air pollution control, which is equal to or better that RACT.

16. COMMENT: The commenter notes that there are certain unique characteristics which differentiate the terminaling industry from other industries subject to N.J.A.C. 7:27-16. Unlike major chemical and oil companies, companies in the for-hire storage business generally do not own the product that they store or control the mode of transport of the product to and from the facility. These differences make compliance with N.J.A.C. 7:27-16 far more problematic for public storage facilities. The revenue earned by a public storage terminal is based on throughput and often tanks are under long-term storage contracts with major chemical companies. Because of the contractual nature of the business, there is limited ability to pass along regulatory costs imposed by DEPE to clients and, ultimately, to consumers. The chemical storage industry is highly mobile and extremely price-sensitive. There is substantial loss of revenue to a storage facility if it must interrupt its contractual

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relationship with a client in order to take tanks out of usage so that work can be done to meet the DEPE imposed requirements. Also, alternate storage facilities will be sought out, possibly not in the State of New Jersey, and it may not be possible to reclaim that business. This industry is in economic distress, partially caused by the cost of compliance in recent years, with the bulk of the costs stemming from Discharge Prevention, Control, and Countermeasure (DPCC) upgrades and with marine vapor recovery. Throughput in the industry is down. The industry deals with smaller volume tanks and the commenter believes that the cost of compliance will be higher and the time necessary to achieve compliance will be longer because of these smaller tanks. Availability of contractors to install materials is also a concern. (4)

RESPONSE: Because New Jersey is classified as a serious nonattainment area, the Department is required by the Clean Air Act (CAA) to regulate major stationary sources of VOC. Storage and transfer of VOCs constitutes a significant part of the VOC inventory. Approximately 75 facilities in the State have estimated annual VOC emissions from transfer operations of at least 2,000 pounds. While some industries may be impacted to a greater degree than others, the intent of the CAA legislation, and of this particular regulation, is to impose controls which are reasonably available including cost considerations. The Department is aware that the regulations will impose financial impacts on the regulated community and has attempted to minimize these impacts.

17. COMMENT: The commenter notes that New Jersey must accept ultimate responsibility for the nonattainment problems, which the commenter believes is happening. However, these problems are not caused solely by sources in New Jersey. Significant contributions are being made from sources in upwind states from sources outside the northeast corridor. In order to achieve attainment in the region, these sources have to be part of the solution. Ozone nonattainment is a shared problem and not the fault of any one company, state, region, source category, or pollutant. We all must share in the responsibilities of solving the problem. In order to remain an economically competitive state, New Jersey industry should not be burdened with more than other states. (2)

RESPONSE: The Department is aware of the regional nature of the ozone air pollution problem, as is the U.S. Congress. The CAAA created the Ozone Transport Commission (OTC) which is a body of representatives from 13 Eastern U.S. states, including New Jersey, directed to coordinate a regional approach to attaining the air quality goal for ozone. New Jersey has been working for the past three years with the OTC analyzing data and formulating interstate, regional approaches to address the ozone problem in an equitable manner. New Jersey has also been participating in two other regional air pollution groups (not specifically created by the CAAA). These are the Northeast States Coalition of Air Unit Managers (NESCAUM) and the Midatlantic Region Air Management Association (MARAMA). Both of these regional air pollution associations are committed to confronting regional air pollution in a cooperative manner. Through these organizations, and otherwise, the Department is striving to ensure that New Jersey's industry bears no more than its fair share of the burden of reducing ozone pollution.

18. COMMENT: This commenter expressed concerns with maintaining operational flexibility in the midst of efforts to achieve fewer and less adverse environmental impacts. The DEPE has expressed their intent on a number of occasions to provide for as much flexibility as is feasibly possible without undermining the intent of the proposed rule. The commenter believes there is a need to modify the rule in some areas in order to provide adequate operating flexibility. The commenter believes that DEPE will be able to make the requested modifications without significantly or seriously impacting the intent of the rules. (2)

RESPONSE: In the proposed rules, the Department attempted to provide the regulated community with the maximum degree of operating flexibility. Further, in response to several comments, the Department has incorporated several modifications to the rules to increase flexibility. One such provision, mentioned in Comment 11, added to several sections of the rule, allows a 60 day extension to the permit application deadline. In addition, alternatives to Continuous Emissions Monitors (CEMs) have been included as acceptable by reference to N.J.A.C. 7:27-19.18. Finally, a modification which eliminates the need for EPA approval of test methods has been included at N.J.A.C. 7:27-16.8(h) through (j), 16.9(g) through (i), 16.10(f) through (h), 16.11(f) through (h) and 16.22 (f).

19. COMMENT: The commenter believes that the definition of major stationary source on page 3 of the Preamble is well defined. (31)

RESPONSE: The Department thanks the commenter for the recognition. Clarity in definitions is a critical component of a regulation.

20. COMMENT: The term major stationary source has greater applicability than the usage in N.J.A.C. 7:27-16. In particular, an airport, a clearly stationary structure, emits unacceptable levels of VOCs and NO_x by attracting several significant sources of air pollution, for example, aircraft, service vehicles, and ground-access vehicles. On July 12, 1993, the California South Coast Air Quality Management District (AQMD) proposed a "bubble" rule as a basic regulatory policy. Each emission source that contributes to the overall pollution generated at an airport would be collectively regulated to achieve a reduction. It is estimated that airport emissions would be lowered by 56 percent for VOCs and 64 percent for NO_x. These improvements are significant enough to warrant adoption by New Jersey. Furthermore, the South Coast AQMD's legal analysis concluded that emission reduction targets for airports can be set, provided that compliance does not affect the design, structure, operation, or performance of the aircraft engine. The commenter recommends that DEPE consider airports as major stationary sources of air pollution. The health and well-being of New Jersey citizens deserve no less. (31)

RESPONSE: The Department feels it is inappropriate to regulate airports as major stationary sources of VOC at this time. Jet fuel has a very low vapor pressure. Although airplanes are a significant source of NO_x, this is not so for VOCs. Regulation of national travel, such as airplanes, is more appropriate for the federal government. The Department will, however, obtain and review the basis of the California South Coast AQMD policy regulating airports as a possible future strategy to obtain further reductions of NO_x.

21. COMMENT: This commenter noted that the published RACT requirements should be state-of-the-art. More often than not, when permit applications are reviewed, DEPE imposes additional requirements than those that are published in the regulation. In making state-of-the-art a case-by-case review, DEPE unnecessarily complicates the air permit review system, which results in long delays in obtaining permits. In many situations, this delay is a detriment to the environment because upgrades cannot be made in a timely fashion. If DEPE insists on using a case-by-case state-of-the-art analysis, there is no purpose to many of the provisions in the proposed subchapter. The subchapter provides limited direction and cannot be relied upon in the preparation of an air permit. The preparation and promulgation of the rule is unnecessary and inconsequential to the air permitting system. The regulation should be eliminated, regardless of whether or not the DEPE believes it is necessary to meet some abstract SIP requirement. DEPE should argue to EPA that state-of-the-art is RACT or better and not waste resources in the promulgation of this rule. (37)

RESPONSE: RACT, as required by the CAA, is intended to require reasonably available controls for new and existing sources, while state-of-the-art is the appropriate review standard for new sources. There are a significant number of existing sources that are "grandfathered" from the state-of-the-art permitting requirements of subchapter 8. RACT rules require such "grandfathered" sources to reduce emissions. The permitting state-of-the-art analysis alone would not apply to all of the sources intended to be regulated by RACT rules. The Department promulgates RACT rules in order to meet specific environmental objectives which are spelled out in the State Implementation Plan (SIP); these objectives are by no means "abstract." These necessary RACT rules are consequential to the permitting program because they set the absolute minimum requirements for new and altered sources. Depending on the specific type and nature of a new or altered source operation, state-of-the-art may be more stringent than RACT. RACT rules are specific to a particular objective (subchapter 16 is designed to reduce ozone precursors in order for New Jersey to attain the NAAQS for ozone), while permitting standards encompass many objectives. Permitting standards are set in consideration of RACT rules, New Source Performance Standard (NSPS) rules at 40 CFR 60, National Emission Standards for Hazardous Air Pollutant (NESHAP) rules at 40 CFR 61, Prevention of Significant Deterioration (PSD) requirements at 40 CFR 52, risk assessment modelling, and other factors. RACT rules are one necessary component to the permitting process and are also necessary in order to regulate sources that are "grandfathered" from the permitting requirements.

The Department is aware that a small number of facilities may be required, through the state-of-the-art permitting process, to meet more stringent requirements than those set forth in these rules. However, the Department submits that the result is required by the Air Pollution

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Control Act and is amply justified by the air quality benefits derived therefrom. For example, N.J.A.C. 7:27-16.4 allows certain transfers to be controlled with an apparatus that reduces VOC emissions by 90 percent. If a member of the regulated community applied for a permit to install a carbon adsorption system to meet this RACT requirements, the state-of-the-art permitting requirement would probably be equivalent to the RACT rule, and the permit would probably be issued at 90 percent control. However, if the applicant preferred to use a thermal oxidizer to comply with the RACT rule, the permit would probably require a 95 percent control efficiency because the relatively minor expense of installing the better thermal oxidizer would be amply justified by the higher level of control of VOCs and products of incomplete combustion achieved thereby.

22. COMMENT: EPA's definition of RACT notwithstanding, the Department has chosen to provide a single, catchall RACT standard to each category of sources regulated under the rules; for example, N.J.A.C. 7:27-16.8 imposes a single standard for all utility boilers above a certain capacity without regard to the economic feasibility of that emissions limit. As an alternative, the Department affords the option of a facility-specific VOC and CO control plan, as it did under the NO_x regulations. Unlike the NO_x regulations however, this plan is the only alternative and is difficult to obtain. The Department recognized in the Preamble that it "expects that owners and operators of such source operations will rarely find it necessary or desirable to resort to the facility-specific approach to VOC control." The commenter believes that RACT for VOC and CO emissions requires plans tailored to the specific unit, taking into account the type and age of the unit, the type of fuel burned, the capacity factor, and the level of NO_x reduction required. This approach corresponds to the NESCAUM Report's conclusion that the level of VOC and CO emissions is "very site-specific." (See NESCAUM Report, p. 77). The commenter urges the Department to revise its rules to make the submission of a facility or source-specific compliance plan a viable option to the categorical approach presently proposed. By doing so, the Department will comply with both the spirit of EPA's RACT definition and the realities of utility emissions of VOCs and CO. (28)

RESPONSE: The Department agrees that in some cases RACT should be site-specific, and it believes that N.J.A.C. 7:27-16.17 provides a viable option for facilities that want to conduct a site-specific analysis. Despite the awkward wording of the preamble of the proposal, the VOC Control Plan requirements pursuant to N.J.A.C. 7:27-16.17 are analogous to the requirements of the facility-specific NO_x Emission Limits described at N.J.A.C. 7:27-19.13. The VOC and the NO_x Facility-Specific plans provisions afford the same degree of flexibility. Both involve a submittal to the Department that details what alternatives are available and a determination of what is RACT for that particular source. Both options would involve a SIP revision, which requires review and approval by EPA and public participation.

23. COMMENT: With regards to N.J.A.C. 7:27-16, the commenter believes, in general, that DEPE's approach to RACT is to provide definitive standards to the extent possible for each category of major source is inconsistent with the EPA definition of RACT. (21)

RESPONSE: The Department disagrees. Many of the existing previously adopted provisions at N.J.A.C. 7:27-16 are based on definitive standards, many of which are specified in EPA-issued Control Techniques Guidelines (CTGs). EPA-issued CTGs specify "presumptive norms" for RACT and include model rules for states to use in developing RACT rules. Provided the data is available, it is possible to specify what RACT is for a particular source. As many members of the regulated community agree, specific RACT standards are useful for all involved because they provide consistency and involve less paperwork than case-by-case RACT determinations. Some source categories, however, do not have a useful body of information concerning feasibilities of control alternatives or costs, and thus it is not possible to determine a generic RACT standard for such categories. This lack of data for certain source categories is, in part, the rationale behind providing the regulated community the option of seeking facility-specific emission limits.

24. COMMENT: The commenter supports regulatory programs that limit the excess emissions of VOCs as long as the programs reflect standards that are technically achievable and represent RACT. (36)

RESPONSE: The Department agrees and appreciates the support.

25. COMMENT: These commenters are concerned that portions of N.J.A.C. 7:27-16 are more stringent than Federal requirements. (37) (36) (6) (1) (35) (21) (2)

One commenter requested that DEPE review the proposed regulation for compliance with specific Federal requirements and eliminate any requirement that is more stringent than the Federal government has chosen to regulate. (37)

Another commenter believes that many areas of the proposed regulation are unreasonable, overly stringent, and warrant careful consideration by DEPE; in some cases the RACT requirements are exceeded. (1)

A final commenter is not aware of any other state in the area that is proposing to establish CO limits as part of the VOC RACT rules; this is more stringent than other states. (2)

RESPONSE: The Department does not believe that the standards adopted herein are more stringent than what the Clean Air Act requires and believes that the standards are consistent with the definition and intent of RACT. The Clean Air Act requires New Jersey, and other nonattainment areas for ozone, to regulate source categories subject to EPA issued CTGs, to regulate all major VOC facilities, and to meet specific emission reductions of VOCs. The standards adopted herein are a necessary part of New Jersey's State Implementation Plan (SIP) to achieve the National Ambient Air Quality Standard for ozone. Along with the existing VOC requirements and other required control strategies, these adopted rules are a necessary part of New Jersey's compliance of the federal Clean Air Act. In meeting its CAA obligations, the Department has made every effort to minimize the burden placed on the State's industry, and the Department submits that it has succeeded in that effort. Every requirement in these rules was given careful consideration.

The VOC and CO standards for combustion sources apply to the same sources subject to the NO_x RACT provisions at N.J.A.C. 7:27-19. The rationale behind the standards is to prevent the increase of VOC emissions that can result from the control measures designed to reduce NO_x emissions. New Jersey is not the only state that has established CO standards. New York and Massachusetts have established CO limits as well.

26. COMMENT: The commenter is concerned that the proposed regulations would be burdensome to operations. (16)

RESPONSE: The intention of designating RACT requirements is not to require overly burdensome procedures but rather require those procedures which are reasonably available. The designation of RACT includes cost effectiveness. The commenter has an opportunity in the provision at N.J.A.C. 7:27-16.17 to submit an alternative VOC Control Plan to demonstrate that the specified RACT for a particular source is overly burdensome.

27. COMMENT: Over the past generation, the Federal government has acted, and New Jersey's industrial sector has performed extremely well, in adapting and adhering to the new age of environmental practice. The era has passed where New Jersey must promulgate regulations because the Federal government has failed to act. Further, Federal requirements are very stringent. Making regulations more stringent for the sake of making them more stringent does not improve the environment. Extremeness has little to do with protection of the environment and everything to do with the elimination of the proud economic base that has been New Jersey. Many of the proposed rules herein again create situations where DEPE is rushing into areas where the Federal government has chosen to regulate. Specifically, the LDAR regulations go well beyond Federal requirements. At this time, the EPA does not require LDAR for VOCs except under the Hazardous Organic NESHAP (HON) rule. The DEPE, in promulgating this rule, will create a complicated system that will be very difficult to reconcile with a Federal system once it becomes available. The DEPE is again regulating as if the geography, geology and meteorology of New Jersey were Southern California. It is recognized that the ozone problem in New Jersey is caused in large part by transport from out-of-State. DEPE must externalize the approach to air pollution to solve the real problem. The commenter quotes the NJPDES Task Force Report of Findings presented to Commissioner Scott A. Weiner (March 29, 1993) regarding DEPE rushing to pass their own version of rules before final Federal promulgation, resulting in excessive requirements which can be costly and do not necessarily provide additional environmental benefit. (37)

RESPONSE: The Department agrees that any decision to impose requirements more stringent that Federal requirements must be carefully justified. However, New Jersey's ozone problem is much more severe than most other states, and Federal law therefore requires New Jersey to impose stricter requirements than some other states are required to impose. These rules are the result of just such a Federal requirement. Further, in order to avoid future complications, the Department was

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careful to avoid setting requirements for sources or activities that it had reason to believe EPA would be regulating in the near future (see N.J.A.C. 7:27-16.27).

The Department is aware of the differences between New Jersey and Southern California and has carefully analyzed southern California's control measures against those differences before proposing their implementation in New Jersey.

None of the regulations were proposed with the intent of "more stringent for the sake of making them more stringent." For instance, the leak detection and repair (LDAR) section is estimated to reduce annual VOC emissions by 3,000 to 5,000 tons per year. Some estimates of cost per ton of VOC emissions reduced for LDAR programs report negative dollars per ton. This means that facilities actually save money by controlling fugitive emissions in some circumstances. All of these rule requirements are driven by specific federal rules or the general mandates of the CAA, or both.

The Department is also aware of the interstate aspects of the ozone problem and is working in concert with regional air pollution groups (see Comment 17 above) to address the interstate aspects of the problem.

28. COMMENT: This commenter addresses the necessity of using CEMS to accurately measure relatively small quantities of emissions from sources that do not operate frequently. The results of the recent emission surveys and other DEPE projects seems to indicate that there are many unknowns with regards to VOCs. The commenter does not think that this justifies measuring so many variables only to find out that many are insignificant, especially if there is a more reasonable way to determine if air quality issues are being adequately addressed at these sources. (7)

RESPONSE: The rules do not absolutely require the use of CEMs. By reference to N.J.A.C. 7:27-19.18, the adopted rules allow for alternatives to CEMs that are demonstrated to be as accurate and reliable.

29. COMMENT: The commenter believes that directly monitoring VOC emissions instead of CO emissions with CEMS should only be done where the correlation between VOC and CO emissions is questionable. (7)

RESPONSE: Monitoring of VOC emissions by CEMs is not required by the rules; the rules require CEMs only for CO emissions.

30. COMMENT: The commenter is concerned that the proposed rule is written with emission rates expressed in parts per million on a dry volume basis (ppmvd). By regulating emissions limits in this form, DEPE is automatically requiring the regulated community to install extractive CEM systems. This precludes the use of extractive-dilution or in situ CEM systems for compliance monitoring without performing a Method 4 test for moisture on some predetermined basis. Performing a Method 4 test on a frequent basis is impractical, costly, and requires additional resources to complete. Extractive dilution systems are generally less expensive to install and require less maintenance than other CEM systems currently available. The commenter suggests that DEPE evaluate the need for a value expressed as ppmvd, and provide additional flexibility in this area. (28)

RESPONSE: The Department disagrees that there is a significant differential in costs between in-situ CEM systems and extractive-dilution CEM systems. Further, expressing emission limits on a dry volume basis (ppmvd) does not necessarily exclude extractive-dilution CEM systems. Such systems may be used if a protocol for accurately converting moisture measurements to a dry weight basis is submitted and approved by the Department.

31. COMMENT: This commenter recommends that all definitions in N.J.A.C. 7:27 be relocated to subchapter 1 rather than having each subchapter with its own set of definitions. (3)

RESPONSE: The Department has decided that the definitions which are specific to a particular subchapter are best located within the subchapter. Historically, the various subchapters have each been added and amended with their own sets of unique definitions. Most definitions are unique to a particular subchapter. Many sources are regulated by, and are therefore only concerned with, one part of the Air Pollution Code. Therefore, locating definitions of terms used in a subchapter at the particular subchapter is a logical approach. Attempting to place all of the definitions at subchapter 1 would likely cause more confusion than it would solve.

32. COMMENT: These commenters are concerned about the economic impacts or the compliance costs of the proposal when compared to the environmental benefits. (4) (29) (6) (28) (35) (21) (18) (2) (5)

One commenter believes that the cost/benefit analysis is deficient. (4)

Another commenter believes that the scope of these and other recent air regulation proposals demands an exhaustive analysis to ensure that the economic viability of New Jersey is not hindered. This commenter suggested that the economic impact analysis be reworked with more realistic numbers; the current analysis includes cost figures that underestimate the economic impact of compliance and neglect to include any negative impact due to the loss of manufacturing jobs. (29)

Another commenter believes that compliance with this proposal will cause businesses to stop existing processes, or to close down product lines or entire facilities; this is unacknowledged in the economic impact section. (18)

A final commenter specifically addressed the petroleum industry and noted that nationwide, the industry will have to spend an estimated minimum of $106 billion over 20 years to comply with existing and anticipated environmental regulations. Refineries have made great strides in reducing emissions, and the American industry has already lost 50,000 jobs in the last 10 years. Therefore, caution is advised in moving too far and too fast in rulemaking. (5)

RESPONSE: The Department invested considerable effort in developing the economic impacts published with the proposed rules. The estimated control costs were derived from factual information on the costs of same-type controls used for other types of source operations or were derived from other available information.

The Department believes that the costs associated with these new rules and amendments are not of a magnitude that could reasonably be expected to jeopardize the economic viability of New Jersey. In this Federally mandated rule action, the Department has provided several avenues of flexibility in order to minimize the economic burden of the rules on the regulated community. For example, the Department has adopted provisions at N.J.A.C. 7:27-16.17 that allow facilities to propose alternative VOC RACT control plans for the control of VOCs from source operations for which control would otherwise be infeasible.

There are many complex factors and mechanisms that lead to loss of jobs. The effect of environmental regulations is only part of the picture. At least two reports regarding the economic effects of environmental regulations have been recently published: the New Jersey Institute of Technology's "A review of the Economic Impact of Environmental Statutes, Rules, and Regulations on New Jersey Industry" and "Environmentalism and Economic Prosperity: Testing the Environmental Impact Hypothesis" by Professor Stephen M. Meyer of the Massachusetts Institute of Technology's Department of Political Science. These two reports reach somewhat different conclusions on the effect of environmental regulations on states' economies. This is an evolving field of study, and the Department will continue to use all available resources to analyze the impacts of its rule proposals.

In developing regulations, the Department must balance the need to protect human health, welfare and the environment with the goal of minimizing economic burdens of environmental compliance. The rules adopted herein are measures that the 1990 amendments of the CAA mandate that the Department adopt. In these rules, the Department has incorporated several avenues of flexibility in order to minimize the economic burden of the rules on the regulated community.

33. COMMENT: The national debate in Congress indicated that the CAAA will have a disproportionate negative impact on certain states such as New Jersey. DEPE has attempted to place a dollar figure range of $2,000 to 10,000 per ton for achieving RACT. It is clear that in some cases, businesses will not be able to make this level of investment. (18)

RESPONSE: The Department recognizes that the adopted rules will impact businesses by various degrees. In developing the rules, the Department attempted to identify requirements that are reasonable including costs. If a facility believes that the VOC control requirements for a particular source operation are not feasible, the facility may submit an alternative VOC RACT control plan pursuant to N.J.A.C. 7:27-16.17. The alternative plan would allow a facility to propose less costly alternative control measures in lieu of specified requirements.

34. COMMENT: The commenter sharply disagrees with the cost estimates provided in the Economic Impact statement. Based upon bids obtained across the nation for various control technologies for VOC, a more realistic cost estimate would be up to $50,000 per ton of VOC removed. The commenter asks the DEPE to consider that public storage terminals do not have the in-house engineering capacity to respond to these regulations and must contract out at additional cost for those services. Also, many facilities have complex load rack configurations throughout their terminals and therefore may require substantial additional costs. (4)

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RESPONSE: The Department does not believe that $50,000 per ton of VOC removed for control apparatus designed to reduce VOC emissions from loading racks is typical. The Department recognizes that some loading racks are more complex than others. If the cost to implement the control measures specified at N.J.A.C. 7:27-16.4 are extremely high (for example, $50,000 per ton), the facility should consider submitting an alternative VOC RACT control plan pursuant to N.J.A.C. 7:27-16.17. The Department realizes that some facilities do not have extensive engineering resources. Facilities must decide whether to perform the necessary tasks to comply with this subchapter in-house or to contract out the tasks.

N.J.A.C. 7:27-8.2 Applicability

35. COMMENT: The commenter recommends N.J.A.C. 7:27-8.2(c) not be incorporated into the new rule. The addition is redundant since N.J.A.C. 7:27-17.7 already requires that chemicals listed in N.J.A.C. 7:27-17.3 be subject to subchapter 8. (11)

RESPONSE: The commenter is correct that proposed N.J.A.C. 7:27-8.2(c) is redundant since N.J.A.C. 7:27-17.7 and N.J.A.C. 7:27-8.2(a)17 require that new or altered sources need to obtain permits and certificates pursuant to subchapter 8. The Department has, therefore, deleted the proposed redundant provision at N.J.A.C. 7:27-8.2(c) upon adoption.

N.J.A.C. 7:27-16.1 Definitions

36. COMMENT: This commenter applauds the definitions of "applicable VOC" and "regulated leak" under N.J.A.C. 7:27-16.1 to focus the leak detection and repair efforts on the source which may contribute to air emissions. (33)

RESPONSE: The Department thanks the commenter for support.

37. COMMENT: These commenters suggest that the definition of "applicable VOC" under N.J.A.C. 7:27-16.1 should be modified to read: "Applicable VOC" means any VOC which has a vapor pressure or sum of partial pressures of organic substances of 0.044 pounds per square inch (2.2 millimeters of mercury) absolute or greater at standard conditions. (1) (35)

RESPONSE: The commenters' suggested language already exists in the definition of "light liquid" at N.J.A.C. 7:27-16.1. The provisions of the rules that refer to "applicable VOC" replace the term "VOC" modified with the clause that specifies VOC with vapor pressure greater than 0.02 psia. The use of the term "applicable VOC" is intentional and appropriate. Most provisions regulating "applicable VOC" have been inplace for quite sometime. The term "light liquid" (used at N.J.A.C. 7:27-16.18) refers to VOCs having a vapor pressure of 0.044 psia. The LDAR provisions refering to "light liquids" are generally more stringent than those refering to "applicable VOC."

38. COMMENT: The proposed definition of "capture system" under N.J.A.C. 7:27-16.1 should not include control apparatus. A capture system may or may not direct emissions to a control apparatus depending on whether the quantity of air contaminants in the exhaust gases must be reduced. (32) (34)

RESPONSE: This definition has been deleted from the rule as it is not used in the actual rule language.

39. COMMENT: These commenters regard the proposed definition of "component" under N.J.A.C. 7:27-16.1 to go beyond RACT by including nonmoving parts in the definition. The proposal for the NO_x RACT regulation stated that "If the added cost of a more expensive control technology is disproportionate to the improvement in the NO_x emissions which will result from its use, the more expensive technology is unlikely to be considered RACT." The Department is encouraged to use the same rationale for this VOC RACT rule. The definition as written includes fittings, seals, and joints. Inclusion of these components in the definition greatly expands the scope of the LDAR program while yielding insignificant environmental benefits. For example, in a typical 100,000 barrel/day refinery there could be 20,000 valves and associated with each valve there are likely to be four or more flanges. This rule would bring the number of regulated components from approximately 20,000 to 100,000 representing a five-fold increase in the cost of the program. Current monitoring costs range between $1.00 and $2.00 per component. Routine monitoring of nonmoving parts is not cost effective and should not be included in this rule. The same rationale is applicable to manholes and hatches and components which are ¾ of an inch or less in diameter. These commenters recommend that the definition of component be revised to read: "Component" means, with respect to leak detection and repair, part of a source operation, including any equipment and control apparatus, from which emissions of air contaminant may be released into the ambient air. This term includes, but is not limited to, any agitator, valve, gasket, pump, compressor, pressure relief device, diaphragm. This term does not include a designed emission point of a stack or chimney or nonmoving parts like flanges, fittings, instruments connection seals, joints, hatches and manholes. (5) (6)

The proposed definition of "component" under N.J.A.C. 7:27-16.1 should not include nonmoving parts in the LDAR program; the size of ½ inch should apply in order to maintain the program at a realistic and practicable level. It is recommend the definition be modified to state: "... This term includes, but is not limited to, any agitator, valve, pump, compressor, pressure relief device, greater than ½." This term specifically excludes, but is not limited to, equipment not containing moving parts such as flange fittings, instrument connections, hatches and manholes, seal, joint, diaphragm, sight-glass, instrument connection or other connection, meter or associated equipment not directly connected to equipment containing moving parts in which vibration could potentially cause such connected equipment to release an emission of air contaminants ..." (20)

These commenters state the term "tightening of flanges" should be removed from the definition of "first attempt at repair" under N.J.A.C. 7:27-16.1. These commenters believe that nonmoving parts should not be included in this regulation because monitoring these components is not a cost effective means of achieving VOC emission reduction. The definition is more cumbersome than necessary because the objective is to stop the leak and the regulated community is aware of the mechanics for getting this accomplished. These commenters recommend that the definition be modified to read: "First attempt at repair" means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere. (5) (6)

These commenters state the definition of "fitting" under N.J.A.C. 7:27-16.1 be removed. Including this definition in the VOC regulations goes beyond RACT. (5) (6)

The definition of "hatch" under N.J.A.C. 7:27-16.1 should be removed. These commenters believe that the references to fittings, flanges, and hatches are not appropriate for RACT applicability. (5) (6)

RESPONSE: Because the Department agrees with the essence of these comments, it has made the following changes:

Instead of biennial monitoring of nonmoving components in light liquid service, semi-annual visual inspection (once every six months) will be required. It is believed that most light liquid leaks of concern will be detected by visual inspection. The Department believes that semi-annual visual inspection will be less onerous that biennial monitoring, and will provide detection of leaks equivalent to the originally proposed biennial monitoring. Even though visual inspection may miss some leaks that could be detected with a monitor, it is believed that visual inspection twice a year will detect as many leaks overall as monitoring every two years.

Instead of biennial monitoring of nonmoving components in gaseous service, monitoring will be required each time a flange, connector, or other nonmoving component is reconnected after it has been disconnected, or the sealing surface has been otherwise disturbed. It is believed that monitoring such components after each disturbance of a sealing surface will be less onerous that biennial monitoring of all components, It is recognized that many facilities already have standard procedures for leak testing disturbed flanges and connectors before they are returned to service. In such cases, this provision will have no impact, except recordkeeping. At a facility that does not have such standard procedures, it is expected that this provision will result in reduction of VOC emissions comparable to biennial monitoring, but at a lower cost.

These changes are incorporated at N.J.A.C. 7:27-16.18(f)1iv and (f)1v, (h)1iii and (h)1iv, and (i)1iv and (i)1v.

The Department believes that these changes address the major concerns of the commenters without reducing the intended effectiveness of the LDAR requirements for nonmoving components.

With these changes on the application of the rule to nonmoving components, the Department believes that it would not be appropriate to delete nonmoving components from the list of definitions at N.J.A.C. 7:27-16.1. Also see responses to Comments 162, 161, 177, 184 and 197.

40. COMMENT: This commenter supports the proposed definition of "facility" under N.J.A.C. 7:27-16.1 on the basis that it appears generally consistent with the Clean Air Act. For the purpose of clarifying applicability, the proposed new language should be revised to read: "For the purposes of this definition, each natural gas pipeline compressor or pump station and each section of a natural gas pipeline between such compressor or pump station shall constitute a separate natural gas

pipeline facility." The revision at N.J.A.C. 7:27-16.27(b)3 refers to natural gas pipelines that are not major VOC facilities. Revision of the definition of "facility" in N.J.A.C. 7:27-16.1 provides consistency of terms and clarifies that the term natural gas pipeline facility refers either to a distinct pipeline section or compressor station. (23)

RESPONSE: The Department agrees with this comment and has amended the definition for clarity.

41. COMMENT: These commenters contend that the definition of "flare" under N.J.A.C. 7:27-16.1 excludes equipment designed as emergency safety devices. (20) (5) (6)

The definition should be modified to reflect the exclusion of emergency flares. (20)

It is recommended the definition of flare be revised to read: "Flare" means a device used for the destruction of waste or by-product gases by passing them through a flame and then directly into the outdoor atmosphere. This term does not include flares used primarily as emergency relief devices. (5) (6)

RESPONSE: The definition has not been modified. The Department has decided not to exempt "emergency flares" from compliance with RACT. It would be very difficult to determine which flares were only being used in true emergencies. A flare used to control the emissions from a routine process, such as the venting of a reactor, is intended to be covered by the regulation, as the owner or operator of the source has chosen to use the flare as a control device for the reactor. Whether a flare is used for emergency purposes or not makes no difference in its ability to destroy VOCs. The information available to the Department indicates that even "emergency" flares can readily comply with this rule, including the requirement for 95 percent destruction efficiency. The Department does not consider startup and shutdown situations as emergencies.

42. COMMENT: The definition of "flare" under N.J.A.C. 7:27-16.1 should be revised to eliminate any confusion between "flare" and "thermal oxidizer." The definition should read: "Flare" means a type of control apparatus which reduces the emissions of air contaminants by passing the gases through a flame and then directly into the outdoor atmosphere. Flares are generally categorized as either elevated open flares or enclosed ground flares. Flares are typically applied to combust gaseous waste from intermittent processes. (16)

RESPONSE: A sentence has been added to the definition of flare to clarify that thermal oxidizers are not flares.

43. COMMENT: These commenters contend that the definition of "gas turbine" under N.J.A.C. 7:27-16.1 is too general and needs to be made specific. The definition should read: "Gas turbine" means an internal-combustion engine fueled by liquid or gaseous fuel, in which turbine blades are driven by hot combustion gases whose pressure and velocity are intensified by compressed air introduced into the combustion chamber, generating mechanical energy in the form of a rotating shaft used to drive electric generator or other industrial equipment. (5) (6) (20)

RESPONSE: The Department agrees that the proposed definition of "gas turbine is too broad and has added the phrase "in which blades are driven by combustion gases" to the definition at N.J.A.C. 7:27-16.1.

44. COMMENT: The definition of "inaccessible components" under N.J.A.C. 7:27-16.1 should be redefined as: "Inaccessible components" means any component located 15 feet above ground, when access is required from the ground or any component located over 3.5 feet horizontally away from a platform or 9.5 feet above a platform, when access is required from a platform. (33)

The definition of "inaccessible component" under N.J.A.C. 7:27-16.1 should be deleted and replaced with the following two definitions: "Inaccessible components" means any component that is obstructed by a structure or equipment and can not be monitored. Examples of this, include, a valve stem seal situated immediately adjacent to other piping prohibiting access to the stem seal surface with a monitoring probe. "Difficult-to-monitor component" means any component located over 15 feet aboveground, or any component located horizontally over 9.6 feet away from an existing structure, where access is possible. There should be a distinction between inaccessible components and difficult-to-monitor components. Inaccessible components are simply those that cannot be reached physically by a monitoring probe and are unsafe. Reducing the monitoring frequency for an inaccessible component would not make an inaccessible component more accessible. Difficult-to-monitor components are those components that can be reached by a monitoring probe via the use of a temporarily erected structure. (21) (36) (37) (18) (1) (19) (5) (6)

RESPONSE: Because the Department agrees with the essence of these comments, it has made the following revisions:

At N.J.A.C. 7:27-16.1, the Department has replaced the term "inaccessible component" with the term "difficult to monitor component." The definition of this new term is identical to that of the term it replaced. At N.J.A.C. 7:27-16.18(l), the Department has replaced the term "inaccessible component" with "difficult to monitor component." Thus, those components formerly referred to as "inaccessible" are now referred to as "difficult to monitor."

At N.J.A.C. 7:27-16.18(m), the Department revised language that reduced testing frequency of "difficult to monitor" components shall not apply to those components installed after May 31, 1995.

In addition, at N.J.A.C. 7:27-16.18(p)2, the Department added a new provision that provides: "A component that cannot be tested because it is not accessible, and cannot practicably be made accessible, for conducting the test. For such components, the owner or operator shall document in writing the reason that the component cannot practicably be made accessible for testing with monitoring equipment, and under what circumstances and by what method, if any, the component can be tested. Further, when those circumstances do arise, the owner or operator shall cause the testing to be performed and shall respond to the results of that testing as this section otherwise required."

These revised provisions retain the proposal's reduced testing frequency for those components which are installed before May 31, 1995 that are out of reach without the use of special equipment, and provide for alternative testing of the components that are not accessible for monitoring.

These revised provisions require that all components installed after May 31, 1995 shall be accessible for monitoring, unless it would be impracticable to so install them.

45. COMMENT: The definition of "leak" under N.J.A.C. 7:27-16.1 should be redefined as: "Leak" means a gaseous leak or a liquid leak of applicable VOC. The change will clarify that the Department does not intend to expand the existing fugitive emissions programs to include heavy liquid service. (33)

RESPONSE: The Department agrees with the commenter that using "applicable VOC" in the definition of "leak" would clarify the Departments intention. The definitions of "gaseous leak" and "liquid leak" already refer to "applicable VOCs." Since "leak" means a gaseous leak or a liquid leak, the definition already refers only to applicable VOCs. Therefore, the Department has modified the definition of "leak" as suggested by the commenter to clarify the meaning of the proposed term.

46. COMMENT: The existing definition of "light liquid" under N.J.A.C. 7:27-16.1 should be redefined to reflect the EPA's light liquid definition. The need to control VOCs to the low vapor pressure of 0.02 psi has not been demonstrated. (1)

RESPONSE: The definition of "light liquid" at N.J.A.C. 7:27-16.1 is consistent with EPA's definition. The definition only includes VOCs having vapor pressures of 0.044 psia or greater, not 0.02 psia or greater. This definition was previously adopted and was not changed in this rulemaking.

47. COMMENT: The existing definition of "light liquid service" under N.J.A.C. 7:27-16.1 should be revised to read: "means contact with a fluid that is 20 percent or greater by weight light liquid." A change to 20 percent light liquid is more reasonable and is more in line with the more restrictive proposed Federal HON rules, and is also consistent with the Federal NSPS regulation. (3)

RESPONSE: The previously adopted LDAR provisions at N.J.A.C. 7:27-16.6 regulated components in light liquid service. The definition of "light liquid service" was previously adopted with the 10 percent light liquid threshold. Pursuant to section 193 of the CAA, the Department cannot relax existing requirements. Further, this definition has served as a reasonable criteria for inclusion of the previously adopted LDAR provisions and continues to be a good criteria for the LDAR provisions adopted herein. The Department notes that because the HON considers many factors other than whether the equipment is in light liquid service, the ultimate effect of the present rule is generally less stringent than that of the HON.

48. COMMENT: The definition of "liquid leak" under N.J.A.C. 7:27-16.1 must be revised. The mere presence of an accumulation or pool should not be construed to be a leak of an applicable VOC unless it can also be shown that the material is an applicable VOC. No enforcement action should be taken unless it can also be demonstrated that any accumulation or pool of an applicable VOC was released from

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a regulated component while in gaseous or liquid service or is otherwise a regulated leak. Also, equipment staining should not be considered to be other visible evidence since this does not indicate that the staining occurred due to a leak during a regulated operation containing an applicable VOC. (34) (32)

The term "drop" in the definition of "liquid leak" under N.J.A.C. 7:27-16.1 should be removed. This is a very rigorous definition and could cause confusion in the field. The presence of a drop of liquid at the pump shaft does not indicate a leak as the drop could be water condensate. The terms "drip and pool" indicate an active leak and should suffice. The definition should be revised to read: "liquid leak" means the release of liquid applicable VOC from a hole, crevice, or other opening in a component subject to N.J.A.C. 7:27-16.18 other than a release of liquid VOC in accordance with the component's design during normal operation. The presence of a drip, accumulation, pool, or other visible evidence of a liquid VOC demonstrates that a liquid leak has occurred. (5) (6)

The definition of "liquid leak" under N.J.A.C. 7:27-16.1 essentially sets the liquid leak concentration to zero. The commenter believes that a zero concentration for liquid leaks for any component is a more severe requirement than the EPA HON proposal and goes beyond RACT as defined in this proposed regulation for components in gaseous service. The following change is recommended: "Liquid leak" means the release of liquid applicable VOC from a hole, crevice, or other opening in a component subject to N.J.A.C. 7:27-16.18, other than a release of applicable liquid VOC in accordance with the component's design during normal operations. A liquid leak is detected if the measured applicable VOC concentration exceed the levels set for gaseous leaks for the type component as specified in Tables 18A and 18B. (33)

The definition of "regulated leak" under N.J.A.C. 7:27-16.1 essentially sets the liquid leak concentration to zero. The commenter believes that a zero concentration for liquid leaks for any component is a more severe requirement than the EPA HON proposal and goes beyond RACT as defined in this proposed regulation for components in gaseous service. The following change is recommended: "Regulated leak" means any gaseous leak or liquid leak of applicable VOC at a concentration or level above any applicable limit established in Tables 18A and 18B (and any liquid leak of an applicable VOC). (33)

RESPONSE: Previously adopted LDAR provisions at N.J.A.C. 7:27-16 did not have threshold concentration limits for liquid leaks. This definition is not more stringent than the HON rule. The HON rule does not reference any threshold concentrations for "liquids dripping," and it establishes that the observation of liquids dripping is a detected leak, to which an appropriate response (for example, repair) must be made.

All liquid leaks of applicable VOC must be repaired. Since a liquid leak of applicable VOC that is visible would almost certainly have a threshold concentration above the threshold concentration established for gaseous leaks, the Department does not believe that measuring the concentration of the liquid leak is warranted in order to determine whether the liquid leak should be repaired.

The Department agrees that a mere equipment stain is not necessarily "visible evidence of a liquid VOC" within the meaning of the definition of liquid leak. However, the presence of such a stain, coupled with other facts (such as, the stain is recent and the equipment was recently in VOC service) is visible evidence of a liquid leak.

For the forgoing reasons, the Department is not revising the proposed definition of "liquid leak" or "regulated leak" in response to this comment.

49. COMMENT: The definition of "liquid leak" under N.J.A.C. 7:27-16.1 should be revised to read: "Liquid leak" means the release of liquid applicable VOC from a hole, crevice, or other opening in a component subject to N.J.A.C. 7:27-16.18 other than a release of a liquid VOC in accordance with the component's design during normal operations. The presence of a drop, drip, accumulation, pool, or other visible evidence of an applicable liquid VOC demonstrates that a liquid leak has occurred. The definition change will clarify that the department does not intend to expand the existing fugitive emission programs to include heavy liquid service. (33)

RESPONSE: The Department agrees that visual evidence of non-VOC liquids and heavy liquids do not constitute a "liquid leak" and has revised the definition to clarify this intention.

50. COMMENT: The definition of "marine terminal" under N.J.A.C. 7:27-16.1 is defined so broadly that an entire facility would be affected if the marine terminal attached to it is defined as a VOC terminal. An example of this would be a terminal attached to a facility that is not a VOC regulated facility. If the terminal unloaded a regulated VOC this definition would regulate the entire facility. This definition should be revised to read: "Marine terminal" means that part of a facility at which liquid cargo is loaded into or unloaded out of marine tank vessels. (5) (6)

RESPONSE: The term "marine terminal" is defined at N.J.A.C. 7:27-16.1 as "any facility, or part thereof, at which liquid cargo is loaded into or loaded out of marine tank vessels." The intent is to regulate the loading of applicable VOC into marine tank vessels whether the loading operation is conducted at a dedicated marine terminal or at a marine terminal which is part of a larger facility. The Department believes the definition is appropriate as written, and that revision of the definition is not necessary.

51. COMMENT: The definition of "maximum gross heat input rate" should be revised under N.J.A.C. 7:27-16.1. The phrase "as stated by the owner and operator" should be used in place of "as stated by the manufacturer," and the phrase "This term is expressed in million BTUs per day" should replace "This term is expressed in million BTUs per hour." The reasons for the change are discussed in the commenter's comments on the NO_x RACT rule (see 25 N.J.R. 5957 (December 20, 1993)). (2)

RESPONSE: The Department has not made the recommended changes. If an owner or operator wanted to operate a unit at less that the manufacturer's stated capacity, such limitation would need to be specified in the unit's individual permit. This is necessary to ensure the existence of a federally enforceable agreement with the Department limiting the gross heat input on a daily basis. The term "million BTUs per hour" is used for operating flexibility and consistency with the NO_x RACT rule at N.J.A.C. 7:27-19.

52. COMMENT: The revised definition of "open burning" has served to confuse the question of who is conducting open burning under subchapter 2. This commenter suggests that this issue be clarified to indicate that an open pit burner is still considered open burning because the exhaust is not being emitted through a stack or chimney. The revised definition as proposed would leave this unclear because the term "incinerator" is being deleted and "stack or chimney" includes an "opening." Thus a pit burner, which is by design going to exhaust through an opening of some kind, may no longer be considered to be open burning despite being regulated under subchapter 2 for more than 20 years. The Department has not set out to change the regulation of open burning under this rulemaking but has intended only to clarify the present exception under current N.J.A.C. 7:27-16.12. Rather than revise the definition of "open burning" in subchapter 2, the commenter recommends leaving it unchanged, revising the exception in proposed N.J.A.C. 7:27-16.27(b)6 to read: "open burning operations regulated under N.J.A.C. 7:27-2.", and deleting the definition of "open burning" from N.J.A.C. 7:27-1.4 and 16.1. The commenter notes that the "open burning" definition is not used anywhere in subchapter 1; thus deleting it there should be a minor change. With the recommended change to N.J.A.C. 7:27-16.27(b)6, a definition of "open burning" in N.J.A.C. 7:27-16.1 is unnecessary. (32)

RESPONSE: The definition of "open burning" in subchapter 2 was modified to be consistent with subchapter 1. Under the revised subchapter 2 definition, open pit burning would be included since products of combustion are not BY DESIGN emitted through a stack or chimney. A pit burner remains within the definition of open burning.

53. COMMENT: A definition of "repowering" under N.J.A.C. 7:27-16.1 should be added as follows: "Repowering" means the replacement of the steam generator in a steam generating unit, or the replacement of a stationary gas turbine in a simple-cycle or combine-cycle gas turbine unit, or the replacement of a stationary internal combustion engine, which incorporates advances in the art of air pollution control for the kind and amount of air contaminant emitted." This revision would be consistent with the commenter's request that a retire/repower option be provided in the VOC RACT rule for utility boilers, stationary gas turbines, and stationary internal combustion engines. (2)

RESPONSE: The Department agrees with the commenter that repowering should be an available option for VOC RACT compliance and has added a provision at N.J.A.C. 7:27-16.8(k) where owners or operators that enter into a Repowering agreement pursuant to N.J.A.C. 7:27-19 can submit facility specific CO limits as part of the Repowering Plan submitted to the Department. The Department is proposing amendments to the NO_x RACT rule extending the repowering provision

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to most sources regulated by that rule. The Department will propose a definition of "repowering" in future amendments to this subchapter to be consistent with the NO_x RACT rules.

54. COMMENT: The terms "equipment" and "source operation" are used frequently in subchapter 8 and subchapter 16. To the regulated community, these terms are interchangeable, and in practice, DEPE's interpretation of the two terms has been essentially equivalent. To reduce the number of terms and definitions required in N.J.A.C. 7:27, it is recommended that the term "source operation" be eliminated and replace with the term "equipment." The definition of equipment is more thorough and understandable than source operation. Standardizing to use "equipment" will simplify the regulations and eliminate confusion in the existing and proposed regulations. The definition of source operation is confusing because it is not well defined. The problem with the existing and proposed definition is that the word "process" is not defined and thus has caused confusion in the regulated community, and the confusion continues with the proposed regulations. Another point of confusion is that the term "Source operation" in the New Jersey rule is different than the Federal Clean Air Act definition of "source." The term "source operation" should be eliminated and replaced with "equipment" to alleviate this confusion. (1) (18) (37) (21) (36) (19) (3)

RESPONSE: The Department acknowledges that these definitions can be somewhat confusing. "Equipment" and "source operation" have somewhat different meanings which overlap. Equipment "means any device capable of causing the emission of an air contaminant either directly or indirectly to the outdoor atmosphere... 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 be reasonably be anticipated to emit any air contaminant either directly or indirectly into the atmosphere." Source operation may include one or more pieces of equipment or control devices. Also, a source operation may include operations which emit air contaminants, but do not include equipment, such as some composting and landfill operations. Consequently, "equipment" is a subset of "source operation."

As the definition of "source operation" was not part of the proposal, the Department cannot make a change to the definition upon adoption. However, the Department plans to propose a revised definition of "source operation" with other proposed changes to subchapter 16. The Department plans to propose a definition of "source operation" to be consistent with the definition proposed in the operating permit rules at N.J.A.C. 7:27-22. The definition of source operation contained in the proposed Operating Permit rules (N.J.A.C. 7:27-22) contains two additional lines: "A source operation may include one or more pieces of equipment or control apparatus. This term includes the term "emission unit" as defined at 40 CFR 70.2".

55. COMMENT: The definition of "thermal oxidizer" refers to heating air contaminants to the point at which they decompose. Does this include pyrolytic decomposition? Also, since flares are defined as devices which destroy gases by combustion, are flares considered to be thermal oxidizers? (34)

The definition of "thermal oxidizer" under N.J.A.C. 7:27-16.1 is confusing since its definition is similar to the definition of "Flare." Since a flare and thermal oxidizer are fundamentally different in design and operation, the following change is proposed for the definition of "Thermal oxidizer:" "Thermal oxidizer" means a type of control apparatus which reduces the emission of air contaminants by subjecting the gases being emitted to elevated temperatures which cause the air contaminant molecules to decompose. Thermal oxidizers are typically used to process a constant feed of waste material. (16)

RESPONSE: The definition of "thermal oxidizer" has been modified to clarify that "flares" are not thermal oxidizers by means of the phrase "within an enclosed space." Also, the definition of "flare" has been modified to state that thermal oxidizers are not flares.

The term "thermal oxidizer" in subchapter 16 refers to an air pollution control device that prevents VOCs from being emitted to the atmosphere. The term is generally used to differentiate among different types of air pollution control devices so as to specify what records need to be kept for each such device. Since pyrolytic decomposition is not used as an air pollution control device, the provisions that refer to "thermal oxidizers" do not apply to pyrolytic oxidizers.

56. COMMENT: The definition of "utility boiler" under N.J.A.C. 7:27-16.1 should be limited to a category called "Electric generating utility." This category should cover entities whose primary business is producing electricity for sale. Other industries have long recognized the energy savings by cogeneration of electricity for internal use. This has been done with the encouragement of state and Federal policy. It is unreasonable to subject these boilers to increased regulatory requirements by the proposed definition. (32)

RESPONSE: This definition has been revised to be consistent with N.J.A.C. 7:27-19, the NO_x RACT rule. "Utility boiler" is now defined as a steam generating unit owned by an electric generating utility which is used for generating electricity for commercial use.

57. COMMENT: These commenters support the adoption of a VOC definition consistent with the definition promulgated by EPA. (11) (23)

The definition of "volatile organic compound or "VOC" under N.J.A.C. 7:27- 16.1 is revised to be completely consistent with the definition promulgated by the EPA. Therefore, all substances included in the EPA's definition will be included in New Jersey's definition, and no substances outside the scope of EPA's definition will be included within New Jersey's definition. To make the definition consistent, the following compounds would be excluded from the definition of "VOC" in addition to those that are excluded under existing rules: dichlorotrifluoroethane, tetrafluoroethane, dichlorofluoroethane, chlorodifluoroethane, chlorotetrafluoroethane, pentafluoroethane, tetrafluoroethane, trifluoroethane, and difluoroethane. The above-mentioned nine compounds are important alternatives for certain uses of ozone-depleting CFCs and halons. By amending the state's regulation in this manner, the state would remove regulatory and economic impediments to the use of these alternatives. The commenter also believes that this proposal is consistent with the EPA's final rule excluding the nine compounds on the grounds that they are negligibly reactive and do not contribute to tropospheric ozone formation. (14)

RESPONSE: The Department appreciates support for its amended definition of the term "volatile organic compound."

58. COMMENT: With regards to N.J.A.C. 7:26-16.1, the EPA definition of VOC allows for the exclusion of negligibly photochemically reactive chemicals measured by the test method. The same exclusion should be incorporated in the VOC definition. (32) (34)

RESPONSE: The Department recognizes the commenter's concern regarding negligibly photochemically reactive compounds measured by test methods. Generally overestimating the amount of VOC present by including negligibly photochemically reactive compounds is not a problem. However, if a facility does emit a large amount of such compounds, a protocol can be submitted for approval by the Department to measure these compounds independently along with an appropriate method to measure total VOCs.

59. COMMENT: Throughout the proposed regulation, the terms "VOC" and "applicable VOC" are used interchangeably. To avoid confusion and improve consistency, it is recommended that the definition of "applicable VOC" be used exclusively. (5) (6) (20)

The proposed definition of "VOC" under N.J.A.C. 7:27-16.1 should be revised to read "Volatile Organic Compounds ... which participate in atmospheric photochemical reactions and has a vapor pressure of organic substances of 0.02 pounds per square inch absolute or greater at standard conditions." (20)

This commenter noted that the definitions make a distinction between "VOC" and "applicable VOC." Some sections apply only to applicable VOC while for other sections, this is not clear. (22)

With regards to N.J.A.C. 7:27-16, the terms VOC, light liquid VOC, and applicable VOC have been used interchangeably throughout the proposed rules, particularly in N.J.A.C. 7:27-16.16. Each of these terms has a separate distinct definition as outlined under N.J.A.C. 7:27-16.1. These commenters recommend that the RACT regulate only VOCs with a vapor pressure equal to or greater than 0.044 psia at standard temperature and pressure. (35) (1)

RESPONSE: The terms "applicable VOC" and "VOC" are not used interchangeably in N.J.A.C. 7:27-16; the terms are intentionally distinct. The term "applicable VOC" is used in place of the cumbersome phrase: "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 other words, "applicable VOC" is a subset of "VOC."

The term "applicable VOC" is used in provisions of N.J.A.C. 7:27-16 for source operations with construction standards (such as a conservation vent on a storage tank) where the vapor pressure of the contents is important to determine applicability. The term "VOC" is generally used in provisions of N.J.A.C. 7:27- 16 for source operations that are tested and, therefore, the test method defines what is VOC, rather than the vapor pressure.

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The Department has historically used 0.02 psi as the threshold vapor pressure for VOCs and continues to use this threshold where appropriate. The threshold of 0.044 psi is appropriate for "light liquid VOC" as employed in the LDAR provisions at N.J.A.C. 7:27-16.18.

60. COMMENT: With regards to N.J.A.C. 7:27-16.1, would non-metallic carbon compounds such as carbon disulfide and carbon tetrachloride be VOCs? Should these also be excluded compounds? (32)

RESPONSE: The only nonmetallic compounds of carbon which are excluded from the definition of VOC are those that are listed in the definition. Carbon disulfide and carbon tetrachloride are VOCs according to the definition used by both EPA and the Department.

61. COMMENT: The proposed definition of "VOC" under N.J.A.C. 7:27-16.1 should be revised to reflect the definition of VOC under the proposed N.J.A.C. 7:27-22. (2)

RESPONSE: The Department agrees with the commenter and has made a minor formatting change to the proposed definition of "VOC" by changing ", excluding carbon monoxide ... metallic carbides, and ammonium carbonate" to "(other than carbon monoxide ... metallic carbides and ammonium carbonate)".

There are a few typographical errors that were proposed in the definition of "VOC" at N.J.A.C. 7:27-22 which will be corrected when the Department adopts its operating permit rules at N.J.A.C. 7:27-22.

62. COMMENT: The proposed definition of "VOC" under N.J.A.C. 7:27-16.1 refers to test methods "approved in writing by the department"; however, it should refer to test methods incorporated in the SIP. Methods should only be used which have been incorporated into the SIP. It could also refer to future revisions to test methods which EPA promulgates. (26)

RESPONSE: The Department agrees that the issue of approved test methods needs further clarification. Therefore, the Department has added the following phrase in the sentence of the definition of VOC which refers to test methodology: "... VOC shall be measured by test methods in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable." This new phrase is consistent with EPA's definition of VOC at 40 CFR 51.100(s) and is consistent with the intent of the proposal. The Department also specifies that any other method must be "acceptable to EPA."

63. COMMENT: The definition of "calendar day" should be added under N.J.A.C. 7:27-16.1 since the term is used in section N.J.A.C. 7:27-16.23(a)1. The definition should read: "Calendar day" means from twelve o'clock midnight to twelve o'clock midnight each day. (2)

RESPONSE: This definition has been added to N.J.A.C. 7:27-16.1.

64. COMMENT: The definition of "gaseous service" should be provided with respect to leak detection and repair requirements. The definition should be consistent with that used in the Hazardous Organic NESHAP. (32) (34)

The definition of "in gaseous service" should be provided to make clear what component must be monitored quarterly. The definition should read: "In gaseous service" means that the piece of equipment contains applicable VOC that is in the gaseous state at operating conditions. The definition should be consistent with the NSPS regulation and the SOCMI HON regulations. (33)

RESPONSE: The Department agrees that a definition of the term "gaseous service" would clarify the text of the rule and has added the definition upon adoption.

65. COMMENT: The definition of "in liquid service" should be provided to make clear what component must be monitored annually. The definition should read: "In liquid service" means that the piece of equipment contains applicable VOC that is a liquid at operating conditions. The definition should be consistent with the NSPS regulation and the SOCMI HON regulations. (33)

RESPONSE: The Department agrees that a definition of the term "liquid service" would clarify the text of the rule and has added the definition upon adoption.

66. COMMENT: The definition of "in service" should be provided with respect to continuous emission monitors and should provide for reasonable downtime. (32) (34)

RESPONSE: The Department has not included this definition in the rule because the term "in service" is not used anywhere in the rules. Any downtime provisions approved by the Department will be incorporated into an approved monitoring protocol.

67. COMMENT: The definition of major stationary source on page 3 of the Preamble (see 25 N.J.R. 3339(a), 3340 (August 2, 1993)) is well defined. (31)

RESPONSE: The Department appreciates the support for this provision of its rule.

68. COMMENT: The definition of "process unit shutdown" should be provided to better clarify what is meant by "process unit shutdown," and it is recommended that the same definition in the EPA SOCMI HON MACT standard be used. (1) (18) (37) (21) (19) (36)

RESPONSE: The Department agrees that clarification is needed and has added the definition of "process unit shutdown" to N.J.A.C. 7:27-16.1. The definition is modelled after the same definition used in the HON rule; the Department modified the actual language used in the HON rule as to clarify and focus it. This definition is consistent with the Department's intent of the term.

69. COMMENT: The definition of "owner or operator" should be provided since it is used in various places, including N.J.A.C. 7:27-16.8, 16.9 and 16.10. A definition for the term "owner or operator" should be consistent with the EPA's Acid Rain Program. Alternatively, the defined term "person" can be used to replace the term "owner or operator" throughout N.J.A.C. 7:27-16. (2)

RESPONSE: The Department currently relies upon the common meaning of the terms owner or operator so as to be most inclusive of various organizational structures of the regulated community. However, the Department recognizes that, in some cases, there may be disagreement over how to apply the use of the common terms; therefore, the Department is considering the proposal of a definition of the term "owner or operator" at N.J.A.C. 7:27-16.1 in the next rulemaking for the subchapter.

Use of the term "person" in lieu of "owner or operator" each time the latter term appears in the rule text would not avoid reference to ownership or operational control as "person" alone would not sufficiently describe the relationship of that person to the requirement in each applicable provision. Use of the term "person" would place the legal obligation on too broad a class, that is, potentially each and every individual employee at the regulated facility. Therefore, the Department has decided not to substitute the term "person" for "owner or operator."

70. COMMENT: The definition of "source" is not provided under N.J.A.C. 7:27-16.1. Not having this definition creates confusion of which facilities are regulated by N.J.A.C. 7:27-16.16 or 16.17. (22)

RESPONSE: The proposed provisions that use the term "source" are intended to refer to the term "source operation." The definition of source operation is currently defined at N.J.A.C. 7:27-16.1. To avoid confusion, the Department has changed the term "source(s)" to "source operation(s)" throughout the text of the rule.

71. COMMENT: The definition of "RACT" is not provided under N.J.A.C. 7:27-16.1. (2) (11)

The Department should incorporate the definition of "RACT" in N.J.A.C. 7:27-16.1. The definition should either be as proposed under N.J.A.C. 7:27-16.1A (2) or adopt the EPA definition of "RACT" (2) (11).

RESPONSE: The Department provides a description of RACT at proposed N.J.A.C. 7:27-16.1A(a) as follows: "EPA defines RACT to mean the lowest emission limitation that a particular source is capable of meeting by the application of air pollution control technology which is reasonably available considering technological and economic feasibility." This description comes from EPA documents including the Federal Register and the preamble to implementing the CAAA.

N.J.A.C. 7:27-16.1A Purpose, scope, applicability, and severability

72. COMMENT: The commenter believes that CO emissions are not adequate surrogates for VOC emissions and do not belong in a VOC RACT rule. The last sentence of N.J.A.C. 7:27-16.1A(a) should be removed. (2)

RESPONSE: The Department realizes that CO is only an approximate surrogate for VOC. The Departments main concern with VOC emissions from combustion sources is that as units attempt to meet NO_x RACT emission limits, VOC emissions are minimized to a reasonable extent. With the ongoing reductions in the VOC emissions from other types of sources in the State, the emissions from boilers has become a significant category of ozone season VOC emissions. Rather than requiring the more expensive monitoring for VOCs, the Department believes that the monitoring for CO as a surrogate will both ensure compliance with the VOC RACT rule and provide valuable data as to the emissions from these sources on a continuous basis.

73. COMMENT: The commenter recommends that DEPE clarify that fugitive emissions are included in calculating major source determination and rule applicability only if the source is in one of 28 categories

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identified at 40 CFR 52.24(f)(4)(iii). New Jersey implies in the proposal that fugitive emissions are included in determining major facility status and RACT applicability for all categories, which served as a basis for developing the standards in this subchapter. The commenter does not believe this is a correct interpretation of CAAA requirements and that the proposed rule should be revised to develop RACT based on fugitive control plans only for those 28 source categories required. Recognizing that these rules are intended to address RACT requirements, sources which are not in one of the 28 categories should not be subjected to the regulation without full consideration of the social, environmental, and economic impacts. (23)

RESPONSE: The Department recognizes that the Federal rules at 40 CFR 52.24(f)(4)(iii) state that "fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources . . ." However, the Department believes that fugitive emissions should be included in determining whether a facility is a major facility. The potential for adverse effects to health, welfare, or the environment depends on the total emissions from a facility, whether these emissions are released through a stack or chimney or as fugitive emissions. Fugitive emissions of VOCs are a significant portion of air pollution in New Jersey. The Department estimates that in 1990 approximately 4,800 tons of VOC were emitted as fugitive emissions in New Jersey. If the Department should take into consideration only stack emissions, this significant quantity of emissions would be overlooked. Therefore, the Department has determined that it is appropriate to take fugitive emissions into account in determining whether a facility is a major facility. The Department is adopting a leak detection and repair program for chemical plants in order to reduce the amount of fugitive emissions that contribute to the ground level ozone problem in New Jersey. Examination of fugitive emissions and potential control strategies is a means of achieving necessary emission reductions. Potential control strategies for fugitive emissions, such as improved housekeeping and leak detection and repair, tend to be cost effective means of reducing VOC emissions and should not be excluded solely because Federal regulations allow an exclusion.

74. COMMENT: N.J.A.C. 7:27-16.1A(a) could be revised to read: "This subchapter establishes requirements and procedures concerning the control and prohibition of air pollution by volatile organic compounds. The purpose of this subchapter is to require any stationary source or group of sources, located within a contiguous area and under common control, to implement reasonably available control technology (RACT) to control VOC emissions. Specific applicability thresholds are provided throughout the subchapter. Carbon monoxide limits are included for combustion sources, in order to control VOC emissions, which are products of incomplete combustion." (11)

RESPONSE: The Department feels that rule language (description of RACT) omitted by the comment is necessary in this provision. The primary intent of the regulations is to comply with the Clean Air Act mandate to require RACT on major stationary sources of VOC. The description of RACT is germane to the nature, intent and interpretation of the amendments to this subchapter. Also, see response to Comment 71.

75. COMMENT: The commenter recommends that this section not be incorporated into the amended rules. EPA will be regulating methylene chloride and 1,1,1- trichloroethane (methyl chloroform) as Hazardous Air Pollutants (HAPs) under Section 112 of the CAAA, which will take into account health effects and adverse environmental impacts related specifically to these chemicals. It is inappropriate to regulate these materials as part of the VOC requirements since VOCs are regulated due to their ozone precursor properties, and EPA has determined that these materials are not ozone precursors. The technologies demonstrated for controlling VOC emissions, as well as the established emission limits, are not designed to address the specific properties of methylene chloride and methyl chloroform. These chemicals present separate and unrelated environmental and health issues from VOCs, and therefore, these materials should not be regulated under the New Jersey regulations for VOCs. (11)

RESPONSE: The Department recognizes that EPA has determined that methylene chloride and 1,1,1 trichloroethane negligibly contribute to the formation of ground level ozone. Accordingly, the Department has excluded these two compounds from the definition of VOC. However, it is because these two compounds are classified as Hazardous Air Pollutants (see 112 of the Clean Air Act Amendments of 1990) that the Department is continuing to regulate these compounds, not as VOCs, but as toxic substances.

N.J.A.C. 7:27-16.1A(b) ensures that these two HAPs will continue to be regulated at a level no less stringent than at which VOCs are regulated. For new or altered sources that emit either of these two compounds, a permit and certificate are required pursuant to N.J.A.C. 7:27-8 and 17.7. Through the permit review process and risk assessment, the health and environmental issues associated with these two compounds are considered in the establishment of the permitted emission rate, which is equal to or less than the regulatory limit. Therefore, for new or altered equipment, the compounds will continue to be regulated appropriately as toxic compounds. However, the permit procedure does not apply to "grandfathered" sources, that is, sources that existed before and have not been altered since the promulgation of the permitting requirements. By requiring sources that emit 1,1,1 trichloroethane and methylene chloride to continue to limit emissions to a level specified as RACT, the Department is preventing the deregulation of emissions of these compounds and is preventing potential adverse health and environmental effects associated with toxic properties of these compounds.

The Department has effectively regulated these compounds as VOCs since 1975. To allow these toxic compounds to be regulated at a level less stringent than previously regulated is unnecessary and inappropriate from a public health perspective.

76. COMMENT: With regards to N.J.A.C. 7:27-16.1A(e), the last sentence of this subsection is unclear in its effect on batch operations that are carried out as a series of separate and distinct operations. These must not be considered the "piecemeal carrying out of an operation" and the final regulation should be clear in its intent. (29)

RESPONSE: The Department now agrees that proposed N.J.A.C. 7:27-16.1A(e) is unclear and has determined that it does not add any substance to the rule. Therefore, the Department has deleted N.J.A.C. 7:27-16.1A(e) upon adoption.

77. COMMENT: With regards to N.J.A.C. 7:27-16.1A(f), the commenter opposes the proposed rule because it may preclude emissions trading under an operating permit program. Emissions trading is necessary to ensure operational flexibility for a facility. (11)

RESPONSE: Proposed N.J.A.C. 7:27-16.1A(f) is an exact duplicate of a provision previously adopted at N.J.A.C. 7:26-16.6(c)6 on January 28, 1992, and promulgated herein at N.J.A.C. 7:27-16.16(f)6. This provision refers to mathematically combined sources or "bubbles" that were allowed under the New Jersey Air Pollution Control Code at N.J.A.C. 7:27-16.6. In the previous round of rule revisions to N.J.A.C. 7:27-16, the Department eliminated "bubbles" to address EPA's finding that New Jersey's provisions were not consistent with the federal emission trading rule of 1986 and required that all source operations in previously approved "bubbles" be required to achieve single source compliance by March 28, 1994 (see 23 N.J.R. 1858(b) and 24 N.J.R. 792(a)). This provision does not refer to any emission averaging provisions such as those allowed in the NO_x RACT rule at N.J.A.C. 7:27-19 and those proposed in the operating permit program, or any emissions trading programs the Department may propose in the future.

However, since the proposed provision at N.J.A.C. 7:27-16.1A(f) is redundant, the Department is removing it upon adoption.

78. COMMENT: This commenter recommends that subsection (f) not be incorporated as a new rule or that exemptions for certain sources be provided within this requirement. Specifically, the application of glass adhesive/body primer must be exempted from this provision due to Federal Motor Vehicle Safety Standards (FMVSS) safety requirements of the glass bonding system. No lower VOC content alternate is currently available. The primer and adhesive make up a unique adhesive system to fix the windshield glass to the vehicle and meet FMVSS requirements. The application of these materials occur at separate locations, yet are a "system." These materials are used in combination and are required for safety bonding "roll-over" testing where the windshield and backlight bonded system contribute to roof crush resistance. The glass adhesive body primer usage is much lower than the adhesive, which has an extremely low VOC content and is clearly the major component of the entire adhesive bonding system. There are two known suppliers and the one having the lowest VOC emissions is used. (11)

RESPONSE: The Department is deleting proposed N.J.A.C. 7:27-16.1A(f) upon adoption because it is an exact duplicate of a provision previously adopted at N.J.A.C. 7:27-16.6(c)6 and promulgated herein at N.J.A.C. 7:27-16.16(f)6. This provision refers to mathematically

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combined sources or "bubbles" that were allowed under the New Jersey Air Pollution Control Code at N.J.A.C. 7:27-16.6. This provision only applies to sources that were previously approved to operate under the "bubble" program.

N.J.A.C. 7:27-16.17, Facility-specific VOC control requirements, is a mechanism to obtain approval of an alternative VOC control plan to the control requirements specified elsewhere in the subchapter. The commenter might want to consider seeking approval of such a plan for its bonding system.

79. COMMENT: This commenter seeks clarification of subsection (f). Refineries, and perhaps other major facilities, have operated using fuel averaging to comply with fuel sulfur regulations. Averaging of sulfur also means that other fuel burning pollutants (NOx, CO, TNMH, TSP) must be averaged as different quantities of liquid or gaseous fuels are burned. Proposed regulations at N.J.A.C. 7:27-19 allow fuel averaging for NO_x compliance. This paragraph appears to eliminate averaging as a compliance option. The commenter believes that this paragraph should be eliminated or clarified. (33)

RESPONSE: Fuel averaging remains permissible, as does the averaging provided in N.J.A.C. 7:27-19. Any ambiguity in this regard is eliminated by the deletion of N.J.A.C. 7:27-16.1A(f) and the retention of only N.J.A.C. 7:27-16.16(f)(6).

N.J.A.C. 7:27-16.2 Storage of volatile organic compounds

80. COMMENT: Under N.J.A.C. 7:27-16.2, the cost of compliance is going to be expensive and the time to comply will be high for chemical storage tanks. These tanks tend to be smaller than gasoline tanks. Also, more tanks are used for chemical storage than for gasoline storage. The volume reduction from these small tanks will be small at a high cost of compliance. (4)

RESPONSE: The standards for storage tanks were not changed in this rulemaking. The Department only eliminated outdated compliance schedules and substituted the term VOC modified with a vapor pressure clause with the term "applicable VOC" which has an identical meaning. The standards at N.J.A.C. 7:27- 16.2 are long-standing cost-effective means of reducing VOC emissions from the storage of VOCs.

81. COMMENT: Under N.J.A.C. 7:27-16.2, a section needs to be added to allow for the operating condition of taking the floating roofs "off-float" when changing products in the tank or taking the tank out of service for cleaning and maintenance. For example, at the beginning of either the summertime Reid Vapor Pressure (RVP) or wintertime oxygenated gasoline seasons, the existing (off-specification) gasoline must be emptied from the tank as completely as possible. As the product level in the tank lowers, the floating roof will eventually rest on its legs and not on the gasoline liquid surface (that is, the floating roof is "off-float"). This condition must be added to allow for the operational flexibility of changing products as required by the regulations. The existing regulation requires the floating roof to be resting on the liquid surface at all times. The regulation needs to recognize those conditions when it is acceptable to allow the floating roofs to come "off-float." (17) (5)

RESPONSE: N.J.A.C. 7:27-16.2 requires only that the tank be equipped with a floating roof, not that it is required to "be resting on the liquid surface at all times." The Department expects that a floating roof will be operated at all times in accordance with its design. It is recognized that there are times when a floating roof may become "off float" when a storage tank is being emptied, and the level in the tank may temporarily be lower than the height of the support legs. This would be considered normal operation, and therefore does not need to be specifically addressed in the regulation. In other words, the tank would be equipped with the floating roof, even if the roof's support legs are resting on the bottom of the tank.

82. COMMENT: EPA states that under the existing N.J.A.C. 7:27-16.2(i), there is a requirement for measuring the "gap area" for external floating roof tanks (second sentence). This provision appears to have been deleted but is still required. In addition, there should be a general requirement that the seals be maintained; that is, seals intact, no visible holes, tears or other openings in the seal. This would make it easy to establish that the seals are not functioning properly without more costly and time-consuming measurements. (26)

RESPONSE: The requirement for measuring the gap area is covered in proposed N.J.A.C. 7:27-16.2(h). The wording for this requirement has not been changed. This paragraph has been expanded to incorporate the recommendation for a general requirement that seals shall be intact, with no visible holes, tears or other openings.

N.J.A.C. 7:27-16.3 Gasoline transfer operations

83. COMMENT: With regards to N.J.A.C. 7:27-16.3(s)2ii, the commenter requests an explanation of how the owner/operator, on a "continuous" basis, confirms the daily automatic switching between carbon beds. Also, the commenter does not understand what acceptable "confirmation" will be to DEPE. (17)

RESPONSE: For any control apparatus using carbon or other adsorptive material, N.J.A.C. 7:27-16.3(s)2ii requires the concentration of total VOC in the flue gas to be monitored continuously, or at a frequency approved by the Department. As an alternative to continuous monitoring of VOC concentration, this subparagraph (N.J.A.C. 7:27-16.3(s)2ii) provides that the owner or operator can comply by confirming daily that the automatic switching between carbon beds is functioning in accordance with permit conditions, and a record is kept of the date of carbon bed replacement. This regulation does not specify the procedure for daily confirmation of proper switching of carbon beds. As with other requirements for inspections and confirmation of operating parameters, it is expected that each affected facility would propose acceptable procedures that are best suited for that particular facility.

N.J.A.C. 7:27-16.4 VOC transfer operations, other than gasoline

84. COMMENT: N.J.A.C. 7:27-16.4 should be clarified to exclude vacuum trucks from this regulation. The petroleum industry, as well as other industries, have historically used vacuum trucks for intra-plant clean-up or equipment clean-out service. These vehicles are used to pick up spilled product from secondary containment or remove drained material from process equipment. These trucks generally pick up liquids by pulling a vacuum on the truck's tank. Transfers from the truck to tankage is usually accomplished by pressuring the vehicle tank, forcing liquid out of the tank and into the receiving tank. These transfers cannot practicably comply with the proposed regulations and should be excluded from the regulations. (33)

RESPONSE: The Department accepts this recommendation. Accordingly, N.J.A.C. 7:27-16.4(h) has been modified to exempt vacuum trucks, used in equipment clean-out or other clean-up operations, from the requirement of N.J.A.C. 7:27-16.4(f). The Department did not intend to include such situations in the requirements for transfer operations and agrees that it would be impractical for vacuum trucks to comply with the proposed rules.

85. COMMENT: With regards to N.J.A.C. 7:27-16.4(a), VOCs that are recovered in groundwater remediation systems under administrative consent orders should be exempted from this regulation. Typically in groundwater remediation where "free" floating VOC product is recovered, a product pump in the recovery well transfers the free product to an aboveground horizontal skid tank. After the tank is filled, its contents are emptied (usually) by a vacuum truck and then transferred to a larger storage tank. Requiring vapor controls for these temporary remediation systems would be cost prohibitive. The size of the site, the disbursement and number of recovery wells and collection tanks, and the remote locations of the wells may make vapor collection and recovery economically infeasible during vacuum truck loading and off-loading. (5) (17)

With regards to N.J.A.C. 7:27-16.4(f) and (g), the commenter recommends that DEPE add an exemption to exclude remedial activities from complying with these sections. Groundwater remediation often involves pumping of VOC-contaminated groundwater at several remote locations on a facility. Some of the contaminated groundwater can have high VOC concentrations. The extracted groundwater is stored in holding tanks and transferred periodically into cargo tanks for off-site treatment. These remedial activities are often temporary and usually do not use loading racks and platforms. Requiring remedial activities to comply with N.J.A.C. 7:27-16.4(f) and (g) would be excessively difficult and burdensome. (19) (18) (1) (21) (37) (36)

RESPONSE: The Department accepts the recommendations of these commenters. Accordingly, N.J.A.C. 7:27-16.4(h) has been modified to provide exemption from N.J.A.C. 7:27-16.4(f) for a delivery vessel used in groundwater remediation operations for temporary storage and handling of VOC contaminated groundwater and recovered VOC. The RACT transfer operation requirements were intended for routine large volume transfers, not temporary remediation activities. This is because the cost per ton of VOC reduction is sharply higher at a temporary operation.

86. COMMENT: With regards to N.J.A.C. 7:27-16.4(a)2, the "and" at the end of the subsection does not appear to be necessary. (26)

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RESPONSE: This grammatical error was corrected prior to the proposed rule's official publication in the New Jersey Register.

87. COMMENT: With regards to N.J.A.C. 7:27-16.4(c), the May 31, 1995 deadline for final compliance is impossible to meet. There are a host of management issues that must be resolved after DEPE has approved the compliance plan and issued permits. Tanks must be taken out of service for a significant amount of time for cleaning, inspection, repairs and installation of a control device. There will be significant questions regarding the availability of contractors and equipment to perform the work at all covered facilities. Forcing so many tanks out of service during a compressed timeframe will cause a substantial economic loss to the public storage terminaling industry and a substantial disruption of the flow of essential products into and through New Jersey. May 31, 1995 is a more realistic deadline for the approval and commencement of the implementation of a compliance plan. Full compliance should be phased in on a more realistic time schedule to be determined on a case-by-case basis. This regulatory flexibility is essential to the preservation of this industry in New Jersey and maintains the spirit of the Federal CAAA. (4)

RESPONSE: The Department recognizes that the delayed promulgation of these VOC RACT rules may have resulted in owners or operators being uncertain as to the specific requirements to which their facilities are subject, thus delaying their planning for compliance. The Department further recognizes that in many cases there may no longer be sufficient time for such facilities to achieve full compliance with these rules by the May 31, 1995 Federal statutory deadline. However, the Department will consider, on a case-by-case basis, requests by owners or operators to phase in compliance with these requirements. When the Department receives a request for phased compliance and, in the exercise of its traditional enforcement discretion, determines that the owner or operator cannot reasonably be required to meet the requirements of this rule by May 31, 1995, the Department will execute a Federally enforceable agreement (such as an administrative consent order) authorizing phased compliance. These agreements will require an owner or operator to implement RACT as expeditiously as practicable and will establish schedules of compliance on a case-by-case basis. In these cases, the Department does not intend to impose penalties for the failure of an owner or operator to meet the Federal compliance deadline, but may impose penalties for failing to meet the final compliance date or other terms of the agreement. This issue is discussed in more detail in the preamble to this notice of adoption.

88. COMMENT: With regards to N.J.A.C. 7:27-16.4(c), the commenter suggests that DEPE consider revising the emissions thresholds for the public storage terminaling industry to 2,000 pounds of VOC emissions per year. This threshold is more in keeping with RACT. (4) RESPONSE: The Department does not believe there is sufficient justification for applying less stringent standards, for similar operations, to the public storage terminaling industry than to other similar industries.

89. COMMENT: With regards to N.J.A.C 7:27-16.4(c) and (d), the $2,000 to $10,000 per ton VOC removed RACT economic criteria is more costly than the CAA requires. The proposed HON regulations stipulate cost effectiveness values (in 1989 dollars) of $1,800 per ton of HAP removed for existing reactor vents and $980 per ton for existing storage tanks. DEPE should readjust the selected RACT control based on a dollar per ton criteria to a value that is less than the proposed MACT value or, alternately, assign the existing proposed standards for new facilities and less stringent standards for existing facilities. (3)

RESPONSE: The $2,000 to $10,000 per ton of VOC removed RACT values listed in the Econmic Impact concerning N.J.A.C. 7:27-16.4 applies only to certain transfer operations and was not meant as RACT compliance costs for existing process vents and storage tanks. The estimated RACT compliance costs will vary substantially for different types of source operations, but the Department's RACT ranges are consistent with EPA guidance. The Department notes that many of the cost per ton estimates in the HON are considerably higher than those cited by the commenter.

The Department believes that a strictly cost-based RACT standard is inadequate to fairly and effectively implement RACT. Amount of emissions reduced as well as environmental impact are also part of the RACT determination. Because the actual cost of installation of RACT will vary from facility to facility, no one cost should be specified above which a technology can be dismissed as not meeting the definition of RACT. Nor does a low cost effectiveness estimate for a part of a Federal MACT rule preclude a higher cost effectiveness for a VOC RACT rule.

90. COMMENT: With regards to N.J.A.C. 7:27-16.4(c) and (d), these commenters support the method used to determine RACT control on transfers to storage tanks. The use of molecular weight, vapor pressure, and annual amount of VOC transferred into a storage tank to calculate annual emissions from the tank is a good way to determine RACT applicability. (3) (19) (21) (1) (37) (36) (18)

RESPONSE: The Department acknowledges and appreciates this expression of support for the method used for calculating uncontrolled VOC emissions during transfer operations.

91. COMMENT: With regards to N.J.A.C. 7:27-16.4(d)1, the term VP should read: "...if the applicable VOC is not heated, this term is the vapor pressure of the applicable VOC at a yearly average ambient temperature as stated in EPA-450/4-88-004." This method would be consistent with the emission calculation required for SARA Title III Form R filing and would eliminate redundant calculations. (20)

RESPONSE: Vapor pressure data at standard conditions is readily available and is typically expressed in these terms. The Department acknowledges that temperature at standard conditions is about 10 degrees higher the average annual ambient temperature in New Jersey, and that using average ambient temperature would result in somewhat lower calculated emission rates. However, the Department believes that it is appropriate that vapor pressure at standard conditions should be used in calculations for conservatively and uniformly determining the quantity of uncontrolled VOC emissions; using standard conditions will greatly simplify the calculations.

92. COMMENT: With regards to N.J.A.C. 7:27-16.4(g)2, the commenter believes that the regulation should clarify that the units for the quantity of VOC transferred should be in gallons. (9)

With regards to N.J.A.C. 7:27-16.4(d)2 and (g)2, the unit of measurement for the annual transfer quantity is not defined; it should be defined to be in gallons. (37) (36) (1) (19) (18) (21) (3)

RESPONSE: The Department agrees with this recommendation. Accordingly, N.J.A.C. 7:27-16.4(d)2 and (g)2 have been clarified by defining quantity in gallons.

93. COMMENT: With regards to N.J.A.C. 7:27-16.4(d)3, EPA comments that the wording "this section 16.4 does not require the use of any control apparatus" appears to be in conflict with the requirement of N.J.A.C. 7:27-16.4(b) for submerged filling. This exemption should only refer to subsection N.J.A.C. 7:27-16.4(c). (26)

RESPONSE: The Department agrees with this comment. The oversight has been corrected by adding the following phrase to N.J.A.C. 7:27-16.4(d)3 and to (g)3, "except as specified in (b) above." This modification retains the existing requirement for submerged pipe filling.

94. COMMENT: With regards to N.J.A.C. 7:27-16.4(f), the commenter recommends a threshold of 4,000 pounds of VOC per year per tank truck transfer facility. (4)

RESPONSE: The threshold criteria of 2,000 gallons is used at several provisions throughout the subchapter. The intent of the VOC RACT regulation is to obtain needed reductions by controlling previously unregulated source operations. The Department feels that 2,000 gallons is a reasonable cutoff beyond which significant quantities are emitted, especially since the commenter has provided it with no substantial justification for setting the threshold at 4,000 rather than 2,000 gallons.

95. COMMENT: The commenter recommends that this section include a de minimis exemption for low-volume throughput tanks or discharge points in piping distribution systems connected to larger, main storage tanks. There may be a main storage tank that meets the applicability thresholds which may feed material to a small tank or discharge point in another location within the facility. It would not be practical to provide control equipment on the small tank or discharge point if it has the de minimis low-volume throughput. (11)

With regards to N.J.A.C. 7:27-16.4(f), as worded, this section would be more stringent than implied in the proposal. The proposed regulation considers emissions from an entire facility to calculate applicability of individual tanks. This makes the section more onerous than the section covering transfers into storage tanks and should be revised to state that the 2,000 pound emission rate be on a per tank basis. (29)

With regards to N.J.A.C. 7:27-16.4(f) and (g), the DEPE should determine regulatory applicability for transfers to delivery vessels based on annual emissions resulting from transfers from a single storage tank to delivery vessels, rather than from facility-wide transfers to delivery vessels. These commenters recommend that subsections (f) and (g) be revised to read as follows:

"(f) On and after May 31, 1995, no person shall cause, allow, or permit the transfer of any applicable VOC from a storage tank into delivery

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vessels, except railroad tank cars, having a maximum capacity of 2,000 gallons or greater and having a total calculated annual emission rate over 2,000 pounds of applicable VOC as determined pursuant to (g) below ...

(g) For the purposes of (f) above, the total calculated annual emission rate of applicable VOC transferred into delivery vessels from a storage tank shall be determined in accordance with the following procedure:

1. Calculate the emission factor for each applicable VOC transferred from a storage tank to regulated delivery vessels: ...

2. Determine the calculated annual emission rate by multiplying each emission factor calculated in 1 above, by the annual quantity of each applicable VOC transferred from a storage tank to a regulated delivery vessel ...

3. Compare the total calculated annual emission rate resulting from total transfers from a storage tank to regulated vessels to 2,000 pounds ..."

Determining transfer emissions from delivery vessels from an entire facility to determine regulatory applicability may require unwarranted control installation at loading racks with minimal emissions, that is, those loading racks with low throughput or those used for low vapor pressure products. Many large plants in New Jersey have over 20 tank truck loading locations. Many of these locations have minimal emissions. For example, one operation loaded approximately one million gallons of an applicable VOC with a vapor pressure of two mm Hg (0.04 psi), and molecular weight of 94. According to the proposed subsection (g), the emission factor for this transfer operation is 9.02×10^{-5} and the calculated annual emissions equals 90 pounds per year. Since the total VOC from the other 19 loading facilities at this facility exceeds 2,000 pounds a year, this specific loading facility that only emits 90 pounds per year would need to be controlled per the proposed regulations. Installation of a tank truck loading closed loop vapor return line control system at that particular location would require approximately 600 feet of pipe with an estimated cost of $75,000. Assuming a 10-year life expectancy on the tank, an annual interest rate of 10 percent and neglecting annual maintenance cost, the annualized cost over the remaining life of the tank is $12,200. The effective VOC removal cost is approximately $271,000 per ton. The cost greatly exceeds the $2,000 to $10,000 per ton figure referenced by DEPE as RACT in the economic criteria in the Preamble.

Contrary to the intent expressed in the proposal, the provisions in N.J.A.C. 7:27-16.4(f) will have an emission threshold per loading operation less than 2,000 pounds, and in many cases less than 1,000 pounds as allowed for transfers to storage tanks in N.J.A.C. 7:27-16.4(c) for a facility with several low-emitting loading operations. By requiring control installation based on annual facility emissions to delivery vessels, the stated rationale in the proposal for the different emission thresholds will not work out for facilities with several loading operations. The commenters support the intent expressed in the proposal and request that N.J.A.C. 7:27-16.4(f) be modified to determine RACT control requirements based on annual emissions resulting from transfers from individual storage tank to regulated delivery vessels.

From an intuitive standpoint, determining the economic feasibility to control emissions should compare the cost to control pollutants at a source with the amount of pollutants that are reduced at the same source. N.J.A.C. 7:27-16.4(f) and (g) compare the transfer emissions from all regulated delivery vessels with a pound per hour criteria that is economically reasonable at a single transfer location. This is not a valid comparison to determine economic feasibility. (3) (18) (19) (1) (37) (36) (21) (5) (6)

RESPONSE: The Department agrees that an effective removal cost of $271,000 per ton is not RACT and acknowledges that the proposed regulations were inconsistent in the way control applicability was determined for transferring applicable VOC from stationary storage tanks into delivery vessels versus transferring applicable VOC from delivery vessels into stationary storage tanks. The Department further agrees that proposed N.J.A.C. 7:27-16.4(f) and (g) are inconsistent with the Department's intent to base the applicability threshold from the regulated loading operation.

Therefore, the Department has modified subsections (f) and (g) such that only the annual quantity of applicable VOC loaded to delivery vessels from a storage tank and the emissions from the transfer operation are used in determining control applicability for the loading operation.

It is believed that these changes substantially address all of the concerns expressed in these comments.

96. COMMENT: With regards to N.J.A.C. 7:27-16.4(g), the annual emission calculation should exclude controlled emissions and transfer emissions from tank cars and storage tanks that are less than 2,000 gallons. If Comment 85 is not accepted, the exclusions that are listed in N.J.A.C. 7:27-16.4(f) should be referenced in N.J.A.C. 7:27-16.4(g). (3) (19) (21) (36) (37) (1) (18)

The proposed regulation at N.J.A.C. 7:27-16.4(g)2 requires transfer emissions controls from delivery vessel loading operations if the total calculated annual emissions rate exceeds 2,000 pounds for the entire facility. The annual emissions rate calculation must include the maximum emissions allowed by any existing permits. The commenter believes that it is not RACT to require controls on a specific operation based on facility-wide emissions, especially if emissions that have already been controlled are included in the calculated emissions. (33)

N.J.A.C. 7:27-16.4(g)2 should be revised to read: "... by the annual quantity of each applicable VOC transferred into a delivery vessel greater than 2,000 gallons, except railroad tank cars, at the facility." Without this revision, a facility would have to count transactions not requiring control toward the facility emission cutoff. As such, a facility that transfers material almost exclusively to railroad tank cars would be required to install a costly control system for the few (or single) applicable transfers that it conducts, leading to dollar per ton of emission reductions far above the $2,000 to $10,000 referenced in the Preamble. (29)

RESPONSE: In response to other comments (see response to Comment 95), the Department has modified N.J.A.C. 7:27-16.4(f) and (g). These changes address the recommendations of these comments.

97. COMMENT: With regards to N.J.A.C. 7:27-16.4(h), the three month time period is too short. DEPE should phase in portions depending on the potential to emit or the number of permits that could be processed. (36)

With regards to N.J.A.C. 7:27-16.4(n), these commenters believe that three months is insufficient time to read and understand the regulations, evaluate the options, and prepare and submit a permit application. (4) (3) (29) (6)

One commenter noted that no matter how many dollars and manhours are devoted to the task, it will be impossible to meet this deadline in certain instances. (4)

Another commenter noted that the public workgroup did not agree to this timeline as stated in the proposal; six months would be an acceptable timeline. (3)

Other commenters stated that six months (29) or 12 months (5) (6) would be needed to submit the application.

RESPONSE: The Department has carefully reviewed this section of the rule and determined that the three-month time frame, in addition to the two months time from the adoption date of the amendments, coupled with the advance notice provided by the proposed rule, for submittal of permits is sufficient in most cases. However, for those companies which require additional time, the Department has revised N.J.A.C. 7:27-16.4 by adding a new subsection, N.J.A.C. 7:27-16.4(q) which allows for a 60-day extension to this deadline. This extension would be granted, upon written request, provided that the facility will still be able to achieve compliance by May 31, 1995 or the final compliance date established in an ACO. The May 31, 1995 compliance date is discussed in more detail in the preamble to this notice of adoption.

98. COMMENT: The commenters recommend that the DEPE delete the requirement at N.J.A.C. 7:27-16.4(i) in its entirety. U.S. Department of Transportation (DOT) regulations adequately regulate cargo tank testing and inspection requirements. Annual pressure and vacuum testing of applicable VOC tank trucks is unreasonable and would put New Jersey at a disadvantage in competition with other states. DOT regulations, 49 CFR 180.407, only require pressure testing of most tank trucks every five years. The DOT has defined necessary testing and inspection requirements based on the type of cargo tank to avoid catastrophic failure and fugitive cargo tank leakage. Most other states do not require annual pressure and vacuum testing of tank trucks. The proposed rule requires New Jersey industry to return tank trucks to the shipper when a test has not been done within the year. Delays will also be encountered by New Jersey industry in comparison to other states to receive empty tank trucks for filling due to the proposed special New Jersey requirements. By Federal law, the DEPE cannot stipulate more stringent regulations than the DOT. As stated in Section 105, paragraph (a)4 of the Hazardous Materials Transportation Act, DOT regulation preempts any law, regulation, order, ruling, provision or other requirements of a state or political division or Indian Tribes regarding the design, manufacturing, fabrication, marking, maintenance, reconditioning, repair or testing of a package or container. A cargo tank is considered a container. And

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many of the New Jersey defined applicable VOCs regulated under the proposed subchapter 16 rule are also classified as hazardous materials. (3) (19) (18) (1) (37) (21) (36)

RESPONSE: The Department accepts this recommendation because it agrees that the DOT regulations are sufficient to ensure that the tank trucks are sufficiently tight to prevent unwarranted leakage of VOC. N.J.A.C. 7:27-16.4(i) has been modified to delete the annual pressure testing requirement, and instead, require tank trucks containing applicable VOC to be certified to comply with DOT regulations concerning inspection and pressure testing, as codified at 40 CFR 180.407. However, for the record, the Department strongly disagrees with the suggestion that the Federal Hazardous Materials Transportation Uniform Safety Act precludes the Department from complying with the Federal Clean Air Act by imposing pollution control requirements on the subject tank trucks.

99. COMMENT: With regards to N.J.A.C. 7:27-16.4(j), the restrictions on loading and unloading of delivery vessels based on pressure needs to be eliminated or greatly revised. Many applicable VOCs are shipped in delivery vessels as pressurized gases or liquids, for example, liquified petroleum gases. Many of these loading spots have vapor return lines to vent inerts (for example, nitrogen or air) back to the storage tank control apparatus. These vessels are designed to be loaded under pressure and could be subject to N.J.A.C. 7:27-16.4(c) or (f). Some delivery vessels are also rated for vacuum service. Pressurized gas delivery vessels are often evacuated with vacuum pumps before changing service, before salvaging, or to completely recover the vessel's contents. If the delivery vessel or storage tank contains any inerts (such as nitrogen/air) they must be vented, typically through a control device. Many delivery vessels are designed to be loaded when under vacuum. DOT regulations stipulate specific design and operating parameters for cargo tanks loaded under vacuum (49 CFR 180.405). Not being able to load cargo tanks under pressure or under vacuum would halt many product loading operations, and hence shutdown operations, at many New Jersey facilities, without a significant corresponding benefit to the environment. (3) (33) (19) (21) (36) (37) (1) (18) (6) (5)

RESPONSE: The Department agrees with this recommendation. N.J.A.C. 7:27-16.4(j) has been modified to allow the loading or unloading of applicable VOC that is typically stored or transferred at elevated pressure, or under vacuum, into or from a delivery vessel that is designed for pressure or vacuum service.

100. COMMENT: With regards to N.J.A.C. 7:27-16.4(k)3, these commenters recommend that this requirement be deleted. The requirements and fines associated with a spill have already been assessed under the N.J.A.C. 7:1E, DPCC regulation. Owner and operators of facilities should not be subjected to two sets of rules and two sets of fines for each release. Companies have already spent millions of dollars to comply with the DPCC regulations by installing secondary spill containment systems in recognition of the fact that spills cannot be completely prevented. Secondary spill containment is a reasonable technology, but there is not a reasonable technology available for containing the emissions from a spill. Therefore, it is unreasonable to subject a company to fines under subchapter 16 for VOC emission resulting from an accidental spill. (1) (37) (36) (18) (19) (21)

RESPONSE: The Department agrees that the present regulation should not duplicate DPCC regulations. Accordingly, N.J.A.C. 7:27-16.4(k) has been modified to require that any loading or unloading operation must cease immediately if the transfer results in a liquid spill of applicable VOC. This requirement is necessary to protect air quality, is not duplicative of DPCC requirements, and is consistent with the intent of the regulation as proposed.

101. COMMENT: With regards to N.J.A.C. 7:27-16.4(k)3, the term "applicable" should be inserted before "liquid VOC spill" since this section only pertains to applicable VOC. (36)

RESPONSE: The Department agrees with this recommendation and N.J.A.C. 7:27-16.4(k)3 has been clarified accordingly.

102. COMMENT: With regards to N.J.A.C. 7:27-16.4(k)3, the term "spill" should be replaced with the term "discharge." "Spill" is not defined and is no longer used under N.J.A.C. 7:1E (DPCC Regulations). The term "discharge" is defined under N.J.A.C. 7:1E and any release due to that discharge would follow the applicability penalty matrix under that rule. (36)

RESPONSE: This subsection has been modified to prohibit the continuation of a transfer that results in a liquid leak of applicable VOC. Therefore, no further definition of "spill" or "discharge" is needed for this section.

103. COMMENT: With regards to N.J.A.C 7:27-16.4(l), does a control system have to be installed on a truck to handle the air that is displaced during unloading? (8)

RESPONSE: Yes, because the displaced "air" contains VOC vapors. The purpose of N.J.A.C. 7:27-16.4(l) is to require a delivery vessel, which is used to transfer applicable VOC, to be closed and vapor tight at all times while containing applicable VOC, unless the opening is venting through a control device. Exemptions are provided to allow for the vessel to be open for emergency conditions and for gauging. In response to other comments, a provision has been added to allow the vessel to be open for sample collection.

Control system requirements during loading or unloading, as covered in N.J.A.C. 7:27-16.4(c) and (f), depend on annual uncontrolled emissions from the total quantity transferred.

104. COMMENT: N.J.A.C. 7:27-16.4(l) should be modified to exempt sample collection from being vapor tight. (3) (29)

Many raw materials are sampled while the material is in the delivery vessel. To get a representative sample, the manway is typically opened and a sample is withdrawn from the middle of the vessel. The vessel cannot remain vapor tight during sample collection. (3)

RESPONSE: The Department agrees with this recommendation. Accordingly, N.J.A.C. 7:27-16.4(l) has been modified to include an exemption from the vapor-tight requirement during sample collection.

105. COMMENT: N.J.A.C. 7:27-16.4(m) uses the phrase "should have been discovered." It is not clear how this is to be interpreted. (26)

RESPONSE: The Department agrees that the phrase "should have been discovered" is ambiguous and is not necessary. Accordingly, this phrase has been deleted from N.J.A.C. 7:27-16.4(m).

106. COMMENT: N.J.A.C. 7:27-16.4(o)2 would require the continuous or periodic monitoring of very small sources. Sources with emission as low as 400 pounds per year (2,000 pounds per year before control with 81 percent control) would be regulated under this section. This requirement for such small sources is onerous and should be eliminated. The language of this paragraph should be revised as follows: "When required by the Department, the owner or operator of any VOC loading facility subject to (f) above shall maintain the following records: ... 2. On a continuous basis or at a frequency approved by the Department in writing; ..." The commenter trusts DEPE would use discretion and only require this type of monitoring on sources with substantial emissions. (29)

RESPONSE: Any VOC loading facility, regardless of its size, that is required to install thermal oxidizers or any control device that uses carbon pursuant to any provision in N.J.A.C. 7:27-16.4 is required to continuously or periodically monitor and record the operating parameters contained in N.J.A.C. 7:27-16.4(o)2i and ii. Monitoring and recording of this information is required to ensure each control device is operating properly and meets the RACT requirements contained in N.J.A.C. 7:27-16.4. If the monitoring is not required to be continuous, the Department will determine the frequency of the monitoring on a case-by-case basis upon application of the operation.

N.J.A.C. 7:27-16.4(o) and (o)2 requires the owner or operator to maintain daily records, and to record continuously, or at a frequency approved by the Department, data on thermal oxidation or carbon adsorption. The Department agrees that continuous monitoring may not always be appropriate, and the regulation provides for approval of alternative monitoring methods and frequencies. In general, the smaller source will be subject to less frequent monitoring. However, the Department will not exempt any regulated source from all monitoring requirements. Without monitoring, neither the Department, the source, nor the public would know whether the source was complying with these regulations.

107. COMMENT: With regards to N.J.A.C. 7:27-16.4(p), these commenters recommend that the 80°F requirement be deleted from this paragraph. (29) (33) (19) (18) (21) (26) (37) (1) (3)

It is impossible to predict the weather with the lead time that is required by DEPE. (29)

The owner/operator should not be held responsible for the ambient temperature on the day of the performance test. (33)

If DEPE believes that it is imperative that the tests be conducted during the warmer months, then months of the year in lieu of the 80xF temperature should be stipulated. (19) (18) (21) (36) (37) (1) (3)

If the temperature is less than 80°F, cancelling the test would incur set-up and preparation costs and would further backlog the Bureau of Technical Services with rescheduling activities. (19) (18) (21) (36) (37) (1) (3)

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RESPONSE: The Department agrees that the requirement of conducting tests at ambient temperature of at least 80°F could result in scheduling difficulties for all parties involved. Accordingly, N.J.A.C. 7:27-16.4(p) has been revised to require that tests be conducted when the ambient temperature is 70°F or higher, unless the Department approves the performance of tests at a lower ambient temperature. The revised ambient temperature requirement is consistent with standard conditions, and the revision allows the Department to approve the conduct of tests at a lower temperature when appropriate.

108. COMMENT: N.J.A.C. 7:27-16.4(p) appears to contain a typographical error. Subparagraphs (c)1i and (g)1i are referenced but do not exist. (36) (21) (37) (1) (18) (19) (3)

RESPONSE: The Department acknowledges these typographical errors and corrections have been made, changing "(c)1i" to "(c)1" and "(f)1i" to "(g)."

N.J.A.C. 7:27-16.5 Marine tank vessel loading and ballasting operations

109. COMMENT: N.J.A.C. 7:27-16.5 needs to be clarified/revised with regard to vessel ballasting. Vessels that have segregated ballast compartments (that is, compartments that only accommodate ballast water) should not be required to be connected to a marine vapor control unit since they do not emit VOCs during the ballasting operation. The proposed regulations should specifically exempt vessels with segregated ballast compartments. (17)

RESPONSE: The Department accepts this recommendation. Accordingly, N.J.A.C. 7:27-16.5 has been modified to provide exemption from these requirements if ballasting is conducted in dedicated ballast tanks that use only water because such ballasting does not emit VOCs.

110. COMMENT: The commenter recommends N.J.A.C. 7:27-16.5(c) be revised to read: "The owner or operator of any marine terminal that meets the following criteria shall by the date one (1) year after the operative date of these new rules, . . ." The timing to come into compliance with the regulation is unrealistic. Three months after the operative date of these new rules to submit an alternative control plan and to be in compliance by May 31, 1995 are too tight a time period. At least nine to 12 months are needed to perform the engineering and design work, RACT analysis, selection of an option, obtain management approval and submit a permit. Once the permit is approved by the Department, two years are needed to place the order, receive the equipment, install the equipment, shut down the facility and tie-in the equipment. The tie- in should occur during the normal planned shutdown maintenance cycle. Having to shut down the facility to tie-in RACT equipment would be cost prohibitive due to the loss of revenue when the product is most in demand. (20)

RESPONSE: Marine terminals subject to N.J.A.C. 7:27-16.5(c) are required to install and operate a control apparatus, which reduces the total VOC emissions from transfer operations by no less than 95 percent by weight, or submit an alternative emission control plan in accordance with N.J.A.C. 7:27-16.17. The Department has added provision N.J.A.C. 7:27-16.17(q) (see 25 N.J.R. 6011) which allows a facility to submit a written request to an extension of the deadline to submit facility-specific control plans. This language is consistent with similar provisions adopted in the NO_x RACT rules (N.J.A.C. 7:27-19).

The Department recognizes that the delayed promulgation of this VOC RACT rule may have resulted in owners or operators being uncertain as to the specific requirements to which their facilities are subject, thus delaying their planning for compliance. The Department further recognizes that in many cases there may no longer be sufficient time for such facilities to achieve full compliance with these rules by the May 31, 1995 Federal statutory deadline. However, the Department will consider, on a case-by-case basis, requests by owners or operators to phase in compliance with these requirements. When the Department receives a request for phased compliance and, in the exercise of its traditional enforcement discretion, determines that the owner or operator cannot reasonably be required to meet the requirements of this rule by May 31, 1995, the Department will execute a Federally enforceable agreement (such as an administrative consent order) authorizing phased compliance. These agreements will require an owner or operator to implement RACT as expeditiously as practicable and will establish schedules of compliance on a case-by-case basis. In these cases, the Department does not intend to impose penalties for the failure of an owner or operator to meet the Federal compliance deadline, but may impose penalties for failing to meet the final compliance date or other terms of the agreement. This issue is discussed in more detail in the preamble to this notice of adoption.

111. COMMENT: At N.J.A.C. 7:27-16.5(c), the regulation should specify a minimum VOC control efficiency of 95 percent. If the owner cannot identify a technology that meets the 95 percent control, then the "Alternative VOC Control Plan" should be submitted that identifies the technology and optimum efficiency (less than 95 percent) that can be achieved. By not specifying a minimum control efficiency, having to go through the exercise of identifying and analyzing every possible VOC control technology as required in the alternative control plan when the technology that gives the best control efficiency is already known, is a waste of time, effort, and money. (17)

RESPONSE: The Department agrees with the essence of this comment and has revised N.J.A.C. 7:27-16.5(c) accordingly. By specifying an appropriate control efficiency as RACT the more cumbersome case-by-case analysis can be avoided.

112. COMMENT: The potential to emit threshold under N.J.A.C. 7:27-16.5(c)3 should be modified to 25 tons to be consistent with the major VOC facility definition. (20)

RESPONSE: A facility that emits 25 tons of VOC per year, or greater, is a major facility, and may contain several sources. It would be inappropriate to set the threshold for each source, located within a major facility, at the same level as for the total facility. The Department believes that the 10 tons per year per source threshold for marine terminals is reasonable, and, based on cost estimates, is consistent with RACT. Accordingly, the Department is not revising the threshold.

113. COMMENT: N.J.A.C. 7:27-16.5(f) should be modified to read: "Effective one (1) year after the operative date of these rules, no person subject to the provision of (b) above, and effective within twenty-four months of a Department approved alternative emission control plan, no person subject to (c) above, shall cause, suffer, allow or permit any transfer of any applicable VOC, or ballasting if:. . ." (20)

RESPONSE: N.J.A.C. 7:27-16.5(f) only requires the owners or operators of facilities subject to the provisions of subsections (b) and (c) above to use safe and prudent operating practices when transferring applicable VOC to marine vessels which prevents liquid spills from occurring and dangerous concentrations of VOC's from accumulating. All components of the marine tank vessel or any control apparatus serving the transfer operation must be installed and operated as designed. Complying with the provisions contained in subsection (f) involves no more than incorporating good business practices. The Department, therefore, does not see the need to generically extend the compliance dates for the provisions contained in (f). The Department recognizes that the delayed promulgation of this VOC RACT rule may have resulted in owners or operators being uncertain as to the specific requirements to which their facilities are subject, thus delaying their planning for compliance. The Department further recognizes that in many cases there may no longer be sufficient time for such facilities to achieve full compliance with these rules by the May 31, 1995 Federal statutory deadline. However, the Department will consider, on a case-by-case basis, requests by owners or operators to phase in compliance with these requirements. When the Department receives a request for phased compliance and, in the exercise of its traditional enforcement discretion, determines that the owner or operator cannot reasonably be required to meet the requirements of this rule by May 31, 1995, the Department will execute a Federally enforceable agreement (such as an administrative consent order) authorizing phased compliance. These agreements will require an owner or operator to implement RACT as expeditiously as practicable and will establish schedules of compliance on a case-by-case basis. In these cases, the Department does not intend to impose penalties for the failure of an owner or operator to meet the Federal compliance deadline, but may impose penalties for failing to meet the final compliance date or other terms of the agreement. This issue is discussed in more detail in the preamble to this notice of adoption.

114. COMMENT: N.J.A.C. 7:27-16.5(i)3 should be modified to read: "Any other equivalent test method approved by the Department and EPA prior to the effective date of these new rules. Alternative methods not approved prior to the effective date of these new rules by the Department and EPA must be approved in advance in writing by the Department and EPA." (20)

RESPONSE: The Department does not see the need to modify N.J.A.C. 7:27-16.5(i)3. The owner or operator of any facility required to perform tests pursuant to this section may use an alternative test method to those specified in the rule if use of the method is approved in advance of its use in writing by the Department and acceptable to

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EPA, whether or not that alternate test method is approved prior to the effective date of these rules. In other words, the rule as proposed provides more flexibility that the one suggested by the commenter.

115. COMMENT: N.J.A.C. 7:27-16.5(j) expands the recordkeeping requirements for marine transfers. Permits for gasoline loading facilities require CEMS and sufficient recordkeeping to document annual throughputs. This subsection implies that a separate compliance record must be maintained. The refinery maintains accounting records which will document important information, such as the type and quantity of material transferred, the date, and the name of the vessel. Items such as vessel arrival and departure times and prior cargo may not be significant to the accounting record and are not normally maintained. A separate record should not be required. The time of arrival and departure are not regulated and failure to record such data should not be a recordkeeping violation.

Information on prior cargoes cannot be verified by the terminal; the terminal operator must rely on the vessel operator to provide such information. Since the vessel must also be permitted by the Department, these records should be sought from the vessel. Paragraphs (j)1, 2 and 5 should be deleted from the proposal. (33)

RESPONSE: The Department agrees that the time the vessel arrived at and departed from the marine terminal is not relevant information needed to determine compliance with provisions contained in the section. Accordingly, this reporting requirement has been removed.

To ensure compliance with N.J.A.C. 7:27-16.5(b) and (c), information on the prior cargo the vessel carried and the condition (cleaned, crude oil washed, etc.) of the vessel is important. The vapors from the prior cargo will be vented from the vessel to the control device during the initial period of the loading operation. Some vapors may be incompatible with the control device. Therefore, it is important for the facility and the Department to know what is being emitted during loading of the vessel. The owner or operator of the terminal should be able, with relative ease, to obtain the necessary information from those owning or operating the vessels using their terminals.

N.J.A.C. 7:27-16.6 Open top tanks and surface cleaners

116. COMMENT: With regard to N.J.A.C. 7:27-16.6, the commenter requests that the term "VOC" be replaced with the term "applicable VOC" to exempt solvents with vapor pressure of less than one mm Hg from the degreaser requirements. Installing or modifying degreasers to meet the specifications in the chapter for low vapor pressure VOC solvents is not cost effective. (3)

RESPONSE: The term "applicable VOC" is used in provisions of N.J.A.C. 7:27-16 for source operations with construction standards (such as a conservation vent on a storage tank) where the vapor pressure of the contents is important to determine applicability. The term "VOC" is generally used in provisions of N.J.A.C. 7:27-16, such as those for open top tanks and degreasers, for source operations that are tested and, therefore, the test method defines what is VOC, rather than the vapor pressure.

N.J.A.C. 7:27-16.7 Surface coating and graphic arts operations

117. COMMENT: The wording in the proposal Summary indicates that only major sources will be covered by the amendments. However, the applicability statement contained in the amendment language indicates that all sources using products containing VOCs are to be covered. This language expands the universe of affected facilities to all screen printing operations and contradicts the intention of only promulgating regulations to control the VOC emissions from major sources. This is substantiated by statements contained in the Summary information indicating that DEPE states "under subchapter 16, all equipment and source operations emitting VOCs will either be covered by or exempted from the RACT standards in subchapter 16. . ." The various positions taken by the DEPE in the Summary and actual rule language appear to contradict each other. Is it the intent of the DEPE to require all screen printing facilities, regardless of size, to comply with the new amended language, or will the amendments only impact those major sources found within the State? This contradiction needs to be resolved prior to any further movement on the amended language for the screen printing industry. (15)

RESPONSE: The amendments to N.J.A.C. 7:27-16 apply to both major and non- major facilities. Existing sections in the subchapter contain regulations with specific applicability criteria for each kind of equipment or source operation. If the source operation exceeds the exclusion rate or other applicability criterion contained in the section, the source operation is required to comply with all provisions contained in the section. N.J.A.C. 7:27-16.7 regulates all graphic arts operations and surface coating operations that use one half gallon or more of coating formulation or cleaning material. In the revision to N.J.A.C. 7:27-16.7, the Department added several new types of surface coating or graphic arts operations: screen printing operations; sheet fed gravure printing operations; and pipe coating operations. The provisions contained in N.J.A.C. 7:27-16.7 do not apply to any surface coating or graphics arts operation that uses less than one half gallon per hour and two and one half gallons per day. The intent of the Department is to require all screen printing operations that exceed the exclusion rate in the section to comply with the provisions contained in the section, whether or not that equipment is used at a major VOC facility. This is because the reductions gained thereby are consistent with RACT and applying the requirements to the entire industry avoids the creation of unfair competitive disadvantages within the industry.

118. COMMENT: The commenter states that the amendments offered are consistent with other state regulatory action over the past several years and parallels proposals from the states of Wisconsin and New York, and both the Bay Area and South Coast Air Quality Management Districts in California. (15)

The commenter fully supports the VOC content of the language under N.J.A.C. 7:27-16.7(c)1, Table 7D, Part C because it represents RACT for the screen printing industry. (15)

RESPONSE: The Department appreciates the participation of the Screen Printing Association International in the development of consistent national RACT regulations for the screen printing industry.

119. COMMENT: A subsection should be added that exempts those surface coating and graphics art operations which have their own specific recordkeeping requirements, such as the EPA Protocol for Automobile and Light-Duty Truck Surface Coating Operations. (11)

RESPONSE: In accordance with the provisions contained in N.J.A.C. 7:27-16.22(b), the owner/operator of any source operation subject to any record keeping requirement set forth in N.J.A.C. 7:27-16.7 may submit a request in writing for approval to maintain records other than those specified in N.J.A.C. 7:27-16.7(m) and (n). The Department and the EPA can approve any request, providing the owner/operator can demonstrate satisfactorily to the Department and the EPA that the alternative records are at least as effective in documenting compliance with the applicable requirements in the section. With respect to automobile and light duty truck topcoat operations, use of the EPA protocol has already been addressed in the footnote to Table 3C. Thus, there is no need to add a new subsection.

120. COMMENT: The commenter requests that the painting of aircraft parts be separately addressed in the proposed new rules; they should not be classified as miscellaneous metal parts. The commenter's aircraft painting/coating operation is more like an automobile coating operation in that the aircraft parts to be coated are very large. The paint used is for military aircraft and has specifications that cannot meet the existing requirement. (27)

RESPONSE: The painting of metal parts provisions were adopted in December 31, 1981, and were not the subject of this proposal. Compliance was required by December 31, 1983. Consequently, applicable facilities should already conform with the rule. However, modifications to operations, including increased production, could make some source newly subject to subchapter 16. If such a facility has special operating conditions or restraints that make it unreasonable to comply with the requirements of this subchapter, N.J.A.C. 7:27-16.17(a)2 would allow the owner or operator of a source operation regulated under N.J.A.C. 7:27-16.2 through 16, or 18 through 21, to submit an alternative control plan. The requirements for the alternative control plan contained in N.J.A.C. 7:27-16.17 would have to be adhered to. Thus, the commenter's options are to submit an alternative VOC control plan, petition the Department for a rule change pursuant to N.J.S.A. 52:14B-4 and to N.J.A.C. 7:1-1.2, or both.

121. COMMENT: With respect to N.J.A.C. 7:27-16.7(c), EPA recommends that a source be required to specifically select a compliance approach which would be included in their permit. This would avoid the situation of a source claiming to average N.J.A.C. 7:27-16.7(c)3 when they should be complying with N.J.A.C. 7:27-16.7(c)1. (26)

RESPONSE: The Department agrees that the owner or operator of a graphic arts or surface coating operation must specifically state what compliance approach or approaches contained in N.J.A.C. 7:27-16.7 is going to be utilized as a part of the preconstruction permit application. As a condition to the permit approval, the company would be required to keep appropriate records that depend on compliance provisions

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selected. If the source operation has a control apparatus installed, records would have to be maintained that ensured compliance with the requirements in N.J.A.C. 7:27-16.7(c)4. If daily weighted means are selected, then records are needed to ensure compliance with N.J.A.C. 7:27-16.7(c)3.

122. COMMENT: EPA stated that flexographic printing operations may also produce goods of a "sheet fed" nature and should be regulated under N.J.A.C. 7:27-16.7(c)1, Table D. (26)

RESPONSE: N.J.A.C. 7:27-16.7 contains regulations that cover flexographic printing operations. The definition of flexographic printing operation does not include the method the paper is introduced into the press. Whether the paper is web fed or "sheet fed", the printing formulations used should be the same, and the maximum allowable VOC content for the different paper feed methods are the same. Both methods of paper feed are already covered by the existing N.J.A.C. 7:27-16.7. In short, the Department does regulate "sheet-fed" flexographic printing under Table 3D.

123. COMMENT: These commenters believe the Department is creating unnecessary paperwork under N.J.A.C. 7:27-16.7(n)1. The commenters do not understand the reason to record the date and the start and end time for each application. (15) (11)

One commenter requested an explanation of the need and benefit derived from the collection of this information. (15)

Another commenter noted that this requirement does not provide information necessary to determining compliance. This commenter believes monthly records of this information would be more appropriate, and recommended that this subsection be revise to read: i. The name and identification number of each coating as applied; and ii. The mass of VOC per volume and the volume of each coating, as applied, on a monthly basis; and iii. Operational data which may be used to predict daily usage. (11)

RESPONSE: The Department agrees that recording the start and finish time of each surface coating formulation applied does not provide information that is pertinent to determining compliance. Therefore, the Department has clarified that only the number of hours a surface coating formulation is applied needs to be recorded daily and has removed the requirement to record the start and finish times. Since compliance must be demonstrated on a daily basis, the recommendation for monthly records has not been incorporated.

124. COMMENT: EPA states that N.J.A.C. 7:27-16.7(n) is not clear regarding whether an owner or operator is to maintain records on an "on-going" or "real time" basis. The provision should clearly require an entry into a log at the beginning of use of a coating or addition of diluent. This would enable an inspector to take a sample and verify the log entry. (26)

RESPONSE: The Department has reviewed N.J.A.C. 7:27-16.7(n) and has determined that requiring the owner or operator of a surface coating or graphics arts operation, subject to the provisions contained in N.J.A.C. 7:27-16.7(n), to enter the time in a logbook at the beginning and the end of application of a new coating formulation or addition of diluent and maintaining the records in a "real time" basis does not provide information necessary to determine compliance with the provisions in N.J.A.C. 7:27-16.7. Recording the number of hours, VOC content and gallons a coating formulation (as diluted) was applied is sufficient in determining compliance with the maximum allowable hourly rate provisions in N.J.A.C. 7:27-16.7(b)4iii. N.J.A.C. 7:27-16.7(n)3 and (n)4iv allow daily weighted averaging of the surface coating formulations, and the number of hours each coating formulation is applied per day is required for determining compliance with the provisions in the sections. The Department expects accurate records. Although keeping records on an "on-going" or "real time" basis is advisable, such a recordkeeping procedure may not be practicable in all cases. As long as the information is accurately recorded, the methodology for recording the information is of lesser importance.

N.J.A.C. 7:27-16.8 Boilers

125. COMMENT: The commenter believes that the CO emission limits should be removed from the proposed rule for several reasons. First, the commenter believes that CO emissions are not adequate surrogates for VOC emissions. The relationship between VOC and CO is very source-specific and for some sources, CO emissions are not a surrogate for VOC emissions. Furthermore, the Department acknowledges in the Preamble that for stationary gas turbines, "CO will not be an accurate surrogate for VOC emissions." Second, the focus of the proposed rule should be on VOC emissions only. Clearly, establishing CO emission limits for these sources is beyond the scope of this rule and contrary to the Department's stated intent not to seek reductions in CO emissions from utility combustion sources. Third, the Preamble states that "the proposed new rules establish CO emission limits for most types of combustion sources, rather than establishing VOC limits." The proposed rule regulates five types of combustion sources. For three of these types (that is, boilers, stationary gas turbines, and asphalt plants), the Department established both CO and VOC emission limits. Only for stationary internal combustion engines has the Department established a CO emission limit only. Therefore, the Department's statement is true for only one out of the five types of combustion sources. For four out of the five affected source categories, owners or operators must simultaneously comply with both CO and VOC emission limits. Consequently, rather than employing CO emissions as a surrogate for VOC emissions, it appears that the Department has simply added another layer of regulatory burden to owners or operators of these sources. Fourth, while the commenter understands the Department's mandate under Title I of the CAAA to implement RACT for all major stationary VOC sources in order to achieve the ozone NAAQS, the CAAA has no corresponding mandate for requiring CO RACT. Therefore, the commenter believes that the proposed rule should focus on establishing reasonable limits for VOC emissions only, and it is inappropriate for the Department to establish CO emission limits because they are beyond the intended scope of the VOC RACT requirements.

Finally, the commenter asserts that CO limits are not warranted because stationary sources typically are not significant contributors to ambient concentrations of CO. It is well-documented that mobile sources are the primary source of CO emissions, and are the most significant contributors to ambient CO levels. Figure 4 of the Department's proposed State Implementation Plan Revision for the Attainment and Maintenance of the Ozone NAAQS indicates that stationary sources comprise only six percent of the total 1990 base year CO emission inventory; mobile sources comprise 94 percent. The Department would likely agree that CO impacts typically predicted for utility sources using dispersion models are below significant impact levels established by EPA and the Department (in N.J.A.C. 7:27-18). In other words, CO emissions from utility sources do not generally present a threat to public health or welfare. The commenter believes CO emissions are more appropriately controlled through mobile source regulations. (2)

RESPONSE: Unlike most of the other sources regulated in the VOC RACT rule, there is no direct means of determining the VOC emissions from a combustion source without performing a stack test or installing a CEM. Therefore, to address the compliance of these sources on a short-term, continuous basis, the Department has proposed monitoring CO emissions as a surrogate for monitoring VOC emissions, since CO emissions are easier and less costly to monitor than are VOC emissions. VOC emissions will be directly tested only pursuant to much less frequent (generally once every five years) stack testing.

However, the Department realizes that CO is not an exact surrogate for VOC emissions in all cases. The monitoring of CO emissions is more to determine a qualitative change in VOC emissions than to determine the exact amount of VOC being emitted. For almost all combustion sources, the emissions of CO will increase before the emissions of VOC. Monitoring for CO emissions and watching for an increase in those emissions almost always indicates an increase in VOC emissions. The alternative to monitoring for CO emissions would be to install more costly monitors for VOC emissions.

The general intent of proposing CO emission limits was not to require any reductions in CO emissions from the regulated sources, but to prevent any unacceptable increases in VOC emissions from these sources when complying with the requirements of the NO_x RACT rule. The Department believes that most sources should be able to comply with the NO_x RACT rule and still maintain CO emissions at a level below those contained in the rule. The Department does not intend to require the installation of CO controls based on this rule. To the extent that a facility thinks that it cannot meet both the generic NO_x and generic CO limits without installing costly CO controls, it could consider submitting an alternative control plan pursuant to N.J.A.C. 7:27-16.17 or pursuant to N.J.A.C. 7:27-19.13.

The Department does agree with the commenter's statements regarding the large part that mobile sources play in the CO inventory within the State and the fact that the CAAA do not require the State to regulate CO emissions for ozone attainment. Again, the CO emission limits in the rule are for the purposes of preventing unacceptable

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increases in CO or VOC emissions when complying with the requirements of the NO_x RACT rule. The intent was not to require the installation of CO controls on the regulated sources.

126. COMMENT: With regards to N.J.A.C. 7:27-16, the commenter requests that DEPE include provisions for complying with the VOC emission limits through intra- and inter-facility emissions averaging. Providing such a compliance mechanism is consistent with DEPE's intent to provide compliance with the proposed NO_x RACT rule through averaging. Compliance with the VOC limits through averaging should be on a 24-hour average basis. If DEPE insists on retaining the CO emission limits in the proposed rule, the commenter requests that DEPE include provisions for complying with CO emission limits through averaging on a 24-hour basis. Emission averaging is a cost-effective method of complying with the proposed rule and provides much needed operating flexibility. (2)

RESPONSE: The Department historically has not allowed for the averaging of VOC or CO limits, essentially because of the stringency of the NAAQS for these pollutants. However, the Department does see considerable merit in these comments and is considering providing for the requested averaging for combustion sources through the reproposal that will follow this adoption in the near future.

127. COMMENT: These commenters believe the proposed rule does not adequately address the seasonality of CO levels. (2) (28)

One commenter noted that elevated CO concentrations typically occur in the winter, whereas the commenter's gas turbines typically operate in the summer. N.J.A.C. 7:27-25 was adopted to address CO emissions from mobile sources in the winter which is when CO emissions from mobile sources are at their highest. Imposing stringent CO emission limits on sources which operate primarily in the summer is neither warranted or rationally related to the goal of achieving compliance with the NAAQS for CO. (2)

Another commenter is concerned that DEPE is requiring specific emissions rates for NO_x from boilers, combustion turbines and other sources while also requiring the sources to maintain a level of VOC and CO emissions. Considering that CO emissions and compliance with NAAQS for CO is a concern during the winter in New Jersey, the Department should consider and implement a program that will require VOC (and NO_x) reductions only during the "Ozone Season" with little concern for CO emissions during this period. Such an approach will aid in the protection of the NAAQS for ozone during the Ozone Season without requiring additional control for CO, while actually helping provide compliance with the CO standard during the winter. Such seasonal control will benefit both the environment and the regulated industry. (28)

RESPONSE: The purpose of including CO emission limits in the proposed rule was not for the purpose of compliance with the NAAQS for CO, which is admittedly a winter time problem. The CO emission limits were included in the rule maainly as an easier to monitor surrogate for VOC emissions, whichcontribute to summertime ozone. Therefore, the CO limits are justifiied year-round. Furthermore, since the emission limits were based on what is achievable while complying with the requirements of the NO_x RACT rule, the Department does not anticipate any sources having to install additional controls to reduce the emissions of either CO or VOC.

Further, even if a facility were to install a control device to reduce CO emissions, the device would have to be operated on a year-round basis, since the USEPA currently does not allow the use of seasonal controls, other than fuel switching.

128. COMMENT: With regards to N.J.A.C. 7:27-16, the proposed rules make reference to the NO_x RACT regulations (N.J.A.C. 7:27-19). Two commenters submitted comments on the proposed subchapter 19. (2) (28)

One commenter expressed the hope that the Department is making appropriate changes, but given the uncertainty and the linkage between the two rules, reserves the legal right to submit further comments on upon adoption of subchapter 19. (2)

Another commenter believes that the NO_x RACT rule will undergo significant changes and requests that DEPE halt any further progress with respect to the VOC RACT rule until the NO_x RACT regulations are finalized. (28)

Several commenters also noted that the regulated community cannot assess the impact of the VOC RACT rule until the NO_x RACT rule are finalized. (28) (5) (6) (2)

RESPONSE: While there is substantial relationship between the two rules, particularly as they relate to combustion sources, the rules are distinct. The NO_x RACT rule (N.J.A.C. 7:27-19) were published in the New Jersey Register on December 20, 1993 and became operative January 23, 1994. While the adopted rules contain minor modifications which increase flexibility, the core of the rules including the emission limits remain as proposed. Accordingly, the adoption of the NO_x rules neither requires nor justifies further comment on the present rules.

129. COMMENT: These commenters support the inclusion of retirement or repowerment options. (2) (28)

Consistent with the Clean Air Act, the proposed NO_x RACT rule, and their comments on the proposed NO_x RACT rules, one commenter supports a retire/repower exemption for utility boilers, stationary gas turbines, and stationary internal combustion engines, because it would encourage the replacement of old utility boilers, stationary gas turbines, and stationary internal combustion engines, with new, cleaner emitting, more efficient units. Retirement/repowering is a viable, environmentally beneficial option for this equipment. This commenter also requests that their comments on the proposed NO_x RACT rules concerning deadlines for submitting retirement/repowering applications and entering into Federally enforceable agreements be taken into consideration in the proposed VOC RACT rules. (2)

Another commenter also noted that the CAAA recognizes the unique status of utility units scheduled for retirement prior to key dates and that the proposed rule does not incorporate a related provision from the NO_x RACT rules allowing the exemption of boilers scheduled for retirement prior to May 15, 1999 (unless the statement in subsection (a) that "the provisions of this section apply to any boiler which is subject to the provisions of N.J.A.C. 7:27-19" is intended to encompass the exemption of N.J.A.C. 7:27-19.4(c)). There is no legal basis prohibiting the Department from extending this provision to the proposed rules, and, therefore, the commenter believes the proposed rules should include an exemption for those boilers scheduled for retirement or to be repowered prior to May 15, 1999. Under the NO_x rules, a utility boiler scheduled to be retired or repowered by this date is subject to no numerical NO_x emission limits other than those set forth in the boiler's permit and certificate issued under N.J.A.C. 7:27-8. (28)

This commenter's turbines are operated only a finite number of hours per year (often below 200 hours per year), and, therefore, the imposition of emissions limits for VOCs and CO for combustion turbines that are used infrequently or are scheduled for retirement is unreasonable. Furthermore, the Department should not require generating units, either boilers or combustion turbines, that are scheduled for retirement prior to May 15, 1999, to install CEMS. If these units are not going to be subject to the RACT emissions levels, stack testing should provide the assurance that these units are complying with the emissions levels in their permit and certificate to operate. (2)

It is recommended that the definition of "retire" be added under N.J.A.C. 7:27-16.1 as follows: "Retire" means to permanently remove a utility boiler, stationary gas turbine, or stationary internal combustion engine from service. This definition should be added to be consistent with the commenter's request for a retire/repower option in the VOC RACT rule for utility boilers, stationary gas turbines, or stationary internal combustion engines. (2)

RESPONSE: The Department agrees with the commenter and has added a provision at N.J.A.C. 7:27-16.8(k) allowing units that enter into a repowering agreement pursuant to N.J.A.C. 7:27-19 to submit facility specific CO limits as part of the Repowering Plan submitted to the Department. In addition, the Department intends to, in the near future, propose amendments to the NO_x RACT rule extending the repowering provision to most sources regulated by that rule.

The Department has not added a specific retirement option because an alternative to the specified requirements can be obtained for units scheduled to be retired through the facility-specific VOC requirements at N.J.A.C. 7:27-16.17.

Since many turbines that are operated irregularly are used as peaking units during the ozone season, emission limits for these units are critical in reducing summertime levels of ozone.

The Department does not encourage the retiring of units to comply with VOC or NO_x RACT. If a unit is to be retired, an owner or operator may submit a facility-specific RACT determination pursuant to N.J.A.C. 7:27-19.13 or 7:27-16.17. Interim CO limits may be specified as part of the plan submitted.

130. COMMENT: Concerning subsections (a) and (b), the commenter believes it is not appropriate to set one limit for all existing boilers throughout New Jersey. The commenter notes that the New Jersey Petroleum Council has sought exclusion of the devices from regulation

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at N.J.A.C. 7:27-19 and that the Department's response to this comment is not yet completed. The Department should continue to regulate CO on a permit-by-permit basis. The commenter notes that their own refinery operates carbon monoxide boilers on its Fluid Catalytic Cracking Unit and other combustion devices. (33)

RESPONSE: The emission limits in both the VOC and NO_x RACT rules only apply to boilers which are burning commercial fuels. Boilers which combust non-commercial fuels, such as carbon monoxide or waste solvents, are regulated under the case-by-case provisions of the rules. The specific numerical emission limits in the VOC and NO_x RACT rules would not apply to the boilers that the commenter mentions.

131. COMMENT: The commenter believes that the levels for utility boilers, 50 ppmvd for VOC and 100 ppmvd for CO, are both unreasonably low and unfounded, given the reduced NO_x emissions required under N.J.A.C. 7:27-19. As stated in the proposal, the Department bases these emissions levels on two sources—the Department's own experience in issuing permits for new and modified boilers and the EPA report entitled "Evaluation and Costing of NO_x Controls for Existing Utility Boilers in the NESCAUM Region." The Department's experience, however vast, does not provide a rational basis upon which the reasonableness of its rule can be measured. In the absence of such a basis, the emissions limits set forth in the rule are arbitrary.

In addition, the NESCAUM Report was not established to provide a basis for the control of VOC and CO emissions; rather, it assessed the basis for NO_x controls. Although the NESCAUM Report includes a discussion of the relationship of NO_x emissions reduction with VOC and CO emissions, it further notes that its intent is not to "develop a correlation between CO and NO_x, but rather to provide some overall guideline on the potential effect of NO_x controls on combustible emissions." The Report concluded that data on NO_x and CO emissions from existing coal-fired boilers appear to be "very site-specific," and "for some NO_x control techniques, CO levels can increase markedly as the NO_x reduction goal is increased beyond 50 percent. Additionally, the data suggests that the use of reactive western coals results in a lower tendency towards high CO emissions relative to less reactive eastern coals." Notably, the proposed NO_x regulations, which are based in part on the Report, call for NO_x emissions reductions for certain utility boilers at levels greater than 50 percent. Additionally, the Department apparently ignores the fact that utility companies in New Jersey rely heavily on the less reactive eastern coals to fire boilers. In summary fashion, the Department concludes that the NESCAUM Report contains data "indicating that compliance with the NO_x rules will not drive VOC or CO emissions concentrations above these [the proposed] limits." This conclusion is unfounded based on (A) the magnitude of the NO_x emissions reductions required under the Department's NO_x RACT regulations and (B) the fact that the NESCAUM Report was not intended to correlate emissions of NO_x to VOC and CO emissions. (28)

RESPONSE: The NESCAUM report was used by the Department to provide further support to the emission limits which the Department proposed for utility boilers. While the NO_x emissions from a few boilers in the State may have to be reduced by more than 50 percent, this is not the general case. Most boilers in the State will be able to comply with the NO_x RACT rules through reductions of 25 to 30 percent from current levels. In those cases, data shows that the CO emissions can remain relatively unaffected by the implementation of NO_x controls. Most existing boilers will be in the range of 10 ppm CO; only those units which are out-of-adjustment for air to fuel ration would be over 100 ppm. The Department has been permitting CO concentrations at 100 ppm or less since before low NO_x burners and flue gas recirculation were common. If a vendor over-commits to low NO_x, along with low CO, it may be difficult to meet the 100 ppm CO limit. This is not expected to be the case for RACT levels of NO_x. In the case of the boiler cited by the commenter, the opportunity to apply for an alternative emission level has been included under N.J.A.C. 7:27-16.17.

132. COMMENT: These commenters recommend that DEPE adopt a CO emissions limit at 400 ppmvd at seven percent oxygen—a level that the boiler manufacturers can reasonably guarantee and consistent with the emission limits adopted in other states. Their concern with the proposed CO level stems from one company's recent attempt to purchase a new industrial boiler (70 million BTU per hour heat input) with factory-equipped flue gas recirculation (FGR) for NO_x control. There was one bid from a leading boiler manufacturer with actual CO and NO_x stack test data for a boiler with FGR. The data shows that their boiler with FGR can easily meet the proposed subchapter 19 NO_x levels but is unable to meet the 100 ppmvd CO level at seven percent oxygen. If a leading boiler manufacturer's new technology will not meet the proposed CO limit, how will FGR retrofits meet the same proposed limit? The commenter also submitted recent EPA published performance data on some of the coal-, natural gas-, and oil-fired units with combustion NO_x control showing that four of the 17 coal-fired units and five of the 14 natural gas- and oil-fired units would fail the 100 ppm CO emission criteria. (1) (36) (37) (21) (18) (19)

Specific concerns regarding this emission level are: 1) None of the contracted boiler manufacturers would guarantee boiler CO emission at 100 ppm at seven percent oxygen (discussions with leading manufacturers indicate that most would guarantee CO emission at a 400 ppm level, and, on occasion, at 200 ppm if the manufacturer is allowed to inspect the limiting operating conditions of the boiler; 2) Should a boiler manufacturer be found to guarantee the 100 ppm emission limit, it is expected that the additional fee charged by the manufacturer would be astronomical; 3) The States of Texas (at 31 TAC 117.105(j)) and California (at State Rule 1146(c)) set limits of 400 ppm CO for utility boilers. New Jersey should review the technical basis for adopting this limit in both states. (1) (36) (37) (21) (18) (19)

One commenter also suggested that a clause be added that allows a case-by-case exemption of the 100 ppm CO limit for existing boilers that have undergone costly FGR retrofits and cannot meet the proposed CO limits. The commenter believes this type of exemption is in line with the waivers contained in the proposed rule for enhanced inspection and maintenance. (1)

RESPONSE: Vendors for new boilers frequently are reluctant to commit to low CO limits as new sources must meet a stricter NO_x standard than NO_x RACT (must meet BACT—Best Achievable Control Technology) which greatly increases CO limits. The Department recognizes that not all boilers covered by the VOC RACT rule will be able to comply with the CO emissions limits proposed. However, given the NO_x RACT limits, most of the boilers in the State should be able to comply with those limits. For the few boilers that can not comply with the proposed emission limits, the case-by-case provisions of the rule allow for the establishment of an alternative maximum allowable emission limit. This case-by-case review is available to all sources regulated by the VOC RACT rule and will allow for sources which have already installed expensive controls and are not able to comply with the proposed CO emission limits to comply with a more reasonable set of emission limitations.

133. COMMENT: Regarding the annual adjustment requirements in N.J.A.C. 7:27-16.8(b) and (c), the commenter notes that NO_x RACT only requires annual adjustment for boilers less than 50 million BTU/hour and greater than 20 million BTU/hour. DEPE should be consistent with the NO_x RACT requirements. Only in the event that the boiler is close to exceeding the regulated concentration ppmvd of CO should an annual adjustment be required. It is costly enough to complete the required controls necessary to meet the 50 ppmvd standard that no additional adjustment be necessary. (36)

RESPONSE: The Department included the provision that all boilers subject to the VOC RACT rules perform the annual tune-up as an energy conservation and emission control strategy. After proposal of the NO_x RACT rules, the Department determined that all boilers subject to either rule should be required to perform the annual adjustments for several reasons. First, and foremost, the performance of the annual adjustment will increase the fuel efficiency of the boiler, and should be performed annually even without the requirement for such in the rule. The cost of the tuneups will, in most cases, be offset by the fuel savings achieved by the tuneup. Furthermore, the adjustment will also reduce the emissions of all contaminants from the boiler by ensuring that the boiler is being operated under optimum conditions. The Department, therefore, has determined to require that all regulated boilers be tuned annually.

134. COMMENT: The commenter believes that the May 1, 1994 start date for adjusting combustion processes in N.J.A.C. 7:27-16.8(b)2 and 16.9(f) is unrealistic. Moreover, this rule, when finalized, will not become effective until 1994 at the earliest, which leaves utilities only four months to schedule such adjustments. Further, as stated in N.J.A.C. 7:27-19.16, one of the requirements of this provision is to "minimize total emissions of NO_x and CO." Thus, the Company recommends delaying the timing of combustion adjustment to correspond with the May 31, 1995 NO_x and VOC RACT compliance deadline imposed by the CAAA, with

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subsequent annual adjustments prior to May 31st of each year after 1995. Such delay will synchronize the boiler adjustments with the installation or implementation of NO_x and VOC control devices or programs. (28)

RESPONSE: The Clean Air Act Amendment require that RACT controls be implemented "as expeditiously as practicable, but in no case later than May 31, 1995". The Department determined that implementing the combustion adjustment procedures is practicable before May 31, 1995 and that they should be performed starting in 1994. While the VOC RACT rules will not become effective until after May 31, 1994, the NO_x rules became effective on January 23, 1994 and require the tune-ups as well. Thus, although the Department is revising this rule so that it does not require tuneups until May 31, 1995, the practical effect of the two RACT rules will be that the regulated combustion processes will have to be adjusted by May 31, 1994 in accordance to the provisions of the NO_x RACT rules at N.J.A.C. 7:27-19.

135. COMMENT: With respect to N.J.A.C. 7:27-16.8(c)1, if the Department insists on retaining CO emission limits for boilers, the word "at" should be inserted between "ppmvd" and "seven". (2)

RESPONSE: The Department thanks the commenter for pointing out this editorial oversight.

136. COMMENT: These commenters are opposed to the requirement in N.J.A.C. 7:27-16.8(g) requiring a Continuous Emissions Monitoring System (CEMS) for CO. (2) (28)

One commenter noted that CEMS equipment is not only expensive from the standpoint of initial installation, but operation and maintenance of CEMS is cost and labor intensive. The commenter owns and operates several combustion turbines at remote, unmanned locations. Installation of CEMS at these locations will necessitate extensive additional resources (that is, manpower, equipment, time) for the care of these systems. Considering that these are remote locations which typically operate less than 200 hours per year, the requirement is very burdensome. The commenter suggests requiring nothing more stringent than stack tests to be conducted at the time of permit renewal (every five years) for these locations. Given the rigorous maintenance on these units and the minimal number of hours of operation, emissions are not expected to degraded the environment. (28)

Another commenter noted that utility boilers are not required to install CEMS for CO pursuant to EPA's Acid Rain CEM Rules (40 CFR 75), and believes that utility boilers should be allowed to verify compliance through representative stack testing. Periodic, representative testing provides an accurate, reliable, and cost-effective method for determining compliance that preserves the operating flexibility upon which the RACT rules are intended to be based. The commenter has estimated the installation and maintenance costs for CEMS for CO on their low capacity factor utility boilers based on the 1990 emission inventory submitted to the Department. CO monitoring costs ranged from $4,418 per ton to $69,500 per ton. These costs are clearly unreasonable simply to obtain CO emission information, especially on stationary units which are acknowledged to be a small contributors to any CO problem. Further, it must be emphasized that these CEM costs would be incurred without any reduction in CO emissions. At a minimum, the Department should exempt utility boilers that qualify to use an alternative to NO_x CEMS under Appendix E of 40 CFR 75 because they are gas-fired or oil-fired peaking units. The commenter recommends that the Department use these same fuel and capacity factor criteria in providing an exemption for peaking units. (2)

The commenter believes that the significance of emissions from low-capacity factor units is in question, especially when the costs and effort involved in installing and maintaining CEMS are considered. The commenter believes the high maintenance needs of CEMS mean that more emphasis and efforts are being directed towards measuring units rather than the sources that are causing the emissions. It is in everyone's interest to focus attention on boiler operations, not CEMS operations. An alternative method was presented to DEPE that is similar to a method that has been accepted by EPA with regard to acid rain monitoring of NO_x emissions. The method involved monitoring other operating parameters such as exit temperature and oxygen, incorporating information on boiler operation, and understanding how emissions related to those parameters. The resulting emissions estimate was a very conservative estimate. DEPE's response to this method was that they were more interested in accurate, not conservative estimates, due to potential enforcement problems. While the commenter understands that enforcement may be an issue where the unit involved is operating close to the limits of the other parameters set by the Department, they also believe it is certainly possible that there would be sources well within the limits that would not require further action. For those sources that are near established limits, two options could be provided: more controls could be added to bring levels down to a comfortable level or more continuous monitoring equipment can be installed. The commenter also noted that they are looking at the Federal criteria for providing flexibility with respect to alternatives to CEMS on low-capacity units. The commenter noted that EPA requires the alternative to provide a good indication of emissions, but is not sure whether a measure that is very conservative, albeit not as accurate, would be acceptable. (7)

RESPONSE: The purpose behind including the requirement for continuous monitoring of CO emissions was not for the purposes of attainment with the National Ambient Air Quality Standard for CO, but as a surrogate for requiring continuous emissions monitors for VOC. With the ongoing reductions in the VOC emissions from other types of sources in the State, the emissions from boilers has become a significant category of ozone season VOC emissions. Rather than requiring more expensive monitoring for VOCs, the Department believes that the monitoring for CO as a surrogate will both ensure compliance with the VOC RACT rule and provide valuable data as to the actual emissions of VOC from these sources on a continuous basis. Recognizing the costs for installation and upkeep of these monitoring systems, the Department has incorporated provisions into this rule, by reference to the NO_x RACT rule N.J.A.C. 7:27-19, allowing for alternatives to continuous emissions monitors. These alternatives include representative monitoring of one unit at a site as being representative of all units at the site as well as parametric (including temperature and oxygen) monitoring.

137. COMMENT: The Department should not require generating units, either boilers or combustion turbines, that are scheduled for retirement prior to May 15, 1999, to install CEMS. If these units are not going to be subject to the RACT emissions levels, stack testing should provide the Department with the assurance that these units are complying with the emissions levels in their permit and certificate to operate. (28)

RESPONSE: The Department does not encourage the retiring of units to comply with RACT. If a unit is to be retired, an owner or operator may submit a facility-specific RACT determination pursuant to N.J.A.C. 7:27-19.13 for NO_x or pursuant to N.J.A.C. 7:27-16.17 for VOCs. Interim CO limits should be specified as part of the plan submitted.

138. COMMENT: N.J.A.C. 7:27-16.8(g) requires the owner of any utility boiler to install a CEMS for CO whereas N.J.A.C. 7:27-16.8(h) only requires CO CEMS for non-utility boilers with a heat input of 200 million BTU/hour. Because the definition of "utility boiler" means any steam-generating unit, from which all or some of the steam is used for generating electricity, some industrial boilers that are connected to steam turbines would be required to install CEMS even if their heat input is less than 200 million BTU/hour. The industrial boilers that would be considered "utility boilers" would have the same potential to emit as a "non-utility boiler," regardless of whether it was connected to a steam turbine. Because the costs of installing and maintaining CEMS can be costly, many small industrial boilers may abandon their steam turbine, which is an efficient way to generate electricity with excess steam. The commenter suggests that DEPE adopt the 200 million BTU/hour heat input requirement for CO CEMS regardless of whether the unit is a utility or non-utility boiler. (36)

RESPONSE: The Department agrees with the essence of this comment. The definition of utility boiler in the NO_x RACT rules, N.J.A.C. 7:27-19, which definition is expressly incorporated into the rules, has been changed such that industrial boilers used to generate electricity will not be considered "utility boilers," and therefore will not require the installation of a CEMS for CO (see 25 N.J.R. 5957, 5988).

139. COMMENT: With regard to N.J.A.C. 7:27-16.8(h) which exempts certain small sources from the requirement to install CEMS, the commenter does not understand why utility boilers would require CEMS when the non-utility boilers would not. (7)

RESPONSE: The difference in the requirement for installing CEMS on utility boilers and industrial boilers is based on the way that these units are typically operated. For instance, a 250 MMBTU industrial boiler would typically be used to provide heat and process steam for the facility, and would typically have a peak usage during the winter months, when the weather is cold and the possibility of ozone formation is low. However, a similar size utility boiler would typically be used solely as a peaking unit. This boiler would only operate of the days when electricity demand is high, typically during the hottest days of the summer when the possibility of ozone formation is high. Therefore, more accurate

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emission information is required of the utility boiler to ensure that it is complying with the emission levels in the rule during the most critical time of the year.

140. COMMENT: In regard to N.J.A.C. 7:27-16.8(i) through (k), 16.9(g) through (i), 16.10(f) through (h), and 16.11(f) through (h), these commenters note that these subsections contain language regarding the use of emission measurement methods "approved in advance" by the Department and EPA. This same language appears in other sections. The language should be revised everywhere it occurs to that used in other chapters, acceptable to the Department. There is no need to have advance approval by both DEPE and EPA for any test protocol. Duplicate reviews of test protocols add needless delay and expense to the process and are not in the best interests of the Government or the regulated community. (32) (34)

One commenter also stated that this language sets both a new standard for approval of test protocols and a new procedure for approval. (34)

RESPONSE: The Department agrees, in part, with the commenter and has changed the rule language to require that the measurement method is "approved in advance by the Department and acceptable to the EPA." With this change, the rule will be consistent with the requirements of other similar rules.

N.J.A.C. 7:27-16.9 Stationary gas turbines

141. COMMENT: Some stationary gas turbine configurations contain duct burners (see definition in 40 CFR Part 60.41c) after the gas turbine. Since it is extremely difficult or impossible to perform separate stack tests on these units, they should be treated as one unit and the emission limitations contained in N.J.A.C. 7:27-16.9 should apply to both. (26)

RESPONSE: The Department agrees with this comment. The emission limitations in N.J.A.C. 7:27-16.9 would apply to the combined emissions from both the turbine and the duct burner.

142. COMMENT: This commenter believes Title V regulation of the portable turbines through a Statewide permit provides for effective regulatory planning and implementation. Alternatively, the commenter recommends that trailer-mounted portable gas turbines utilized for emergency replacement (compression) or recovery of natural gas during pipeline blowdown events be exempted from regulations under this subchapter. Recognizing that trailer-mounted turbines have extremely limited hours of operation, the commenter believes that unless operated at a facility designated as major, the turbine, by itself, would not constitute a major source and is therefore not subject to RACT requirements. Trailer-mounted sources are usually intended for portable use as emergency replacements to ensure limited interruption of customer service in New Jersey and adjacent states. Occasionally, such a turbine is used for maintenance and operated only a few hours or days. A typical portable turbine is less than 4500 horsepower, and if operated for 45 days continuously, emissions would not exceed 15 tons of NO_x and one ton of VOC. In addition, typically the trailer-mounted turbine may be on stand-by status in a 10-state area, and maintaining a unit capable of meeting the diverse and changing rules of each state would be impossible. Not all turbines are capable of retrofit with controls, and even if controls are feasible for a stationary application, they may be inappropriate for a portable application due to cost, safety, and reliability factors. The benefits associated with including portable gas turbines as part of the definition of stationary turbines are negligible due to the limited and infrequent use of such engines. Conversely, the costs associated with imposing the requirements set forth in the proposed regulation are significant, in terms of potential interruption of service to end users and the practicability of employing the requirements set forth in the rulemaking. In some instances, obsolescence of valuable equipment may result. The Department did not acknowledge or consider these factors in the Economic Impact evaluation, nor the negative social impact due to potential interruption of service. Finally, environmental impacts resulting from such an exemption are not anticipated to be significant. (23)

The definition of "stationary gas turbine" under N.J.A.C. 7:27-16.1 may result in significant cost added, and in some instances, obsolescence of valuable equipment. The Department did not acknowledge or consider these factors in its Economic Impact. The proposed regulation of trailer mounted turbines may also have a negative social impact due to the potential for interruption in gas supplies to residential and industrial end users. Exclusion of trailer mounted turbine is not anticipated to have a significant environmental impact due to the typically low emission rate of turbine and the limited hours of operation. (23)

The definition of "stationary gas turbine" under N.J.A.C. 7:27-16.1 is too broad and fails to recognize other uses such as emergency compression or recovery of gas during pipeline blowdown, when the emission of VOCs will be *de minimis*. (12)

If these uses were evaluated on the basis of potential to emit, the turbines could be considered major sources. To ensure that such turbine use does not fall under these proposed rules, it is recommended that the definition exempt emergency replacement (compression) or recovery of natural gas during blowdown events. It is also recommended that the definition exclude gas turbines mounted on trailers that are used less than 45 days per year at any location. The recommendation is based upon consideration of EPA requirements, operation requirements, feasibility, flexibility, and of social, economic, and environmental impacts. (23)

RESPONSE: As stated in N.J.A.C. 7:27-16.9(a), only gas turbines which are subject to the provisions of N.J.A.C. 7:27-19 (NO_x RACT rules) are subject to the VOC RACT requirements (these rules). N.J.A.C. 7:27-19.2(c) provides an exemption for any emergency generator which is subject to a Federally enforceable limitation or condition restricting its hours of operations to less than 500 hours during any consecutive 12 month period, and which does not have the potential to emit at least 25 tons of NO_x per year. Thus, portable gas turbines operating less than 500 hours per year may be exempted from the CO/VOC emission limits. Other portable gas turbines would not be exempt from the CO/VOC limits, but may obtain alternative limits under N.J.A.C. 7:27-16.17, Facility specific VOC requirements. The Department intends to re-propose the CO limits for stationary gas turbines at 250 ppmvd at 15 percent oxygen.

The Department has decided not to exempt non-emergency turbines since many of these are used as "peaking units" during the summer months, the most critical period for ozone formation.

143. COMMENT: These commenters suggest that the Department provide an exemption for stationary combustion turbines which operate below a given threshold. (2) (28)

One commenter noted that several of their stationary combustion turbines often operate for less than 200 hours per year. Given this level of run time, control for NO_x, VOC and/or possibly CO emissions becomes extremely expensive on a cost per ton removed. Requiring control for these seldom operated units will place New Jersey industry at an unfair disadvantage. (28)

Another commenter supports an exemption for stationary gas turbines that operate for less than 200 hours per year, consistent with their comments on the NO_x RACT rule. To accommodate this exemption, the following statement should be added to this section: "Notwithstanding the provisions of (b) and (c) above, any stationary gas turbine which is subject to a Federally enforceable limitation or condition restricting its operations to 200 hours during any consecutive twelve (12) month period, and which does not have the potential to emit 25 tons of VOC per year during its annual period of operations, is not subject to this subchapter." To ensure that the environment continues to be protected and that this exemption applies only to stationary gas turbines with *de minimis* emissions, the commenter recommends that the exemption be permanently withdrawn if a peaking unit exceeds the 200 hour per year limit. For example, if such a unit exceeds the 200 hour limit in any year, it would be required to install RACT during the following year and would thereafter be subject to the requirement of this subchapter regardless of its hours of operation. The commenter would appreciate the opportunity to work with the Department in developing this language. (2)

RESPONSE: As set forth in response to Comment 142, the Department does allow an exemption for certain emergency generators that are limited to less than 500 hours of use. As to non-emergency turbines, the Department considered including such an exemption in both subchapter 19 and subchapter 16. However, due to the way in which these sources are used, the Department decided not to include such a provision. While these sources may only operate for 200 hours per year, most, if not all, of those operating hours occur at the worst possible time in respect to ozone air pollution. Most of the units for which the commenter is requesting the exemption are only operated on days when electric demand is high. These days tend to be the hottest of the year, and the days when the possibility of an ozone exceedance is at a maximum. Therefore, the Department felt that exempting these sources, even though they are not operated continuously, would have such an adverse impact on the environment as to outweigh the cost of installing RACT.

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144. COMMENT: This commenter notes that compliance with the 100 ppm CO limit would require the installation of oxidation catalysts on approximately 1,460 megawatts of natural gas-fired gas turbine capacity. These catalysts and associated stack modifications required for installation would cost the commenter approximately $40 million, or approximately $4 million for an 8 engine unit. The estimated annualized costs for installing the catalysts ranges from approximately $13,000 per ton to approximately $240,000 per ton. These potential expenditures are well beyond what would be considered "reasonable," and are clearly inconsistent with the Department's intent expressed in the proposal that "the Department does not expect that compliance with the proposed new VOC rules will require the owners or operators of these sources (boilers, stationary gas turbines, and stationary internal combustion engines) to incur significant costs beyond what is required under the proposed NO_x rules." The proposal also states that compliance with the CO limits "can be achieved without the installation of any additional control technology." These statements are based on the assumption stated in the proposal that "improvements in operation and maintenance methods required in the propose NO_x rules . . . should be sufficient to enable the combustion sources to attain compliance with the emission limits in the proposed new VOC rules." This is simply not the case for gas turbines firing natural gas, or, under certain operating scenarios (for example, minimum load), for gas turbines firing oil.

In addition to the costs involved, the commenter notes that the proposed CO limit is contrary to the Department's intent as stated in the Preamble and from information presented at a workshop, to not seek reductions in CO or VOC emission from utility combustion sources, and to not claim any VOC reductions from stationary gas turbines to meet the CAAA mandate of 15 percent VOC reduction by 1996. The proposed rule forces reductions in baseline CO emissions at unreasonable costs with little or no environmental benefit, and may actually result in increased levels of NO_x by forcing the use of oil rather than natural gas, based on results of testing performed by the commenter. The test data indicate that the commenter can reduce NO_x emissions from stationary gas turbines by approximately 50 percent without any significant increase in CO emissions. Therefore, the commenter's preliminary strategy for NO_x RACT compliance calls for NO_x emissions averaging between boilers and stationary gas turbines, with NO_x reductions of approximately 50 percent on selected turbines. This strategy will allow the commenter to meet both the requirements of the proposed NO_x RACT rule and the proposed 50 ppm VOC limit, while also not increasing CO above its present levels. This strategy is consistent with the Department's intent to avoid negative CO and VOC impacts resulting from compliance with NO_x RACT.

Finally, the commenter notes that the Department also supported its decision to establish a 100 ppm CO limit by indicating that "tests conducted by Public Service Electric & Gas at its Edison Generating Station showed that its approach to compliance with the NO_x rules would not raise VOC or CO above the limits." The commenter is concerned that the Department has misinterpreted the test data, which they believe clearly show that baseline CO emissions for gas turbines at base load firing natural gas are approximately 130 to 150 ppmvd at 15 percent oxygen, not 100 ppmvd. Based on this data, the commenter would be required to reduce emissions by a minimum of 23 percent on all gas turbines firing natural gas in order to comply with the proposed rule. The commenter also submitted additional test results verifying that a large number of their gas turbines cannot presently meet the proposed 100 ppm CO limit. The commenter believes that the Department did not intend to require that the commenter install CO catalysts on their stationary gas turbines (which comprises the largest fleet in the State) and welcomes the opportunity to review their data with the Department in order to provide a fuller understanding of the interaction of NO_x, CO, and VOC emissions for stationary gas turbines. (2)

RESPONSE: The Department has reviewed the data submitted by the commenters and agrees with the commenters. Accordingly, the Department has reserved the relevent subsection and will propose an amendment to the rule establishing CO emission limit of 250 ppmvd at 15 percent oxygen to address the commenter's concerns. It expects to adopt that amendment well before the compliance date of May 31, 1995.

145. COMMENT: CEMS for utility boilers were required by the CAAA. However, the CAAA did not specifically require that CEMS be installed on combustion turbine sources; therefore, DEPE should have complete latitude with regard to this portion of the proposed rules. If DEPE insists on requiring CEMS for stationary combustion turbines, the commenter suggests that the applicable requirements be only as stringent as 40 CFR Part 60, in as much as quality assurance and quality control procedures are concerned. (28)

RESPONSE: The rule does not require CEMS for gas turbines; it instead provides only that turbines may use CEMs to conduct emissions tests for CO. The Department agrees with the commenter that the applicable requirements for CEMS should only be as stringent as the Federal requirements at 40 CFR part 60. N.J.A.C. 7:27-16.9(h) and (i) specifically reference 40 CFR Part 60 as the requirements which CEMs must meet in order for it to be acceptable.

146. COMMENT: These commenters oppose the adjustment requirement contained in N.J.A.C. 7:27-16.9(f). (2) (28)

One commenter noted that there are little, if any, adjustments that can be made with respect to stationary turbines. The rule should be modified to reflect preventative maintenance which is performed for the purpose of promoting complete, efficient combustion. Such preventative maintenance could be part of the compliance plan for each respective unit, and would include activities such as evaluating engine condition, replacing wear parts, and evaluating controls. (28)

Another commenter noted that the proposed procedures are not appropriate, or indeed possible, for stationary gas turbines or stationary internal engines. This commenter requests that the Department develop separate procedures appropriate for these turbines and engines. (2)

RESPONSE: The Department agrees with the essence of these comments, and it intends to propose a revision to N.J.A.C. 7:27-19.16, the referenced provisions for adjustment of combustion sources, in order to address preventive maintenance for gas turbines and internal combustion engines.

N.J.A.C. 7:27-16.10 Stationary internal combustion engines

147. COMMENT: The commenter proposes that DEPE include language that would allow Departmental discretion in the application of the regulation, that is, to weigh the environmental costs/benefits of minor VOC increases resulting from engine adjustments made for the purpose of significantly reducing NO_x emissions. The commenter believes all such decisions should be evaluated on a case-by-case basis. (24)

RESPONSE: The Department agrees with the commenter to a degree. Pursuant to N.J.A.C. 7:27-16.17, any source regulated under subchapter 16 may apply for a case-by-case determination for an alternative emission limit or compliance procedure. However, the commenter should recognize that, according to Federal law, all case-by-case determinations must become part of the State Implementation Plan (SIP), and therefore require an amendment to the SIP, which includes a required public hearing. Because of the burdens this process imposes on the applicant and the Department, the Department determined to set generic RACT requirements for most sources, which could be implemented without case-by-case SIP actions. The Department prefers that any source capable of complying with the emission limits in the rule in a reasonable and cost effective manner do so.

148. COMMENT: Concerning N.J.A.C. 7:27-16.10(b), these commenters object to the proposed CO emission limit. Both commenters stated that their review of the CO emission information in EPA's NO_x Alternative Control Techniques (ACT) document does not support DEPE's assertion that the 100 ppmvd CO level is attainable for every type of internal combustion engine. (24) (25)

One commenter noted that the ACT shows CO levels can be nearly five times as high as the proposed limit. Based on the commenter's own testing, use of a 100 ppmvd limit for CO may unfairly penalize certain models of internal combustion engines, making it impossible to use engine adjustments to achieve beneficial NO_x reductions. The commenter recommends adding language that gives the owner or operator the option of providing an empirically-derived correlation curve, substantiated by actual stack emissions data, as an alternative to the proposed CO limit. (24)

A second commenter noted that N.J.A.C. 7:27-16.10(b) conflicts with N.J.A.C. 7:27-19. Attempting to achieve the low NO_x emissions levels required by the NO_x RACT regulation will cause CO emissions to inevitably rise, or in the best case scenario, stay constant. The data that is referenced throughout the ACT document relied upon by DEPE, do not support the proposal statement "That data indicates if NO_x control techniques are properly employed, there will be no significant additional cost to prevent CO emissions from exceeding 100 ppmvd." In most cases, the CO levels reported in the ACT exceed 250 ppmvd, and quite often, 3,000 ppmv. Therefore, the commenter recommends that DEPE review this issue and raise the proposed CO emission limit for internal combustion engines to 1,000 ppmvd at 15 percent oxygen. (25)

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RESPONSE: The Department agrees with the commenter and intends to propose a CO emission limit of 500 ppmvd at 15 percent oxygen as a revision to N.J.A.C. 7:27-16.10, prior to May 31, 1995, based on EPA's NO_x RACT document.

149. COMMENT: In N.J.A.C. 7:27-16.10, the Department proposed a CO emission limit for stationary internal combustion engines, but did not impose a VOC limit. N.J.A.C.7:27-16.10(f) refers to conducting emission tests for VOC in accordance with New Jersey Air Test Method 3. This reference seems inappropriate considering that the Department has not proposed a VOC emission limit, and therefore, this subsection should be removed. (2)

RESPONSE: The Department agrees with the commenter and has changed the language to refer to Reference Method Ten (10) found in 40 CFR Part 60-Appendix A. The Department did not intend to impose a VOC limit or require testing for VOCs in connection with these engines.

N.J.A.C. 7:27-16.13 Flares

150. COMMENT: This commenter suggests modifying N.J.A.C. 7:27-16.16(a)12 to read: "Flares as defined by N.J.A.C. 7:27-16.1 and equipment designed as emergency devices to combust gases generated from scheduled start-up or shutdown, process upsets or emergency events from petroleum refining processes." (20)

These commenters stated emergency flares should be exempt from the proposed rule because their primary purpose is to act as safety devices. (5) (6) (33)

Two commenters stated that emergency flares are primarily used during refinery unit startups, shutdowns, and emergency events. These are necessary equipment in petroleum refining operations to prevent the over-pressurizing of equipment. They provide the only safe means for disposing of gases resulting from emergency and startup and shutdown situations. The objective should be to reduce VOC emissions to the atmosphere. This is done by operating with a flame present at all times when it is on-line. The Department is urged to be practical. There are significant environmental and economic incentives not to release process gases to the flare. Logic holds that the regulated community will work to minimize losses to the flare. (5) (6)

A third commenter stated that devices have been installed at refineries to safely manage non-routine safety releases of hydrocarbons. These devices are as necessary as safety relief devices on pressurized process vessels, which are exempted from regulation. Flares are a continuation of pressure relief facilities, and should also be exempted from regulation. (33)

RESPONSE: The Department does not feel the modification is necessary. The requirements for flares are minimal. They are designed to require that flares are operating in conformance with manufacturers specifications. The commenter's have failed to identify any burdens that compliance with this rule's flare requirements would place on their business. The Department does not consider startups or shutdowns "emergencies." They are normal process operations.

151. COMMENT: Flares have been installed at refineries to safely manage non- routine safety releases of hydrocarbons. They are as necessary as safety relief devices on pressurized process vessels, which are exempted from regulation. Flares are a continuation of pressure relief facilities and as such should also be exempted from regulation. (33)

RESPONSE: A flare used as a control measure is required to comply with the rule. This includes flares at refineries used to control the emissions from routine venting of vessels, as well as non-routine releases. The Department feels the requirements concerning flares are minimal and warranted since flares can be significant sources of VOC. The Department is unaware of any evidence suggesting that compliance with the present rule would in anyway interfere with the ability of a flare to perform its usual function.

152. COMMENT: Under N.J.A.C. 7:27-16.13, EPA suggests that this section should also require that facilities operate flares in accordance with 40 CFR Part 60.18(b)-(f). This will provide some check on the manufacturer's specifications. (26)

RESPONSE: The Department respects the commenter's position. However, upon reviewing the New Source Performance Standards (NSPS) regulations at 40 CFR 60.18, the Department has determined that the provisions of that rule, while appropriate for new sources, are overly burdensome for existing sources which are not already regulated by NSPS. The Department believes that the requirement to operate the flare in accordance with the manufacturer's instructions represents RACT for these sources.

153. COMMENT: These commenters are concerned that N.J.A.C. 7:27-16.13 makes no provision for emergency devices. (5) (6) (2)

The distinction between two types of flares, process flares and emergency flares, is not recognized under this section. (20)

Emergency flares should be exempt from the regulation because they are intermittently used in safety/emergency operations and for unit start-ups and shutdown only. Controlling emergency flares, which intermittently operate, does not represent a meaningful reduction on VOCs. (20) (5) (6)

There are significant environmental and economic incentives not to release process gases to a flare. (5) (6)

The Department should remove this entire section. If the Department chooses not to delete this section, several commenters recommend revising the wording to read:

"(a) Any flare (as defined at N.J.A.C. 7:27-16.1 excluding emergency devices) used at a major VOC facility after May 31, 1995, shall: ...

(b) The owner or operator of an existing flare (as defined at N.J.A.C. 7:27-16.1 excluding emergency devices) subject to this section shall submit in writing ... Such submittal shall be certified by the highest ranking official on site with responsibility for operation of the flare....

(c) The owner or operator of a flare (as defined at N.J.A.C. 7:27-16.1 excluding emergency devices) subject to this section shall maintain a preventive maintenance program to periodically take flares out of service for turnaround maintenance activities. The owner or operator of the flare shall record the dates of the turnarounds in a permanently bound book." (5) (6)

Another commenter suggests that N.J.A.C. 7:27-16.13(a) should be modified to read: "Any flare in the use at a major VOC facility after May 31, 1995 as defined by N.J.A.C. 7:27-16.1, specifically excluding equipment designed as emergency devices to combust gases generated from scheduled start-up or shutdown, process upsets or emergency events from petroleum refining processes, shall:" (20)

RESPONSE: A flare used to control the emissions from a routine process, such as the venting of a reactor, should be covered by the regulation, as the owner or operator of the source has chosen to use the flare as a control device for the reactor. The Department does not consider scheduled startups and shutdowns as "emergencies." Based upon its experience, the Department believes the requirements for flares (95 percent control of VOC from the source operation and flare operation in a manner consistent with manufacturer's specifications) specified are RACT for both routine and emergency use of flares.

154. COMMENT: If the definition of a flare is not changed in N.J.A.C. 7:27-16.1, N.J.A.C. 7:27-16.13(a) should be modified to read: "Any flare installed at a major VOC facility after the effective operative date of these rules, shall: ..." (20)

N.J.A.C. 7:27-16.13(b) does no more than create a paper trail without achieving any environmental benefits. Such a paper trail may be impossible for older flare units for which detailed information may not be available. The data requested at N.J.A.C. 7:27-16.13(b) should be deleted, or at the very minimum, be required only for new installations as part of permit applications. Those flares installed prior to rule promulgation should receive a grandfather status. (5) (6)

RESPONSE: The Department disagrees. Based upon the information identified in the proposal, the Department has determined that the requirements at N.J.A.C. 7:27-16.13 are reasonably achievable even if they must be achieved through retrofit. RACT has consistently been applied to both new and existing sources. Thus both old and new flares must comply with N.J.A.C. 7:27-16.13.

155. COMMENT: The requirement under N.J.A.C. 7:27-16.13(b) for a principal executive officer of at least the level of vice president is not logical. Should the Department require certification in new flare installations, this should be obtained from the highest ranking official on the facility's site who has the responsibility for the unit's operation. No references should be made to N.J.A.C. 7:27-8.24. (5) (6)

RESPONSE: Among other things, the certification requirements at N.J.A.C. 7:27-8.24 ensure accountability and enforceability. Accordingly, the requirement that the flare information be certified in accordance with that regulation have been adopted as proposed.

156. COMMENT: N.J.A.C. 7:27-16.13(c) requires additional clarification. It is assumed that the Department's intent is not to attempt to inspect flares while they are in service which would pose a serious safety hazard. It is more prudent and technologically feasible to maintain a preventive maintenance program where flares are periodically taken

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off-stream for turnaround maintenance activities. Each facility should develop their own maintenance program to correspond with that facility's turnaround schedule. (5) (6)

RESPONSE: Each flare must be inspected between January 1 and May 1 each year to verify that it is operating in accordance with the manufacturer's specifications. This can be done during periodic maintenance activities when the flare is taken off-stream. The Department does not intend that flares be inspected while they are in service.

N.J.A.C. 7:27-16.16 Other source operations

157. COMMENT: With regard to N.J.A.C. 7:27-16.16, the commenters request clarification concerning when a major facility's source operation falls under this section and when it would fall under N.J.A.C. 7:27-16.17. The commenters' understanding is that operations currently regulated under N.J.A.C. 7:27-16.6 will continue to be regulated under N.J.A.C. 7:27-16.16. (34) (32)

RESPONSE: Yes, operations currently regulated under N.J.A.C. 7:27-16.6 will continue to be regulated under N.J.A.C. 7:27-16.16, even if the source operation is at a major VOC facility. Source operations which fall under N.J.A.C. 7:27-16.16 include those source operations that are not listed at N.J.A.C. 7:27-16.16(a)1 through 19. For example, emissions from manufacturing process vents, bakery ovens and sterilization units are regulated under N.J.A.C. 7:27-16.16.

Source operations would fall under N.J.A.C. 7:27-16.17 in the following two situations. First, if a source operation is located at a major facility (a facility which has the potential to emit 25 tons of VOC per year) and the source operation in question has a potential to emit three pounds of VOC per hour and the source operation is not covered in any other section of subchapter 16. This requirement is designed to regulate those few source operations for which specific requirements are not provided. An example would be an obscure surface coating operation that does not fit into any of the categories established in N.J.A.C. 7:27-16.7. Second, an owner or operator of a facility may wish to submit an alterative control plan for a source operation.

158. COMMENT: With regard to N.J.A.C. 7:27-16.16, this section seems to refer to VOC when it should probably refer to "applicable VOC." (22)

RESPONSE: It is more appropriate to use the term VOC in N.J.A.C. 7:27-16.16 than the term "applicable VOC." The term "applicable VOC (which means any VOC which has a vapor pressure or sum of partial pressures of 0.02 pounds per square inch (1.0 millimeters of mercury) absolute or greater at standard conditions)" is used in sections of subchapter 16 for source operations with construction standards (such as a conservation vent on a storage tank) where the vapor pressure of the contents is important to determine applicability. The term "VOC" is generally used in provisions of N.J.A.C. 7:27-16 (such as manufacturing processes regulated under N.J.A.C.7:27-16.16) for source operations that are tested and, therefore, the test method defines what is VOC, rather than the vapor pressure.

159. COMMENT: These commenters suggest modifying N.J.A.C. 7:27-16.16(a)18 to read: "Any source operation regulated pursuant to N.J.A.C. 7:27-16.17(a)2; and . . ." The current wording of both N.J.A.C. 7:27-16.16 and 16.17 contain confusing language with regard to which section may be applicable to a particular source. It appears that the exemption from N.J.A.C. 7:27-16.16 should apply to those sources which "opt in" to the provisions of N.J.A.C. 7:27-16.17. (21) (1) (19) (36) (37) (18) (29)

RESPONSE: Proposed N.J.A.C. 7:27-16.16(a)18 does provide that source operations which are "opted in" the facility specific RACT requirements of N.J.A.C. 7:27-16.17 are excluded from regulation under N.J.A.C. 7:27-16.16. In order to have such an alternative plan approved, the applicant must demonstrate that it would be beyond RACT to implement the presumptive RACT requirements specified in the applicable section of subchapter 16. VOC RACT plans pursuant to N.J.A.C. 7:27-16.17 are required for major sources at major facilities that are not specifically covered, specifically exempted, or specifically excluded from other provisions of N.J.A.C. 7:27-16. It appears likely that, in practice, facility-specific RACT plans would only be required for major sources consisting of: 1) surface coating and graphic arts operations not addressed by N.J.A.C. 7:27-16.7 and not exempted by N.J.A.C. 7:27-16.27, and 2) fiberglass manufacturing furnaces, glass manufacturing furnaces, fuel burning operations for steam generation or space heating, and sulfuric acid plant burners. However, there may be other types of major sources that are not otherwise specifically regulated exempted or excluded from N.J.A.C. 7:27-16 that would, therefore, also be subject to the provisions of N.J.A.C. 7:27-16.17.

N.J.A.C. 7:27-16.18 Leak detection and repair

160. COMMENT: The commenter supports the leak detection and repair (LDAR) work group comments. (33)

RESPONSE: The Department is aware that the LDAR workgroup comments represent the views of many interested parties in similar industries.

161. COMMENT: The RACT standards under the proposed definition of "applicable VOC" under N.J.A.C. 7:27-16.1 are more stringent than EPA MACT standards for hazardous air pollutants. These commenters want to be consistent with the EPA; there is no basis for the proposed standards to be more stringent than the EPA MACT standard. (1) (35)

The standard is also inconsistent with the 0.044 psi vapor pressure level set by the EPA for both Synthetic Organic Chemical Manufacturing Industry (SOCMI) New Source Performance Standards for equipment leaks and RCRA Treatment, Storage and Disposal Facility (TSDF) equipment leaks. Also, VOCs with such low vapor pressures will not develop vapor concentrations sufficient enough for existing monitoring instrumentation to detect them as "leaks." (35)

RESPONSE: The previously adopted rule (N.J.A.C. 7:27-16.6(d) through (l)) regulates VOC with vapor pressure of 0.02 psia or greater. The revisions adopted herein make no change in this vapor pressure cutoff point. The term "applicable VOC" was defined as any VOC with a vapor pressure of 0.02 psia or greater at standard conditions. The term "applicable VOC" is used throughout the rule to avoid repeating the definition throughout the text of the subchapter.

As in the previously adopted LDAR provisions of subchapter 16, the LDAR rules adopted herein regulate leaks of light liquids (0.044 psia vapor pressure) and gaseous leaks of applicable VOC (0.02 psia vapor pressure).

The LDAR rules are not more stringent than the LDAR standards in EPA's Hazardous Organic National Emission Standards for Hazardous Air Pollutants (HON). In consideration of this and other comments, the Department has modified N.J.A.C. 7:27-16.18(f)1iv, (f)1v, (h)1iii, (h)1iv, (i)1iii and (i)1iv to require visual inspection instead of monitoring non-moving components. Testing of components in heavy liquid service is not required. The LDAR rules do not require a Quality Improvement Program (QIP) like what is required in the HON. Also, monitoring and visual inspection frequencies are generally less stringent in subchapter 16 than in EPA's HON. Also, the times required to repair defined leaks are not more stringent than the times required in the HON.

162. COMMENT: The commenter supports comments made by another commenter at the hearing, in particular the need for reasonable production quantity exclusion for chemical plants and also the elimination of LDAR requirements for other components such as flanges and connectors. (3)

RESPONSE: These two issues have resulted in modified rule language in the adopted rule. The LDAR criteria for equipment at chemical plants is held in reserve so that the Department may repropose a production quantity criterion in its place (see the following comment and response). The requirement concerning the inspection of flanges and connectors has been differentiated into those components involving gases and those involving liquids. Flanges and connectors involved with liquids must only be visually inspected every six months, while those in contact with gases are not required to be inspected regularly, but only in the event of disruption. See the actual rule language modified in N.J.A.C. 7:27-16.18.

163. COMMENT: Existing regulations at N.J.A.C. 7:27-16.6(f), (g) and (h) require leak detection and repair (LDAR) programs for petroleum refineries, natural gas/gasoline processing plants and synthetic organic chemical industry (SOCMI) or polymer manufacturing facilities.

The Department proposed in N.J.A.C. 7:27-16.18(b)4 that equipment at a chemical plant, which is a major VOC facility, that is in contact with a substance that is ten per cent by weight or greater applicable VOC, and the component is in gaseous or light liquid VOC service more than 300 hours per year shall be subject to LDAR requirements. A number of commenters objected to this 300 hours per year threshold for applicability of chemical plants.

Two commenters expressed the need for establishing a level below which the cost of an LDAR program would be unreasonable. These commenters suggested that whether or not a facility is a major VOC facility has little bearing on the effectiveness of an LDAR program. The

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effectiveness of such a program is related more to the number of components in VOC service. These commenters suggested a threshold, based on the number of components in a system, below which an LDAR program would not be required. (32) (34)

Two commenters suggested that the threshold should be established in such a way that a small facility, or a discrete process unit, would be encouraged to eliminate components (for example, install welded pipe, sealless pumps, etc.) in order to get below the threshold. (32) (34)

One commenter recommended that the concentration proposed in N.J.A.C. 7:27-16-18(b)4 be increased from 10 percent to 20 percent for chemical plants, and retained at 10 percent for SOCMI and polymer plants as specified in the existing regulation at N.J.A.C. 7:27-16.6(h). (3)

One commenter expressed the belief that the logic of N.J.A.C. 7:27-16.18(b)4 in proposing a threshold of 300 hours of operation per year in determining chemical plant applicability is not consistent with N.J.A.C. 7:27-16:18(b)3, in which applicability of SOCMI and polymer plants has been previously established at 1,100 tons per year of production. This commenter asserted that LDAR requirements for other chemical plants should be the same as that already established for SOCMI plants, since operations are similar and both use the same type of equipment. This commenter reported that results of a study of processes at the large chemical manufacturing plant, with which he is associated, indicated that 12 of 13 continuous operations and one batch operation at this plant would be subject to LDAR, using the 1,100 tons per year production threshold. This commenter expressed the belief that the 1,100 tons per year exclusion level for other chemical plants would provide a reasonable RACT applicability criteria. (3)

This commenter stated that the applicability of leak detection and repair of N.J.A.C. 7:27-16.18(b)4 is stringent. For the batch industry, the cost of VOC reduction associated with conducting LDAR on short duration processes is excessive and not reasonable. (21)

Seven commenters specifically addressed applicability threshold for chemical plants and included suggestions for basing chemical plant applicability threshold on quantity of VOC used in the equipment instead of production quantity or hours of operation. These comments are summarized as follows:

- Separate standards for chemical plants and synthetic organic chemical manufacturing industry (SOCMI) plants are set. Many of the SOCMI industries also fall under the SIC code 28 designation for chemical plants. The double standard is unwarranted, and both the SIC 28 and SOCMI plants should be regulated on a consistent or at least a proportional basis.
- With regards to N.J.A.C. 7:27-16.18(b)4, the LDAR trigger of 300 hours of operation per year for chemical plants is beyond the principle of RACT. These commenters recommended the following alternate language be used:

(b) The provisions of this section shall apply only to equipment in contact with a substance that:

4. At any chemical plant, other than a synthetic organic chemical or polymer manufacturing facility, is ten percent by weight or greater applicable VOC, and the component is in gaseous or light liquid VOC service and the equipment is used either to produce greater that 1,100 tons/yr of chemical products, or the total applicable VOC usage in the equipment is greater than 1,100 tons/yr. Usage includes total annual VOC feed, VOC recycle (excluding reflux) and VOC generation for all processes used in the equipment.

They presented the following additional information in support of their position that the proposed applicability threshold for chemical plants is not appropriate:

The 300 hours per year in DEPE's proposal is most likely taken from the EPA's proposed HON equipment leak standard. None of the EPA RACT guidance publications reference 300 hours per year as a reasonable level for VOC LDAR. The HON rule is a Maximum Achievable Control Technology (MACT) standard and is not intended or suggested by EPA to be used as a RACT VOC guidance rule. The 300 hours per year trigger proposed for chemical plants equates to only 12.5 days of production in VOC service and is not reasonable considering that the total potential VOC emissions from equipment leaks from a process are proportional to the time in VOC service. The cost in dollars per ton of VOC reduction associated with conducting LDAR on short duration processes is astronomical and not in line with the $2,000-$10,000 per ton figures presented by DEPE as RACT.

In 1989, Hoffmann-La Roche instituted a voluntary program to identify and repair fugitive VOC emissions from equipment leaks. The actual cost and details of this program were previously shared with DEPE and EPA. For one pharmaceutical process, the actual costs for monitoring, tagging, recordkeeping, testing and repair of equipment leaks equated to $25,000 per ton of VOC reduction. The $25,000 per ton figure was for a continuous batch process that operated more than 8,000 hours per year with the costs for monitoring, recordkeeping and repair remaining and the actual annual fugitive emission reduced in proportion with the reduction of operation time, the LDAR cost at the 300 hours per year level would be over $600,000 per ton of VOC reduced. These costs certainly do not represent RACT. These astronomical costs can be confirmed by applying conservative published EPA fugitive emission factors to a hypothetical process operating in VOC service for only 300 hours per year.

Based on the fact that the 300 hours per year LDAR trigger is not reasonable, an alternate trigger for applicability of LDAR at "chemical plants" must be defined. After evaluating several SIC Code 28 "chemical plants" for an applicable production rate trigger, it became apparent that different types of chemical plants produce a wide variety of products at different ranges of annual production rates. The actual production rate should not be the sole indicator of the LDAR applicability for a chemical process. These commenters propose two trigger levels. The first trigger level would be based on the annual production rate for large dedicated processes. Large dedicated chemical processes in VOC service producing more than 1,100 tons per year of total products should be subject to LDAR because these plants generally will have the greatest potential for significant fugitive emissions (as do the SOCMI and polymer plants at this level). A second LDAR applicability trigger must be set to capture non-dedicated chemical processes, that is, batch and multi-product equipment trains that may have significant VOC emission but would be otherwise exempt from LDAR because production is less than 1,100 tons per year. This second trigger should be based on VOC usage rather than solely on production rates. VOC usage is an excellent indicator of the potential of a process to emit fugitive emissions. The precedent for using usage and production rates has already been set by EPA in the Benzene NESHAP LDAR rule. The term "usage" should apply to the total annual VOC introduced into an equipment train, including VOC generation and recycle, excluding reflux. Since many SOCMI plants are actually producing VOCs as a product, the SOCMI production rate trigger is comparable on an emission potential basis to a chemical plant's VOC usage. Setting the VOC usage trigger at 1,100 tons per year will serve to target those chemical process trains with significant fugitive emission potential and meet the intent of RACT.

Results of a survey show that every batch process, regardless of size, would be regulated under the 300 hours per year operation criterion. On the other hand, using the combined criteria of 1,100 ton per year production or 1,100 ton per year VOC usage rate, will affect only the larger batch processes contributing most of the fugitive emissions. (35) (1) (37) (36) (21) (19) (18)

RESPONSE: The Department has considered these comments and agrees that the proposed threshold of 300 hours operation per year is not an appropriate threshold for determining applicability of a RACT standard. While operation of 300 hours per year of very large processing equipment may be a reasonable control threshold, it would not be a reasonable control threshold for a small or moderate scale operation.

The Department also agrees with these commenters that the cost per ton of VOC reduction is highly variable from one plant to another and even between operations within the same plant. Since most of the costs associated with an LDAR program are relatively fixed, the cost per ton of VOC reduction would be highly dependent on the quantity of reduction in VOC emissions. It is recognized that some plants which would be included in this proposed LDAR requirement are already diligently controlling fugitive leaks for different reasons, such as cost control by reducing product loss, reducing exposure to chemicals by plant personnel, plant safety in handling flammable materials, general housekeeping efforts, etc. However, the Department remains convinced that fugitive emissions of VOC in New Jersey are substantial, and the Department believes that a significant portion of fugitive emissions result from equipment leaks at chemical plants that are not regulated by existing LDAR requirements in N.J.A.C. 7:27-16.6. It is important that this potential source of VOC emissions be addressed at chemical plants that are not subject to existing LDAR regulations.

In light of the foregoing and in response to these extensive comments, the Department has determined not to adopt the proposed 300 hours per year applicability threshold for equipment at chemical plants at N.J.A.C. 7:27-16.18(b)4. Instead, the Department will repropose a new threshold as quickly as possible. The Department expects that the new

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threshold would be set at 550 tons of applicable VOC processed in the equipment annually, regardless of annual hours of operation. The quantity processed would include the total annual quantity of applicable VOC charged to all processes used in the equipment. The Department believes that a threshold of 550 tons processed is comparable to 1,100 tons usage, including recycle. However, it would be easier to demonstrate and verify compliance with a threshold based upon quantity processed (quantity charged) than one based upon quantity charged, plus recycle excluding reflux, plus VOC generation.

164. COMMENT: This commenter stated that proposed N.J.A.C. 7:27-16.18(c) as written would do the impossible task of regulating emergencies, and recommended that the Department revise this section to read "...permit a leak of any applicable VOC form any pressure relief device or any component as defined by N.J.A.C. 7:27-16.1, specifically excluding equipment designed as emergency and/or safety devices, unless one of the following conditions is satisfied: . . ." (20)

RESPONSE: The Department agrees that this rule was not designed to outlaw the proper functioning of pressure relief devices. The purpose of this requirement is to address continuous leakage through an improperly seated or sealed relief device. As noted in the statements to proposal and as a result of the definition of "gaseous leak," the maximum concentration limit for a gaseous leak from a pressure relief device would not apply to releases that occur while the pressure relief device is functioning in accordance with its design to reduce excessively high pressure. The rule language has nonetheless been clarified to reflect this intent through the addition N.J.A.C. 7:27-16.18(c)2.

165. COMMENT: This commenter recommended that proposed N.J.A.C. 7:27-16.18(c) be revised to read: "After the applicable date set forth in Table 18A, no person subject to this section shall cause, suffer, allow or permit a leak of any applicable VOC from any pressure relief device or any component as defined by N.J.A.C. 7:27-16.1, specifically excluding equipment designed as emergency devices to combust gases generated from scheduled start-up or shutdown, process upsets or emergency events from petroleum refining processes, unless one of the following conditions is satisfied: . . ." (20)

RESPONSE: The intent of proposed N.J.A.C. 7:27-16.18(c) is to regulate continuous leakage as opposed to emergency discharges. For further clarification of this intent, rule language been added at N.J.A.C. 7:27-16.18(c)3 to exempt discharges from an emergency device (such as a flare) that is designed to combust gases generated during process upsets or emergency events from petroleum refining processes. A flare is not a leak, but a permitted emission point.

166. COMMENT: This commenter suggested that a liquid leak become a regulated leak only if monitoring of the leak determines the air component of the leak exceeds the concentration levels set in Tables 18A and 18B for gaseous leaks. (33)

RESPONSE: Existing regulations at N.J.A.C. 7:27-16.6 do not have threshold concentration limits for liquid leaks. All liquid leaks of applicable VOC must be repaired. The proposed definition of regulated leak in N.J.A.C. 7:27-16.1 makes no change in this existing requirement. Since a liquid leak of applicable VOC that is visible would likely be above the threshold concentration that has been established for gaseous leaks, the Department does not believe that measuring the concentration of a liquid leak, to determine whether or not it should be repaired, is warranted.

167. COMMENT: This commenter suggested that with regards to Tables 18A and 18B for chemical plants, the repair timeframes should become effective on the same date the first monitoring is required, May 31, 1995. (32)

RESPONSE: The Department agrees. As specified in N.J.A.C. 7:27-16.18(i) a leak detection and repair program must be developed and implemented for chemical plants in time for the initial leak tests to be completed by May 31, 1995. As specified in N.J.A.C. 7:27-16.18(j) any owner or operator of a chemical plant shall comply with the LDAR recordkeeping and reporting requirements also beginning May 31, 1995.

168. COMMENT: Two commenters suggested that a distinction between their effective dates in Tables 18A and 18B should be made between newly regulated chemical plants and those source categories which are already required to conduct leak monitoring under the existing subchapter 16. (32) (34)

RESPONSE: N.J.A.C. 7:27-16.18(i) specifies that initial leak testing at newly regulated chemical plants shall be completed by May 31, 1995. Subsection 16.18(j) specifies that recordkeeping and reporting requirements for newly regulated chemical plants shall become effective on May 31, 1995. The newly regulated chemical plants would therefore become subject to the requirements of Tables 18A and 18B on May 31, 1995. Specification of the timeframes when already regulated categories must begin/continue leak detection are specified at (f) though (h). Tables 18A and 18B specify the timeframes defined leaks must be repaired and, unless otherwise specified in the Tables (or elsewhere at N.J.A.C. 7:27-16.18), go into effect upon the operative date of these rules, July 26, 1994.

169. COMMENT: Two commenters suggested that completion of repairs within timeframes specified in Tables 18A and 18B will, in some cases, be impossible, unless replacement parts or components are kept in inventory. This section should include an allowance for the owner or operator to demonstrate to the Department that maintaining a particularly large inventory of spare or expensive parts for leak repair is unreasonable. If leaks in components result in a demand for parts beyond that kept in inventory, then the repair times in Tables 18A and 18B should not apply, but a mutually agreeable schedule for repair would be established considering supplier delivery timetables. (32) (34)

RESPONSE: The Department agrees that some repairs may be sufficiently unusual that they would be unreasonable to be repaired within strict accordance with the time limits for repair specified at Tables 18A and 18B. Accordingly, the Department has provided a new affirmative defense at N.J.A.C. 7:27-16.18(s). This provision addresses the commenter's concern regarding the cases where parts needed to repair leaks are justifiably unavailable in order to comply with the repair time limits specified at Tables 18A and 18B.

170. COMMENT: Six commenters suggested that the column titles for Tables 18A and 18B should be changed to "Maximum Number of Operating Days . . ." to add clarification. (1) (37) (36) (21) (18) (19)

RESPONSE: The schedules are intended to reflect calendar days and are adequate to allow for potential intervening weekends and holidays. Also, in the case of continuous operations, operating days and total days would be the same. In the case of intermittent operations, there are provisions for extending repair schedules as long as repairs are completed within the prescribed schedule or before the equipment restarts.

171. COMMENT: Six commenters noted a typographical error in Table 18A. An "N/A" should be inserted under the first column for concentration levels at 1,000 ppm but less than 10,000 ppm. (1) (37) (36) (21) (18) (19)

RESPONSE: The Department acknowledges this omission, and the correction has been made.

172. COMMENT: Six commenters recommended that Table 18B be corrected due to a typographical error, and suggested that the last line of the table should read "1,000 ppm but less than 5,000 ppm". (1) (37) (36) (21) (18) (19)

RESPONSE: Table 18B requires a first attempt to repair within five days and completion of repair within 15 days for leaks above 10,000 ppm concentration.

Effective April 1, 1995, leaks above 5,000 ppm concentration would also have to be repaired within 15 days. However, a first attempt to repair would only be required if the leak exceeds 10,000 ppm concentration.

As the "phase-in" of the rule continues, effective April 1, 1996, leaks above 1,000 ppm concentration would have to be repaired within 15 days. Again, a first attempt to repair would only be required if the leak exceeds 10,000 ppm concentration.

In light of the foregoing, the Department has amended the table as suggested by the commenter. However, the Department notes that changing the last line from "1,000 ppm but less than 10,000 ppm" to read "1,000 ppm but less than 5,000 ppm" does not change the effect of the rule because the previous line specifies that leaks between 5,000 and 10,000 ppm that occur on or after April 1, 1995 must be repaired within 15 days. The same result is caused by the rule as proposed and adopted.

173. COMMENT: Six commenters recommended that the effective dates in Table 18A be modified for "5,000 ppm but less than 10,000 ppm" from April 1, 1995 to May 31, 1996; and "1,000 ppm but less than 5,000 ppm" from April 1, 1996 to May 31, 1997. The one year ratcheting down of the equipment "leak" definitions for "chemical plants" is too stringent. A chemical plant must complete its first round of LDAR testing by May 31, 1995. The ratcheting down of the leak definition should then occur one year from the anniversary of the first round of the testing. (18) (1) (37) (36) (21) (18) (19)

RESPONSE: Since the raw materials, processes and equipment used in chemical plants are generally similar to those used in SOCMI and

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polymer plants it is appropriate that similar standards apply. The Department believes that it is reasonable to require this two step ratchetting down beginning after the first year.

174. COMMENT: This commenter noted that Table 18B would require pumps and compressors to meet a leak definition of 5,000 ppm by April 1, 1995, and a 1,000 ppm leak definition by April 1, 1996. In order for this commenter to comply with the 5,000 ppm and 1,000 ppm leak definition, a significant number of existing pump and compressor seals would need to be replaced with upgraded seals. The commenter estimates the cost to comply with the 5,000 ppm and 1,000 ppm leak definitions are $135,000 and $665,000, respectively, for those pumps that are in continuous service. In a petroleum refinery, each pump has an installed spare which must also be modified with no commensurate reduction in emissions, bringing the installed cost to $270,000 and $1,330,000. Emission reduction costs average $7,000 to $14,000 per ton for the 5,000 ppm leak level, and from $21,000 to $42,000 per ton for the 1,000 leak level. Individual pump modification costs could range as high as $83,000 to $166,000 per ton, if two pumps must be modified for one in service pump. Clearly these costs go far beyond RACT. The commenter believes that RACT for pumps should remain at 10,000 ppm or a facility should be allowed to limit the application of a 5,000 ppm leak detection rate to specific pumps/services which can be economically modified. (33)

RESPONSE: The Department recognizes that some equipment modifications may be necessary in order to comply with the lower concentration leak definitions of 5,000 and 1,000 ppm. The Department also acknowledges that the cost per ton of VOC emission reduction may vary greatly from one pump to another, and would be influenced by equipment design as well as the quantity of VOC emission reduction achieved. Finally, the Department would agree that a cost of $42,000 per ton is well beyond RACT. However, based on the information available to the Department, it expects that for most facilities the cost of complying with the rule will be well below that figure, especially when the cost of installing the new pumps or other equipment is amortized over their useful life. Further, if a facility is convinced that its costs will be in the range of $42,000 per ton, the Department suggests that the facility strongly consider developing and submitting an alternative VOC control plan.

175. COMMENT: Six commenters recommended eliminating references to detection levels greater than 10,000 ppm under Tables 18A and 18B. It would not be meaningful nor practicable for DEPE and industry to maintain three detection levels. The most commonly used detection instrument for LDAR monitoring has a concentration scale from either 0 to 1,000 ppm or 0 to 10,000 ppm. The proposed Tables 18A and 18B infer that leak concentrations greater than 10,000 ppm need to be quantified. To use conventional LDAR instrumentation to quantify concentrations at greater than 10,000 ppm would require the use of a dilution orifice kit which is difficult to setup and requires extensive calibration procedures. Setting guidelines at 50,000 ppm and above would require the technician to either carry two instruments, one calibrated at up to 10,000 ppm and the other at above 10,000 ppm, or re-calibrate the instrument each time concentrations above 10,000 ppm are detected. The use of the 50,000 ppm concentration level in the regulation is cumbersome, costly and time-consuming. The requirement does not represent RACT. The industry prefers tolerating a lower trigger limit than to have to use the dilution orifice. Response factors for these monitoring instruments are non-linear and EPA has not published response factors for most VOCs at concentrations above 10,000 ppm. Therefore, it is imperative that DEPE eliminate the 50,000 ppm detection level and replaces it with a single leak definition of "10,000 ppm and greater." This recommendation is consistent with every EPA rule and NSPS published on equipment leaks. In addition, the 50,000 ppm concentration level defined in the California regulation applies only to refineries. Discussions with the personnel at some of those refineries confirmed that the dilution kit is cumbersome and many of the field measurements were meaningless because of a lack of response factors. DEPE should not repeat the same mistake made in California. (1) (37) (36) (21) (18) (19)

RESPONSE: The Department accepts the recommendations of these commenters, and has deleted references to 50,000 ppm in Tables 18A and 18B. The intent of establishing a threshold of 50,000 ppm was to require a first attempt to repair within two days instead of five days for major leaks. The proposed schedule would have still allowed 15 days to complete the repair, which was the same allowance as for a leak of 10,000 ppm concentration.

Even though the commenters indicated that a time shorter than five days for first attempt to repair any leak above a concentration of 10,000 ppm may be less onerous than the separate requirement of having to measure concentrations at 50,000 ppm, the Department has decided not to decrease the five days allowance for first attempt to repair. The Department believes that major leaks will generally be addressed much sooner than five days after detection, because attempting to stop a leak of valuable product is good business practice. However, the Department also recognizes that in some cases because of weekends and holidays, and/or the need for special tools or equipment, up to five days may be needed for a first attempt to repair. For the foregoing reasons and because the Department expects leaks of greater than 50,000 ppm to be extremely rare, the Department anticipates that this minor relaxation of the time for a first attempt at repair will have no significant or measurable effect on air quality.

176. COMMENT: Several commenters suggested clarification in N.J.A.C. 7:27-16.18(f), (h) and (i) concerning when leaking components, which require a shutdown of equipment in order to be repaired, are considered to be available for repair. The commenters recommended exemption from repair requirements during emergency or unplanned equipment outages of short duration because of the likely unavailability of manpower and the need to restore operations as quickly as possible.

Two commenters recommended that proposed N.J.A.C. 7:27-16.18(g)6 be changed to read:

"Any leaking component detected to have a regulated leak shall be repaired, in accordance with the schedules set forth in tables 18A or 18B above, unless the shutdown of a process unit is necessary to repair the regulated leak. In such case, the regulated leak shall be repaired at the next scheduled shut down of that unit."

They note that such a change would exclude emergency or other types of unplanned shutdowns when the manpower and equipment may not be ready or available to repair the leak. (5) (6)

Six other commenters recommended that the last sentence in N.J.A.C. 7:27-16.18(h)6 and (i)6 be changed to:

"In such case, the regulated process unit shall be repaired at the next process unit shutdown and prior to the next start-up."

They explained that DEPE allows for the delay in repair of components if the repair would require the shutdown of the process unit. Unfortunately, the scope of this allowance and the intent of the phrase "not in operation" are unclear. Is a continuous process unit "not in operation" when it goes on recycle and is not producing a product? Is a distillation tower "not in operation" if the inlets and outlets are blocked off and it is sitting under pressure, but with no material movement? Is a batch reactor "not in operation" for the moment between consecutive batches of the same product if the system is still contaminated with raw materials and product? This uncertainty would be greatly clarified if DEPE would incorporate the changes as recommended above. (1) (37) (36) (21) (18) (19)

RESPONSE: The proposed language specifies that a leak which can only be repaired when the equipment is not operating shall be repaired at the earliest period in which either the process is not in operation or the particular unit is out of service. The Department agrees that this can be interpreted to mean that any unplanned equipment outage could result in a requirement for leak repair before restart. It is understood that this is not always practicable. In some cases (that is, an unexpected power failure) all efforts have to be concentrated on restoring operations as quickly as possible. Delaying such a restart following a short emergency outage until manpower or equipment is available to complete a leak repair is not the intent of this regulation. The rule language at N.J.A.C. 7:27-16.18 (f), (g), (h) and (i) has been clarified to require that, if a shutdown is required to repair a leak, the regulated leak shall be repaired during the next process unit shutdown, and prior to the next start-up. In addition, "process unit shutdown" has been defined to exclude short-term, unexpected outages and shutdowns.

177. COMMENT: A total of 40 comments were submitted by 12 commenters concerning the provisions in N.J.A.C. 7:27-16.18(f)1iv, 16.18(g)1iii and (h)1iii to require monitoring of non-moving components. These commenters provided information to support their recommendations that biannual monitoring of non-moving components should not be required, and provided several recommendations for alternate methods of detecting leaks. These comments are summarized as follows:

This commenter stated that the public work group never agreed to testing and monitoring of components with non-moving parts such as

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flanges and connectors, and further stated that the work group's agreement with DEPE was not to require monitoring of these components for the following reasons:

- Monitoring of components with non-moving parts, such as flanges and other connectors, would escalate LDAR costs, will not result in significant VOC reductions, and does not represent RACT.
- The EPA SOCMI, NSPS, RCRA, TSDF and other EPA RACT LDAR guidance documents all specifically exempt flanges and connectors from the LDAR RACT rule requirement. (1) (19)

This commenter strongly recommends that the Department reconsider and delete N.J.A.C. 7:27-16.18(f)1iv, (g)1iii, (h)1iv. The estimated costs associated with such a monitoring program would be astronomical with little or no significant gain in emissions reduction. (19)

Two commenters stated that the testing of flanges and other non-moving parts in facilities represent a large population of points with very minimal leakage potential. The cost of testing this type of equipment does not represent reasonable control technology for VOCs and will not be an effective use of the regulated community's or DEPE resources. (5) (6)

This commenter asserted that the testing of non-moving components under N.J.A.C. 7:27-16.18(i)1iv is definitely not RACT. The time and money necessary to accomplish this task would be astronomical, compared to the reduction in VOC emissions achievable. Monitoring of components with non-moving parts such as flanges, sight-glasses and other connections would not result in significant VOC reduction. This requirement is neither consistent with the intent of the CAA nor in line with any other Federal guideline or CTGs stating the need to test components with non-moving parts. Based on these reasons, it is recommended that DEPE reconsider its position and delete this requirement in its entirety. (35)

This commenter recommended that N.J.A.C. 7:27-16.18(h)1iii and (i)1iv be eliminated because the biennial testing frequency is excessive. Based on HON MACT background information, EPA expects to get less than 10 percent of the average emission reduction from a connector as from a valve. It costs roughly four times more to monitor connectors than to monitor valves, primarily due to accessibility (valves are designed to be accessible, connectors are not). Therefore, emission reductions from monitoring connectors is greater than 40 times more expensive than monitoring valves. The Federal HON MACT rules require testing of these types of components on a biennial frequency. However, RACT is defined as less stringent than MACT. Additionally the benzene NESHAP and NSPS Subpart VV do not require testing of these types of components.

If DEPE eliminates these two sections, then N.J.A.C. 7:27-16.18(h)1iii and (i) should be revised to read: "test any other type of component within 3 months after a regulated leak is repaired and after any disturbance to the component." This is an acceptable balance between MACT and RACT for testing of flanges and other types of components without moving parts. It also provides a new feature not presently included in the proposed regulations to test these types of components shortly after installation or repair.

If DEPE does not agree with either of the two approaches suggested above then a provision should be included to allow testing once every four years if results from the initial and all future tests show less than 0.5 percent of the components tested have a regulated leak. This allowance for reduced frequency of testing is in line with the Federal HON MACT rules. (3)

These commenters strongly objected to the testing and monitoring requirements for components with non-moving parts, such as flanges and connectors, every two years. Under N.J.A.C. 7:27-16.16(f)1iv, it is estimated that the cost associated with such a monitoring program would be astronomical with little or no significant gain in emissions reduction. Based on past experience, these commenters are requesting DEPE to modify N.J.A.C. 7:27-16.18(f)1iv, (g)1iii and 16.18(h)1iii to include the following exemption: "Monitoring of any components with non-moving parts such as flanges and connectors is not required under this section for those processes or operations that have an established quality control procedure to check and verify the leak integrity of each new non-moving component installed and for each non-moving component that is re-assembled after repair, replacement, cleaning or reconfiguration. Acceptable quality control procedures to check and verify leak integrity include such procedures as pressure testing, hydrostatic testing, helium or other gas testing, soap bubble testing, leak screening, fugitive emission monitoring or other acceptable industry practices." Based on plant maintenance records and results of the LDAR program at one commenter's facilities, in general, all components with mom-moving parts do not leak if they are properly torqued and installed. The amount of emission from flanges and connectors is insignificant and should not be subject to LDAR for those process operations with good quality control procedures. The recommended exemption is reasonable and meets the intent of the RACT regulation. (21) (36) (37) (1) (18)

This commenter recommended that N.J.A.C. 7:27-16.18(f)1iv be deleted because the requirement to monitor nonmoving parts exceeds RACT. The majority of refinery flanges remain undisturbed for many years and, therefore, have a low probability of leaking. The experienced leak rate on undisturbed refinery flanges is close to zero.

Some pieces of equipment are designed to be easily isolated and removed from the unit for repair or replacement while the process unit remains in service. Flanges, which allow removal and replacement, are routinely inspected for leakage when the equipment is returned to service. In other situations, such as unit turnarounds, the removal of large quantities of hydrocarbons is required to isolate and remove or repair process equipment. In general, unit turnarounds are planned at one to four year intervals. Before a unit goes back into hydrocarbons service, a unit tightness test is performed. In most process units, obtaining operating pressures without the elevated process temperatures is not possible with installed process equipment.

During the post turnaround unit tightness test, only the connectors disturbed during the turnaround are normally inspected. Any connector found leaking is repaired prior to placing the unit back in hydrocarbon service. The tests, inspections and repairs are extremely important to continuous operations since leaking components in a continuous process unit may require an early unit shutdown for repairs. Experience has shown that post turnaround unit tightness test, along with the near zero experienced leak rate from undisturbed connectors, provides an excellent LDAR program.

The program required in the proposed regulation would be extremely expensive in a petroleum refinery. Connectors such as flanges are more difficult to monitor than valves based on both the location of the sealed surface, the presence of insulation and jacketing, and the perimeter to be monitored. In many cases, flanges are not designed to be accessible since the flange can only be disconnected or disturbed when the process unit is out of service. Hot service flanges, by design, will be safely located out of operating areas to minimize personnel exposure. The sealed surface of flanges has a much longer perimeter than a valve stem, and the total flange perimeter is normally not accessible for monitoring from one operating location. These combined factors make the flange monitoring cost much higher per item.

Because the undisturbed flange leak rate is near zero, including this large population of components in the once per two year monitoring increases the program cost with little return in emission reductions. For flanges and connectors, a program focused on in-service leak detection only locates items which, in many cases, must await a process unit shutdown to be repaired, thereby lowering the program effectiveness. The current refinery procedures utilizing the unit pre-startup tightness test only on disturbed components is an effective emission prevention program. Where these procedures exist, a facility should be excluded from LDAR for other types of components.

To estimate a program cost, the commenter originally looked at the 1980 Radian Refinery Assessment Study of South Coast Refineries with no LDAR programs. The data showed 17 (0.84 percent) leakers in the 1,000 to 10,000 ppm range and 11 (0.54 percent) leakers in the greater than 10,000 ppm range in a flange population of 2,030. Radian Corporation has recently (August 1993) completed a study for the Western States Petroleum Association and for the American Petroleum Institute to determine how the emission correlation equations had changed since the 1980 study.

Based on the 1993 emission correlations (pounds per connector) for flange and non-flange connectors, and the 1980 study typical percent leakers, an LDAR program with a 1,000 ppm leak definition, would reduce emissions by 25 tons per year at the commenter's facility. The LDAR program would have an initial cost of $359,000, and $170,000 per year ongoing program cost, to monitor an estimated 80,000 connectors.

In order to test the validity of the 1980 Radian South Coast refineries study, a group of accessible connectors (flanges, manways, exchangers, etc.) were tested in the commenter's Fluid Catalytic Cracking Plant in September 1993. Of 446 components tested, only two (0.45 percent) leaking components were found above 1,000 ppm. Again, using the August 1993 Radian emission correlations study along with the

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commenter's percent leaders, these results predict five tons per year of emissions. Both of the leakers found were on flanges that would be more frequently disturbed. This supports monitoring components that are disturbed for maintenance work.

With the initial cost included over a five year period, the program cost becomes $242,000 per year. The cost per ton of VOC conserved ranges from $9,680 per ton based on 1980 percent leakers, to $48,000 per ton based on actual current data (0.45% leakers). (33)

RESPONSE: The Department recognizes that the emissions potential per individual non-moving component is quite low compared with a moving component. However, because the number of non-moving components is typically several times higher than the number of moving components, the total potential emissions caused by leakage of these components could be significant and should be addressed. For instance, one of the commenters acknowledged that the facility could achieve a 25 ton per year reduction through LDAR for non-moving parts. It is recognized that, at many facilities where fugitive emissions are diligently controlled, LDAR programs for non-moving components may not result in significant reductions in VOC emissions. However, implementation of LDAR programs at other facilities could potentially result in significant reductions in VOC emissions.

In considering the information presented in the comments above, and the recommendations made by the commenters, the Department has made two changes to this proposal:

- Instead of biennial monitoring of non-moving components in light liquid service, semi-annual visual inspection will be required. It is believed that most light liquid leaks of concern will be detected by visual inspection. The Department further believes that semi-annual visual inspection will be less onerous than biennial monitoring, and will provide detection of leaks equivalent to the originally proposed biennial monitoring. Even though visual inspection may miss some leaks that could be detected with a monitor, it is believed that visual inspection twice a year will detect as many leaks overall as monitoring every two years.
- Instead of biennial monitoring of non-moving components in gaseous service, monitoring will be required each time a flange, connector or other non-moving component is reconnected after it has been disconnected, or the sealing surface has been otherwise disturbed. It is believed that monitoring such components after each disturbance of a sealing surface will be less onerous than biennial monitoring of all components, especially since the rule as proposed allows monitoring to be accomplished through pressure testing. It is recognized that many facilities already have standard procedures for leak testing of disturbed flanges and connectors before they are returned to service. In such cases this provision will have no impact, except record keeping. At a facility that does not have such standard procedures it is expected that this provision will result in reduction of VOC emissions essentially equal to that achieved through biennial monitoring, but at a lower cost.

These changes are incorporated in N.J.A.C. 7:27-16.18(f)1iv and (f)1v, (h)1iii and (h)1iv and (i)1iv and (i)1v.

The Department believes that these changes substantially respond to the major concerns of the commenters without reducing the intended effectiveness of LDAR requirements for non-moving components.

178. COMMENT: This commenter recommended that the wording in proposed N.J.A.C. 7:27-16.18(f)1ii be modified to account for multiple facilities under one ownership. The proposed language provides for reduced testing frequency when "on both of the last two occasions such testing was conducted at any petroleum refinery the owner or operator determined that:" (26)

RESPONSE: For clarification, N.J.A.C. 7:27-16.18(f)1ii has been modified as follows:

"on both of the last two occasions when such testing was conducted at the petroleum refinery the owner or operator determined that:"

179. COMMENT: This commenter recommended that the applicability section of N.J.A.C. 7:27-16 allow an exemption for equipment components subject to monitoring under Subpart H of the Hazardous Organic NESHAP for which the commenter assumes the Department will be delegated enforcement authority. This will not result in components going unmonitored, only in components not being subject to potentially conflicting requirements. (34)

RESPONSE: An exemption, as recommended by the commenter, is not necessary because subpart H of the EPA's promulgated HON regulation is generally more stringent than the LDAR provisions of N.J.A.C. 7:27-16.18. Therefore, components that are in compliance with the HON LDAR provisions should automatically result in compliance with N.J.A.C. 7:27-16.18 since the required monitoring frequencies and leak definitions in the HON LDAR program are more stringent than those specified at N.J.A.C. 7:27-16.18.

180. COMMENT: These commenters expressed appreciation for the Department's cooperation in bringing the existing leak detection and repair regulations into conformance with the Federal NSPS for petroleum refineries in N.J.A.C. 7:27-16.18(b)1. They recommended that the term "VOC" be replaced with "applicable VOC" to be consistent with the rule and for clarity. (5) (6)

RESPONSE: The Department acknowledges and appreciates this expression of support.

The term "VOC" in N.J.A.C. 7:27-16.18(b)1 has been replaced with "applicable VOC," as recommended by these commenters; the Department's intent on proposal was to have the subsection refer to "applicable VOC."

181. COMMENT: This commenter recommended an exemption from testing requirements under N.J.A.C. 7:27-16.18(f), (g), (h), and (i) if the component is out of service or shut down and not in contact with applicable process chemicals for more than 50 percent of the monitoring period or frequency. This is needed to avoid starting an operation for the purpose of testing only. This commenter has several processes that are subject to testing under the existing N.J.A.C. 7:27-16.6 regulations. In the past, the commenter has had to start a shutdown process on recycle to circulate chemicals strictly for the purpose of leak detection testing. The commenter proposes the following language be inserted as N.J.A.C. 7:27-16.18(f)7, (g)7, and (i)7: "if components are not in contact with applicable VOC for more than 50% of the monitoring frequency specified in paragraphs 1 through 6 above, component testing is not required for that period. Testing must resume the following period when applicable VOC contacts the components." (3)

RESPONSE: It was not the intent of the Department that an owner or operator would be required to start-up equipment and operate on recycle for the sole purpose of conducting monitoring in order to comply with provisions of N.J.A.C. 7:27-16.18. An exemption from this section based on contact with applicable VOC less than 50 percent of the time, as recommended by the commenter, would not fully address this concern. Also, since applicability thresholds are established in other sections, it is preferable to not establish additional threshold levels.

This concern has been addressed by revising N.J.A.C. 7:27-16.18(f), (g), (h) and (i) to provide that equipment which is not operating when monitoring is required to be conducted during a specified monitoring period, and is not scheduled to operate again before the end of the monitoring period, shall be monitored within 30 calendar days after the equipment is restarted. The revisions specifically provide that equipment which is not operating is not required to be started up solely for the purpose of monitoring components during a specified monitoring period. Also, equipment that is operating may not be shutdown for the purpose of avoiding the monitoring of its components during a specified monitoring period.

182. COMMENT: Six commenters recommended that N.J.A.C. 7:27-16.18(i)6 be modified from: "Any component detected to have a leak shall be repaired, . . .", to: "Any component detected to have a regulated leak shall be repaired, . . .", in order to clarify that only regulated leaks are required to be repaired in accordance with the schedules set forth in Tables 18A and 18B. (1) (37) (36) (21) (18) (19)

RESPONSE: The Department agrees with this recommendation, and N.J.A.C. 7:27-16.18(i)6 has been revised accordingly.

183. COMMENT: Six commenters noted that N.J.A.C. 7:27-16.18(j)2 incorrectly specified that reports be submitted within 30 days after the first day of every third month. This should read "within 30 days after the last day of every third month." (1) (37) (36) (21) (18) (19)

RESPONSE: The Department acknowledges this error, and it has been corrected.

184. COMMENT: N.J.A.C. 7:27-16.18(k) proposed that components which are insulated, encased, or enclosed may be tested for leaks at a distance within 0.4 inches (one centimeter) of the surface of the insulation, encasement, or enclosure.

One commenter recommended that this section be amended to require testing of components which are insulated, encased, or enclosed only if the components have moving seals. The commenter recommended the following amended language: "Components, with moving seals, that are insulated encased or enclosed may be tested for leaks at the insulation/seal interface." The commenter estimated that the cost associated with this type of monitoring program would be significant with little or no

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significant reduction of VOC emissions, and asserted that this requirement is inconsistent with the requirements of the CAA and also not consistent with the definition of RACT. (35)

Another commenter stated that this requirement is more restrictive than the Federal HON MACT requirements which exempt inaccessible (insulated) connectors from testing. The proposed rule is a VOC RACT rule and should not be more stringent than EPA's MACT standard for hazardous air pollutants. (3)

Seven commenters stated that testing of insulated, encased or enclosed components would not provide any meaningful results, and would be a misuse of manpower. (3) (31) (36) (37) (1) (19) (18)

RESPONSE: In writing the proposed regulation, the Department elected not to require the removal of insulation, encasement or enclosure from a component in order to test it. It was decided that testing the component within 0.4 inches (one centimeter) of the insulation, encasement or enclosure would represent a reasonable alternative to removal. The cost of monitoring such a component in this manner should be comparable to monitoring other components. It is recognized that such a measurement may not detect a small leak, but it is expected that a major leak would be detected by this method. Thus, the relatively minor expense of the monitoring is consistant with RACT.

Changes have been made to N.J.A.C. 7:27-16.18(f)1iv and (f)1v, (h)1iii and (h)1iv and (i)1iv and (i)1v, which address the concern expressed by this commenter with the requirement for monitoring non-moving components.

The monitoring would be conducted within 0.4 inches (one centimeter) of the insulation, encasement or enclosure at the point of interface with the component.

185. COMMENT: A total of 61 comments were submitted by 10 different commenters concerning proposed requirements for monitoring inaccessible components. Inaccessible component was defined as any component located over 15 feet above ground when access is required from the ground, or any component located over 9.6 feet away from a platform when access is required from the platform.

Most commenters urged the Department to revise the definition of inaccessible to include components that are truly inaccessible, and cannot be made accessible for monitoring, and to exempt these from monitoring requirements altogether. These commenters emphasized that different requirements should apply to components that are "difficult to monitor" and those that are truly inaccessible and cannot be monitored.

These comments are summarized as follows:

EPA stated that existing N.J.A.C. 7:27-16.6(l) has specific conditions under which monitoring could be exempted, which should be retained. This is different from unsafe testing of components covered by the new N.J.A.C. 7:27-16.18(p)2. (26)

Several commenters recommended that inaccessible components be omitted from testing requirements under N.J.A.C. 7:27-16.18(l). (5) (1) (18) (21) (36) (37) (19) (35) (6) (33)

Some of the commenters suggested that this section be modified to read: "Notwithstanding the provisions of (f), (g), (h), and (i) above, inaccessible components are exempt from testing. Difficult-to-monitor components are exempt from quarterly testing requirements and instead such testing shall be conducted on an annual basis." (1) (18) (21) (36) (37) (19) (35)

Several commenters stated that inaccessible components cannot be monitored, and reducing the frequency of required monitoring does not resolve this issue. (1) (35) (33)

Several commenters asserted that the proposed rule is more stringent than the EPA MACT standards for hazardous organic air pollutants. (18) (21) (36) (37) (1) (19) (35)

Other commenters recommended that this section be modified to read as follows: "Notwithstanding the provisions of (f), (g), and (h), and (i) above, inaccessible components installed prior to February 1, 1994, are exempt from testing requirements. Difficult to monitor components should be monitored on an annual basis". Inaccessible components are, by their very nature, unsafe to test or are truly inaccessible. Such components can be near process piping with elevated temperatures, in areas that cannot be safely reached by ladder or scaffolding, or may require the tester to reach or walk over other piping or process equipment to reach inaccessible components. These should not be required to be tested on an annual basis. Since the population of components in this category is very small the cost-benefit ratio of testing these areas is very low. (5) (6)

One commenter recommended that N.J.A.C. 7:27-16.18(l) be revised to include the modifier "if practicable", such that inaccessible components installed prior to February 1, 1994 would be tested on an annual basis "if practicable". (33)

Several commenters recommended that N.J.A.C. 7:27-16.18(m) be removed. (1) (18) (21) (36) (37) (19) (35)

Several commenters recommended that N.J.A.C. 7:27-16.18(m) be modified to read: "Components installed on or after February 1, 1994, as part of a new process system, at a facility subject to this section, must make all components accessible to monitoring unless the owner or operator of a facility can demonstrate to the Department unreasonable cost. Replacement components for systems installed prior to February 1, 1994, shall continue to be subject to the requirements in paragraph (1) of this section." (18) (21) (36) (37) (1) (19)

Several commenters asserted that the cost to design a process in a manner such that all components are accessible could result in unreasonable cost and would not be RACT. (1) (18) (21) (36) (37) (1) (19) (35)

One commenter recommended that N.J.A.C. 7:27-16.18(m) be revised to include the modifier "if practicable." This paragraph would then read as follows:

"No component installed on or after February 1, 1994, at a facility subject to this section will be exempt from any applicable testing requirements, unless it is not practicable to install an accessible component. (33)

RESPONSE: The Department never intended to require the regulated community to monitor components that are, in fact, impossible to monitor and now understands that the rule as proposed may have imposed such a requirement. In order to make the rule consistent with the Department's original intent, and in response to these comments, has made the following revisions to N.J.A.C. 7:27-16.18:

- At N.J.A.C. 7:27-16.1, the Department has added "difficult to monitor component" to the list of definitions, and defined as any component located over 15 feet above ground when access is required from the ground, or any component located over 9.6 feet away from a platform when access is required from a platform.
- At N.J.A.C. 7:27-16.1, the Department has deleted "inaccessible component" from the list of definitions.
- At N.J.A.C. 7:27-16.18(l), the Department has substituted "difficult to monitor" for "inaccessible" components.
- At N.J.A.C. 7:27-16.18(m), the Department has revised language so that reduced testing frequency of "difficult to monitor" components shall not apply to those components installed after May 31, 1995.
- At N.J.A.C. 7:27-16.18(p)2, the Department has added language which provides exemption for "A component that cannot be tested because it is not accessible, and cannot be made accessible, for conducting the test. For such components the owner or operator shall document in writing the reason that the component cannot be made accessible for testing with monitoring equipment, and under what circumstances, if any, and by what method the component can be tested, such as pressure testing when the unit is scheduled out of service. When those circumstances arise, the owner or operator shall cause testing to be performed and shall handle and respond to the results of that testing as this section otherwise requires."

These revised provisions retain the reduced testing frequency schedule for those components which were installed before May 31, 1995 that are out of reach without the use of special equipment, and provide for alternative testing of components that are not accessible for monitoring.

These revised provisions require that all components installed after May 31, 1994 shall be accessible for monitoring, if practicable.

186. COMMENT: N.J.A.C. 7:27-16.18(n) provides exemption from monitoring of valves in vacuum service.

Several commenters recommended that any component in vacuum service be exempted from monitoring requirements for the following reasons:

- The DEPE standard should not be more stringent than the EPA MACT.
- It is extremely unlikely that a leak may develop from components in vacuum service. (18) (21) (36) (37) (1) (19)

RESPONSE: As proposed, N.J.A.C. 7:27-16.18(n) exempted valves from monitoring under certain conditions, including valves in vacuum service. The Department agrees with these commenters that other components, in addition to valves, in vacuum service are not likely to be a source of VOC leaks.

Accordingly, this subsection has been revised to extend the exemption from monitoring to other components in vacuum service.

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187. COMMENT: Based on the technically complex application of response factors, these commenters strongly urge the Department to reconsider the requirement for applying EPA Test Method 21 and replace paragraph N.J.A.C. 7:27-16.18(e)1 with one of the following:

"EPA Test Method 21 shall be applied to components in contact with a single applicable VOC when the instrument response factor of that applicable VOC has been published. The use of response factors is not mandated for leak measurements of components containing mixtures of applicable VOCs, or for components that contain applicable VOCs for which there are no published instrument response factors." (36) (37) (1) (18) (21) (19)

"EPA Test Method 21 shall be applied to single constituent process streams when the instrument response factor of that constituent has been published at the leak definition concentration range of that constituent. The use of response factors is not mandated for leak measurements of components containing mixtures or for components that contain chemicals for which there are no published instrument response factors." (35)

EPA Method 21, paragraph 4.4.1, addresses response factor determination methods which the commenters believe exceed RACT in its application to LDAR activities. In addition, multiple constituent process streams require significant technical effort, time, and cost when determining correct response factors. The response factor will change if the ratios of the constituents change within the process stream (which occurs frequently) and as the concentration levels change. These changing parameters present a complex and changing set of variables that must be analyzed before and during each monitoring campaign. Foxboro Corporation, a leading manufacturer of monitoring equipment, has recently stated that their customers typically are not applying response factors to the emission calculations, especially in the case of process streams with multiple constituents. Similar concerns are addressed in the EPA Document, "Survey of Portable Analyzers for the Measurement of Gaseous Fugitive Emissions" (April 20, 1992). Eight subject companies participated in the instrument evaluations and none applied the response factor corrections to the measured concentration levels in what EPA considered the proper manner. Many statements contained in the report support the technical difficulties previously discussed. The conclusion to the report states that: "Response factors are a frequently researched area of portable instrument use. Even more information is needed for all instruments in order to develop consistency in reporting and instrument selection." The commenters believe that the use of response factors with the emission measurements for LDAR application in many cases adds tremendous effort and cost to both the implementation and maintenance of an LDAR program far beyond the "reasonable available control technology" intent of N.J.A.C. 7:27-16.18. These commenters strongly urge the Department to gain further understanding on the technical aspects of applying EPA Test Method 21 to the LDAR regulations. (36) (37) (1) (18) (21) (19) (35)

RESPONSE: The Department acknowledges that the use of instrument response factors for each compound or mixture measured for VOC concentration is required when EPA Test Method 21 is used. The response factors must be determined by testing for each mixture if the factors have not published. The Department also recognizes the complexity involved in utilizing instrument response factors for each compound or mixture being measured for VOC concentration while using EPA Test Method 21.

Method 21 was promulgated in 1983 for the testing of some source operations subject to the New Source Performance Standards (NSPS) standards. In the development of Method 21, EPA considered the use of response factors to be economically reasonable; the Department feels that the use of response factors are at least as economically reasonable as they were in 1983. The method requires the use of response factors because it is not possible to accurately quantify many organic compounds when the instrument is calibrated with a single compound, such as methane. For example, oxygenated compounds tend to respond low, resulting in a measurement of emissions that is biased low. The opposite case, although not as common, can also occur. Accordingly, removing consideration of response factor to leak detection would seriously compromise the relative accuracy of the measurements and therefore the effectiveness of the leak detection and repair program.

N.J.A.C. 7:27-16.18(e)2 allows use of any other equivalent test method approved in advance in writing by the Department and acceptable to EPA. Also, N.J.A.C. 7:27-16.18(q) allows the owner or operator of a facility subject to the provisions of this section to use pressure testing with gas or liquid as an alternative method to comply with leak detection requirements, providing the provisions in N.J.A.C. 7:27-16.18(q) are adhered to.

188. COMMENT: N.J.A.C. 7:27-16.18(e)1 is an incomplete specification of a leak detection method, since Method 21 anticipates that the applicable regulation will specify the leak definition based on a reference compound. This leak definition should also include liquid leaks of applicable VOC. Paragraph (e)1 should be revised to read: "in determining the concentration of VOC in a gaseous or liquid leak of applicable VOC from a component, the applicable VOC shall be measured at a distance within 0.4 inches of the source in accordance with: 1. The EPA test reference Method 21 set forth at 40 CFR part 60 Appendix A using methane as the reference compounds: or . . ." (33)

RESPONSE: In response to this comment, the Department has amended N.J.A.C. 7:27-16.18(a)1. Because Method 21 does not specify the calibration gas, the Department has done so by specifying methane or another calibration gas corrected to methane. The LDAR provisions in the HON specify methane as the only acceptable calibration gas. In general, the Department accepts the use of methane as the reference compound. However, there may be cases where the use of another compound such as n-hexane, as the calibration gas is more appropriate than methane. For example, in the NSPS standards at 40 CFR 60 Subparts VV, GGG, and KKK, methane or n-hexane is specified as the acceptable calibration gas for testing of leaks using method 21. The Department acknowledges that methane may not always be the best calibration gas and is allowing the use of other compounds where appropriate as long as the calibration gas has a known response factor for the particular instrument being used and as long as the readings recorded are corrected in terms of methane.

The Department has not incorporated the commenter's suggestion to add reference to liquid leaks in this provision. The definition of "liquid leak" is not dependent upon a measured concentration, but is dependant upon visual indications, and no concentrations are specified for liquid leaks at Tables 18A and 18B. Therefore, method 21 is not needed to determine whether a liquid leak has occurred.

189. COMMENT: N.J.A.C. 7:27-16.18(o) proposed that a valve at the end of a pipeline containing applicable VOC shall be sealed with a second valve, a blind flange, a plug or a cap except when the pipeline is in actual use in the process or when a sample is being taken.

One commenter expressed the following concern with the application of this section: How would N.J.A.C. 7:27-16.18(o) be applied to the end of a line, the purpose of which is to dispense solvent into other equipment or packages? Such filling lines will run around the clock, but the dispensing function occurs intermittently. Such a line has a valve at the end which is closed between filling events. It would be unreasonable to cap the discharge from this valve between filling events since the time between such events would usually be at most a few minutes. The commenter recommends that no end cap be required for such lines. (32)

RESPONSE: The previously adopted provision at N.J.A.C. 7:27-16.6(k) required that a valve at the end of a line containing VOC be sealed with a second valve, blind flange, a plug or a cap. The sealing device may only be removed when a sample is taken or during maintenance operations.

As proposed, N.J.A.C. 7:27-16.18(o) included flexibility similar to the HON regulation, in that the sealing device is not required when the line is in actual use.

In response to this comment, this subsection has been clarified to note that a fill line that is used regularly to fill containers is considered to be in actual use for the purpose of this provision.

190. COMMENT: One commenter recommended that an exemption under N.J.A.C. 7:27-16.18(p) be provided where it can be demonstrated that a facility, or a discrete process unit, has designed equipment and developed and implemented maintenance procedures to reduce emission under the applicable threshold. This demonstration could be renewable on a five-year basis. (32)

RESPONSE: The Department recognizes that some owners and operators have already developed and implemented procedures for minimization, detection and repair of equipment leaks. Elements of existing programs that were discussed in this and other comments and responses were considered in changes that have been made to N.J.A.C. 7:27-16.18(f), (g), (h), (i), (l) and (p). These changes were directed at making the requirements less onerous, without reducing the effectiveness of the rule. It is believed that these changes substantially address the recommendation of this commenter. To the extent that they do not, the

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Department is not willing to provide such a broad exemption for a variety of reasons, including the implementation and enforcement difficulties it would create.

191. COMMENT: A total of 13 comments were submitted by seven commenters recommending changes to proposed N.J.A.C. 7:27-16.18(p)4i, ii, and iii. This paragraph proposed exemptions for dual mechanical seals operated under certain conditions. Several comments recommended minor language revisions to clarify that satisfying any one of three, instead of all of the three, listed conditions qualifies for exemption. Other comments recommended a modification to N.J.A.C. 7:27-16.18(p)4iv to substitute "equipped with a device that provides detection for the failure of the seal system" for "equipped with a sensor that will detect failure of the seal system."

The commenters asserted that the recommended revisions clarify the requirement, and is more consistent with requirements in the NSPS standard and the proposed HON LDAR rule. The change in wording in subparagraph (p)4iv would allow the use of other types of leak detection devices that are equally effective and with demonstrated performance records. (18) (1) (37) (36) (21) (19) (33)

RESPONSE: The Department agrees that the recommended changes would clarify the intent of this section, and may improve flexibility in achieving compliance without reducing control effectiveness.

Accordingly, the language has been changed to incorporate these recommendations. "Equipped with a sensor" has been changed to "equipped with a device" that will detect failure of a seal system, at N.J.A.C. 7:27-16.18(p)4iv. The term "sensor" generally implies an electronic monitor. The Department does not wish to restrict the monitoring device to an electronic sensor if other devices are available, or developed in the future, which are equally effective in detecting seal failure.

192. COMMENT: Seven commenters submitted 10 comments recommending revisions to N.J.A.C. 7:27-16.18(p)6. This paragraph proposed exemption from requirements of this section for process equipment enclosed in such a manner that all emissions from any component with a leak is vented through a system that routes those emissions to a VOC control apparatus, provided that the enclosure is maintained under a negative pressure at all times while the process is in operation. The commenters commended the Department for providing this exemption. However, they recommended that less restrictive language for better utilization of the exemption.

They recommended that "vented to a control apparatus" be changed to "vented to a permitted emission point, or to an emission point which is excluded from permitting by this subchapter or by subchapter 7:27-8."

They expressed concern that requiring the enclosure to be maintained under a negative pressure will exclude beneficial utilization of existing in-plant systems such as flare grids, process furnaces or low pressure vapor recovery systems. (18) (1) (37) (36) (21) (19) (33)

RESPONSE: The Department agrees with the recommendation to change "vented to a control apparatus" to "vented to a permitted emission point." However, the Department does not agree to extend the exemption to enclosed components where the enclosure is vented to an emission point which is excluded from permitting by this subchapter or N.J.A.C. 7:27-8, because to do so would potentially allow uncontrolled VOC emissions, which would undermine the rule's fundamental purpose. In addition, the Department does not agree with the recommendation to delete the requirement that the enclosure be maintained under negative pressure to qualify for exemption because this may also allow potential excess VOC emissions.

In order to partially incorporate these recommendations for flexibility, the rule language has been modified as follows:

"Process equipment enclosed in such a manner that all emissions from any component with a leak is vented through a system that routes these emissions to a controlled emission point, provided that:

i. The enclosure is maintained under negative pressure at all times while the process unit is in operation; or

ii. The potential points of leakage from the enclosure are subjected to the same leak detection and repair requirements as the components would be if they were not enclosed."

193. COMMENT: EPA commented that N.J.A.C. 7:27-16.18(q)2ii refers to alternate testing for batch operations. It appears that this section will limit testing of batch operations to once a year, assuming no configuration changes. Is this DEPE's intent? (26)

RESPONSE: Yes, the intent of this provision is that components will be tested after configuration changes in piping and equipment. In some cases, this will occur several times a year. In case there is no reconfigurement in a year, then the components would have to be tested at least once a year. This is consistent with the HON regulation.

194. COMMENT: Several commenters recommended that these regulations be modified to allow facility owners and operators to limit fugitive emissions using alternate methods. These comments are summarized below:

Six commenters recommended that DEPE add a new subsection, N.J.A.C. 7:27-16.18(s), to the rule to allow facility owners and operators to limit fugitive emissions using alternate methods. It was recommended that this new subsection read as follows "As an alternative to complying with the requirements of this section, the owner or operator of a facility subject to the provisions of this section may employ alternate means of emission limitation that are approved in advance in writing by the Department and EPA." (18) (21) (36) (37) (1) (19)

One commenter suggested that the following statement be added to N.J.A.C. 7:27-16.18:

"As an alternative to complying with the requirements of this section, 16.18, the owner or operator of a facility subject to the provisions of this section may employ alternate means of emission limitations that are approved in advance in writing by the Department and the US EPA."

This commenter stated that his company has taken some novel approaches in the area of leak detection, such as the position and location of relief valves. The addition of the above statement to this section allows the company flexibility to do something new in the way of leak detection and repair. (1)

These commenters recommended that N.J.A.C. 7:27-16.18 be modified to include provisions that would allow a facility owner to submit under N.J.A.C. 7:27-16.17 a justification of why a LDRP is not RACT for a facility. This would not be an alternative control plan to replace the LDRP. Such a justification might include cost effectiveness and environmental impact of the VOCs emitted, as well as the effect of quality assurance programs (such as ISO 9000) in place for other purposes. (3) (34)

RESPONSE: The Department understands that some owners and operators may have devised alternative methods to control fugitive emissions, and encourages the continued efforts to develop new and innovative control strategies. Because of the potentially large number of different control procedures that would have to be evaluated, this rule attempts to minimize the number of alternative control strategies, or case by case situations. However, N.J.A.C. 7:27-16.17 provides a mechanism whereby facility-specific VOC control requirements can be submitted to the Department. In future revisions of this rule, as alternative methods are better defined, they will be evaluated.

195. COMMENT: Two commenters questioned how the Department will enforce these requirements if an inspector observes evidence of either a gaseous or liquid leak in between scheduled monitoring of the leaking component and the LDRP is working properly, that is, monitoring is occurring and leaks are being addressed within the applicable timeframes of Tables 18A and 18B. The commenters suggested that citation of a facility for such an initial observation of a violation would serve no purpose if the facility is acting in good faith to address leaks. The Department should allow the repair of the component pursuant to the procedures and schedules outlined in N.J.A.C. 7:27-16.18 and only cite the facility for a violation if the appropriate actions are not taken within the specified timeframes. (32) (34)

RESPONSE: The Department agrees with these comments and submits that the rule as proposed and adopted is consistent with them. In other words, so long as a facility is fully complying with the monitoring and repair requirements of this rule, the facility will not be cited if a leak is discovered prior to the time at which the rule requires that it be repaired. To provide clarity, however, the Department has adopted a new subsection to this effect at N.J.A.C. 7:27-16.18(t).

196. COMMENT: There were several comments concerning the use of different VOC terms.

Two commenters stated that the terms "VOC," "light liquid VOC," and "applicable VOC" have been used interchangeably through out the proposed rule and, in particular, N.J.A.C. 7:27-16.18. The VOC RACT rule should only regulate VOCs having a vapor pressure equal to or greater than 0.044 psi at standard conditions. (35) (1)

One commenter stated that a problem in the regulation is that the pressure cutoff for light liquid is set at 0.044 psi, but applicable VOC is set at 0.02 psi, so there is an inconsistency. (1)

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This commenter recommended that DEPE adopt EPA's light liquid definition for "applicable VOC" and recommended that the definition of applicable VOC under N.J.A.C. 7:27-16.18 be modified to read: "Applicable VOC which has a vapor pressure or sum of partial pressures of organic substances of 0.044 pounds per square inch (2.2 millimeters of mercury) absolute, or greater, at standard conditions." The proposed definition is inconsistent with the intent of the CAA of providing reasonable control. VOCs with such low vapor pressure (0.02 psi) will not result in vapor concentrations sufficient enough to constitute a leak when using a monitoring instrument. (1)

RESPONSE: The previously adopted LDAR provisions at N.J.A.C. 7:27-16.6(d) through (l) regulated VOC with vapor pressure of 0.02 psi or greater. The proposed rule was not intended to change this cutoff point. Instead, the term "applicable VOC" is defined as any VOC with a vapor pressure of 0.02 psi or higher at standard conditions, and the term "applicable VOC" is used in the text of the rule. This change was made to make the rule somewhat more readable. In response to this and other comments, the term the term "VOC" modified with the long vapor pressure limitation clause has been substituted with the term "applicable VOC" throughout the subchapter for consistency and added clarification.

Light liquid is defined in the existing rule as a fluid with a vapor pressure of 0.044 psi or greater at standard conditions. This definition is consistent with EPA's definition, and the Department does not feel a change is necessary. As in the previously adopted LDAR provisions, the LDAR section adopted herein regulates leaks of light liquid (0.044 psi vapor pressure) and gaseous leaks of applicable VOC (0.02 psi vapor pressure). These well established vapor pressure limits have been demonstrated to be reasonable and are consistent with EPA's CTGs.

In short, the Department has substantive reasons for carefully and consistently differentiating each of these terms from the others.

197. COMMENT: This commenter suggested that the RACT standards that are being proposed, and the definition of applicable VOC, are more stringent than EPA MACT standards for HAPS. The EPA MACT standards divide the HAPs into heavy and light liquids and gases. Equipment in heavy liquid service, those with low vapor pressure, are only subject to visible leak determinations, not monitoring. Routine monitoring with instruments for leaks is only required for equipment in gaseous and light liquid service. DEPE should be consistent with EPA; there is no basis for DEPE to propose a standard more stringent than the EPA MACT. (1)

RESPONSE: In consideration of this and other comments regarding the proposed monitoring requirements, the Department modified the rule language at N.J.A.C. 7:27-16.18(f)1iv, (f)1v, (h)1iii, (h)1iv, (i)1iv and (i)1v. This modification requires visual inspection instead of monitoring of non-moving components.

As a point of clarification, N.J.A.C. 7:27-16.18 does not require visual inspection or monitoring of components in heavy liquid service.

198. COMMENT: This commenter stated that the LDAR regulations go well beyond Federal requirements. At this time, the EPA does not require LDAR for VOCs except under the HON rule. The EPA may choose to regulate in this area and promulgate a RACT standard for other HAP VOCs. The DEPE in promulgating this rule will create a complicated system that will be very difficult to reconcile with a Federal system once it becomes available. The DEPE is again regulating as if the geography, geology, and meteorology of New Jersey were Southern California. It is recognized that the ozone problem in New Jersey is caused in large part by transport from out-of-State. DEPE must externalize its approach to air pollution to solve the real problem. (37)

RESPONSE: LDAR regulations are already included in existing N.J.A.C. 7:27-16.6 for petroleum refineries, natural gas processing plants, SOCMI and polymer plants. The Department has no plans to rescind these requirements. The new rule proposed the addition of "other chemical plants" to the list of facilities already regulated under existing LDAR requirements. It is appropriate that other chemical plants be included, because the raw materials, processes and equipment are similar to the facilities already regulated. New Jersey remains designated as nonattainment for ozone and must implement measures to further reduce emissions. The Department is aware of the interstate aspects of the ozone nonattainment problem and is actively working with regional groups, such as the Ozone Transport Commission (OTC), the Northeastern States for Coordinated Air Use Management (NESCAUM) and the Mid Atlantic Regional Air Management Association (MARAMA), in developing regional and equitable strategies for ozone attainment.

199. COMMENT: This commenter contended that implementing a leak detection and repair program is not cost-effective. In Appendix VII of the 1993 Ozone SIP, the Department estimated the VOC emission reductions at chemical plants. These reductions range over five orders of magnitude. The commenter states that it is difficult to imagine that a facility which provides only 0.05 pounds of VOC removal per day (0.009 tons of VOC removed per year) by implementing N.J.A.C. 7:27-16.18 could find LDAR cost-effective given the expenses associated with personnel; monitoring equipment purchase, operation and maintenance; recordkeeping; and reporting. (32)

RESPONSE: LDAR programs have already been implemented at petroleum refineries, natural gas plants, SOCMI and polymer plants as required by existing regulations. The new rule proposed that other chemical plants also develop and implement LDAR programs. This is appropriate since other chemical plants use raw materials, processes and equipment similar to those facilities that already have LDAR programs, as required under existing regulations. In consideration of this comment along with a number of other comments, several changes were made to the proposed rule to set a higher threshold for chemical plant applicability, and to modify LDAR requirements to substitute visual inspection for testing of nonmovimg components. Several other changes were made to make the new rule less onerous than as originally proposed. The Department believes that as a result of the revised threshold for chemical plants and other changes that have been made in the rule, LDAR is a cost effective component of programs required to meet the federally mandated 15 percent reduction in VOC emissions.

The Department believes that an LDAR program implemented at a facility for equipment that processes 550 tons of applicable VOC per year is unlikely to reduce VOC emissions by only 0.05 pounds per day. The Department, recognizes the cost effectiveness will vary from one facility to another. The Department believes that such costs will be consistent with the intent and definition of RACT. If a facility can show that the LDAR provisions are well above RACT, the Department suggests that facilities apply for a facility specific alternative VOC control plan pursuant to N.J.A.C. 7:27-16.17.

200. COMMENT: This commenter stated that the Department has inappropriately set RACT for N.J.A.C. 7:27-16.18(c). The control level is as stringent as the HON MACT standard and the existing NSPS. Both the Petroleum Refinery NSPS and HON SOCMI standards recognize the 500 ppm standard as a non-detectable emissions limit which will require the installation of rupture disks in combination with safety valves. Setting RACT in New Jersey at this level requires a re-design of existing process safety equipment requirements, and purchase and installation of new equipment by the operative date of the proposed rule. This is an equipment design standard equivalent to a zero emissions standard, not a work standard and, therefore, cannot be RACT for existing equipment. The proposed New Jersey RACT requirement applies to both existing and new pressure relief valves in applicable VOC service. The ASME Boiler and Pressure Vessel Code Section VIII, Rules for Construction of Pressure Vessels, Division I at UG-127 and UG-132, states the conditions for using this combination of devices and the methods to certify the reduced capacity of combined devices. A reduced capacity may mean that additional pressure relief devices would be required, a change that can only be accomplished by adding additional nozzles at the next unit turnaround. The New Jersey RACT requires quarterly monitoring for all pressure relief devices in gaseous service. Requiring the installation of rupture disks, plus monitoring within 5 days of a release and quarterly monitoring exceeds the NSPS and HON requirements. The commenter believes setting RACT for petroleum refineries equal to and exceeding SOCMI MACT is prejudicial to refinery MACT and, in fact, makes any discussion on refinery pressure relief valve MACT Standards moot. The commenter has estimated the average cost effectiveness to install rupture disks under pressure relief valves ranges from $5,400 to 19,400 per ton of emissions reduced with an average of $12,400 per ton. The rupture disk is a small part of the overall installation cost. Items such as re-engineering of safety facilities, installing additional nozzles and safety valves to maintain process capacity, uprating pressure vessels, and tell-tale instrumentation to monitor the space between the rupture disk and pressure relief valve. Due to the large number of relief valves in a petroleum refinery, an overall program cost is estimated at greater than $10,000,000, with a more than five-year implementation period. Applying the HON MACT design standard requiring rupture disks under all pressure relief valves in applicable VOC service in a petroleum refinery far exceeds the expected

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MACT impact on a refinery and is not RACT. The commenter suggests that the pressure relief valve RACT be set on the same basis as process valves. (33)

RESPONSE: In consideration of this comment, and other concerns that were expressed regarding controlling leaks from pressure relief valves to a threshold level of 500 ppm, the Department has determined not to adopt the reference to relief valves in Table 18A. The Department now agrees that requiring such leaks to be controlled to 500 ppm would be unreasonable in light of the cost per ton of reductions which would be achieved by such a requirement. Accordingly, leak definition for relief valves will be the same as for other valves, that is, 1,000 ppm. Based on the information available to the Department, it believes that controlling leaks from pressure relief valves at 1,000 ppm or greater represents RACT.

N.J.A.C. 7:27-16.21 Natural gas pipelines

201. COMMENT: The commenter believes that the proposed N.J.A.C. 7:27-16.21 is a win-win situation for both the gas industry and New Jersey. By allowing gas companies to use prudent engineering judgment to employ practicable VOC reduction techniques, the gas transmission industry can produce substantial VOC reductions in New Jersey at a manageable cost. The commenter supports this section of the regulation as proposed. (25)

RESPONSE: The Department appreciates the commenter's support.

202. COMMENT: Under EPA's Natural Gas Star Program, some companies have agreed to reduce emissions of natural gas where economically and technically feasible. The additional paperwork burden and cost involved in obtaining air permits for any and all voluntary control measures will serve to discourage their installation, and thereby thwart the goal of emission reduction. The commenter proposes that DEPE adopt language that grants a blanket authorization for the installation of control devices installed for the purpose of reducing natural gas emissions when conducted as part of a voluntary natural gas emissions reduction program. (24)

RESPONSE: The proposed revisions to N.J.A.C. 7:27-8.2(a) (see the September 7, 1993, New Jersey Register at 25 NJR 3996) remove the automatic requirement for obtaining a preconstruction permit for all control devices. Certain control apparatus may be exempt from the requirement of obtaining preconstruction permits. Proposed N.J.A.C. 7:27-8.2(a)18 and 19 would only require preconstruction permits for any equipment required to have air pollution control apparatus pursuant to any provision in N.J.A.C. 7:27 and any control apparatus serving equipment for which a permit is required pursuant to N.J.A.C. 7:27-8.2. Natural gas pipelines will require permits for control equipment because the present rule requires them to use air pollution control apparatus. In other words, any reductions will not be truly voluntary.

Also, the Department has a flexible permit procedure for portable sources which allows equipment to be moved to different locations if certain conditions and reporting procedures are met. Equipment subject to this procedure can include portable natural gas pipe venting equipment. If a control device is part of a gas venting Control Measure Plan, it may be permitted to be used at several locations along the natural gas pipeline if specified in the preconstruction permit application. The preconstruction permit approval would indicate the control device would be able to be relocated and would include the notification procedures for relocation to a nonspecified location.

203. COMMENT: These comments concern the waiver given to owners/operators of natural gas pipelines at N.J.A.C. 7:27-16.21. Since a waiver of this nature is highly uncommon, the commenter believes that the Department should articulate the "alternative method" within the final rulemaking for review by the general public. A waiver of this nature is cause for concern because it gives the Department "carte blanche" to decide who must comply with standards and who does not for "practicable reasons." Use of this waiver could demonstrate a discriminatory attitude, especially in light of the fact that the "alternative methods" are not discussed in the text. (13)

RESPONSE: The Department has not given owners or operators of natural gas pipelines a "waiver." Insufficient experience by the Department with natural gas pipelines and the unique operating conditions of the gas pipelines has precluded specification of definitive VOC RACT requirements for natural gas pipelines. Neither the EPA nor any other state has regulated VOC emissions from natural gas pipelines; there is not sufficient information to designate RACT provisions.

The source of VOC emissions from natural gas pipelines involve blowdowns at pump stations, compressor stations, and at valves along the pipelines. These blowdowns occur whenever a section of pipeline has to undergo inspection, maintenance, or repair. The hourly emission rate can be large, but the blowdowns may occur only a few times per year at a site, and the duration of the blowdowns can be short. Blowdowns are currently regulated by N.J.A.C. 7:27-16.6, if the emission rate is above 3.5 pounds per hour. Emission rates greater than 3.5 pounds per hour require 95 percent control. The most common control for natural gas pipelines is flaring. However, operating a flare in some areas may not be possible. Also, when control devices are used, the flow of gas from the pipeline may be slowed and this could create safety problems where quick venting to fix a leak elsewhere is required.

However, there are control measures that can be reasonably and practically applied, and that have the potential to reduce the amount of VOC emitted during a blowdown event significantly. For example, a natural gas operator could potentially emit 10,000 pounds of VOC during a blowdown event, but could reduced emissions to 700 pounds by simply reducing the pressure in the line. Consequently, general and flexible provisions have been included in N.J.A.C. 7:27-16.21 requiring each owner or operator of a natural gas pipeline to prepare and implement a Control Measures Plan, which describes the control technology or procedures that the owner or operator will use to reasonably achieve reductions of VOC emissions during a blowdown event. N.J.A.C. 7:27-16.21(a) lists the required information the Control Measure Plan must contain. The information gathered from the Control Measures Plans and the annual reports submitted to the Department on the blowdown events during the year will be used to establish RACT requirements in the future.

Despite the commenter's suggestions, the Department will implement N.J.A.C. 7:27-16.21 in a fair and non-discriminatory manner. The Department notes that both the regulated and environmental communities have ample opportunity to challenge any perceived discriminatory treatment on the part of the Department.

204. COMMENT: Natural gas pipelines are not defined under N.J.A.C. 7:27-16.21. Natural gas pipelines should be defined as interfacility pipelines. These pipelines are typically larger and have the potential to emit larger quantities of VOC than intrafacility pipelines. In addition, intrafacility pipelines typically can be depressured into process equipment. (5) (6)

With regards to N.J.A.C. 7:27-16.21(a), the commenter recommends that an applicability statement be incorporated in this subsection to clarify that these rules apply only to natural gas pipelines used for distribution of natural gas in commerce. Without this clarification, it could be interpreted that this subsection applies to the internal distribution natural gas pipeline systems within a facility, as opposed to utility supply pipelines. (11)

RESPONSE: Only owners or operators of natural gas pipelines that could, in the absence of control, emit 2,000 pounds of VOC from a blowdown event are required to prepare a Control Measures Plan. It is unlikely that many, if any, intrafacility gas pipelines could emit, in the absence of control, more than 2,000 pounds of VOC from a blowdown event. However, if this is the case, such facilities must prepare and implement a Control Measures Plan demonstrating how they will control such significant emissions.

205. COMMENT: N.J.A.C. 7:27-16.21 requires a case-by-case determination of RACT for natural gas pipeline companies which perform blowdown events. These "Control Measure Plans" must be submitted and approved by EPA as SIP revisions. (26)

RESPONSE: The Department agrees with this comment. Since N.J.A.C. 7:27-16.21 does not require specific emission reductions, the measures used to achieve the VOC reductions could differ greatly from operation to operation, and this case-by-case determination of RACT would require the plans to be submitted to and approved by the EPA as a SIP revision. The Department has clarified this by the addition of N.J.A.C. 7:27-16.21(f)6.

206. COMMENT: The commenters recommend that the language of N.J.A.C. 7:27-16.21(d) be revised. (12) (24)

One commenter suggested the following language: "The owner or operator of any natural gas pipeline . . . shall retain the Control Measure Plan at a company-owned facility near the location of any blowdown event in New Jersey . . ." Many of the blowdown events performed on natural gas pipelines occur along the pipeline right-of-way at valve settings or other locations where the only above-ground facilities are pipeline valves or regulators; no document storage facilities exist at these

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locations. During the actual blowdown event, a copy of the Control Measure Plan will be available on-site for inspection. However, at most locations it will be impractical to retain a copy on a permanent basis. (24)

Another commenter recommends that the Control Measure Plan be retained at the company office which has operating responsibility for the section of pipeline at which the blowdown activity is being conducted. The subsection should read:

(d) The owner or operator of any natural gas pipeline subject to (a) above shall retain the Control Measure Plan at the office of the owner/operator which has operating responsibility for the section of pipeline for which the blowdown event will occur and shall provide a copy of such plan to the Department within three days of receipt of a written request from the Department.

This commenter noted that blowdown activities for repair, maintenance and inspection are temporary, short-term activities that can be undertaken at any point along a transmission pipeline, generally in remote locations. In essentially all cases, there will be no structure within which the Control Measure Plan can be retained. (12)

RESPONSE: The Department agrees with these comments because they reduce the burden imposed on the industry without compromising the rule's beneficial effects on air quality. Accordingly, the Department has revised N.J.A.C. 7:27-16.21(d) to incorporate the suggestion.

N.J.A.C. 7:27-16.23 Procedures for demonstrating compliance

207. COMMENT: With regards to N.J.A.C. 7:27-16.23(a), the commenter recommends this subsection read: "The owner or operator of equipment or source operation subject to N.J.A.C. 7:27-16.8, 16.9, 16.10, 16.11 or 16.13 that is subject to an emission limit under this subchapter shall demonstrate compliance, if compliance has not been demonstrated prior to the effective date of this rule or not required in the permit for such equipment or source operation, frequency with the emission limit pursuant to (a)1 below if a continuous emission monitoring system has been installed on the equipment or source operation for the air contaminant in question, or pursuant to (a)2 below if no such system has been installed for air contaminant." (20)

RESPONSE: The Department has not included the commenter's request in the rule. The language suggested by the commenter may limit the requirement for an owner or operator of certain equipment or source operations to install continuous emissions monitoring systems, which would undermine the goal of using such systems to provide important emission information.

208. COMMENT: The proposed requirement is excessive by requiring an expense of approximately $5,000 per stack for stack testing to measure a potentially insignificant emission, as well as requiring this expense without achieving any reductions in VOC. The commenter conducted testing of a 184 MMBtu per hour boiler in January 1993 and VOC results were 0.13 pounds per hour (0.57 tons per year) during combustion of natural gas and 0.09 pound per hour (0.39 tons per year) while burning fuel oil. (Both tests were below the level of accuracy of the analyzer.) The commenter also presented estimates from a 100 MMBtu per hour, non-utility boiler burning a variety of fuels. As indicated from these estimates, a boiler twice the size of the 50 MMBtu per hour applicability size limit could potentially emit between 0.63 and 2.22 ton per year of VOC. The commenter therefore recommends that stack testing for non-utility boilers be removed from N.J.A.C. 7:27-16.23(a)2. (11)

RESPONSE: The Departments disagrees with the commenter's estimates of the cost of stack testing. The stack testing for VOC emissions can be conducted in conjunction with the stack testing for NO_x emissions in accordance with N.J.A.C. 7:27-19, thus, the incremental cost of the additional testing is not as significant as projected by the commenter as would be consistent with RACT.

209. COMMENT: With regards to N.J.A.C. 7:27-16.23(a)2, the commenter believes that testing is an appropriate compliance method but requests that the Department provide the flexibility to perform testing on representative units within a source category, rather than testing every single unit. The commenter believes that limited, periodic testing of representative units would be sufficient to adequately characterize air contaminant emissions from the Company's gas turbine fleet. Allowing for such testing would provide an accurate, reliable, and cost-effective method for determining compliance that preserves the operating flexibility upon which the RACT rules are intended to be based. (2)

RESPONSE: The Department agrees with the commenter and will consider amending the rule to allow for representative sampling at a later date.

210. COMMENT: With regards to N.J.A.C. 7:27-16.23(d), the commenter requests that DEPE clarify an inconsistency with the proposal. The commenter believes that N.J.A.C. 7:27-16.23(d) correctly states the intended rule, and that the proposal Summary is a simple misstatement. If the commenter is mistaken, then the Department should articulate why a violation of the NO_x emissions limits automatically must result in a violation of the VOC emission regulations. (28)

RESPONSE: The Department apologizes for the misstatement in the Summary of N.J.A.C. 7:27-16.23. The statement should read: "If the testing or monitoring required to demonstrate compliance shows instead that the source is exceeding the applicable VOC and/or CO emission limits, the exceedance is considered a violation of subchapter 16 for which the Department may assess penalties under N.J.A.C. 7:27A."

N.J.A.C. 7:27-16.24 Adjusting combustion processes

211. COMMENT: With regards to N.J.A.C. 7:27-16.24, the commenters request that the Department develop separate procedures appropriate for stationary gas turbines and stationary internal engines. (2) (28)

Procedures could include monitoring turbine gas temperature spreads, engine pressure ratios, and water to fuel ratios for those units equipped with water injection systems. (2)

The rule should be modified to reflect preventive maintenance which is performed for the purposes of promoting complete, efficient combustion. The preventive maintenance would include evaluating engine condition, replacing wear parts, evaluating controls, etc. (28)

The procedures in the proposed rule for adjusting the combustion process are not appropriate nor possible for stationary gas turbines and stationary internal engines. (2) (28)

It is not possible to inspect the flame pattern and make adjustments to the burner necessary to optimize the flame pattern. (2)

RESPONSE: The Department agrees with the essence of these comments, and it therefore intends in the near future to propose amendments to the NO_x RACT rules at N.J.A.C. 7:27-19.16, which amendments would set forth separate procedures appropriate for stationary gas turbines and stationary internal engines.

N.J.A.C. 7:27-16.25 Continuous emissions monitoring

212. COMMENT: CEMS are not always reliable instruments. The commenter suggests that downtime be allowed in the proposed regulations. (5)

RESPONSE: The Department will consider allowing down time for the CEMS, and will handle any such provisions on a case-by-case basis at the time when the continuous monitoring system is approved for use by the Department. Guidelines for CEMS are available from the Chief, Bureau of Technical Services, DEPE—Air Quality Regulation, CN 411, Trenton, New Jersey, 08625-0411.

213. COMMENT: CEMS equipment is not only expensive from the standpoint of initial installation, but the operation and maintenance of CEMS is cost and labor intensive. The requirement for CEMS as proposed in the rule is overly burdensome, especially for systems that are in use a minimal number of hours. For example, one commenter believes the installation of CEMS for compliance purposes at remote, unmanned locations which operate typically less than 200 hours per year, will necessitate extensive additional resources (that is, manpower, equipment, and time) for the care of these systems. This commenter recommends requiring nothing more stringent than stack tests to be conducted at the time of permit renewal (every five years) for these locations. Considering the rigorous maintenance on these units and the minimal number of hours which these stationary combustion turbines operate, emissions from these sources are not expected to degrade. (28)

Another commenter, who has estimated the installation and maintenance costs for CEMs for CO on their low capacity factor utility boilers, believes that these costs are clearly unreasonable simply to obtain CO emission information, especially on stationary units which are acknowledged to be small contributors to any CO problem. Furthermore, it must be emphasized that these CEMS costs would be incurred without any reduction in CO emissions. (2)

RESPONSE: The Department agrees, in part, with the commenter. The Department agrees that the installation of CEMS on certain units can be expensive, especially when those units are located at remote, unmanned sites. However, the Department believes that monitoring at these sites is justified by virtue of the fact that they are unmanned. During most of the year, no one is at the site to ensure that the equipment is functioning properly. Therefore, the Department determined that some monitoring of the emissions from these sources

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must be done to ensure compliance with the rule and minimization of the impact to the environment. The Department will allow alternatives to CEMs, however, as outlined in the adopted language of NO_x RACT, N.J.A.C. 7:27-19.18.

214. COMMENT: EPA does not require the installation of CEMS for CO in the Continuous Emissions Monitoring provisions of the Acid Rain Program rules at 40 CFR 75, which were promulgated on January 11, 1993. (2)

RESPONSE: The Department agrees with this comment, but notes that the purpose of the Acid Rain Program is to control the emissions of acid rain precursors, while the purpose of this rule is to reduce the emissions of ozone precursors. The requirement for CO CEMS is made in lieu of requiring more expensive monitoring of the VOC emissions from these sources, since CO emissions serve as a surrogate for VOC emissions for most combustion sources.

215. COMMENT: Although CEMS for utility boilers were required by the 1990 CAAA, they were not specifically required for combustion turbine sources. Therefore, DEPE should have complete latitude with regard to this portion of the proposed rules. If the Department insists on requiring CEMS for the stationary combustion turbines, the commenter suggests that the applicable requirements be only as stringent as 40 CFR Part 60 in as much as quality assurance and quality control procedures are concerned. (28)

RESPONSE: The Department agrees with the commenter; the quality assurance and quality control procedures at 40 CFR 60 are appropriate for combustion turbines. However, the Department believes, in respect to stationary gas turbines, the installation of continuous emissions monitoring systems is warranted, since these turbines operate on the days when the probability of exceeding the ozone NAAQS are highest.

216. COMMENT: With regards to N.J.A.C. 7:27-16.8(g), this commenter believes that CO emission limits should not be part of the proposed rule and therefore states that installation of CEMs for CO should also not be required. (2)

RESPONSE: The Department has received significant comments on its CEMS provisions in both this rule and its NO_x RACT rules, N.J.A.C. 7:27-19. It considers many of those comments to have considerable merit, and it accordingly intends to propose amendments to its CEMS provisions. Because the CEMS provisions in both rules are so similar, and because the Department intends in the near future to propose amendments to the NO_x RACT rules, the Department has determined to simply reserve the CEMS section in these rules, N.J.A.C. 7:27-16.25, and to establish any VOC CEMs requirements in the context of the upcoming NO_x RACT proposal.

Nonetheless, the Department notes by way of more specific response to this comment that the purpose behind including the requirement for continuous monitoring of CO emissions was not for the purposes of attainment with the National Ambient Air Quality Standard for CO, but as a surrogate for requiring continuous emissions monitors for VOC. With the ongoing reductions in the VOC emissions from other types of sources in the State, the emissions from boilers has become a significant category of ozone season VOC emissions. Rather than requiring more expensive monitoring for VOCs, the Department believes that the monitoring for CO as a surrogate will both ensure compliance with the VOC RACT rule and provide valuable data as to the actual emissions of VOC from these sources on a continuous basis. However, recognizing the costs for installation and upkeep of these monitoring systems, the Department intends to incorporate provisions into this rule, by reference to N.J.A.C. 7:27-19.18 provisions allowing for alternatives to continuous emissions monitors. These alternatives will include representative monitoring of one unit at a site as being representative of all units at the site as well as parametric monitoring. These changes were made in the adoption of the NO_x RACT rule which became operative January 23, 1994.

217. COMMENT: This commenter believes that the Department should not impose CEMS requirements for CO on utility boilers. Periodic representative testing provides an accurate, reliable, and cost-effective method for determining compliance that preserves the operating flexibility upon which the RACT rules are intended to be based. The commenter recommends that utility boilers should be allowed to verify compliance through representative stack testing rather than through CEMs to estimate emissions from those utility boilers exempted from installing CEMS for CO. At a minimum, the Department should exempt utility boilers that qualify to use an alternative to NO_x CEMS under Appendix E of 40 CFR 75 because they are gas-fired or oil-fired peaking units. (2)

RESPONSE: The Department believes that the installation of continuous emission monitoring systems on utility boilers is warranted based on the way in which they are operated. The peaking utility boilers which the commenter noted are usually operated on those days when the possibility of exceeding the ozone standard is at a maximum. Furthermore, with the reduction in VOC emissions from other source categories, the VOC emissions from the utility industry have become a significant portion of the ozone season day VOC inventory. Alternatives to CEMs, however, will be allowed by reference to N.J.A.C. 7:27-19.18, as incorporated by N.J.A.C. 7:27-16.8(f).

218. COMMENT: These commenters recommend that N.J.A.C. 7:27-16.25(a) be revised as follows: "(a) Any person required to install a continuous emissions monitoring system under this subchapter shall: 5. Continuously monitor and record CO emissions from the combustion source operations or equipment subject to the monitoring requirement." (5) (6)

RESPONSE: As set forth in Response 217, the Department is reserving N.J.A.C. 7:27-16.25. Nonetheless, the Department notes by way of more specific response to this comment that the recommended language would be redundant since other provisions of the rule make it clear that CEMS are required only for combustion sources.

219. COMMENT: With regards to N.J.A.C. 7:27-16.25(b), this proposed regulation is not consistent with Department guidance on the operation of source equipment monitored by CEMS. Guidance documents state the Department expects acceptable CEMS to obtain valid data 90 percent of the time. This paragraph, as written, is extremely severe and would require a refinery shutdown upon CEMS failure. The regulation should be rewritten consistent with the Department's guidance on this issue, and should not be subject to the Department's source-by-source approval. (33)

RESPONSE: The Department agrees with the commenter. Generally, the Department requires CEMS to provide for a minimum of ninety percent valid data for each calendar quarter. However, the allowance for down time of the CEMS system can be adjusted on a case-by-case basis as the CEMS systems are approved by the Department. Also, see the response to Comment 212.

220. COMMENT: With regards to N.J.A.C. 7:27-16.25(b), these commenters believe that if this section also applies to approved equivalents for CEMS, facilities that have multiple vapor units will benefit from the reduced equipment costs, maintenance costs, and manpower costs. These commenters view this as a beneficial enhancement to existing regulations. (5) (6)

RESPONSE: The Department agrees with the commenter about the relaxation of the CEMS requirements for multiple units at one site under these rules. However, the Department still reserves the right to require the installation of such a system on each unit at the site, if it cannot be shown that the emissions from one unit are closely related to the emissions from the other units at the site.

221. COMMENT: The commenter recommends consistency with the exemption under 40 CFR 75, which is an equitable alternative to the criteria for limited installation of CEMS outlined in the proposed N.J.A.C. 7:27-16.25(e). These criteria are too stringent to provide any relief from installing CEMs for CO on every utility boiler. This commenter's alternative is consistent with EPA requirements and provides much-needed operating flexibility, which the commenter believes the Department intended to provide in the proposed rule. (2)

RESPONSE: The Department does intend to provide industry with operating flexibility, but it does not agree that the exemption procedures for CEMS outlined under 40 CFR 75 should be part of this rule. Those procedures were designed to measure emissions on an annual time frame. On an annual scale, the emissions from peaking units are relatively small. However, on a daily basis, especially during the hottest days of the year (that is, those days when an ozone exceedance is likely), the emissions from peaking units may be a significant portion of the inventory. Therefore, the Department will not exempt these units for the requirements for CEMS.

222. COMMENT: This commenter supports the provision of the rule that would permit limited installation of CEMS on equipment of the same make and model, provided that equipment is operated under similar conditions. However, the commenter believes that this representative installation provision should be expanded to include equipment that satisfies the similarity requirements, but is located at a different facility, as long as the equipment is operated by the same

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company. This expansion would lessen the financial impact of the CEMS requirement, and still provide the Department the type and frequency of emission information that it requires. (28)

RESPONSE: As set forth in Response 217, the Department is reserving N.J.A.C. 7:27-16.25. Nonetheless, the Department notes by way of more specific response to this comment that it agrees with the essence of this comment. Although it also believes that the proposed rule would have allowed the commenter to implement its suggestion, it will propose language to make it even more clear than the "similarity" can be between equipment located at different facilities operated by the same entity.

223. COMMENT: With regards to N.J.A.C. 7:27-16.25(l), these commenters believe that continuous emissions monitors have not been reliable instruments and provisions for the monitor to be out of service should be provided. (5) (6) (32) (34)

Two commenters noted that Federal regulation 40 CFR Part 60.105 allows for eight days per month downtime. The Department should allow for instrument repair and downtime for routine maintenance in this regulation. These two commenters recommend this section be amended to read: "(l) The owner or operator of an item of equipment or source operation required to have a continuous emissions monitoring system shall not operate the equipment or source operation without such a system, except when emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments, emission data will be obtained by using one of the following methods to provide emission data for a minimum of 18 hours per day in at least 22 out of 30 days in accordance with a plan approved under this section. If an item of equipment or a source operation required to have a continuous emissions monitoring system is operating without such a system, without first having received approval of a plan authorizing such operation, it shall not be a defense to an enforcement action that an application for approval of a plan is pending." (5) (6)

Other commenters believe that this provision should allow for CEMS to be out of service for maintenance, calibration, repair, and the performance of required cylinder gas audits. (32) (34)

One commenter states that all of these conditions should be reasons to allow an emission source to operate without a CEMS. A reasonable allowance should be made for maintenance and repair outages. The allowance should be at least one week per outage, that is, a source must install a replacement monitor if the repair or maintenance will require more than one week or take other corrective action. (32)

Finally, another commenter recommends that subchapter 16 include a definition of "in service" with respect to continuous emission monitors and should provide for reasonable downtime. (34)

RESPONSE: The Department believes that the requirement that the CEMS meet the requirements of 50 CFR Part 60 includes the allowance for downtime, but that the requirement to continuously monitor and record emissions limits the down time to when the monitor is not functioning and does not allow for "turning off" the monitor just because the 22 days per month criteria has been met. Also see the responses to Comment 212 and Comment 219.

N.J.A.C. 7:27-16.27 Exceptions

224. COMMENT: This commenter addresses the failure to account for retirement of units. Throughout the course of the proposed rules, the Department has cross-referenced and incorporated several of the provisions of its NO_x emissions rule. A notable exception is the provision allowing for the retirement of boilers scheduled for retirement prior to May 15, 1999. There is no legal basis prohibiting the Department from extending this provision to the proposed Rule. Accordingly, this commenter believes that the VOC rule should include a provision to exempt from the RACT requirements boilers that are scheduled for retirement or to be repowered prior to May 15, 1999. Under the NO_x rules, a utility boiler that is to be retired or repowered prior to May 15, 1999 is subject to no numerical NO_x emission limits other than those set forth in the boiler's permit and certificate issued under N.J.A.C. 7:27-8 (see N.J.A.C. 7:27-19.4(c)). Furthermore, the commenter requests that the rule include an exemption for combustion turbines that are scheduled for retirement prior to May 15, 1999, for the same reasons that utility boilers scheduled for retirement should be exempt from the rule. Notably, the commenter's combustion turbines are operated only a finite number of hours per year (often below 200 hours per year), and therefore, the imposition of emissions limits for VOCs and CO for combustion turbines that are used infrequently or are scheduled for retirement prior to May 15, 1999 is unreasonable. (28)

RESPONSE: The NO_x RACT rule, as adopted, does not include a retirement provision. Retirement of a unit may be considered RACT under a Facility-specific NO_x RACT plan submitted pursuant to N.J.A.C. 7:27-19.13. Similarly for VOC, retirement of a unit may be considered RACT under facility-specific VOC control requirements.

225. COMMENT: With regards to N.J.A.C. 7:27-16.27(b), the commenter states that these proposed rules exempt certain operations from the requirements until November 15, 1994. The commenter recommends that the proposed wording in N.J.A.C. 7:27-16.27(b) be changed to delete the reference date of November 15, 1994. As proposed, the rules would become effective for all listed categories on November 15, 1994, which does not appear to be the intent of the Department. As stated in the proposed rule Summary, in the event that EPA does not publish a CTG document for these sources, the Department intends to review these sources on a case-by-case basis, rather than have the existing and proposed VOC regulations become applicable to these sources. (11)

RESPONSE: The Department agrees with the substantive result suggested by the commenter, but it submits that the rule as proposed provides that result and is consistent with the Department's intent. Specifically, the rule as proposed provides that sources engaged in the "exempted" activities will be subject to the RACT requirements beginning on November 15, 1994 and must implement RACT by May 31, 1995; absent further rulemaking, the RACT requirements to which they will be subject will be the facility-specific requirements of N.J.A.C. 7:27-16.17. The Department's intent is consistent with the requirements of the CAAA, as interpreted by EPA guidance (for example, Appendix E to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 18070 (April 28, 1992)).

EPA has issued Draft Control Techniques Guidelines for Offset Lithography, Wastewater, and Surface Coating of Automobiles & Business Machine Plastic Parts. Although EPA does not plan to finalize these CTGs until at least 1995, it does plan to issue Alternative Control Technology (ACT) documents which will contain information on emissions, controls, control options and costs, but will not contain specific recommended RACT emission limits. The draft CTGs and the upcoming ACTs will provide basis and background for the case-by-case regulation of these categories pursuant to N.J.A.C. 7:27-16.17. The Department is currently reviewing the existing draft CTGs and the number of potentially impacted facilities to determine whether to promulgate specific RACT regulations for these categories. Based on initial review of these categories, the Department will likely promulgate specific RACT regulations for Offset Lithography, Industrial Wastewater Treatment and Surface Coating of Plastic Parts. In any event, the Department will make every effort to ensure that the timing in the ACT issuances by EPA will not subject the affected source categories to inconsistent requirements or other undue burden.

226. COMMENT: The commenter notes that the definition of "stationary gas turbine" fails to recognize the use of turbines for emergency services and for temporary, short-term industrial uses such as emergency compression or recovery of gas during pipeline blowdown, over which period the emission of VOCs will be *de minimis*. However, if these uses were to be evaluated on the basis of potential to emit (that is, 8,760 hours per year), the turbines could be considered major sources. To ensure that such turbine use does not fall under these proposed rules, the addition of the following paragraph to N.J.A.C. 7:27-16.27(b), is recommended: 7. Portable gas turbines used for emergency services; and for recovery of pipeline blowdown events and other temporary, short-term intermittent activities, provided use of the turbine at a single location is less than 45 days in duration. (12)

RESPONSE: Only stationary gas turbines which are subject to the provisions of N.J.A.C. 7:27-16.19 are subject to the VOC RACT requirements for stationary gas turbines at N.J.A.C. 7:27-16.9. N.J.A.C. 7:27-19.2(d) contains an exemption for emergency generators subject to a Federally enforceable limit restricting its operations to less than 500 hours during any 12 month period which does not have the potential to emit more than 25 tons of NO_x per year.

227. COMMENT: This commenter supports the proposed revision of the definition of facility on the basis that it appears generally consistent with the CAAA. For the purpose of clarifying applicability, the proposed new language should be revised to read: "For the purposes of this definition, each natural gas pipeline compressor or pump station and each section of natural gas pipeline between such compressor or pump station shall constitute a separate natural gas pipeline facility." The reason cited for the revision is that N.J.A.C. 7:27-16.27(b)3 refers to

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natural gas pipelines that are not major VOC facilities. Revising the definition of "facility" in N.J.A.C. 7:27-16.1 provides consistency of terms and clarifies that the term "natural gas pipeline facility" refers either to a distinct pipeline section or compressor station. Furthermore, the commenter believes that this exception should be revised to incorporate by reference the definition of facility that is proposed in N.J.A.C. 7:27-16.1. The purpose is to clarify that a natural gas pipeline facility constitutes either a natural gas pipeline section, a natural gas compressor station, or pump station, each of which are separate facilities and fall under the exception set forth at N.J.A.C. 7:27-16.27(b)3. The commenter suggests the following revision to proposed N.J.A.C. 7:27-16.27 to achieve such clarification: "Natural gas pipeline facilities, as defined at N.J.A.C. 7:27-16.1, that are not major VOC facilities, with the exception of blowdown events as set forth in N.J.A.C. 7:27-16.21(a)1." (23)

RESPONSE: The Department feels the proposed rule language is sufficiently clear and the recommended modifications would not make the rule more clear.

228. COMMENT: The loss of the exemption for wastewater treatment systems will have a tremendous impact on both industry and the general community through the inclusion of POTWs. The cost to develop alternative VOC control plans under N.J.A.C. 7:27-16.17, which would include all alternative processes, their installation costs and operating expenses, would be excessive in comparison to the level of VOC reduction, and not consistent with the definition of RACT. It is recommended that the exemptions outlined in N.J.A.C. 7:27-16.27(b)4 and 16.27(b)5 remain in place. (35)

These commenters are concerned with the November 1994 expiration of the industrial wastewater exemption based on data regarding air emissions from their wastewater plants, and cost estimates to cover and control them. In many instances, the cost to install retrofit covers and control devices on a wastewater plant is prohibitively expensive for modest reductions in VOC emissions. A dollar per ton figure needs to be promulgated as part of the alternative VOC control plan 16.17 requirements to assure the regulated community that "Reasonable" remains a key part of RACT. (36) (37) (19) (3) (18)

RESPONSE: The CAA requires that all major sources be subject to RACT requirements by November 15, 1994 and that those source implement those requirements by May 31, 1995. Thus, the Department is precluded by Federal law from continuing this exemption. However, the Department does retain discretion in determining what RACT would be for a source or source category, and it is sympathetic to some of the difficulties wastewater plants will face in controlling their emissions. For example, the Department would agree that if the cost to install retrofit covers is prohibitively expensive and would produce only modest VOC reductions, N.J.A.C. 7:27-16.17 probably would not require that they be installed. However, until the appropriate analysis is conducted, the Department cannot determine with precision what is and is not RACT. In performing this analysis, a specific dollar per ton figure for RACT has not been set by the Department or EPA. Setting specific dollar figures would be contrary to the flexible nature of the RACT concept. However, the upper range of the cost effectiveness of the measures proposed in this rule can be used as a general criterion for judging whether costs are excessive in relation to benefits. This cost effectiveness was $10,000 per ton of VOC. The commenters should be assured that "reasonable" will remain a key component of the Department's RACT analysis. As to the commenter's concerns about the cost of even performing the analysis required by N.J.A.C. 7:27-16.17, the Department believes that the cost of preparing the necessary analysis will be consistent with RACT. Further, the Department believes that there are a variety of ways in which the owners and operators of the affected wastewater plants can keep their analysis costs to a minimum. For example, through industry associations or otherwise, they can develop "generic" analyses that could be used throughout the industry. The Department is willing to devote resources by working with industry representatives to develop generic analyses.

N.J.A.C. 7:27-17.3 Storage, transfer and use of toxic substances

229. COMMENT: The commenter is particularly supportive of the Department's intention to regulate methylene chloride and methyl chloroform. The health risks posed by these chemicals warrant additional controls. The commenter opposes any efforts to weaken the proposed controls in the absence of new information. (10)

RESPONSE: The Department agrees that the continued regulation of methylene chloride and methyl chloroform is necessary to protect health, welfare and the environment.

N.J.A.C. 7:27-17.4 Discharge of toxic substances

230. COMMENT: With regards to N.J.A.C. 7:27-17.4(c), the commenter questions how DEPE will implement this for the new group II TXSs. Currently emissions from the batch and pilot plant permits are grouped into categories and subcategories. Will these permits need to be revised to indicate that methylene chloride is a TXS instead of just a VOC? (36)

RESPONSE: N.J.A.C. 7:27-17.4(c) regulates Group II TXS in the same manner as VOCs are regulated. Since Group II TXS, such as methylene chloride, are regulated at the same level as VOCs in batch and pilot plant permits, no addition controls are required. These permits may be administratively revised upon renewal of the permit or earlier, at the discretion of the permit holder to indicate the amount of Group II TXS emitted.

N.J.A.C. 7:27A-3.10 Civil administrative penalties for violations of rules adopted pursuant to the Act

231. COMMENT: These commenters suggest that the fine associated with N.J.A.C. 7:27-16.4(k) be removed so that the facility will not be fined twice if a transfer of a VOC results in a liquid spill. (36) (1)

The requirements and fines associated with a spill have already been assessed under the N.J.A.C. 7:1E DPCC regulations. Owners and operators of facilities should not be subjected to two sets of rules and two sets of fines for each release. (1)

It is unreasonable to subject a company to mandatory fines under N.J.A.C. 7:27A-3.10 for VOC emissions resulting from an accidental spill. Companies have spent millions of dollars to comply with the new DPCC regulation by install secondary spill containment systems in recognition of the fact that spills cannot be completely prevented. Secondary spill containment is a reasonable technology. However, there is no reasonable technology for containing the emissions from a spill. (1)

RESPONSE: N.J.A.C. 7:27-16.4(k) specifically prohibits the transfer of applicable VOC's when liquid VOC will spill if the transfer continues. An enforceable provision which prohibits a liquid spill of an applicable VOC is appropriate in the air pollution control regulations because such a spill will result in emissions into the air. The Department establishes civil administrative penalties for violations of the enforceable provisions of a rule. N.J.A.C. 7:1E, Discharge Prevention Containment and Countermeasures Regulations provide for the assessment of civil administrative penalties for a discharge of a hazardous substance into the waters or onto the lands of the State. The Department disagrees with the commenter and asserts that the DPCC regulations do not control the release of applicable VOC's into the air.

232. COMMENT: The commenter believes the schedule of penalties under N.J.A.C. 7:27A-3.10 for offense provided under citations N.J.A.C. 7:27-16.21(a), (b) and (e) are excessive. The commenter believes that the "Blowdown Event" Control Measure Plan is similar in application and effect to requirement of a permit. The schedule for failure to acquire a permit as required under N.J.A.C. 7:27-16.3(r)1 allows for a first offense penalty of $400.00, second offense $800.00, etc. The penalty for failure to provide an initial plan or to revise a plan should be reduced from $2,000.00 to $400.00 accordingly. (23)

RESPONSE: The Department has not decreased the amounts of the civil administrative penalties for violations of N.J.A.C. 7:27-16.21(a), (b) and (e) as requested by the commenter. The Department established the civil administrative penalties for violations of N.J.A.C. 7:27-16.21(a), (b) and (e) based on the potential adverse environmental impact if these requirements are not implemented and a blow down event occurs. The Department based the penalties for violations of N.J.A.C. 7:27-16.21(a), (b) and (e) on existing penalty provisions for significant violations of N.J.A.C. 7:27-8.3(e)1 and maintains that the proposed amounts are appropriate.

Summary of Changes Upon Adoption in Response to Comments

In response to Comments 11 and 97, the Department has added provisions at N.J.A.C. 7:27-16.4(q), 16.7(q), and 16.21(g) which allows a 60 day renewable extension of the permit application deadline which is obtainable from the Department upon written request.

In response to Comments 14 and 18, at N.J.A.C. 7:27-16.8(h) through (j), 16.9(g) through (i), 16.10(f) through (h), 16.11(f) through (h), and 16.22(f), the Department has indicated that test methods need only be approved in advance by the Department and acceptable to EPA.

In response to Comment 35, the Department has deleted the proposed redundant provision at N.J.A.C. 7:27-8.2(c) upon adoption.

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In response to Comment 38, the Department has deleted the definition of "capture system" from N.J.A.C. 7:27-16.1 as the term is not used in the subchapter.

In response to Comments 39, 162, 161, 177, 184 and 197, the Department has modified the monitoring requirements at N.J.A.C. 7:27-16.18(f)1iv, (f)1v, (h)1iii, (h)1iv, (i)1iv and (i)1v.

In response to Comment 40, the Department has revised the definition of "facility" for clarity.

In response to Comment 42, the Department has modified the definition of "flare" to clarify that thermal oxidizers are not flares.

In response to Comment 43, the Department has revised the definition of "gas turbine."

In response to Comments 44 and 185, the Department has replaced the term "inaccessible component" with "difficult to monitor component" at N.J.A.C. 7:27-16.1 and 16.18. The Department has also revised N.J.A.C. 7:27-16.18(m) so that reduced testing frequency of "difficult to monitor" components shall not apply to those components installed on or after May 31, 1995. The Department has also revised language at N.J.A.C. 7:27-16.18(p)2 that provided exemption for "a component that cannot be tested because it is inaccessible, and cannot be made accessible, for conducting the test."

In response to Comment 45, the Department has added the word "applicable" to modify VOC in the definition of "leak" at N.J.A.C. 7:27-16.1.

In response to Comment 49, the Department has added the word "applicable" to modify VOC in the definition of "liquid leak" at N.J.A.C. 7:27-16.1.

In response to Comment 55, the Department has added the phrase "within an enclosed space" to the definition of thermal oxidizer at N.J.A.C. 7:27-16.1 to clarify that flares are not included in the definition.

In response to Comment 56, the Department has revised the definition of the term "utility boiler" in order to be consistent with the definition of the same term at N.J.A.C. 7:27-19.1

In response to Comment 61, in order to provide consistency with the proposed operating permit rules, the Department has made a minor format change in the definition of "VOC" at N.J.A.C. 7:27-8.1, 16.1, 17.1, 23.2, 25.1; N.J.A.C. 7:27A-3.2 and N.J.A.C. 7:27B-3.1.

In response to Comment 62, the Department has clarified the specification of the acceptable test methods for the measurement of VOC in the definition of "VOC" at N.J.A.C. 7:27-8.1, 16.1, 17.1, 23.2, 25.1; N.J.A.C. 7:27A-3.2 and N.J.A.C. 7:27B-3.1.

In response to Comment 63, the Department has added a definition of "calendar day" at N.J.A.C. 7:27-16.1.

In response to Comment 64, the Department has added a definition of "gaseous service" at N.J.A.C. 7:27-16.1.

In response to Comment 65, the Department has added a definition of "liquid service" to N.J.A.C. 7:27-16.1.

In response to Comment 68, the Department has added a definition of "process unit shutdown" to N.J.A.C. 7:27-16.1.

In response to Comment 70, the Department has replaced the word "source" with the defined term "source operation" throughout the text of the adopted provisions.

In response to Comments 76 through 79, the Department has deleted non-substantive N.J.A.C. 7:27-16.1A(e) and has deleted N.J.A.C. 7:27-16.1A(f) which redundantly referred to mathematical combination of sources or "bubbles."

In response to Comment 82, the Department has added the requirement at N.J.A.C. 7:27-16.2(h) that secondary seals shall be intact, with no visible holes tears or other openings.

In response to Comment 84, the Department has added an exemption at N.J.A.C. 7:27-16.4(h)3 for vacuum trucks used for equipment clean-out or other clean-up operations.

In response to Comment 85, the Department has added an exemption at N.J.A.C. 7:27-16.4(h)2 for delivery vessels used in groundwater remediation.

In response to Comment 86, the Department has corrected a grammatical error at N.J.A.C. 7:27-16.4(a)2.

In response to Comment 92, the Department has added the phrase "in gallons" to N.J.A.C. 7:27-16.4(d)2 and (g)2.

In response to Comment 93, the Department has added the phrase "except as provided in (b) above" to N.J.A.C. 7:27-16.4(d)3 and (g)3.

In response to Comments 95 and 96, the Department has modified N.J.A.C. 7:27-16.4(f) and (g) so that only the annual quantity of applicable VOC loaded to delivery vessels from a storage tank is used to calculate annual uncontrolled emissions.

In response to Comment 98, the Department has modified N.J.A.C. 7:27-16.4(i) to delete the annual pressure testing requirement. Instead, tank trucks containing applicable VOC are required to comply with DOT regulations concerning inspection and pressure testing at 40 CFR 180.407.

In response to Comment 99, the Department has modified N.J.A.C. 7:27-16.4(j) to allow the loading and unloading of applicable VOC stored or transferred at elevated pressure or under vacuum.

In response to Comments 100 and 102, the Department has modified N.J.A.C. 27-16.4(k) to require that any loading or unloading operation must cease immediately if the transfer results in a liquid spill.

In response to Comment 101, the Department has modified N.J.A.C. 7:27-16.4(k)2 by replacing the term "VOC" with "applicable VOC."

In response to Comment 104, the Department has exempted sample collection from the vapor tight requirement at N.J.A.C. 7:27-16.4(l).

In response to Comment 105, the Department has deleted the phrase "should have been discovered" from N.J.A.C. 7:27-16.4(m). It has also clarified that its intent was only to require that the leaking truck be repaired and retested before being placed back into service; little or no environmental benefit would be achieved by requiring the prompt repair of a truck that the owner has decided to take out of service.

In response to Comment 107, at N.J.A.C. 7:27-16.4(p), the Department has revised the minimum ambient temperature for conducting tests for vapor control systems from 801dF to 70°F.

In response to Comment 108, the Department has corrected two typographical errors at N.J.A.C. 7:27-16.4(p).

In response to Comment 109, the Department has provided an exemption from the ballasting requirements at N.J.A.C. 7:27-16.5(a) when ballasting is conducted in dedicated ballast tanks that use only water.

In response to Comment 111, the Department has revised N.J.A.C. 7:27-16.5(c) by specifying an appropriate control efficiency (95 percent) as RACT as an alternative to the case-by-case analysis.

In response to Comment 115, the Department has deleted the requirement to record the time at which each marine tank vessel arrived and departed from the marine terminal from the required records pursuant to N.J.A.C. 7:27-16.5(j).

In response to Comments 123 and 124, at N.J.A.C. 7:27-16.7(n), the Department has deleted the requirement to record the time each surface coating formulation is started and ended.

In response to Comment 129, the Department has added a provision at N.J.A.C. 7:27-16.8(k) allowing units that enter into a Repowering agreement pursuant to N.J.A.C. 7:27-19 to submit facility-specific CO limits as part of the Repowering Plan submitted to the Department.

In response to Comment 134, the Department has extended the initial combustion process adjustment requirement from May 1, 1994 to May 1, 1995 at N.J.A.C. 7:27-16.8(b)3, 16.9(f), and 16.10(e). However, this change does not alter the date at which combustion sources are required to be adjusted pursuant to the NO_x RACT rules at N.J.A.C. 7:27-16.19.

In response to Comment 135, the Department has corrected a grammatical error by inserting the word "at" at N.J.A.C. 7:27-16.8(b)1 and (c)1.

In response to Comment 136, the Department has allowed for alternatives to continuous emission monitors (CEMs) at N.J.A.C. 7:27-16.8(f) and (g).

In response to Comment 140, the Department has modified the requirements at N.J.A.C. 7:27-16.8(i) through (k), 16.9(g) through (i), 16.10(f) through (h) and 16.11(f) through (h) to state that emission measurement methods must be "approved in advance by the Department and acceptable to EPA."

In response to Comments 142, 144 and 148, the Department has reserved the proposed CO limits at N.J.A.C. 7:27-16.9(b) and 16.10(b). The Department will propose new CO limits in a future amendment to N.J.A.C. 7:27-16. The Department is considering a CO limit of 250 ppmvd at 15 percent oxygen for stationary gas turbines and a CO limit of 500 ppmvd at 15 percent oxygen for stationary internal combustion engines.

In response to Comment 149, the Department has corrected the test method referenced at N.J.A.C. 7:27-16.10(f).

In response to Comments 162 and 163, the Department has determined not to adopt the proposed LDAR applicability threshold for chemical plants, which was set at equipment that is operated in VOC service for at least 300 hours per year. The Department agrees that quantity of VOC processed is a more rational threshold than hours of operation. Therefore, the Department has "reserved" the proposed

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threshold for chemical plants and will repropose a new threshold as soon as possible. The Department is considering reproposing N.J.A.C. 7:27-16.18(b) to read as follows:

"(b) The provisions of this section shall apply to equipment in contact with a substance that:

1.-3. (No change.)

4. At any chemical plant, other than a synthetic organic chemical or polymer manufacturing facility, is ten percent by weight or greater applicable VOC, and the total quantity of applicable VOC processed in the equipment is greater than 550 tons per year. Quantity processed includes the total annual quantity of applicable VOC charged to all processes used in the equipment."

In response to Comment 164, the Department has clarified the language at N.J.A.C. 7:27-16.18(c)2 in order to exclude the proper functioning of pressure relief devices.

In response to Comment 165, the Department has added language at N.J.A.C. 7:27-16.18(c)3 in order to exclude certain equipment designed as emergency devices from leak detection and repair requirements.

In response to Comment 169, the Department has added a new provision at N.J.A.C. 7:27-16.18(s) which allows for an affirmative defense for noncompliance with the repair time limits specified at Tables 18A and 18B in the case where parts are unavailable.

In response to Comments 171 and 172, the Department has corrected typographical errors in Tables 18A and 18B.

In response to Comment 175, the Department has the Department has deleted references to 50,000 ppm in Tables 18A and 18B.

In response to Comment 176, the Department has clarified the rule language at N.J.A.C. 7:27-16.18(f) through (i) to state that if a shutdown is required to repair a leak then the regulated leak shall be repaired during the next process unit shutdown and prior to the next start-up.

In response to Comment 178, the Department has revised the wording at N.J.A.C. 7:27-16.18(f)1ii to account for multiple facilities under one ownership.

In response to Comment 180, the Department has replaced the term "VOC" with "applicable VOC" at N.J.A.C. 7:27-16.18(b)1.

In response to Comment 181, the Department has clarified N.J.A.C. 7:27-16.18(f) through (i) to state that equipment which is not operating is not required to be started-up for solely for the purpose of monitoring components during a specified monitoring period. N.J.A.C. 7:27-16.18(j)2 was also amended to require that such equipment be identified to the Department.

In response to Comment 182, the Department has clarified that N.J.A.C. 7:27-16.18(i)6 applies to components detected to have a regulated leak.

In response to Comment 183, the Department has revised the due date for reports to be submitted pursuant to N.J.A.C. 7:27-16.18(j)2 from "the first day of every third month" to "the last day of every third month."

In response to Comment 186, the Department has broadened the exemption at N.J.A.C. 7:27-16.18(n) to include components other than valves in vacuum service from the leak detection and repair requirements.

In response to Comment 188, the Department has indicated, at N.J.A.C. 7:27-16.18(e)1, the acceptable calibration gases to be used in the implementation of Method 21.

In response to Comment 189, the Department has clarified the requirement at N.J.A.C. 7:27-16.18(o) to note that a fill line that is used regularly to fill containers is considered to be in actual use for the purpose of this provision.

In response to Comment 191, the Department has broadened the description of the monitoring device required to detect seal failure at N.J.A.C. 7:27-16.18(p)4iv.

In response to Comment 192, the Department has "vented to a control apparatus" to "vented to a controlled emission point" at N.J.A.C. 7:27-16.18(p)6.

In response to Comment 195, the Department has added a provision at N.J.A.C. 7:27-16.18(t) stating that a leak shall not constitute a violation of this section so long as the component from which it appears has been monitored or inspected in accordance with this section and so long as the leak has been repaired in accordance with this section.

In response to Comment 200, the Department has deleted the reference to relief valves in Table 18A.

In response to Comment 205, at N.J.A.C. 7:27-16.21(f)6, the Department has clarified that it may require amendment of a Control Measure Plan if EPA denies it as a SIP revision.

In response to Comment 206, the Department has revised N.J.A.C. 7:27-16.21(d) to require Control Measure Plans for natural gas pipelines be located at the office having responsibility for the section of pipeline for which the blowdown event will occur.

In response to Comment 216, the Department has reserved N.J.A.C. 7:27-16.25 as proposed, and instead, has incorporated by reference at N.J.A.C. 7:27-16.8(f) and (g) the revised requirements for continuous emission monitors in the NO_x RACT rule, N.J.A.C. 7:27-19.18.

Summary of Agency Initiated Changes

The phrases referring to the operative date of this adoption have been replaced with actual dates at N.J.A.C. 7:27-16.4(a) and (n)1; 16.5(c) through (f) and (j); 16.7(j), (k)1, (p), and the footnote to Table 7D; and 16.18(e) Tables 18A and 18B, and 16.21(a).

At N.J.A.C. 7:27-16.1, the Department has renamed the term "batch type asphalt plant" to "batch mix asphalt plant" for consistency with the common use of the term and with the text of N.J.A.C. 7:27-16.11.

At N.J.A.C. 7:27-16.1, the Department has added a definition of the term "DOT" which is used at N.J.A.C. 7:27-16.4(i).

At the definition of "maximum gross heat input rate" at N.J.A.C. 7:27-16.1, the Department has clarified that this term is valid for any "combustion source," not just for "steam generating units."

At N.J.A.C. 7:27-16.1, the Department has clarified the definition of "pressure relief valve" to make it more consistent with the prevailing industrial usage of that term, and it has clarified the definition of "repair" to make it more consistent with the subchapter's general recognition that leaks are "eliminated" when they are controlled or reduced below certain levels.

At the equations at N.J.A.C. 7:26-16.4(d)1 and (g)1, the Department has changed the format of the conversion constant from scientific notation to decimal notation.

At N.J.A.C. 7:27-16.4(i), the Department has added the metric equivalent of 2,000 gallons.

At N.J.A.C. 7:27-16.5(e), the Department separated out the three conditions, codifying them as paragraphs (e)1 through 3.

At N.J.A.C. 7:27-16.5(j)6 and (j)7, the Department has deleted the requirement to report certain information that the Department now realizes is not necessary for determining whether ballasting has been properly performed.

At the equation at N.J.A.C. 7:27-16.7(c)4iv, the symbols for capture and destruction efficiencies have been corrected.

At N.J.A.C. 7:27-16.7(k)1, the mailing address for the Bureau of New Source Review has been corrected.

The requirements of proposed N.J.A.C. 7:27-16.8(b) and (c) have been combined at N.J.A.C. 7:27-16.8(b). Accordingly, the subsequent subsections have been redesignated.

At N.J.A.C. 7:27-16.11(a) and (b), the terms "drum mix asphalt plant" and "batch mix asphalt plant" are used consistently.

At N.J.A.C. 7:27-16.11(a), the Department has provided drum mix asphalt plants the option to meet the specific emission limits that were proposed for batch mix asphalt plant in lieu of submitting a facility-specific plan. This change was made because the emission limits specified in the section, as proposed for batch mix plants, are also acceptable for drum mix plants. The Department proposed the specific emission limits only for batch mix plants because, at the time, the Department believed that all drum mix plants would have great difficulty meeting such limits. However, upon further reflection, the Department has determined to provide all such plants with at least the option of meeting the specific emission limits, and thereby avoiding the paperwork involved with submitting facility-specific RACT plans pursuant to N.J.A.C. 7:27-16.17.

At N.J.A.C. 7:27-16.11(e), the Department has set the frequency for adjusting the combustion process for asphalt plants. That frequency shall be specified in the permit and certificate or at least once per year beginning in 1995, whichever is more stringent. Since N.J.A.C. 7:27-16.11 basically codifies existing policy used to approve permit application for asphalt plants, asphalt plants with valid permits and certificates are already required to adjust the combustion process on at least an annual basis. This minor change to the rule language has been made to avoid confusion or conflict with existing permits and certificates. Any new permits issued by the Department will continue to require combustion adjustment on at least an annual basis.

At N.J.A.C. 7:27-16.13(b), the Department has changed the initial compliance date from May 31, 1994 to May 31, 1995, as the proposed initial compliance date has passed.

At N.J.A.C. 7:27-16.16(a)14 through 17, the Department has removed the redundant clauses "not at a major VOC facility."

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At N.J.A.C. 7:27-16.16(f)2, the Department has removed the condition "do not exceed the hourly exclusion rates for their ranges, as set forth in Table 16A, Column 3" because this condition is a subset of, and is addressed in, the condition at N.J.A.C. 7:27-16.16(f)2i.

At N.J.A.C. 7:27-16.16(f)2i, the Department has clarified the condition for batch processes.

At N.J.A.C. 7:27-16.18(c) and (d), the Department has simplified the format for describing regulated leaks by replacing "leak" with "regulated leak" at N.J.A.C. 7:27-16.18(c) and (d) and removing proposed N.J.A.C. 7:27-16.18(c)1 and (d)1.

At N.J.A.C. 7:27-16.18(f)1i, (h)1i and (i)1i, the Department has corrected an error of omission by adding "agitators" to the lists of components that are required to be tested annually. Table 18B specifies a concentration of 10,000 ppm or greater as the leak detection threshold for agitators and the preamble to the proposal indicates that the Department intended to require the monitoring of all moving parts, including agitators, in light liquid service. See 25 N.J.R. 3358. Therefore, the Department has added agitators to the lists of other components with moving parts that must be tested annually.

At N.J.A.C. 7:27-16.18(f)3, (g)3, (h)3 and (i)3, the Department clarified its interpretation of "immediately" with respect to when a repaired pressure relief device must be retested after venting by specifying a fixed time-period of "by no later than five days."

At N.J.A.C. 7:27-16.23(a)1, the Department has added the phrase "not including periods of equipment downtime" to clarify, consistent with long-standing Departmental practice and policy, that the calculation of an average emission rate should not include periods when the equipment is not in use.

At N.J.A.C. 7:27-23.2, the definition of "Regulated Organic Compound or ROC" has been removed because the term is not used.

At N.J.A.C. 7:27A-3.10(e)16, the citations N.J.A.C. 7:27-16.6(g) and N.J.A.C. 7:27-16.18(g) have been corrected to N.J.A.C. 7:27-16.16(g) and N.J.A.C. 7:27-16.18(q) respectively. Other citations have been corrected due to change of location of provisions upon adoption. No changes in the penalty amounts have been made and no new penalties have been added upon adoption.

Upon adoption, the Department has made other minor changes consisting only of corrections of punctuation or corrections that are strictly typographical or grammatical in nature.

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

7:27-1.4 Definitions

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

...

"ASTM" means the American Society for Testing and Materials.

...

"Open burning" means any fire from which the products of combustion are emitted directly into the open air, and are not by design directed through a stack or chimney.

...

7:27-2.1 Definitions

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

...

"Open burning" means any fire from which the products of combustion are emitted directly into the open air, and are not by design directed through a stack or chimney.

...

7:27-8.1 Definitions

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

...

"Volatile organic compound" or "VOC" means any compound of carbon*[, excluding]* ***(other than*** carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate*[,]***)*** which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods ***in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or*** which have been approved in writing by the Department ***and are acceptable to EPA***. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
trifluoromethane (HFC-23)
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
chlorodifluoromethane (HCFC-22)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)
1,1,1-trifluoroethane (HFC-143a)
1,1-difluoroethane (HFC-152a)

Classes of perfluorocarbons:

cyclic, branched, or linear, completely fluorinated alkanes
cyclic, branched, or linear, completely fluorinated ethers with no unsaturations
cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations
sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

7:27-8.2 Applicability

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

[(c) Notwithstanding the definition of the term VOC in this subchapter, the provisions of this subchapter which apply to VOC shall also apply to Group II TXS listed in N.J.A.C. 7:27-17.3 Table 1.]

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, have the following meanings, unless the context clearly indicates otherwise.

...

"Actual emissions" means the rate at which an air contaminant is actually emitted, either directly or indirectly, to the outdoor atmosphere, in units of mass per calendar year, seasonal period, or other time period specified in this subchapter.

"Agitator" means an apparatus with an external seal used to shake, stir, or mix material in an enclosed vessel.

...

"Applicable VOC" means any VOC which has a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1.0 millimeters of mercury) absolute or greater at standard conditions.

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"Asphalt" means a solid, semisolid, or liquid material, produced by mixing bituminous substances together with gravel, crushed rock or similar materials, and used commonly as a coating or paving.

"ASTM" means the American Society for Testing and Materials.

"Background concentration" means, with respect to the measurement of the emission of VOC from a component, the concentration of VOC in the ambient air as determined within the facility and at least one meter upwind of the component being tested.

"Ballasting" means the loading of water or other liquid into a marine tank vessel's cargo tank to obtain proper propeller, rudder, and hull immersion.

...

"Batch *[type]* ***mix*** asphalt plant" means an asphalt plant where the aggregate and asphalt cement or other binder are mixed in equipment other than a rotary dryer.

"Blowdown event" means the non-emergency release of natural gas from a pipeline for the purposes of inspection, maintenance, or repair and where, in the absence of control, more than 2,000 pounds of VOC could be released to the atmosphere.

"British thermal unit" or "BTU" means the quantity of heat required to raise the temperature of one avoirdupois pound of water one degree Fahrenheit at 39.1 degrees Fahrenheit.

...

"Calendar day" means the 24 hour period from 12 o'clock midnight to 12 o'clock midnight the following day.

["Capture system" means all equipment including, but not limited to, hoods, ducts, fans, booths, ovens, and dryers, that contains, collects, and transports an air contaminant to a control apparatus.]

"Carbon monoxide" or "CO" means a colorless, odorless, tasteless gas at standard conditions, having a molecular composition of one carbon atom and one oxygen atom.

...

"Catalytic oxidizer" means a type of control apparatus which reduces the emission of air contaminants by causing the air contaminant molecules to decompose by oxidation, accomplished by preheating the gases being emitted to a predetermined temperature, which is less than required for thermal oxidation, and contacting the preheated gases with catalysts to promote decomposition.

...

"Chemical plant" means any facility, or any part thereof, classified within the Standard Industrial Code (SIC) Major Group 28, "Chemical and Allied Products."

...

"CO" means carbon monoxide.

"Combined cycle gas turbine" means a gas turbine in which heat is recovered from the turbine's exhaust gases to heat water or generate steam.

"Combustion source" means a source operation or item of equipment which combusts fuel.

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

"Component" means, with respect to leak detection and repair, any part of a source operation, including any equipment and control apparatus, from which emissions of air contaminants may be released into the ambient air. This term includes, but is not limited to, any agitator, valve, flange, fitting, gasket, seal, joint, pump, compressor, pressure relief device, diaphragm, manhole, hatch, sight-glass, instrument connection or other connection, meter, or associate equipment. This term does not include a designed emission point of a stack or chimney.

"Compressor" means a device used to compress gases or vapors by the addition of energy, and includes all associated components used to make connections or seals.

"Conductive ink" means an ink used in screen printing which contains material that permits electric current to flow through printed lines or patterns.

...

"Construction ballast" means the filling of an underground storage tank with any VOC, including gasoline, to provide stability during construction.

...

"Day" means calendar day.

"Delivery vessel" means any vehicle designed and constructed or converted to be capable of transporting liquid VOC cargo such as gasoline or fuel oil. This term includes, but is not limited to, tank trucks, tank trailers, railroad tank cars, and marine tank vessels.

...

"Difficult to monitor component" means any component located over 15 feet above ground when access is required from the ground, or any component located 9.6 feet away from a platform when access is required from a platform.

...

"DOT" means the United States Department of Transportation.

...

"Drum mix asphalt plant" means an asphalt plant where the asphalt cement or other binder is added to the aggregate while the aggregate is still in the rotary dryer.

"Emission statement" means a report of the actual annual emissions of a facility submitted by the owner or operator to the Department pursuant to the requirements of N.J.A.C. 7:27-21.

...

"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. For the purposes of this definition, each natural gas pipeline compressor or pump station and each section of natural gas pipeline between *[same]* ***such compressor or pump station*** shall *[be deemed to be]* ***constitute*** a separate ***natural gas pipeline*** facility.

...

"First attempt at repair" means rapid action taken for the purpose of stopping or reducing a leak. First attempts at repair include, but are not limited to, the following practices where practicable: tightening of packing gland nuts, tightening of flanges, and ensuring that the seal flush is operating at design pressure and temperature.

"Fitting" means a component used to attach or connect pipes or piping details including, but not limited to, flanges and threaded connections.

"Flare" means a device used for the destruction of waste or by-product gases by passing them through a flame and then directly into the outdoor atmosphere. ***Thermal oxidizers are not flares.***

"Flexographic printing operation" means a system of transferring images onto a substrate through first applying ink to an inking roller which in turn transfers the ink onto the raised image areas of a rubber or elastomeric plate secured to a second roller, which then transfers the ink onto the substrate.

...

"Fountain solution" means an aqueous solution used in graphic arts operations to dampen the plate and prevent the non-image areas of the plate from accepting the hydrophobic inks used.

...

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

"Gaseous leak" means the emission of applicable VOC directly or indirectly to the atmosphere as a gas or vapor from a hole, crevice, or other opening in a component, other than an emission that is in accordance with the component's design during normal operations.

"Gaseous service" means contact with applicable VOC that is in the gaseous state at operating conditions.

"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 commonly or commercially known or sold as gasoline.

...

"Gas turbine" means an internal combustion engine fueled by liquid or gaseous fuel, ***in which blades are driven by combustion***

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gases, and* which generates mechanical energy in the form of a rotating shaft which is used to drive an electric generator or other industrial equipment.

"Graphic arts operation" means the application of one or more surface coating formulations across portions of a surface using one or more rotogravure or flexographic printers used to produce published material and packaging for commercial or industrial purposes, or any rotogravure or flexographic printers used to produce vinyl or urethane coated fabric or sheets, or any sheet-fed gravure, screen printing, or fabric printing operations together with any associated drying or curing areas. A single graphic arts operation ends after drying or curing and before other surface coating formulations are applied. For any web line, this term means an entire application system, including any associated drying ovens or areas between the supply roll and take-up roll or folder. This term does not include any surface coating operation.

"Gravure printing operation (sheet-fed)" means a system of transferring images onto a substrate through first applying ink to a cylinder into the surface of which small, shallow cells have been etched forming a pattern, then wiping the lands between the cells free of ink with a doctor blade, and finally contacting the substrate, which is fed in single sheets, onto the cylinder so that the surface of the substrate is pressed into the cells, transferring the ink to the substrate. This term does not include proof presses which are being used to check the quality of the image formation of newly engraved or etched gravure cylinders.

"Hatch" means a system, including a cover which may be opened or closed, that provides access to the interior of a tank or other enclosed container.

["Inaccessible component" means any component located over 15 feet above ground when access is required from the ground or any component located over 9.6 feet away from a platform when access is required from the platform.]

"Incinerator" means any device, apparatus, equipment, or structure using combustion or pyrolysis to oxidize, reduce or salvage any material or substance. "Incinerator" does not include thermal or catalytic oxidizers used as control apparatus on equipment, but it does include (without limitation) any thermal destruction facility which is a resource recovery facility, as such terms are defined in N.J.A.C. 7:26-1.4.

...

"Industrial wastewater treatment system" means any structure or structures by means of which industrial liquid waste or sludges are subjected to any treatment process requiring the issuance of an individual NJPDES permit regulated by the Department pursuant to the New Jersey Pollutant Discharge Elimination System Permit Program, N.J.A.C. 7:14A, under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

"Ink transfer" means a decal, printed using screen printing onto a special release carrier, that will be transferred from the carrier to a substrate. Final transfer of the decal to the substrate may or may not occur at the screen printing facility.

"Laboratory operations" means any action, process, or treatment utilizing chemical, physical, or biological factors to conduct experimental research, tests, or demonstrations.

"Leak" means a gaseous leak or a liquid leak of ***applicable*** VOC.

...

"Liquid leak" means the release of liquid applicable VOC from a hole, crevice, or other opening in a component subject to N.J.A.C. 7:27-16*[.18]*, other than a release of liquid VOC in accordance with the component's design during normal operations. The presence of a drop, drip, accumulation, pool, or other visible evidence of a liquid***, applicable*** VOC demonstrates that a liquid leak has occurred.

...

"Liquid service" means contact with applicable VOC that is in the liquid state at operating conditions.

"Lithograhic printing operation" means printing by a planographic method in which the image and nonimage areas are on the same geometric plane.

...

"Major VOC facility" means any facility which has the potential to emit 25 or more tons of VOC per year.

...

"Marine tank vessel" means any tugboat, tanker, freighter, passenger ship, barge, boat, ship, or watercraft, which is specifically constructed or converted to be capable of carrying liquid cargo in tanks.

"Marine terminal" means any facility, or part thereof, at which liquid cargo is loaded into or unloaded out of marine tank vessels.

"Maximum gross heat input rate" means the maximum amount of fuel a combustion source is able to combust in a given period as stated by the manufacturer of the *[steam generating unit]* ***combustion source***. This term is expressed in BTUs per hour, based on the highest BTU value of the fuels combusted.

...

"New Jersey's coastal waters" means the Atlantic Ocean area and all areas under tidal influence within three nautical miles (5,566 meters) of the mean high water line as measured from the New Jersey coast, except that, if at any point along the line of measurement, within or beyond three nautical miles (5,566 meters), there is a meeting of waters under the exclusive jurisdiction of any other State or the United States of America, New Jersey's jurisdiction shall end at that point. Any point of measurement shall be taken from a point of New Jersey land, permanent or nonpermanent, and extended azimuthally to a distance of three nautical miles (5,566 meters) or to the point where another State or the United States of America has jurisdiction.

"Non-utility boiler" means any steam generating unit which is not a utility boiler.

"Offset lithography" means a planographic method of printing in which the image and nonimage areas are on the same plane and where the ink is transferred from an image plate on one cylinder to an image blanket on a different cylinder. The ink is finally transferred from the image blanket to the surface to be printed.

...

"Open burning" means any fire from which the products of combustion are emitted directly into the open air, and are not by design directed through a stack or chimney.

...

"Order" means any and all orders issued by the Department including, but not limited to, administrative orders and administrative consent orders.

"Other wastewater treatment system" means any structure or structures by means of which liquid waste or sludges (other than industrial liquid waste or sludges) are subjected to any treatment process requiring the issuance of an individual NJPDES permit pursuant to the New Jersey Pollutant Discharge Elimination System Permit Program, N.J.A.C. 7:14A, under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

...

"Person" means any individual or entity and shall include, without limitation, corporations, companies, associations, societies, firms, partnerships, and joint stock companies, and shall also include, without limitation, all political subdivisions of any State or any agencies or instrumentalities thereof.

...

"Planography" means any method of printing from a flat surface.

"Plastic part" means a piece made from a substance that has been formed from a natural or synthetic resin through the application of pressure or heat or both.

...

"Platform" means any elevated horizontal surface, either temporary or permanent, used for the purpose of gaining access to a component.

...

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"Ppm" means parts per million.

"Ppmvd" means parts per million by volume, dry basis. This is the number of parts in a mixture, by volume, which are of the specified substance, not including the number of parts contributed by water.

"Pressure relief device" means a type of component which is installed for safety to relieve elevated pressure within equipment, or within a conduit or duct serving equipment. Such a component is designed to release material contained within the system when the pressure within the system exceeds a set level.

"Pressure relief valve" means a type of pressure relief device which consists of a valve that automatically opens when the pressure within the system exceeds a set level ***and closes when the pressure drops below that level***.

. . .

"Process unit shutdown" means a regularly scheduled work practice or operational procedure that stops production from a process unit or part of a process unit for 24 hours or such other longer time as the owner or operator of the unit establishes to be necessary for the removal of the process material so that repairs to the unit can be carried out in a safe manner. The use of spare equipment without stopping production is not a process unit shutdown.

"Pump" means a device used to transport fluids by the addition of energy, and includes all associate components used to make connections or seals.

"Receiving vessel" means any vessel into which an applicable VOC is introduced including, but not limited to, storage tanks, delivery vessels, and manufacturing process vessels.

. . .

"Regenerative cycle gas turbine" means a gas turbine which recovers heat from its exhaust gases and uses that heat to preheat the combustion air which is drawn into the gas turbine.

"Regulated leak" means any gaseous leak of applicable VOC at a concentration or level above any applicable limit established in Tables 18A and 18B and any liquid leak of an applicable VOC.

. . .

"Repair" means, with respect to a VOC leak, a corrective action taken to eliminate the leak ***or reduce the leak to below regulated levels***.

. . .

"Rotogravure printing operation (web-fed)" means a system of transferring images onto a substrate through first applying ink to a cylinder into the surface of which small, shallow cells have been etched forming an image or a pattern, then wiping the lands between the cells free of ink with a doctor blade, and finally contacting the substrate, which is fed from a continuous roll, over the cylinder so that the surface of the substrate is pressed into the cells, transferring the ink to the substrate. This term does not include proof presses which are being used to check the quality of the image formation of newly engraved or etched gravure cylinders.

"Rupture disc" means a type of pressure relief device which is designed to fracture, rupture, or burst under pressure when the pressure within the system exceeds a set level. Such a device is commonly a diaphragm held between flanges, which under conditions of normal operation remains intact and prevents gases from being released from the system.

"Screen printing operation" means a system of transferring images onto a substance in which the printing ink passes through a fabric to which a stencil has been applied. The openings in the stencil determine the form and dimensions of the imprint.

. . .

"Simple cycle gas turbine" means a gas turbine which does not recover heat from its exhaust gases.

. . .

"Special purpose screen printing inks and coatings" means inks and coatings used in screen printing which are used to print ink transfers, or are designed to resist or withstand any of the following: more than two years of outdoor exposure, exposure to chemicals, solvents, acids, detergents, oil products or cosmetics, temperatures in excess of 170 degrees Fahrenheit, vacuum forming, embossing or molding.

. . .

"Standard Industrial Classification Code" or "SIC Code" means the system devised by the United States Office of Management and Budget to classify establishments according to the type of economic activity in which they are engaged.

. . .

"Stationary gas turbine" means any simple cycle gas turbine, regenerative cycle gas turbine, or combined cycle gas turbine that is not self-propelled. The term includes a gas turbine of any of these types which is mounted on a vehicle for portability.

"Stationary internal combustion engine" means any internal combustion engine that is not self-propelled. This term includes internal combustion engines which are mounted on vehicles for portability.

"Steam generating unit" means any furnace, boiler, or other device which combusts fuel for the purpose of producing steam.

. . .

"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. This term includes such material whether used in a surface coating or graphic arts operation.

. . .

"Surface coating of paper" means the application of any coating, excluding plastisol, uniformly distributed across the web, which is put on paper, or on pressure-sensitive tapes regardless of substrate (including paper, fabric, or plastic film); related web coating processes on plastic film including, but not limited to, typewriter ribbons, photographic film, and magnetic tape; and decorative coating on metal foil including, but not limited to, gift wrap and packaging. This term does not include any graphic arts operation.

"Surface coating of pipe" means the application of any coating to a pipe of any composition, except plastic.

. . .

"Surface coating operation" means the application of one or more surface coating formulations across an entire surface, 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. This term does not include any graphic arts operation.

. . .

"Thermal oxidizer" means a type of control apparatus which reduces the emission of air contaminants by subjecting the gases being emitted to elevated temperatures which cause the air contaminant molecules to decompose ***within an enclosed space. For the purposes of this subchapter, this term includes catalytic and non-catalytic thermal oxidizers***.

"Toxic substance" or "TXS" means a substance listed in Table 1 of N.J.A.C. 7:27-17.3.

. . .

"Utility boiler" has the meaning defined in N.J.A.C. 7:27-19.

"Vacuum service" means equipment operating at an internal pressure which is at least 0.725 pounds per square inch (37.5 millimeters of mercury) below ambient pressure.

"Valve" means a device that regulates or isolates the fluid flow in a pipe, tube, or conduit by means of an external actuator.

. . .

"Volatile organic compound" or "VOC" means any compound of carbon*[, excluding]* ***(other than*** carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate*[,]***)*** which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods ***in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or*** which have been

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approved in writing by the Department ***and are acceptable to EPA***. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
trifluoromethane (HFC-23)
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
chlorodifluoromethane (HCFC-22)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)
1,1,1-trifluoroethane (HFC-143a)
1,1-difluoroethane (HFC-152a)

Classes of perfluorocarbons:

cyclic, branched, or linear, completely fluorinated alkanes
cyclic, branched, or linear, completely fluorinated ethers with no unsaturations
cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations
sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

. . .

7:27-16.1A Purpose, scope, applicability, and severability

(a) This subchapter establishes requirements and procedures concerning the control and prohibition of air pollution by volatile organic compounds. The purpose of this subchapter is to require any stationary source ***operation*** or group of *[sources]* ***source operations***, located within a contiguous area and under common control to implement reasonably available control technology (RACT) to control VOC emissions. EPA defines RACT to mean the lowest emission limitation that a particular source is capable of meeting by the application of air pollution control technology which is reasonably available considering technological and economic feasibility. Specific applicability thresholds are provided throughout the subchapter. Carbon monoxide limits are included for combustion sources, in order to control VOC emissions, which are also products of incomplete combustion.

(b) As set forth at N.J.A.C. 7:27-17.4(c), this subchapter's requirements for the implementation of control measures, including, but not limited to requirements for the installation and use of control apparatus, or the use of compliant coatings, shall apply with full force to Group II TXS until the Department amends this rule in response to EPA rule-making or otherwise.

(c) 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.

(d) 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 the chapter, the relevant provisions of the subchapter requiring the lowest allowable rate will apply.

*[(e) No owner or operator subject to this subpart may build, erect, install, or use any article, machine, equipment, process, or other method the use of which conceals emissions that would otherwise constitute applicability or non-compliance with any section of this subchapter. This includes, but is not limited to, the use of gaseous diluents to achieve compliance, and the piecemeal carrying out of an operation to avoid coverage by a section of this subpart that applies only to operations larger than a specified size.

(f) Any approval of a permit or certificate issued by the Department authorizing the demonstration of compliance through a mathematical combination of sources shall expire as of March 28, 1994.]*

*[(g)]***(e)*** Each owner and each operator of any equipment or source operation subject to this subchapter is responsible for ensuring compliance with all requirements of this subchapter. If there is more than one owner or operator of the equipment or source operation, each owner and each operator is jointly and severally liable for any penalties for violations of this subchapter.

*[(h)]***(f)*** If any provision of this subchapter or the application thereof to any person or circumstance is adjudicated to be invalid or unenforceable to any extent, the remainder of this subchapter or its application to any person or circumstance other than those that are the subject of the adjudication shall continue to be unaffected by the adjudication.

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 applicable VOC 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 applicable VOC 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 2A 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 2A

Step 1:	(No change.)
Step 2:	Select the appropriate line in Table 2A for the vapor pressure determined in Step 1.
Step 3:	(No change.)
Step 4:	(No change.)
Step 5:	(No change.)

TABLE 2A
(No change in text.)

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

(g) Any stationary storage tank in Range III as determined Table 2A, 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 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. ***Any secondary seal shall be intact, with no visible holes, tears or other openings.***

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(i) 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.

(j) Any delivery vessel that contains any applicable VOC 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.

(k) Any person responsible for the emission of any applicable VOC 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.

7:27-16.3 Gasoline transfer operations

(a) No person shall cause, suffer, allow, or permit the transfer of gasoline 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. 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.-2. (No change.)

3. A vapor balance system with a hole of ¼ inch (6.4 millimeters) or less in diameter in the cap on the atmospheric vent;

4. A vapor control system which reduces by no less than 90 percent the concentration of applicable VOC in the air-vapor mixture displaced during the transfer of gasoline. Upon the request of the Department, any owner or operator utilizing a vapor control system shall demonstrate 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 Celsius (°C)) or greater; or

5. A floating roof.

(d) No person shall cause, suffer, allow, or permit the transfer of any substance into any gasoline vapor laden delivery vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such delivery vessel is connected to control apparatus installed and operated in accordance with the provisions of (e) below.

(e) No person shall cause, suffer, allow, or permit the transfer or loading of gasoline or any other substance into any gasoline vapor laden delivery vessel except at a facility that is equipped with and operating a control apparatus in accordance with the following provisions:

1. Facilities loading 15,000 gallons (56,775 liters) of gasoline or less per day shall be equipped with and operating a vapor balance system or other control apparatus of equal or higher efficiency. Such vapor balance system shall have no open vent to the atmosphere during transfer and shall not return the vapors to any tank equipped with a floating roof.

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 3A; or

ii. (No change.)

TABLE 3A

(No change in text.)

3. The daily loading rate shall be calculated on the basis of the daily average rate during the month with the highest throughput in the last 12 months of operation.

(f) Except as provided in (g) below, no person shall cause, suffer, allow, or permit the transfer of gasoline into any gasoline vapor laden vehicular fuel tank unless such person complies with (h) and (p) below, and 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 the release into the outdoor atmosphere of no less than 95 percent by weight of the VOC generated by dispensing gasoline at the facility; and

2. (No change.)

(g) (No change.)

(h) Any person subject to the provisions of (f) above shall comply with the following provisions:

1. (No change.)

2. Documentation of the monthly throughput shall be made available upon request by the Department.

(i) No person shall cause, suffer, allow, or permit any delivery vessel except railroad tank cars or marine tank vessels, having a maximum capacity of 2,000 gallons (7,570 liters) or greater to contain gasoline unless such delivery vessel:

1.-2. (No change.)

3. Has a record of certification which shall be kept with the delivery vessel at all times and made available upon request by the Department. The record of certification shall include the test title, delivery vessel owner and address, delivery vessel identification number, testing location, date of test, tester's name and signature, and test results.

(j) (No change.)

(k) No person shall cause, suffer, allow, or permit any transfer of gasoline, subject to the provisions of (c), (d), (e), and (f) above, if:

1. The delivery being loaded or unloaded, any control apparatus or other equipment serving the transfer operation has a leak that:

i. Results in a concentration of VOC greater than or equal to 100 percent of the lower explosive limit of propane when measured at a distance of 1.0 inch (2.54 centimeters) or less from the location of the leak; or

ii. Is a liquid leak;

2. Any component of the delivery vessel designed for preventing the release of gasoline vapors is not installed and operating as designed; or

3. The continued transfer results in a liquid gasoline spill.

(l) (No change.)

(m) No person shall cause, suffer, allow, or permit the transport or transfer of gasoline 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 during:

1. Emergency conditions;

2. Gauging; or

3. Venting through a vapor control system approved by the Department.

(n)-(o) (No change.)

(p) The provisions of this section shall not apply to the loading of gasoline as cargo into any marine tank vessel. Marine tank vessel loading operations occurring in New Jersey or in New Jersey coastal waters are subject to the provisions of N.J.A.C. 7:27-16.5.

(q) Any new gasoline dispensing facility shall install equipment meeting the requirements of (f) above prior to the use of that facility for dispensing gasoline.

(r) 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, March 28, 1992 shall comply with the following schedule:

1. Within three 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 nine months of exceeding the average monthly throughput of 10,000 gallons, construction of the equipment and control

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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.

(s) 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. (No change.)

ii. For any control apparatus using carbon or other adsorptive material, record the concentration of the total VOC in the flue gas emitted to the outdoor atmosphere; or, provided that the owner or operator confirms daily that the automatic switching between carbon beds is functioning in accordance with permit conditions, record the date of carbon bed replacement; and

3. (No change.)

7:27-16.4 VOC transfer operations, other than gasoline

(a) On and after *[the operative date of these new rules]* ***July 26, 1994***, the provisions of this section shall apply to any transfer of an applicable VOC, except:

1. The transfer of gasoline. Gasoline transfer operations are subject to the provisions of N.J.A.C. 7:27-16.3; and

2. The loading of applicable VOC as cargo into a marine tank vessel. Marine tank vessel loading operations occurring in New Jersey or in New Jersey's coastal waters are subject to the provisions of N.J.A.C. 7:27-16.5.

(b) No person shall cause, suffer, allow or permit the transfer of any applicable VOC 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. 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 the VOC is transferred. This subsection shall not apply to a transfer to a manufacturing process vessel installed before December 17, 1979.

(c) On and after May 31, 1995, no person shall cause, suffer, allow, or permit the transfer of any applicable VOC from a delivery vessel into any stationary storage tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater and having a total calculated annual emission rate over 1,000 pounds of applicable VOC as determined pursuant to (d) below unless the storage tank is equipped with and operating one of the following control apparatus:

1. A vapor control apparatus which reduces by no less than 90 percent the concentration of applicable VOC in the air-vapor mixture displaced during the transfer of applicable VOC;

2. A floating roof; or

3. A vapor balance system with:

i. All atmospheric vents positively closed during transfer;

ii. A conservation vent adjusted to remain closed during transfer; or

iii. A hole of 1/4 inch (6.4 millimeters) or less in diameter in the cap on the atmospheric vent.

(d) For the purposes of (c) above, the total calculated annual emission rate for each tank shall be determined in accordance with the following procedure:

1. Calculate the emission factor for each applicable VOC as follows:

$$EF = VP \times MW \times 24 \times 10^{-6}$$

Where:

EF = the emission factor for each applicable VOC being transferred;

VP = the vapor pressure (psia) of each applicable VOC. If the VOC is heated, this term is the vapor pressure of the VOC at the temperature at the point of transfer; if the VOC is not heated, this term is the vapor pressure of the VOC at standard conditions;

MW = the molecular weight of the applicable VOC; and

24×10^{-6} = a constant to convert units;

2. Determine the calculated annual emission rate by multiplying each emission factor calculated in (d)1 above, by the annual quantity ***, in gallons,*** of each applicable VOC transferred from delivery vessels into the tank. Sum the calculated annual emission rates for each applicable VOC transferred. For a storage tank for which a permit is in effect, the annual quantity of each applicable VOC transferred shall be considered to be the maximum quantity allowed by the permit. For a storage tank for which no permit is in effect, the annual quantity of applicable VOC transferred shall be the quantity that was transferred during the previous calendar year (from January 1 through December 31); and

3. Compare the total calculated annual emission rate to 1,000 pounds. If the total calculated annual emission rate for the tank is less than 1,000 pounds, this section does not require the use of any control apparatus***, except as specified in (b) above***. Otherwise, one of the control apparatus described in (c) above must be used.

(e) The provisions of (c) above shall not apply to a storage tank during construction ballast if an applicable VOC is used.

(f) On and after May 31, 1995, no person shall cause, suffer, allow, or permit the transfer of any applicable VOC into any delivery vessel, except railroad tank cars, ***from a storage tank*** having a maximum capacity of 2,000 gallons (7,570 liters) or greater and *[at a facility]* having a total calculated annual emission rate over 2,000 pounds of applicable VOC ***from transfer operations***, as determined pursuant to (g) below, unless the transfer is directly from a tank equipped with a floating roof or unless any such delivery vessel is connected to one of the following control apparatus:

1. A vapor control apparatus which reduces by no less than 90 percent by weight the total VOC emissions to the outdoor atmosphere; or

2. A vapor balance system with all atmospheric vents positively closed during transfer. Such vapor balance system shall not return the vapors to any tank equipped with a floating roof.

(g) For the purposes of (f) above, the total calculated annual emission rate of applicable VOC transferred into delivery vessels *[at a facility]* ***from each storage tank*** shall be determined in accordance with the following procedure:

1. Calculate the emission factor for each applicable VOC ***transferred from the storage tank to regulated delivery vessels*** as follows:

$$EF = {}^{*}0.000024 \times {}^{*} VP \times MW \; {}^{*}[\times 24 \times 10^{-6}]^{*}$$

Where:

EF = the emission factor for each applicable VOC being transferred;

VP = the vapor pressure (psia) of each applicable VOC. If the VOC is heated, this term is the vapor pressure of the VOC at the temperature at the point of transfer; if the VOC is not heated, this term is the vapor pressure of the VOC at standard conditions;

MW = the molecular weight of the applicable VOC; and

0.000024 *[24×10^{-6}]* = a constant to convert units;

2. Determine the calculated annual emission rate by multiplying each emission factor calculated in (g)1 above, by the annual quantity ***(in gallons)*** of each applicable VOC transferred into delivery vessels at the ***regulated*** facility. Sum the calculated annual emission rates for each applicable VOC transferred. For a facility for which a permit is in effect, the annual quantity of each applicable VOC transferred shall be considered to be the maximum quantity allowed by the permit. For a facility for which no permit is in effect, the annual quantity of applicable VOC transferred shall be the quantity that was transferred during the previous calendar year (from January 1 through December 31); and

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3. Compare the total calculated annual ***uncontrolled*** emission rate ***resulting from the total transfers from the storage tank*** to 2,000 pounds. If the calculated annual emission rate is less than 2,000 pounds, this section does not require the use of any control apparatus***, except as specified in (b) above***. Otherwise, one of the control *[apparatuses]* ***apparatus*** described in (f) above must be used.

(h) The provisions of (f) above shall not apply to *[a]****:**

1. A* delivery vessel used for less than 30 days for the purpose of holding VOC from a storage tank during a period in which the storage tank is undergoing repair or maintenance***;**

2. A delivery vessel used in groundwater remediation operations for temporary storage and handling of VOC contaminated groundwater and recovered VOC; and

3. Vacuum trucks used for equipment clean-out or other clean-up operations*.

(i) On and after May 31, 1995, no person shall cause, suffer, allow, or permit any tank truck having a maximum capacity of 2,000 gallons (7,570 liters) or greater to contain applicable VOC unless such tank truck ***is certified to comply with DOT regulations concerning inspection and pressure testing, codified at 40 CFR 180.407. A record of DOT certification shall be kept with the delivery vessel at all times.****[:

1. Sustains a pressure change of less than three inches of water (six millimeters of mercury) in five minutes when pressurized to 18 inches of water (34 millimeters of mercury) and evacuated to six inches of water (11 millimeters of mercury), as tested at least once in every 12-month period for leaks in accordance with test procedures specified by the Department;

2. Has a certification affixed to the vessel in a prominent location, which indicates the identification number of the vessel and the date the vessel last passed the pressure and vacuum tests required by (i)1 above; and

3. Has a record of certification which shall be kept with the delivery vessel at all times and made available upon request by the Department. The record of certification shall include the test title, delivery vessel owner and address, delivery vessel identification number, testing location, date of test, tester's name and signature, and test results.]*

(j) On and after May 31, 1995, no person shall cause, suffer, allow, or permit a transfer to or from a tank truck of applicable VOC, which transfer is subject to the provisions of (c) or (f) above, if the tank truck being loaded is under a pressure in excess of 18 inches of water (34 millimeters of mercury) gauge or the tank truck being unloaded is under a vacuum in excess of six inches of water (11 millimeters of mercury) gauge. ***This provision shall not apply to the loading or unloading of applicable VOC that is typically stored or transferred at elevated pressure, or under vacuum, into or from a delivery vessel that is designed for pressure or vacuum service.***

(k) No person shall cause, suffer, allow, or permit any transfer of applicable VOC, which transfer is subject to the provisions of (c) or (f) above, ***if any components of the delivery vessel designed for preventing the release of applicable VOC vapors are not installed and operating as designed. Any loading or unloading transfer operations must cease immediately*** if:

1. On and after May 31, 1995, the delivery vessel being loaded or unloaded, any control apparatus or other equipment serving the transfer operation has a leak that:

i. Results in a concentration of VOC greater than or equal to 100 percent of the lower explosive limit of propane when measured at a distance within 1.0 inch (2.54 centimeters) of the source; or

ii. Is a liquid leak; ***or***

[2. Any components of the delivery vessel designed for preventing the release of applicable VOC vapors are not installed and operating as designed; or]

*[3.]****2.*** The transfer results or would result in a liquid *[VOC spill]* ***leak of applicable VOC*.**

(l) On and after May 31, 1995, no person shall cause, suffer, allow, or permit the transport or transfer of any applicable VOC in a delivery vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such vessel, while containing any applicable VOC, is vapor-tight at all times, except during:

1. Sample collection;

*[1.]****2.*** Emergency conditions;

*[2.]****3.*** Gauging; or

*[3.]****4.*** Venting through a vapor control apparatus approved by the Department.

(m) *[The owner or operator of any]* ***After a leaking*** tank truck ***,*** subject to the provisions of (i), (k) or (l) above ***is repaired, the owner or operator shall test the delivery vessel before it is loaded with applicable VOC. A record of the repair and test shall be maintained with the delivery vessel for one year.*** *[shall repair any leaking vessel within 15 days of when the leak was discovered or should have been discovered and shall have the tank truck recertified in accordance with (i) above.]*

(n) Any owner or operator of a facility with transfer operations subject to the provisions of (c) or (f) above shall comply with the following schedule:

1. By *[the date which is three months after the operative date of these new rules]* ***October 26, 1994***, submit to the Chief, Bureau of New Source Review, *[Division of]* Environmental Regulation ***Program***, Department of Environmental Protection and Energy, CN 401, Trenton, New Jersey 08625-0401, a complete application for each permit required, pursuant to N.J.A.C. 7:27-8, to achieve compliance with (c) or (f) above; and

2. By May 31, 1995, achieve compliance with (c) or (f) above and maintain compliance with this section thereafter.

(o) The owner or operator of any VOC loading facility subject to (f) above shall maintain the following records:

1. On a daily basis, record the name and total quantity of each applicable VOC, 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 in the flue gas emitted to the outdoor atmosphere or record the date of carbon bed the replacement and, on a daily basis, check the functioning of the automatic system for switching between carbon beds; and

3. Upon request of the Department and at a frequency specified by the Department, record any other operating parameter relevant to the prevention or control of the emission of air contaminants from the facility.

(p) Upon the request of the Department, any owner or operator utilizing a vapor control system pursuant to (c)1*[i]* or *[(g)1i]* ***(f)*** above shall demonstrate to the satisfaction of the Department achievement of the required control efficiency through testing performed when the ambient air temperature is *[80]* ***70*** degrees Fahrenheit (*[27]* ***21*** degrees Celsius) or greater***, unless the Department, in writing, approves the performance tests at a lower ambient temperature*.**

***(q) After receipt of a written request from an owner or operator for an extension of the deadline set forth in (n)1 above, the Department may authorize a 60-day renewable extension upon showing of good cause. Such extension may be renewed by the Department upon the written request of the owner or operator. Approval of such an extension shall not constitute approval of extension of the May 31, 1995 deadline established in (n)2 above. Written requests for the extension of a deadline submitted pursuant to this subsection shall be addressed to:**

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Assistant Director, Air and Environmental Quality Enforcement
Division of Enforcement Field Operations
Department of Environmental Protection and Energy
CN 422
401 East State Street, 4th Floor
Trenton, New Jersey 08625-0422*

7:27-16.5 Marine tank vessel loading and ballasting operations

(a) The provisions of this section apply to the following marine tank vessel operations conducted at marine terminals in New Jersey:

1. The transfer of applicable VOC, including gasoline, as cargo into a marine tank vessel; and

2. Ballasting conducted in a marine tank vessel***, unless the ballasting is conducted in dedicated ballast tanks that never contain anything other than water***.

(b) The owner or operator of any marine terminal having an annual throughput of 6,000,000 gallons (22,710,000 liters) or greater for loading gasoline as cargo into marine tank vessels or having a daily throughput, between May 1 and September 15, of 60,000 gallons or greater for loading gasoline as cargo into marine tank vessels shall install and operate a control apparatus, which reduces the total VOC emissions to the outdoor atmosphere resulting from gasoline transfers at the facility by no less than 95 percent by weight.

(c) The owner or operator of any marine terminal that meets the following criteria shall ***install and operate a control apparatus, which reduces the total VOC emissions to the outdoor atmosphere resulting from applicable VOC transfers at the facility by no less than 95 percent by weight, or shall***, by *[the date which is three months after the operative date of these rules]* ***October 26, 1994***, submit to the Department a written alternative emission control plan in accordance with N.J.A.C. 7:27-16.17 that shall be implemented in accordance with a schedule in the plan approved in accordance with N.J.A.C. 7:27-16.17:

1. The marine terminal is a major VOC facility;

2. A transfer of some applicable VOC that is not gasoline is conducted at the marine terminal; and

3. Any of the source operations at the terminal which include the transfer of some applicable VOC that is not gasoline has the potential to emit 10 tons per year or more of VOC.

(d) Effective on *[the operative date of these new rules]* ***July 26, 1994***, the Department shall not approve an application for a permit for equipment or control apparatus, required pursuant to (b) or (c) above, unless:

1. The system has been designed to collect and control the emissions of applicable VOC resulting from ballasting; or

2. The potential to emit VOC from ballasting is limited to less than two pounds of VOC per 1,000 barrels of ballast transferred.

(e) Effective on *[the operative date of these new rules]* ***July 26, 1994***, if a marine tank vessel *[or]* ***and*** marine terminal is equipped with a control apparatus, no person shall cause, suffer, allow, or permit ballasting to be conducted on a marine tank vessel at a marine terminal***,*** unless *[the]***:

1. The ballasting is conducted in dedicated ballast tanks that only use water;

2. The* control apparatus is used during ballasting *[to capture and control the VOC emissions resulting from ballasting or unless the]***; or**

3. The* potential to emit VOC from ballasting is less than two pounds of VOC per 1,000 barrels of ballast transferred.

(f) Effective on *[the operative date of these new rules]* ***July 26, 1994***, no person subject to the provision of (b) above, and effective May 31, 1995, no person subject to (c) above, shall cause, suffer, allow, or permit any transfer of any applicable VOC, or ballasting if:

1. The delivery vessel being loaded, any control apparatus or other equipment serving the transfer operation has a leak that:

i. Results in a concentration of VOC greater than or equal to 100 percent of the lower explosive limit of propane when measured at a distance of 1.0 inch (2.54 centimeters) or less from the source; or

ii. Is a liquid leak ***of applicable VOC***;

2. Any component of the marine tank vessel or any control apparatus serving the source operation is not installed and operating as designed; or

3. The transfer results or would result in a liquid VOC spill.

(g) Monitoring for gaseous leaks of VOC shall be conducted according to EPA's Reference Method 21 (40 CFR-Part 60-Appendix A), incorporated herein by reference, or any other equivalent test method approved in advance in writing by the Department and ***acceptable to*** EPA.

(h) Any testing to determine VOC emissions during the transfer of VOC to a marine tank vessel, conducted in order to determine compliance with this section, shall be performed for at least 60 minutes during the transfer of the last 50 percent of total liquid cargo. For a transfer operation for which the transfer of the last 50 percent of the total liquid cargo is less than a 60 minute duration, the testing shall be performed during the transfer of the entire last 50 percent of the total liquid cargo.

(i) Any tests conducted pursuant to this section to determine emissions of VOC shall be carried out in accordance with:

1. New Jersey Air Test Method 3 (N.J.A.C. 7:27B-3);

2. EPA's Reference Method 25 or 25(a) (40 CFR-Part 60-Appendix A); or

3. Any other equivalent test method approved in advance in writing by the Department and ***acceptable to*** EPA.

(j) Effective on *[the operative date of these new rules]* ***July 26, 1994***, the owner or operator of a marine terminal subject to (b) or (c) above shall maintain at the marine terminal records sufficient to demonstrate compliance with this section. Any records required by this section shall be made available to the Department upon request and shall be maintained for five years. For each transfer of gasoline or other applicable VOC to the marine tank vessel and for performance of ballasting on a marine tank vessel at the marine terminal, the records shall include the following information:

1. The company name and address of the marine terminal;

2. The date *[and time at which each marine tank vessel arrived and departed from the marine terminal]*;

3. The name and registry of the marine tank vessel;

4. For any transfer operation, the type of VOC and the quantity, in gallons or liters, loaded into the marine tank vessel;

5. The prior cargo carried by the marine tank vessel and the condition (that is, cleaned, crude oil washed, gas freed, etc.) of the cargo tanks on the marine tank vessel prior to their being loaded or ballasted; ***and***

6. For ballasting, the amount of ballast water or other liquid added to ballast tanks which are unsegregated*[; and

7. For ballasting, a reference to any written procedures followed to prevent venting while ballasting into ballast tanks which are unsegregated]* ***and which may contain VOC vapor***.

(k) It is an affirmative defense to liability for a violation of any of the provisions of this section that compliance would have any of the following effects:

1. Require any act or omission that would be in violation of any statute or regulation over which the United States Coast Guard has jurisdiction; or

2. Prevent an act that was necessary to secure the safety of a vessel or the safety of the passengers or crew.

7:27-16.6

(No change in text.)

7:27-16.7 Surface coating and graphic arts operations

(a) The provisions of this section apply to any surface coating operation or graphic arts operation to which any control criteria set forth in Table 7A, 7B, 7C, or 7D applies. *[Other]* ***Any other*** surface coating operation or graphic arts operation located at a major VOC facility and having the potential to emit three pounds per hour or more of VOC shall be subject to the provisions of N.J.A.C. 7:27-16.17.

(b) (Reserved)

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(c) No person shall cause, suffer, allow, or permit the use of any surface coating operation or graphic arts operation subject to this section, unless:

1. The VOC content of any surface coating formulation as applied does not exceed the applicable maximum allowable VOC content if any, specified in Table 7A, 7B, 7C, or 7D; or

2. Until March 28, 1994, the surface coating operation is included in a mathematical combination of sources which was approved by the Department prior to March 28, 1992.

3. If more than one surface coating formulation subject to the same maximum allowable VOC content limit as set forth in Table 7A, 7B, 7C, or 7D is applied by a single surface coating or graphic arts operation and one or more of any such formulation are not in compliance with any limit specified in the applicable table, the daily weighted mean of the VOC content of the surface coating formulations as applied does not exceed the applicable maximum allowable VOC content as set forth in the applicable Table. This daily weighted mean shall be 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 surface coating formulations subject to the same maximum allowable VOC content standard, applied in one day;

i = subscript denoting an individual surface coating formulation;

(C_i) = maximum actual VOC content per volume of each surface coating formulation (minus water) applied in one day, in pounds per gallon or kilograms per liter; and

(V_i) = volume of each surface coating formulation (minus water) applied in one day, in gallons or liters; or

4. The surface coating or graphic arts operation is served by VOC control apparatus satisfying the requirements listed in (c)4i through iii below:

i. The control apparatus for any surface coating operation 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 control apparatus for any graphic arts operation meets the collection and control requirements set forth in (h) below; or

iii. The VOC emissions from the surface coating or graphic arts 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:

[Maximum allowable hourly rate = (1-y/d) (z) (x)/(1-x/d)]

$$\textbf{*Maximum allowable hourly rate} = \frac{\left(1-\frac{y}{d}\right)(z)\ (x)}{\left(1-\frac{x}{d}\right)}*$$

where x = maximum allowable VOC content per volume of surface coating formulation (minus water), in pounds per gallon (lb/gal) or kilograms per liter (kg/l) as set forth in Table 7A, 7B, 7C, or 7D of this section;

d = density of the VOC of the applied surface coating formulation in pounds per gallon (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 surface coating formulation (minus water) applied per hour in gallons per hour (gal/hr) or liters per hour (l/hr); or

iv. For a surface coating or graphic arts 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:

Actual daily emissions = $(1-*[n_c n_d]*\ *\eta_c \eta_d*(VOC_a)(V)$

where VOC_a = daily mean VOC content of the surface coating formulations as calculed by (a)3 above;

V = total daily volume of the surface coating formulations, as applied;

$*[n_c]*\ *\eta_c*$ = capture efficiency, i.e. the ratio of the VOC collected by the control apparatus to the VOC in the surface coating formulations as applied, as determined by a method approved by the Department and EPA; and

$*[n_d]*\ *\eta_d*$ = destruction efficiency of the control apparatus, i.e. the ratio of the VOC prevented from being discharged into the outdoor atmosphere to the VOC collected by the control apparatus, as determined by a method approved by the Department and EPA; and

[Allowable daily emissions = $(1-VOC_a/d)$ (V) (x)/(1-x/d)]

$$\textbf{*Maximum allowable hourly rate} = \frac{\left(1-\frac{VOC_a}{d}\right)(V)\ (x)}{\left(1-\frac{x}{d}\right)}*$$

where x = maximum allowable VOC content per volume of surface coating formulation (minus water), in pounds per gallon (lb/gal) or kilograms per liter (kg/l) as set forth in Table 7A, 7B, 7C, or 7D of this section;

d = density of the VOC of the applied surface coating formulation in pounds per gallon (lb/gal) or kilograms per liter (kg/l);

V = total daily volume, in gallons or liters, of the surface coating formulations (minus water) as applied per day; and

VOC_a = daily mean VOC content of the applied surface coating formulations as calculated by (a)3 above.

(d) (No change in text.)

(e) The provisions of (c) and (d) above and (h), (i), and (j) 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. At rates not in excess of one half gallon per hour and two and one half gallons per day; or

2. For the purpose of developing new surface coating formulations or new equipment for use in surface coating or graphic arts operations, or for the purpose of performing research preceding such development provided such surface coating formulations are applied at rates not in excess of two gallons per hour and three gallons per day.

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(f) The owner or operator of any automobile or light duty truck surface coating operation may, as an alternative to complying, pursuant to (c) above, with the content limits set forth in Table 7A, comply with the provisions of Table 7C 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 7A
AUTOMOBILE AND LIGHT DUTY TRUCK SURFACE COATING OPERATIONS
CONTROL CRITERIA AND COMPLIANCE DATES

Type of Operation	Maximum Allowable VOC Content Per Volume of Coating (minus water)		
	Pounds Per Gallon	Kilograms Per Liter	Final Compliance Date
(No change in text.)			

TABLE 7B
MISCELLANEOUS SURFACE COATING OPERATIONS
CONTROL CRITERIA AND COMPLIANCE DATES

Type of Operation	Maximum Allowable VOC Content per Volume of Coating (minus water)		
	Pounds Per Gallon	Kilograms Per Liter	Final Compliance Date
Group I			
Can Coating			December 31, 1981
Sheet basecoat	2.8	0.34	
Two-piece can exterior			
Two- and 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	December 31, 1981
Fabric Coating	2.9	0.35	December 31, 1981
Vinyl Coating	3.8	0.45	December 31, 1981
Paper Coating	2.9	0.35	December 31, 1981
Metal Furniture Coating	3.0	0.36	December 31, 1981
Magnet Wire Coating	1.7	0.20	December 31, 1981
Large Appliance Coating	2.8	0.34	December 31, 1981
Miscellaneous Metal Parts and Products			December 31, 1983
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	
Flat Wood Paneling			December 31, 1983
Printed hardwood plywood panels and particleboard panels	2.7	0.32	
Natural finish hardwood plywood	3.3	0.40	
Hardboard panels	3.6	0.43	
Group II			
Leather Coating	5.8	0.70	December 31, 1987
Urethane Coating	3.8	0.45	December 31, 1987
Table Coating	5.5	0.66	December 31, 1987
Glass Coating	3.0	0.36	December 31, 1987
Wood Furniture			December 31, 1987
Semitransparent stain	6.8	0.82	
Wash coat	6.1	0.73	
Opaque stain	4.7	0.56	
Sealer	5.6	0.67	
Pigment coat	5.0	0.60	
Clear Topcoat	5.6	0.67	
Group III			
Coatings for Metal and Concrete Pipe			May 31, 1995,
Clear coating	4.3	0.52	except December
Air-dried coating	3.5	0.42	31, 1983 for
Extreme performance coating	3.5	0.42	metal pipe
All other coatings	3.0	0.36	coating

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TABLE 7C

(No change in text.)

NOTE: Each combination of VOC content and transfer efficiency in Table 7C 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 7C.

TABLE 7D
GRAPHIC ARTS OPERATIONS
Part A
COMPLIANCE DATES

Type of Graphic Arts Operation	Final Compliance Date
Rotogravure printing operations (web-fed) and flexographic printing operations which produces published material or packaging for commercial or industrial purposes[1]	December 31, 1981
Rotogravure printing operations (web-fed) and flexographic printing operations on vinyl or urethane coated fabric or sheets[1]	December 31, 1987
Fabric printing operations[1]	December 31, 1987
Gravure printing operations (sheet-fed)	May 31, 1995
Screen printing operations	May 31, 1995

Part B
CONTROL CRITERIA FOR GRAPHIC ARTS SOURCE OPERATIONS EXCEPT SCREEN PRINTING OPERATIONS

Basis	Control Criteria	
Surface coating formulations[2] that contain water (except fountain solutions):	**Maximum Allowable volume percent VOC in volatile fraction of surface coating formulations or fountain solutions (VOC plus water) as applied.**	
	25.0%	
Surface coating formulations[2] that do not contain water:	**Maximum Allowable VOC Content per volume of surface coating formulation (minus water)**	
	Pounds per Gallon	**Kilograms Per Liter**
	2.9	**0.35**
Fountain solutions:	**5.0%, if the temperature of the fountain solution is 55°F or less; or**	
	3.0%, if the temperature of the fountain solution is higher than 55°F	

Part C
CONTROL CRITERIA FOR SCREEN PRINTING OPERATIONS

Basis	Control Criteria Maximum Allowable VOC content per volume of surface coating formulations[2]	
	Pounds per Gallon	**Kilograms per Liter**
Substrate Category:[3]		
Paper	**3.3**	**0.40**
Glass and Ceramic	**3.3**	**0.40**
Metal	**3.3**	**0.40**
Rigid and Flexible Plastic	**3.3**	**0.40**
Reflective Sheeting	**3.3**	**0.40**
Pressure Sensitive Decals	**3.3**	**0.40**
Wood	**3.3**	**0.40**
Fabric	**2.9**	**0.35**
Surface Coating Formulation:		
Conductive Ink	**8.5**	**1.03**
Special Purpose Screen Printing Inks and Coatings	**6.7**	**0.81**

[1]**Control apparatus serving certain graphic arts operations of this type which were constructed prior to *[the effective date of these amendments]* *July 26, 1994*** may have compliance dates on or after *[the effective date of these amendments]* ***July 26, 1994***, pursuant to the provisions of (p) below.

[2]This term includes inks and coatings; see definition of "surface coating formulation."

[3]Except where conductive ink and special purpose screen printing inks and coatings are used.

(g) The owner or operator of 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 surface coating formulation (minus water) set forth in Group I of Table 7B, pursuant to (c)1 above, apply to the Department for an alternative maximum allowable VOC content limit per volume of surface coating formulation, 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.

(h) Except as provided in (p) below, the owner or operator of any rotogravure, sheet-fed gravure, flexographic, fabric, or screen printing operation may, as an alternative to complying with the control criteria requirements set forth in Table 7D, pursuant to (c)1 above, install and use control apparatus which:

1. Collects at least 75 percent by volume of the source gas emitted from a rotogravure or gravure printing operation (sheet-fed), including associated dryers, and prevents from being discharged into the outdoor atmosphere:

i. At least 95 percent by volume of the VOC collected on an hourly basis if a thermal oxidizer is used to control emissions, except as provided in (p) below; or

ii. At least 90 percent by volume of the VOC collected on an hourly basis if a carbon adsorption system or any other control device is used to control emissions;

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:

i. At least 95 percent by volume of the VOC collected on an hourly basis if a thermal oxidizer is used to control emissions, except as provided in (p) below; or

ii. At least 90 percent by volume of the VOC collected on an hourly basis if a carbon adsorption system or any other control device is used to control emissions;

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:

i. At least 95 percent by volume of the VOC collected on an hourly basis if a thermal oxidizer is used to control emissions, except as provided in (r) below; or

ii. At least 90 percent by volume of the VOC collected on an hourly basis if a carbon adsorption system or any other control device is used to control emissions; or

4. Collects at least 70 percent by volume of the source gas emitted from a screen printing operation and prevents from being discharged into the outdoor atmosphere:

i. At least 95 percent by volume of the VOC collected on an hourly basis if a thermal oxidizer is used to control emissions; or

ii. At least 90 percent by volume of the VOC collected on an hourly basis if a carbon adsorption system or any other control device is used to control emissions.

(i) Notwithstanding the provisions of (c)2 and (c)4ii above, the owner or operator of any 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

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forth in Table 7B, 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.

(j) The owner or operator of any 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 7B, Group II under "Wood Furniture" shall be applied using airless, air-assisted airless, or heated airless spray techniques, or another application method approved by the 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 7B, Group II under "Wood Furniture" 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.

(k) The owner or operator of any pipe coating operation, gravure printing operation (sheet-fed), or screen printing operation subject to (c) above shall comply with the following schedule:

1. By *[the date which is three months after the operative date of these new rules]* ***October 26, 1994***, submit to the Chief, Bureau of New Source Review, *[Division of]* Environmental Regulation ***Program***, Department of Environmental Protection and Energy, CN *[401]* ***027***, Trenton, New Jersey 08625-*[0401]* ***0027***, a complete application for each permit required, pursuant to N.J.A.C. 7:27-8, to achieve compliance with (b) above; ***and***

[2. By March 31, 1994, commence construction or installation, in accordance with the approved permit, of any equipment and control apparatus required to achieve compliance with (b) above; and]

*[3.]****2.*** By May 31, 1995, achieve compliance with (b) above and maintain compliance with this section thereafter.

(l) (No change in text.)

(m) The owner or operator of 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 7A, 7B, 7C, or 7D 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.

(n) The owner or operator of any surface coating operation, or graphic arts 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 7A, 7B, 7C, or 7D, shall maintain the following records:

1. For each surface coating formulation including each change of diluent or concentration of diluent as applied, record the following:

i. The number of hours each surface coating formulation was applied and the date *[and time each application started and ended]*;

ii. The volume of each surface coating formulation applied;

iii. The density of each surface coating formulation;

iv. The density of the VOC in each surface coating formulation;

v. The percent by weight of VOC in each surface coating formulation;

vi. The percent by weight of any exempt organic substance in each surface coating formulation;

vii. The percent by weight of any water in each surface coating formulation;

2.-4. (No change.)

(o) The method(s) to be used to determine the composition of a surface coating formulation as required by (m) or (n) above may include utilization of standard formulation sheets, material safety data sheets, the results of analytical tests, or other methods approved in advance and provided that the required information can be readily extracted from the documents.

(p) Notwithstanding the provisions of (h)1, 2, or 3 above, the owner or operator of any rotogravure printing operation, gravure (sheet-fed) printing operation, flexographic printing operation, or fabric printing operation, subject to this section pursuant to (a)1 above, may continue to use a control apparatus which was installed and continues to be operated in compliance with a permit issued by the Department for the printing operation prior to *[the effective date of these amendments]* ***July 26, 1994*** so long as the control apparatus has not been altered or replaced since the date of approval of the current permit. If and when the control apparatus is altered or replaced, the new or altered control apparatus shall, at a minimum, meet the requirements set forth in (h)1, 2, or 3 above.

(q) After receipt of a written request from an owner or operator for an extension of the deadline set forth in (k)1 above, the Department may authorize a 60-day renewable extension upon showing of good cause. Such extension may be renewed by the Department upon the written request of the owner or operator. Approval of such an extension shall not constitute approval of extension of the May 31, 1995 deadline established in (k)2 above. Written requests for the extension of a deadline submitted pursuant to this subsection shall be addressed to:

Assistant Director, Air & Environmental Quality Enforcement
Division of Enforcement Field Operations
Department of Environmental Protection and Energy
CN 422
401 East State Street, 4th Floor
Trenton, New Jersey 08625-0422*

7:27-16.8 Boilers

(a) The provisions of this section apply to any boiler which is subject to the provisions of N.J.A.C. 7:27-19.

(b) The owner or operator of any non-utility boiler with a maximum gross heat input rate of 50,000,000 British thermal units or more per hour or any utility boiler shall:

1. Cause it to emit VOC in concentrations that do not exceed 50 ppmvd at seven percent oxygen; *[and

2. Adjust its combustion process in accordance with N.J.A.C. 7:27-16.24 before May 1 of each calendar year beginning in 1994.

(c) The owner or operator of any non-utility boiler with a maximum gross heat input rate of 50,000,000 British thermal units or more per hour or any utility boiler shall:]*

*[1.]****2.*** Cause it to emit CO in concentrations that do not exceed 100 ppmvd ***at*** seven percent oxygen; and

*[2.]****3.*** Adjust its combustion process in accordance with N.J.A.C. 7:27-16.24 before May 1 of each calendar year beginning in *[1994]* ***1995***.

*[(d)]****(c)*** The owner or operator of any utility boiler or non-utility boiler with a maximum gross heat input rate at least 20,000,000 British thermal units per hour and less than 50,000,000 British thermal units per hour shall adjust the combustion process in accordance with N.J.A.C. 7:27-16.24 before May 1 of each calendar year beginning in *[1994]* ***1995***.

*[(e)]****(d)*** Any owner or operator of a boiler subject to this section shall achieve compliance with (b) *[and (c)]* above by May 31, 1995, and maintain compliance with this section thereafter.

*[(f)]****(e)*** The owner or operator of any utility boiler or non-utility boiler subject to this section shall demonstrate compliance with this subchapter in accordance with the procedures at N.J.A.C. 7:27-16.23 before May 31, 1996.

*[(g)]****(f)*** The owner or operator of any utility boiler subject to this section shall install a continuous emissions monitoring system for CO in accordance with the procedures set forth at N.J.A.C. 7:27-*[16.25]****19.18*** before May 31, 1995.

*[(h)]****(g)*** The owner or operator of any non-utility boiler with a maximum gross heat input rate of greater than 250,000,000 British thermal units per hour shall install a continuous monitoring system for CO in accordance with the procedures set forth at N.J.A.C. 7:27-*[16.25]****19.18*** before May 31, 1995.

*[(i)]****(h)*** Any source conducting emissions tests for VOC in accordance with this subsection shall do so using the New Jersey

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Air Test Method 3 (N.J.A.C. 7:27B-3) or any equivalent method *[which the Department and the EPA have approved in advance]* ***approved in advance by the Department and acceptable to EPA***.

*[(j)]**(i)* Any source conducting emissions monitoring for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix B, Performance Specification Test No. 2, and 40 CFR 60, Appendix F, Quality Assurance Requirements, including any amendments or supplements thereto, incorporated herein by reference, or any equivalent method *[which the Department and the EPA have approved in advance]* ***approved in advance by the Department and acceptable to EPA***.

*[(k)]**(j)* Any source conducting emissions tests for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix A, Reference Method 10, including any amendments or supplements thereto, incorporated herein by reference, or any equivalent method *[which the Department and EPA have approved in advance]* ***approved in advance by the Department and acceptable to EPA***.

(k) Any owner or operator submitting a Repowering Plan for a combustion source pursuant to N.J.A.C. 7:27-19 may submit facility-specific CO limits as an alternative to those specified in this section as part of the facility's proposed Repowering Plan.

7:27-16.9 Stationary gas turbines

(a) The provisions of this section apply to any stationary gas turbine which is subject to the provisions of N.J.A.C. 7:27-19.

(b) *[The owner or operator of any stationary turbine shall cause it to emit CO in concentrations that do not exceed 100 ppmvd at 15 percent oxygen.]* ***(Reserved)***

(c) The owner or operator of any stationary gas turbine shall cause it to emit VOC in concentrations that do not exceed 50 ppmvd at 15 percent oxygen.

(d) Any owner or operator of a stationary gas turbine subject to this section shall achieve compliance with this section by May 31, 1995, and maintain compliance with this section thereafter.

(e) The owner or operator of any stationary gas turbine subject to this section shall demonstrate compliance with this subchapter in accordance with the procedures at N.J.A.C. 7:27-16.23 before May 31, 1996.

(f) Any owner or operator of any stationary gas turbine subject to this section shall adjust the combustion process in accordance with the procedure set forth at N.J.A.C. 7:27-16.24 before May 1 of each year beginning in *[1994]* ***1995***.

(g) Any source conducting emissions tests for VOC in accordance with this section shall do so using New Jersey Air Test Method 3 (N.J.A.C. 7:27B-3) or any equivalent method *[which the Department and the EPA have approved in advance]* ***approved in advance by the Department and acceptable to EPA***.

(h) Any source conducting emissions monitoring for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix B, Performance Specification Test No. 2, and 40 CFR 60, Appendix F, Quality Assurance Requirements, including any amendments or supplements thereto, or any equivalent method *[which the Department and the EPA have approved in advance]* ***approved in advance by the Department and acceptable to EPA***.

(i) Any source conducting emissions tests for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix A, Reference Method 10, including any amendments or supplements thereto, or any equivalent method *[which the Department and EPA have approved in advance]* ***approved in advance by the Department and acceptable to EPA***.

(j) Any owner or operator submitting a Repowering Plan for a combustion source pursuant to N.J.A.C. 7:27-19 may submit facility-specific CO limits as an alternative to those specified in this section as part of the facility's plan proposed Repowering Plan.

7:27-16.10 Stationary internal combustion engines

(a) The provisions of this section apply to any stationary internal combustion engine which is subject to the provisions of N.J.A.C. 7:27-19.

(b) *[The owner or operator of a stationary internal combustion engine subject to this section shall cause it to emit CO in concentrations that do not exceed 100 ppmvd at 15 percent oxygen.]* ***(Reserved)***

(c) Any owner or operator of a stationary internal combustion engine subject to this section shall achieve compliance with this section by May 31, 1995, and maintain compliance with this section thereafter.

(d) The owner or operator of any stationary internal combustion engine subject to this section shall demonstrate compliance with this subchapter in accordance with the procedures at N.J.A.C. 7:27-16.23 before May 31, 1996.

(e) Any owner or operator of any stationary internal combustion engine subject to this section shall adjust the combustion process in accordance with the procedure set forth at N.J.A.C. 7:27-16.24 before May 1 of each year beginning in *[1994]* ***1995***.

(f) Any source conducting emissions tests for VOC to determine compliance with this section shall do so using *[New Jersey Air Test Method 3 (N.J.A.C. 7:27B-3)]* ***Reference Method 10 found in 40 CFR Part 60—Appendix A*** or any equivalent method *[which the Department and the EPA have approved in advance]* ***approved in advance by the Department and acceptable to EPA***.

(g) Any source conducting emissions monitoring for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix B, Performance Specification Test No. 2, and 40 CFR 60, Appendix F, Quality Assurance Requirements, including any amendments or supplements thereto, or any equivalent method *[which the Department and the EPA have approved in advance]* ***approved in advance by the Department and acceptable to EPA***.

(h) Any source conducting emissions tests for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix A, Reference Method 10, including any amendments or supplements thereto, or any equivalent method *[which the Department and EPA have approved in advance]* ***approved in advance by the Department and acceptable to EPA***.

7:27-16.11 Asphalt plants

(a) The provisions of this section shall apply to any batch mix asphalt plant which is located at a major VOC facility ***or any drum mix asphalt plant which is located at a major VOC facility***. Any ***batch mix asphalt plant or any*** drum *[type]* ***mix*** asphalt plant *[shall]* ***may opt to*** be subject to the provisions of N.J.A.C. 7:27-16.17.

(b) The owner or operator of a batch *[type]* ***mix*** asphalt plant ***or a drum mix asphalt plant*** shall cause it to emit CO in concentrations that do not exceed 500 ppmvd at seven percent oxygen and VOC in concentrations that do not exceed 250 ppmvd at seven percent oxygen.

(c) Any owner or operator of an asphalt plant subject to this section shall achieve compliance with this section by May 31, 1995, and maintain compliance with this section thereafter.

(d) Any owner or operator of an asphalt plant subject to this section shall demonstrate compliance with this subchapter in accordance with the procedures at N.J.A.C. 7:27-16.23 before May 31, 1996.

(e) Any owner or operator of any asphalt plant subject to this section shall adjust the combustion process in accordance with the procedure set forth *[at N.J.A.C. 7:27-16.24 before May 15 of each year beginning in 1994]* ***in its permit and certificate or at least once per year beginning in 1995, whichever is more stringent***.

(f) Any source conducting emissions tests for VOC to determine compliance with this section shall do so using New Jersey Air Test Method 3 (N.J.A.C. 7:27B-3) or any equivalent method *[which the Department and the EPA have approved in advance]* ***approved in advance by the Department and acceptable to EPA***.

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(g) Any source conducting emissions monitoring for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix B, Performance Specification Test No. 2, and 40 CFR 60, Appendix F, Quality Assurance Requirements, including any amendments or supplements thereto, or any equivalent method *[which the Department and the EPA have approved in advance]* ***approved in advance by the Department and acceptable to EPA***.

(h) Any source conducting emissions tests for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix A, Reference Method 10, including any amendments or supplements thereto, or any equivalent method *[which the Department and EPA have approved in advance]* ***approved in advance by the Department and acceptable to EPA***.

7:27-16.12 (Reserved)

7:27-16.13 Flares

(a) Any flare in use at a major VOC facility after May 31, 1995, shall:

1. Have been designed to reduce the concentration of VOC from the source operation by no less than 95 percent;
2. Have been installed in accordance with the specifications provided by the manufacturer of the flare; and
3. Be operated and maintained in accordance with the specifications provided by the manufacturer of the flare.

(b) The owner or operator of any existing flare subject to this section shall submit in writing, to the Assistant Director of Air and Environmental Quality Enforcement, Division of Enforcement Field Operations, Department of Environmental Protection and Energy, CN 411, Trenton, N.J. 08625-0411, the following information prior to May 31, *[1994]* ***1995***. The following information shall be submitted with any permit application for any flare to be installed after that date. Such submittal shall be certified in accordance with N.J.A.C. 7:27-8.24.

1. The name of the owner and operator of the flare;
2. The make, model and serial number of the flare;
3. A copy of the manufacturer's specification of the performance standards for the flare;
4. A statement that the flare was installed in accordance with the manufacturer's specifications;
5. A statement that the flare is being operated and maintained in accordance with the manufacturer's specifications; and
6. A statement that the flare will continue to be operated in accordance with the manufacturer's specifications.

(c) The owner or operator of a flare subject to this section shall inspect the flare before May 1 of each year beginning in *[1994]* ***1995*** to verify that the flare continues to be operated in accordance with the manufacturer's specifications for the operation of the flare. The owner or operator of the flare shall record the following in a permanently bound log book at the conclusion of each inspection:

1. The name of the person conducting the inspection;
2. The date on which the inspection was conducted;
3. An entry indicating which flare was inspected;
4. Any changes or adjustments made to the flare as a result of the inspection; and
5. A statement stating that the flare is currently being operated in compliance with the manufacturer's specifications.

7:27-16.14 and 16.15 (Reserved)

7:27-16.16 Other source operations

(a) The provisions of this section apply to any source operation, except source operations in the following categories (Note: Source operations in those categories designated by an asterisk (*) which have the potential to emit three pounds per hour or more of VOC and which are located at a major VOC facility are regulated by N.J.A.C. 7:27-16.17.)***:***

1. VOC storage operations;
2. Gasoline transfer operations;
3. VOC transfer operations, other than gasoline;
4. Marine transfer operations;
5. Open top tanks and surface cleaners;
6. Surface coating and graphic arts operations;
7. Boilers;
8. Stationary gas turbines;
9. Stationary internal combustion engines;
10. Asphalt plants;
11. Natural gas pipeline blowdown events;
12. Flares;
13. Petroleum solvent dry cleaning operations;

14*. Fiberglass manufacturing furnaces*[, not at a major VOC facility]*;

15*. Glass manufacturing furnaces*[, not at a major VOC facility]*;

16*. Fuel burning for steam generation for space heating*[, not at a major VOC facility]*;

17*. Sulfuric acid plant burners*[, not at a major VOC facility]*;

18. Any source operation regulated pursuant to N.J.A.C. 7:27-16.17; and
19. Any source operation exempted from this subchapter pursuant to N.J.A.C. 7:27-16.27.

(b) Source operations to which this section apply are not limited to those involved in manufacturing and include, without limit, the following: agitators, autoclaves, bakery ovens, blenders, centrifuges, distillation processes, driers, extruders, fermentation processes, fiberglass boat or vessel manufacturing operations, fiberglass product manufacturing operations, foam blowing operations, fumigation chambers, mills, mixers, ovens, reactors, receivers, roasters, sterilization operations, and synthetic fiber manufacturing operations.

(c) No person shall cause, suffer, allow, or permit any VOC to be emitted into the outdoor atmosphere from any source operation subject to the provisions of this section, in excess of the maximum allowable emission rate, as determined in accordance with the procedure in (d) below.

(d) For the purposes of (c) above, the maximum allowable emission rate for a source operation subject to this section shall be determined in accordance with the following procedure:

1.-2. (No change.)

3. From Table 16B, 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. From Table 16A, Column 2, determine the maximum allowable percent of process emissions for the source gas range as determined in Step 3.
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 the Exclusion Rate shown in Column 3, whichever is greater.

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TABLE 16A

MAXIMUM ALLOWABLE HOURLY VOC EMISSIONS FROM SOURCE OPERATIONS

Column 1	Column 2	Column 3	
Range Determined From Table 16B	Maximum Allowable emissions, Percent of Process Emissions by Weight	Exclusion Rates As of June 15, 1990 Continuous or Batch Cycle Emission	
		Pounds Per Hour	Kilograms Per Hour
Range A	15	3.5	1.59
Range B	15	3	1.36
Range C	15	2.5	1.14
Range D	12	2	0.91
Range E	10	1.5	0.68
Range F	8	1	0.46
Range G	2	0.5	0.23
Range H	0.3	0	0
Range I	15	3.5	1.59

Table 16B

DETERMINANTS OF CONTROLS REQUIRED FOR PROCESS SOURCE GASES

(No change in text.)

(e) The provisions of (c) 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 inches (15 centimeters) of the point at which the source gas is discharged to an internal work space, provided such exhaust ventilation system:

1.-2. (No change.)

(f) For the purpose of this section:

1. Source gases from a single source operation which are emitted from different vents in different range classifications as determined from Table 16B shall be considered as being discharged from separate source operations for each of which the maximum allowable emission rate must be determined separately.

2. Source operations normally falling within the category subject to the provisions of this section but used for research or development purposes are exempt from compliance with (c) above provided *[they do not exceed the hourly exclusion rates for their ranges, as set forth in Table 16A, Column 3 as applicable; or provided]*:

i. No more than two times the applicable hourly exclusion rate set forth in Table 16A, Column 3 is emitted in any one hour ***or over a batch cycle average***; and

ii. No more than three times the applicable hourly exclusion rate set forth in Table 16A, Column 3 is emitted in any 24-hour period.

3. The maximum allowable emission rate for source gases physically combined (manifolded) for more than one source operation shall be the sum of the maximum allowable emission rates for the separate source gases as determined under N.J.A.C. 7:27-16.6(c), (h), (i), and (j) and 16.16(c) and (e). The process emission rate shall be used as the maximum allowable emission rate of a separate source gas if it is less than the applicable exclusion rate contained in Table 16A, Column 3;

4.-6. (No change.)

(g) Any person responsible for a source operation subject to (c) 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 16A in (c) 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 themaximum 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. (No change.)

2.-4. (No change.)

7:27-16.17 Facility-specific VOC control requirements

(a) (No change.)

(b) The owner or operator of any facility that contains a source operation subject to (a)1 above shall:

1. By *[three months after the operative date of the adoption or other final action, on the remainder of the proposal published in the New Jersey Register on August 2, 1993, at 25 N.J.R. 3339(a),]* ***October 24, 1994***, submit a demonstration for all source operations to the Department at the address listed in (s) below. This demonstration shall include one of the following for each source operation subject to (a)1 above:

i.-iii. (No change.)

2. (No change.)

(c) An owner or operator seeking approval of an alternative VOC control plan pursuant to (a)2 above shall submit to the Department at the address listed in (s) below a proposed alternative VOC control plan prepared in accordance with (d) below. Submission of a proposed alternative VOC control plan does not relieve an owner or operator of any facility, equipment or source operation facility from complying by May 31, 1995 for source operations first regulated under this subchapter as amended operative *[(add operative date upon adoption of or other final action on the remainder of the proposal published in the New Jersey Register on August 2, 1993 at 25 N.J.R. 3339(a)) (see 25 N.J.R. and 26 N.J.R.)]* ***July 26, 1994*** or compliance dates in other sections of this subchapter. If and when the Department approves the alternative VOC control plan, the owner or operator shall be subject to the conditions and requirements of the plan and of the Department's approval.

(d)-(s) (No change.)

7:27-16.18 Leak detection and repair

(a) The provisions of this section shall apply to any owner or operator of the following:

1. Any petroleum refinery;

2. Any natural gas/gasoline processing plant;

3. Any synthetic organic chemical or polymer manufacturing facility; or

4. Any chemical plant, other than a synthetic organic chemical or polymer manufacturing facility, which is a major VOC facility.

(b) The provisions of this section shall apply only to equipment in contact with a substance that:

1. At any petroleum refinery, is 10 percent by weight or greater ***applicable*** VOC;

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2. At any natural gas/gasoline processing plant, is one percent by weight or greater ***applicable*** VOC; or

3. At any synthetic organic chemical or polymer manufacturing facility, is ten percent by weight or greater gaseous ***applicable VOC*** or light liquid VOC and the equipment is used to produce greater than 1,100 tons per year (1,000 megagrams per year) of synthetic organic chemicals or polymers, or any combination thereof; or

4. *[At any chemical plant, other than a synthetic organic chemical or polymer manufacturing facility, is ten percent by weight or greater applicable VOC, and the component is in gaseous or light liquid VOC service more than 300 hours per year.]* ***(Reserved) (applicability threshold for other chemical plants)***

(c) After the applicable date set forth in Table 18A, no person subject to this section shall cause, suffer, allow or permit a ***regulated*** leak of any applicable VOC from any pressure relief device or any other component without moving parts (including, without limitation, flanges, manholes, hatches, instrument connections, sealed connections, joints and fittings), unless one of the following conditions is satisfied:

[1. The leak is not a regulated leak; or]

*[2.]***1.*** The person first attempts to repair the regulated leak, and completes the repair, as soon as is practicable but *[in no event]* ***not*** beyond the time allotted for each of those actions in Table 18A***;**

2. The leak is an overpressure release discharge from a pressure relief device, for which the pressure relief device is designed, and the release is properly reported pursuant to any applicable law or rule; or

3. The leak is a discharge to an emergency device (such as a flare) that is designed to combust gases generated during process upsets for emergency events*.

(d) After the applicable date set forth in Table 18B, no person subject to this section shall cause, suffer, allow or permit a ***regulated*** leak of any applicable VOC from any agitator or any other component with moving parts (including, without limitation, valves, pumps, compressors, agitators and diaphragms), unless *[one of the following conditions is satisifed:]*

[1. The leak is not a regulated leak; or]

[2. The] ***the*** person first attempts to repair the leak, and completes the repair, as soon as is practicable but *[in no event]* ***not*** beyond the time allotted for each of those actions in Table 18B.

(e) In determining the concentration of VOC in a gaseous leak from a component, the applicable VOC shall be measured at a distance within 0.4 inches (one centimeter) of the source in accordance with:

1. The EPA test reference method 21 set forth at 40 CFR part 60 Appendix A***, using methane as the reference compound, unless the owner or operator chooses to use a more appropriate calibration gas with an established response factor for the instrument and to record and report the concentration in terms of methane***; or

2. Any other equivalent test method approved in advance in writing by *[EPA and]* the Department ***and acceptable to EPA*.**

TABLE 18A
TIME LIMITS FOR LEAK REPAIR OF *[PRESSURE RELIEF VALVES AND OTHER]* COMPONENTS WITHOUT MOVING PARTS

Type of Leak	Maximum Number of Days from Date Leak Was Detected until the First Attempt at Repair	Maximum Number of Days from Date Leak Was Detected until the Repair Is Complete	Date Provision Becomes Effective
*[From a Pressure Relief Device:			
Liquid Leak	2	15	*
Gaseous Leak having a concentration of applicable VOC greater than 500 ppm above background concentration	5	15	*
From Other Such Components:]*			
Liquid Leak	2	15	*[*]* ***July 26, 1994***
Gaseous Leak having a concentration of applicable VOC above background concentration equal to or greater than:			
*[50,000 ppm	2	15	*]*
10,000 ppm *[but less than 50,000 ppm]*	5	15	*[*]* ***July 26, 1994***
1,000 ppm but less than 10,000 ppm	***N/A***	15	*[*]* ***July 26, 1994***

*[*Upon operative date of this rule.]*

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TABLE 18B
TIME LIMITS FOR LEAK REPAIR OF AGITATORS
AND OTHER COMPONENTS WITH MOVING PARTS

Type of Leak	Maximum Number of Days from Date Leak Was Detected until the First Attempt at Repair	Maximum Number of Days from Date Leak Was Detected until the Repair Is Complete	Date Provision Becomes Effective
From an Agitator:			
Liquid Leak	2	15	*[*]* ***July 26, 1994***
Gaseous Leak having a concentration of applicable VOC greater than 10,000 ppm above background concentration	5	15	*[*]* ***July 26, 1994***
From Other *[Such]* Components ***with Moving Parts***:			
Liquid Leak	2	15	*[*]* ***July 26, 1994***
Gaseous Leak having a concentration of applicable VOC above background concentration equal to or greater than:			
*[50,000 ppm	2	15	*]*
10,000 ppm *[but less than 50,000 ppm]*	5	15	*[*]* ***July 26, 1994***
5,000 ppm but less than 10,000 ppm	N/A	15	4/1/95
1,000 ppm but less than *[10,000]* ***5,000*** ppm	N/A	15	4/1/96

*[*Upon operative date of this rule.]*

(f) The owner or operator of a petroleum refinery shall develop and implement a leak detection and repair program for any component subject to the provisions of (c) and (d) above. The program shall include the following provisions:

1. The minimum frequency of testing of components shall be as follows:

i. Annually, test all ***agitators,*** pumps and valves in ***light*** liquid service;

ii. Quarterly, test all compressors, valves, and pressure relief devices in gaseous service, unless on both of the *[past]* ***last*** two occasions ***when*** such testing was conducted at *[any]* ***the*** petroleum refinery the owner or operator determined that:

(1) Less than two percent of all the pumps, valves, compressors, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every two quarters; or

(2) Less than one percent of all the pumps, valves, compressors, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every four quarters;

iii. Monthly, visually inspect all pumps; *[and]*

iv. *[Once every two years, test any other type of component;]* ***Semi-annually, visually inspect any other type of component in light liquid service; and***

v. Test any other type of component in gaseous service within 15 days after the component has been returned to service following having been taken apart or disconnected and reassembled;*

2. By no later than five days after a pressure relief device has vented to the atmosphere, the pressure relief device shall be tested;

3. *[Immediately]* ***By no later than five days*** after repair, any component from which a regulated leak was detected shall be tested;

4. By July 1, 1982, the initial leak tests ***required in (f)1i, (f)1ii, and (f)1iii above shall be completed, and by May 31, 1995 the initial leak tests required in (f)1iv above*** shall be completed;

5. A readily visible identification tag shall be affixed to any component detected to have a regulated leak. The tag must bear a number identifying the component and the date on which the regulated leak was detected. The tag must remain in place until the regulated leak is repaired; *[and]*

6. Any component detected to have a regulated leak shall be repaired, in accordance with the schedules set forth in Tables 18A or 18B above, unless *[the shutdown of]* a refinery process unit ***shutdown*** is necessary to repair the regulated leak. In such case, the regulated leak shall be repaired during the next *[period in which the unit is out of service]* ***process unit shutdown*** and prior to the next start-up***;****

7. Notwithstanding paragraphs (f)1 through 6 above, a component that does not come in contact with applicable VOC at any time during a specified monitoring period need not be monitored during that period, but, instead, must only be monitored within 30 days of when the component next comes in contact with applicable VOC; and

8. Notwithstanding paragraphs (f)1 through 6 above, equipment that is not operating need not be started up solely for the purpose of monitoring components within a specified monitoring frequency period, but, instead, components of such equipment must be monitored within 30 days of when the equipment is next restarted*.

(g) The owner or operator of any natural gas/gasoline processing plant shall develop and implement a leak detection and repair program for any component subject to the provisions of (c) and (d) above. The program shall include the following provisions:

1. The minimum frequency of testing of components shall be as follows:

i. Quarterly, test all pumps, valves, compressors, and pressure relief devices, unless on both of the past two occasions such testing was conducted at any natural gas/gasoline processing plant the owner or operator determined that:

(1) Less than two percent of all the pumps, valves, compressors, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every two quarters; or

(2) Less than one percent of all the pumps, valves, compressors, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every four quarters;

ii. Weekly, visually inspect all pumps; and

iii. Once every two years, test any other type of component;

2. By no later than five days after a pressure relief device has vented to the atmosphere, the pressure relief device shall be tested;

3. *[Immediately]* ***By no later than five days*** after repair, any component from which a regulated leak was detected shall be tested;

4. By March 31, 1987, the initial leak tests shall be completed;

5. A readily visible identification tag shall be affixed to any component detected to have a regulated leak. The tag must bear a number

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identifying the component and the date on which the regulated leak was detected. The tag must remain in place until the regulated leak is repaired; *[and]*

6. Any component detected to have a regulated leak shall be repaired, in accordance with the schedules set forth in Tables 18A or 18B above, unless *[the shutdown of]* a process unit ***shutdown*** is necessary to repair the regulated leak. In such case, the regulated leak shall be repaired *[at the earliest period in which either the process is not in operation or the particular unit is out of service, whichever occurs first]* ***during the next process unit shutdown*** and prior to the next start-up***;***

7. Notwithstanding paragraphs (g)1 through 6 above, a component that does not come in contact with applicable VOC at any time during a specified monitoring period need not be monitored during that period, but, instead, must only be monitored within 30 days of when the component next comes in contact with applicable VOC; and

8. Notwithstanding paragraphs (f)1 through 6 above, equipment that is not operating need not be started up solely for the purpose of monitoring components within a specified monitoring frequency period, but, instead, components of such equipment must be monitored within 30 days of when the equipment is next restarted*.

(h) The owner or operator of a synthetic organic chemical or polymer manufacturing facility subject to this section shall develop and implement a leak detection and repair program for any component subject to the provisions of (c) and (d) above. The program shall include the following provisions:

1. The minimum frequency of testing of components shall be as follows:

i. Quarterly test all ***agitators,*** pumps ***and valves*** in light liquid service, *[valves in light liquid service,]* ***and*** compressors*[,]* and pressure relief devices on equipment in gas service, unless on both of the past two occasions such testing was conducted at a synthetic organic chemical or polymer manufacturing facility the owner or operator determined that:

(1) Less than two percent of all the compressors, valves, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every two quarters; and

(2) Less than one percent of all the compressors, valves, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every four quarters;

ii. Weekly, visually inspect all pumps in light liquid service; *[and]*

iii. *[Once every two years, test any other type of component]* ***Semi-annually, visually inspect any other type of component in light liquid service; and***

iv. Test any type of component in gaseous service within 15 days after the component has been returned to service following having been taken apart or disconnected and reassembled*;

2. By no later than five days after a pressure relief device has vented to the atmosphere, the pressure relief device shall be tested;

3. *[Immediately]* ***By no later than five days*** after repair, any component from which a regulated leak was detected shall be tested;

4. By March 31, 1987, the initial leak tests ***pursuant to (h)1i and (h)1ii above shall be completed, and by May 31, 1995, the initial leak tests required pursuant to (h)1iii above*** shall be completed;

5. A readily visible identification tag shall be affixed to any component detected to have a regulated leak. The tag must bear a number identifying the component and the date on which the regulated leak was detected. The tag must remain in place until the regulated leak is repaired; *[and]*

6. Any leaking component detected to have a ***regulated*** leak shall be repaired, in accordance with the schedules set forth in Tables 18A or 18B above, unless *[the shutdown of]* a process unit ***shutdown*** is necessary to repair the regulated leak. In such case, the regulated leak shall be repaired *[at the earliest period in which either the process is not in operation or the particular unit is out of service, whichever occurs first,]* ***during the next process unit shutdown*** and prior to the next start-up***;***

7. Notwithstanding paragraphs (h)1 through 6 above, a component that does not come in contact with applicable VOC at any time during a specified monitoring period need not be monitored during that period, but, instead, must only be monitored within 30 days of when the component next comes in contact with applicable VOC; and

8. Notwithstanding paragraphs (f)1 through 6 above, equipment that is not operating need not be started up solely for the purpose of monitoring components within a specified monitoring frequency period, but, instead, components of such equipment must be monitored within 30 days of when the equipment is next restarted*.

(i) The owner or operator of a chemical plant that is a major VOC facility shall develop and implement a leak detection and repair program for any equipment subject to the provisions of (d) and (e) above if such equipment is not subject to the provisions of (f), (g), or (h) above. The program shall include the following provisions:

1. The minimum frequency of testing of components shall be as follows:

i. Annually, test all ***agitators,*** pumps, valves, and pressure relief devices in light liquid service;

ii. Quarterly, test all compressors, valves, and pressure relief devices in gas service, unless on both of the past two occasions such testing was conducted at a chemical plant the owner or operator determined that:

(1) Less than two percent of all the compressors, valves, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every two quarters; and

(2) Less than one percent of all the compressors, valves, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every four quarters;

iii. Monthly, visually inspect all single mechanical seals and packed seal pumps; and

iv. *[Once every two years, test any other type of component]* ***Every six months, visually inspect any other type of component in light liquid service; and***

v. Test any other type of component in gaseous service within 15 days after the component has been returned to service following having been taken apart or disconnected and reassembled*;

2. By no later than five days after a pressure relief device has vented to the atmosphere, the pressure relief device shall be tested;

3. *[Any component detected to have a regulated leak shall be tested immediately after repair]* ***By no later than five days after repair, any component from which a regulated leak was detected shall be retested*;***

4. By May 31, 1995, the initial leak tests shall be completed;

5. A readily visible identification tag shall be affixed to any component detected to have a regulated leak. The tag must bear a number identifying the component and the date on which the regulated leak was detected. The tag must remain in place until the regulated leak is repaired; *[and]*

6. Any component detected to have a ***regulated*** leak shall be repaired, in accordance with the schedules set forth in Tables 18A or 18B above, unless *[the shutdown of]* a process unit ***shutdown*** is necessary to repair the regulated leak. In such case, the regulated leak shall be repaired *[at the earliest period in which either the process is not in operation or the particular unit is out of service, whichever occurs first,]* ***during the next process unit shutdown*** and prior to the next start-up***;***

7. Notwithstanding paragraphs (i)1 through 6 above, a component that does not come in contact with applicable VOC at any time during a specified monitoring period need not be monitored during that period, but, instead, must only be monitored within 30 days of when the component next comes in contact with applicable VOC; and

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8. Notwithstanding paragraphs (f)1 through 6 above, equipment that is not operating need not be started up solely for the purpose of monitoring components within a specified monitoring frequency period, but, instead, components of such equipment must be monitored within 30 days of when the equipment is next restarted*.

(j) Any owner or operator of a petroleum refinery subject to (f) above shall comply with (j)1 below beginning July 1, 1982, and shall comply with (j)2 below beginning October 1, 1982. Any owner or operator of a natural gas/gasoline processing plant or synthetic organic chemical/polymer manufacturing facility subject to (g) or (h) above, respectively, shall comply with (j)1 below beginning April 1, 1987, and shall comply with (j)2 below beginning July 1, 1987. Any owner or operator of a chemical plant subject to (i) above shall comply with (j)1 and 2 below beginning May 31, 1995:

1. A log of information about components detected to have regulated leaks shall be maintained. The log shall be retained for a minimum of five years and be made available immediately upon request by the Department. The log shall contain the following data for each instance in which a component is detected to have a regulated leak:

i. The name of the process unit where the component detected to have a regulated leak is located;

ii. The type of component;

iii. The tag identification number of the component;

iv. The date on which the regulated leak was detected;

v. The date on which the component detected to have a regulated leak was repaired;

vi. The date and instrument reading of the retest procedure after a component detected to have a regulated leak is repaired;

vii. A record of the calibration of the monitoring instrument;

viii. An identification of those regulated leaks that cannot be repaired *[until]* ***without*** a process unit *[is shut down]* ***shutdown***; and

ix. The total number of components monitored and the total number of components detected to have a regulated leak.

2. Within 30 days following the *[first]* ***last*** day of every third month, a report shall be submitted to the Department that lists all components detected to have a regulated leak during the previous three calendar months that have not been repaired within the applicable time limits set forth in Tables 18A and 18B, all components detected to have a regulated leak whose repair is awaiting a process unit shutdown, ***all components not tested because they were not in contact with applicable VOC or not in operation during their specified monitoring period,*** the total number of components inspected, and the total number of components detected to have a regulated leak.

(k) Components that are insulated, encased, or enclosed may be tested for leaks at a distance within 0.4 inches (one centimeter) of the surface of the insulation, encasement, or enclosure.

(l) Notwithstanding the provisions of (f), (g), (h), and (i) above, *[inaccessible]* ***difficult to monitor*** components installed prior to *[February 1, 1994]* ***May 31, 1995***, are exempt from quarterly testing requirements, and instead such testing shall be conducted on an annual basis.

(m) *[No component installed on or after February 1, 1994, at a facility subject to this section will be exempt from any applicable testing requirements]* ***The reduced testing provisions pursuant to (l) above shall not apply to components installed on or after May 31, 1995, at a facility subject to this section. Instead, all such components installed on or after May 31, 1995 shall be tested in accordance with the other provisions of this section***.

(n) The provisions of (f), (g), (h), and (i) above shall not apply to a pressure relief device which is connected to an operating flare or to a vapor recovery device, a storage tank valve, a valve that is not externally regulated, or a valve ***or other component*** in vacuum service.

(o) No owner or operator of any facility listed in (o)1 through 4 below shall install or operate a valve, except for a safety pressure relief valve, at the end of a pipe or line containing applicable 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, during actual use in the process, or during maintenance. ***A fill line that is used to regularly fill containers is considered to be in actual use in the process for the purpose of this provision.*** Owners and operators of the following types of facilities are subject to this prohibition, beginning on the dates set forth below:

1. Any petroleum refinery subject to (f) above, after July 1, 1982:

2. Any natural gas/gasoline processing plant subject to (g) above, after July 1, 1987;

3. Any synthetic organic chemical or polymer manufacturing facility subject to (h) above, after July 1, 1987; or

4. Any chemical plant subject to (i) above, beginning May 31, 1995.

(p) The provisions of (f), (g), (h), and (i) above shall not apply to the following components:

1. A component which is primarily used in a laboratory operation or research facility;

2. A component that cannot be tested without immediate danger to the personnel conducting the test***, or a component that cannot be tested because it is not accessible, and cannot practicably be made accessible, for conducting the test***. For such components***,*** the owner or operator shall document in *[a safety manual or written policy, the]* ***writing:***

i. The reason that the *[monitoring personnel would be placed in immediate danger and the circumstances, if any, under which]* the component *[could]* ***cannot*** be safely tested***, or cannot practicably be made accessible for testing with monitoring equipment; and***

ii. Under which circumstances and by what method, if any, the component can be tested *[(for example, when the component is not in service)]*. Further, when those circumstances ***do*** arise, the owner or operator shall cause *[the]* testing ***that complies with this section*** to be performed *[that is reasonably equivalent to the standard testing circumstances in accuracy and in efficacy for leak detection]* and shall *[handle and]* respond to the results of that testing as this section otherwise requires;

3. A pump that is inherently sealless by design, for example, a magnetic drive, canned motor, or diaphragm pump;

4. A pump equipped with dual mechanical seals, provided that the barrier fluid is not an applicable VOC and that:

i. Each dual mechanical seal is operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure;

ii. Each dual mechanical seal is equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a VOC control apparatus;

iii. Each dual mechanical seal is equipped with a closed-loop system that purges the barrier fluid into a process stream; or

iv. Each barrier fluid system is equipped with a *[sensor that will detect]* ***device that provides detection for the*** failure of the seal system, the barrier fluid system, or both;

5. A leakless design Bellows type valve; and

6. Process equipment enclosed in such a manner that all emissions from any component with a leak is vented through a system that routes those emissions to a *[VOC control apparatus, provided that the enclosure is]* ***controlled emission point, provided that:***

i. The enclosure is maintained under *[a]* negative pressure at all times while the process unit is in operation***; or***

ii. The potential points of leakage from the enclosure are subjected to the same leak detection and repair requirements as the components would be if they were not enclosed.

(q) Notwithstanding the other subsections of this section, the owner or operator of a facility subject to the provisions of this section may use pressure testing with gas or liquid as an alternative method to comply with leak detection requirements.

1. If the pressure testing alternative is used for continuous processing equipment, the frequency of pressure testing shall be no less than the frequency set forth in (f), (g), (h) and (i).

2. If the pressure testing alternative is used for batch product processes:

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i. Each time batch processing equipment is reconfigured, the batch product-process equipment shall be pressure tested for leaks before applicable VOC is first fed into the equipment and the equipment is placed in applicable VOC service, provided, however, that when the seal is broken between two items of equipment or when equipment is changed in a section of the batch product-processing equipment train, pressure testing is required only for the new or disturbed equipment; and

ii. Notwithstanding (i) above, each batch product process that operates in applicable VOC service during a calendar year shall be pressure tested at least once during the calendar year.

3. When pressure testing with a gas, the following procedures shall be used:

i. The product-process equipment shall be pressurized with a gas to the operating pressure of the equipment, but the equipment shall not be tested at a pressure greater than the pressure setting of the lowest relief valve setting ***in the portion of the equipment being tested***;

ii. Once the test pressure is obtained, the gas source shall be shut off;

iii. The test shall continue for not less than 15 minutes unless it can be determined in a shorter period of time that the allowable rate of pressure drop is exceeded; and

iv. The pressure shall be measured at the beginning and at the end of the test period using a pressure measurement device (gauge, manometer, or equivalent) which has a precision of plus or minus 2.5 mm Hg. If the rate of pressure change is greater than one pound per square inch per hour, or if there is visible, audible or olfactory evidence of fluid loss, a regulated leak is detected.

4. When pressure testing with a liquid, the following procedures shall be used:

i. The product-process equipment shall be filled with the test liquid. Once the equipment is filled, the liquid source shall be shut off;

ii. The test shall be conducted for a period of at least 60 minutes, unless it can be determined in a shorter period of time that there is a regulated leak; and

iii. Each seal in the equipment being tested shall be inspected for indications of fluid loss. If there are any indications of liquid dripping or of fluid loss a regulated leak is detected.

(r) The owner or operator of a facility subject to the provisions of this section is exempt from the requirement to repair any regulated leak within the applicable time limits set forth in this section, so long as no applicable VOC is fed to the source operation of which the component is a part until testing confirms that the leak has successfully been repaired.

***(s) An affirmative defense to liability for a violation of this section's requirements's regarding time limits for repairs shall be available to any person who can demonstrate that:**

1. Failure to comply with those time limits was caused by an inability to obtain the necessary parts through the exercise of due diligence; and

2. Keeping the necessary part in stock or otherwise available would have been technically or economically unreasonable; and

3. The parts were obtained and the repairs were made as quickly as the exercise of due diligence permitted.

(t) A leak shall not constitute a violation of this section so long as the component from which it appears has been monitored or inspected in accordance with this section and so long as the leak has been repaired in accordance with this section.*

7:27-16.19 Application of cutback and emulsified asphalts

(a) (No change.)

7:27-16.20

(No change in text.)

7:27-16.21 Natural gas pipelines

(a) The owner or operator of any natural gas pipeline shall by *[(90 days from the effective date of this rule)]* ***October 26, 1994*** prepare a Control Measure Plan that shall:

1. Identify each control technology or procedure available to the owner or operator for achieving reductions in VOC emissions from a blowdown event. Such control technology or procedures may include, without limitation, pipeline pressure reductions, the use of mobile compressors for recompressing, and the use of control apparatus; and

2. Identify in detail the criteria that the owner or operator will use to select the control technology or procedure, or combination thereof, that will achieve the greatest reductions in VOC reasonably achievable for each blowdown event.

(b) The owner or operator of any natural gas pipeline shall by May 31, 1995 achieve some reduction in VOC emissions from each blowdown event and shall implement the control technologies or procedures that the Control Measure Plan indicates would be appropriate for each blowdown event.

(c) On or before March 1 of each year beginning in 1996, the owner or operator of each natural gas pipeline shall submit a report to the Chief, Bureau Field Operations setting forth the location, date and duration of each blowdown event, a description of the emissions reduction procedures and technology used, and a quantification of the amount of VOC emission reductions achieved for each event.

(d) The owner or operator of any natural gas pipeline subject to (a) above shall retain the Control Measure Plan at the *[location of any blowdown event in New Jersey]* ***office having operating responsibility for the section of pipeline for which the blowdown event will occur*** and shall provide a copy of such plan to the Department within three days of receipt of a written request from the Department.

(e) If after reviewing a Control Measure Plan, the Department determines that it fails to satisfy the requirements set forth in (a) above, the Department shall notify the owner or operator that it has 30 days to submit to the Department appropriate amendments to its plan. Failure to do so shall constitute a violation of this section. However, an owner or operator may request an adjudicatory hearing regarding the Department's determination in accordance with the procedure at N.J.A.C. 7:27-8.12.

(f) The Department may require amendments to a Control Measure Plan if:

1. The Plan does not contain all of the information required under (a) above;

2. The Plan does not consider all control technology and procedures used or considered for use by other persons in the owner or operator's industry, taking into account the potential for the creation of a safety hazard or the potential for unreasonable interference with enjoyment of life and property;

3. The Plan would be ineffective in controlling VOC emissions during blowdown events;

4. The emission reductions being achieved are not the greatest reductions which can be practicably achieved at reasonable costs; or

5. Implementation of the plan results or would result in any violation of law or regulation*; **or**

6. EPA denies approval of the proposed Control Measure Plan as a revision to the State Implementation Plan*.

***(g) After receipt of a written request from an owner or operator for an extension of the deadline set forth in (a) above, the Department may authorize a 60-day renewable extension upon showing of good cause. Such extension may be renewed by the Department upon the written request of the owner or operator. Approval of such an extension shall not constitute approval of extension of the May 31, 1995 deadline established in (b) above. Written requests for the extension of a deadline submitted pursuant to this subsection shall be addressed to:**

Assistant Director, Air & Environmental Quality Enforcement
Division of Enforcement Field Operations
Department of Environmental Protection and Energy
CN 422
401 East State Street, 4th Floor
Trenton, New Jersey 08625-0422*

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7:27-16.22 Emission information, record keeping and testing

(a) (No change.)

(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(k), 16.3(s), 16.4(l), 16.5(j), 16.6(l), 16.7(h) and (o), 16.13(d), 16.18(j), 16.20(q) or 16.24(c). 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 ***operation*** is operating in compliance with the applicable requirements.

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

(f) All testing and monitoring pursuant to the provisions of this subchapter shall be conducted using N.J.A.C. 7:27B-3 or other method approved ***in advance*** by the Department and ***acceptable to*** *[the]* EPA.

(g) (No change.)

(h) Any record keeping requirement set forth at N.J.A.C. 7:27-16.2(k), 16.3(s), 16.7(m), 16.7(n), 16.16(g), or 16.20(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(k), 16.3(s), 16.7(m) and (n), 16.16(g), or 16.20(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.

7:27-16.23 Procedures for demonstrating compliance

(a) The owner or operator of equipment or a source operation subject to N.J.A.C. 7:27-16.8, 16.9, 16.10, 16.11 or 16.13 that is subject to an emission limit under this subchapter shall demonstrate compliance with the emission limit pursuant to (a)1 below if a continuous emissions monitoring system has been installed on the equipment or source operation for the air contaminant in question, or pursuant to (a)2 below if no such system has been installed for the air contaminant.

1. With respect to an emission limit for any air contaminant monitored by a continuous emissions monitoring system installed on the equipment or source operation, compliance with the limit is based upon the average of emissions over one calendar day***, not including periods of equipment downtime***.

2. With respect to an emission limit for any air contaminant that is not monitored by a continuous emissions monitoring system installed on the equipment or source operation, compliance with the limit is based upon the average of three one-hour tests, each performed over a consecutive 60-minute period specified by the Department and performed in compliance with N.J.A.C. 7:27-16.22.

(b) For any equipment or source operation subject to (a) above which was in operation before January 1, 1995, the owner or operator shall demonstrate compliance with this subchapter in accordance with (a)1 or 2 above by May 31, 1996, and thereafter at the frequency set forth in the permit ***or certificate*** for such equipment or source operation.

(c) For any equipment or source operation subject to (a) above which commences operations or is altered after January 1, 1995, the owner or operator shall demonstrate compliance with this subchapter in accordance with (a) or (b) above within 180 days from the date on which the source ***operation*** commences operation, and thereafter at the frequency set forth in the permit ***or certificate*** for such equipment or source operation.

(d) An exceedance of any applicable VOC or CO emission limit set forth in this subchapter, determined through testing or monitoring performed pursuant to (a) or (b) above or otherwise, is a violation of this subchapter.

7:27-16.24 Adjusting combustion processes

When any provision of this subchapter requires the adjustment of a combustion process for any equipment or source operation, the owner or operator of the equipment or source operation shall do so in accordance with the terms and conditions of N.J.A.C. 7:27-19.16.

7:27-16.25 *[Continuous emissions monitoring]* ***(Reserved)***

*[(a) Any person required to install a continuous emissions monitoring system under this subchapter shall:

1. Submit to the Department a continuous emissions monitoring equipment and certification protocol. The Department may approve a system if its design and specifications satisfy the requirements established by EPA at 40 CFR Part 60, Appendix B, and 40 CFR Part 60, Appendix F, Quality Assurance Requirements;

2. Install the system in compliance with the EPA regulations listed in (a)1 above, and in accordance with the manufacturer's specifications;

3. Conduct performance tests of the system in accordance with the approved continuous emissions monitoring equipment and certification protocol listed in (a)1 above, and obtain confirmation from the Department that the system satisfies the performance requirements of those regulations;

4. Install and operate the system in accordance with the manufacturer's specifications;

5. Continuously monitor and record CO emissions from the equipment or source operation subject to the monitoring requirement; and

6. Conduct quality assurance procedures in accordance with 40 CFR—Part 60, Appendix F or other standards specified by the Department is being substantially equivalent.

(b) A person required under this subchapter to install continuous emissions monitoring systems on equipment of a given type at a facility may satisfy this requirement without installing such a system on every unit of such equipment at the facility, in accordance with a plan approved in writing by the Department.

(c) A person seeking approval of a plan for limited installation of continuous emissions monitoring systems shall submit a written application to the Bureau of Technical Services. The applicant shall include in the application a plan containing the following information for each source operation for which a continuous emissions monitoring system is required under this subchapter:

1. The name and business address of the person seeking approval of the plan, and the name and address of the facility at which the equipment or source operation is used;

2. The make and model of the equipment or source operation;

3. A description of the conditions under which the equipment or source operation is used;

4. The results of all source emissions testing conducted within the five years preceding the application;

5. A statement that the applicant proposes to install or not install a continuous emissions monitoring system;

6. A statement indicating all reasons why the applicant is requesting that the required continuous emissions monitors not be installed; and

7. Any other information which the Department requests which is reasonably necessary to enable it to determine whether the application satisfies the requirements of (e) below.

(d) Within 30 days after receiving an application, the Department shall notify the applicant in writing whether the application includes all of the information required under (c) above.

1. If the application is incomplete, the Department shall include in the notice a list of the deficiencies, a statement of the additional information required to make the application complete, and the time by which the applicant must submit a complete application.

2. The Department may refrain from reviewing the substance of the application (or any part thereof) until it is complete.

3. The applicant shall submit a complete proposed plan within the time stated in the Department's notification.

4. If the applicant fails to submit a complete application within the time stated in the Department's notification, the Department may reject the application.

(e) The Department shall approve the plan only if:

1. For each item of equipment or source operation on which a continuous emissions monitoring system is not to be installed, there

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is another item of equipment or source operation at the facility which is:

i. Of the same make and model;

ii. Is used under substantially the same conditions; and

iii. Will have a continuous emissions monitoring system installed on it;

2. Under the plan, a continuous emissions monitoring system will be installed on each utility boiler at the facility if required under 40 CFR 75 or 76; and

3. The emission rate from the equipment or source operation on which the continuous emissions monitoring system is to be installed will not differ significantly from the emission rate from the corresponding equipment or source operation on which no continuous emissions monitoring system is to be installed.

(f) As a condition of an approval issued under this section, the Department may impose requirements upon the operation of the subject equipment or source operation necessary to minimize any adverse impact upon human health, welfare and the environment.

(g) The approval of a plan under (c) above is void upon the alteration of any item of equipment or source operation included in the plan (whether or not the item of equipment or source operation has a continuous emissions monitoring system installed).

1. The owner or operator may apply for and obtain the Department's approval of a revised plan pursuant to this section, reflecting the proposed alteration.

2. Before altering any equipment or source operation which is subject to the plan, the owner or operator shall apply for and obtain such permits and certificates as are required under N.J.A.C. 7:27-8 and any other applicable law or regulation.

(h) The owner or operator shall comply with the approved plan, and with all conditions imposed by the Department under (f) above.

(i) The Department may revoke an approval issued under this section, by written notice to the owner or operator of the facility which is the subject of the plan, if:

1. Any material condition of the Department's approval of the plan is violated;

2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of fact in the request for the approval or any supporting documentation;

3. The Department determines that as a result of a change in circumstances since the date the installation of any continuous emission monitoring system was approved, the emissions from an unmonitored item of equipment or source operations are not substantially the same as the emissions from the corresponding continuously monitored item of equipment; or

4. Based upon the record of exceedances shown by one continuous emission monitoring sytem, the Department determines that it is reasonably likely that a source operation or item of equipment is exceeding applicable limits without detection.

(j) In revoking an approval pursuant to (i) above, the Department shall specify an effective date for the revocation which provides the owner or operator with a reasonable amount of time to install a continuous emissions monitoring system on the item of equipment or source operation in question.

(k) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27-8.12, if:

1. The Department has denied the person's application for approval of a plan under this section;

2. The person seeks to contest conditions imposed by the Department under (f) above; or

3. The Department has revoked its approval of the person's plan pursuant to (i) and (j) above.

(l) The owner or operator of an item of equipment or source operation required to have a continuous emissions monitoring system shall not operate the equipment or source operation without such a system, except in accordance with a plan approved under this section. If an item of equipment or a source operation required to have a continuous emissions monitoring system is operating without such a system, without first having received approval of a plan authorizing such operation, it shall not be a defense to an enforcement action that an application for approval of a plan is pending.

(m) A person seeking approval of a plan for limited installation of a continuous emissions monitoring system shall send the application to the Department at the following address:

Chief, Bureau of Technical Services
Division of Air Quality Regulation
Department of Environmental Protection and Energy
CN 411
Trenton, New Jersey 08628-0411]*

7:27-16.26

(No change in text.)

7:27-16.27 Exceptions

(a) (No change.)

(b) The provisions of this subchapter shall not apply to the emissions of VOC from the following source operations:

1. Offset lithography printing operations until November 15, 1994;

2. Surface coating of plastic parts until November 15, 1994;

3. Natural gas pipelines that are not major VOC facilities, with the exception of blowdown events as set forth in N.J.A.C. 7:27-16.21;

4. Industrial wastewater treatment systems until November 15, 1994;

5. All other wastewater treatment facilities until November 15, 1994; and

6. Open burning.

7:27-17.1 Definitions

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

. . .

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

"Distillates of air" means helium (He), nitrogen (N_2), oxygen (O_2), neon (NE), argon (Ar), xenon (Xe), and carbon dioxide (CO_2).

"Effective stack height" means the distance to the plume center line from the ground as determined by adding the plume rise to the physical height of the stack. It shall be calculated by one of the following equations:

1. If the lowest possible temperature of the gas leaving the stack is 68 degrees Fahrenheit (20 degrees Celsius) or less:

Effective stack height = $H_s + 2.76(D)(B^{1/3})$

where:

H_s = the physical stack height above grade in meters

D = the stack outlet in diameter in meters

B = $(V^2)/T$

V = the stack gas exit velocity in meters per second

T = the stack gas temperature at the stack outlet in degrees Kelvin

2. If the lowest possible temperatuer of the gas leaving the stack is greater than 68 degrees Fahrenheit (20 degrees Celsius):

Effective stack height = $H_s + 8.28(F^{0.75})$

where:

H_s = the physical stack height above grade in meters

F = $(V)(D^2)(T\text{-}293)/T$

V = the stack gas exit velocity in meters per second

D = the stack outlet diameter in meters

T = the stack gas temperature at the stack outlet in degrees Kelvin

. . .

"Gasoline" means any petroleum distallate or petroleum distallate/oxegenate blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) absolute or greater, and commonly or commercially known or sold as gasoline.

. . .

"Person" means any individual or entity and shall include, without limitation, corporations, companies, associations, societies, firms, partnerships, and joint stock companies, and shall also include, without limitation, all political subdivisions of this State or any agencies or instrumentalities thereof.

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

. . .

"Volatile organic compound" or "VOC" means any compound of carbon*[, excluding]* ***(other than*** carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate*[,]***)*** which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods ***in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or*** which have been approved in writing by the Department ***and are acceptable to EPA***. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
trifluoromethane (HFC-23)
1,1,2-trichloro-1,2,2,-trifluoroethane (CFC-113)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
chlorodifluoromethane (HCFC-22)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)
1,1,1-trifluoroethane (HFC-143a)
1,1-difluoroethane (HFC-152a)

Classes of perfluorocarbons:

cyclic, branched, or linear, completely fluorinated alkanes

cyclic, branched, or linear, completely fluorinated ethers with no unsaturations

cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations

sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.00(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

7:27-17.3 Storage, transfer, and use of toxic substances

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

(f) Permit applications submitted to the Department pursuant to N.J.A.C. 7:27-8 satisfy the registration requirements of this section.

TABLE 1
TOXIC SUBSTANCES

GROUP I

Name	CAS Number
Benzene (Benzol)	71-43-2
Carbon tetrachloride (Tetrachloromethane)	56-23-5
Chloroform (Trichloromethane)	67-66-3
Dioxane (1,4-Diethylene dioxide)	123-91-1
Ethylenimine (Aziridine)	151-56-4
Ethylene dibromide (1,2-Dibromoethane)	106-93-4
Ethylene dichloride (1,2-Dichloroethane)	107-06-2
1,1,2,2-Tetrachloroethane (sym Tetrachloroethane)	79-34-5
Tetrachloroethylene (Perchloroethylene)	127-18-4
1,1,2-Trichloroethane (Vinyl trichloride)	79-00-5
Trichloroethylene (Trichlorethene)	79-01-6

GROUP II

Name	CAS Number
Methylene chloride (Dichloromethane)	75-09-2
1,1,1-Trichloroethane (Methyl chloroform)	71-55-6

7:27-17.4 Discharge of toxic substances

(a) No person shall cause, suffer, allow or permit any GROUP I TXS to be emitted from any source operation into the outdoor atmosphere unless such discharge is:

1. At any effective stack height of no less than 40 feet (12.2 meters) above grade;

2. No less than 20 feet (6.1 meters) higher than any area of human use or occupancy including, but not limited to, the roof of a building, which is within 50 feet (15.2 meters), measured horizontally from the point of discharge; and

3. Directed vertically upward.

(b) No person shall cause, suffer, allow or permit the emission of a GROUP I TXS into the outdoor atmosphere from a system, equipment, or control apparatus not approved by the Department as being effective in preventing aerodynamic downwash.

(c) The Department has determined that Group II TXS should be subject to at least reasonably available control technology requirements. Accordingly, requirements for the implementation of control measures, including, but not limited to, requirements for the installation and use of control apparatus, set forth at N.J.A.C. 7:27-16 and 23, shall apply with full force to Group II TXS until the Department amends this rule in response to anticipated EPA rule-making or otherwise. For example, pursuant to this subsection and N.J.A.C. 7:27-16.4(b), certain transfers of methylene chloride may be conducted only with either a vapor control apparatus which reduces by no less than 90 percent the concentration of methylene chloride in the air-vapor mixture displaced during the transfer, a floating roof, or certain types of vapor balance systems. For another example, pursuant to this subsection and N.J.A.C. 7:27-23.3, a lacquer may not contain more than 5.7 pounds per gallon of methylene chloride, nor may it contain more than 4.7 pounds of VOC together with one pound of methylene chloride.

7:27-23.1 Applicability

(a) This subchapter prescribes the rules of the Department for limiting the 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 method to be followed by manufacturers, distributors, and retailers to assure these standards are met.

(b) As set forth at N.J.A.C. 7:27-17.4(c), this subchapter's requirements for the implementation of control measures, including but not limited to, requirements for the installation and use of control apparatus, or the use of compliant coatings, shall apply with full force to Group II TXS until the Department amends this rule in response to EPA rulemaking or otherwise.

7:27-23.2 Definitions

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

. . .

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

. . .

"Normal environmental conditions" means temperatures above 50 degrees Fahrenheit (14 degrees centigrade).

. . .

["Regulated organic compound" or "ROC" means the total combination of any VOC and any TXS.]

. . .

"Toxic substance" or "TXS" means a substance listed in Table 1 of N.J.A.C. 7:27-17; that is, Benzene (Benzol), Carbon tetrachloride (Tetrachloromethane), Chloroform (Trichloromethane), Dioxane (1,4-Diethylene dioxide), Ethylene dibromide (1,2-Dibromoethane), Ethylene dichloride (1,2-Dichloroethane), 1,1,2,2-Tetrachloroethane (sym Tetrachloroethane), Tetrachloroethylene

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(Perchloroethylene), 1,1,2-Trichloroethane (Vinyl trichloride), Trichloroethylene (Trichloroethane), Methylene chloride (Dichloromethane), and 1,1,1-Trichloroethane (Methyl Chloroform).

. . .

"Volatile organic compound" or "VOC" means any compound of carbon*[, excluding]* ***(other than*** carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate*[,]***)*** which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods ***in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or*** which have been approved in writing by the Department ***and are acceptable to EPA***. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
trifluoromethane (HFC-23)
1,1,2-trichloro-1,2,2,-trifluoroethane (CFC-113)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
chlorodifluoromethane (HCFC-22)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)
1,1,1-trifluoroethane (HFC-143a)
1,1-difluoroethane (HFC-152a)

Classes of perfluorocarbons:

cyclic, branched, or linear, completely fluorinated alkanes

cyclic, branched, or linear, completely fluorinated ethers with no unsaturations

cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations

sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

. . .

7:27-25.1 Definitions

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

. . .

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

. . .

"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 commonly or commercially known or sold as gasoline.

"Volatile organic compound" or "VOC" means any compound of carbon*[, excluding]* ***(other than*** carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate*[,]***)*** which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods ***in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or*** which have been approved in writing by the Department ***and are acceptable to EPA***. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
trifluoromethane (HFC-23)
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
chlorodifluoromethane (HCFC-22)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)
1,1,1-trifluoroethane (HFC-143a)
1,1-difluoroethane (HFC-152a)

Classes of perfluorocarbons:

cyclic, branched, or linear, completely fluorinated alkanes

cyclic, branched, or linear, completely fluorinated ethers with no unsaturations

cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations

sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

. . .

7:27-25.7 Exemptions

(a) (No change.)

(b) Application for an exemption shall be made on forms obtained from the Department. Any person may request application forms from:

Assistant Director of Air and Environmental Quality Enforcement
Division of Enforcement Field Operations
Department of Environmental Protection and Energy
CN 422
Trenton, New Jersey 08625-0422

(c) The Department may require an applicant for an exemption to submit such details about the intended use of the non-conforming gasoline as it considers necessary to evaluate the potential effect of such use on public health, welfare and the environment. Such information shall include, but is not limited to:

1.-3. (No change.)

4. A calculation of the maximum potential additional VOC emissions that could occur during the May 1 through September 15 period in any year due to the storage, transfer, and use of non-conforming gasoline; and

5. (No change.)

(d)-(l) (No change.)

7:27A-3.2 Definitions

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise. Unless otherwise specified below, all words and terms are defined in N.J.S.A. 26:2C-2 and in N.J.A.C. 7:27.

. . .

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"Volatile organic compound" or "VOC" means any compound of carbon*[, excluding]* ***(other than*** carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate*[,]**)* which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods ***in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or*** which have been approved in writing by the Department ***and are acceptable to EPA***. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
trifluoromethane (HFC-23)
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
chlorodifluoromethane (HCFC-22)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)
1,1,1-trifluoroethane (HFC-143a)
1,1-difluoroethane (HFC-152a)

Classes of perfluorocarbons:

cyclic, branched, or linear, completely fluorinated alkanes
cyclic, branched, or linear, completely fluorinated ethers with no unsaturations
cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations
sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(a)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

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 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.-15. (No change.)

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[3]	$15,000[3]
N.J.A.C. 7:27-16.2(b)	Control Apparatus	$1,000	$2,000	$5,000[3]	$15,000[3]
N.J.A.C. 7:27-16.2(c)	Vapor Control System	$1,000	$2,000	$5,000[3]	$15,000[3]
N.J.A.C. 7:27-16.2(d)	Gauging/Sampling	$500	$1,000	$2,500[3]	$7,500[3]
N.J.A.C. 7:27-16.2(g)	Floating Roof	$2,000	$4,000	$10,000[3]	$30,000[3]
N.J.A.C. 7:27-16.2(h)	Seal-Envelope	$2,000	$4,000	$10,000[3]	$30,000[3]
N.J.A.C. 7:27-16.2(i)	Roof Openings	$600	$1,200	$3,000[3]	$9,000[3]
N.J.A.C. 7:27-16.2(k)	Records	$500	$1,000	$2,500[3]	$7,500[3]
N.J.A.C. 7:27-16.3(a)	Submerged Fill (Gasoline)	$600	$1,200	$3,000[3]	$9,000[3]
N.J.A.C. 7:27-16.3(c)	Transfer of Gasoline	$600	$1,200	$3,000[3]	$9,000[3]
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	Loading 15,000 gallons or less per day	$1,000	$2,000	$5,000[3]	$15,000[3]
N.J.A.C. 7:27-16.3(e)2	Loading more than 15,000 gallons per day	$5,000	$10,000	$25,000[3]	$50,000[3]
N.J.A.C. 7:27-16.3(f)1	Release of VOC	$600	$1,200	$3,000[3]	$9,000[3]
N.J.A.C. 7:27-16.3(f)2	Overfill and Spillage	$1,000	$2,000	$5,000[3]	$15,000[3]
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 or (i)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)1	Leak	$600	$1,200	$3,000	$9,000
N.J.A.C. 7:27-16.3(k)2	Component	$800	$1,600	$4,000	$12,000

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N.J.A.C. 7:27-16.3(k)3	Spill	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.3(m)	Vapor-Tight Delivery Vessel (Gasoline)	$600	$1,200	$3,000	$9,000
N.J.A.C. 7:27-16.3(o)	Recertify	$200	$400	$1,000	$3,000
N.J.A.C. 7:27-16.3(s)	Records	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-16.4(b)	Submerged Fill (VOC)	$600	$1,200	$3,000[3]	$9,000[3]
N.J.A.C. 7:27-16.4(c)	Transfer of VOC	$600	$1,200	$3,000[3]	$9,000[3]
N.J.A.C. 7:27-16.4(f)	Transfer of VOC (Delivery)	$600	$1,200	$3,000	$9,000
N.J.A.C. 7:27-16.4(i)1	Pressure Testing	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-16.4(i)*[2 or (i)3]*	Certification Display	$100	$200	$500	$1,500
N.J.A.C. 7:27-16.4(j)	Transfer Pressure	$600	$1,200	$3,000	$9,000
***N.J.A.C. 7:27-16.4(k)**	**Component**	**$800**	**$1,600**	**$4,000**	**$12,000 ***
N.J.A.C. 7:27-16.4(k)1	Leak	$600	$1,200	$3,000	$9,000
*[N.J.A.C. 7:27-16.4(k)2	Component	$800	$1,600	$4,000	$12,000]*
N.J.A.C. 7:27-16.4(k)*[3]**2*	Spill	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.4(l)	Vapor-Tight Delivery Vessel (VOC)	$600	$1,200	$3,000	$9,000
N.J.A.C. 7:27-16.4(m)	Recertify	$200	$400	$1,000	$3,000
N.J.A.C. 7:27-16.4(o)	Records	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-16.5(b)	Control Apparatus	$2,000[3]	$4,000[3]	$10,000[3]	$30,000[3]
N.J.A.C. 7:27-16.5(c)	Submittal/Plan	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-16.5(e)	Ballasting	$2,000[3]	$4,000[3]	$10,000[3]	$30,000[3]
N.J.A.C. 7:27-16.5(f)1	Leak	$1,200	$2,400	$6,000	$18,000
N.J.A.C. 7:27-16.5(f)2	Component	$1,600	$3,200	$8,000	$24,000
N.J.A.C. 7:27-16.5(f)3	Spill	$4,000	$8,000	$20,000	$50,000
N.J.A.C. 7:27-16.5(j)	Records	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-16.6(a)	Tank Lids	$500	$1,000	$2,500	$7,500[3]
N.J.A.C. 7:27-16.6(b)	Unheated Surface Cleaner 25 square feet or less	$500	$1,000	$2,500[3]	$7,500[3]
N.J.A.C. 7:27-16.6(c)	Unheated Surface Cleaner greater than 25 square feet	$1,000	$2,000	$5,000[3]	$15,000[3]
N.J.A.C. 7:27-16.6(d)	Heated Tank	$1,000	$2,000	$5,000[3]	$15,000[3]
N.J.A.C. 7:27-16.6(e)	Vapor Surface Cleaner	$1,500	$3,000	$7,500[3]	$22,500[3]
N.J.A.C. 7:27-16.6(f)	Unheated Conveyorized Surface Cleaner	$1,000	$2,000	$5,000[3]	$15,000[3]
N.J.A.C. 7:27-16.6(g)	Heated Conveyorized Surface Cleaner	$1,500	$3,000	$7,500[3]	$22,500[3]
N.J.A.C. 7:27-16.6(h)	Conveyorized Vapor Surface Cleaner	$2,000	$4,000	$10,000[3]	$30,000[3]
N.J.A.C. 7:27-16.6(i)	Oil-Water Separator	$500	$1,000	$2,500[3]	$7,500[3]
N.J.A.C. 7:27-16.6(j)	Written Instructions	$200	$400	$1,000	$3,000[3]
N.J.A.C. 7:27-16.6(k)	Training Program	$500	$1,000	$2,500	$7,500[3]
N.J.A.C. 7:27-16.6(l)	Copies of Instructions	$300	$600	$1,500	$4,500[3]
N.J.A.C. 7:27-16.6(m)	Submittal	$300	$600	$1,500	$4,500[3]
N.J.A.C. 7:27-16.6(n)	Notification	$200	$400	$1,000	$3,000[3]

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Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.7(c)				
CLASS Surface Coating or Graphic Arts				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1.-3. (No change.)				
From 10 pounds through 22.8 pounds per hour:				
1.-3. (No change.)				
For greater than 22.8 pounds per hour:				
1.-3. (No change.)				

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.7(d)				
CLASS Surface Coating or Graphic Arts				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1.-3. (No change.)				
From 10 pounds to 22.8 pounds per hour:				
1.-3. (No change.)				
For greater than 22.8 pounds per hour:				
1.-3. (No change.)				

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.7(g)				
CLASS Metal Furniture or Large Appliance				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1.-3. (No change.)				
From 10 pounds through 22.8 pounds per hour:				
1.-3. (No change.)				
For greater than 22.8 pounds per hour:				
1.-3. (No change.)				

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.7(h)				
CLASS Printing				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1.-3. (No change.)				
From 10 pounds through 22.8 pounds per hour:				
1.-3. (No change.)				
For greater than 22.8 pounds per hour:				
1.-3. (No change.)				

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Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.7(i)				
CLASS Tablet Coating				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1.-3. (No change.)				
From 10 pounds through 22.8 pounds per hour:				
1.-3. (No change.)				
For greater than 22.8 pounds per hour:				
1.-3. (No change.)				

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.7(j)				
CLASS Wood Furniture				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1.-3. (No change.)				
From 10 pounds through 22.8 pounds per hour:				
1.-3. (No change.)				
For greater than 22.8 pounds per hour:				
1.-3. (No change.)				

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.7(k)1	Permit	$400	$800	$2,000	$6,000
*[N.J.A.C. 7:27-16.7(k)2	Construction	$800	$1,600	$4,000	$12,000]*
N.J.A.C. 7:27-16.7(m) or (n)	Records	$500	$1,000	$2,500	$7,500

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.8(b)1 or *[(c)1]* **2***				
CLASS Non-utility and Utility Boilers				
Actual Emission (pounds per million BTU):				
Boiler Heat Input Capacity—Less than 100 MMBTU				
1. Less than 25 percent over the allowable standard	$2,000[3]	$4,000[3]	$10,000[3]	$30,000[3]
2. From 25 through 50 percent over the allowable standard	$4,000[3]	$8,000[3]	$20,000[3]	$50,000[3]
3. Greater than 50 percent over the allowable standard	$8,000[3]	$16,000[3]	$40,000[3]	$50,000[3]
Boiler Heat Input Capacity—From 100-250 MMBTU				
1. Less than 25 percent over the allowable standard	$6,000[3]	$12,000[3]	$30,000[3]	$50,000[3]
2. From 25 through 50 percent over the allowable standard	$8,000[3]	$16,000[3]	$40,000[3]	$50,000[3]
3. Greater than 50 percent over the allowable standard	$10,000[3]	$20,000[3]	$50,000[3]	$50,000[3]
Boiler Heat Input Capacity—Greater than 250 MMBTU				
1. Less than 25 percent over the allowable standard	$8,000[3]	$16,000[3]	$40,000[3]	$50,000[3]
2. From 25 through 50 percent over the allowable standard	$10,000[3]	$20,000[3]	$50,000[3]	$50,000[3]
3. Greater than 50 percent over the allowable standard	$10,000[3]	$20,000[3]	$50,000[3]	$50,000[3]

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Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.8(b)*[2,]* **3 or*** (c)*[2, or (d)]*	Adjust Combustion	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.8*[(f)]***(e)*	Demonstrate Compliance	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.8***(f) or*** (g) *[or (h)]*	Failure to Install CEM	$10,000	$20,000	$50,000	$50,000

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.9(b) and (c)				
CLASS Stationary Gas Turbine				
Actual Emission (pounds per million BTU):				
3-10 MW Turbine				
1. Less than 25 percent over the allowable standard	$2,000[3]	$4,000[3]	$10,000[3]	$30,000[3]
2. From 25 through 50 percent over the allowable standard	$4,000[3]	$8,000[3]	$20,000[3]	$50,000[3]
3. Greater than 50 percent over the allowable standard	$8,000[3]	$16,000[3]	$40,000[3]	$50,000[3]
11-50 MW Turbine				
1. Less than 25 percent over the allowable standard	$6,000[3]	$12,000[3]	$30,000[3]	$50,000[3]
2. From 25 through 50 percent over the allowable standard	$8,000[3]	$16,000[3]	$40,000[3]	$50,000[3]
3. Greater than 50 percent over the allowable standard	$10,000[3]	$20,000[3]	$50,000[3]	$50,000[3]
Greater than 50 MW Turbine				
1. Less than 25 percent over the allowable standard	$8,000[3]	$16,000[3]	$40,000[3]	$50,000[3]
2. From 25 through 50 percent over the allowable standard	$10,000[3]	$20,000[3]	$50,000[3]	$50,000[3]
3. Greater than 50 percent over the allowable standard	$10,000[3]	$20,000[3]	$50,000[3]	$50,000[3]

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.9(e)	Demonstrate Compliance	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.9(f)	Adjust Combustion	$2,000	$4,000	$10,000	$30,000

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.10(b)				
CLASS Stationary Internal Combustion Engine				
Actual Emission (grams per horsepower hr):				
1000 Hp or less				
1. Less than 25 percent over the allowable standard	$2,000[3]	$4,000[3]	$10,000[3]	$30,000[3]
2. From 25 through 50 percent over the allowable standard	$4,000[3]	$8,000[3]	$20,000[3]	$50,000[3]
3. Greater than 50 percent over the allowable standard	$8,000[3]	$16,000[3]	$40,000[3]	$50,000[3]
Greater than 1000 Hp				
1. Less than 25 percent over the allowable standard	$6,000[3]	$12,000[3]	$30,000[3]	$50,000[3]
2. From 25 through 50 percent over the allowable standard	$8,000[3]	$16,000[3]	$40,000[3]	$50,000[3]
3. Greater than 50 percent over the allowable standard	$10,000[3]	$20,000[3]	$50,000[3]	$50,000[3]

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*Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense*
N.J.A.C. 7:27-16.10(d)	Demonstrate Compliance	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.10(e)	Adjust Combustion	$2,000	$4,000	$10,000	$30,000

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.11(b)				
CLASS Asphalt plants				
Maximum Actual Emissions				
1. Less than 25 percent over the allowable standard	$2,000[3]	$4,000[3]	$10,000[3]	$30,000[3]
2. From 25 through 50 percent over the allowable standard	$4,000[3]	$8,000[3]	$20,000[3]	$50,000[3]
3. Greater than 50 percent over the allowable standard	$8,000[3]	$16,000[3]	$40,000[3]	$50,000[3]

*Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense*
N.J.A.C. 7:27-16.11(d)	Demonstrate Compliance	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.11(e)	Adjust Combustion	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.13(a)	Flares	$1,200[3]	$2,400[3]	$6,000[3]	$18,000[3]
N.J.A.C. 7:27-16.13(b)	Submittal	$300	$600	$1,500	$4,500
N.J.A.C. 7:27-16.13(c)	Log	$500	$1,000	$2,500	$7,500

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.16(c)				
CLASS Other Source Operations				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1.-3. (No change.)				
From 10 pounds through 22.8 pounds per hour:				
1.-3. (No change.)				
For greater than 22.8 pounds per hour:				
1.-3. (No change.)				

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-*[16.6(g)]* ***16.16(g)***	Records	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-16.17(b)1	Control Apparatus	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.17(b)2	Compliance with Alternative VOC Control Plan	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.17(c)1	Compliance	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.17(d)	Submittal	$300	$600	$1,500	$4,500
N.J.A.C. 7:27-16.17(e)	Submittal	$300	$600	$1,500	$4,500
N.J.A.C. 7:27-16.17(n)	Submittal	$300	$600	$1,500	$4,500
N.J.A.C. 7:27-16.18(c)	Leak	$300	$600	$1,500[3]	$4,500[3]
N.J.A.C. 7:27-16.18(d)	Leak	$300	$600	$1,500[3]	$4,500[3]
N.J.A.C. 7:27-16.18(f)	Leak Detection and Repair	$3,000	$6,000	$15,000[3]	$45,000[3]

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N.J.A.C. 7:27-16.18(g)	Leak Detection and Repair	$3,000	$6,000	$15,000[3]	$45,000[3]
N.J.A.C. 7:27-16.18(h)	Leak Detection and Repair	$3,000	$6,000	$15,000[3]	$45,000[3]
N.J.A.C. 7:27-16.18(i)	Leak Detection and Repair	$3,000	$6,000	$15,000[3]	$45,000[3]
N.J.A.C. 7:27-16.18(j)1	Log	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-16.18(j)2	Report	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-16.18(l)	Annual Testing	$1,000	$2,000	$5,000	$15,000
N.J.A.C. 7:27-16.18(o)	Sealing Device	$600	$1,200	$3,000	$9,000
N.J.A.C. 7:27-16.18*[(g)]**(q)*	Alternative Methods	$1,000	$2,000	$5,000	$15,000
N.J.A.C. 7:27-16.19	Cutback and Emulsified Asphalt	$1,000	$2,000	$5,000	$15,000

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense

N.J.A.C. 7:27-16.20(a)

CLASS Petroleum Solvent Dry Cleaning

Maximum Actual Emissions

For less than 10 pounds per hour:

1.-3. (No change.)

From 10 pounds through 22.8 pounds per hour:

1.-3. (No change.)

For greater than 22.8 pounds per hour:

1.-3. (No change.)

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.20(b)	Filtration Emissions	$600	$1,200	$3,000	$9,000
N.J.A.C. 7:27-16.20(c)1	Leaking Equipment	$500	$1,000	$2,500[3]	$7,500[3]
N.J.A.C. 7:27-16.20(c)2	Open Containers	$500	$1,000	$2,500[3]	$7,500[3]
N.J.A.C. 7:27-16.20(f)	Total Emissions	$600	$1,200	$3,000	$9,000
N.J.A.C. 7:27-16.20(g)	Records	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-16.21(a)	Plan	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.21(b)	Implement Plan	$4,000	$8,000	$20,000	$50,000
N.J.A.C. 7:27-16.21(c)	Report	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-16.21(d)	Records Availability	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-16.21(e)	Revise Plan	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.22(a)	Records Availability	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-16.22(c)	Information	$300	$600	$1,500	$4,500
N.J.A.C. 7:27-16.22(d)	Monitoring	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.22(e)	Sampling and Testing	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.24(a)	Adjust Combustion	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.25(h)	Plan	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.25(l)	CEM	$2,000	$4,000	$10,000	$30,000

[3]Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

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7:27B-3.1 Definitions

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

. . .

"Volatile organic compound" or "VOC" means any compound of carbon*[, excluding]* ***(other than*** carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate*[,]****)*** which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods ***in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or*** which have been approved in writing by the Department ***and are acceptable to EPA***. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
trifluoromethane (HFC-23)
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
chlorodifluoromethane (HCFC-22)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)
1,1,1-trifluoroethane (HFC-143a)
1,1-difluoroethane (HFC-152a)

Classes of perfluorocarbons:

cyclic, branched, or linear, completely fluorinated alkanes

cyclic, branched, or linear, completely fluorinated ethers with no unsaturations

cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations

sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

. . .

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PUBLIC NOTICES

COMMUNITY AFFAIRS

(a)

LOCAL FINANCE BOARD

Notice of Public Hearing
Local Government Ethics Law
Request for Advisory Opinion Concerning Fire Commission Members

Take notice that the State of New Jersey, Department of Community Affairs, Local Finance Board is scheduling a **public hearing** on a request for an advisory opinion concerning the potential for a violation under the Local Government Ethics Law. The issue is: can an elected Fire Commissioner simultaneously serve as an elected official of a fire company, or as a volunteer fire fighter in a fire company, in the same district served as commissioner?

In accordance with N.J.S.A. 40A:9-22.7(e), the Local Finance Board has the authority to render an advisory opinion as to whether a given set of facts and circumstances would constitute a violation of the Law and in accordance with N.J.S.A. 40A:9-22.7(g), the Board also has the authority to adopt rules and regulations pursuant to the "Administrative Procedures Act," P.L. 1968, c.410 (N.J.S.A. 52:14B-1 et seq.) and to do other things as are necessary to implement the purposes of this Law.

In accordance with N.J.S.A. 40A:9-22.8, a local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provision of the Law. The Board has been requested to render an advisory opinion as to whether an elected fire commissioner can also serve as an elected official of the fire company in his or her own district. Additionally, the Board has expanded the question to include whether an elected fire commissioner can also serve as a volunteer fire fighter in a fire company in his or her own fire district.

Due to the Statewide nature of the activity being questioned and the resulting implications of an advisory opinion, the Board will conduct a public hearing to afford members of the public and any interested parties the opportunity to share their views on the matter with the Board prior to the Board rendering an opinion.

The **public hearing** is scheduled for:

Tuesday, July 12, 1994
Department of Community Affairs
101 S. Broad Street
Conference Room #134
Trenton, New Jersey
Time: 9:00 A.M. to 12:00 P.M.

Persons wishing to make oral presentations are asked to advise the Board by July 7, 1994 of their intention to make a presentation and to limit their comments to a five minute time period. Those wishing to present testimony should bring nine copies of their testimony to the hearing for distribution to the Board and to be made part of the record. The hearing record will be kept open for a period of seven days following the date of the public hearing.

Interested persons may submit written comments until July 19, 1994 to:

Beth Gates, Chair
Local Finance Board
CN 258
Trenton, New Jersey 08625

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

ENVIRONMENTAL REGULATION

Notice of Public Hearing
New Jersey Pollutant Discharge Elimination System
1993-94 Annual Fee Report and Fee Schedule

Take notice that the Department of Environmental Protection and Energy (Department) will hold a **public hearing** to present the 1993-94 Annual Fee Report and Fee Schedule for the New Jersey Pollutant Discharge Elimination System (NJPDES) program. This program regulates the operational wastewater discharges from public and privately owned wastewater treatment systems.

The **public hearing** will be held on Monday, July 25, 1994 beginning at 10:00 A.M. at:

New Jersey Department of Environmental Protection and Energy
Public Hearing Room, First Floor
401 East State Street
Trenton, New Jersey

The **public comment period** on the 1993-94 Annual Fee Report and Fee Schedule will remain open for comments until July 29, 1994. Please submit written comments to:

John Burke
Division of Water Quality
Bureau of Permit Management
CN 029
Trenton, New Jersey 08625

Copies of the 1993-94 Annual Fee Report and Fee Schedule will be mailed to NJPDES permittees by June 30, 1994. Other interested parties may request a copy by contacting the Bureau of Permit Management at (609) 984-4428.

(c)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Sussex County Water Quality Management Plan
Public Notice

Take notice that on May 10, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Sussex County Water Quality Management Plan was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for Andover Township. The WMP allows for a new sewage treatment plant (STP) discharging to ground water to serve a proposed senior citizens complex (Life Care Mews). The projected wastewater flow to this STP is 65,200 gallons per day. The WMP also identifies the existing STPs within the Township which include the Andover Nursing Home, Long Pond School, St. Paul's Abbey and Ascot Park Garden Apartments STPs. The WMP identifies the service areas to the existing STPs and to the proposed Life Care Mews STP. In addition, the WMP identifies the projected ground water disposal service areas within the Township, with specific gallons per acre per day limitations based on watershed and geologic formation.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

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(a)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Monmouth County Water Quality Management Plan

Public Notice

Take notice that on May 10, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Monmouth County Water Quality Management Plan was adopted by the Department. The amendment modifies the Western Monmouth Utilities Authority (WMUA) Wastewater Management Plan. This amendment expands the existing WMUA sewer service area to include one single family home on 8.81 acres located at Block 146, Lot 22 in Marlboro Township. The anticipated wastewater flow from the site is 400 gallons per day and is proposed to be treated at the WMUA Pine Brook Sewage Treatment Plant.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

LABOR

(b)

DIVISION OF VOCATIONAL REHABILITATION SERVICES

Notice of Availability of Grant Funds

Title of Grant: New Jersey Technology Assistive Resource Program (TARP) (P.L. 100-407)

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Labor hereby announces the availability of the following grant program funds.

A. Name of program: New Jersey Technology Assistive Resource Program (P.L. 100-407).

B. Purpose: Funds are being made available to develop an evaluation design and to conduct an evaluation of the assistive technology program funded through the Technology-Related Assistance for Individuals with Disabilities Act of 1988. This assessment should serve to answer five questions:

1. To what extent did TARP increase or improve awareness of information, funding, education, and service delivery as related to assistive technology?
2. To what extent has TARP developed and implemented a comprehensive, state-wide program of technology-related assistance for individuals with disabilities?
3. To what extent has TARP made aggressive outreach to underrepresented and rural populations and children with disabilities?
4. To what extent has TARP promoted systems change?
5. To what degree are those consumers who accessed TARP satisfied with the technology-related assistance they received?

In order to respond to Question 5, the vendor will be responsible for contracting with a Center for Independent Living or Office on the Disabled in each of the three regional centers' catchment areas for the purpose of performing peer review consumer-satisfaction surveys. In addition the vendor must develop the peer review monitoring instrument, train the peer review team, and analyze the data gathered by the team.

C. Amount of available funding for the program: $55,000 annualized.

D. Qualifications: The applicant must have experience in conducting this type of an evaluation.

E. Procedure for eligible organizations to apply: Interested applicants may request an application by writing or calling the New Jersey Technology Assistive Resource Program:

c/o Division of Vocational Rehabilitation Services
135 East State Street
CN 398
Trenton, New Jersey 08625
Phone: 1-800-DIALTEC
1-800-DTECHNJ (TDD)
609-292-7498

F. Address to which applications must be submitted:

New Jersey Technology Assistive Resource Program
c/o Division of Vocational Rehabilitation Services
135 East State Street, First Floor, CN 398
Trenton, New Jersey 08625

G. Deadline by which applications must be received: By close of business, July 19, 1994.

H. Date the applicant is to be notified of acceptance or rejection: July 27, 1994.

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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the May 2, 1994 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 promulgation of the rule and its chronological ranking in the Registry. As an example, R.1993 d.1 means the first rule filed for 1993.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT APRIL 18, 1994

NEXT UPDATE: SUPPLEMENT MAY 16, 1994

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
25 N.J.R. 2621 and 2794	June 21, 1993	26 N.J.R. 1 and 280	January 3, 1994
25 N.J.R. 2795 and 3050	July 6, 1993	26 N.J.R. 281 and 520	January 18, 1994
25 N.J.R. 3051 and 3276	July 19, 1993	26 N.J.R. 521 and 878	February 7, 1994
25 N.J.R. 3277 and 3582	August 2, 1993	26 N.J.R. 879 and 1178	February 22, 1994
25 N.J.R. 3583 and 3884	August 16, 1993	26 N.J.R. 1179 and 1272	March 7, 1994
25 N.J.R. 3885 and 4360	September 7, 1993	26 N.J.R. 1273 and 1416	March 21, 1994
25 N.J.R. 4361 and 4540	September 20, 1993	26 N.J.R. 1417 and 1554	April 4, 1994
25 N.J.R. 4541 and 4694	October 4, 1993	26 N.J.R. 1555 and 1738	April 18, 1994
25 N.J.R. 4695 and 4812	October 18, 1993	26 N.J.R. 1739 and 1904	May 2, 1994
25 N.J.R. 4813 and 4980	November 1, 1993	26 N.J.R. 1905 and 2166	May 16, 1994
25 N.J.R. 4981 and 5382	November 15, 1993	26 N.J.R. 2167 and 2510	June 6, 1994
25 N.J.R. 5383 and 5728	December 6, 1993	26 N.J.R. 2511 and 2692	June 20, 1994
25 N.J.R. 5729 and 6084	December 20, 1993		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-11.1	Subpoenas	26 N.J.R. 1276(a)	R.1994 d.293	26 N.J.R. 2255(a)
1:10-1.1, 14.2, 14.3	Family Development hearings: reproposal	26 N.J.R. 1744(b)		
1:12	Department of Labor hearings	26 N.J.R. 2174(a)		
1:12A	Department of Labor hearings	26 N.J.R. 2174(a)		
1:13A-11.1	Subpoenas	26 N.J.R. 1276(a)	R.1994 d.293	26 N.J.R. 2255(a)
1:14-10	BRC ratemaking hearings: discovery	26 N.J.R. 3(a)		
1:14-10	BRC ratemaking hearings: extension of comment period regarding discovery process	26 N.J.R. 883(a)		
Most recent update to Title 1: TRANSMITTAL 1994-2 (supplement April 18, 1994)				
AGRICULTURE—TITLE 2				
2:3	Livestock and poultry importation	26 N.J.R. 1908(a)		
2:5	Quarantines and embargoes on animals	26 N.J.R. 1908(b)		
2:6	Animal health: biologics for diagnostic or therapeutic purposes	25 N.J.R. 4985(a)		
2:32-2.1, 2.7, 2.9, 2.27	Sire Stakes Program conditions	26 N.J.R. 1181(a)	R.1994 d.271	26 N.J.R. 2256(a)
2:33	Agricultural fairs	26 N.J.R. 285(a)		
2:69-1.11	Commercial values of primary plant nutrients	26 N.J.R. 1560(a)	R.1994 d.312	26 N.J.R. 2568(a)
2:76	Agriculture Development Committee	26 N.J.R. 1419(a)		
2:76-6.11	Farmland Preservation Program: correction to proposal and extension of comment period regarding acquisition of development easements	25 N.J.R. 4697(a)		
Most recent update to Title 2: TRANSMITTAL 1994-2 (supplement March 21, 1994)				
BANKING—TITLE 3				
3:1-2.17, 2.25, 2.26	Closing of branch offices	26 N.J.R. 883(b)		
3:1-2.25, 2.26	Charter conversions	26 N.J.R. 286(a)	R.1994 d.208	26 N.J.R. 1827(a)
3:1-6.6	Department examination charges	26 N.J.R. 1560(b)		
3:1-12.2	Multiple party deposit accounts: administrative correction	———	———	26 N.J.R. 2568(b)
3:4-3	Banking institutions: sale of alternative investments	25 N.J.R. 5733(a)		
3:6-8.2, 8.3, 17	Charter conversions	26 N.J.R. 286(a)	R.1994 d.208	26 N.J.R. 1827(a)
3:6-15.2	Disqualification of savings bank directors	25 N.J.R. 3586(b)		
3:11	Investments	26 N.J.R. 1909(a)		
3:11-7.11	Disqualification of bank directors	25 N.J.R. 3586(b)		
3:13-5	Mutual holding companies	26 N.J.R. 1213(a)		
3:32-3	Mutual holding companies	26 N.J.R. 1213(a)		
3:38-1.1, 1.10, 5.1	Mortgage banker non-servicing	25 N.J.R. 1035(a)	R.1993 d.295	25 N.J.R. 2687(a)
3:38-5.3	Mortgage referrals by real estate agents	26 N.J.R. 6(a)		
3:38-5.3	Mortgage referrals by real estate agents: extension of comment period	26 N.J.R. 884(a)		
3:41-12	Cemetery Board: service contractors and service contracts	26 N.J.R. 6(b)		
Most recent update to Title 3: TRANSMITTAL 1994-2 (supplement March 21, 1994)				
CIVIL SERVICE—TITLE 4				
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PERSONNEL—TITLE 4A				
4A:1-2.3	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:2-2.3	Sexual harassment; discrimination complaints	26 N.J.R. 1182(a)		
4A:2-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-4.6	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:4-2.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:4-2.9	Make-up examinations	26 N.J.R. 1183(a)	R.1994 d.285	26 N.J.R. 2256(a)
4A:4-2.15, 5.2	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:6-1.1, 1.8, 1.10, 1.21A	Family and medical leave	26 N.J.R. 1183(b)		
4A:6-1.2, 1.3, 1.5, 1.23, 2.4	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:6-4.2	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:7-1.3, 3.3	Sexual harassment; discrimination complaints	26 N.J.R. 1182(a)		
4A:8-2.1	Layoff rights	26 N.J.R. 2182(a)		
4A:8-2.4	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
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5:15	Emergency shelters for the homeless	26 N.J.R. 1421(a)		
5:18-2.12, 2.21, App. 3-A	Uniform Fire Code: cigarette lighters	26 N.J.R. 2182(b)		
5:23-2.5	Uniform Construction Code: increase in dwelling size	26 N.J.R. 1910(a)		
5:23-2.23, 4.20	UCC: testing of blackflow preventers	26 N.J.R. 1911(a)		
5:23-3.4, 3.20A	Indoor air quality subcode	25 N.J.R. 5918(a)		
5:23-4.4, 4.5, 4.5A, 4.12, 4.14, 4.18, 4.20	Uniform Construction Code: private on-site inspection agencies	25 N.J.R. 2162(a)		
5:23-5.19	UCC: elevator inspector HHS requirements	26 N.J.R. 1912(a)		
5:23-8.10	Asbestos Hazard Abatement Subcode: asbestos safety technician	26 N.J.R. 2183(a)		
5:25-2.5	New home warranties and builder registration: denial of registration	26 N.J.R. 1913(a)		
5:25A-1.3	Fire-retardant treated plywood failure: notice of rule invalidation regarding definition of major structural defect	———	———	26 N.J.R. 1828(a)
5:60	Displaced Homemaker Programs: eligibility for grants-in-aid	26 N.J.R. 1622(b)	R.1994 d.311	26 N.J.R. 2568(c)
5:80-3.2	Housing and Mortgage Finance Agency: return on equity for housing project sponsors	26 N.J.R. 1186(a)		
5:80-5.10	Housing and Mortgage Finance Agency: prepayment of project mortgage	26 N.J.R. 1187(a)		
5:80-8	Housing and Mortgage Finance Agency: occupancy income requirements	26 N.J.R. 8(a)	R.1994 d.300	26 N.J.R. 2569(a)
5:80-9.14, 9.15	Housing and Mortgage Finance Agency: rent increases for projects without Federal rent subsidies and for low/market rate projects	26 N.J.R. 1188(a)	R.1994 d.301	26 N.J.R. 2570(a)
5:80-23.7, 23.9	Housing Incentive Note Purchase Program: fees; subordinate financing	26 N.J.R. 9(a)	R.1994 d.302	26 N.J.R. 2571(a)
5:80-29	Housing and Mortgage Finance Agency: investment of housing project funds	25 N.J.R. 4830(a)	R.1994 d.303	26 N.J.R. 2572(a)
5:91-1.3, 14	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)	R.1994 d.290	26 N.J.R. 2300(a)
5:92-1.1, 1.3	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)	R.1994 d.290	26 N.J.R. 2300(a)
5:93	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)	R.1994 d.290	26 N.J.R. 2300(a)
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5A:6	Veterans' programs and services: policies and procedures	26 N.J.R. 530(a)	R.1994 d.295	26 N.J.R. 2572(b)
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EDUCATION—TITLE 6				
6:21	Pupil transportation	26 N.J.R. 1997(a)		
6:26	Intervention and referral services for general education pupils	26 N.J.R. 2004(a)		
6:28-2.10, 3.6, 4.3	Special education	26 N.J.R. 1422(a)		
6:29-1.7	Eye protection in public schools	26 N.J.R. 537(a)	R.1994 d.238	26 N.J.R. 2019(a)
6:29-9.1, 9.2	Reporting of allegations of child abuse	26 N.J.R. 538(a)	R.1994 d.237	26 N.J.R. 2019(b)
6:30	Adult education programs	26 N.J.R. 884(b)	R.1994 d.286	26 N.J.R. 2257(a)
6:30-2.1	Adult basic skills programs: professional staff certification	26 N.J.R. 2184(a)		

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6:39	District evaluation	26 N.J.R. 1423(a)		
6:70	Library network services	26 N.J.R. 2184(b)		

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7:0	Management of waste oil: request for public comment	26 N.J.R. 1466(a)		
7:1C-1.1, 1.2, 1.5	Ninety-day construction permits: fees	26 N.J.R. 787(a)		
7:1C-1.1, 1.3, 1.5	Ninety-day construction permits: fees	26 N.J.R. 913(a)		
7:1E	Discharges of petroleum and other hazardous substances: request for public comment on draft amendments	25 N.J.R. 2636(a)		
7:1G	Worker and Community Right to Know	26 N.J.R. 123(a)		
7:5D	State Trails System	26 N.J.R. 1459(a)		
7:7	Coastal Permit Program	26 N.J.R. 917(a)	R.1994 d.276	26 N.J.R. 2413(a)
7:7	Coastal Permit Program	26 N.J.R. 918(a)		
7:7	Coastal Permit Program: extension of comment period	26 N.J.R. 1561(a)		
7:7-8	Coastal Permit Program: enforcement	26 N.J.R. 1745(a)		
7:7E	Coastal zone management	26 N.J.R. 943(a)		
7:7E	Coastal zone management: public meetings and opportunity for comment on proposed revisions to planning and growth region policies	26 N.J.R. 1003(a)		
7:7E-3.43	Coastal zone management: administrative correction regarding special urban areas	26 N.J.R. 1561(b)		
7:7E-8.12	Coastal zone management: notice of clarification	26 N.J.R. 1561(c)		
7:9-1.1	Treatment works approval, sewer bans and sewer ban exemptions	25 N.J.R. 3282(a)	R.1994 d.278	26 N.J.R. 2413(b)
7:11-2.1-2.4, 2.9, 2.10, 2.13	Delaware and Raritan Canal—Spruce Run/Round Valley Reservoirs System: sale of water	25 N.J.R. 5742(a)	R.1994 d.306	26 N.J.R. 2595(a)
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: sale of water	25 N.J.R. 5744(a)	R.1994 d.307	26 N.J.R. 2598(a)
7:13	Flood hazard area control	26 N.J.R. 1009(a)		
7:13	Flood hazard area control	26 N.J.R. 1036(a)		
7:14	Water Pollution Control Act rules	26 N.J.R. 1038(a)	R.1994 d.256	26 N.J.R. 2459(a)
7:14-8.3	Clean Water Enforcement Act: financial assurance for penalty payment schedules	25 N.J.R. 5395(a)	R.1994 d.277	26 N.J.R. 2461(a)
7:14A	New Jersey Pollutant Discharge Elimination System	26 N.J.R. 1332(a)		
7:14A	NJPDES permitting program: waiver of Executive Order No. 66(1978) expiration date	———	———	26 N.J.R. 2462(a)
7:14A-1.9, 12, 22, 23	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)	R.1994 d.278	26 N.J.R. 2413(b)
7:14A-2.15, 6.14, 6.17, 12.4	Contaminated site remediation: NJPDES permit program	26 N.J.R. 158(a)		
7:15	Statewide Water Quality Management Planning Rules: public meetings and opportunity for comment on draft amendments	26 N.J.R. 792(a)		
7:15-5.18	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)	R.1994 d.278	26 N.J.R. 2413(b)
7:23	Flood Control Bond Grants	26 N.J.R. 1334(a)	R.1994 d.308	26 N.J.R. 2599(a)
7:24A	Dam Restoration and Inland Waters Projects Loan Program	26 N.J.R. 2228(a)		
7:25-4	Implementation of Wild Bird Act of 1991	26 N.J.R. 1040(a)		
7:25-5	1994-95 Game Code	26 N.J.R. 1913(b)		
7:25-6.22	1994-95 Fish Code: snapping turtles, bull frogs and green frogs	26 N.J.R. 1047(a)	R.1994 d.234	26 N.J.R. 2021(a)
7:25-18.1	Flounder management	Emergency (expires 6-12-94)	R.1994 d.230	26 N.J.R. 1885(a)
7:25-18.1, 18.2	Marine fisheries: size and possession limits; pound nets	26 N.J.R. 291(a)	R.1994 d.248	26 N.J.R. 2021(b)
7:25-18.1, 18.5	Directed conch fishery	26 N.J.R. 1931(a)		
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	26 N.J.R. 1652(a)		
7:26-1.4	Hazardous waste transportation: informal meeting on draft "10-day in-transit holding rule"	26 N.J.R. 294(a)		
7:26-8.2, 8.14	Hazardous waste from specific sources: removal of K053 through K059 and K074 from list	26 N.J.R. 1464(a)		
7:26-8.8, 8.12, 8.19	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)	R.1993 d.300	25 N.J.R. 2718(a)
7:26C	Site Remediation Program: opportunity for comment on draft remedial priority system	25 N.J.R. 4551(c)		
7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)		
7:27-1, 8, 18, 21, 22	Air pollution control: extension of comment period regarding facility operating permits, emission statements, and penalties	25 N.J.R. 4836(a)		
7:27-1, 8, 18, 22	Air Operating Permits and Reconstruction Permits: public roundtable on proposed new rules and amendments	26 N.J.R. 793(a)		

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7:27-1.4, 2.1, 8.1, 8.2, 16.1, 16.1A, 16.2–16.6, 16.8–16.11, 16.13, 16.16–16.22, 16.26, 16.27, 17.1, 17.3, 17.4, 23.1–23.7, 25.1, 25.7	Air pollution by volatile organic compounds: control and prohibition	25 N.J.R. 3339(a)	R.1994 d.313	26 N.J.R. 2600(a)
7:27-15.1, 15.2, 15.4-15.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27-15.1, 15.4	Enhanced Inspection and Maintenance (I/M) program	25 N.J.R. 5400(a)		
7:27-15.4	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27-16.1	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27-21.1–21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)		
7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)		
7:27-25.1, 25.3, 25.8	Control and prohibition of air pollution by vehicular fuels	26 N.J.R. 1048(a)		
7:27-25.1, 25.3, 25.8	Redesignation of carbon monoxide nonattainment areas and amendments regarding oxygenated fuels: public hearing time change	26 N.J.R. 1336(a)		
7:27-26	Low Emission Vehicles Program	26 N.J.R. 1467(a)		
7:27-27	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)		
7:27A-3.2, 3.10	Air pollution by volatile organic compounds: control and prohibition	25 N.J.R. 3339(a)	R.1994 d.313	26 N.J.R. 2600(a)
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)		
7:27A-3.10	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27A-3.10	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27A-3.10	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27B-3.1, 3.10	Air pollution by volatile organic compounds: control and prohibition	25 N.J.R. 3339(a)	R.1994 d.313	26 N.J.R. 2600(a)
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7:27B-4.1, 4.5, 4.6, 4.9	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27B-4.5, 4.6, 4.9	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:28-48	Non-ionizing radiation producing sources: registration fees	25 N.J.R. 5422(a)		
7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
7:50-2, 3, 4, 5, 6, 7	Pinelands Comprehensive Management Plan	26 N.J.R. 165(a)		
7:61-3.15, 3.16	Board of Commissioners of Pilotage: Drug Free Workplace Program	26 N.J.R. 2238(a)		

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8:1-1	Disability discrimination grievance procedure	26 N.J.R. 2005(a)		
8:8	Collection, processing, storage and distribution of blood	26 N.J.R. 1057(a)	R.1994 d.229	26 N.J.R. 2025(a)
8:8	Collection, processing, storage and distribution of blood	26 N.J.R. 2025(a)		
8:31B-2.1, 2.3, 2.4, 2.5	Hospital reporting of uniform bill-patient summaries (inpatient)	26 N.J.R. 10(a)		
8:31B-3.3, 3.70	Health care financing: monitoring and reporting	26 N.J.R. 12(a)		
8:31B-4.37	Charity care audit functions	26 N.J.R. 13(a)		
8:33L	Home Health Agency Policy Manual	26 N.J.R. 1065(a)	R.1994 d.279	26 N.J.R. 2266(a)
8:36-1.8, 9.3	Assisted living residences and comprehensive personal care homes: personal care assistants; administration of medications	26 N.J.R. 2187(a)		
8:38-1–3	Health Maintenance Organizations	26 N.J.R. 1624(a)		
8:39	Long-term care facilities: standards for licensure	26 N.J.R. 1772(c)		
8:42A	Licensure of alcoholism treatment facilities	26 N.J.R. 1625(a)		
8:43D	Health Care Administration Board bylaws	26 N.J.R. 1627(a)		
8:43H	Licensure of rehabilitation hospitals	26 N.J.R. 1628(a)		
8:44-2.1, 2.14	Clinical laboratory licensure: HIV testing	25 N.J.R. 2184(a)		
8:44-2.5	Clinical laboratory Proficiency Testing Program	26 N.J.R. 1070(a)		
8:44-2.11	Clinical laboratories: reporting of blood lead levels	26 N.J.R. 294(b)	R.1994 d.275	26 N.J.R. 2270(a)
8:44-2.11	Clinical laboratories: reopening of comment period on reporting of blood lead levels	26 N.J.R. 1190(a)		

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8:59-App. A, B	Worker and Community Right to Know Hazardous Substance List	26 N.J.R. 540(a)		
8:65-10.1, 10.2	Controlled dangerous substances	26 N.J.R. 1630(a)		
8:71	Interchangeable drug products (see 25 N.J.R. 1970(c), 2881(b), 4497(b), 6060(b))	25 N.J.R. 875(a)	R.1993 d.155	26 N.J.R. 1347(a)
8:71	Interchangeable drug products (see 25 N.J.R. 2881(a), 4496(a))	25 N.J.R. 1814(b)	R.1993 d.676	25 N.J.R. 6061(a)
8:71	Interchangeable drug products	25 N.J.R. 1815(a)	R.1993 d.334	25 N.J.R. 2879(c)
8:71	Interchangeable drug products (see 25 N.J.R. 4495(b), 6062(a), 364(b))	25 N.J.R. 2802(b)	R.1994 d.245	26 N.J.R. 2094(c)
8:71	Interchangeable drug products (see 25 N.J.R. 6060(c))	25 N.J.R. 3906(a)	R.1994 d.39	26 N.J.R. 364(a)
8:71	Interchangeable drug products (see 26 N.J.R. 362(b), 1347(b))	25 N.J.R. 4844(a)	R.1994 d.246	26 N.J.R. 2095(a)
8:71	List of Interchangeable Drug Products (see 26 N.J.R. 1348(a))	26 N.J.R. 13(b)	R.1994 d.247	26 N.J.R. 2096(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 14(a)	R.1994 d.244	26 N.J.R. 2039(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 69(a)	R.1994 d.243	26 N.J.R. 2028(a)
8:71	Interchangeable drug products	26 N.J.R. 1190(b)	R.1994 d.242	26 N.J.R. 2025(a)
8:71	Interchangeable drug products	26 N.J.R. 1821(a)		
8:71	Interchangeable drug products	26 N.J.R. 1822(a)		
8:91	Health Access New Jersey	26 N.J.R. 2007(a)		
8:100	State Health Plan rules: notice of invalidation	———	———	26 N.J.R. 1828(b)

Most recent update to Title 8: TRANSMITTAL 1994-2 (supplement March 21, 1994)

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9:2-2	Minority Undergraduate Fellowship Program	26 N.J.R. 80(a)	R.1994 d.239	26 N.J.R. 2096(b)
9:4-1.7	Curriculum coordinating committee	26 N.J.R. 1751(a)		
9:5-2.1, 2.2, 2.3, 2.5, 2.7	Job training program: unemployed persons tuition waiver	25 N.J.R. 3593(a)	R.1994 d.225	26 N.J.R. 1856(a)
9:9-1.23	NJHEAA reporting of loan status credit bureaus	26 N.J.R. 893(a)	R.1994 d.240	26 N.J.R. 2097(a)
9:11	Educational Opportunity Fund program: procedures and policies	26 N.J.R. 711(a)	R.1994 d.226	26 N.J.R. 1857(a)
9:11-2, 3, 4	Graduate EOF financial eligibility; Martin Luther King Physician-Dentist Scholarship; C. Clyde Ferguson Law Scholarship	26 N.J.R. 1932(a)		
9:12	Educational Opportunity Fund program support	26 N.J.R. 711(a)	R.1994 d.226	26 N.J.R. 1857(a)
9:18	Implementation of Higher Education Facilities Trust Fund Act	26 N.J.R. 1486(a)	R.1994 d.304	26 N.J.R. 2579(a)

Most recent update to Title 9: TRANSMITTAL 1994-2 (supplement February 22, 1994)

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10:15C-1.1	Child care payment rates and co-payment fees in Family Development service programs: administrative correction	———	———	26 N.J.R. 2098(a)
10:17	Child placement rights	26 N.J.R. 1563(a)		
10:31	Mental Health Screening and Screening Outreach Programs	26 N.J.R. 1424(a)	R.1994 d.291	26 N.J.R. 2271(a)
10:37-5.37–5.43	Repeal (see 10:37A)	25 N.J.R. 2672(a)	R.1994 d.292	26 N.J.R. 2271(b)
10:37-6.1–6.4, 6.8, 6.9, 6.25, 6.26, 6.30–6.33, 6.37, 6.38, 6.58, 7.1–7.9	Repeal (see 10:37D)	26 N.J.R. 1277(a)		
10:37A	Community residences for mentally ill adults	25 N.J.R. 2672(a)	R.1994 d.292	26 N.J.R. 2271(b)
10:37B	Psychiatric community residences for youth	25 N.J.R. 2197(a)	R.1994 d.227	26 N.J.R. 1828(c)
10:37C	Community mental health clinical case management	25 N.J.R. 4845(a)		
10:37D	Division of Mental Health and Hospitals: management and governing body standards for provider agencies	26 N.J.R. 1277(a)		
10:39	Repeal (see 10:37A)	25 N.J.R. 2672(a)	R.1994 d.292	26 N.J.R. 2271(b)
10:40	Division of Developmental Disabilities: organizational rules	Exempt	R.1994 d.249	26 N.J.R. 2098(b)
10:48-1	Division of Developmental Disabilities: appeal procedure	26 N.J.R. 1280(a)		
10:48-4	Eligibility for services	26 N.J.R. 1752(a)		
10:49-17.5	Home care services: Traumatic Brain Injury Program	26 N.J.R. 1566(a)		
10:50-1.2, 1.3, 1.4, 1.6, 1.7, 2.2	Transportation services for Medicaid recipients	26 N.J.R. 1425(a)		
10:52-8.2	Manual of Hospital Services: disproportionate share adjustment for other Uncompensated Care component	26 N.J.R. 2239(a)		
10:52-8.2	Manual for Hospital Services: payments for beds for mentally ill and developmentally disabled clients	26 N.J.R. 2241(a)		
10:53A-3.2, 3.4	Hospice Services Manual: determination of Medicaid eligibility	26 N.J.R. 1283(a)		
10:60-1.4	Covered home health services: administrative correction	———	———	26 N.J.R. 2285(a)

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10:60-5	Home care services: Traumatic Brain Injury Program	26 N.J.R. 1566(a)		
10:63-3.21, 3.22, 3.23	Nursing facility relief	26 N.J.R. 894(a)	R.1994 d.213	26 N.J.R. 1840(a)
10:65-1.1, 1.2, 1.4, 1.5, 1.7, 1.8, 2.1, 2.2, App. H	Pediatric medical day care services	26 N.J.R. 1427(a)		
10:71-4.8, 5.4, 5.5, 5.6, 5.9	Medicaid Only: eligibility computation amounts	26 N.J.R. 1754(a)		
10:81	Public Assistance Manual	26 N.J.R. 1573(a)		
10:81-2.2, 2.3, 5.1, 7.40-7.47, 15	Fraudulent receipt of AFDC assistance; disqualification penalties	25 N.J.R. 3408(a)		
10:81-2.6, 3.4, 11.2, 11.3	Public Assistance Manual: client Social Security numbers	26 N.J.R. 324(a)	R.1994 d.233	26 N.J.R. 2099(a)
10:81-11.2, 11.4, 11.18A	Public Assistance Manual: assignment of right to support; wage withholding	26 N.J.R. 896(a)		
10:81-11.9	Public Assistance Manual: $50 disregarded child support payment	26 N.J.R. 1937(a)		
10:81-14.18A	Child care payment rates and co-payment fees in Family Development service programs: administrative correction	———	———	26 N.J.R. 2098(a)
10:82	Aid to Families with Dependent Children (AFDC)	26 N.J.R. 1584(a)		
10:85-4.6	General Assistance Program: extension of temporary rental assistance benefits	26 N.J.R. 1756(a)		
10:86-10.6	Child care payment rates and co-payment fees in Family Development service programs: administrative correction	———	———	26 N.J.R. 2098(a)
10:95	Commission for the Blind and Visually Impaired: Vocational Rehabilitation Services Program	26 N.J.R. 2242(a)		
10:97	Commission for the Blind and Visually Impaired: Business Enterprise Program	26 N.J.R. 725(b)	R.1994 d.209	26 N.J.R. 1841(a)
10:122	Manual of Requirements for Child Care Centers	25 N.J.R. 4987(a)	R.1994 d.231	26 N.J.R. 2100(a)
10:133-1.3	DYFS: initial response and service delivery definitions	26 N.J.R. 1285(a)		
10:133C-2	Eligibility for DYFS services	26 N.J.R. 897(a)		
10:133H-3	Review of children in out-of-home placement	25 N.J.R. 5752(a)		
10A:33	Manual of Standards for Juvenile Detention Commitment Programs	25 N.J.R. 5749(a)		

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10A:3-5.7	Strip search of inmates	26 N.J.R. 1937(b)		
10A:4-4.1	Inmate prohibitions: failure to keep scheduled appointment	26 N.J.R. 1287(a)	R.1994 d.264	26 N.J.R. 2285(b)
10A:4-4.1, 5.1, 5.2, 5.3	Inmate prohibitions: misuse of electronic equipment	26 N.J.R. 1286(a)	R.1994 d.254	26 N.J.R. 2129(a)
10A:6-2.2, 2.7	Inmate legal services: use of typewriters	26 N.J.R. 2188(a)		
10A:19	Public information	26 N.J.R. 1287(b)	R.1994 d.255	26 N.J.R. 2129(b)
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10A:33	Manual of Standards for Juvenile Detention Commitment Programs	25 N.J.R. 5749(a)		
10A:71-3.15, 3.16	State Parole Board: parole hearings	26 N.J.R. 2189(a)		
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11:3-2B	Market Transition Facility of New Jersey: suspension of claims payments	26 N.J.R. 1393(a)	R.1994 d.261	26 N.J.R. 2283(a)
11:3-3	Limited assignment distribution servicing carriers	25 N.J.R. 1327(b)	R.1994 d.210	26 N.J.R. 1869(a)
11:3-16.7	Automobile insurers rate filing requirements	26 N.J.R. 900(a)		
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11:3-29.6	Personal auto injury fee schedule: physician's services	25 N.J.R. 4554(a)		
11:3-32	Automobile and motor vehicle insurers: certification of compliance with mandatory liability coverages	26 N.J.R. 1939(a)		
11:5-1.15, 1.23	Real Estate Commission: discriminatory conduct prohibitions	26 N.J.R. 729(a)	R.1994 d.266	26 N.J.R. 2581(a)
11:5-1.28	Real Estate Commission: requirements for prelicensure schools and instructors	26 N.J.R. 730(a)	R.1994 d.267	26 N.J.R. 2581(b)
11:5-1.43	Real Estate Commission: extension of comment period regarding licensee provision of Agency Information Statement	25 N.J.R. 2645(a)		
11:5-1.44	Real Estate Commission: collection of licensee Social Security numbers	26 N.J.R. 735(a)	R.1994 d.268	26 N.J.R. 2585(a)
11:5-2.5	Real Estate Commission: access to commission records	26 N.J.R. 736(a)	R.1994 d.269	26 N.J.R. 2585(b)
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11:17-3, 5.1–5.4, 5.6, 5.7	Professional qualifications of insurance producers	26 N.J.R. 1289(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge	26 N.J.R. 2195(a)		
11:19-4	Financial Examinations Monitoring System: data submission requirements for domestic life/health insurers	26 N.J.R. 1195(a)		
11:21-1.2, 8, 10, Exh. CC	Small Employer Health Benefits Program: carrier certification of non-member status; Market Share Report	26 N.J.R. 1588(a)	R.1994 d.228	26 N.J.R. 1873(a)
11:21-2.5	Small Employer Health Benefits Program Board: structure and meetings	26 N.J.R. 1940(a)	R.1994 d.319	26 N.J.R. 2587(a)

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12:18-2.6, 2.38, 2.41–2.48	Temporary Disability Benefits appeal hearings	26 N.J.R. 2195(b)		
12:18 App.	Department of Labor hearings	26 N.J.R. 2174(a)		
12:20	Board of Review and Appeal Tribunal	26 N.J.R. 1941(a)		
12:20	Department of Labor hearings	26 N.J.R. 2174(a)		
12:20	Board of Review regarding unemployment benefits appeals	26 N.J.R. 2196(a)		
12:23-5.9	Workforce Development Partnership Program: overpayments of additional unemployment benefits	26 N.J.R. 2198(a)		
12:56-6.1, 7.5, 7.6	Wage and Hour compliance: limousine operators	26 N.J.R. 94(a)		
12:235-9.4	Workers' Compensation: appeals regarding discrimination complaints	26 N.J.R. 1591(b)		
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12A:31-1.4	Development Authority for Small Businesses, Minorities' and Women's Enterprises: allocation of direct loan assistance	25 N.J.R. 5759(a)		
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13:13	Housing discrimination	26 N.J.R. 1942(a)		
13:18-6.1, 6.2	Division of Motor Vehicles: insurance verification	25 N.J.R. 3925(b)	R.1994 d.252	26 N.J.R. 2135(a)
13:20-34.2, 34.3	Division of Motor Vehicles: license plates' identifying marks	26 N.J.R. 1487(a)	R.1994 d.314	26 N.J.R. 2587(b)

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13:21-24	Division of Motor Vehicles: defensive driving courses	26 N.J.R. 1592(a)		
13:23	Division of Motor Vehicles: driving schools	26 N.J.R. 1299(a)	R.1994 d.294	26 N.J.R. 2588(a)
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13:27-6.2	Boards of Professional Engineers and Land Surveyors, Architects, and Professional Planners: depiction of existing conditions on a site plan	26 N.J.R. 1221(a)		
13:28-5.1	Board of Cosmetology and Hairstyling: fee schedule	26 N.J.R. 1947(a)		
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13:30-1.1	Board of Dentistry: qualifications of applicants for licensure to practice	25 N.J.R. 2216(d)		
13:30-8.18	Board of Dentistry: licensee continuing education	26 N.J.R. 1948(a)		
13:31-1.3	Board of Examiners of Electrical Contractors: licensing examination	26 N.J.R. 1218(a)		
13:31-1.9	Board of Examiners of Electrical Contractors: identification of licensee vehicles	26 N.J.R. 1218(b)		
13:31-1.10	Board of Examiners of Electrical Contractors: duty of licensee to return pressure seal	26 N.J.R. 1594(a)		
13:33-4.1	Board of Ophthalmic Dispensers and Ophthalmic Technicians: contact lens dispensing	26 N.J.R. 1595(a)		
13:34-1.1	Board of Marriage Counselor Examiners: examination fee	26 N.J.R. 1301(a)	R.1994 d.287	26 N.J.R. 2293(a)
13:35-2B, 6.14	Board of Medical Examiners: physician assistants	25 N.J.R. 5099(b)		
13:35-5.1	Board of Medical Examiners: release of contact lens specification to patient	26 N.J.R. 1219(a)		
13:35-6.10	Board of Medical Examiners: licensee testimonial advertisements	26 N.J.R. 1219(b)		
13:35-6.13	Board of Medical Examiners: administrative correction regarding fee schedule	_____	_____	26 N.J.R. 2589(b)
13:35-6.17	Board of Medical Examiners: professional fees and investments	25 N.J.R. 5441(a)		
13:35-8.7, 8.8	Board of Medical Examiners: fitting and dispensing of deep ear canal hearing aid devices	26 N.J.R. 1301(b)		
13:35-11	Board of Medical Examiners: Alternative Resolution Program	25 N.J.R. 2824(b)		
13:36-7.1	Board of Mortuary Science: handling and embalming bodies dead of infectious or contagious disease	26 N.J.R. 1302(a)	R.1994 d.288	26 N.J.R. 2293(b)
13:37-7	Certification of nurse practitioners/clinical nurse specialists	25 N.J.R. 2829(a)	R.1994 d.212	26 N.J.R. 1876(a)
13:37-12.1	Board of Nursing: fees for certification of nurse practitioner	26 N.J.R. 1490(b)	R.1994 d.317	26 N.J.R. 2589(c)
13:37-12.1, 14	Board of Nursing: certification of homemaker-home health aides	25 N.J.R. 1950(a)	R.1994 d.289	26 N.J.R. 2293(c)
13:37-14	Homemaker-home health aide competency evaluation: public hearing	25 N.J.R. 3704(b)		
13:38-6.1	Board of Optometrists: release of contact lens specification to patient	26 N.J.R. 1220(a)		
13:39	Board of Pharmacy rules	26 N.J.R. 1596(a)		
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13:40-7.2	Boards of Professional Engineers and Land Surveyors, Architects, and Professional Planners: depiction of existing conditions on a site plan	26 N.J.R. 1221(a)		
13:40A-2A.3	Board of Real Estate Appraisers: certification as residential appraiser	26 N.J.R. 902(a)		
13:40A-4.1–4.9	Board of Real Estate Appraisers: licensee continuing education	26 N.J.R. 903(a)	R.1994 d.251	26 N.J.R. 2137(a)
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13:42-1.1, 1.2, 4.5, 9.9	Board of Psychological Examiners rules	25 N.J.R. 4937(a)		
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13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	25 N.J.R. 3931(b)		
13:44E-2.1	Board of Chiropractic Examiners: licensee advertising	25 N.J.R. 3932(a)		

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13:44E-2.13	Board of Chiropractic Examiners: overutilization; excessive fees	26 N.J.R. 1231(b)		
13:44E-2.14	Board of Chiropractic Examiners: administrative correction regarding referral of patients to physical therapists	———	———	26 N.J.R. 2590(a)
13:44G-5.1, 5.2, 5.3	Board of Social Work Examiners: licensure and certification	26 N.J.R. 1604(b)	R.1994 d.320	26 N.J.R. 2590(b)
13:45A-14.7	Office of Consumer Protection: unit price labeling	26 N.J.R. 1306(a)	R.1994 d.257	26 N.J.R. 2138(a)
13:45A-16.1	Home improvement practices: security protection devices	26 N.J.R. 1605(a)		
13:46-2	Athletic Control Board: participant health and safety in boxing and combative sports events	25 N.J.R. 4717(a)		
13:47C	Weights and measures: general commodities	26 N.J.R. 1761(a)		
13:57	Uniform Crime Reporting (UCR) system	26 N.J.R. 905(a)	R.1994 d.250	26 N.J.R. 2139(a)
13:60	Motor carrier safety	26 N.J.R. 1307(a)	R.1994 d.253	26 N.J.R. 2140(a)
13:70-14A.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1955(a)		
13:70-14A.8	Thoroughbred racing: possession of drugs or drug instruments	26 N.J.R. 1315(a)		
13:70-14A.9	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(a)		
13:70-19.44	Thoroughbred racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5107(a)		
13:71-9.5	Harness racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5108(a)		
13:71-23.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(b)		
13:71-23.8	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1957(a)		
13:71-23.9	Harness racing: possession of drugs or drug instruments	26 N.J.R. 1316(a)		
13:75	Violent Crimes Compensation Board: practice and procedure	26 N.J.R. 1491(a)		

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14:0	IntraLATA competition for telecommunications services: preproposal	25 N.J.R. 3682(b)		
14:0	Intrastate dial-around compensation: preproposal	25 N.J.R. 4586(a)		
14:18-3.24	Cable television: late fees and charges	26 N.J.R. 105(a)		
14:18-10.5	Cable television: performance monitoring	25 N.J.R. 2700(a)		
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15:10-8	Certification of electronic voting systems: public hearing and extension of comment period	25 N.J.R. 4864(a)		

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16:26	Bureau of Electrical Engineering	26 N.J.R. 1764(a)		
16:28-1.5	Speed limit zones along Route 37 in Ocean County	26 N.J.R. 1958(b)		
16:28-1.10	Speed limit zones along U.S. 46, including U.S. 1, 9 and 46, in Washington Township	26 N.J.R. 1959(a)		
16:28-1.10	Speed limit zones along U.S. 46, including U.S. 1, 9 and 46, in Dover	26 N.J.R. 1960(a)		
16:28-1.18	Speed limit zones along Route 34 in Aberdeen and Matawan	26 N.J.R. 1765(a)		
16:28-1.41	School zone along U.S. 9 in Lower Township, Cape May County	26 N.J.R. 1765(b)		
16:28-1.41	Speed limit zones along U.S. 9 in Ocean County	26 N.J.R. 1960(b)		
16:28-1.67	Speed limit zones along U.S. 202 in Somerset County	26 N.J.R. 1316(b)	R.1994 d.262	26 N.J.R. 2299(a)

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16:28-1.72	Speed limit zones along U.S. 206, including U.S. 206 and 130, in Morris County	26 N.J.R. 1961(a)		
16:28-1.96	Speed limit zones along Route 45 in Gloucester County	26 N.J.R. 1962(a)		
16:28-1.106	Speed limit zones along Route 31 in Clinton Township	26 N.J.R. 1963(a)		
16:28-1.132	Speed limit zones along Route 47 in Middle Township	26 N.J.R. 1767(a)		
16:28-1.182	Speed limits along Wyckoff Mills Road in Howell Township	26 N.J.R. 1767(b)		
16:28-1.183	Speed limits along Frontage Road in Union Township, Hunterdon County	26 N.J.R. 1768(a)		
16:28A-1.22	No stopping or standing zones along Route 31 in East Amwell Township	26 N.J.R. 1768(b)		
16:28A-1.23	No stopping or standing zones along Route 33 in Manalapan Township	26 N.J.R. 1963(b)		
16:28A-1.28	Restricted parking and stopping along Route 40 in Hamilton Township, Atlantic County	26 N.J.R. 1769(a)		
16:28A-1.41	Time limit parking on Route 77 in Bridgeton: correction to proposal	25 N.J.R. 3944(a)		
16:28A-1.57	No stopping or standing along U.S. 206 in Mount Olive	26 N.J.R. 2200(a)		
16:28A-1.113	No stopping or standing zones along Route 33 (Business) in Manalapan Township	26 N.J.R. 1964(a)		
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships	26 N.J.R. 908(a)	R.1994 d.263	26 N.J.R. 2299(b)
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships: correction to proposal and extension of comment period	26 N.J.R. 1317(a)		
16:30-7.3	Limited access prohibition along Route 55 Freeway in Cumberland, Salem, and Gloucester counties	26 N.J.R. 1769(b)		
16:30-7.6	Limited access prohibitions along Route 18 Freeway in Monmouth and Middlesex counties	26 N.J.R. 1965(a)		
16:30-7.7	Limited access prohibitions along Route 42 Freeway in Gloucester and Camden counties	26 N.J.R. 1964(b)		
16:31-1.3	Turn prohibitions on Route 46 in Mount Olive Township, Morris County	26 N.J.R. 1771(a)		
16:31-1.8	Turn prohibitions on Route 47 in the City of Vineland, Cumberland County	26 N.J.R. 1770(a)		
16:47-4.13	State Highway Access Management Code: administrative correction	_____	_____	26 N.J.R. 2299(c)
16:50-8.9, 11	Employer Trip Reduction Program: employee transportation coordinator training; disclosure of information	25 N.J.R. 5452(a)		
16:50-15	Employer Trip Reductiion Program tax credit	26 N.J.R. 756(a)		
16:51	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53	Autobuses	26 N.J.R. 1606(a)		
16:53B	Jurisdictional assignments for railroad overhead bridges	26 N.J.R. 1203(a)	R.1994 d.232	26 N.J.R. 2146(b)
16:53D	Autobus carrier Zone of Rate Freedom	26 N.J.R. 1205(a)	R.1994 d.214	26 N.J.R. 1841(b)
16:53D	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:56	Airport safety improvement aid	26 N.J.R. 1607(a)		
16:72-1.1, 1.2, 1.5, 2.2, 2.4	NJ TRANSIT: procurement policies and procedures	26 N.J.R. 908(b)	R.1994 d.211	26 N.J.R. 1842(a)

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17:1-4.32	Workers' Compensation: reduction of retirement allowance	26 N.J.R. 2201(a)		
17:2-1.4	Public Employees' Retirement System: replacement of member-trustee who declines to serve	25 N.J.R. 5113(a)	R.1994 d.259	26 N.J.R. 2299(d)
17:9-4.1, 4.5	State Health Benefits Program: appointive officer eligibility	26 N.J.R. 109(a)		
17:9-4.2, 8.3, 9.1	State Health Benefits Program: continued coverage under voluntary furlough program	26 N.J.R. 2202(a)		
17:13	Goods and services contracts for small businesses, minority businesses, and female businesses	25 N.J.R. 4889(a)		
17:14	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)		
17:16-62.11	State Investment Council: Common Pension Fund A realized appreciation	26 N.J.R. 1771(b)		

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17:16-63.11	State Investment Council: Common Pension Fund B realized appreciation	26 N.J.R. 1772(a)		
17:16-67.11	State Investment Council: Common Pension Fund D realized appreciation	26 N.J.R. 1772(b)		

Most recent update to Title 17: TRANSMITTAL 1994-2 (supplement April 18, 1994)

TREASURY-TAXATION—TITLE 18

18:2-3.9	Payment of taxes by Electronic Funds Transfer	26 N.J.R. 1612(a)	R.1994 d.305	26 N.J.R. 2591(a)
18:7-15.1–15.5	Corporation Business Tax: urban enterprise zone credits	26 N.J.R. 2203(a)		

Most recent update to Title 18: TRANSMITTAL 1994-3 (supplement April 18, 1994)

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19:2	South Jersey Transportation Authority: rules of operation; Atlantic City Expressway	26 N.J.R. 1966(a)		
19:3, 3A, 4, 5	Hackensack Meadowlands Development District rules	26 N.J.R. 1970(a)		
19:8-2.11	Garden State Arts Center: sale of merchandise on property	26 N.J.R. 1318(a)	R.1994 d.235	26 N.J.R. 2146(c)
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19:31-8.2, 8.3	Hazardous Discharge Site Remediation Fund	26 N.J.R. 1612(b)		
19:31-8.7, 8.9	Hazardous Discharge Site Remediation Fund: administrative correction	———	———	26 N.J.R. 2462(b)
19:31-9	New Jersey Boat Industry Loan Guarantee Fund	26 N.J.R. 1613(a)		

Most recent update to Title 19: TRANSMITTAL 1994-4 (supplement April 18, 1994)

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19:40-1.2	Casino operation certificate	25 N.J.R. 5893(a)	R.1994 d.265	26 N.J.R. 2463(a)
19:40-1.2	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:40-1.2	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 1447(a)		
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19:40-4.1, 4.2, 4.8	Confidential information	26 N.J.R. 1434(a)		
19:41-1.3	Keno	26 N.J.R. 2218(a)		
19:41-1.4	Casino operation certificate	25 N.J.R. 5893(a)	R.1994 d.265	26 N.J.R. 2463(a)
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19:41-1.5A, 1.8, 1.9	Qualification standards for casino employees and gaming school instructors	26 N.J.R. 2207(a)		
19:41-1.6	Casino employee license position endorsements	26 N.J.R. 910(a)		
19:41-5.6, 5.6A	Business entity disclosure forms	26 N.J.R. 1437(a)	R.1994 d.296	26 N.J.R. 2591(b)
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19:41-8.8	Reapplication for license, registration, qualification or approval after denial or revocation	26 N.J.R. 1993(a)		
19:41-9.4	Division of Gaming Enforcement: hourly fee for efforts associated with sports events matters	———	———	26 N.J.R. 2476(a)
19:41-9.8, 9.9, 9.9A, 9.11A, 9.12, 9.13, 9.14, 14.6	License periods and fees	26 N.J.R. 780(a)	R.1994 d.216	26 N.J.R. 1846(a)
19:41-9.16	Listing of endorsements on casino employee licenses	26 N.J.R. 911(a)	R.1994 d.217	26 N.J.R. 1847(a)
19:41-11.1–11.4	Casino licensees, applicants, and casino service industry enterprises	26 N.J.R. 339(b)	R.1994 d.220	26 N.J.R. 1847(b)
19:42-3.6	Casino licensee application requirements; renewal of casino license	26 N.J.R. 1615(a)		
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19:65-2.5	Approval criteria for hotel development projects	25 N.J.R. 5455(a)		

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